Administrative Register of Kentucky

LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

VOLUME 8, NUMBER 2
SATURDAY, AUGUST 1, 1981

IN THIS ISSUE

NOTE: The August meeting of the Administrative Regulation Review Subcommittee will be a ONE-DAY meeting—Wednesday, August 5, 1981, at 10 a.m., in Room A, Capitol Annex.

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.

The *Administrative Register of Kentucky* is the monthly advance sheets service for the 1981 Edition of KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE.

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

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

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

---

Administrative Register of kentucky

(ISSN 0096-1493)

The Administrative Register of Kentucky is published monthly by the Legislative Research Commission, Frankfort, Kentucky 40601. Subscription rate, postpaid in the United States: $24 per volume of 12 issues, beginning in July and ending with the June issue of the subsequent year.

Second class postage paid at Frankfort, Kentucky.

POSTMASTER: Send address changes to Administrative Register of Kentucky, Room 300, State Capitol, Frankfort, Kentucky 40601.

Public Hearings Scheduled

ALCOHOLIC BEVERAGE CONTROL BOARD

A public hearing will be held at 9 a.m. EDT August 10, 1981, at 123 Walnut Street, Frankfort, Kentucky on the following regulation:

804 KAR 9:010. Retail liquor license limit. [8 Ky.R. 18]

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION

A public hearing will be held at 10 a.m. EDT August 3, 1981, in Room G-1 of the Capital Plaza Tower, Frankfort, Kentucky on the following regulations:

401 KAR 61:132. Existing miscellaneous metal parts and products surface coating operations. [8 Ky.R. 7]
401 KAR 63:030. Leaks from gasoline tank trucks and vapor collection systems. [8 Ky.R. 86]

Public hearings will be held at the following times and locations on regulations **405 KAR 30:010 through 405 KAR 30:410. Oil shale operations. [8 Ky.R. 87]**
7 p.m. EDT September 8, 1981, at 419 Reed Hall, Morehead State University, Morehead, Kentucky.
7 p.m. EDT September 10, 1981, at the Nelson County High School, Highway 62, Bardstown, Kentucky.
7 p.m. EDT September 14, 1981, at Room 212, Carl Perkins Building, Eastern Kentucky University, Kit Carson Drive, Richmond, Kentucky.
1 p.m. EDT September 15, 1981, at Bluegrass Area Development District, 3220 Nicholasville Road, Lexington, Kentucky.

DEPARTMENT FOR HUMAN RESOURCES

A public hearing will be held on August 4, 1981, at 9 a.m. EDT in the Vital Statistics Conference Room, First Floor, DHR Building, 275 East Main Street, Frankfort, Kentucky on the following regulations:

902 KAR 20:115. Ambulance services. [8 Ky.R. 27]
902 KAR 20:120. Non-emergency health transportation services. [8 Ky.R. 36]

Emergency Regulations Now In Effect

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 81-546
June 29, 1981

EMERGENCY REGULATION
Department of Transportation
Bureau of Highways

WHEREAS, KRS 189.270 authorizes the Secretary of Transportation to promulgate rules and regulations for the issuance by it of permits for the operation of motor vehicles and house trailers whose gross weight, height, width or length exceed the limits prescribed by law; and

WHEREAS, the Secretary of the Department of Transportation has determined that it is in the public interest to permit the movement of overdimensional house trailers during the hours of 6:00 p.m. until sundown, in addition to the currently permissible hours from 9:00 a.m. to 3:00 p.m. week days only; and

WHEREAS, the prevailing housing shortage and high interest rates have made it difficult for persons to purchase permanent residences, making it necessary for them to purchase and move house trailers to a more convenient and suitable site; and

WHEREAS, the extension of the daylight hours during which the house trailers may be moved will result in time and travel expense economies since many moves may be accomplished now in one day instead of two; and

WHEREAS, the time delay necessary in complying with the procedural requirements of KRS Chapter 13 would prevent the proposed extension of hours of movement from becoming effective during the summer season when it would be most advantageous to the public; and

WHEREAS, the Secretary of the Department of Transportation has determined that an emergency exists and recommends that the Governor declare the attached regulation amendment to be effective immediately upon being filed with the Legislative Research Commission:

NOW, THEREFORE, I, John Y. Brown, Jr., Governor of the Commonwealth of Kentucky, pursuant to the authority vested in me by KRS 13.085(2), do hereby acknowledge the finding of the Secretary of the Department of Transportation that an emergency exists and direct that the attached regulation amendment shall become effective immediately upon being filed in the Office of the Legislative Research Commission.

JOHN Y. BROWN, JR., Governor
FRANCES JONES MILLS, Secretary of State

DEPARTMENT OF TRANSPORTATION
Bureau of Highways

603 KAR 5:110E. Permits for moving mobile homes.

RELATES TO: KRS 189.270
PURSUANT TO: KRS 13.082
EFFECTIVE: June 30, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
NECESSITY AND FUNCTION: KRS 189.270 authorizes the Department of Transportation to issue permits for the movement of house trailers exceeding legal dimensions. This regulation establishes permit fees and determines requirements necessary in the interest of highway safety.

Section 1. No house trailer of a width greater than eight (8) feet or with a combined length of house trailer and towing vehicle greater than fifty-five (55) feet, one (1) or both, shall be towed upon any Kentucky highway unless, and until a special written permit has been issued by the Department of Transportation.

Section 2. Permits will be issued for single trips, or at the option of owners as set forth in Section 3, an annual permit will be issued to authorize movement of house trailers not exceeding twelve (12) feet in width. Registration and capacity of towing vehicles for house trailers in excess of eight (8) feet wide shall be the same as noted in Section 3. Single trip permits will be issued for a period of not more than ten (10) calendar days.

Section 3. Annual permits for movement of house trailers not exceeding twelve (12) feet in width on specified highways as shown by map on the permit will be issued to dealers and manufacturers located within the Commonwealth of Kentucky and certificated motor carriers who are properly licensed as such by the Department of Transportation and to private owner-residents of Kentucky for movements of their personally owned house trailers. No annual permits will be issued for the movement of house trailers in excess of twelve (12) feet in width. Each towing vehicle for house trailers twelve (12) feet wide must be registered in Kentucky for a gross weight of not less than 22,000 pounds, have dual wheels on the rear and be rated at least one and one-half (1½) ton capacity. Towing vehicles for house trailers fourteen (14) feet wide must have a minimum of 185 horsepower, a minimum of two (2) ton capacity, and must be licensed for a gross weight equal to the combined weight of the towing vehicle and the house trailer.

Section 4. The issue cost of single trip permits shall be ten dollars ($10) and the issue cost of annual permits shall be forty dollars ($40) for each towing vehicle and the cost will not be prorated. Permits will not be issued for units, including towing vehicle and house trailer combined, exceeding eighty-five (85) feet in length and fourteen (14) feet in width. The house trailer itself shall not exceed seventy (70) feet in length. Single trip permits will specify the highway to be used for a trip.

Section 5. Annual permits shall be issued by the Permit Section, Division of Motor Carriers, Department of Transportation, Frankfort, Kentucky.

Section 6. Single trip permits shall be issued by the Permit Section, Division of Motor Carriers, Frankfort, Kentucky, and by the Department of Transportation District Offices at Paducah, Madisonville, Bowling Green, Elizabethtown, Louisville, Covington, Lexington, Somerset, Flemingsburg, Ashland Sub-District, Jackson, Manchester and Pikeville, Kentucky.

Section 7. One (1) lead escort vehicle is required for movement of house trailers twelve (12) feet wide on all two (2) lane highways except on sections of toll roads which may be two (2) lane. Escort vehicles, both front and rear, may be required on some highways where highway conditions may dictate the need. Red flags twelve (12) inches by twelve (12) inches square must be displayed both sides front bumper of lead escort and both sides of rear of a following escort. Amber flashing lights may be used on both escort and towing vehicles. Red lights are prohibited.

Section 8. All permit forms and requests for trip permits shall specify make of towing vehicle, license number and state of issue, name and address of owner, dates for travel and routes of travel. Requests and permit forms for annual permits shall specify make of towing vehicle, rated capacity, serial number, license number, and whether for hire or private carrier.

Section 9. A duplicate permit to replace an annual permit or to transfer the permit to another vehicle may be obtained from the Permit Section, Division of Motor Carriers, Frankfort, by the payment of a fee of ten dollars ($10).

Section 10. Prior departmental approval must be secured from the Permit Section, Division of Motor Carriers, Frankfort, for any house trailer hauled under an annual permit which deviates from the routes prescribed in the permit issued for the towing vehicle.

Section 11. Permits shall be carried in the towing vehicles and must be presented, upon request, to any law enforcement officer or authorized personnel of the Department of Transportation for inspection.

Section 12. Permits are valid during daylight hours only, from Monday through Saturday noon, except for those periods before, during and after the following holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; and Christmas Day. In connection with these holidays, travel is not permitted from noon the preceding day until daylight of the next permissible day. If the holiday occurs on Sunday or Monday the restricted period will extend from noon of the preceding Friday to daylight of the following Tuesday. If satisfactory proof of an emergency is furnished the Permit Section, Division of Motor Carriers, Frankfort, Kentucky, the Permit Section may authorize moves during the restricted hours. The term "daylight hours" means the period from one-half (½) hour before sunrise until one-half (½) hour after sunset, but it does not include such period or part thereof when atmospheric conditions render visibility lower than is ordinarily the case during such daylight hours.

Section 13. Single trip permits for moves involving house trailers fourteen (14) feet wide will be issued by the Central Office only. The permit fee shall be ten dollars ($10).

Section 14. Moves of house trailers fourteen (14) feet wide will be limited to four (4) lane highways and to reasonable distance of two (2) lane highways. The definition of a reasonable distance from a four (4) lane highway to the unit's ultimate destination is defined in the sense that the Department of Transportation will in its best judgment designate the shortest and best route to be used. The department shall deny movements on any routes deemed unsuitable for move.

Section 15. Moves cannot be made when the pavement is wet or when wind velocity exceeds twenty-five (25) MPH. Moves will be made between the hours of 9:00 a.m. and 3:00 p.m. *and from 6:00 p.m. to sundown* week days only. No travel on weekends, holidays or at night.

Section 16. When house trailers fourteen (14) feet wide are moved, one (1) escort will be required in the rear on four (4) lane highways and one (1) escort vehicle, both front and rear, on other highways. Escort vehicles shall have an amber flashing light on the roof. The house trailer shall be equipped with four (4) way amber flashers spaced not less than six (6) feet above the roadway. All running lights must be on while in motion. All axles on the house trailer shall be equipped with brakes.

Section 17. Speed limit on movement of fourteen (14) feet wide house trailers on interstate highways is forty-five (45) MPH. On other highways the speed limit is thirty-five (35) MPH, unless posted minimum speed exceeds this, then this may be increased to the minimum posted speed.

DEAN HUFF, Commissioner
ADOPTED: June 29, 1981
APPROVED: FRANK R. METTS, Secretary
RECEIVED BY LRC: June 30, 1981 at 3 p.m.

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 81-551
June 29, 1981

EMERGENCY REGULATION
Department for Human Resources
Bureau for Social Insurance

WHEREAS, the Secretary of the Department for Human Resources is responsible for promulgating, by regulation, the policies of the Department with regard to the provision of Medical Assistance; and

WHEREAS, the Secretary has found the current budgetary deficit facing the Commonwealth and the Department should be reduced to the extent possible by prompt action; and

WHEREAS, the Secretary has devised a reimbursement plan for long-term care which basically relates the maximum payment amount for the class of facility to 110% of the median facility allowable cost; and

WHEREAS, the Secretary has promulgated a regulation on Payments for Dual Licensed Pediatric Facility Services; and

WHEREAS, the Secretary has found that an emergency exists with respect to the said regulation, and that, therefore, such regulation should, pursuant to the provision of law, be effective immediately upon filing with the Legislative Research Commission:

NOW, THEREFORE, I, John Y. Brown, Jr., Governor of the Commonwealth of Kentucky, by virtue of the authority vested in me by KRS 13.085(2), do hereby acknowledge the finding of emergency by the Secretary of the Department for Human Resources with respect to the filing of said regulation on Payments for Dual Licensed Pediatric Facility Services, and direct that said regulation shall be effective upon filing with the Legislative Research Commission, as provided in Chapter 13 of the Kentucky Revised Statutes.

JOHN Y. BROWN, JR., Governor
FRANCES JONES MILLS, Secretary of State

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance

904 KAR 1:033E. Payments for dual licensed pediatric facility services.

RELATES TO: KRS 205.520
PURSUANT TO: KRS 13.082, 194.050
EFFECTIVE: June 30, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.

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 *federal law and/or regulations* [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] *the* basis *of rates which are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable state and federal laws, regulations and quality and safety standards.* Such payment shall be prospective in nature with no year end adjustment for routine costs of care. The *skilled nursing and* intermediate care principles as specified in 904 KAR *1:036* [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 *skilled nursing and* 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 *which reasonably takes into account current economic conditions and trends, except that the inflation factor is not applied to fixed or capital costs* [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.

(f) The component (cost center) limitations specified in 904 KAR 1:036 are not applicable.

(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, *while recognizing that pediatric facilities serve a specialized clientele (children) who, during spells of illness, require closer or more intensive supervision.* The composite upper limit in effect as of *July 1, 1981* [June 1, 1978] shall be *fifty-five dollars ($55)* [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 *skilled nursing and* 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.

WILLIAM L. HUFFMAN, Commissioner
ADOPTED: June 15, 1981
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: June 30, 1981 at 3 p.m.

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 81-550
June 29, 1981

EMERGENCY REGULATION
Department for Human Resources
Bureau for Social Insurance

WHEREAS, the Secretary of the Department for Human Resources is responsible for promulgating, by regulation, the policy of the Department with regard to the standards of need and amount of assistance for the Aid to Families with Dependent Children Program (AFDC); and

WHEREAS, the Secretary has found that the current budgetary deficit facing the Commonwealth and the Department should be reduced to the extent possible by prompt action; and

WHEREAS, the Secretary has promulgated a regulation removing the child care special needs requirement from the AFDC program; and

WHEREAS, the Secretary has found that an emergency exists with respect to the said proposed regulation, and that, therefore, such regulation should, pursuant to the provision of law, be effective immediately upon filing with the Legislative Research Commission:

NOW, THEREFORE, I, John Y. Brown, Jr., Governor of the Commonwealth of Kentucky, by virtue of the authority vested in me by KRS 13.085(2), do hereby acknowledge the finding of emergency by the Secretary of the Department for Human Resources with respect to the filing of said regulation and direct that said regulation shall be effective upon filing with the Legislative Research Commission, as provided in Chapter 13 of the Kentucky Revised Statutes.

JOHN Y. BROWN, JR., Governor
FRANCES JONES MILLS, Secretary of State

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance

904 KAR 2:010E. AFDC; standards for need and amount.

RELATES TO: KRS 205.200(2), 205.210(1)
PURSUANT TO: KRS 13.082, 205.200(2)
EFFECTIVE: July 1, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.

NECESSITY AND FUNCTION: The Department for Human Resources is required to administer the public assistance programs. KRS 205.200(2) and 205.210(1) require that the secretary establish the standards of need and amount of assistance for the Aid to Families with Dependent Children Program, hereinafter referred to as AFDC, in accordance with federal regulations and Title IV-A of the Social Security Act. This regulation sets forth the standards by which the need for and the amount of an AFDC assistance payment is established.

Section 1. Resource Limitations: An applicant for or recipient of AFDC is permitted to retain:

(1) A homestead, household equipment, motor vehicles and farm equipment without limitation on value;

(2) Equity in non-homestead, income producing property, not to exceed $5,000;
(3) Equity in non-income producing non-homestead property not to exceed $1,000;
(4) Other assets are limited to:
(a) Savings, stocks or bonds: $500 for child living with relative other than parent; $1,000 for one (1) child and one (1) parent; $1,500 for two (2) or more children and one (1) or two (2) parents or one (1) child and two (2) parents.
(b) Cash surrender value of life insurance not to exceed $1,000 for each parent or $500 for each child.
(5) Non-continuing income which, whenever added to other resources, does not exceed resource maximums.

Section 2. Countable Income: To determine if a specified relative may be included in the AFDC grant when a stepparent is also in the home, a test budget is completed. Gross income of the stepparent and any of his/her minor children in the home is adjusted by deducting work expenses, child care and fixed and measurable medical expenses. The adjusted income is compared to the income allowed for that family size (the stepparent and his/her children) in accordance with the medical assistance income scale contained in 904 KAR 1:004. Any excess is then applied to the needs of the specified relative. If the specified relative's needs are met, the specified relative may not be included in the AFDC grant and none of the stepparent's income is included in the budget unless it is actually made available to the children included in the grant. If the specified relative's needs are not met, the specified relative may be included in the AFDC grant and the excess income of the stepparent is counted in the grant determination. In determining initial eligibility for AFDC and the amount of the assistance payment, all continuing income of persons for whom application is made or assistance received is deducted from the assistance standard except those amounts or from those sources for which a disregard is required by 45 CFR 233.20 as follows:
(1) Standard work expense deductions in accordance with the following scale or verified actual work expenses if verification is provided by the client. This scale covers all work expenses except child care. *Actual cost of child care is deducted as a work-related expense for an applicant/recipient who is employed.*

Work Expense Standard Deduction Scale
(Exclud*ing* [ed] Work-Related Child Care)

Gross Monthly Earned Income	Standard Monthly Deduction
$ 2.00- 49.99	$ 6.00
50.00- 99.99	19.00
100.00-149.99	31.00
150.00-199.99	44.00
200.00-249.99	56.00
250.00-299.99	69.00
300.00-349.99	81.00
350.00-399.99	94.00
400.00-449.99	106.00
450.00-499.99	119.00
500.00-549.99	131.00
550.00-599.99	144.00
600.00-649.99	156.00
650.00-699.99	169.00
700.00-749.99	181.00
750.00 and over	194.00

(2) Earnings of a child under age fourteen (14).
(3) Work Incentive Program (WIN) and Comprehensive Employment and Training Act Program (CETA) incentive payments.
(4) Reimbursement for training-related expenses made by a manpower agency to applicants in institutional and work experience training.
(5) Value of food coupons.
(6) Emergency assistance program payments.
(7) Non-emergency medical transportation payments.
(8) Principal of loans obtained to meet needs not included in the assistance plan, e.g., home repair, farm expansion.
(9) Educational grants, loans, scholarships, including payments for actual educational costs made under the GI Bill, obtained and used under conditions that preclude their use for current living costs and all education grants and loans administered by the United States Commissioner of Education.
(10) The amount of statutory benefits, paid to or for a minor child and with the condition that the child be in regular school attendance, which is used for tuition, registration fees, and other school-related expenses. Except that RSDI benefits based on school attendance are totally disregarded.
(11) Highway relocation assistance.
(12) Urban renewal assistance.
(13) Federal disaster assistance and state disaster grants.
(14) Home produce for household consumption.
(15) Proceeds from the sale of homestead property provided the family intends to reinvest in another homestead within six (6) months.
(16) Income/resources of a step-parent are considered only in relation to the eligibility of the parent as specified relative.
(17) Earnings received by a person employed by CETA under the Youth Incentive Entitlement Pilot Projects (YIEPP), the Youth Community Conversation and Improvement Project (YCCIP), and the Youth Employment and Training Program (YETP).
(18) Earnings received from participation in Job Corps.
(19) Experimental housing allowance program payment made under annual contributions contracts entered into prior to January 1, 1975, under Section 23 of the U.S. Housing Act of 1937, as amended; and HUD Section 8 payments for existing housing under Title 24 part 882.
(20) Receipts distributed to members of certain Indian tribes which are referred to in Section 5 of Public Law 94-114 that became effective October 17, 1975.
(21) Compensation provided to volunteers under Vista/Action or other programs established under Title VI of the Older American's Act of 1965, as amended.
(22) Earned income credit provided under the Revenue Act of 1978.
(23) First thirty dollars ($30) and one-third (⅓) of the remainder of the total combined earned income of all the members of the assistance group if the family's needs were met in whole or in part by an AFDC payment for any one (1) of the four (4) months preceding month of application.

Section 3. Additional Disregards: After initial eligibility is established, the following income is also disregarded:
(1) First thirty dollars ($30) and one-third (⅓) of the remainder of the total combined earned income of all the members of the assistance group.
(2) Earnings of a child in full-time school attendance or in half-time school attendance, if working full-time.

Section 4. Members of Assistance Group: (1) The assistance group is composed of one (1) or more children and may include as specified relative any person specified in 904 KAR 2:005, Section 3. The incapacitated natural or adoptive parent of the child(ren) who is living in the home and legally married to the specified relative may be included as second parent if the technical eligibility factors are met.

(2) The decision regarding application for or continued inclusion of an individual child rests with the parent or other specified relative.

Section 5. Assistance Standard. (1) The AFDC assistance standard including amounts for food, clothing, shelter, utilities and non-medical transportation from which countable income is deducted in determining eligibility for and the amount of the AFDC assistance payment is as follows:

Number of Eligible Persons	Monthly Standard
1 Child	$133
2 Persons	$162
3 Persons	$188
4 Persons	$235
5 Persons	$275
6 Persons	$310
7 or more Persons	$345

(2) The actual cost of child care shall be added to the standard if, *prior to July 1, 1981,* the relative with whom the child lives requests a child care payment *for child care costs incurred prior to July 1, 1981,* and is in a training program for which no wage or allowance is received. *Child care costs shall not be paid for child care incurred after July 1, 1981.*

Section 6. Payment Rates for Foster Care. Payment rates are based on the Department for Human Resources per diem payment rates. The department's rates are based on the age and needs of the child.

(1) A child in foster family care who is eligible for aid to families with dependent children foster care payments receives payment in one (1) of the following monthly amounts according to the child's age and needs assessment (as determined by the Bureau for Social Services):

Age	Regular	Special	Extraordinary
0-5	$144	$167	$228
6-12	160	183	228
13-over	175	198	228

(2) A child in a private child caring institution who is eligible for aid to families with dependent children foster care payments receives payment in one (1) of the following monthly amounts according to the child's age and needs assessment as (determined by the Bureau for Social Services):

Age	Regular	Special
0-5	$151	$212
6-12	175	212
13-over	192	212

WILLIAM L. HUFFMAN, Commissioner
ADOPTED: June 15, 1981
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: July 1, 1981 at 3 p.m.

Amended After Hearing

(Republished prior to Subcommittee consideration as required by KRS 13.085(4).)

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Amended After Hearing

815 KAR 7:050. Accessibility standards for the physically disabled.

RELATES TO: KRS Chapter 198B
PURSUANT TO: KRS 198B.260
NECESSITY AND FUNCTION: The Board of Housing, Buildings and Construction is required by KRS 198B.260 to issue regulations establishing the requirements necessary for making buildings accessible to and usable by physically disabled persons. This regulation has been designed after and selected from various nationally recognized codes and standards. This regulation establishes the minimum new construction requirements which shall apply to buildings and facilities to provide accessibility and usability by the elimination of architectural barriers in the environment. The terms of this regulation shall be incorporated into the Kentucky Building Code.

Section 1. Purpose and Scope. It is the express intention of this regulation to achieve uniformity in the technical design criteria necessary to establish a barrier-free environment thereby allowing a physically disabled person to get to, enter and use a building or facility, so that they may have access to education, employment, living and recreational opportunities and be as self sufficient as possible.

(1) New construction. This regulation shall be mandatory to and in all buildings and facilities, including both rooms and spaces, site improvements, exterior facilities and public walks, with the following specific exceptions:

(a) One (1) and two (2) family dwellings which are single family detached units or duplexes;

(b) Multi-family residential buildings or projects consisting of twenty-four (24) units or less;

(c) The restoration or authentic reconstruction of buildings designated as historic properties by the Kentucky Heritage Commission or the National Register of Historic Places;

(d) Small business concerns, which is defined to mean buildings and facilities primarily used for office purposes consisting of a total square footage of less than 10,000 square feet and no more than two (2) stories in height. [Any building or facility owned or leased by the Commonwealth or any political subdivision thereof shall not be classified as a small business, irrespective of area or height.] (In the case of a one (1) story building or the first floor of a two (2) story building not exceeding the maximum established herein, it is the intent that the provisions of this subsection should be applied as broadly as possible, including the theory of accessible route.)

(e) All buildings or facilities owned or leased by state, city or county governmental bodies shall be accessible and shall not be consider a "small business concern."

(2) Existing buildings. This regulation shall be mandatory for existing buildings, as follows:

(a) Alterations and repairs may be made to any structure without requiring other areas of the existing structure to comply with the accessibility requirement of this regulation provided such new work conforms to that of a new structure.

(b) Additions to an existing facility shall comply with the standards established by this regulation; however, the existing portion need not comply provided such addition does not result in decreased accessibility.

(c) Remodeling involving major structural changes to a building shall require full compliance with all applicable provisions of this regulation.

(3) Modifications of the technical provisions of this regulation may be allowed where such modification provides equal facilitation.

(4) Problem sites. It is not the intent of this regulation to discourage development of sites with extreme conditions, for example, where housing would be built on steep slopes or recreation facilities provided in natural terrain, and where full accessibility might prove impractical.

(5) Interpretive decisions. Where any provision of this regulation can be shown to be clearly unreasonable or impractical as applied to a particular building or use, or if full compliance would create a safety hazard, because of a particular use or condition, any person may request to appear before the Architectural Barriers Advisory Committee of the Department of Housing, Buildings and Construction. After advice from the committee, the department shall render its decision in the matter and said decision shall be appealable to the Board of Housing, Buildings and Construction.

(6) Enforcement. It shall be the duty of the local building official or the state building official having plan review and inspection responsibility under the Kentucky Building Code to enforce the provisions of this regulation.

(7) Distribution of accessible elements. Residential units accessible to the physically handicapped must not be segregated from other units. For example, in large apartment complexes, hotels or motels, all the units or rooms for the disabled may not be placed in one (1) building but must be dispersed throughout the complex.

(8) Appendix. All figures, tables and charts which are not included under a specific section of this regulation shall be found in Appendix A which is attached hereto. *Any figures or numbers not in agreement with the written language of this regulation shall be superceded by said written words or numbers.*

(9) Technical provisions. Sections 3 through 35 constitute the technical provisions of this regulation.

Section 2. Definitions. The following terms shall, for the purpose of this regulation, have the meaning indicated in this section.

(1) Access aisle. An accessible pedestrian space between elements such as parking spaces, seating, and desks, that provides clearances appropriate for use of the elements.

(2) Accessible. Describes a site, building, facility, or portion thereof that complies with this section and that can be approached, entered, and used by physically disabled people.

(3) Accessible element. Part of an accessible route or accessible functional space; an item specified by this regulation (for example, telephone, controls, and the like).

(4) Accessible route. A continuous unobstructed path connecting all accessible elements and spaces in a building or facility that can be negotiated by a severely disabled person using a wheelchair and that is also safe for and usable by people with other disabilities. Interior accessible routes may include corridors, floors, ramps, elevators, and clear floor space at fixtures. Exterior accessible routes may include parking access aisles, curb ramps, walks, and ramps.

(5) Adaptability. The ability of certain building elements, such as kitchen counters and sinks to be added to, raised, lowered, or otherwise altered so as to accommodate the needs of either the disabled or nondisabled, or to accommodate the needs of persons with different types or degrees of disability.

(6) Assembly area. A room or space accommodating fifty (50) or more individuals for religious, recreational, educational, political, social or amusement purposes, or for the consumption of food and drink, including all connected rooms or spaces with a common means of egress and ingress. Such areas as conference rooms would have to be accessible in accordance with other parts of this standard but would not have to meet all of the criteria associated with assembly areas.

(7) Automatic door. A door equipped with a power-operated mechanism and controls that open and close the door automatically upon receipt of a momentary actuating signal. The switch that begins the automatic cycle may be a photoelectric device, floor mat, or manual switch mounted on or near the door itself (see power-assisted door).

(8) Circulation path. An exterior or interior way of passage from one place to another for pedestrians, including, but not limited to, walks, hallways, courtyards, stairways, and stair landings.

(9) Clear. Unobstructed.

(10) Common use. Refers to those interior and exterior rooms, spaces, or elements that are made available for the use of a restricted group of people (for example, residents of an apartment building, occupants of an office building, or guests of such residents or occupants).

(11) Coverage. The extent or range of accessibility that a particular administrative authority adopts and requires.

(12) Cross slope. The slope of a pedestrian way that is perpendicular to the direction of travel (see running slope).

(13) Curb ramp. A short ramp cutting through a curb.

(14) Detectable. Perceptible by one (1) or more of the senses.

(15) Disability. A limitation or loss of use of a physical, mental, or sensory body part or function.

(16) Dwelling unit. A single unit providing complete, independent living facilities for one (1) or more persons including permanent provisions for living, sleeping, eating, cooking, and sanitation.

(17) Egress, means of. A continuous and unobstructed path of travel from any point in a building or structure to a public way and consists of three (3) separate and distinct parts:

(a) The exitway access;

(b) The exitway; and

(c) The exitway discharge; a means of egress comprises the vertical and horizontal means of travel and shall include intervening room spaces, doors, hallways, corridors, passageways, balconies, ramps, stairs, enclosures, lobbies, escalators, horizontal exits, courts, and yards.

(18) Emergency. Refers to facilities resulting from or anticipating unforeseen combinations of circumstances, for example, storm shelters, bomb shelters, and comparable refuges.

(19) Functional spaces. The rooms and spaces in a building or facility that house the major activities for which the building or facility is intended.

(20) Handicapped. Those with significant limitations in using specific parts of the environment.

(21) Housing. A building, facility, or portion thereof, excluding inpatient health care facilities, that contains one (1) or more dwelling units or sleeping accommodations. Housing may include, but is not limited to, one (1) and two (2) family dwellings, apartments, group homes, hotels, motels, dormitories, and mobile homes.

(22) Marked crossing. A crosswalk or other identified path intended for pedestrian use in crossing a vehicular way.

(23) Operable part. A part of a piece of equipment or appliance used to insert or withdraw objects, or to activate, deactivate, or adjust the equipment or appliance (for example, coin slot, pushbutton, handle).

(24) Power-assisted door. A door with a mechanism that helps to open the door, or relieve the opening resistance of a door, upon the activation of a switch or a continued force applied to the door itself. If the switch or door is released, such doors immediately begin to close or close completely within three (3) to thirty (30) seconds (see automatic door).

(25) Principal entrance. An entrance intended to be used by the residents or users to enter or leave a building or facility. This may include, but is not limited to, the main entrance.

(26) Public use. Describes interior and exterior rooms or spaces that are made available to the general public. Public use may be provided at a building or facility that is privately or publicly owned.

(27) Ramp. A walking surface that has a running slope greater than 1:20.

(28) Reasonable number. A number that is sufficient to accommodate the disabled users of a site, building, facility, or element.

(29) Running slope. The slope of a pedestrian way that is parallel to the direction of travel (see cross slope).

(30) Service entrance. An entrance intended primarily for delivery or service.

(31) Signage. Verbal, symbolic, and pictorial information.

(32) Site. A parcel of land bounded by a property line or a designated portion of a public right-of-way.

(33) Site improvements. Landscaping, paving for pedestrian and vehicular ways, outdoor lighting, recreational facilities, and the like, added to a site.

(34) Sleeping accommodations. Rooms in which people sleep, for example, dormitory and hotel or motel guest rooms, but not including dwelling units.

(35) Tactile. Describes an object that can be perceived using the sense of touch.

(36) Tactile warning. A standardized surface texture applied to or built into walking surfaces or other elements to warn visually impaired people of hazards in the path of travel.

(37) Temporary. Applies to facilities that are not of permanent construction but are extensively used or essential for public use for a given (short) period of time; for example, temporary classrooms or classroom buildings at schools and colleges, or facilities around a major construction site to make passage accessible, usable, and safe for everybody. Structures directly associated with the actual processes of major construction, such as port-a-potties, scaffolding, bridging, trailers, and the like, are not included.

(38) Vehicular way. A route intended for vehicular traffic, such as a street, driveway, or parking lot.

(39) Walk. An exterior pathway with a prepared surface intended for pedestrian use, including general pedestrian areas such as plazas and courts.

(40) Walking aid. A device used by a person who has difficulty walking (for example, a cane, crutch, walker, or brace).

Section 3. Minimum Requirements. (1) Accessible site and exterior facilities. An accessible site shall meet the following minimum requirements:

(a) At least one (1) accessible route complying with Section 5 shall be provided from public transportation stops, accessible parking spaces, accessible passenger loading zones if provided, and public streets or sidewalks to an accessible building entrance.

(b) At least one (1) accessible route complying with Section 5 shall connect accessible buildings, facilities, elements, and spaces that are on the same site.

(c) All objects that protrude from surfaces or posts into circulation paths shall comply with Section 5(3).

(d) Ground surfaces along accessible routes and in accessible spaces shall comply with Section 5(2).

(e) When parking is provided, parking spaces and access aisles shall comply with Section 6.

(f) Stairs shall comply with Section 9.

(g) All passenger elevators shall comply with Section 10.

(h) All doors or gates to accessible spaces and elements and along accessible routes shall comply with Section 13.

(i)All drinking fountains along accessible routes shall comply with Section 15.

(j) All toilet rooms provided for public use or as otherwise required by the Kentucky Building Code shall comply with Section 22. Bathing facilities on accessible routes shall comply with Section 23.

(k) Tactile warnings shall be provided at hazardous conditions as specified in Section 29.

(l) All signs shall comply with Section 30.

(m) If public telephones are provided, they shall comply with Section 31.

(n) If seating, tables, or work surfaces are provided in accessible spaces, they shall comply with Section 32.

(o) If places of assembly are provided, they shall comply with Section 33.

(2) Accessible buildings. Accessible buildings and facilities shall meet the following minimum requirements:

(a) At least one (1) accessible route complying with Section 5(1) shall connect accessible building or facility entrances with all accessible spaces and elements within the building or facility.

(b) All objects that overhang circulation paths shall comply with Section 5(3).

(c) Ground and floor surfaces along accessible routes and in accessible rooms and spaces shall comply with Section 5(2).

(d) Stairs shall comply with Section 9. This requirement is not mandatory within dwelling units.

(e) All passenger elevators shall comply with Section 10.

(f) If windows intended to be operated by occupants are provided, then a reasonable number, but always at least one (1), of windows in each accessible space shall comply with Section 12.

(g) All doors to accessible spaces along accessible routes shall comply with Section 13.

(h) All principal entrances shall comply with Section 14.

(i) All drinking fountains along accessible routes shall comply with Section 15.

(j) All toilet rooms provided for public use or as otherwise required by the Kentucky Building Code shall comply with Section 22. Bathing facilities on accessible routes shall comply with Section 23.

(k) If storage facilities such as cabinets, shelves, closets, and drawers are provided in accessible spaces, they shall comply with Section 25.

(l) Controls and operating mechanisms in accessible spaces, along accessible routes, or as parts of accessible elements (for example, light switches and dispenser controls), shall comply with Section 27.

(m) If emergency warning systems are provided, they shall comply with Section 28.

(n) Tactile warnings shall be provided at hazardous conditions as specified in Section 29.

(o) If signs are provided, they shall comply with Section 30.

(p) If public telephones are provided, they shall comply with Section 31.

(q) If seating tables, or work surfaces are provided in accessible spaces, they shall comply with Section 32.

(r) If places of assembly are provided, they shall comply with Section 33.

(s) If sleeping accommodations are provided, they shall comply with Section 34.

(3) Accessible housing. Accessible housing shall comply with the minimum requirements in subsections (1) and (2) of this section. It shall also meet the following requirements:

(a) Accessible dwelling units shall comply with Section 35.

(b) Each accessible dwelling unit shall be connected to an accessible entrance complying with Section 14 by an accessible route complying with Section 5.

(c) Common use spaces and facilities (for example, swimming pools, playgrounds, entrances, rental offices, lobbies, elevators, mail box areas, lounges, storage rooms, halls, corridors, and the like) that serve one (1) or more accessible dwelling units shall comply with subsections (1) and (2) of this section. At least one (1) accessible route shall connect all accessible entrances to each accessible dwelling unit.

Section 4. Space Allowances and Reach Ranges. (1) Wheelchair passage width. The minimum clear width for single wheelchair passage shall be thirty-two (32) inches at a point and thirty-five (35) inches continuously.

(2) Width for wheelchair passing. The minimum width for two (2) wheelchairs to pass is sixty (60) inches.

(3) Wheelchair turning space. The space required for a wheelchair to make a 180 degree turn is a clear space of sixty (60) inches diameter or a T-shaped space with a minimum clear width of thirty-six (36) inches.

(4) Clear floor or ground space for wheelchairs:

(a) Size and approach. The minimum clear floor or ground space required to accommodate a single, stationary wheelchair and occupant is thirty (30) inches by forty-eight (48) inches. The minimum clear floor or ground space for wheelchairs may be positioned for forward or parallel approach to an object. Clear floor or ground space for wheelchairs may be part of the knee space required under some objects.

(b) Relationship of maneuvering clearances to wheelchair spaces. One (1) full unobstructed side of the clear floor or ground space for a wheelchair shall adjoin or overlap an accessible route or adjoin another wheelchair clear floor space. If a clear floor space is located in an alcove or otherwise confined in all or part of three (3) sides, additional maneuvering clearances shall be provided (see Appendix A, Figure 1).

(c) Surfaces of wheelchair spaces. Clear floor or ground spaces for wheelchairs shall comply with Section 5(2).

(5) High forward reach. If the clear floor space only allows forward approach to an object, the maximum high forward reach allowed shall be *forty (40)* [forty-eight (48)] inches. If the high forward reach is over an obstruction, reach and clearances shall be as shown in Appendix A, Figure 2.

(6) Side reach. If the clear floor space allows parallel approach by a person in a wheelchair, the maximum high side reach allowed shall be *forty-eight (48)* [fifty-four (54)] inches and the low side reach shall be no less than nine (9) inches above the floor. If the side reach is over an obstruction, the reach and clearances shall be as shown in Appendix A, Figure 3.

Section 5. Accessible Route, Ground and Floor Surfaces, and Protruding Objects. (1) Accessible route. All walks, halls, corridors, aisles, and other spaces that are of an accessible route shall comply with this subsection.

(a) Location:

1. At least one (1) accessible route shall be provided from public transportation stops, accessible parking and accessible passenger loading zones, and public streets or sidewalks to the accessible building entrance they serve.

2. At least one (1) accessible route shall connect accessible buildings, facilities, elements, and spaces that are on the same site.

3. At least one (1) accessible route shall connect accessible building or facility entrances with all accessible spaces and elements and with all accessible dwelling units within the building or facility.

4. An accessible route shall connect at least one (1) accessible entrance of each accessible dwelling unit with those exterior and interior spaces and facilities that serve the accessible dwelling unit.

(b) Width. The minimum clear width of an accessible route shall be thirty-six (36) inches except at doors. (See Section 13(5).) If a person in a wheelchair must make a turn around an obstruction, the minimum clear width of the accessible route shall be as shown in Appendix A, Figure 4.

(c) Passing space. If an accessible route has less than sixty (60) inches clear width, then passing spaces at least sixty (60) inches by sixty (60) inches shall be located at reasonable intervals not to exceed 200 feet. A T-intersection of two (2) corridors or walks is an acceptable passing place.

(d) Head room. Accessible routes shall comply with subsection (3)(b) of this section.

(e) Surface texture. The surface of an accessible route shall comply with subsection (2) of this section.

(f) Slope. An accessible route with a running slope greater than 1:20 is a ramp and shall comply with Section 8. Nowhere shall the cross slope of an accessible route exceed 1:50.

(g) Changes in level. Changes in level along an accessible route shall comply with subsection (2)(b) of this section. If an accessible route has changes in level greater than one-half (½) inch, then a curb ramp, ramp or elevator shall be provided that complies with Sections 7, 8 and 10, respectively. Stairs shall not be part of an accessible route.

(h) Doors. Doors along an accessible route shall comply with Section 13.

(i) Egress. At least one (1) accessible route serving any accessible space or element shall also serve as a means of egress.

(2) Ground and floor surfaces. Ground and floor surfaces along accessible routes and in accessible rooms and spaces, including floors, walks, ramps, stairs, and curb ramps, shall be stable, firm, and relatively nonslip under all weather conditions and shall comply with this subsection.

(a) Changes in level. Changes in level up to one-fourth (¼) inch may be vertical and without edge treatment. Changes in level between one-fourth (¼) inch and one-half (½) inch shall be beveled with a slope no greater than 1:2. Changes in level greater than one-half (½) inch shall be accomplished by means of a ramp that complies with Sections 7 or 8.

(b) Carpet. If carpet or carpet tile is used on a ground or floor surface, then it shall be securely attached; have a firm cushion, pad, or backing or no cushion or pad; and have a level loop, textured loop, level cut pile or level cut/uncut pile texture. The maximum combined thickness of pile, cushion, and backing shall be one-half (½) inch. Exposed edges and trim shall be securely fastened in place and shall comply with paragraph (a) of this subsection.

(c) Gratings. If gratings are located in walking surfaces, then they shall have spaces no greater than one-half (½) inch wide in one (1) direction. If gratings have elongated openings, then they shall be placed so that the long dimension is perpendicular to the dominant direction of travel.

(3) Protruding objects:

(a) Objects projecting from walls (for example, telephones) with their leading edges between twenty-seven (27) inches and eighty (80) inches above the finished floor shall protrude no more than four (4) inches into walks, halls, corridors, passageways, or aisles. Objects mounted with their leading edges at or below twenty-seven (27) inches above the finished floor may protrude any amount. Free standing objects mounted on posts or pylons may overhang twelve (12) inches maximum from twenty-seven (27) inches to eighty (80) inches above the ground or finished floor. Protruding objects shall not reduce the clear width of an accessible route or maneuvering space. (See Appendix A, Figure 5.)

(b) Head room. Walks, halls, corridors, passageways, aisles, or other circulation spaces shall have eighty (80) inches in minimum clear head room. (See Appendix A, Figure 5.)

Section 6. Parking and Passenger Loading Zones. (1) Minimum number. Where parking spaces are provided, the minimum number of spaces shall be in accordance with Table 1 and shall comply with subsections (2) through (4) of this section. Where passenger loading zones are provided, at least one (1) shall comply with subsection (5) of this section.

TABLE 1

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 or over	2% of total—20 plus 1 for each 200 over 1000

[(2)Location. Parking spaces for disabled people and accessible passenger loading zones that serve a particular building shall be located on the shortest possible accessible circulation route to an accessible entrance of the building. In separate parking structures or lots that do not serve a particular building, parking spaces for disabled people shall be located on the shortest possible circulation route to an accessible pedestrian entrance of the parking facility.]

(2) [(3)] Parking spaces. Parking spaces for disabled people shall be at least ninety-six (96) inches wide and shall have an adjacent access aisle sixty (60) inches wide minimum (see Appendix A, Figure 6). Parking access aisles shall be part of the accessible route to the building or facility entrance and shall comply with Section 5(1). Two (2) accessible parking spaces may share a common access aisle. Parked vehicle overhangs shall not reduce the clear width of an accessible circulation route.

(3) [(4)] Signage. Accessible parking spaces shall be designated as reserved for the disabled by a sign showing the international symbol of accessibility. Such signs shall be above grade.

(4) [(5)] Passenger loading zones. Passenger loading zones shall provide an access aisle at least forty-eight (48) inches wide and twenty (20) feet long adjacent and parallel to the vehicle pull-up space. If there are curbs between the access aisle and the vehicle pull-up space, then a curb ramp complying with Section 7 shall be provided.

(5) [(6)] Vertical clearance. Provide minimum vertical clearance of nine (9) feet six (6) inches at accessible parking spaces, at accessible passenger loading zones and along vehicle access route to such areas from site entrances.

Section 7. Curb Ramps. (1) Location. Curb ramps complying with this section shall be provided wherever an accessible route crosses a curb.

(2) Slope. Slopes of curb ramps shall comply with Table 815 of the Kentucky Building Code. The slope shall be measured at a ratio of rise to horizontal run.

(3) Width. The minimum width of a curb ramp shall be thirty-six (36) inches, exclusive of flared sides.

(4) Surface. Surfaces of curb ramps shall comply with Section 5(2). Transitions from ramps to walks and ramps to gutters or streets shall be flush and free from abrupt changes.

(5) Sides of curb ramps. If a curb ramp is located where pedestrians must walk across the ramp, then it shall have flared sides; the maximum slope of the flare shall be 1:10. Curb ramps with returned curbs may be used where pedestrians would not normally walk across the ramp. Curb ramps shall not have handrails.

(6) Built-up curb ramps. Built-up curb ramps, or curb ramps that project into a vehicular path, shall not be permitted in new construction. They may be permitted in existing conditions only where such application is determined to be the only reasonable means of access and where the location of the built-up curb ramp is not in an uncontrolled vehicular path. Built-up curb ramps shall comply with this section.

(7) Warning textures. A curb ramp shall have a tactile warning texture contrasting to adjoining surfaces and complying with Section 29, extending the full width and depth of the curb ramp, including any flares.

(8) Obstructions. Curb ramps shall be located or protected to prevent their obstruction by parked vehicles.

(9) Location at marked crossings. Curb ramps at marked crossings shall be wholly contained within the markings, excluding any flared sides.

(10) Diagonal curb ramps. If diagonal (or corner type) curb ramps have returned curbs or other well defined edges, such edges shall be parallel to the direction of pedestrian flow. If diagonal curb ramps have flared sides, they shall also have at least a twenty-four (24) inch long segment of straight curb located on each side of the curb ramp and within the marked crossing.

(11) Islands. Any raised islands in crossings shall be cut through level with the street or have curb ramps at both sides and a level area at least forty-eight (48) inches long in the part of the island intersected by the crossings.

(12) Uncurbed intersections. If there is no curb at the intersection of a walk and an adjoining street, parking lot, or busy driveway, then the walk shall have a tactile warning texture complying with Section 29(5) at the edge of the vehicular way.

Section 8. Ramps. Any part of an accessible route with a slope greater than 1:20 shall be considered a ramp and shall comply with Section 815 of the Kentucky Building Code as filed in 815 KAR 7:020.

Section 9. Stairs. Stairways shall comply with Section 816 of the Kentucky Building Code as filed in 815 KAR 7:020. These specifications are not mandatory for stairs within dwelling units.

Section 10. Elevators. (1) All public passenger elevators shall be required to be accessible and shall comply with the provisions of Article 21 of the Kentucky Building Code as filed in 815 KAR 7:020.

(2) At least one (1) public passenger elevator shall be required in buildings three (3) stories or greater in height*; except that residential buildings three (3) stories in height and containing no more than twenty-four (24) units shall not be required to have an elevator.*.

Section 11. Platform lifts. Platform lifts are not permitted until such time as a national standard shall be created and approved by the board.

Section 12. Windows. (1) General. If windows intended to be operated by occupants are provided, at least one (1) operable window in each accessible space shall comply with this section.

(2) Window hardware. Windows requiring pushing, pulling or lifting to open (for example, doublehung, sliding, or casement and awning units without cranks) shall require no more than five (5) pounds to open or close. Locks, cranks, and other window hardware shall comply with Section 27.

Section 13. Doors. (1) General. All doors to accessible spaces and elements and along accessible routes shall comply with the requirements of this section.

(2) Revolving doors and turnstiles. Revolving doors or turnstiles shall not be the only means of passage at an accessible entrance or along an accessible route.

(3) Gates. Gates, including ticket gates, shall meet all applicable specifications of this section.

(4) Double-leaf doorways. If doorways have two (2) door leaves, then at least one (1) leaf shall meet the specifications in subsections (5) and (6) of this section. That leaf shall be an active leaf.

(5) Clear width. Doorways shall have a minimum clear opening of thirty-two (32) inches with the door open ninety (90) degrees, measured between the face of the door and the stop. Openings more than twenty-four (24) inches in depth shall have a minimum clear opening of thirty-six (36) inches.

(6) Maneuvering clearances at doors. Minimum maneuvering clearances for doors that are not automatic shall be as shown in Appendix A, Figure 7. The floor or ground area within the required clearances shall be level and clear. Doors required to be a minimum of forty-four (44) inches in institutional buildings shall be exempt from the requirements for space at the latch side of the door.

(7) Two (2) doors in series. The minimum space between two (2) doors in series shall be forty-eight (48) inches plus the width of any door swinging into the space. Doors in series shall swing either in the same direction or away from the space between the doors.

(8) Thresholds at doorways. Thresholds at doorways shall not exceed one-half (½) inch in height except that thresholds at exterior sliding doors shall not exceed three-fourth (¾) inch. Raised thresholds and floor level changes at accessible doorways shall be beveled with a slope no greater than 1:2, and shall meet the requirements of Section 5(2)(a).

(9) Door hardware. Handles, pulls, latches, locks and other operating devices on accessible doors shall have a shape that is easy to grasp with one (1) hand and does not require tight grasping, tight pinching, or twisting of the wrist to operate. Lever-operated mechanisms, push-type mechanisms and U-shaped handles are acceptable designs. When sliding doors are fully open, operating hardware shall be exposed and usable from both sides. Doors to hazardous areas shall have hardware complying with Section 29(3).

(10) Door closers. If a door has a closer, then the sweep period of the closer shall be adjusted so that from an open position of seventy (70) degrees, the door will take at least three (3) seconds to move to a point three (3) inches from the latch, measured to the leading edge of the door.

(11) Door opening force. The maximum force for pushing or pulling open a door shall be as follows:

(a) Fire doors shall have the minimum opening force of fifteen (15) pounds and as required in Section 812.5.4 of the Kentucky Building Code.

(b) Other doors: exterior hinged doors, 8.5 pounds; interior hinged doors, five (5) pounds; sliding or folding doors, five (5) pounds. These forces do not apply to the force required to retract latch bolts or disengage other devices that may hold the door in a closed position.

(12) Automatic doors and power-assisted doors. If an automatic door is used, then it shall comply with American National Standard for Power-Operated Doors, ANSI A156.10-1979. Slowly opening, low-powered, automatic doors shall be considered a type of custom design installation as described in paragraph 1.1.1 of ANSI A156.10-

1979. Such doors shall not open to back check faster than three (3) seconds and shall require no more than fifteen (15) pounds to stop door movement. If a power-assisted door is used, its door opening force shall comply with subsection (11) of this section and its closing shall conform to the requirements in Section 10 of ANSI A156.10-1979.

(13) Framed glass doors. Where framed glass doors are used, the bottom rail shall be a minimum height of seven and one-half (7½) inches.

Section 14. Entrances. (1) Principal entrances. Principal entrances to a building or facility shall be part of an accessible route and shall comply with Section 5(1). Such entrances shall be connected by an accessible route to public transportation stops, to accessible parking and passenger loading zones, and to public streets or sidewalks if available. They shall also be connected by an accessible route to all accessible spaces or elements within the building or facility.

(2) Service entrances. A service entrance shall not be the sole accessible entrance unless it is the only entrance to a building or facility (for example, in a factory or garage).

Section 15. Drinking Fountains and Water Coolers. (1) Minimum number. All drinking fountains or water coolers along accessible routes shall comply with this section.

(2) Spout height. Spouts shall be no higher than thirty-six (36) inches, measured from the floor or ground surfaces to the spout outlet.

(3) Spout location. The spouts of drinking fountains and water coolers shall be at the front of the unit and shall direct the water flow in a trajectory that is parallel or nearly parallel to the front of the unit. The spout shall provide a flow of water so as to allow the insertion of a cup or glass under the flow of water.

(4) Controls. Controls shall comply with Section 27(4).

(5) Clearances. Wall and post mounted cantilevered units shall have a clear knee space between the bottom of the apron and the floor or ground at least twenty-seven (27) inches high, thirty (30) inches wide, and seventeen (17) inches to nineteen (19) inches deep. Such units shall also have a minimum clear floor space thirty (30) inches by forty-eight (48) inches to allow a person in a wheelchair to make a parallel approach to the unit. This clear floor space shall comply with Section 4(4).

Section 16. Water Closets. Accessible water closets shall comply with this section. For water closets in adaptable dwelling units, see Section 35(4)(b).

(1) Clear floor space. Clear floor space for water closets not in stalls shall comply with Appendix A, Figure 9. Clear floor space may be arranged to allow either a left-handed or right-handed approach.

(2) Height. The height of water closets shall be seventeen (17) inches to nineteen (19) inches measured to the top of the toilet seat (see Appendix A, figure 10). Seats shall not be sprung to return to a lifted position when not in use.

(3) Grab bars. Grab bars for water closets shall comply with Appendix A, Figures 9 and 10, and Section 4. Grab bars may be mounted by any desired method as long as they have a gripping surface at the locations shown and do not obstruct the required floor area.

(4) Flush controls. Flush controls shall be hand operated and shall comply with Section 27(4). Controls for flush valves shall be mounted no more than *forty (40)* [forty-four (44)] inches above the floor.

(5) Dispensers. Toilet paper dispensers shall be installed within reach as shown in Appendix A, Figure 10. Dispensers shall not control delivery and shall permit continuous paper flow.

Section 17. Toilet Stalls. (1) Location. Accessible toilet stalls shall be on an accessible route and shall meet the requirements of this section.

(2) Water closets. Water closets in stalls shall comply with Section 16.

(3) Size and arrangement. The size and arrangement of the toilet stalls shall comply with Appendix A, Figure 11(a). In existing buildings alternate stalls (Appendix A, Figure 11(b)) may be used where available space prohibits installation of the standard stall. Arrangements shown for stalls may be reversed to allow either a left or right-handed approach.

(4) Toe clearances. In standard stalls, the front partition and at least one (1) side partition shall provide a toe clearance of at least nine (9) inches above the floor. If the depth of the stall is greater than sixty (60) inches, then the toe clearance is not required.

(5) Doors. Toilet stall doors shall comply with Section 13. Doors of toilet stalls shall be out-swinging. Doors on toilet stalls shall have either a self-closing mechanism or a pull mounted on the hinged side of the stall door.

(6) Grab bars. Provide grab bars at toilet stalls as shown in Appendix A, Figures 10 and 11. Grab bars may be mounted by any desired method as long as they have a gripping surface at the locations shown and do not obstruct the required clear floor area. Grab bars shall comply with Section 26.

Section 18. Urinals. (1) General. Accessible urinals shall comply with this section.

(2) Heights. Urinals shall be stall-type or wallhung with an elongated rim at a maximum of seventeen (17) inches above the floor.

(3) Clear floor space. A clear floor space thirty (30) inches by forty-eight (48) inches shall be provided in front of urinals to allow forward approach. This clear space shall adjoin or overlap an accessible route and shall comply with Section 4(4).

(4) Flush controls. Flush controls shall be hand operated, shall comply with Section 27(4) and shall be mounted no more than *forty (40)* [forty-four (44)] inches above the finished floor.

(5) Urinal shields. Urinal shields that do not extend beyond the front edge of the urinal rim may be provided with twenty-nine (29) inches clearance between them.

Section 19. Lavatories and Mirrors. The requirements of this section shall apply to lavatory fixtures, vanities, and built-in lavatories.

(1) Height and clearances. Lavatories shall be mounted with a clearance of at least twenty-nine (29) inches from the floor to the bottom of the apron. Knee and toe clearances shall comply with Appendix A, Figure 12.

(2) Clear floor space. A clear floor space thirty (30) inches by forty-eight (48) inches complying with Section 4(4) shall be provided in front of a lavatory to allow a forward approach. Such clear floor space shall adjoin or overlap an accessible route and shall extend a maximum of nineteen (19) inches underneath the lavatory.

(3) Exposed pipes and surfaces. If hot water exceeds 120 degrees Fahrenheit, the hot water and drain pipes under lavatories shall be insulated or otherwise covered. There shall be no sharp or abrasive surfaces under lavatories.

(4) Faucets. Faucets shall comply with Section 27(4). Lever-operated, push-type and electronically controlled

mechanisms are examples of acceptable designs. Self-closing valves are allowed if the faucet remains open for at least ten (10) seconds.

(5) Mirrors. Mirrors shall be mounted with the bottom edge no higher than forty (40) inches from the floor.

Section 20. Bathtubs. (1) General. Accessible bathtubs shall comply with this section. For bathtubs in accessible dwelling units, see Section 35(4)(d).

(2) Floor space. Clear floor space in front of bathtubs shall be as shown in Appendix A, Figure 13.

(3) Seat. An in-tub seat or a seat at the head end of the tub shall be provided as shown in Appendix A, Figures 13 and 14. The structural strength of seats and their attachments shall comply with Section 26(3). Seats shall be mounted securely and shall not slip during use.

(4) Grab bars. Grab bars complying with Section 26 shall be provided as shown in Appendix A, Figures 13 and 14.

(5) Controls. Faucets and other controls complying with Section 27(4) shall be located as shown in Appendix A, Figure 14.

(6) Shower unit. A shower spray unit with a hose at least sixty (60) inches long that can be used as a fixed shower head or as a hand-held shower shall be provided.

(7) Bathtub enclosures. If provided, enclosures for bathtubs shall not obstruct controls or transfer from wheelchairs onto bathtub seats or into tubs. Enclosures on bathtubs shall not have tracks mounted on their rims.

Section 21. Shower Stalls. (1) General. Accessible shower stalls shall comply with this section. For shower stalls in accessible dwelling units, see Section 35(4)(e).

(2) Size and clearances. Shower stall size and clear floor space shall comply with Appendix A, Figure 15.

(3) Seat. A seat shall be provided in transfer shower stalls as shown in Appendix A, Figure 16. The seat shall be mounted seventeen (17) inches to nineteen (19) inches from the bathroom floor and shall extend the full depth of the stall. The seat shall be on the wall opposite the controls. The structural strength of seats and their attachments shall comply with Section 26(3).

(4) Grab bars. Grab bars complying with Section 26 shall be provided as shown in Appendix A, Figure 17.

(5) Controls. Faucets and other controls complying with Section 27(4) shall be located as shown in Appendix A, Figure 17. In transfer shower stalls all controls, faucets, and the shower unit shall be mounted on the side wall opposite the seat.

(6) Shower unit. A shower spray unit with a hose at least sixty (60) inches long that can be used as a fixed shower head or as a hand-held shower shall be provided.

(7) Curbs. If provided, curbs in transfer shower stalls shall be no higher than four (4) inches. Roll-in shower stalls shall not have curbs.

(8) Shower enclosures. If provided, enclosures for shower stalls shall not obstruct controls or obstruct transfer from wheelchairs onto shower seats.

Section 22. Toilet Rooms. (1) Minimum number. All toilet rooms provided for public use or otherwise required by the Kentucky Building Code shall be on an accessible route and shall comply with this section.

(2) Doors. All doors to accessible toilet rooms shall comply with Section 13. Doors shall not swing into the clear floor space required for any fixture.

(3) Clear floor space. The accessible fixtures and controls required in subsections (4), (5), (6) and (7) of this section shall be on an accessible route. An unobstructed turning space complying with Section 4(3) shall be provided within an accessible toilet room. The clear floor space at fixtures and controls, the accessible route, and the turning space may overlap.

(4) Water closets. If toilet stalls are provided, then a reasonable number, but always at least one (1), shall comply with Section 17; its water closet shall comply with Section 15. If water closets are not in stalls, then a reasonable number, but always at least one (1), of water closets shall comply with Section 16.

(5) Urinals. If urinals are provided, a reasonable number, but always at least one (1), shall comply with Section 18.

(6) Lavatories and mirrors. If lavatories and mirrors are provided, a reasonable number, but always at least one (1) of each, shall comply with Section 19.

(7) Controls and dispensers. If controls, dispensers, receptacles, or other equipment is provided, at least one (1) of each shall be on an accessible route and shall comply with Section 27.

(8) Emergency lighting. Where emergency lighting in a building is required by Section 624 of the Kentucky Building Code, the emergency lighting shall be provided in accessible toilet rooms.

Section 23. Bathrooms, Bathing Facilities and Shower Rooms. (1) Minimum number. Bathrooms, bathing facilities, or shower rooms on an accessible route shall comply with this section. For bathrooms in accessible dwelling units, see Section 35(4).

(2) Doors. Doors to accessible bathrooms shall comply with Section 13. Doors shall not swing into the floor space required for any fixture.

(3) Clear floor space. The accessible fixtures and controls required in subsections (4), (5), (6), (7), (8), and (9) of this section shall be on an accessible route. An unobstructed turning space complying with Section 4(3) shall be provided within an accessible bathroom. The clear floor space at fixtures and controls, the accessible route, and the turning space may overlap.

(4) Water closets. If toilet stalls are provided, then a reasonable number, but always at least one (1), shall comply with Section 17; its water closet shall comply with Section 16. If water closets are not in stalls, then a reasonable number, but always at least one (1), shall comply with Section 16.

(5) Urinals. If urinals are provided, then a reasonable number, but always at least one (1), shall comply with Section 18.

(6) Lavatories and mirrors. If lavatories and mirrors are provided, then a reasonable number, but always at least one (1) of each, shall comply with Section 19.

(7) Controls and dispensers. If controls, dispensers, receptacles, or other equipment is provided, at least one (1) of each shall be on an accessible route and shall comply with Section 27.

(8) Bathing and shower facilities. If tubs or showers are provided, then at least one (1) accessible tub that complies with Section 20 or at least one (1) accessible shower that complies with Section 20 or at least one (1) accessible shower that complies with Section 21 shall be provided.

(9) Medicine cabinets. If medicine cabinets are provided, at least one (1) shall be located with a usable shelf no higher than *forty (40)* [forty-four (44)] inches above the floor space. The floor space shall comply with Section 4(4).

Section 24. Sinks. (1) General. If accessible sinks are

provided, they shall comply with this section. Sinks in kitchens of accessible dwelling units shall comply with Section 35(5)(e).

(2) Height. Sinks shall be mounted with the counter or rim no higher than thirty-four (34) inches from the floor.

(3) Knee clearance. Knee clearance that is twenty-seven (27) inches high, thirty (30) inches wide, and nineteen (19) inches deep shall be provided underneath sinks.

(4) Depth. Each sink shall be a maximum of six and one-half (6½) inches deep.

(5) Clear floor space. A clear floor space at least thirty (30) inches by forty-eight (48) inches complying with Section 4(4) shall be provided in front of a sink to allow forward approach. The clear floor space shall be on an accessible route and shall extend a maximum of nineteen (19) inches underneath the sink.

(6) Exposed pipes and surfaces. If hot water exceeds 120 degrees Fahrenheit, hot water and drain pipes under sinks shall be insulated or otherwise covered. There shall be no sharp or abrasive surfaces under sinks.

(7) Faucets. Faucets shall comply with Section 27(4). Lever-operated push-type, touch-type, or electronically controlled mechanisms are acceptable designs.

Section 25. Storage. (1) General. Accessible storage facilities such as cabinets, shelves, closets, and drawers shall comply with this section.

(2) Clear floor space. A clear floor space at least thirty (30) inches by forty-eight (48) inches complying with Section 4(4) that allows either a forward or parallel approach by a person using a wheelchair shall be provided at accessible storage facilities.

(3) Height. Accessible storage spaces shall be within at least one (1) of the reach ranges specified in Section 4(5) and (6). Clothes rods shall be a maximum of *forty-eight (48)* [fifty-four (54)] inches from the floor.

(4) Hardware. Hardware for accessible storage facilities shall comply with Section 27(4). Touch latches and U-shaped pulls are acceptable.

Section 26. Handrails, Grab Bars and Tub and Shower Seats. (1) General. All handrails, grab bars, and tub and shower seats shall comply with this section.

(2) Size and spacing of grab bars and handrails. The outside diameter or width of the gripping surfaces of handrail or grab bar shall be one and one-fourth (1¼) inch to one and one-half (1½) inch or the shape shall provide an equivalent gripping surface. If handrails or grab bars are mounted adjacent to a wall, the space between the wall and the handrail or grab bars shall be one and one-half (1½) inch (see Appendix A, Figure 18). Handrails may be located in a recess if the recess is a maximum of three (3) inches deep and extends at least eighteen (18) inches above the top of the rail (see Appendix A, Figure 18).

(3) Structural strength. Handrails, grab bars, tub and shower seats, fasteners, and mounting devices shall support a minimum concentrated load of 250 pounds and shall not rotate in their fittings.

(4) Eliminating hazards. A handrail or grab bar and any wall or other surface adjacent to it shall be free of any sharp or abrasive elements. Edges shall have a minimum radius of one-eighth (1/8) inch.

Section 27. Controls and Operating Mechanisms. (1) General. Controls and operating mechanisms in accessible spaces, along accessible routes, or as part of accessible elements (for example, light switches, dispenser controls) shall comply with this section.

(2) Clear floor space. Clear floor space complying with Section 4(4) that allows a forward or parallel approach by a person using a wheelchair shall be provided at controls, dispensers, receptables, and other operable equipment.

(3) Height. The highest operable part of all controls, dispensers, receptacles, and other operable equipment shall be placed within at least one (1) of the reach ranges specified in Section 4(5) and (6). Except where the use of special equipment dictates otherwise, electrical and communications systems receptacles on walls shall be mounted no less than fifteen (15) inches above the floor.

(4) Operation. Controls and operating mechanisms shall be operable with one (1) hand and shall not require tight grasping, pinching, or twisting of the wrist. The force required to activate controls shall be no greater than five (5) pounds of force.

Section 28. Alarms. (1) General. If emergency warning systems are provided, they shall include both audible alarms complying with subsection (2) of this section and visual alarms complying with subsection (3) of this section. In facilities with sleeping accommodations, accessible sleeping accommodations shall have an auxiliary visual alarm system complying with subsection (4) of this section.

(2) Audible alarms. Audible emergency alarms shall produce a sound that exceeds the ambient room or space noise by at least fifteen (15) decibels or exceeds any maximum sound level with a duration of thirty (30) seconds by five (5) decibels, whichever is louder. Sound levels for alarm signals shall not exceed 120 decibels.

(3) Visual alarms. Electronically powered internally illuminated emergency exit signs or adjacent devices shall flash as a visual emergency alarm in conjunction with audible emergency alarms. The flashing frequency of visual alarm devices shall be less than five (5) Hz. If such alarms use electricity from the building as a power source, then they shall be installed on the same system as the audible emergency alarms.

(4) Auxiliary alarms. Accessible sleeping accommodations shall have a visual alarm connected to the building emergency alarm system or shall have a standard 110-volt electrical receptable into which such an alarm could be connected. Instructions for use of the auxiliary alarm or connection shall be provided.

(5) Alarm activators. Alarm activators shall comply with Section 27 controls and operating mechanisms.

(6) Special alarm systems. Specialized alarm systems utilizing advanced technology will be considered on a case-by-case basis.

Section 29. Tactile Warnings. (1) General. Where tactile warnings are required, they shall comply with this section.

(2) Tactile warnings on walking surfaces. Tactile warning textures on walking surfaces shall contrast with that of the surrounding surface. Raised strips or grooves shall comply with Appendix A, Figure 19. Grooves may be used indoors only.

(3) Tactile warnings on doors to hazardous areas. Doors that lead to areas that might prove dangerous to a blind person (for example, doors to loading platforms, mechanical rooms, stages, and the like) shall be made identifiable to the touch by a textured surface on the door handle, knob, pull, or other operating hardware. This textured surface may be made by knurling or roughening or by a material applied to the contact surface. Such textured surfaces shall not be provided for emergency exit doors or any doors other than those to hazardous areas.

(4) Tactile warnings at stairs. All stairs (except those in

dwelling units, in enclosed stair towers, or set to the side of the path of travel) shall have a tactile warning at the top of stair runs.

(5) Tactile warnings at hazardous vehicular areas. If a walk crosses or adjoins a frequently used vehicular way, and if there are no curbs, railings, or other elements detectable by a person who has a severe visual impairment separating the pedestrian and vehicular areas, then the boundary between the areas shall be defined by a continous thirty-six (36) inch wide tactile warning texture complying with subsection (2) of this section.

(6) Tactile warnings at reflecting pools. The edges of reflecting pools shall be protected by railings, walls, curbs, or tactile warnings complying with subsection (2) of this section.

(7) Standardization. Textured surfaces for tactile warnings shall be standard within a building, facility, site, or complex of buildings.

Section 30. Signage. (1) General. All signage that provides emergency information of general circulation directions or identifies rooms and spaces shall comply with this section.

(2) Character proportion and contrast. Letters and numbers on sign systems shall:

(a) Have a width-to-height ratio of between 3:5 and 1:1.

(b) Have a stroke width-to-height ratio of between 1:5 and 1:10.

(c) Contrast in value with their backgrounds, preferably light letters on a dark background.

(d) Have a matte finish on a matte finish background.

(3) Raised or incised characters. Provide numbers and letters that are:

(a) Raised or incised from the background surface one thirty-second (1/32) inch. Also incise or raise symbols and pictographs in this manner.

(b) Between five-eighths (5/8) inch and two (2) inches high.

(c) San serif with sharply defined edges.

(d) If incised, provided with at least one-fourth (¼) inch stroke width.

(4) Mounting location and height. Signage shall be placed in a standardized location throughout a building or facility as follows:

(a) Interior signage shall be located on the door or alongside of the door on the latch side and shall be mounted at between four feet, six inches (4′6″) and five feet, six inches (5′6″) above finished floor.

(b) Exterior signage shall be installed at entrances and walks to direct individuals to accessible routes and entrances as required.

(c) Symbols of accessibility. If accessible facilities are identified, then the international sign of accessibility shall be used.

Section 31. Telephones. (1) General. If public telephones are provided, then they shall comply with this section.

(2) Clear floor or ground space. A clear floor or ground space at least thirty (30) inches by forty-eight (48) inches that allows either a forward or parallel approach by a person using a wheelchair shall be provided at telephones. The clear floor or ground space shall comply with Section 4(4). Bases, enclosures, and fixed seats shall not impede approaches to telephones by people who use wheelchairs.

(3) Mounting height. The highest operable part of the telephone shall be within reach ranges specified in Section 4(5) or (6). Telephones mounted diagonally shall have the highest operable part no higher than fifty-four (54) inches above the floor.

(4) Enclosures. If telephone enclosures are provided, they may overhang the clear floor space required in subsection (2) of this section within the following limits:

(a) Side reach possible: The overhang shall be no greater than nineteen (19) inches; the height of the lowest overhanging part shall be equal to or greater than twenty-seven (27) inches.

(b) Full-height enclosures: Entrances to full-height enclosures shall be thirty (30) inches clear minimum.

(c) Forward reach required: If the overhang is greater than twelve (12) inches, then the clear width of the enclosure shall be thirty (30) inches minimum, if the clear width of the enclosure is less than thirty (30) inches, then the height of the lowest overhanging part shall be equal to or greater than twenty-seven (27) inches.

(d) Where telephone enclosures protrude into walls, halls, corridors, or aisles, they shall also comply with Section 5(3).

(5) Equipment for hearing impaired people. Telephones shall be equipped with a receiver that generates a magnetic field in the area of the receiver cap. If banks of public telephones are provided, a minimun of five (5) percent, but always at least one (1), in a building or facility shall be equipped with a volume control.

(6) Controls. Telephones shall have pushbutton controls where service for such equipment is available.

(7) Telephone books. Telephone books, if provided, shall be located so that they can be used by a person in a wheelchair.

(8) Cord length. The cord from the telephone to the handset shall be at least twenty-nine (29) inches long.

Section 32. Seating, Tables, and Work Surfaces. (1) Minimum number. If fixed or built-in seating, tables, or work surfaces are provided in accessible spaces, a minimum of five (5) percent, but always at least one (1), of seating spaces, tables, or work surfaces shall comply with this section.

(2) Seating. If seating spaces for people in wheelchairs are provided at tables, counters, or work surfaces, clear floor space complying with Section 4(4) shall be provided. Such clear floor space shall not overlap knee space by more than nineteen (19) inches.

(3) Knee clearances. If seating for people in wheelchairs is provided at tables, counters, and work surfaces, knee spaces at least twenty-seven (27) inches high, thirty (30) inches wide, and nineteen (19) inches deep shall be provided.

(4) Height of work surfaces. The tops of tables and work surfaces shall be from twenty-eight (28) inches to thirty-four (34) inches from the floor to ground.

Section 33. Assembly Areas. (1) Minimum number. Assembly areas shall have a minimum of five (5) percent, but no less than two (2), of locations for wheelchair users in each assembly area that complies with this section. Assembly areas with audio-amplification systems shall have a listening system complying with subsections (6) and (7) of this section to assist a minimum of five (5) percent of people, but no fewer than two (2), with severe hearing loss in the appreciation of audio presentations.

(2) Size of wheelchair locations. Each wheelchair location shall provide minimum clear ground or floor space of sixty-six (66) inches wide by forty-eight (48) inches deep for forward or rear access and sixty-six (66) inches deep for

side access and shall accommodate two (2) people in wheelchairs.

(3) Placement of wheelchair locations:

(a) Wheelchair areas shall be an integral part of any fixed seating plan and shall be dispersed throughout the seating area. They shall adjoin an accessible route that also serves as a means of egress in case of emergency and shall be located to provide lines of sight comparable to those for all viewing areas.

(b) Exception. In alteration work where it is structurally impossible to alter seating location to disperse seating throughout, seating may be located in collected areas, but must adjoin an accessible route.

(4) Surfaces. The ground or floor at wheelchair locations shall be level and shall comply with Section 5(2).

(5) Access to performing areas. An accessible route shall be provided to performing areas, including stages, arena floors, dressing rooms, locker rooms, and other spaces used by performers.

(6) Placement of listening systems. If the listening system provided serves individual fixed seats, then such seats shall be located within a fifty (50) foot viewing distance of the stage or playing area and shall have a complete view of the stage or playing area.

(7) Types of listening systems. Audio loops and radio frequency systems are two (2) acceptable types of listening systems.

Section 34. Hotels and Motels. Minimum Requirements. In hotel and motel buildings, lodging houses, boarding houses, and dormitory buildings, providing sleeping accommodations for twenty (20) or more individuals, a minimum of five (5) percent of those accommodations shall be accessible to and shall comply with Section 3(1) and (2).

Section 35. Dwelling Units. Where multi-family housing projects are required to be accessible, a minimum of one (1) in twenty-five (25) dwelling units shall meet the requirements of this section.

(1) An accessible dwelling unit shall be on an accessible route. An accessible dwelling unit shall have the following accessible elements and spaces as a minimum:

(a) Common spaces and facilities serving individual accessible dwelling units (for example, entry walks, trash disposal facilities, and mail boxes) shall comply with Sections 3 through 33.

(b) Accessible spaces shall have maneuvering space complying with Section 4(2) and (3) and surfaces complying with Section 5(2).

(c) At least one (1) accessible route complying with Section 5(1) shall connect the accessible entrances with all accessible spaces and elements within the dwelling units.

(d) If parking spaces are assigned for use with individual dwelling units, then at least one (1) parking space per accessible dwelling unit shall comply with Section 6(3).

(e) If windows intended to be operated by occupants are provided, then they shall comply with Section 12.

(f) Doors to and in accessible spaces that are intended for passage shall comply with Section 13.

(g) All entrances to accessible dwelling units shall comply with Section 14.

(h) Storage in accessible spaces in dwelling units, including cabinets, shelves, closets, and drawers, shall comply with Section 25.

(i) All controls in accessible spaces shall comply with Section 27. Those portions of heating, ventilating, and air conditioning equipment requiring regular, periodic maintenance and adjustment by the resident of a dwelling shall be accessible to people in wheelchairs. If air distribution registers must be placed in or close to ceilings for proper air circulation, this specification shall not apply to registers.

(j) If emergency alarms are provided, alarm connections complying with Section 28(4), (5), and (6) shall be provided in the dwelling unit.

(k) If telephone connections are installed in the dwelling unit, a reasonable number, but always at least one (1), shall comply with Section 31(2) and (3).

(l) A reasonable number, but always at least one (1), of full bathrooms shall comply with subsection (4) of this section. A full bathroom shall include a water closet, a lavatory, and a bathtub or shower.

(m) The kitchen shall comply with subsection (5) of this section.

(n) If laundry facilities are provided, they shall comply with subsection (6) of this section.

(o) The following spaces shall be accessible and shall be on an accessible route:

1. The living area.
2. The dining area.
3. The sleeping area, or the bedroom in one (1) bedroom dwelling units, or at least two (2) bedrooms or sleeping spaces in dwelling units with two (2) or more bedrooms.
4. Patios, terraces, balconies, carports, and garages, if provided with the dwelling unit.

(2) Adaptability. The specifications of subsection (5) of this section are based on the concept of adaptability.

(3) Consumer information. To ensure that the existence of adaptable features will be known to the owner or occupant of a dwelling, consumer information shall be provided for each accessible dwelling unit for rent or sale.

(4) Bathrooms. Bathrooms shall be on an accessible route and shall comply with the requirements of this subsection.

(a) Minimum dimensions. Accessible bathrooms shall accommodate wheelchair turning space in accordance with Section 4(3). Door operation shall not interfere with maneuverability.

(b) Water closets:

1. Clear floor space at the water closet shall be as shown in Appendix A, Figure 9. The water closet may be located with the clear area at either the right or left side of the toilet.
2. The height of the water closet shall be at least seventeen (17) to nineteen (19) inches measured to the top of the toilet seat.
3. Grab bars shall be installed as shown in Appendix A, Figure 10 and shall comply with Section 26.
4. The toilet paper dispenser shall be installed within reach as shown in Appendix A, Figure 10.

(c) Lavatory, mirrors, and medicine cabinets:

1. The lavatory and mirrors shall comply with Section 19.
2. If a medicine cabinet is provided above the lavatory, then the bottom of the medicine cabinet shall be located with a usable shelf no higher than forty-four (44) inches above the floor.

(d) Bathtubs. If a bathtub is provided, then it shall have the following features:

1. Floor space. Clear floor space at bathtubs shall be as shown in Appendix A, Figure 13.
2. Seat. An in-tub seat or a seat at the head end of the

tub shall be provided as shown in Appendix A, Figures 13 and 14. The structural strength of seats and their attachments shall comply with Section 26(3). Seats shall be mounted securely and shall not slip during use.

3. Grab bars. Grab bars shall be installed as shown in Appendix A, Figure 14 and shall comply with Section 26.

4. Controls. Faucets and other controls shall be located as shown in Appendix A, Figure 14 and shall comply with Section 27(4). Single lever and mixing devices are acceptable designs.

5. Shower unit. A shower spray unit with a hose at least sixty (60) inches long that can be used as a fixed shower head at various heights or as a hand-held shower shall be provided.

(e) Showers. If a shower is provided, it shall have the following features:

1. Size and clearances. Shower stall size and clear floor space shall comply with Appendix A, Figure 15.

2. Seat. A seat shall be provided in the transfer shower stalls as shown in Appendix A, Figure 16. The seat shall be seventeen (17) inches to nineteen (19) inches high measured from the bathroom floor and shall extend the full depth of the stall. The seat shall be on the wall opposite the controls. The structural strength of seats and their attachments shall comply with Section 26(3). Seats shall be mounted securely and shall not slip during use.

3. Grab bars. Grab bars complying with Section 26 shall be provided as shown in Appendix A, Figure 17.

4. Controls. Faucets and other controls shall be located as shown in Appendix A, Figure 17 and shall comply with Section 27(4). In transfer shower stalls, all controls, faucets, and the shower unit shall be mounted on the side wall opposite the seat.

5. Shower unit. A shower spray unit with a hose at least sixty (60) inches long that can be used as a fixed shower head at various heights or as a hand-held shower shall be provided.

(f) Bathtub and shower enclosures. Enclosures for bathtubs or shower stalls shall not obstruct controls or transfer from wheelchairs onto shower or bathtub seats. Enclosures on bathtubs shall not have tracks mounted on their rims.

(g) Clear floor space. Clear floor space at fixtures may overlap.

(5) Kitchens. Kitchens and their components shall be on an accessible route and shall comply with the requirements of this subsection.

(a) Clearance. Clearances between all opposing base cabinets, counter tops, appliances or walls shall accommodate wheelchair turning space in accordance with Section 4(3).

(b) Clear floor space. A clear floor space at least thirty (30) inches by forty-eight (48) inches complying with Section 4(4) that allows either a forward or a parallel approach by a person in a wheelchair shall be provided at all appliances in the kitchen, including the range or cooktop, oven, refrigerator/freezer, dishwasher, and trash compactor. Laundry equipment located in the kitchen shall comply with subsection (6) of this section.

(c) Controls. All controls in kitchens shall comply with Section 27.

(d) Work surfaces. At least one (1) thirty (30) inch section of counter shall provide a work surface that complies with the following requirements:

1. The counter either shall be adjustable (or replaceable as a unit) to provide alternative heights of twenty-eight (28) inches to thirty-six (36) inches, or shall be fixed at thirty (30) inches measured from the floor to the top of the counter surface.

2. Base cabinets, if provided, shall be removable under the full thirty (30) inch minimum frontage of the counter. The finished floor shall extend under the counter to the wall.

3. Counter thickness and supporting structure shall be two (2) inches maximum over the required clear area.

4. A clear floor space thirty (30) inches by forty-eight (48) inches shall allow a forward approach to the counter. Nineteen (19) inches maximum of the clear floor space may extend underneath the counter. The knee space shall have a minimum clear width of thirty (30) inches and a minimum clear depth of nineteen (19) inches.

5. There shall be no sharp or abrasive surfaces under such counters.

(e) Sink. The sink and surrounding counter shall comply with the following requirements:

1. The sink and surrounding counter either shall be adjustable (or replaceable as a unit) to provide alternative heights of twenty-eight (28) inches to thirty-six (36) inches, or shall be fixed at thirty (30) inches measured from the floor to the top of the counter surface or sink rim. The total width of sink and counter area shall be thirty (30) inches minimum.

2. Where the sink is adjustable, rough-in plumbing shall be located to accept connections of supply and drain pipes for sinks mounted at the height of twenty-eight (28) inches.

3. The depth of a sink bowl shall be no greater than six and one-half (6½) inches.

4. Faucets shall comply with Section 27(4). Lever-operated or push-type mechanisms are two (2) acceptable designs.

5. Base cabinets, where provided, shall be removable under the full thirty (30) inch minimum frontage of the sink and surrounding counter. The finished flooring shall extend under the counter to the wall.

6. Counter thickness and supporting structure shall be two (2) inches maximum over the required clear space.

7. A clear floor space thirty (30) inches by forty-eight (48) inches shall allow forward approach to the sink. Nineteen (19) inches maximum of the clear floor space may extend underneath the sink. The knee space shall have a minimum clear width of thirty (30) inches and a clear depth of nineteen (19) inches.

8. There shall be no sharp or abrasive surfaces under sinks. If hot water exceeds 120 degrees Fahrenheit, hot water and drain pipes under sinks shall be insulated or otherwise covered.

(f) Ranges and cooktops. Ranges and cooktops shall comply with subsection (5)(b) of this section and Section 27. If ovens or cooktops have keen spaces underneath, then they shall be insulated or otherwise protected on the exposed contact surfaces to prevent burns, abrasions, or electrical shock. The clear floor space may overlap the knee space, if provided, by nineteen (19) inches maximum. The location of controls for ranges and cooktops shall not require reaching across burners.

(g) Ovens. Ovens shall comply with subsection (5)(b) of this section and Section 27. Ovens shall be of the self-cleaning type or be located adjacent to a counter with knee space below. For side-opening ovens, the door latch side shall be next to the open counter space, and there shall be a pull-out shelf under the oven extending the full width of the oven and pulling out not less than ten (10) inches when fully extended. Ovens shall have controls on front panels;

they may be located on either side of the door.

(h) Refrigerator/freezers. Refrigerator/freezer type shall comply with Section 27. Refrigerators shall be:

1. Of the vertical side-by-side refrigerator/freezer type; or

2. Of the over-and-under type and meet the following requirements:

a. Have at least fifty (50) percent of the freezer space below fifty-four (54) inches above the floor.

b. Have 100 percent of the refrigerator space and controls below fifty-four (54) inches. Freezers with less than 100 percent of the storage volume within the limits specified in subsections (5) or (6) of this section shall be the self-defrosting type.

(i) Dishwashers. Dishwashers shall comply with subsection (5)(b) of this section and Section 27. Dishwashers shall have all rack space accessible from the front of the machine for loading and unloading dishes.

(j) Kitchen storage. At least fifty (50) percent of kitchen storage areas shall comply with Section 25. Door pulls or handles for wall cabinets shall be mounted as close to the bottom of cabinet doors as possible. Door pulls or handles for base cabinets shall be mounted as close to the top of cabinet doors as possible.

(6) Laundry facilities. If laundry equipment is provided within individual accessible dwelling units, or if separate laundry facilities serve one (1) or more accessible dwelling units, then they shall meet the requirements of this subsection.

(a) Location. Laundry facilities and laundry equipment shall be on an accessible route.

(b) Washing machines and clothes dryers. Washing machines and clothes dryers in common-use laundry rooms shall be front loading.

(c) Controls. Laundry equipment shall comply with Section 27.

JOHN R. GROVES, JR, Commissioner
ADOPTED: April 14, 1981
APPROVED: H. FOSTER PETTIT, Secretary
RECEIVED BY LRC: July 15, 1981 at 2:40 p.m.

See Appendix A on the following pages.

APPENDIX A

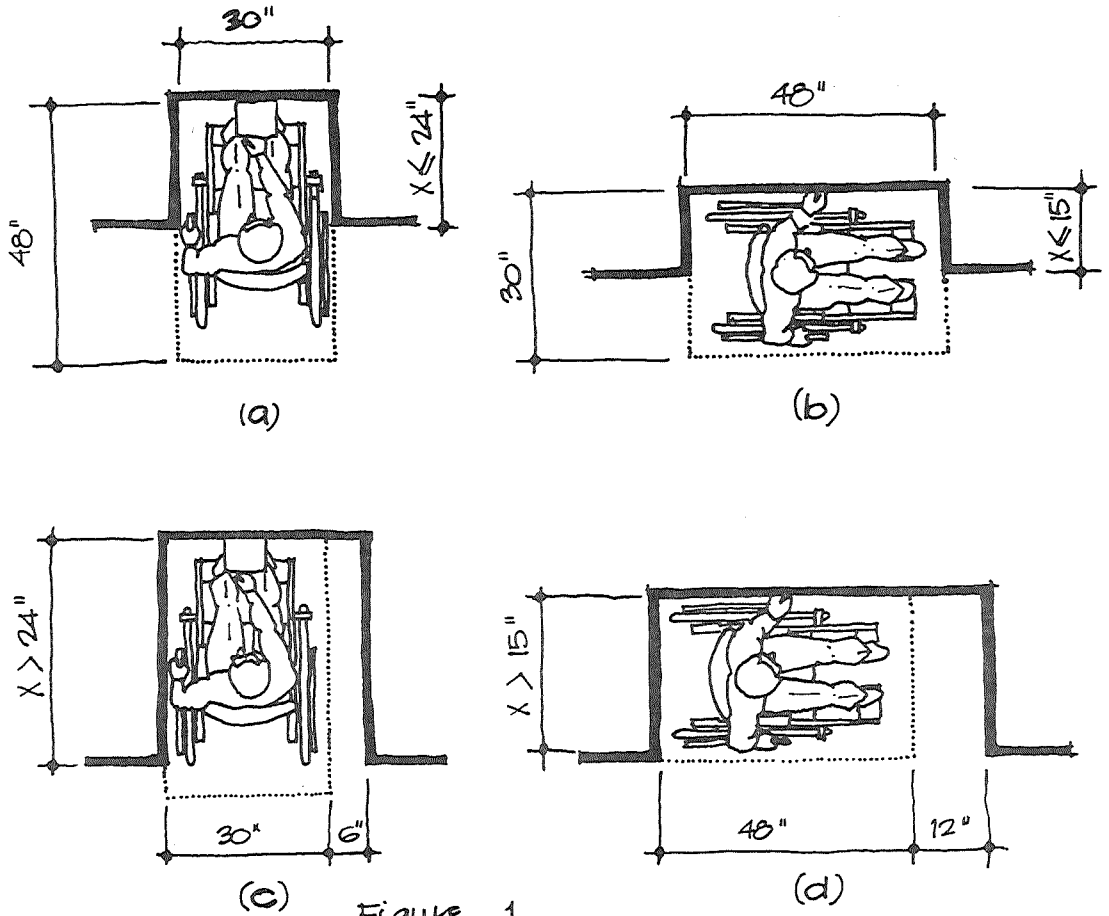


Figure 1
Clear Floor Space in Alcoves

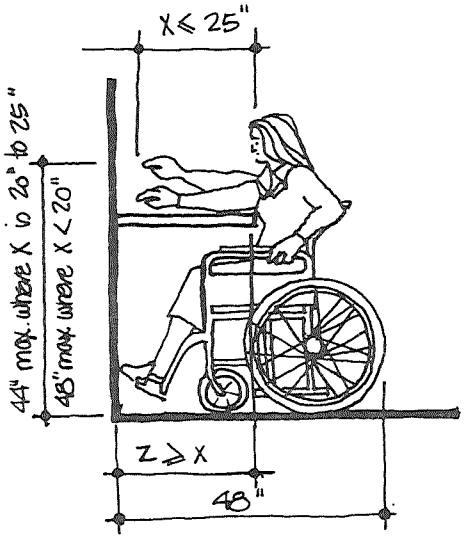


Figure 2
Maximum Forward Reach
Over an Obstruction

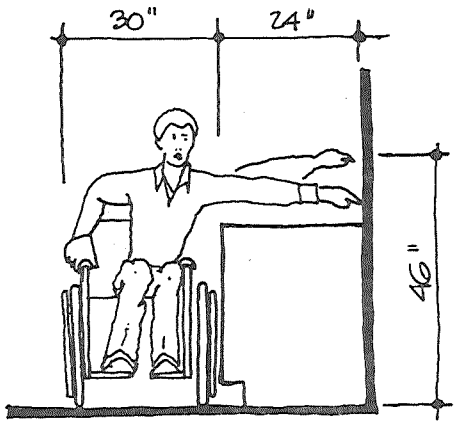


Figure 3
Maximum Side Reach
Over an Obstruction

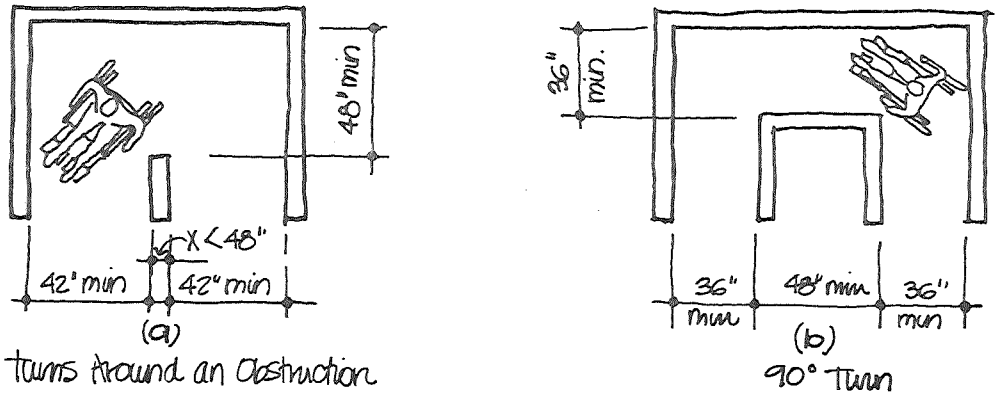


Figure 4
Width of Accessible Route

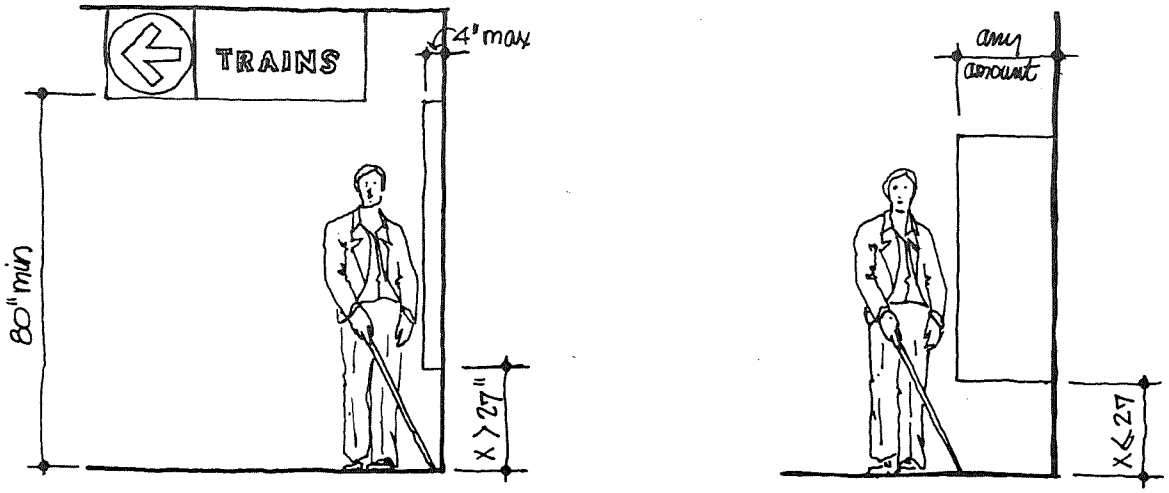


Figure 5
Protruding Objects

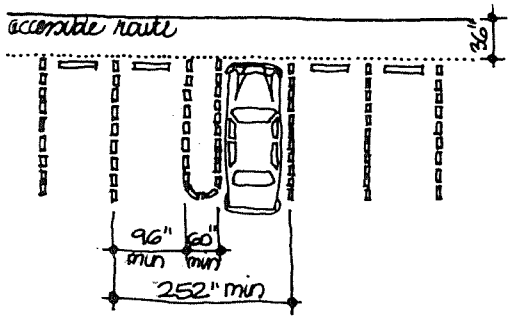


Figure 6
Dimensions of Parking Spaces

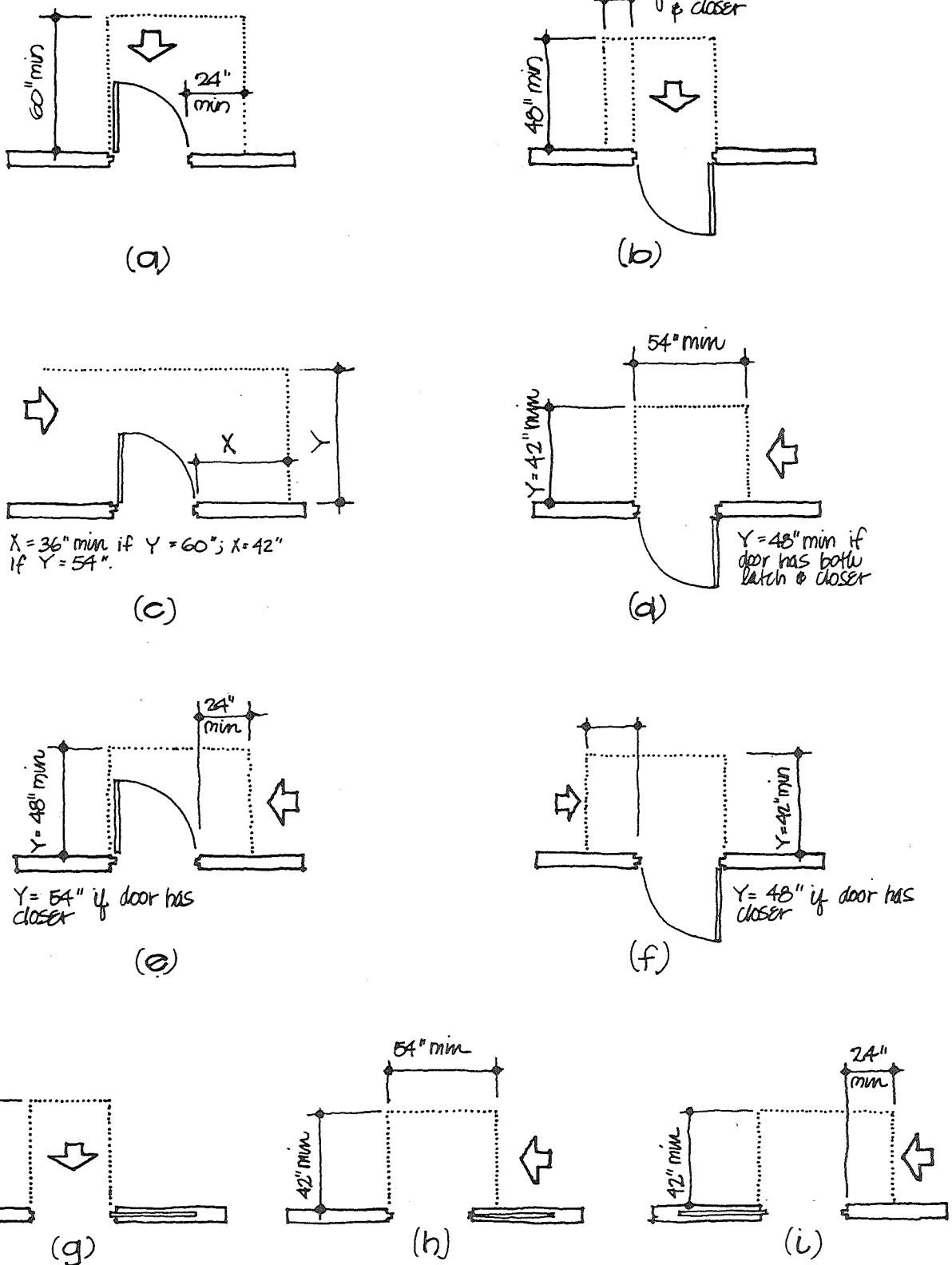
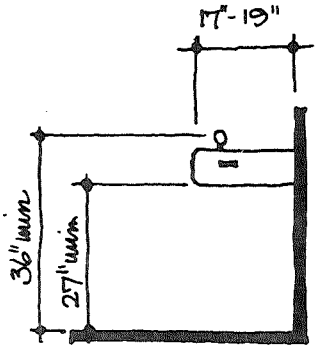
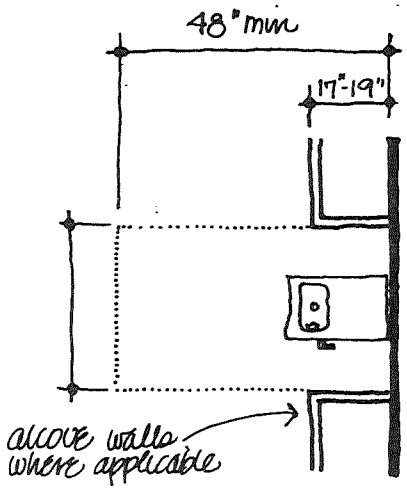


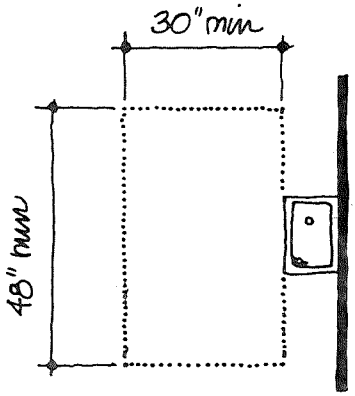
FIGURE 7
Maneuvering Clearances at Doors



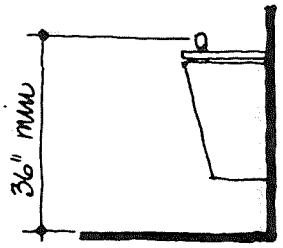
(a)
Spout Height and
Knee Clearance



(b)
Clear Floor Space



(c)
Free Standing
Fountain or Cooler



(d)
Free Standing
Fountain or Cooler

Figure 8
Drinking Fountains and
Water Coolers

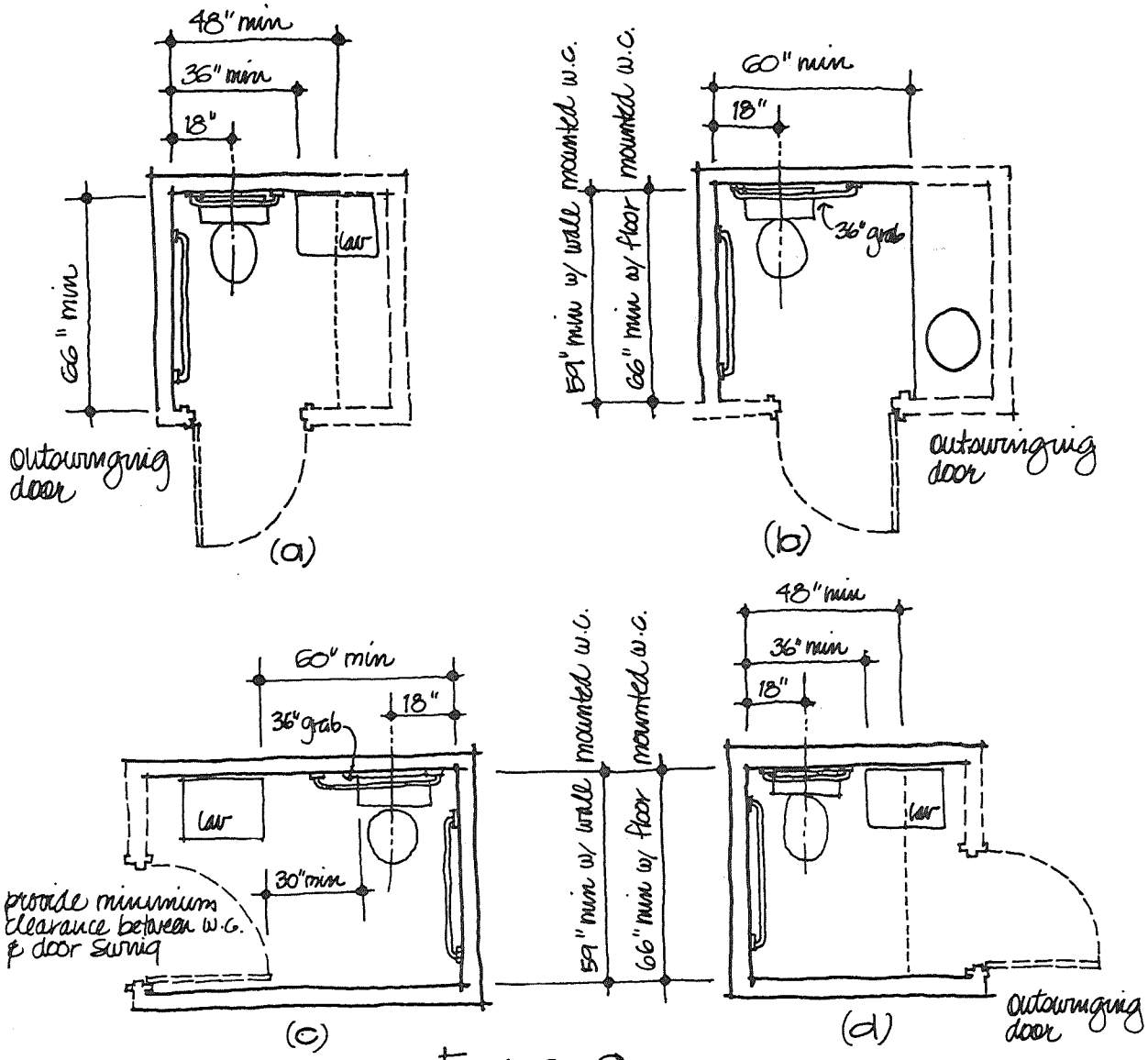


Figure 9
Clear Floor Space at Water Closets

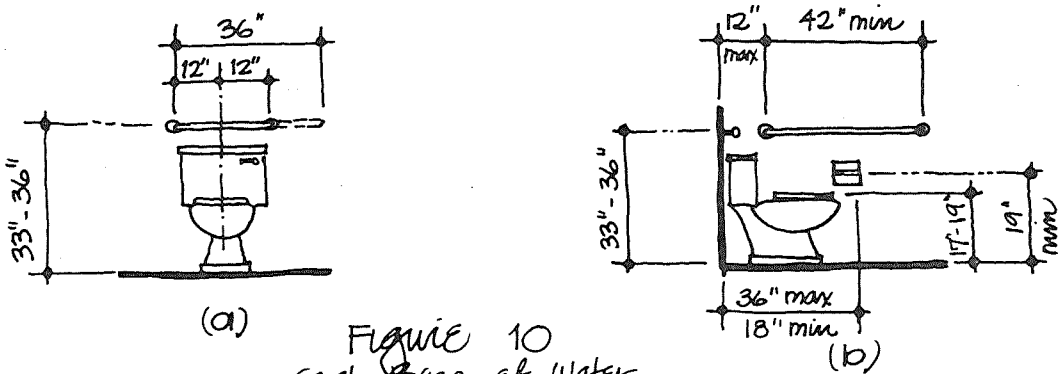


Figure 10
Grab Bars at Water Closets

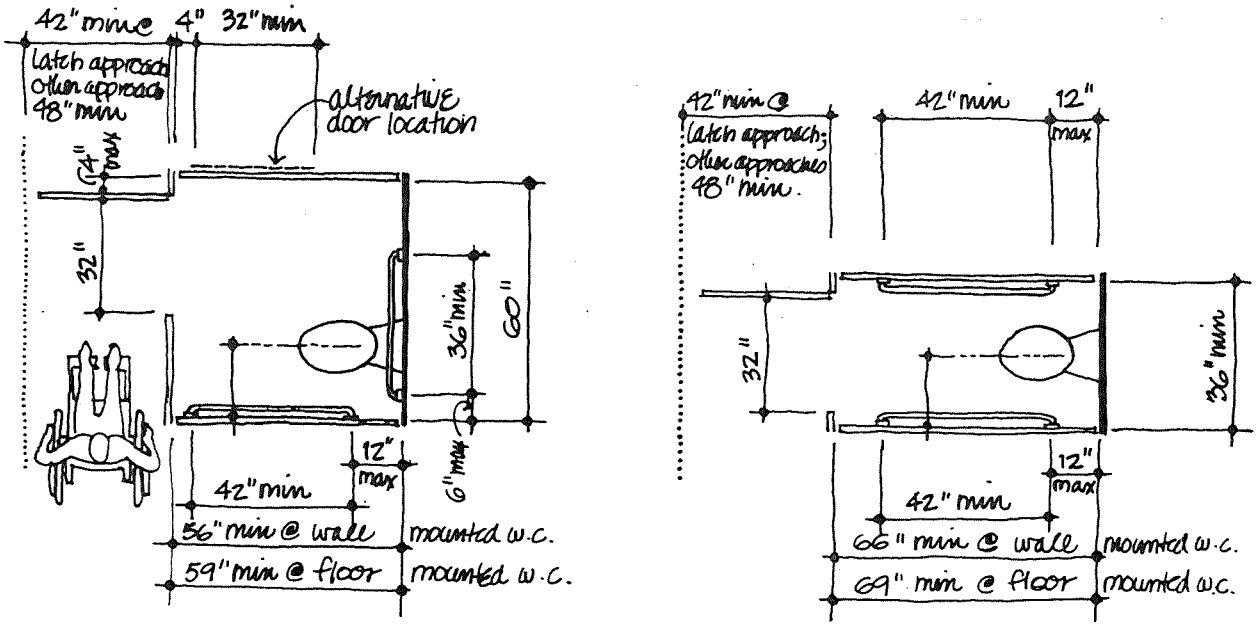


Figure 11
Toilet Stalls

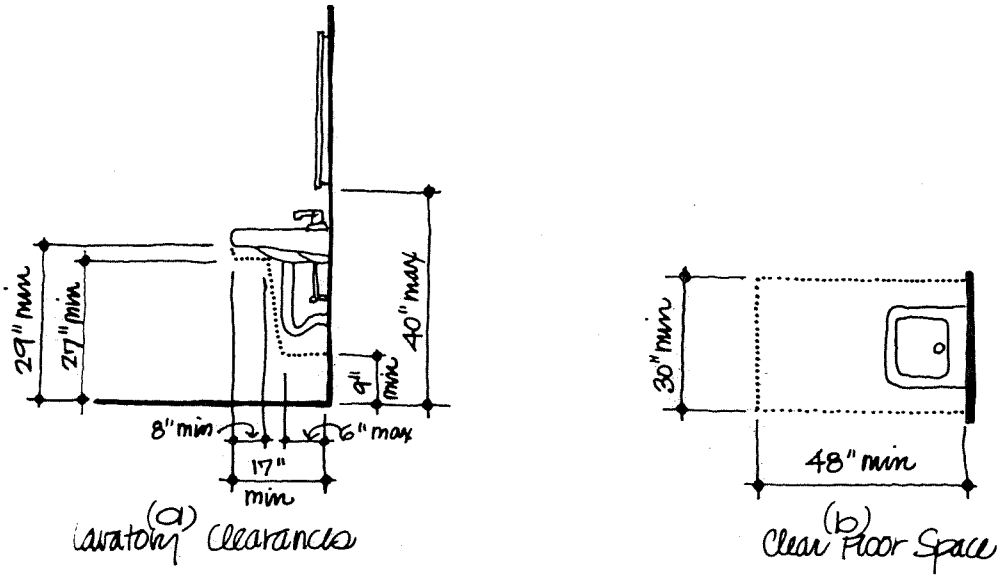


Figure 12
Lavatories

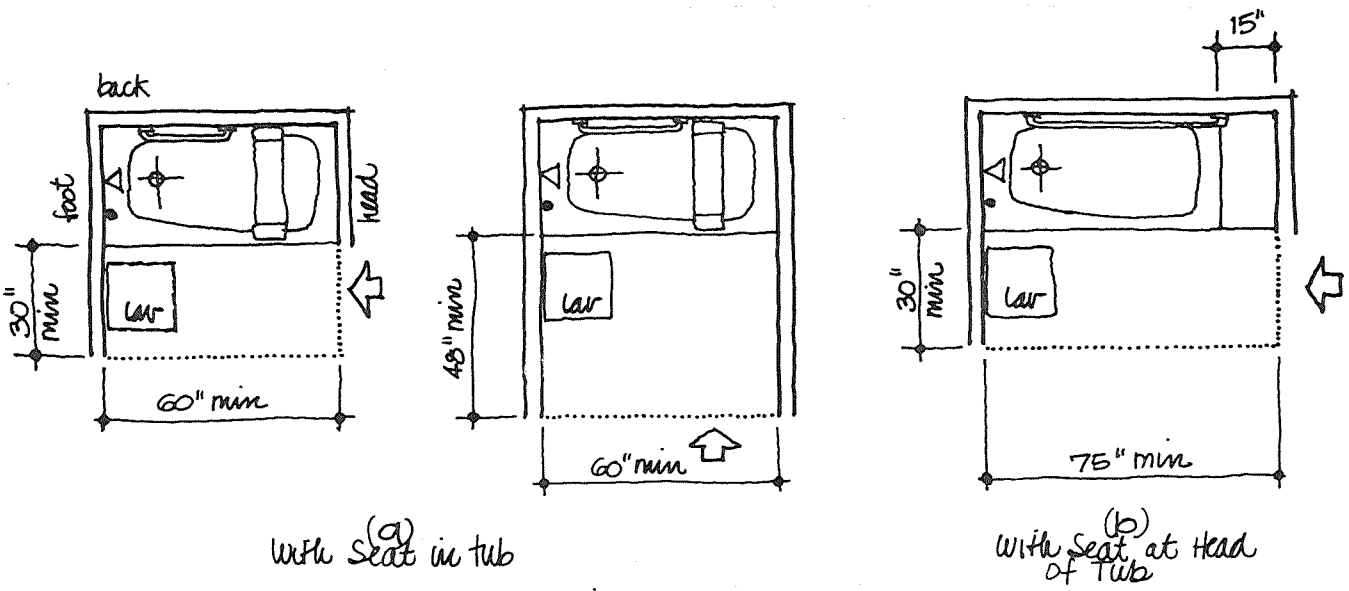


Figure 13
Clear Floor Space @ Bathtubs

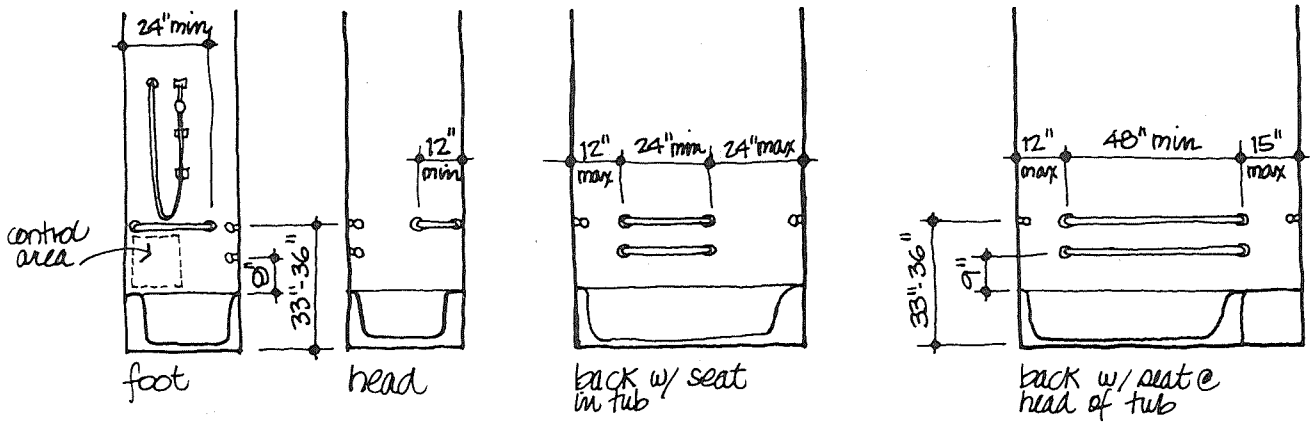


Figure 14
Grab Bars @ Bathtubs

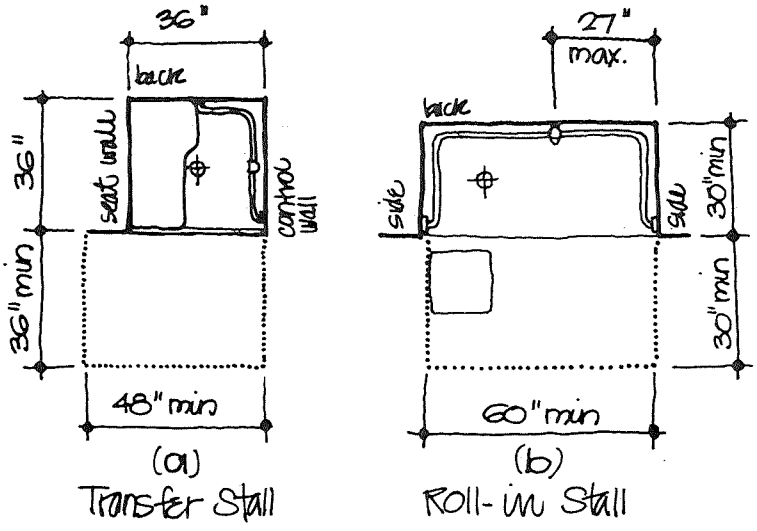


Figure 15
Shower Size and Clearances

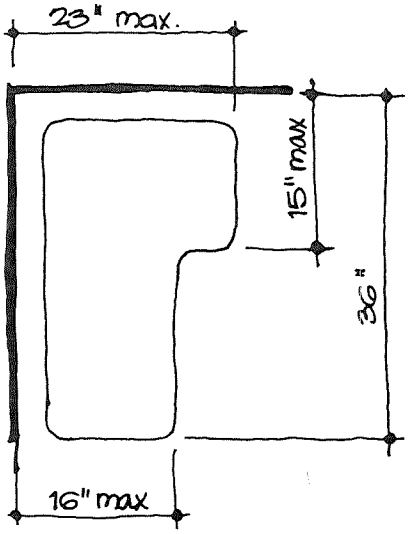
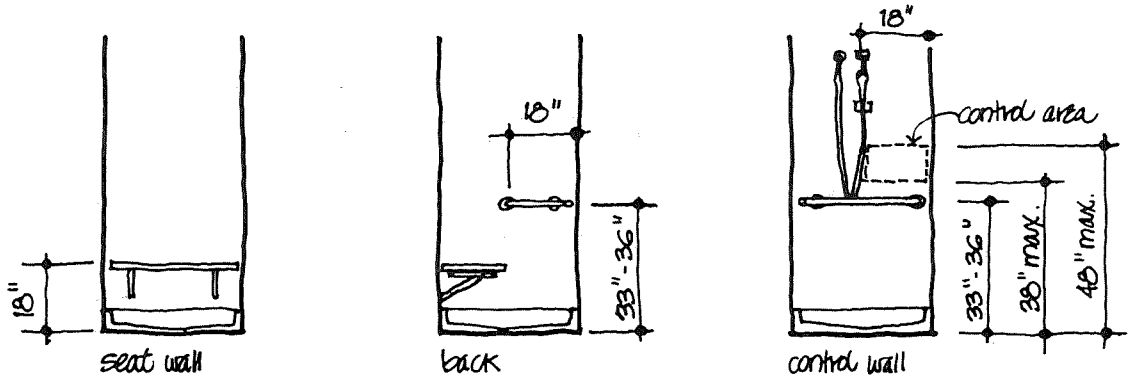


Figure 16
Shower Seat Design



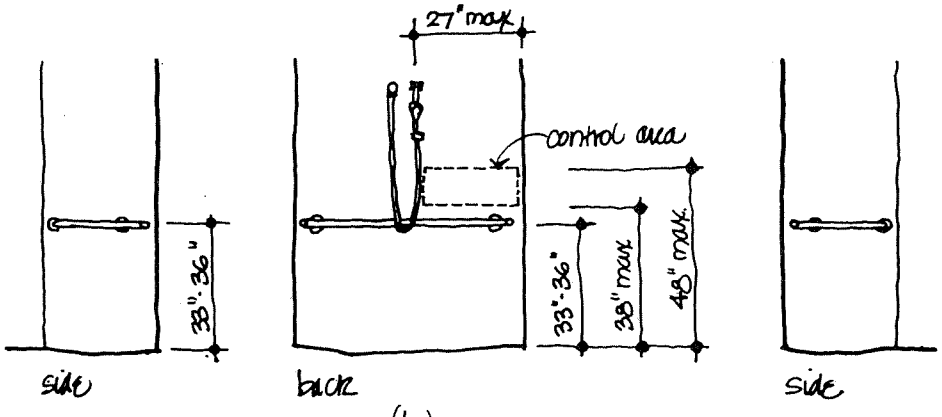


Figure 17
Grab Bars at Shower Stalls

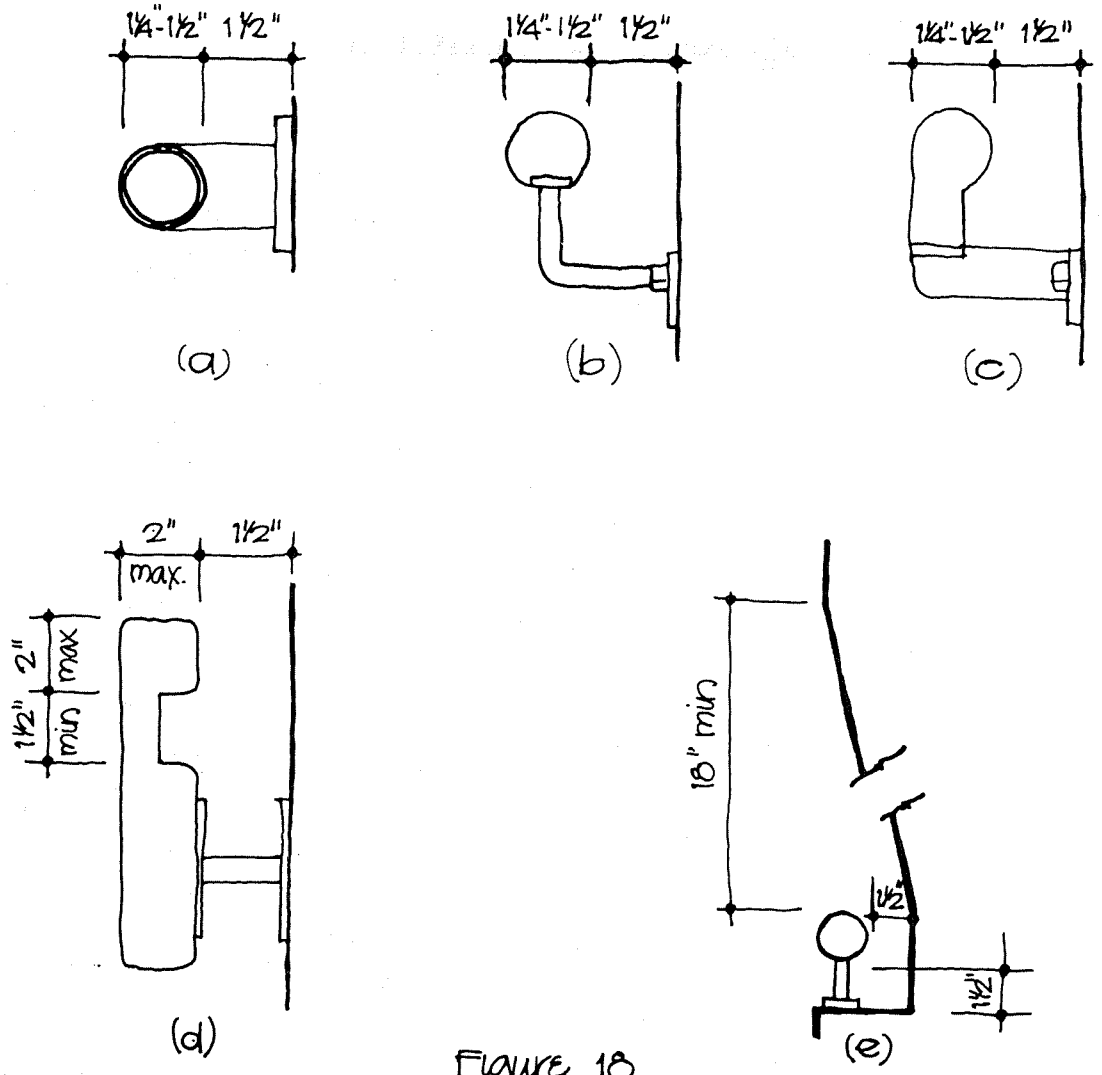


Figure 18
GRAB BARS and HANDRAILS

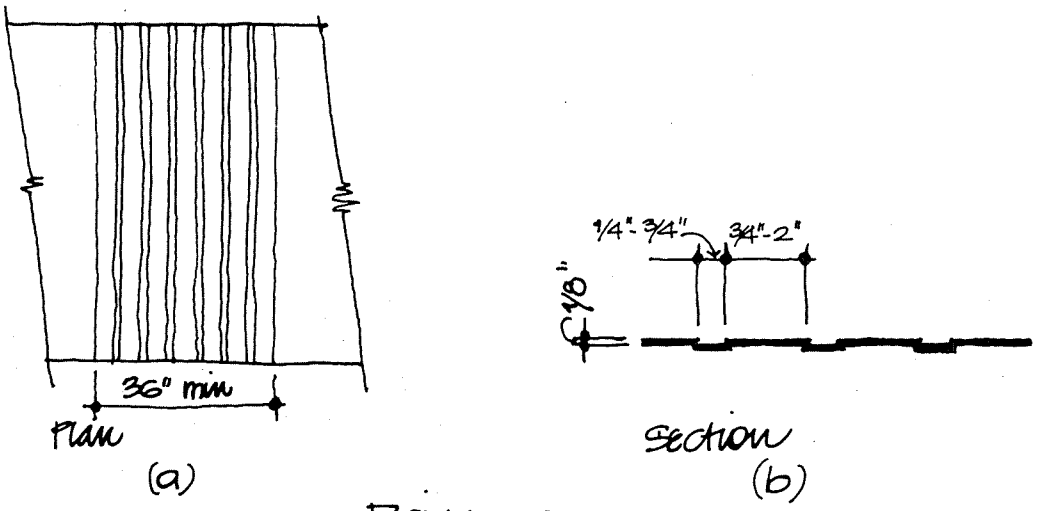


Figure 19
Tactile Warnings on Walking Surfaces

Proposed Amendments

DEPARTMENT OF REVENUE
(Proposed Amendment)

103 KAR 8:090. Classification of property; public service corporations.

RELATES TO: KRS 136.130
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: This regulation classifies certain property as real estate, personalty and manufacturing machinery. The property involved has been the subject of some confusion in the past. This information is helpful to public service companies in classifying new property.

Section 1. The Department of Revenue prescribes the following classification of property to be used by public service corporations in reporting under KRS 136.120 et seq. This list is not intended to be complete and comprehends only those items of property whose proper classification has been subject to some confusion in the past.

Class of Property	Classification by Department of Revenue
1. Leaseholds	Real Estate
2. Oil Wells	Real Estate
3. Gas Wells	Real Estate
4. Gathering Lines	Personalty
5. Pipe lines (Transmission)	Real Estate
6. Electric Transmission Lines	Personalty
7. Electric Distribution Lines	Personalty
8. Telephone Lines	Personalty
9. Underground Cables	Personalty
10. Electric substations *and transformers* [(reducing voltage of higher than 4000)]	Manufacturing Machinery
[11. Electric (Pole) Transformers]	[Personalty]
11. [12.] Machinery & Equipment used in Manufacture of Gas	Manufacturing Machinery
12. [13.] Conduits	Real Estate
13. [14.] Wire contained in underground Conduits	Personalty

ROBERT H. ALLPHIN, Commissioner
ADOPTED: July 10, 1981
RECEIVED BY LRC: July 10, 1981 at 9:30 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Department of Revenue, Capitol Annex Building, Frankfort, Kentucky 40620

DEPARTMENT OF TRANSPORTATION
Bureau of Vehicle Regulation
(Proposed Amendment)

601 KAR 1:090. Exempted commodities.

RELATES TO: KRS Chapter 281
PURSUANT TO: KRS 13.082, 281.625*(7)* [(6)]
NECESSITY AND FUNCTION: KRS 281.625*(7)* [(6)] requires the Bureau of Vehicle Regulation to promulgate regulations designating exempted commodities which are normally and usually not transported by common carriers by motor vehicle.

Section 1. In General. The following commodities are hereby specifically designated as exempted commodities pursuant to KRS 281.625:

(1) Airplanes; automobiles and trucks; barrels, used, empty; barrel staves; beer; bituminous concrete or bituminous asphalt surface; blocks, concrete and cinder; blood, human; *human bio-specimens, which include blood samples, urine samples, body fluids and human tissue samples;* boats, used and assembled, owned by individuals and transported for personal purposes; buildings, used, intact or in section; and brick.

(2) Cement in bags and sacks and other containers in lots, the aggregate weight of which does not exceed 10,000 pounds; chrome ore in bulk in its crude state; clay; coal; coke; commercial papers and documents not normally and ordinarily used in banks and banking institutions, written instruments and inter-office communications ordinarily used in business houses other than banks, not including delivery of newly manufactured items; concrete products, pre-stressed or pre-cast, weighing more than 2,000 pounds; cotton, in bales; cottonseed hulls; crossties; culvert, sewer pipe or gas line pipe, together with couplings and other items necessary for installing, including culvert, sewer pipe or gas line pipe, knocked down or nesting; and currency, coinage and other forms of legal tender, together with negotiable securities, transported by armored cars.

(3) Distillery swill (slop); feed, both in bulk and in bags; fertilizer; fluorspar; fly ash, in bags and sacks and other containers, the aggregage weight of which does not exceed 10,000 pounds; fresh meat, including smoked meats, frozen fish, lard and cheese for peddler route distribution only; fruits and vegetables, in bulk; garbage; grain; grass sod; and gravel.

(4) Hauling or towing of wrecked or disabled motor vehicles; heavy steel items and metal products, each item weighing more than 2,000 pounds or exceeding ten (10) feet in length or four (4) feet in width but including no item exceeding 10,000 pounds in weight; hides, green; highway markers (concrete); industrial alcohol, in bulk, transportation of which is licensed by the Alcoholic Beverage Control Board under the provisions of KRS 243.030(17); license tags and decals to be issued pursuant to KRS Chapter 186; lime, in bags and sacks and other containers, the aggregate weight of which does not exceed 10,000 pounds; livestock; logs; and lumber, rough.

(5) Magazines; magnesite in bulk in its crude state;

materials, supplies and equipment used exclusively for the construction, reconstruction or maintenance of any public highway, road or street; milk and cream, in bulk, or in five (5) gallon cans or greater, or in bottles, but excluding cases of canned milk or cream; newspapers; peat moss; piling; posts (wood); and poultry (live).

(6) Race horses; rock, salt, rock, crushed and screened, not farther processed or refined, unfit for human consumption; sand; sawdust; scrap metal and scrap paper, loose or in bundles; seed, in bulk; stave bolts; and stone.

(7) Tanks and boilers, over 500 gallons capacity; telegraph poles; telephone poles; tobacco, unmanufactured; tobacco hogsheads, new and used, empty; trees and shrubs; United States Mail and Parcel Post; voting machines; water; well rigs, including machinery and equipment; and wool, unprocessed.

Section 2. Limited Exempted Commodities. The following commodities are hereby specifically designated as exempted commodities pursuant to KRS 281.625 and limited by the definition contained in 601 KAR 1:035: emigrant movables, materials used in handling unmanufactured tobacco.

JAMES F. RUNKE, Commissioner
ADOPTED: June 24, 1981
APPROVED: FRANK R. METTS, Secretary
RECEIVED BY LRC: July 9, 1981 at 10 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Stephen Reeder, Deputy Secretary for Legal Affairs, 1008 State Office Building, Frankfort, Kentucky 40622.

EDUCATION AND ARTS CABINET
Department of Education
Bureau of Instruction
(Proposed Amendment)

704 KAR 3:025. Classroom units.

RELATES TO: KRS 157.360[(7)]
PURSUANT TO: KRS 13.082, 156.070, *157.360* [156.160]
NECESSITY AND FUNCTION: KRS 157.360 specifies that the Superintendent of Public Instruction shall allot classroom units for administrative and special instructional services in determing the cost of the foundation program for each district. Each unit shall meet the criteria established by the State Board *of* [for Elementary and Secondary] Education. *This regulation implements the duty of prescribing the criteria for specific ASIS units.*

Section 1. Classroom units for administrative and special instructional services shall be based on the following program of services:

(1) An art education teacher shall provide an accepted program in art education as described in the *"Program of Studies for Kentucky Schools, K-12," as adopted in 704 KAR 3:304* [current "Approved Guidelines for Art Education," as adopted by the State Board for Elementary and Secondary Education, and filed herein by reference. Copies may be obtained from the department].

(2) An assistant principal shall have such duties as may be assigned including administrative duties and supervision of instruction. The assistant principal shall serve all grades within the school or schools to which assigned. The assistant principal shall devote at least fifty percent (50%) of his/her time to the duties of the assistant principalship. Classroom teaching shall not be considered a part of this unit. An assistant principal shall not be assigned to a school which does not have the services of principal.

(3) An assistant superintendent shall have such duties as assigned by the superintendent. The duties shall be designed to assist and aid the superintendent in performance of the duties of superintendent as provided in KRS 160.370. The assistant superintendent shall devote himself exclusively to *the* [his] duties *as assigned* and shall be employed for the full school year.

(4) Consultants shall work in cooperation with the existing supervisory program in the school district; help plan, coordinate, and develop programs in their subject or area specialty in individual schools or system wide; serve as a consultant to classroom teachers, do demonstration teaching and help individual teachers improve the quality of the program at the classroom level; work to improve the facilities, equipment and utilization of materials; and seek to improve the relationship of program to the total school program.

(5) A driver education teacher shall provide a comprehensive program of learning experiences for the purpose of teaching students knowledge, skills, and attitudes to promote traffic efficiency and safety. The program shall follow the *description of the driver and traffic safety education section in the "Program of Studies for Kentucky Schools, K-12"* [guidelines described in the current "Approved Guidelines of Driver and Traffic Safety Education," as adopted by the State Board for Elementary and Secondary Education, and filed herein by reference. Copies may be obtained from the department].

(6) *Teachers assigned to the curriculum areas of industrial arts and industrial education level I and level II* [An industrial arts teacher] shall provide an accepted program in *the area(s) assigned* [industrial arts] as described in *"The Program of Studies for Kentucky Schools, K-12"* ["The Program of Industrial Arts Education in Kentucky," published by the State Department of Education in 1961, and filed herein by reference. Copies may be obtained from the department].

(7) An instructional coordinator shall have such duties as supervision of instruction and staff development which shall include the following types of activities:

(a) Provide staff development services to participating teachers in the area of instructional methodology, instructional strategies, classroom management, and communication skills.

(b) Assist professional school employes in the implementation of the Kentucky Plan for Improving the Professional Performance of School Personnel.

(c) Conduct classroom visitations and follow-up conferences with teachers and other professional school personnel.

(d) Serve as liaison in instructional matters between teachers and administrators within the school and with central office personnel.

(e) Serve as instructional and staff development consultant within the school to teachers, department chairmen, committees, and administrators.

(f) Work under the immediate direction of the school principal.

(8) An instructional television coordinator shall provide service to teachers in the area of instructional methodology

and instructional strategies; assist in planning, coordinating, and developing an effective instructional television program for the school district; serve as a resource person to classroom teachers, do demonstration teaching and help to improve the quality of instruction; work to improve facilities, equipment, and utilization of material; and maintain records on all instructional television equipment. *An instructional television coordinator shall hold a certificate valid for teaching in Kentucky schools.*

(9) A local director of vocational education shall coordinate and direct the development of the annual and long-range plan for vocational education for the local school districts in cooperation with educational agencies, advisory committees, and other planning agencies. The duties shall include:

(a) Improving vocational facilities, equipment and utilization of vocational materials;

(b) Planning for teacher and community participation in development of curriculum;

(c) Planning for professional improvement of vocational staff; and

(d) Evaluation vocational programs.

(10) A media librarian shall provide a functional program which has a systematic plan for the selection and acquistion of books and other materials plus a loan system for student use. Provisions shall be made for every child to have access to the library. The media librarian shall devote at least fifty percent (50%) of his/her time to the duties of media librarian.

(11) A music education teacher shall provide an accepted program in music education as described in the *music education section of the "Program of Studies for Kentucky Schools, K-12"* [current "Approved Guidelines for Music Education," as adopted by the State Board for Elementary and Secondary Education, and filed herein by reference. Copies may be obtained from the department].

(12) A physical education teacher shall provide an accepted program in physical education as described in the *"Program of Studies for Kentucky Schools, K-12"* [current "Approved Guidelines for Physical Education," as adopted by the State Board for Elementary and Secondary Education, and filed herein by reference. Copies may be obtained from the department].

(13) A principal shall be assigned administrative and supervision duties. A significant portion of his/her time shall be devoted to supervision and he/she shall be a cooperating participant in the various activities which are designed to improve instruction. The principal shall devote at least fifty percent (50%) of his/her time to the duties of principalship. Classroom teaching shall not be considered a part of this unit. A principal shall supervise at least eight (8) teachers in one (1) or more schools.

(14) A school business administrator and/or finance officer shall supervise, under the direction of the superintendent, the financial affairs of the school district including establishment and maintenance of accounting procedures, and shall be responsible for financial reports required by the superintendent, the board of education, and the State Department of Education. The school business administrator or finance officer shall devote himself*/herself* exclusively to his*/her* duties and shall be employed for the full school year.

(15) A school health coordinator shall work with other school personnel in providing a school health service program which meets the health needs of individual pupils. The program shall consist of the following services:

(a) Coordinate all comprehensive health *assessment* [screening] procedures.

(b) Supervise appropriate follow-up of *health assessment programs* [mass screening] and direct [to] appropriate services for each [individual] child *requiring services.*

(c) Secure and obtain appropriate consultation for communicable diseases.

(d) Supervise and assess the completeness of periodic health examinations of children.

(e) Establish and supervise first aid facilities for each school.

(f) Assist with parent health education program.

(g) Periodically check with teacher for classroom observation, teacher evaluation, and follow-up in such areas as psychological, speech, and neurological.

(h) Follow-up of prolonged illness with the pupil's physician and interpret physician's recommendations to teacher.

(i) Assist with medical aspects of sports.

(j) Maintain a dental health program.

(k) Assist local school officials in meeting the requirements of [the] school health *regulations* [code] pertaining to school employee medical examinations.

(16) A school lunch director shall work with others to plan, develop, administer and supervise the school food service program for all schools in the district.

(17) A school *psychometrist* [psychologist] shall recommend and direct the application of those measuring instruments which will provide most accurately the information about pupils desired by other staff members. The school psychometrist discharges these responsibilities by:

(a) Selecting and recommending the measuring devices that are the most valid and reliable indicators of the pupil characteristics to be considered.

(b) Planning, organizing and directing the administration of the tests or other devices chosen by the school staff member or members.

(c) Planning, organizing and directing the scoring of the measures administered.

(d) Converting the raw scores into such terms as are desired by the staff.

(e) Making such statistical calculations as are needed by the staff.

(f) Preparing charts, graphs and other interpretative materials for the use of the staff.

(g) Keeping and filing for later reference the important data obtained.

(h) Selecting, training and supervising clerical workers employed to score tests, collect data, and carry out statistical tasks in his/her office.

(i) Conducting minor research studies of groups of school pupils for administrative, supervisory or guidance counselors.

(j) Assisting guidance counselors in obtaining and organizing pertinent data needed regarding individual students.

(k) Making diagnostic studies of the individual child. The purpose of the services rendered by the school psychometrist to other individuals and groups is to conserve the time of the school's teachers, guidance counselors(s) and administrative and supervisory personnel in supplying recorded data regarding sudents to agencies or individuals not directly involved in the school's educational programs.

[(18) A school psychometrist shall provide to members of the staff, data regarding the characteristics and abilities of individual pupils and groups of pupils in the schools. The duties shall include specialized evaluation and measurement of the psychological and educational traits of students and the statistical treatment of numerical data ob-

tained by evaluative methods.]

(18) [(19)] A school social worker and/or visiting teacher shall work with individual pupils who need help with problems of social adjustment promoting positive adjustment to school experience, and helping pupils find opportunities to continue their educational progress toward realization of their potential. The finding shall be coordinated with the respective teachers.

(19) [(20)] A special education work-study program coordinator's duties shall include on the job placement and supervision in working situations of exceptional children between the ages of fourteen (14) and twenty-one (21). The on-the-job training shall be a cooperative arrangement between the school system and employers coordinated by the special education work-study program coordinator.

(20) [(21)] A supervisor of instruction shall devote the allotted time for supervision to providing leadership services in the improvement of instruction in the school program by working with administrators, teachers, other supervisors, and the lay public. In districts entitled to a fractional unit or one (1) unit for a supervisor, this unit or fraction shall be for a general supervisor. Districts entitled to more than one (1) unit for a supervisor shall employ a general supervisor for the first unit. The program of supervision shall make provisions for:

(a) Cooperative curriculum revision and development involving the total staff.

(b) Assistance in the selection and use of good instructional materials.

(c) Preparation of study guides, courses of study, handbooks, and other materials adapted to local needs.

(d) Cooperative efforts with principals and classroom teachers to improve the learning environment in schools and to meet pupil needs.

(e) Adequate evaluation of the supervisory program in terms of improved instructional services.

RAYMOND BARBER
Superintendent of Public Instruction

ADOPTED: June 23, 1981
RECEIVED BY LRC: July 1, 1981 at 2:45 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Mr. Fred Schultz, Secretary, Kentucky State Board of Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

EDUCATION AND ARTS CABINET
Department of Education
Bureau of Instruction
(Proposed Amendment)

704 KAR 3:052. Head teacher.

RELATES TO: KRS *157.320,* 157.360, *158.150*
PURSUANT TO: KRS 13.082, 156.070, *157.320* [156.130, 156.160]
NECESSITY AND FUNCTION: *KRS 157.320 authorizes the State Board of Education to adopt such rules and regulations as it deems necessary for the administration of the Foundation Program;* KRS 157.360 requires the Superintendent of Public Instruction to allot *classroom* units *for elementary and secondary schools (basic units) and administrative and special instructional services, the latter of which are interpreted by 704 KAR 3:010* to *include units for* principals, *and KRS 158.150 authorizes a superintendent, principal, or head teacher to suspend a pupil. This regulation defines a head teacher and the* [The purpose of these] criteria *for including such a teacher with administrative duties normally assigned to a principal within a school's basic units* [is to furnish superintendents and boards of education with the basic requirements for approval of special units].

Section 1. (1) A school [which has fewer than eight (8) certified teachers] may have a teacher designated as the head teacher, *if the teaching staff, including the head teacher does not exceed the equivalent of eight (8) full-time teachers.* The person qualified to serve in this position shall hold a legal teaching certificate.

(2) A head teacher shall devote at least fifty (50) percent of the school day to teaching, the remaining portion of the day to be devoted to administrative responsibilities usually assigned to a principal.

RAYMOND BARBER
Superintendent of Public Instruction

ADOPTED: June 23, 1981
RECEIVED BY LRC: July 1, 1981 at 2:45 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Mr. Fred Schultz, Secretary, Kentucky State Board of Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

EDUCATION AND ARTS CABINET
Department of Education
Bureau of Instruction
(Proposed Amendment)

704 KAR 4:010. Physical education.

RELATES TO: KRS 156.160
PURSUANT TO: KRS 13.082, 156.070, 156.160
NECESSITY AND FUNCTION: KRS 156.160 requires the *State Board of Education* [Superintendent of Public Instruction] to *adopt* [prepare] regulations governing medical inspection, physical education and recreation, and other rules and regulations deemed necessary or advisable for the protection of the physical welfare and safety of the public school children. *This regulation implements that duty relative to health and physical educuation instruction.* [In addition, it is desirable to establish a working relationship between the State Board for Elementary and Secondary Education and the Kentucky High School Athletic Association for the governance of secondary school interscholastic athletic programs.]

Section 1. (1) All elementary school pupils shall receive organized physical education instruction which shall total a minimum of 120 minutes per week.

(2) In the secondary school, opportunities for physical education experiences shall be provided for each pupil. Each student shall earn a minimum of one-half (½) credit on the secondary level in health and one-half (½) credit in physical education as a graduation requirement.

(3) *Elementary and secondary programs or courses shall follow the descriptions and requirements recorded in the physical education section of the "Program of Studies for Kentucky Schools, K-12," as adopted in 704 KAR 3:304.* [No elementary or secondary school shall be considered as having met physical education regulations until programs have been put into operation which meet the "Approved Guidelines for Physical Education."]

(4) A local board of education may authorize a child whose parents or guardian present a certificate from a licensed physician to the effect that because of the child's physical condition, participation in the one-half (½) unit physical education course is not in the best interest of the child, to substitute a physical education course which is within the capabilities of the child as specified by the child's physician.

Section 2. Each school shall include health instruction in its curriculum for grades K-12. All pupils shall receive health instruction in programs *as described in the "Program of Studies for Kentucky Schools, K-12."* [meeting the "Approved Guidelines for Health Education."]

RAYMOND BARBER
Superintendent of Public Instruction
ADOPTED: June 23, 1981
RECEIVED BY LRC: July 1, 1981 at 2:45 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Mr. Fred Schultz, Secretary, Kentucky State Board of Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

EDUCATION AND ARTS CABINET
Department of Education
Bureau of Instruction
(Proposed Amendment)

704 KAR 20:229. Hearing impaired, endorsement for teaching.

RELATES TO: KRS 161.020, 161.025, 161.030
PURSUANT TO: KRS 13.082, 156.030, 156.070, *161.030* [156.160]
NECESSITY AND FUNCTION: *KRS 161.020 prohibits any person from holding the position of superintendent, principal, teacher, supervisor, director of pupil personnel, or other public school position for which certificates may be issued unless he holds a certificate of legal qualifications for the particular position; KRS 161.025 give the Kentucky Council on Teacher Education and Certification the duty to develop and recommend policies and standards relating to teacher preparation and certification; and KRS 161.030 rests the certification of teachers and other school personnel and the approval of teacher-preparatory colleges and universities and their curricula with the State Board of Education. This regulation* establishes an appropriate certification *endorsement* and corresponding program of preparation for *teaching the hearing impaired* [a professional school position as required under KRS 161.020, 161.025 and 161.030].

Section 1. (1) The endorsement for teaching hearing impaired pupils shall be issued in accordance with the pertinent Kentucky statutes and State Board *of* [for Elementary and Secondary] Education regulations to an applicant who holds either the provisional elementary certificate, the provisional certificate for teaching in the middle grades, or the provisional high school certificate and who has completed the approved program of preparation which corresponds to this endorsement at a teacher education institution approved under the standards and procedures included in the Kentucky *Standards* [State Plan] for the [Approval of] Preparation-[Programs for the] Certification of Professional School Personnel *as adopted in 704 KAR 20:005.*

(2) The endorsement for teaching hearing impaired pupils shall be valid for the same grade levels as the teaching certificate used as a base for the endorsement and shall have the same duration period as the base certificate except that the elementary certificate shall be valid for kindergarten through grade eight (8).

(3) A one (1) year endorsement for teaching hearing impaired pupils, valid for the same grade level as the teaching certificate used as a base for the endorsement, shall be issued upon completion of six (6) semester hours credit from the approved curriculum. *As a prerequisite, the certificate application shall be accompanied by a statement from the superintendent of the local school district declaring that an emergency exists as described in the regulations governing emergency teacher certification (704 KAR 20:120) and also describing the special supervisory services that will be provided for this teaching position.* The endorsement may be renewed for no more than three (3) subsequent one (1) year periods upon completion of a minimum of six (6) semester hours additional credit each year after which time the teacher must qualify by having completed the entire curriculum.

RAYMOND BARBER
Superintendent of Public Instruction
ADOPTED: June 23, 1981
RECEIVED BY LRC: July 1, 1981 at 2:45 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Mr. Fred Schultz, Secretary, Kentucky State Board of Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

EDUCATION AND ARTS CABINET
Department of Education
Bureau of Instruction
(Proposed Amendment)

704 KAR 20:230. Hearing impaired; teacher's provisional certificate.

RELATES TO: KRS 161.020, 161.025, 161.030
PURSUANT TO: KRS 13.082, 156.030, 156.070, *161.030* [156.160]
NECESSITY AND FUNCTION: KRS 161.020, 161.025, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Kentucky Council on Teacher Education and Certification and approved by the State Board *of* [for Elementary

and Secondary] Education; futhermore, the teacher education institutions are required to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures recommended by the Council and approved by the State Board. This regulation establishes an appropriate *provisional* certificate *for teaching the hearing impaired* and relates to the corresponding standards and procedures for program approval as included in the Kentucky *Standards* [State Plan] for the [Approval of] Preparation- [Programs for the] Certification of Professional School Personnel.

Section 1. (1) The provisional certificate for teachers of exceptional children—hearing impaired shall be issued in accordance with the pertinent Kentucky statutes and State Board *of* [for Elementary and Secondary] Education regulations to an applicant who has completed the approved program of preparation which corresponds to the certificate at a teacher education institution approved under the standards and procedures included in the Kentucky *Standards* [State Plan] for the [Approval of] Preparation- [Programs for the] Certification of Professional School Personnel *as adopted in 704 KAR 20:005.*

(2) The provisional certificate for teachers of exceptional children—hearing impaired shall be issued initially for a duration period which expires ten (10) years from the calendar year of completion of the curriculum requirements. This certificate shall be renewed for a ten (10) year period only upon completion of the planned fifth year program. The certificate may be extended for life upon completion of three (3) years of successful teaching experience on a regular certificate and upon completion of a planned fifth year program.

(3) The provisional certificate for teachers of exceptional children—hearing impaired shall be valid at any grade level for the instruction of exceptional children who are hearing impaired and as a provisional elementary certificate valid for classroom teaching in grades one (1) through eight (8).

(4) The provisional certificate for teachers of exceptional children—hearing impaired shall be issued for a one (1) year period to an applicant who holds the provisional elementary certificate or any other certificate of similar validity for elementary classroom teaching and who has completed at least six (6) semester hours credit from the special education component of the approved curriculum. *As a prerequisite, the certificate application shall be accompanied by a statement from the superintendent of the local school district declaring that an emergency exists as described in the regulations governing emergency teacher certification (704 KAR 20:120) and also describing the special supervisory services that will be provided for this teaching position.* The certificate may be renewed for no more than three (3) subsequent one (1) year periods upon completion of a minimum of six (6) semester hours additional credit each year after which time the teacher must qualify by having completed the entire curriculum.

RAYMOND BARBER
Superintendent of Public Instruction

ADOPTED: June 23, 1981
RECEIVED BY LRC: July 1, 1981 at 2:45 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Mr. Fred Schultz, Secretary, Kentucky State Board of Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

EDUCATION AND ARTS CABINET
Department of Education
Bureau of Instruction
(Proposed Amendment)

704 KAR 20:235. Learning and behavior disorders; teacher's provisional certificate.

RELATES TO: KRS 161.020, 161.025, 161.030
PURSUANT TO: KRS 13.082, 156.030, 156.070, *161.030* [156.160]
NECESSITY AND FUNCTION: KRS 161.020, 161.025, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Kentucky Council on Teacher Education and Certification and approved by the State Board *of* [for Elementary and Secondary] Education; futhermore, the teacher education institutions are required to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures recommended by the Council and approved by the State Board. This regulation establishes an appropriate *provisional* certificate *for teaching exceptional children with learning and behavior disorders* and relates to the corresponding standards and procedures for program approval as included in the Kentucky *Standards* [State Plan] for the [Approval of] Preparation- [Programs for the] Certification of Professional School Personnel.

Section 1. (1) The provisional certificate for teachers of exceptional children—[;] learning and behavior disorders shall be issued in accordance with the pertinent Kentucky statutes and State Board *of* [for Elementary and Secondary] Education regulations to an applicant who has completed the approved program of preparation which corresponds to the certificate at a teacher education institution approved under the standards and procedures included in the Kentucky *Standards* [State Plan] for the [Approval of] Preparation- [Programs for the] Certification of Professional School Personnel *as adopted in 704 KAR 20:005.*

(2) The provisional certificate for teachers of exceptional children—[;] learning and behavior disorders shall be issued initially for a duration period which expires ten (10) years from the calendar year of completion of the curriculum requirements. This certificate shall be renewed for a ten (10) year period only upon completion of the planned fifth year program. The certificate may be extended for life upon completion of three (3) years of successful teaching experience on a regular certificate and upon completion of a planned fifth year program.

(3) The provisional certificate for teachers of exceptional children—[;] learning and behavior disorders shall be valid at any grade level for the instruction of exceptional children with learning and behavior disorders and as a provisional elementary certificate valid for classroom teaching in grades one (1) through eight (8).

(4) The provisional certificate for teachers of exceptional children—[;] learning and behavior disorders shall be issued for a one (1) year period to an applicant who holds the provisional elementary certificate or any other certificate of similar validity for elementary classroom teaching and who has completed at least six (6) semester hours credit from the special education component of the approved curriculum. *As a prerequisite, the certification application shall be accompanied by a statement from the superintendent of the local school district declaring that an*

emergency exists as described in the regulations governing emergency teacher certification (704 KAR 20:120) and also describing the special supervisory services that will be provided for this teaching position. The certificate may be renewed for no more than three (3) subsequent one (1) year periods upon completion of a minimum of six (6) semester hours additional credit each year after which time the teacher must qualify by having completed the entire curriculum.

(5) (a) The provisional certificate for teachers of exceptional children—[;] learning and behavior disorders, limited in validity to grades seven (7) through twelve (12), may be issued to an applicant who holds the provisional high school certificate or any other certificate of similar validity for secondary classroom teaching and who has completed the approved special education component of twenty-seven (27) semester hours for learning and behavior disorders and in addition thereto, two (2) sequential courses in the teaching of reading and two (2) courses in mathematics for elementary school teachers.

(b) The provisional certificate for teachers of exceptional children—[;] learning and behavior disorders, valid for grades seven (7) through twelve (12), may be issued for a one (1) year period to an applicant who holds the provisional high school certificate or any other certificate of similar validity for secondary classroom teaching and who has completed at least six (6) semester hours credit from the special education component of the curriculum described above and a three (3) semester hour course in reading. As a prerequisite, the certificate application shall be accompanied by a statement from the superintendent of the local school district declaring that an emergency exists as described in the regulations governing emergency teacher certification (704 KAR 20:120) and also describing the special supervisory services that will be provided for this teaching position. The certificate may be renewed for subsequent one (1) year periods upon completion of at least six (6) semester hours credit each year from the approved curriculum.

RAYMOND BARBER
Superintendent of Public Instruction

ADOPTED: June 23, 1981
RECEIVED BY LRC: July 1, 1981 at 2:45 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Mr. Fred Schultz, Secretary, Kentucky State Board of Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

EDUCATION AND ARTS CABINET
Department of Education
Bureau of Instruction
(Proposed Amendment)

704 KAR 20:245. Trainable mentally handicapped; teacher's provisional certificate.

RELATES TO: KRS 161.020, 161.025, 161.030
PURSUANT TO: KRS 13.082, 156.030, 156.070, *161.030* [156.160]
NECESSITY AND FUNCTION: KRS 161.020, 161.025, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Kentucky Council on Teacher Education and Certification and approved by the State Board *of* [for Elementary and Secondary] Education; furthermore, the teacher education institutions are required to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures recommended by the Council and approved by the State Board. This regulation establishes an appropriate *provisional* certificate *for teaching exceptional children classified as trainable mentally handicapped* and relates to the corresponding standards and procedures for program approval as included in the Kentucky *Standards* [State Plan] for the [Approval of] Preparation- [Programs for the] Certification of Professional School Personnel.

Section 1. (1) The provisional certificate for teachers of exceptional children—trainable mentally handicapped shall be issued in accordance with the pertinent Kentucky statutes and State Board *of* [for Elementary and Secondary] Education regulations to an applicant who has completed the approved program of preparation which corresponds to the certificate at a teacher education institution approved under the standards and procedures included in the Kentucky *Standards* [State Plan] for the [Approval of] Preparation- [Programs for the] Certification of Professional School Personnel *as adopted in 704 KAR 20:005.*

(2) The provisional certificate for teachers of exceptional children—trainable mentally handicapped shall be issued initially for a duration period which expires ten (10) years from the calendar year of completion of the curriculum requirements. This certificate shall be renewed for a ten (10) year period only upon completion of the planned fifth year program. The certificate may be extended for life upon completion of three (3) years of successful teaching experience on a regular certificate and upon completion of a planned fifth year program.

(3) The provisional certificate for teachers of exceptional children—trainable mentally handicapped shall be valid at any grade level for the instruction of exceptional children who are trainable mentally handicapped and as a provisional elementary certificate valid for classroom teaching in grades one (1) through eight (8).

(4) The provisional certificate for teachers of exceptional children—trainable mentally handicapped shall be issued for a one (1) year period to an applicant who holds the provisional elementary certificate or any other certificate of similar validity for elementary classroom teaching and who has completed at least six (6) semester hours credit from the special education component of the approved curriculum. *As a prerequisite, the certificate application shall be accompanied by a statement from the superintendent of the local school district declaring that an emergency exists as described in the regulations governing emergency teacher certification (704 KAR 20:120) and also describing the special supervisory services that will be provided for this teaching position.* The certificate may be renewed for no more than three (3) subsequent one (1) year periods upon completion of a minimum of six (6) semester hours additional credit each year after which time the teacher must qualify by having completed the entire curriculum.

RAYMOND BARBER
Superintendent of Public Instruction

ADOPTED: June 23, 1981
RECEIVED BY LRC: July 1, 1981 at 2:45 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Mr. Fred Schultz, Secretary, Kentucky State Board of Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

EDUCATION AND ARTS CABINET
Department of Education
Bureau of Instruction
(Proposed Amendment)

704 KAR 20:255. Visually impaired; teaching endorsement.

RELATES TO: KRS 161.020, 161.025, 161.030
PURSUANT TO: KRS 13.082, *156.030,* 156.070, *161.030* [156.130, 156.160]
NECESSITY AND FUNCTION: KRS 161.020, 161.025, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Kentucky Council on Teacher Education and Certification and approved by the State Board *of* [for Elementary and Secondary] Education; furthermore, the teacher education institutions are required to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures recommended by the council and approved by the state board. This regulation establishes an appropriate certificate *endorsement for teaching the visually impaired* and relates to the corresponding standards and procedures for program approval as included in the Kentucky *Standards* [State Plan] for the [Approval of] Preparation- [Programs for the] Certification of Professional School Personnel.

Section 1. (1) The endorsement for teaching visually impaired pupils shall be issued in accordance with the pertinent Kentucky statutes and State Board *of* [for Elementary and Secondary] Education regulations to an applicant who holds either the provisional elementary certificate, the provisional certificate for teaching in the middle grades, or the provisional high school certificate and who has completed the approved program of preparation which corresponds to this endorsement at a teacher education institution approved under the standards and procedures included in the Kentucky *Standards* [State Plan] for the [Approval of] Preparation- [Programs for the] Certification of Professional School Personnel *as adopted in 704 KAR 20:005.*

(2) The endorsement for teaching visually impaired pupils shall be valid for the same grade levels as the teaching certificate used as a base for the endorsement and shall have the same duration period as the base certificate.

(3) A one (1) year endorsement for teaching visually impaired pupils, valid for the same grade level as the teaching certificate used as a base for the endorsement, shall be issued upon completion of six (6) semester hours credit from the approved curriculum. *As a prerequisite, the certificate application shall be accompanied by a statement from the superintendent of the local school district declaring that an emergency exists as described in the regulations governing emergency teacher certification (704 KAR 20:120) and also describing the special supervisory services that will be provided for this teaching position.* The endorsement may be renewed for no more than three (3) subsequent one (1) year periods upon completion of a minimum of six (6) semester hours additional credit each year after which time the teacher must qualify by having completed the entire curriculum.

RAYMOND BARBER
Superintendent of Public Instruction
ADOPTED: June 23, 1981
RECEIVED BY LRC: July 1, 1981 at 2:45 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Mr. Fred Schultz, Secretary, Kentucky State Board of Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance
(Proposed Amendment)

904 KAR 1:003. Technical eligibility.

RELATES TO: KRS 205.520
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The Department for Human Resources has responsiblity 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, hereinafter referred to as MA, to Kentucky's indigent citizenry. This regulation sets forth the technical eligibility requirements of the MA Program.

Section 1. The Categorically Needy: All individuals receiving Aid to Families with Dependent Children, Supplemental Security Income or Optional or Mandatory State Supplementation are eligible for MA as categorically needy individuals. In addition, the following classifications of needy persons are included in the program as categorically needy and thus eligible for MA participation.

(1) Children in foster family care or private non-profit child caring institutions dependent in whole or in part on a governmental or private agency;

(2) Children in psychiatric hospitals or medical institutions for the mentally retarded;

(3) Unborn children deprived of parental support due to death, absence, incapacity or unemployment of the father;

(4) Children of unemployed parents;

(5) Children in subsidized adoptions dependent in whole or in part on a governmental agency;

(6) Families terminated from the Aid to Families with Dependent Children (AFDC) program because of increased earnings or hours of employment.

Section 2. The Medically Needy: Other individuals, meeting technical requirements comparable to the categorically needy group, but with sufficient income to meet their basic maintenance needs may apply for MA with need determined in accordance with income and resource standards prescribed by regulation of the Department for Human Resources.

Section 3. Technical Eligibility Requirements: Technical eligibility factors of families and individuals included as categorically needy under subsections (1) through (6) of Section 1, or as medically needy under Section 2 are:

(1) Children in foster care, private institutions, psychiatric hospitals or mental retardation institutions must be under twenty-one (21) years of age, except that a child eligible for and receiving inpatient psychiatric services on his twenty-first birthday may be eligible until he reaches his twenty-second birthday or the inpatient treatment ends, whichever comes first;

(2) Unborn children are eligible only upon medical proof of pregnancy;

(3) Unemployment relating to eligibility of both parents and children is defined as:

(a) Employment of less than 100 hours per month, except that the hours may exceed that standard for a particular month if the work is intermittent and the excess is of a temporary nature as evidenced by the fact that the individual was under the 100 hour standard for the prior two (2) months and is expected to be under the standard during the next month;

(b) The individual has prior labor market attachment consisting of earned income of at least fifty dollars ($50) during six (6) or more calendar quarters ending on March 31, June 30, September 30, or December 31, within any thirteen (13) calendar quarter period ending within one (1) year of application, or the individual within twelve (12) months prior to application received unemployment compensation;

(c) The individual is currently receiving or has been found ineligible for unemployment compensation;

(d) The individual is currently registered for employment at the state employment office, and available for full-time employment;

(e) The unemployed parent must not have refused suitable employment without good cause as determined in accordance with 45 CFR section 233.100(a)(3)(ii).

(4) Children, but not parents, may be eligible if both parents meet a more liberal definition of unemployment defined as:

(a) Employment of less than thirty (30) hours per week; or

(b) Regular attendance, at public expense, in a formalized full-time training course, below the college level. A public work project in which a real wage is paid, that is, subject to standard payroll deductions, is not considered a training course; or

(c) Receipt of unemployment compensation; and

(d) Requirements of subsection (3)(d) are met in that at least one (1) parent is registered and available for employment unless both parents are unemployed pursuant to paragraph (b) of this subsection; and the requirements of subsection (3)(e) are met for both parents.

(5) Under the definitions contained in subsections (3) and (4) of this section, a parent shall not be considered as unemployed if he is:

(a) Temporarily unemployed due to weather conditions or lack of work when it is anticipated he can return to work within thirty (30) days; or

(b) On strike, or unemployed as a result of involvement in a labor dispute when such involvement would disqualify the individual from eligibility for unemployment insurance in accordance with KRS 341.360; or

(c) Unemployed because he voluntarily quit his most recent work for the purpose of attending school; or

(d) A farm owner or tenant farmer, unless he has previously habitually required and secured outside employment and currently is unable to secure outside employment; or

(e) Self-employed and not available for full-time employment.

(6) An aged individual must be at least sixty-five (65) years of age.

(7) A blind individual must meet the definition of blindness as contained in Title II and XVI of the Social Security Act relating to RSDI and SSI.

(8) A disabled individual must meet the definition of permanent and total disability as contained in Title II and XVI of the Social Security Act relating to RSDI and SSI.

(9) For families losing AFDC eligibility solely because of increased earnings or hours of employment, medical assistance shall continue for four (4) months to all such family members as were included in the family grant (and children born during the four (4) month period) if the family received AFDC in any three (3) or more months during the six (6) month period immediately preceding the month in which it became ineligible for AFDC. The four (4) month period begins on the date AFDC is terminated. If AFDC benefits are paid erroneously for one (1) or more months in such a situation, the four (4) month period begins with the first month in which AFDC was erroneously paid, i.e., the month in which the AFDC should have been terminated.

(10) Parents may be included for assistance in the cases of families with children (except as shown in subsection (4) of this section) including adoptive parents and alleged fathers where circumstances indicate the alleged father has admitted the relationship prior to application for assistance. Other relatives who may be included in the case (one (1) only) are caretaker relatives to the same extent they may be eligible in the aid to families with dependent children program.

(11) An applicant who is deceased may have eligibility determined in the same manner as if he was alive, in order to pay medical bills during the terminal illness.

(12) Children of the same parent, i.e., a "common" parent, residing in the same household shall be included in the same case unless this acts to preclude eligibility of an otherwise eligible household member.

(13) To be eligible, an applicant or recipient must be a citizen of the United States, or an alien legally admitted to this country or an alien who is residing in this country under color of law. An alien must have been admitted for permanent residence. The applicant or recipient must also be a resident of Kentucky. Generally, this means the individual must be residing in the state for other than a temporary purpose; however, there are exceptions with regard to recipients of a state supplementary payment and institutionalized individuals. The conditions for determining state residency are specified in federal regulations at 42 CFR 435.403, which are hereby incorporated by reference.

(14) An individual may be determined eligible for medical assistance for up to three (3) months prior to the month of application if all conditions of eligibility are met. The effective date of medical assistance is generally the first day of the month of eligibility. For individuals eligible on the basis of unemployment, eligibility may not exist for the thirty (30) day period following the starting date of the unemployment. In these cases, the effective date of eligibility may be as early as the first day following the end of the thirty (30) day period if all other conditions of eligibility are met. For individuals eligible on the basis of desertion, a period of desertion must have existed for thirty (30) days, and the effective date of eligibility may not precede the first day of the month in which the thirty (30) day period ends. For individuals eligible on the basis of utilizing their excess income for incurred medical expenses, the effective date of eligibility is the day the spend-down liability is met.

(15) "Child" means a needy dependent child under the age of twenty-one (21), including the unborn child, who is not otherwise emancipated, self supporting, married, or a member of the armed forces of the United States, and who is a recipient of or applicant for public assistance. Included within this definition is an individual(s) under the age of twenty-one (21), previously emancipated, who has returned to the home of his parents, or to the home of another relative, so long as such individual is not thereby residing with his spouse.

Section 4. Institutional Status: No individual shall be eligible for MA if a resident or inmate of a non-medical public institution. No individual shall be eligible for MA while a patient in a state tuberculosis hospital unless he has reached age sixty-five (65). No individual shall be eligible for MA while a patient in a state institution for mental illness unless he is under age twenty-one (21) (except as provided for in Section 3(1) or is sixty-five (65) years of age or over.

Section 5. Application for Other Benefits: As a condition of eligibility for medical assistance, applicants and recipients must apply for all annuities, pensions, retirement and disability benefits to which they are entitled, unless they can show good cause for not doing so. Good cause is considered to exist when such benefits have previously been denied with no change of circumstances, or the individual does not meet all eligibility conditions. Annuities, pensions, retirement and disability benefits include, but are not limited to, veterans' compensations and pensions, retirement and survivors disability insurance benefits, railroad retirement benefits, and unemployment compensation. Notwithstanding the preceding, no applicant or recipient shall be required to apply for federal benefits when the federal law providing for such benefits shows the benefit to be optional and that the potential applicant or recipient for such benefit need not apply for such benefit when to do so would, in his opinion, act to his disadvantage.

Section 6. Transferred Resources. When an applicant or recipient transfers a non-excluded resource(s) for the purpose of becoming eligible for medical assistance, the value of the transferred resource(s) will be considered a resource to the extent provided for by this section. The provisions of this section are applicable to both family related cases and medical assistance only cases based on age, blindness, or disability.

(1) The disposal of a resource, including liquid assets, at less than fair market value shall be presumed to be for the purpose of establishing eligibility unless the individual presents convincing evidence that the disposal was exclusively for some other purpose. If the purpose of the transfer is for some other reason or if the transferred resource was considered an excluded resource at the time it was transferred, the value of the transferred resource is disregarded. If the resource was transferred for an amount equal to at least the assessed value for tax purposes, the resource will be considered as being disposed of for fair market value.

(2) After determining that the purpose of the transfer was to become or remain eligible, the department shall first add the uncompensated equity value of the transferred resource to other currently held resources to determine if retention of the property would have resulted in ineligibility. For this purpose, the resource considered available shall be the type of resource it was prior to transfer, e.g., if non-homestead property was transferred, the uncompensated equity value of the transferred property would be counted against the permissible amount for non-homestead property. If retention of the resource would not have resulted in ineligibility, the value of the transferred resource would thereafter be disregarded.

(3) *If retention would result in ineligibility, the department will consider the excess transferred resource available for up to twenty-four (24) months, subject to the following conditions:* [If retention would result in ineligibility, the department will compute the period the transferred resource will be considered available by dividing the total excess resources (including the uncompensated equity value of the transferred resource) by $500. The derived number shall be the number of months the resource is considered available; however, the resource shall not be considered available for a period of time in excess of twenty-four (24) months. For an applicant meeting all other conditions of eligibility, the period the transferred resource is to be considered available shall begin with the first month the applicant would be eligible except for the fact the transferred resource is counted as an available resource, or the month of application if earlier. For a recipient whose care must be discontinued due to excess resources, the period shall begin with the month of discontinuance. For an applicant also ineligible for another reason, the period shall begin with the month of application. In none of the preceding, however, shall the period begin prior to the month in which the resource was transferred or extend longer than twenty-four (24) months from the date of transfer.]

(a) The value of the total excess resources considered available (including the uncompensated equity value of the transferred resource) shall be reduced by $500 for each month that has elapsed since the transfer, beginning with the month of transfer; except

(b) The reduction provided for in paragraph (a) of this subsection shall not be applicable with regard to any month in which the individual received medical assistance but was actually ineligible due to the provisions of this section.

(4) [The provisions of this section shall be effective on March 1, 1981.] For those recipients who were receiving assistance on February 28, 1981, this section *is* [will be] applicable only with respect to resources transferred subsequent to that date.

WILLIAM L. HUFFMAN, Commissioner
ADOPTED July 15, 1981
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: July 15, 1981 at 2:40 p.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 1:040. Payments for vision care 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 method for determining amounts payable by the department for vision care services.

Section 1. *Allowable Charge Determinations.* [Optometrists:] *Reimbursement shall be made to optometrists and ophthalmic dispensers on the basis of usual, customary and allowable charges, except that reimbursement for materials is at the laboratory cost of the materials not to exceed upper limits as set by the department.*

[(1) Reimbursement shall be made to participating optometrists utilizing a relative value system for covered vision care services provided based on the 1968 relative value study conducted by the American Optometric Association.]

[(2) Individual participating optometrists shall be reimbursed at the usual and customary rate of reimbursement under the relative value system, which is not to exceed the prevailing maximum fee. The usual and customary rates of reimbursement are established from fee charge data submitted by individual participating optometrists. The prevailing maximum fee is derived from fee charge data collected during July, 1972 from individual participating optometrists.]

[(3) Participating optometrists shall be reimbursed for eyeglass materials at their actual laboratory cost, except that for materials for which the department has established payment maximums deemed by the department to be reasonable, the payment shall not exceed the established maximum.]

Section 2. Definitions. For purposes of determination of payment the following definitions shall be applicable:

(1) "Usual and customary charge" means the uniform amount the individual optometrist or ophthalmic dispenser charges in the majority of cases for a specific covered procedure or service.

(2) "Allowable charges" are those charges computed on the basis of the provider's past charge history, determined by medical service area, and which do not exceed:

(a) The median charge for the service; or

(b) The area seventy-fifth (75th) percentile (or fiftieth (50th) percentile for newly participating providers) charge for the service; or

(c) The Title XVIII-B (Medicare) reasonable or prevailing charge for the service.

(3) The "median charge" is the arithmetic median of all billed charges for a given individual procedure billed by a given optometrist in a calendar year.

(4) The "seventy-fifth (75th) percentile" or "fiftieth (50th) percentile" is the charge that is equal to or greater than seventy-five (75) or fifty (50) percent of all charges, respectively, computed on the basis of all submitted charges for each procedure within a given area.

Section 3. Maximum Reimbursement for Covered Procedures and Materials for Optometrists.

(1) Reimbursement for covered services, except materials, is limited to the lowest of the following:

(a) The actual charge for the service rendered as submitted on the billing statement; or

(b) The allowable charge, as defined in Section 2.

(2) Reimbursement for materials (eyeglasses and/or parts of eyeglasses) may be made at the laboratory cost of the materials not to exceed upper limits for materials as set by the department. A laboratory invoice, or proof of actual acquisition cost of materials, must accompany the billing form.

Section 4. [2.] *Maximum Reimbursement for Covered Procedures and Materials for Ophthalmic Dispensers.* [Ophthalmic Dispensers: Participating licensed ophthalmic dispensers shall be reimbursed on the basis of the laboratory cost of the eyeglasses, not to exceed the established payment maximums as specified in Section 1, above, plus a usual and customary fitting fee not in excess of the prevailing maximum fee as determined in accordance with Section 1, above.]

(1) Payment for covered services (a dispensing service fee or a repair service fee) rendered by licensed ophthalmic dispensers to eligible recipients is limited to the lowest of the following:

(a) The actual charge for the service rendered as submitted on the billing statement; or

(b) The allowable charge, as defined in Section 2.

(2) Reimbursement for materials (eyeglasses and/or parts of eyeglasses) may be made at the laboratory cost of the materials not to exceed upper limits for materials as set by the department. A laboratory invoice, or proof of actual acquisition cost of materials, must accompany the billing form.

Section 5. Reimbursement for Other Supplies and Materials. Other supplies and materials such as cleaning fluid, cleaning cloth, carrying cases, etc., which are not eyeglasses or replacement/repair parts for eyeglasses, are considered to be provided in conjunction with and paid for as a part of the vision services rendered, and additional charges may not be made to the department or the recipient for these items.

Section 6. Effect of Third Party Liability. When payment for a covered service is due and payable from a third party source, such as private insurance, or some other third party with a legal obligation to pay, the amount payable by the department shall be reduced by the amount of the third party payment.

Section 7. Limitations. (1) Program reimbursement for eyeglasses must be inclusive. The cost of both laboratory materials and dispensing fees must be billed to either the program or the recipient. If any portion of the amount is billed to or paid by the recipient, no responsibility for reimbursement shall attach to the department and no bill for the service shall be paid by the department. This limitation shall not, however, preclude the issuance of billings for the purpose of establishing the liability of, and/or collecting from, liable third parties.

(2) Telephone contacts are excluded from payment.

(3) Contact lenses are excluded from payment.

(4) Safety glasses are excluded from payment, unless the recipient is blind in one (1) eye and safety glasses are prescribed for protection.

WILLIAM L. HUFFMAN, Commissioner
ADOPTED: July 9, 1981
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: July 10, 1981 at 12:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance
(Proposed Amendment)

904 KAR 3:010. Definitions.

RELATES TO: KRS 194.050
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The Department for Human Resources has responsibility to administer a food stamp program as prescribed by the Food Stamp Act of 1977, as amended, and 7 CFR Part 270 through 280. KRS 194.050 provides that the secretary, shall by regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This regulation sets forth definitions for terms used by the department in regulations pertaining to the food stamp program.

Section 1. Definition of terms utilized in regulations relating to the food stamp program are as follows:

(1) "Application for participation[,]" means the form designed or approved by Food and Nutrition Service, hereinafter referred to as FNS, which is completed by a household member or authorized representative; or for household consisting solely of public assistance recipients, it may also mean the application form used to apply for public assistance, including attachments approved by FNS, which is completed by a household member or authorized representative.

(2) "Authorization to participate card," ATP, means the document which is issued by the state agency to a certified household to show the allotment the household is authorized to receive on presentation of such document.

(3) "Authorized representative[,]" means an individual designated by a household member to act on behalf of the household in one (1) or all of the following capacities: making application for the program, obtaining the coupons, using the coupons.

(4) "Certification" means the action necessary to determine eligibility of a household. Such action includes interviews, verification and decisions.

(5) "Communal dining facility" means a public or nonprofit private establishment, approved by FNS, which prepares and serves meals for elderly persons, or for supplemental security income (SSI) recipients and their spouses, a public or private nonprofit establishment (eating or otherwise) that feeds elderly persons or SSI recipients and their spouses, and federally subsidized housing for the elderly at which meals are prepared for and served to the residents. It also includes private establishments that contract with an appropriate state or local agency to offer meals at concessional prices to elderly persons or SSI recipients and their spouses.

(6) [(5)] "Coupons" mean any stamp, coupon or type of certificate issued in accordance with the Food and Nutrition Service regulations *for the purchase of eligible food.*

(7) "Drug addiction or alcoholic treatment and rehabilitation program" means any drug addiction or alcoholic treatment and rehabilitation program conducted by a private nonprofit organization or institution which is certified by the department or agencies designated by the Governor as responsible for the administration of the state's programs for alcoholics and drug addicts.

(8) [(6)] "Elderly person" means a person sixty (60) years of age or older.

(9) "Eligible foods" means any of the following:

(a) Any food or food product intended for human consumption except alcoholic beverages, tobacco, and hot foods and hot food products prepared for immediate consumption;

(b) Seeds and plants to grow foods for the personal consumption of eligible households;

(c) Meals prepared and delivered by an authorized meal delivery service to households eligible to use coupons to purchase delivered meals; or meals served by a communal dining facility for the elderly, for SSI households or both, to households eligible to use coupons for communal dining;

(d) Meals prepared and served by an authorized drug addict or alcoholic treatment and rehabilitation center to households eligible to use coupons to purchase those meals; or

(e) Meals prepared and served by an authorized group living arrangement facility to residents who are blind or disabled recipients of benefits under Title II or Title XVI of the Social Security Act.

(10) [(7)] "Federal fiscal year" means a period of twelve (12) calendar months beginning with each October 1 and ending with September 30 of the following calendar year.

(11) [(8)] "FNS" means the Food and Nutrition Service of the United States Department of Agriculture.

(12) [(9)] "Food Stamp Act" means the Food Stamp Act of 1977 (Pub. L. 95-113) including any subsequent amendment thereto.

(13) "Group living arrangement" means a public or private nonprofit residential setting that serves no more than sixteen (16) residents and is appropriately certified. Residents must be blind or disabled and receiving benefits under Title II or Title XVI of the Social Security Act to be eligible for food stamps.

(14) [(10)] "Head of household" is the person in whose name the application for participation is made.

(15) [(11)] "Household" means any of the following individuals or groups of individuals provided that such individuals or groups are not residents of an institution, or residents of a commercial boarding house, and provided that separate household status shall not be granted to a spouse of a member of the household, or to children under eighteen (18) years of age under the parental control of a member of the household:

(a) An individual living alone;

(b) An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from the others;

(c) An individual who is a boarder, living with and paying reasonable compensation to the others for meals for home consumption;

(d) A group of individuals living together for whom food is customarily purchased in common and for whom meals are prepared together for home consumption; or

(e) A group of individuals who are boarders living with others and paying reasonable compensation to the others for meals for home consumption.

(16) [(12)] "Identification (ID) card" means a card which identifies the bearer as eligible to receive and use food coupons.

(17) [(13] "Immigration and Naturalization Service (INS)" means the Immigration and Naturalization Service, United States Department of Justice.

(18) [(14)] "Institution of higher education" means any institution providing post high school education, including but not limited to colleges, universities, and vocational or technical schools at the post high school level.

(19) [(15)] "Low-income household" means a household whose annual income does not exceed 125 percent of the Office of Management and Budget poverty guidelines.

(20) "Meal delivery service" means a political subdivision, a private nonprofit organization, or a private establishment with which the department has contracted for the preparation of meals at concessional prices to elderly persons and their spouses, and to the physically or mentally handicapped and persons otherwise disabled, and their spouses, such that they are unable to adequately prepare all of their meals.

(21) [(16)] "Medicaid" means medical assistance under Title XIX of the Social Security Act, as amended.

(22) [(17)] "Non-Assistance household" hereinafter referred to as NA, means a household containing members who are not included in a public assistance household, hereinafter referred to as PA, grant.

(23) "Nonprofit cooperative food purchasing venture" means any private nonprofit association of consumers whose members pool their resources to buy food.

(24) [(18)] "Non-household member" means individuals residing with a household but are not considered household members in determining the household's eligibility or allotment. Non-household members who are otherwise eligible may participate in the program as separate households.

(a) Roomers. Individuals to whom a household furnishes lodging, but not meals, for compensation.

(b) Boarders. Individuals to whom a household furnishes lodging and meals with the following restrictions;

1. Boarder status shall not be granted to a spouse of a member of the household, or to children under eighteen (18) years of age under the parental control of a member of the household.

2. Boarder status shall not be extended to persons paying less than a reasonable monthly payment for meals.

(c) Live-in-attendants. Individuals who reside with a household to provide medical, housekeeping, child care or other similar personal services.

(d) Ineligible aliens. Individuals who do not meet the citizenship or eligible alien status.

(e) *Ineligible students. Students not meeting eligiblity requirements as set forth in 7 CFR 273.5.* [Student tax dependents. Students who are or could be properly claimed as tax dependents for federal income tax purposes by a member of a household which is not eligible to participate in the food stamp program.]

(f) Disqualified individuals. Individuals disqualified for fraud, or *for failure to meet social security number requirements as set forth in 7 CFR 273.6* [college students disqualified for failure to meet the school year work registration requirements].

(g) Others. Other individuals who share living quarters with the household but who do not customarily purchase food and prepare meals with the household.

(25) [(19)] "Overissuance" means the amount by which coupons issued to a household exceeds the amount such household was eligible to receive.

(26) [(20)] "Public assistance" hereinafter referred to as PA, means any of the programs authorized by the Social Security Act of 1935, as amended; old age assistance, aid to families with dependent children (AFDC), including AFDC for children of unemployed parents, aid to the blind, aid to the permanently and totally disabled and aid to aged, blind or disabled.

(27) [(21)] "Spouse" refers to either of two (2) individuals:

(a) Who would be defined as married to each other under applicable state law; or

(b) Who are living together and are holding themselves out to the community as husband and wife by representing themselves as such to relatives, friends, neighbors, or tradespeople.

(28) [(22)] "Supplemental security income (SSI)" means monthly cash payments made under the authority of Title XVI of the Social Security Act, as amended, to the aged, blind and disabled.

(29) [(23)] "Thrifty food plan" means the diet required to feed a family of four (4) persons consisting of a man and a woman twenty (20) through fifty-four (54), a child six (6) through eight (8), and a child nine (9) through eleven (11) years of age, determined in accordance with the Secretary of United States Department of Agriculture's calculations. The cost of such diet shall be the basis for uniform allotments for all households regardless of their actual composition, except that the Secretary of the United States Department of Agriculture shall make household-size adjustment in the thrifty food plan taking into account economies of scale.

(30) "Underissuance" means the amount by which the allotment to which the household was entitled exceeds the allotment which the household received.

WILLIAM L. HUFFMAN, Commissioner
ADOPTED: July 7, 1981
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: July 8, 1981 at 2:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance
(Proposed Amendment)

904 KAR 3:020. Eligibility requirements.

RELATES TO: KRS 194.050
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The Department for Human Resources has responsibility to administer a food stamp program as prescribed by the Food Stamp Act of 1977, as amended, and 7 CFR Part 270 through 280. KRS 194.050 provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This regulation sets forth the eligibility requirements used by the department in the administration of the food stamp program.

Section 1. Eligibility Requirements. In accordance with regulations promulgated by the Food and Nutrition Service, of the United State Department of Agriculture, national uniform standards of eligibility for the food stamp program, composed of both financial and non-financial criteria, shall be utilized. Financial criteria shall consist of income and resource limitations. Non-financial criteria shall consist of certain technical factors. Participation in the program shall be limited to those households whose incomes are determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet. The in-

come eligibility standards are derived from the Office of Management and Budget's (OMB) non-farm income poverty guidelines.

Section 2. Countable Income. The following, when received by any household member, shall be considered as income:

(1) All wages and salaries of an employee.

(2) The gross income of a self-employment enterprise, including the total gain from the sale of any capital goods or equipment related to the business, excluding the cost of doing business.

(3) Training allowance from vocational and rehabilitative programs recognized by federal, state or local governments, to the extent that they are not reimbursements.

(4) Assistance payments from federal or federally aided public assistance such as supplemental security income (SSI) or aid to families with dependent children (AFDC); general assistance (GA) programs, or other assistance programs based on need.

(5) Annuities; pensions; retirement; veteran's or disability benefits; worker's or unemployment compensation; old-age, survivors, or social security benefits; foster care payments for children or adults; gross income minus the cost of doing business derived from rental property in which a household member is not actively engaged in the management of the property at least twenty (20) hours a week.

(6) Support or alimony payments made directly to the household from non-household members.

(7) Scholarships, educational grants, fellowships, deferred payment loans for education, veterans educational benefits and the like in excess of amounts excluded.

(8) Payments from government sponsored programs, dividends, interest, royalties, and all other direct money payments from any source which can be construed to be a gain or benefit.

(9) *Monies withdrawn or dividends which are or could be received from a trust fund by a household, unless otherwise exempt under the provisions set forth in 7 CFR 273.9(c).* [Withdrawals from trust funds.]

Section 3. Income Exclusions. The following payments shall not be considered as income;

(1) Money withheld from an assistance payment, earned income or other income source, or moneys received from any income source which are voluntarily or involuntarily returned, to repay a prior overpayment received from that income source.

(2) Child support payments received by AFDC recipients which must be transferred to the division administering Title IV-D of the Social Security Act, as amended, to maintain AFDC eligibility.

(3) Any gain or benefit which is not in the form of money payable directly to the household.

(4) Money payments that are not payable directly to a household, but are paid to a third party for a household expense are excludable as a vendor payment.

(5) Any income in the certification period which is received too infrequently or irregularly to be reasonably anticipated, but not in excess of thirty dollars ($30) in a quarter.

(6) Educational loans on which payment is deferred, grants, scholarships, fellowships, veteran educational benefits, and the like to the extent that they are used for tuition and mandatory fees at an institution of higher education, including correspondence schools at that level, or a school at any level for the physically or mentally handicapped.

(7) All loans, including loans from private individuals as well as commercial institutions, other than educational loans on which repayment is deferred.

(8) Reimbursements for past or future expenses to the extent they do not exceed actual expenses, and do not represent a gain or benefit to the household.

(9) Money received and used for the care and maintenance of a third party beneficiary who is not a household member.

(10) The earned income of children who are members of the household, who are students at least half-time and who have not obtained their eighteenth (18th) birthday.

(11) Money received in the form of a non-recurring lump-sum payment.

(12) The cost of producing self-employment income.

(13) Any income specifically excluded by any other federal statute from consideration as income for the purpose of determining eligibility for the food stamp program.

Section 4. Income Deductions. The following shall be allowable income deductions:

(1) A standard deduction per household per month. This standard shall be adjusted by FNS each January 1 to the nearest five dollars ($5) to reflect changes in the consumer price index for items other than food for the twelve (12) months ending the preceding September 30.

(2) Twenty (20) percent of gross earned income.

(3) Payments for the actual cost for the care of a child or other dependent. This deduction shall not exceed the standard established by FNS.

(4) Monthly shelter cost in excess of fifty (50) percent of the household's income after all other allowable deductions have been made. The shelter deduction alone or in combination with the dependent care deduction in subsection three (3) above shall not exceed a fixed monthly amount established by FNS. This fixed monthly amount shall be adjusted each January to the nearest five dollars ($5). The adjustment shall reflect changes in the shelter, fuel, and utility components of the consumer price index for the eighteen (18) month period ending the preceding September 30. Allowable monthly shelter expenses shall be those expenses outlined in 7 CFR Part 273.9(d). The department shall develop a standard utility allowance for use in calculating shelter cost for those households which incur utility cost separate and apart from their rent or mortgage payments. If the household is not entitled to the standard or does not choose to use the standard, it may claim actual utility expenses for any utility which it does pay separately. The standard utility allowance shall be adjusted at least annually to reflect changes in the cost of utilities.

(5) Allowable medical expenses in excess of thirty-five dollars ($35) per month, excluding special diets, incurred by any household member who meets the definition of aged, blind, or disabled as set forth in 7 CFR 273.9(d)(3). Allowable medical costs are those meeting the criteria set forth in 7 CFR 273.9(d)(3) including, but not limited to:

(a) Medical and dental care;

(b) Hospitalization or outpatient treatment and nursing care;

(c) Medication and medical supplies;

(d) Health and hospitalization premiums; and

(e) Dentures, hearing aids, eyeglasses and prosthetics.

Section 5. Resources. Uniform national resource stand-

ards of eligibility shall apply to applicant households. Eligibility shall be denied or terminated if the total value of the liquid and non-liquid household's resources exceed:

(1) $3000: for all households with two (2) or more members, when at least one (1) member is sixty (60) years or older; or

(2) $1500: for all other households.

Section 6. Exempt Resources. The following resources shall not be considered in determining eligibility:

(1) The home and surrounding property which is not separated from the home by intervening property owned by others.

(2) Household goods, personnel effects and the cash value of life insurance policies and pension funds.

(3) Licensed vehicles as specified in 7 CFR Part 273.8(h).

(4) Property which annually produces income consistent with its fair market value, even if only used on a seasonal basis.

(5) Property which is essential to the employment or self-employment of a household member.

(6) Installment contracts for the sale of land or buildings if the contract or agreement is producing income consistent with its fair market value.

(7) Any governmental payments which are designated for the restoration of a home damaged in a disaster, if the household is subject to legal sanction if funds are not used as intended.

(8) Resources whose cash value is not accessible to the household.

(9) Resources which have been prorated as income.

(10) Indian lands held jointly with the tribe, or land that can be sold only with the approval of the Department of the Interior's Bureau of Indian Affairs; and

(11) Resources which are excluded for food stamp purposes by expressed provision of federal statute.

Section 7. Transfer of Resources. Households which have transferred resources knowingly for the purpose of qualifying or attempting to qualify for food stamps shall be disqualified from participation in the program for up to one (1) year from the date of the discovery of the transfer.

Section 8. Non-financial Criteria. Non-financial eligibility standards apply equally to all households and consist of:

(1) Residency: A household must live in the county in which they make application;

(2) Identity: Applicant's identity will be verified; also, where an authorized representative applies for the household, both the applicant's and the authorized representative's identities will be verified;

(3) [(2)] Citizenship or eligible alien status: A program participation shall be limited to either a citizen of the United States or eligible alien as outlined in 7 CFR Part 273.4;

[(3) Tax dependency: A student age eighteen (18) or older is ineligible for program participation if he is properly claimed or could be properly claimed for the current tax year as a dependent child for federal income tax purposes by a tax payer who is not a member of an eligible food stamp household;]

(4) Household size: Size of household will be verified through readily available documentary evidence or through a collateral contract; and

(5) [(4)] Work registration: All household members between the ages of eighteen (18) and sixty (60), except those exempt in 7 CFR Part 273.7(b), shall be required to register for work, accept suitable employment and be subject to other work registration requirements specified in 7 CFR Part 273.7.

WILLIAM L. HUFFMAN, Commissioner
ADOPTED: July 7, 1981
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: July 8, 1981 at 2:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance
(Proposed Amendment)

904 KAR 3:035. Certification process.

RELATES TO: KRS 194.050
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The Department for Human Resources has responsibility to administer a food stamp program as prescribed by the Food Stamp Act of 1977, as amended, and 7 CFR Part 270 through 280. KRS 194.050 provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This regulation sets forth the certification process used by the department in the administration of the food stamp program.

Section 1. Eligibility and Benefit Levels. Eligibility and benefit levels shall be determined by the department by considering the households circumstances for the entire month(s) for which each household is certified. Procedures specified in 7 CFR Parts 273.10(a), 273.10(b), 273.10(c), 273.10(d) and 273.10(e) shall be used to determine eligibility and calculate net income and benefit levels.

Section 2. Certification Periods. The department shall establish a definite period of time within which a household shall be eligible to receive benefits. At the expiration of each certification period entitlement to food stamp benefits ends. Further eligibility shall be established only upon a recertification based upon a newly completed application, an interview, and verification. Certification periods for non-public assistance households shall be in accordance with those specified in 7 CFR Part 273.10(f)(3)(4)(5)(6). Households in which all members are included in a PA grant shall be certified for one (1) year, except that the food stamp case shall be recertified at the same time they are redetermined for PA.

Section 3. Certification Notices to Households. The department shall provide applicants with one (1) of the following written notices as soon as a determination is made, but no later than thirty (30) days after the date of the initial application:

(1) Notice of eligibility.
(2) Notice of denial.
(3) Notice of pending status.

Section 4. Application for Recertification. The department shall process applications for recertification in accordance with 7 CFR Part 273.10(g)(2) and Part 273.14.

Section 5. Certification Process for Specific Households. The following households have circumstances that are substantially different from other households and therefore require special certification procedures:

(1) Households with self-employed members shall have their cases processed in accordance with 7 CFR Part 273.11(a).

(2) Boarders and/or households with boarders shall have their case processed in accordance with 7 CFR Part 273.11(b).

(3) Households with members which have been disqualified from program participation due to fraud or failure to *provide a Social Security number* [meet the student work registration requirements] shall have their case processed in accordance with 7 CFR Part 273.11(c).

(4) Households with ineligible aliens or other non-household members will be processed in accordance with 7 CFR Part 273.11(d).

(5) Residents of drug/alcoholic treatment and rehabilitation programs shall have their case processed in accordance with 7 CFR Part 273.11(e).

(6) Residents of group living arrangements who receive benefits under Title II or Title XVI of the Social Security Act shall have their case processed in accordance with 7 CFR Part 273(f), which allows residents to apply in their own behalf or through the use of an authorized/certified facility's authorized representative.

(7) [(6)] Households requesting replacement allotments for stolen or destroyed coupons or improperly manufactured or mutilated coupons shall be processed in accordance with 7 CFR 273.11*(g)* [(f)].

Section 6. Reporting Changes. Certified households are required to report within ten (10) days, those changes in household circumstances specified in 7 CFR Part 273.12(a). The department shall use the change report form designated by FNS and shall act on reported changes in accordance with 7 CFR Part 273.12(c). The department shall comply with other change reporting provisions outlined in 7 CFR Part 273.12.

WILLIAM L. HUFFMAN, Commissioner
ADOPTED: June 17, 1981
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: June 18, 1981 at 2:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance
(Proposed Amendment)

904 KAR 3:060. Administrative fraud hearings.

RELATES TO: KRS 194.050
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The Department for Human Resources has responsibility to administer a food stamp progam as prescribed by the Food Stamp Act of 1977, as amended and 7 CFR Part 270 through 280. KRS 194.050 provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This regulation sets forth the procedures used by the department to disqualify food stamp recipients who have committed fraud.

Section 1. Fraud Disqualification Penalties. Individuals found through an administrative fraud hearing to have committed fraud shall be ineligible to participate for three (3) months beginning with the periods specified in 7 CFR Part 273.16(b)(8). Individuals found guilty of criminal or civil fraud by a court of appropriate jurisdiction shall be ineligible for not less than six (6) months and not more than twenty-four (24) months as determined by the court. If the court fails to specify or address a disqualification period for the fraudulent act, the department shall impose a six (6) month disqualification period unless it is contrary to the court order. The department shall disqualify only the individual convicted of fraud and not the entire household. If the individual fails to agree to make restitution, the period of disqualification shall continue until the individual agrees to make restitution. Individuals or the remaining household members shall be permitted to make restitution during the period of disqualification in accordance with established procedures for cash repayment or allotment reduction. The department shall inform the household in writing of the disqualification penalties for committing fraud at each time it applies for benefits.

Section 2. Definition of Fraud. For purposes of determining at an administrative fraud hearing whether or not fraud was committed, fraud shall consist of any action by an individual to knowingly, willfully, and with deceitful intent:

(1) Make a false statement to the department, either orally or in writing, to obtain benefits to which the household is not entitled;

(2) Conceal information to obtain benefits to which the household is not entitled;

(3) Alter ATP's to obtain benefits to which the household is not entitled;

(4) Use coupons to buy expensive conspicuous nonfood items such as alcohol or cartons of cigarettes;

(5) Use or possess improperly obtained coupons or ATP's; or

(6) Trade or sell coupons or ATP's.

Section 3. Administrative Disqualification. An administrative fraud hearing may be initiated by the department whenever the department has documented evidence to prove that a currently certified household member has committed fraud. The department may initiate an administrative fraud hearing regardless of the current eligibility of the individual. The disqualification period for nonparticipants at the time of the final hearing decision shall be deferred until the individual applies for and is determined eligible for program benefits. Fraud hearings shall not be conducted if the amount the department suspects has been fraudulently obtained is less than thirty-five dollars ($35) or if the value of the ineligible items that have been purchased with food stamps is under thirty-five dollars ($35). The burden of proving fraud is on the department.

Section 4. Fraud Hearing Procedures. The department will provide administrative fraud hearings at the [local level in all counties with a right to appeal to a] state[-]level [fraud hearing]. The conduct of *an administrative* [a] fraud hearing will be similar to that of a fair hearing. [The

department will designate hearing officials to conduct only local fraud hearings.] *Administrative* [F] *fraud hearings* [decisions appealed to the state level] will be heard by the fair hearing officials. Hearings shall be conducted by an impartial official(s) who did not have any personal stake or involvement in the case; who was not directly involved in the initial determination that the household member had committed fraud; and was not the immediate supervisor of the eligibility worker who took the action. [State level hearings shall be conducted by state-level personnel. The hearing official(s) shall be an employee of the department.]

(1) The powers and duties of the hearing official shall be the same as those specified in 904 KAR 3:070, Section 12.

(2) The household's rights during the fraud hearing shall be the same as those specified in 904 KAR 3:070, Section 13.

(3) The hearing decision shall comply with provisions specified in 904 KAR 3:070, Section 14(1).

(4) At the fraud hearing, the hearing official shall advise the household member or representative that they may refuse to answer questions during the hearing.

(5) Within ninety (90) days of the date the household member is notified in writing that a*n* [local] *administrative* hearing has been scheduled, the department shall conduct the hearing, arrive at a decision and initiate administrative action which will make the decision effective. [If the household decides to appeal its case to a state level hearing, the department shall conduct the state level hearing, arrive at a decision and initiate administrative action which will make the decision effective within sixty (60) days of the date the household member appealed its case.] The household member or representative is entitled to a postponement of up to thirty (30) days. If a hearing is postponed, the above time limits shall be extended for as many days as the hearing is postponed.

Section 5. Advance Notice of Hearing. [(1)] The department shall provide written notice to the household member suspected of fraud at least thirty (30) days in advance of the date a*n administrative* [local level] fraud hearing initiated by the department has been scheduled. The notice shall be *sent* [mailed] certified mail, return receipt requested and shall contain:

(1) [(a)] The date, time, and place of the hearing;

(2) [(b)] The charge(s) against the household member;

(3) [(c)] A summary of the evidence, and how and where the evidence can be examined;

(4) [(d)] A warning that the decision will be based solely on information provided by the food stamp office if the household member fails to appear at the hearing;

(5) [(e)] A warning that a determination of fraud will result in a three (3) month disqualification;

(6) [(f)] A listing of the household member's rights as contained in 904 KAR 3:070, Section 13;

(7) [(g)] A statement that the hearing does not preclude the state or federal government from prosecuting the household member for fraud in a civil or criminal court action, or from collecting the overissuance;

(8) [(h)] A telephone number of someone who can give free legal advice.

[(2) If the household member suspected of fraud is appealing a local level hearing to a state level hearing the department shall provide a written notice to that household member at least ten (10) days in advance of the scheduled hearing. The ten (10) day advance notice shall contain the provisions of paragraphs (a), (f), (g), and (h) of subsection (1) of this section, as well as a statement that the department will dismiss the hearing request and the household member will be disqualified in accordance with the local hearing decision if the household or its representative fails to appear for the hearing without good cause. The department's hearing procedures will be listed on the ten (10) and thirty (30) day written notices.]

Section 6. Scheduling the Hearing. The time and place of the hearing shall be arranged so that the hearing is accessible to the household member suspected of fraud. If the household member or its representative cannot be located or fails to appear at a hearing initiated by the department without good cause, the hearing shall be conducted without the household member represented. Even though the household member is not represented, the hearing official is required to carefully consider the evidence and determine if fraud was committed based on clear and convincing evidence. If the household member is found to have committed fraud but a hearing official later determined that the household member or representative had good cause as defined in 904 KAR 3:070, Section 9, for not appearing, the previous decision shall no longer remain valid and the department shall conduct a new hearing. The hearing official who originally ruled on the case may conduct the new hearing. The household member has ten (10) days from receipt of the notice of the fraud decision to present reasons indicating a good cause for failure to appear. A hearing official must enter the good cause decision into the record. [If a local fraud hearing decision is appealed to a higher hearing level but the household member or its representative fails to appear for the hearing, the department shall dismiss the hearing request and notify the household member that it will be disqualified for three (3) months in accordance with the local hearing decision unless the household member or its representative provides good cause for not appearing at the hearing within ten (10) days of receipt of the notice. If the hearing official determines that the household member or representative had good cause for not appearing, the department shall reschedule the hearing.]

Section 7. Participation While Awaiting a Hearing. A pending fraud hearing shall not affect the individual's or the household's right to be certified and participate in the program. Since the department cannot disqualify a household member for fraud until the hearing official finds that the individual has committed fraud, the department shall determine the eligibility and benefit level of the household in the same manner it would be determined for any other household.

Section 8. Fraud Hearing Decision. The hearing official shall base the determination of fraud on clear and convincing evidence which demonstrates that the household member knowingly, willfully, and with deceitful intent committed fraud *as defined in Section 2.* Decisions of the hearing official shall specify the reasons for the decision, identify the supporting evidence, identify the pertinent handbook section and corresponding FNS regulation and respond to reasoned arguments made by the household member or representative. An official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the hearing proceeding, shall be retained by the department. This record shall also be available to the household or its representative during work hours for copying and inspection.

Section 9. Appeal Rights of the Household. [Household members found to have committed fraud may appeal their decision as follows:]

[(1)Appeal after local hearing. A household member found to have committed fraud by a local hearing authority has fifteen (15) days after the member receives the local hearing decision to appeal the decision to a state level hearing. The department shall mail the notice by certified mail, return receipt requested. If a state level hearing is not requested, the household member shall be disqualified for three (3) months. If, however, the household member requests a state level hearing within the fifteen (15) day period, the household member shall not be disqualifeid unless the state level hearing also finds the household member committed fraud. If a state level hearing is requested, a new hearing shall be conducted and a decision rendered within sixty (60) days of the request. In a new hearing, the prior decision shall not be taken into consideration.]

[(2) Appeal after state level hearing.] After a household member has been found to have committed fraud by a [state level] hearing official, the household member shall be disqualified for three (3) months beginning with the first month which follows the date the household member has received the state level hearing notice. No further administrative appeal procedure exists after an adverse *administrative fraud* [state level] hearing. The determination of fraud made by a fraud hearing official cannot be reversed by a subsequent fair hearing decision. The household member, however, is entitled to seek relief in a court having appropriate jurisdiction. The period of disqualification may be subject to stay or other injunctive remedy.

Section 10. Notification of Fraud Hearing Decisions. The department shall notify a household member in writing of fraud hearing decisions as specified below:

(1) If the hearing finds that the household member did not commit fraud, the department shall provide a written notice which informs the household member of the decision.

(2) If the administrative fraud hearing finds that the household member committed fraud, the department shall mail a written notice to the household member prior to disqualification. The notice shall inform the household member of the decision and the reason for the decision. The notice shall also inform the remaining household members, if any, of either the allotment they will receive during the period of disqualification, or *that* they must reapply because the certification period has expired[. For state level decisions, the notice shall inform the household member of] *and* the date disqualification will take effect. [For local level decisions, the notice shall inform the household member of the deadline for requesting a state level hearing, the date disqualification will take effect unless a state level hearing is requested, and that benefits will be continued pending a state level hearing if the household is otherwise eligible.] If the individual is no longer participating, the notice shall inform the individual that the period of disqualification will be deferred until such time as the individual again applies for and is determined eligible for program benefits. A written agreement letter for restitution, explaining the repayment requirements shall also be sent. A list of the household member's rights shall also be printed on the notice of fraud hearing decisions.

Section 11. Court Imposed Disqualification. A court of appropriate jurisdiction, with either the state, a political subdivision of the state, or the United States as prosecutor or plaintiff, may order an individual disqualified from participation in the program for not less than six (6) months and not more than twenty-four (24) months if the court finds that individual guilty of civil or criminal fraud. Court ordered disqualifications may be imposed separate and apart from any action taken by the department to disqualify the individual through an administrative fraud hearing. In cases where the determination of fraud is reversed by a court the department shall reinstate the individual if eligible and restore any benefits that were lost as a result of the disqualification.

WILLIAM L. HUFFMAN, Commissioner
ADOPTED: July 13, 1981
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: July 15, 1981 at 2:40 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621

Proposed Regulations

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Air Pollution

401 KAR 63:030. Leaks from gasoline tank trucks and vapor collection systems.

RELATES TO: KRS Chapter 224
PURSUANT TO: KRS 13.082, 224.033
NECESSITY AND FUNCTION: KRS 224.033 requires the Department for Natural Resources and Environmental Protection to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of volatile organic compound emissions from leaks from gasoline tank trucks and vapor collection systems.

Section 1. Applicability. The provisions of this regulation shall apply to each affected facility which loads or unloads gasoline on or after December 31, 1982 in urban counties designated non-attainment for ozone according to 401 KAR 51:010.

Section 2. Defintions. As used in this regulation, all terms not defined herein shall have the meaning given to them in 401 KAR 50:010, 401 KAR 61:055, 401 KAR 61:056, and 401 KAR 61:085.

(1) "Affected facility" means:

(a) Vapor collection systems at: bulk gasoline terminals regulated by 401 KAR 59:100 or 401 KAR 61:055; bulk gasoline plants regulated by 401 KAR 59:101 or 401 KAR 61:056; and service stations regulated by 401 KAR 59:175 or 401 KAR 61:085.

(b) Gasoline tank trucks that are equipped for vapor collection and which load or unload at regulated bulk terminals, bulk plants, and service stations.

(2) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one-tenth (0.1) mm Hg at conditions of twenty (20) degrees Celsius and 760 mm Hg.

(3) "LEL" means lower explosive limit, measured as propane.

Section 3. Standard for Volatile Organic Compounds. (1) No owner or operator of a gasoline tank truck subject to this regulation shall allow loading or unloading unless the gasoline tank truck and its vapor collection system are certified annually as having a pressure change of no more than seventy-five (75) mm water (three (3) in. water) in five (5) minutes when pressurized to 450 mm water (eighteen (18) in. water) or evacuated to 150 mm water (six (6) in. water) using the test procedure referenced in Section 4.

(2) No owner or operator of a vapor collection system subject to this regulation shall allow loading or unloading unless the following provisions are met:

(a) The vapor collection system and associated equipment are designed and operated to prevent gauge pressure in the tank truck from exceeding 450 mm water (eighteen (18) in. water) and prevent vacuum from exceeding 150 mm water (six (6) in. water);

(b) A pressure tap is installed on the vapor collection system of the bulk terminal, bulk plant, or gasoline station so that a liquid manometer, supplied by the department, can be connected by an inspector to the tap in order to determine compliance with paragraph (a) of this subsection. The pressure tap shall be installed by the owner or operator as close as possible to the connection with the delivery tank, and shall be compatible with the department's manometer;

(c) During loading or unloading operations at regulated service stations, bulk plants and bulk terminals, there is no reading greater than or equal to 100 percent of the lower explosive limit (LEL, measured as propane) at a distance of two and five-tenths (2.5) centimeters around the perimeter of a potential leak source as detected by a combustible gas detector using the test procedure referenced in Section 4; and

(d) During loading or unloading at service stations, bulk plants and bulk terminals, there are no avoidable visible liquid leaks.

Section 4. Compliance. (1) The test procedure as defined in Appendix A to "Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems" (OAQPS 1.2-119, U.S. EPA, Office of Air Quality Planning and Standards), filed by reference in 401 KAR 50:015, shall be used to determine compliance with the standard prescribed in Section 3(1). The owner or operator of the tank truck shall have the truck tested annually and shall maintain records of test data, date of testing, identification of tank truck, type of repair, retest data and date. Records are to be maintained for two (2) years after the date of testing and made available for inspection by the department. Such records demonstrating compliance shall constitute certification as required by Section 3.

(2) The test procedure for inspection as defined in Appendix B to "Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems" (OAQPS 1.2-119, U.S. EPA, Office of Air Quality Planning and Standards) or an equivalent procedure approved by the department, shall be used by the department to determine compliance with the standard prescribed in Section 3(2)(c) at regularly scheduled inspections. Trucks with leaks greater than or equal to 100 percent of the LEL shall be repaired and shall pass the pressure or vacuum test described in Section 3(1) within fifteen (15) days. Bulk terminal, bulk plant and service station owners or operators shall keep records for two (2) years identifying the dates and locations on the equipment at which volatile organic compound leakage exceeded the provisions of Section 3(2)(d).

JACKIE SWIGART, Secretary
ADOPTED: July 6, 1981
RECEIVED BY LRC: July 9, 1981 at 9:30 a.m.
PUBLIC HEARING: A public hearing to receive oral and written comments on this proposed regulation will be conducted September 1, 1981 at 10:00 A.M. (local time) in

Room G-1 of the Capital Plaza Tower, Frankfort, Kentucky. Written comments are due on or before September 1, 1981 at the Frankfort Office of the Division of Air Pollution Control, 18 Reilly Road, Fort Boone Plaza, Frankfort, Kentucky 40601, to the attention of Mr. Larry Wilson, Supervisor, Development and Evaluation Branch.

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

405 KAR 30:010. Definitions.

RELATES TO: KRS 350.600
PURSUANT TO: KRS 13.082, 151.125, 224.033, 350.028, 350.050, 350.600
NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation provides for the defining of certain essential terms used in Title 405, Chapter 30.

Section 1. Definitions. Unless otherwise specifically defined or otherwise clearly indicated by their context, terms in Title 405, Chapter 30 shall have the meanings given in this regulation.

(1) "Acid drainage" means water with a pH of less than 6.0 and in which total acidity exceeds total alkalinity, discharged from active, inactive or abandoned oil shale mines, waste disposal areas, and reclamation operations or from other affected areas.

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

(3) "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface or ground water, fish and wildlife, vegetation soils, or other resources protected by KRS Chapter 350 may be adversely impacted by an oil shale operation.

(4) "Affected area" means any land or water upon which surface oil shale operations are conducted or located, and the land or water which is located above or below underground mine workings.

(5) "Agricultural use" means the use of any tract of land for the production of animal or vegetable life. The uses include, but are not limited to, the pasturing, grazing, and watering of livestock, and the cropping, cultivation, and harvesting of plants.

(6) "Applicant" means any person seeking a permit from the department to conduct oil shale operations pursuant to KRS Chapter 350 and all applicable regulations.

(7) "Application" means the documents and other information filed with the department for a permit.

(8) "Aquifer" means a zone, stratum, or group of strata that can store and transmit water.

(9) "Barrel" means the unit of liquid volume for the petroleum and related products equal to forty-two (42) gallons (158.9 liters).

(10) "Best technology currently available" means equipment, devices, systems, methods, or techniques which will prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area, but in no event will result in contributions of suspended solids in excess of requirements set by applicable Kentucky or federal laws; and minimize, to the extent possible, disturbances and adverse impact on fish, wildlife, and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the department, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with applicable laws and regulations. The department shall have the discretion to determine the best technology currently available on a case-by-case basis, as authorized by KRS Chapter 350 and Chapter 224 and regulations promulgated pursuant thereto.

(11) "Capital assets" means those assets such as land, buildings and equipment held for use in the production or sale of other assets or services.

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

(13) "Compaction" means increasing the density of a material by reducing the voids between the particles by mechanical effort.

(14) "Complete application" means an application for a permit, which contains all information required under Title 405, Chapter 30.

(15) "Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops. Land used for facilities in support of cropland farming operations which is adjacent to or an integral part of these operations is also included for purposes of land use categories.

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

(17) "Deposit" means a consolidated or unconsolidated material that has accumulated by a natural process or agent.

(18) "Developed water resources land" means land used for storing water for beneficial uses such as stock ponds, irrigation, fire protection, flood control, recreation, and water supply.

(19) "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spent shale, and mining or processing waste is placed during oil shale operations. Those areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by Title 405, Chapter 30 is released.

(20) "Diversion" means a channel, embankment, or other manmade structure constructed to divert water from one (1) area to another.

(21) "Downslope" means the land surface below the projected outcrop of the lowest bench elevation from which oil shale is being mined.

(22) "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 for other similar purposes.

(23) "Exploratory well" means a well drilled to assess oil or gas in an unproved area or to find new reserviors, resources or collect geological data.

(24) "Fish and wildlife habitat" means land dedicated wholly or partially to the production, protection or management of species of fish or wildlife.

(25) "Forest land" means land used or managed for the long-term production of wood, wood fiber, or wood derived products. Land used for facilities in support of forest harvest and management operations which is adjacent to or an integral part of these operations is also included.

(26) "Fragile lands" means geographic areas containing natural, ecologic, scientific or aesthetic resources that could be damaged or destroyed by oil shale operations. These lands may include, but are not limited to, uncommon geologic features, National Natural Landmark sites, valuable habitats for fish and wildlife, critical habitats for endangered or threatened species of animals and plants, wetlands, environmental corridors containing concentrations of ecologic and aesthetic features, state-designated nature preserves and wild rivers, areas of recreational value due to high environmental quality, buffer zones around areas where oil shale operations are prohibited, and important, unique or highly productive soils or mineral resources.

(27) "Fugitive dust" means that particulate matter which becomes airborne due to wind erosion or mechanical operations.

(28) "Grazing land" means grassland and forest lands where the indigenous vegetation is actively managed for grazing, browsing, or occasional hay production. Land used for facilities in support of grazing operations which are adjacent to or an integral part of these operations is also included.

(29) "Ground water" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

(30) "Head-of-hollow fill" means a fill structure consisting of any material, other than organic material, placed in the uppermost reaches of a hollow near the approximate elevation of the ridgeline, where there is no significant natural drainage area above the fill, and where the side slopes of the existing hollow measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than ten (10) degrees.

(31) "Highwall" means the face of exposed overburden and/or oil shale in an open cut of a surface oil shale mining operation.

(32) "Historic lands" means historic or cultural districts, places, structures or objects, including but not limited to sites listed on a State or National Register of Historic Places, National Historic Landmarks, archaeological and paleontological sites, cultural or religious districts, places, or objects.

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

(34) "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 requirements of KRS Chapter 350 and applicable regulations in an oil shale operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the 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 avoid exposure to the danger during the time necessary for abatement.

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

(36) "Industrial/commercial lands" means lands used for:

(a) Extraction or transformation of materials for fabrication of products, wholesaling of products or for long-term storage of products; and heavy and light manufacturing facilities such as lumber and wood processing, chemical manufacturing, petroleum refining, and fabricated metal products manufacture. Land used for facilities in support of these operations which is adjacent to or an integral part of that operation is also included. Support facilities include, but are not limited to railroads, roads, and other transportation facilities.

(b) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments. Land used for facilities in support of commercial operations which is adjacent to or an integral part of these operations is also included. Support facilities include, but are not limited to, parking, storage or shipping facilities.

(37) "In situ processes" means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of oil shale. The term includes, but is not limited to, in situ gasification, in situ leaching, solution mining, borehole mining, and fluid recovery mining.

(38) "Intermittent stream" means:

(a) A stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year, or;

(b) A stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and ground water discharge.

(39) "Land use" means specific uses or management-related activities rather than the vegetation or cover of the land, and may be identified in combination when joint or seasonal uses occur.

(40) "Leaching" means the dissolving, by liquid solvent of soluble material, from its mixture with an insoluble solid.

(41) "Leachate" means the liquid that has passed through or emerged from any waste and contains soluble, suspended or miscible materials removed from such wastes.

(42) "Logging" means the measurement of physical properties of the strata penetrated by a borehole; accomplished by lowering instruments down the hole and recording measurements at the surface.

(43) "Monitoring" means the collection of environmental, scientific, or engineering data by either continuous or periodic sampling methods.

(44) "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.

(45) "Natural hazard lands" means geographic areas in which natural conditions exist that pose or, as a result of

oil shale operations, may pose a threat to the health, safety, or welfare of people, property or the environment, including but not limited to, areas subject to landslides, caveins, subsidence, substantial erosion, unstable geology, or frequent flooding.

(46) "Noxious plants" means species classified under Kentucky law as noxious plants.

(47) "Occupied dwelling" means any building that is being used on a regular or temporary basis for human habitation at the time of application for permit.

(48) "Oil shale" means any argillaceous, carbonate or siliceous sedimentary rock which, through distillation chemical processes, other methods or means will yield shale oil or other substances.

(49) "Oil shale exploration" means the field gathering of surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality, quantity, and composition of overburden and oil shale of an area.

(50) "Operations" means oil shale extraction experimentation, exploration, processing, waste disposal and reclamation activities, all of the premises, facilities, roads and equipment used in the mining and processing of oil shale from a designated area, or removing overburden for the purpose of determining the location, quality or quantity of a natural oil shale deposit or the activity to facilitate or accomplish the extraction or removal of oil shale.

(51) "Operator" means any person, partnership, or corporation engaged in oil shale extraction, exploration, processing, waste disposal, reclamation or related operations which includes but is not limited to those who remove or intend to remove oil shale or shale oil from the earth, or who remove overburden for the purpose of determining the location, quality or quantity of a natural oil shale deposit, or those who engage in oil shale processing.

(52) "Outslope" means the face of the spoil, waste, or embankment sloping downward from the highest elevation to the toe.

(53) "Overburden" means material of any nature, consolidated or unconsolidated, that overlies an oil shale deposit, excluding topsoil and vegetation.

(54) "Pastureland/hayland" means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed. Land used for facilities in support of pastureland or land occasionally cut for hay which is adjacent to or an integral part of these operations is also included.

(55) "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of ground-water discharge or surface runoff. The term does not include intermittent stream or ephemeral stream.

(56) "Permanent diversion" means a diversion remaining after oil shale mining, processing, waste disposal, reclamation or related operations are completed which has been approved for retention by the department and other appropriate Kentucky and federal agencies.

(57) "Permit" means written approval issued by the department to conduct oil shale operations.

(58) "Permit area" means the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas which are or will be affected by any oil shale operations under a particular permit.

(59) "Permittee" means any person, partnership, or corporation engaged in oil shale extraction, exploration, processing, waste disposal, reclamation or related operations which includes, but is not limited to, those who remove or intend to remove oil shale or shale oil from the earth, or who remove overburden for the purpose of determining the location, quality or quantity of a natural oil shale deposit or those who engage in oil shale processing. In all cases a permittee shall be considered an operator.

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

(61) "pH" means a measure of the acidity or alkalinity of a solution.

(62) "Pilot project" means any oil shale extraction or processing operation which disturbs less than twenty-five (25) acres annually or has a shale oil production capacity equal to or less than 1,000 barrels per day, whichever is smaller.

(63) "Precipitation event" means a quantity of water resulting from drizzle, rain, snow, sleet, or hail in a specified period of time.

(64) "Processing" means the crushing, preparation, distillation, refining, upgrading, or any other operation used in the extraction of shale oil or other products from oil shale.

(65) "Property to be mined" means both the surface and mineral estates on and underneath lands which are within the permit area.

(66) "Public office" means a facility under the direction and control of a governmental entity which is open to public access on a regular basis during reasonable business hours.

(67) "Public park" means an area dedicated or designated by any federal, state, or local agency for public recreational use, despite whether such use is limited to certain times or days. It includes any land leased, reserved or held open to the public because of that use.

(68) "Public road" means any publicly owned thoroughfare for the passage of vehicles.

(69) "Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation, water table or an aquifer.

(70) "Reclamation" means the reconditioning and restoration of areas affected by any oil shale operation as required by KRS Chapter 350, Chapter 224 and all regulations promulgated pursuant thereto under a plan approved by the department.

(71) "Recreation land" means land used for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, hunting, and other undeveloped recreational uses.

(72) "Recurrence interval" means the interval of time in which an event is expected to occur once, on the average.

(73) "Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity and plant species diversity that are produced naturally or by crop production methods approved by the department. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.

(74) "Renewable resource lands" means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazing lands.

(75) "Residential land" means tracts used for single and multiple-family housing, mobile home parks, and other

residential lodgings. Also included is land used for support facilities which is adjacent to or an integral part of these operations such as vehicle parking, open space, and other facilities which directly relate to the residential use of the land.

(76) "Safety factor" means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

(77) "Sedimentation structure" means a primary sediment control structure designed, constructed and maintained in accordance with 405 KAR 30:330 and including but not limited to a barrier, dam, excavation or diversion which slows down water runoff to allow suspended solids to settle out. A sedimentation pond shall not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts and other measures that reduce runoff volume or trap sediment to the extent that such secondary sedimentation structures drain to a sedimentation pond.

(78) "Shale fines" means those shale particles which have been produced through handling, crushing, transporting, and other associated processes and because of their size are not utilized for resource recovery.

(79) "Shale oil" means the liquid hydrocarbon obtained from the distillation or other processing methods of kerogen in oil shale.

(80) "Significant, imminent environmental harm" is an adverse impact on land, air, or water resources which include, but are not limited to, plant and animal life as further defined in this subsection.

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

1. Is causing such harm, or;

2. May reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set by the department's authorized agents pursuant to the provisions of KRS Chapter 350.

(b) An environmental harm is significant if that harm is appreciable and not immediately reparable.

(81) "Slurry" means a suspension of pulverized solid in a liquid.

(82) "Slope" means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g. 1v:5h). It may also be expressed as a percent or in degrees.

(83) "Soil horizons" means contrasting layers of soil 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 soil layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

(b) "B horizon." The layer that typically is 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 soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

(84) "Soil survey" means a field and other investigation resulting in a map showing the geographic distribution of different kinds of soil and an accompanying report that describes, classifies, and interprets such soils for use. Soil surveys must meet the standards of the National Cooperative Soil Survey.

(85) "Spent shale" means the solid waste material after oil shale has been subjected to a process (chemical, mechanical, or thermal) to recover the oil and gas contained in the raw material.

(86) "Spoil" means overburden that has been removed during oil shale operations.

(87) "Stabilize" means to control movement of soil, spoil piles, spent shale, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as providing a protective surface coating.

(88) "Suspended solids" or nonfilterable residue, expressed as milligrams per liter, means organic or inorganic materials carried or held in the procedure outlined by the Environmental Protection Agency's regulations for waste water and analyses.

(89) "Temporary diversion" means a diversion of a stream or overland flow which is used during oil shale operations and not approved by the department to remain after reclamation as part of the approved postmining land use.

(90) "Topsoil" means the A horizon soil layer.

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

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

(93) "Undeveloped land" means land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

(94) "Valley fill" means a fill structure consisting of any material other than hazardous waste and organic material that is placed in a valley where side slopes of the existing valley measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than ten (10) degrees.

(95) "Waste" means:

(a) "Mining waste" means those wastes which are generated during and incident to the mining and extraction of oil shale and related overburden from the earth. Such wastes shall include, but not be limited to, woody vegetation, spoil, lean shale, grease, lubricants, paints, flammable liquids, garbage, abandoned machinery, and lumber resultant to the mining operation.

(b) "Processing wastes" means any solid, liquid, semisolid, slurry or sludge material (excluding spent shale) produced by any physical, chemical, mechanical, or thermal process which is considered of low economic value. Such wastes shall include but not be limited to raw shale fines, scrubber sludges, tank bottoms, filter cakes, and spent catalysts.

(c) "Spent shale" means the solid waste material left after oil shale has been subjected to processing (chemical, mechanical, or thermal) to remove the oil and gas contained in the raw material.

(96) "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.

JACKIE SWIGART, Secretary
ADOPTED: June 30, 1981
RECEIVED BY LRC: June 30, 1981 at 4:15 p.m.
PUBLIC HEARING: Public hearings scheduled for 405 KAR 30:010 through 405 KAR 30:410 are listed on page 41 of this *Register*.

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

405 KAR 30:020. General provisions.

RELATES TO: KRS 151.250, 350.600
PURSUANT TO: KRS 13.082, 151.125, 224.033, 350.028, 350.050, 350.600
NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation set forth general provisions which apply in this chapter with regard to applicability, conflicting provisions, severability, obligations of permittees, technology assessment, reporting requirements, hearings, provisions for citizen suits, and petitions for rulemaking.

Section 1. Applicability. The regulations in Chapter 30 of Title 405 shall apply to any oil shale operation conducted on or after the effective date of these regulations on land containing oil shale deposits and any other lands used, disturbed, or redisturbed in connection with or to facilitate such operations or any other activity related to oil shale development. The extraction of oil shale by a land owner for his own agricultural related use from land owned or leased by him is exempt from the requirements of this chapter.

Section 2. Conflicting Provisions. The provisions of Chapter 30 of Title 405 are to be construed as being campatible 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 3. Severability. In the event that any provision or regulation in Chapter 30 of Title 405 is found to be invalid, the remaining provisions of this chapter shall not be affected nor diminished thereby.

Section 4. Obligations of Persons Engaged in Oil Shale Operations. (1) General obligations:

(a) No person shall engage in an oil shale operation or related activity without having obtained from the department a valid permit covering the area of land to be affected.

(b) A person engaged in any oil shale operation shall not throw, pile, dump or permit the throwing, piling, dumping or otherwise placing of any overburden, stones, rocks, shale, 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 Chapter 30 of Title 405, or 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 this chapter.

(c) A person engaged in an oil shale operation shall not engage in any activities 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 engaged in an oil shale operation 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) Upon development of any emergency conditions which threaten the life, health, or property of the public, a person engaged in an oil shale operation shall immediately notify the person or persons whose life, health, or property are so threatened, shall take any and all reasonable actions to eliminate the condition creating the emergency, and shall immediately provide notice of the emergency conditions to the department, to local law enforcement officials, and to local government officials. Any emergency action taken by a person engaged in an oil shale operation pursuant to this paragraph shall not relieve that person of other obligations under this chapter or of obligations under other applicable local, state, or federal laws and regulations.

(f) Compliance with the requirements of this chapter does not relieve any person engaged in an oil shale operation from compliance with other applicable regulations of the department.

(2) Sedimentation structures:

(a) The responsible design engineer shall determine the structure hazard classification of all sedimentation structures whether new or proposed reconstructed structures according to the classification descriptions in paragraph (b). For structures classified (B)—moderate hazard or (C)—high hazard, the person engaged in an oil shale operation shall obtain a permit from the department, Division of Water, pursuant to KRS 151.250, and regulations adopted pursuant thereto, prior to construction or reconstruction.

(b) 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 at 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 each structure.

Section 5.Maps and Reports. (1) Map. Any person engaged in an oil shale operation shall include in the permit application an accurate map of the permit area at a scale of 1:6000 or larger. The detail of information on the map shall be as specified by the department.

(2) Reports. A person engaged in an oil shale operation shall submit such data, 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. The department may impose any monitoring or data collection requirements upon the permittee as are deemed necessary for the department to adequately assess the possible adverse environmental impacts of such activities. Such information shall be submitted at intervals and in a format specified by the department.

Section 6. Extraction and Processing Operations. (1) Any person engaged in an oil shale operation shall demonstrate to the department utilizing necessary technical, scientific, and engineering data the impacts their operation will have on the environment. Such data used in the justification shall have been generated on eastern shales having comparable characteristics to the shales in the location of the proposed project area.

(2) In the event the applicant cannot demonstrate to the department's satisfaction the extent and magnitude of possible adverse environmental impacts of the facility, its size shall be limited to a total annual surface disturbance of twenty-five (25) acres or a production capacity of 1000 barrels per day whichever is smaller. Total surface disturbance shall include, but not be limited to, areas upon which mining activities occur or where such activities disturb the natural land surface, lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site and for haulage, lands accommodating conveyor systems, and excavations, workings, impoundments, dams, ventilation shafts, entry ways, spent shale banks, spent shale disposal sites, dumps, stockpiles, overburden piles, spoil piles, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities.

(3) The applicant shall monitor the operation of such projects and collect such data as the department may require pursuant to 405 KAR 30:160.

(4) Data or information submitted to the department by a person engaged in an oil shale operation shall be submitted on a schedule and in a format specified by the department.

Section 7. Nothing in this chapter shall be construed to relieve the permittee of any responsibility for any of the obligations of 405 KAR Chapter 30.

JACKIE SWIGART, Secretary

ADOPTED: June 30, 1981
RECEIVED BY LRC: June 30, 1981 at 4:15 p.m.
PUBLIC HEARING: Public hearings scheduled for 405 KAR 30:010 through 405 KAR 30:410 are listed on page 41 of this *Register*.

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

405 KAR 30:030. General requirements for performance bond and liability insurance.

RELATES TO: KRS 350.600
PURSUANT TO: KRS 13.082, 151.125, 224.033, 350.028, 350.050, 350.600
NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation sets forth the general requirements for performance bonds and liability insurance.

Section 1. Applicability. This regulation sets forth the minimum requirements for filing and maintaining performance bonds and insurance for oil shale operations.

Section 2. Requirement to File a Bond. (1) After an application for a new, revised or renewed permit to conduct oil shale operations has been approved but before such permit is issued, but before such permit is issued, the applicant shall file with the department a performance bond payable to the department. A condition of the performance bond will be the faithful completion of all the requirements of the applicable statutes, the pertinent regulations promulgated pursuant thereto, and the provisions of the reclamation plan and permit.

(2) The performance bond liability shall apply to all oil shale operations and related activities conducted within the permit area. Liability shall continue until requirements established by the department has been met. After the amount of the bond has been determined for the permit area, the permittee or applicant shall file the entire performance bond required during the term of the permit.

Section 3. Requirement to File a Certificate of Liability Insurance. Each applicant shall file as a part of the permit

application evidence that the applicant has obtained liability insurance.

JACKIE SWIGART, Secretary
ADOPTED: June 30, 1981
RECEIVED BY LRC: June 30, 1981 at 4:15 p.m.
PUBLIC HEARING: Public hearings scheduled for 405 KAR 30:010 through 405 KAR 30:410 are listed on page 41 of this *Register*.

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

405 KAR 30:040. Amount and duration of performance bonds.

RELATES TO: KRS 350.600
PURSUANT TO: KRS 13.082, 151.125, 224.033, 350.028, 350.050, 350.600
NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation sets forth specified criteria upon which to base determination of bond amounts and requires certain periods of liability during which bonds must remain in effect.

Section 1. Determination of Bond Amounts. The standard applied by the department in determining the amount of performance bond shall be the estimated cost to the department if it had to perform the reclamation, restoration and abatement work required of a person who conducts oil shale operations under KRS Chapter 350, all other applicable statutes, and the regulations promulgated pursuant thereto, as well as such additional work as would be required to achieve compliance with the standards for revegetation under these oil shale regulations. The amount of bond shall be further based on, but not be limited to, such other cost information as may be required by or available to the department. In calculating the initial amount of the performance bond, the department shall take into consideration the three (3) phases of reclamation and the percentages to be released upon completion of each phase. The three (3) phases of reclamation and the percentages to be released upon completion of each phase are set forth in 405 KAR 30:070 entitled Procedures, Criteria and Schedule for Release of Performance Bonds.

Section 2. Minimum Amount. The minimum amount of bond for exploration permits involving drilling and coring shall be $2,000. For all other oil shale operation permits the minimum amount of bond per acre shall be $5,000 but in no event shall such a bond be less than $20,000.

Section 3. Period of Liability. (1) Liability under performance bonds applicable to a permit shall continue until completion of all reclamation work required of persons who conduct oil shale operations under the requirements of these oil shale regulations and the conditions of the permit have been completed.

(2) In addition to the period necessary to achieve compliance with the requirements of all applicable statutes and regulations and the conditions of the permit, the period of liability under performance bonds shall continue for a period of seven (7) years beginning with the last year of substantially augmented seeding, fertilizing, irrigation or other work. The period of liability shall begin again whenever substantially augmented seeding, fertilizing, irrigation or other work is required or conducted on the site prior to bond release. A portion of a bonded area requiring extended liability because of substantial augmentation may be separated from the original area and bonded separately upon approval by the department; provided, however, that such separation comes only following a good faith attempt to reclaim the entire permit area. The original bond amount shall apply to the area which has not required substantial augmentation. A new bond, in an amount determined by the department, shall be posted for the area which has been substantially augmented. Before determining that extended liability should apply to only a portion of the original bonded area, the department shall determine that such area portion:

(a) Is not significant in extent in relation to the entire area under bond; and

(b) Is limited to a distinguishable contiguous portion of the bonded area.

(3) If the department approves a long-term intensive agricultural postmining land use, pursuant to these oil shale regulations, the seven (7) year period of liability shall commence at the date of initial planting for such long-term intensive argicultural land use. Such approval shall not constitute a grant of an exception to the bond-liability periods of this section.

(4) If an area is separated under subsection (2) of this section, that portion shall be bonded separately and the period of liability shall commence anew. The period of liability for the remaining area shall continue in effect without extension. The amount of bond on the original bonded area may be adjusted in accordance with the following section.

Section 4. Adjustment of Amount. (1) The amount of the bond shall be reviewed and may be adjusted at any time during the life of a permit. The amount of the performance bond liability applicable to a permit shall be adjusted by the department as the acreage in the permit area is increased or when the department determines that the cost of future reclamation, restoration or abatement work has changed substantially. It shall be the obligation of the permittee to secure any additional bond that the department determines is necessary.

(2) A permittee may request reduction of the required performance bond amount at any time if the permittee's method of operation or other circumstances will reduce the maximum estimated cost to the department to complete the reclamation responsibilities; provided, however, that under no circumstances will the bond amount be reduced where such a reduction will decrease the bond amount to a level less than that necessary for full reclamation.

JACKIE SWIGART, Secretary
ADOPTED: June 30, 1981
RECEIVED BY LRC: June 30, 1981 at 4:15 p.m.
PUBLIC HEARING: Public hearings scheduled for 405 KAR 30:010 through 405 KAR 30:410 are listed on page 41 of this *Register*.

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

405 KAR 30:060. Form, terms and conditions of performance bonds and liability insurance.

RELATES TO: KRS 350.600
PURSUANT TO: KRS 13.082, 151.125, 224.033, 350.028, 350.050, 350.600
NECESSITY AND FUNCTION: KRS 350.033 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation sets forth minimum bonding and insurance standards. The regulation sets forth under what conditions bonds should be forfeited. The regulation specifies the types, terms, and conditions of liability insurance.

Section 1. Types of Performance Bond. (1) The form for the performance bond shall be prescribed by the department.

(2) The performance bond shall be either:

(a) A surety bond;

(b) A cash bond, which may include certificates of deposit; letters of credit, and acceptable escrow accounts; or

(c) A combination of these bonding methods as approved by the department.

Section 2. Terms and Conditions of Performance Bond. (1) The performance bond shall be in an amount determined by the department.

(2) The performance bond shall be payable to the department and not subject to cancellation by anyone until released by the department.

(3) The performance bond shall be conditioned upon the faithful performance of all of the requirements of the applicable statutes and regulations and the conditions of the reclamation plan and permit.

(4) The surety, by certified mail, will give prompt notice to the permittee and the department of any notice received or action filed alleging any violations of state or federal regulatory requirements which could result in suspension or revocation of the surety's license to do business.

(a) In the event that the surety becomes unable to fulfill its obligations under the bond for any reason, written notice shall be given promptly to the permittee and the department by certified mail.

(b) Upon the incapacity of a surety for any reason whatsoever, including but not limited to bankruptcy, insolvency or suspension or revocation of its license, the permittee shall be deemed to be without bond coverage in violation of these regulations and shall immediately secure replacement bond coverage or cease operations; provided, however, that bona fide reclamation activity may continue as approved by the department.

(5) Cash bonds, except for letters of credit, shall be subject to the following conditions:

(a) The department shall obtain possession of all cash bonds which shall be kept in an appropriate account. Possession will be maintained until authorized for release or replacement.

(b) The department shall require that certificates of deposit be assigned to the department and the issuing bank in writing.

(c) The department shall not accept an individual certificate of deposit for denomination in excess of the maximum insurable amount as determined by the Federal Deposit Insurance Corporation and the Federal Savings and Loan Insurance Corporation.

(d) The department shall require the issuer of the certificates of deposit to waive all rights of set-off or liens which it might have had against the certificates. The issuer of the certificates of deposit shall give the right of priority to the department.

(e) The department shall accept only those certificates of deposit that are automatically renewable.

(f) The cash value of any instrument pledged as collateral shall be at least equal to the bond amount.

(6) Letters of credit shall be subject to the following conditions:

(a) Only a bank authorized to do business in the United States may issue a letter of credit.

(b) The letter of credit, by its express terms, must be payable in full to the department upon receipt from the department of a Notice of Forfeiture.

(c) The letter of credit shall provide that in the event the issuer becomes unable to fulfill its obligations under the letter of credit for any reason, notice, by certified mail, shall be given immediately to the permittee and the department.

Section 3. Substitution of Bonds. (1) Substitution of bonds shall be in the discretion of the department.

(2) In effecting a requested substitution of bonds, the department shall not release the existing prior performance bond until the permittee has submitted and the department has approved acceptable substitute performance bonds.

Section 6. Terms and Conditions for Liability Insurance. (1) The department shall require the applicant to submit at the time of permit application proof that the applicant has a public liability insurance policy in full force and effect for the oil shale operation for which the permit is sought. The public liability insurance policy shall provide for personal injury and property damage protection in an amount adequate to compensate all persons injured or property damaged as a result of oil shale operations, including such injury or damage by use of explosives and injury or damage to water wells. Minimum insurance coverage for bodily injury shall be $300,000 for each occurrence and $500,000 aggregate; and minimum insurance coverage for property damage shall be $300,000 for each occurrence and $500,000 aggregate.

(2) The public liability insurance policy shall be maintained in full force during the term of the permit or any renewal thereof, and until completion of all reclamation operations under these oil shale regulations.

(3) The policy shall include a clause requiring that the insurer notify the department whenever any change whatsoever is made in the policy, including any termination of a policy or failure to renew the policy.

JACKIE SWIGART, Secretary
ADOPTED: June 30, 1981
RECEIVED BY LRC: June 30, 1981 at 4:15 p.m.
PUBLIC HEARING: Public hearings scheduled for 405 KAR 30:010 through 405 KAR 30:410 are listed on page 41 of this *Register*.

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

405 KAR 30:070. Procedures, criteria and schedule for release of performance bond.

RELATES TO: KRS 350.600
PURSUANT TO: KRS 13.082, 151.125, 224.003, 350.028, 350.050, 350.600
NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation sets forth the procedures, criteria, and schedule for release of performance bonds.

Section 1. Procedures for Seeking Release of Performance Bond. (1) The permittee, or any person authorized in writing to act on his behalf, may file an application on a form provided by the department for a release of all or part of the performance bond liability applicable to a particular permit after all reclamation, restoration and abatement work in a particular reclamation phase, as defined by these oil shale regulation, has been completed on the entire permit area.

(a) Bond release applications will be considered at times or seasons that allow the department to evaluate properly the reclamation operations alleged to have been completed.

(b) The application for bond release shall include copies of notices sent to the surface owners and adjoining property owners, notifying them of the permittee's intention to seek release of performance bonds. These notices shall be sent to the persons listed above before the permittee files the application for release with the department.

(c) Within thirty (30) days after filing the application for release the permittee shall submit proof of publication of the advertisement required by subsection (2) of this section. Such proof of publication shall be considered part of the bond release application.

(2) At the time of filing an application under this section for a bond release, the permittee shall advertise pursuant to KRS 424.110 through 424.130. The advertisement shall:

(a) List the name of the permittee, including the number and date of issuance and/or renewal of the permit;

(b) Describe the precise location and the number of acres of the lands subject to the application;

(c) List the total amount of bond in effect for the permit area, the type of release sought, and the amount for which release is sought;

(d) Be filed with the department and made a part of the complete permit application; and

(e) State that written comments, objections, and requests for a hearing pursuant to these oil shale regulations must be submitted within thirty (30) days of the last publication date, provide the appropriate address of the department, and the closing date by which comments, objections, and requests must be received.

(3) Written objections to the proposed bond release and requests for a hearing may be filed with the department by any person having an interest which is or may be adversely affected by the proposed bond release. Such written objection must be filed within thirty (30) days of the date of the last advertisement of the filing for the bond release application.

(4) The department shall inspect and evaluate the reclamation work allegedly performed by the permittee. Such inspection shall be completed within thirty (30) days after receiving a proper application for bond release, or as soon thereafter as weather conditions permit; provided however, that the bond release application is filed during a time or season that allows the department to properly evaluate the reclamation operations.

(5) (a) If a hearing is held it shall be pursuant to KRS 224.083.

(b) The notice of the decision by the department shall state the reasons for the decision, recommend any corrective actions necessary to secure the release, and notify the permittee and all interested parties of their right to seek administrative or judicial review of the decision.

Section 2. Criteria and Schedule for Release of Performance Bond. (1) There shall be no release of performance bonds until the permittee has met the requirements of the applicable reclamation phases as defined in subsection (4) of this section. The department may release portions of the liability under performance bonds applicable to a permit following completion of reclamation phases on the entire permit area.

(2) There shall be three (3) phases of reclamation and release of performance bonds shall be calculated under the following percentages:

(a) Sixty percent (60%) of the bond shall be released if reclamation phase one (1) is completed on the acreage; and

(b) An additional twenty-five percent (25%) of the bond amount shall be released if reclamation phase two (2) is completed on the acreage; and

(c) The remaining fifteen percent (15%) of the bond amount shall be released if reclamation phase three (3) is completed on the acreage.

(3) The department shall not release any liability under performance bonds applicable to a permit if such release would reduce the total remaining liability under performance bonds to an amount less than that necessary for the department to complete the approved reclamation plan, achieve compliance with the requirements of all applicable statutes and regulations, and abate any significant environmental harm to air, water or land resources or danger to the public health and safety which might occur prior to the release of all performance bond liability for the permit area. Where the permit includes an alternative postmining land use plan approved by the department, the department shall retain a sufficient amount of bond in order for the department to complete any additional work which would be required to achieve compliance with the general standards for revegetation set forth in these oil shale regulations in the event the permittee fails to implement the approved alternative postmining land use plan within the period of time required by these oil shale regulations.

(4) For the purposes of this section:

(a) Reclamation phase one (1) shall be deemed to have been completed when the permittee completes backfilling, regrading, topsoil replacement, drainage control including soil preparation, seeding, planting and mulching in accordance with the approved reclamation plan, and a planting report for the area has been submitted to the department; and

(b) Reclamation phase two (2) shall be deemed to have been completed when:

1. Revegetation has been established in accordance with the approved reclamation plan and the standards for the success of revegetation are met;

2. All water quality performance standards and parameters are met, drainage control is satisfactory to the

department, the affected area is not contributing suspended solids to stream flow, runoff outside the permit area is not in excess of the requirements of applicable laws and regulations, and excess suspended solids are not contributed to stream flow or runoff outside the permit area.

3. With respect to prime farmlands, soil productivity has been restored as required by these oil shale regulations and the plan approved pursuant to the permit; and

4. The provisions of a plan approved by the department for the sound future management of any permanent impoundment by the permittee or landowner have been implemented to the satisfaction of the department.

(c) Reclamation phase three (3) will be deemed to have been completed when the permittee has successfully completed all oil shale operations in accordance with the approved reclamation plan, such that the land is capable of supporting the postmining land use approved by the department, and the permittee has achieved compliance with the requirements of these oil shale regulations and the applicable liability period.

JACKIE SWIGART, Secretary
ADOPTED: June 30, 1981
RECEIVED BY LRC: June 30, 1981 at 4:15 p.m.
PUBLIC HEARING: Public hearings scheduled for 405 KAR 30:010 through 405 KAR 30:410 are listed on page 41 of this *Register.*

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

405 KAR 30:080. Bond forfeiture.

RELATES TO: KRS 350.600
PURSUANT TO: KRS 13.082, 151.125, 224.033, 350.028, 350.050, 350.600
NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation sets forth the procedures and criteria by which a bond may be forfeited to the Department.

Section 1. General. The department may forfeit any bond held by it upon failure of the principal to perform.

Section 2. Procedures. In the event forfeiture of the bond is required by Section 3 of this regulation, the department shall:

(1) Send written notification by certified mail, return receipt requested, to the permittee and the surety on the bond, of the department's determination to initiate forfeiture of the bond and the reasons for the forfeiture, including the amount proposed to be forfeited.

(2) Advise the permittee and those responsible on the bond of their right to a hearing.

Section 3. Criteria for Forfeiture. (1) The department shall have the authority to forfeit a bond if:

(a) The department find that the oil shale operations have not been conducted in accordance with all applicable statutes and regulations or the conditions of the permit or the reclamation plan within the time required by the statutes or regulations; or

(b) The department finds that the permit for the area under bond should be revoked; or

(c) The department finds that the permittee or surety, or the party responsible on the bond, has failed to comply with a compliance schedule. The department may withhold forfeiture if the permittee or the party responsible on the bond agrees to a compliance schedule to correct the violations of the permit or bond conditions; or

(d) For such other good cause as the department determines is sufficient.

(2) The department shall forfeit the entire amount of the bond and deposit the forfeited amount in an appropriate account for use in the payment of all costs associated with the conduct of reclamation, restoration or abatement activities by the department on the permit area to which the forfeited bond applies.

JACKIE SWIGART, Secretary
ADOPTED: June 30, 1981
RECEIVED BY LRC: June 30, 1981 at 4:15 p.m.
PUBLIC HEARING: Public hearings scheduled for 405 KAR 30:010 through 405 KAR 30:410 are listed on page 41 of this *Register.*

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

405 KAR 30:090. General provisions for inspection and enforcement.

RELATES TO: KRS 350.600, 350.990
PURSUANT TO: KRS 13.082, 151.125, 224.033, 350.028, 350.050, 350.600, 350.990
NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and environment of the Commonwealth. This regulation sets forth an enforcement and inspection policy for the department. This regulation directs that inspections be made periodically and without need of a warrant or prior notice to the operator.

Section 1. Applicability. The provisions of this regulation shall apply to all oil shale operations.

Section 2. Inspection and Enforcement. In accordance with the provisions of this regulation, the department shall conduct or cause to be conducted such inspections, studies, investigations or other determinations as it deems reasonable and necessary to obtain information and evidence which will ensure that oil shale operations are conducted in accordance with the provisions of all applicable statutes and regulations, and all terms and conditions of the permit.

Section 3. Timing and Conduct of Inspections. (1) Right of entry and access. Authorized employees of the department shall have unrestricted right of entry and ac-

cess to all parts of the oil shale operation for any purpose associated with their proper duties pursuant to this Title, including but not limited to, making inspections and delivering documents or information of any kind to persons associated with the operation or receiving documents or information from persons associated with the operation.

(2) Prior notice. The department shall have no obligation to give prior notice that an inspection will be conducted.

(3) Timing. Inspections shall ordinarily be conducted at irregular and unscheduled times during normal workdays, but may be conducted at night or on weekends or holidays when the department deems such inspections necessary to properly monitor compliance with all applicable laws and regulations.

(4) Frequency of inspections. The department shall conduct periodic inspections of all oil shale operations.

Section 4. Penalties and Sanctions. Any person who violates any provision of KRS 350.600, any provision of this Title, any other applicable statutes or regulations, or any permit condition, or who fails to perform the duties imposed by such provisions, or who fails to comply with a determination or order of the department pursuant to such provisions, shall be subject to civil penalties as set forth in KRS 350.990(6) or any other applicable provision of law. Violations by any person conducting oil shale operations on behalf of the permittee shall be attributed to the permittee.

Section 5. Public Participation. Any person having an interest which is or may be adversely affected by an oil shale operation shall have the opportunity to cause an inspection and to participate in enforcement actions of the department as provided in this Title.

Section 6. Formal Review. Any person having an interest which is or may be adversely affected by the issuance, modification, vacation, or termination of a notice or order, may request review of that action by filing a request for hearing, within thirty (30) days after receiving notice of the action. The filing of a request for a hearing shall not operate as a stay of any notice or order or any modification, termination or vacation thereof.

JACKIE SWIGART, Secretary

ADOPTED: June 30, 1981

RECEIVED BY LRC: June 30, 1981 at 4:15 p.m.

PUBLIC HEARING: Public hearings scheduled for 405 KAR 30:010 through 405 KAR 30:410 are listed on page 41 of this *Register*.

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

405 KAR 30:100. Enforcement.

RELATES TO: KRS 350.600

PURSUANT TO: KRS 13.082, 151.125, 224.033, 350.028, 350.050, 350.600

NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation sets forth various kins of notices and orders to be issued by authorized representatives of the department. The regulation requires that a notice of noncompliance and order for remedial measures be issued for violations of KRS 350.600, the regulations promulgated pursuant thereto, any permit condition, or any other applicable statute or regulation. The regulation sets forth the general form of the notices, and hearing procedures.

Section 1. Notice of Noncompliance and Order for Remedial Measures. (1) Issuance. An authorized employee of the department shall issue a notice of noncompliance and order for remedial measures if, on the basis of inspection, he finds a violation of KRS 350.600, the regulations promulgated pursuant thereto, any permit condition, or any other applicable statute or regulation.

(2) Form and content. A notice of noncompliance and order for remedial measures issued pursuant to this section shall be in writing and shall be signed by the authorized employee who issued it. The notice shall set forth with reasonable specificity:

(a) The nature of the violation;

(b) The remedial action required, if any, which may include accomplishment of interim steps, if appropriate;

(c) A reasonable time for remedial action, if any, which may include time for accomplishment of interim steps, if appropriate; and

(d) A reasonable description of the portion of the oil shale operation to which the notice applies.

(3) Service. Service of a notice of noncompliance and order for remedial measures shall be in the manner set forth in Section 3.

(4) Extension. An authorized employee may extend the time set for remedial action or for accomplishment of an interim step, if the failure to meet the time previously set was not caused by lack of diligence on the part of the person to whom the notice of noncompliance and order for remedial measures was issued. The total time for remedial action under such notice, including all extensions, shall not exceed ninety (90) days from the date of issuance of the notice.

(5) Modification. An authorized employee may modify an order for remedial measures for good cause.

Section 2. Notice of Inspection of Noncompliance. (1) Issuance. If an authorized employee issues a notice of noncompliance and order for remedial measures he shall reinspect the permit area on or soon after the date given in the notice or order for completion of remedial measures. At the time of this reinspection, the authorized representative shall issue a notice of inspection of noncompliance.

(2) Form and content. The notice of inspeciton of noncompliance shall set forth whether:

(a) The remedial measures have been completed, and the notice or order is therefore terminated;

(b) The remedial measures have not been completed, but the notice or order is modified or extended for good cause; or

(c) The remedial measures have not been completed.

(3) Service. Service of a notice of inspection of noncompliance shall be in the manner set forth in Section 3.

(4) The correction of a violation shall not affect the right of the department to assess civil penalties for that violation pursuant to this Title or to impose any other applicable sanctions as authorized by law.

Section 3. Service of Notices and Orders. (1) Any notice of noncompliance and order for remedial measures, any notice of inspection of noncompliance, and any other order of the department shall be served on the person to whom it is issued, in person or by mailing it to the permanent on the permit and application; or by hand to the designated agent or to the individual who, based upon reasonable inquiry by the authorized employee, appears to be in charge at the site of the oil shale operation. If the individual in charge cannot be located at the site, a copy may be tendered to any individual at the site who appears to be an employee or agent of the person to whom the notice or order is issued. Service, whether by hand or by mail, shall be complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept. If no person is present at the site of the operation, service by mail upon the permittee shall by itself be sufficient notice.

(2) Designation by any person of an agent for service of notices and orders shall be made a part of the permit application. Such person shall continue as agent for service of process until such time as written revision of the permit is made which designates another person as agent.

(3) The department may furnish copies of notices and orders to any person having an interest in the oil shale operation.

Section 4. Suspension or Revocation of Mining Permits and Exploration Permits. (1) The department may, after hearing pursuant to KRS Chapter 224, suspend or revoke a permit if the department determines that a pattern of violations of any requirement of KRS 350.600, the regulations promulgated pursuant thereto, any other applicable statutes or regulations, or any permit condition, exists or has existed.

(2) The department may determine that a pattern of violations exists or has existed, based on two (2) or more inspections of the permit area after considering the circumstances, including:

(a) The number of violations cited on more than one (1) occasion as to same or related requirements of KRS 350.600, the regulations promulgated pursuant thereto, any other applicable statutes or regulations, or permit conditions;

(b) The number of violations, cited on more than one (1) occasion as to different requirements of KRS 350.600, the regulations promulgated pursuant thereto, any other applicable statutes and regulations, or permit conditions; and

(c) The extent to which the violations were isolated departures from lawful conduct.

(3) If the department revokes or suspends the permit, the permittee shall immediately cease oil shale operations on the permit area and shall:

(a) If the permit is revoked, complete reclamation within the time specified in the order; or

(b) If the permit is suspended, complete all affirmative obligations to abate all conditions, practices or violations, as specified in the order.

JACKIE SWIGART, Secretary
ADOPTED: June 30, 1981
RECEIVED BY LRC: June 30, 1981 at 4:15 p.m.
PUBLIC HEARING: Public hearings scheduled for 405 KAR 30:010 through 405 KAR 30:410 are listed on page 41 of this *Register*.

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

405 KAR 30:110. Public participation in inspection and enforcement.

RELATES TO: KRS 350.600
PURSUANT TO: KRS 13.082, 224.033, 350.028, 350.050, 350.600
NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation provides for citizen participation in the inspection and enforcement process. The regulation provides for citizen request for inspection.

Section 1. Citizen Request for Inspection. (1) Any person having an interest which is or may be adversely affected by an oil shale operation, may request that the department conduct an inspection by furnishing to an authorized employee, a signed, written statement, giving the authorized employee reason to believe that a violation, condition, or practice in violation of applicable laws and regulations or permit conditions exists, and setting forth a telephone number and address at which the person can be contacted.

(2) The identity of any person supplying information to the department relating to a possible violation or imminent danger or harm shall remain confidential with the department, if requested by that person, unless disclosure is required by law.

(3) Within ten (10) days of the inspection, or if there is no inspection, within fifteen (15) days of receipt of the person's written statement, the department shall send to the person the following:

(a) If no inspection was conducted, an explanation of the reasons why no inspection was conducted;

(b) If an inspection was conducted, a description of the enforcement action taken, if any, which may consist of copies of the inspection report and all notices and orders issued as a result of the inspection or an explanation of why no enforcement action was taken.

JACKIE SWIGART, Secretary
ADOPTED: June 30, 1981
RECEIVED BY LRC: June 30, 1981 at 4:15 p.m.
PUBLIC HEARING: Public hearings scheduled for 405 KAR 30:010 through 405 KAR 30:410 are listed on page 41 of this *Register*.

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

405 KAR 30.120. Oil shale exploration permits.

RELATES TO: KRS 61.870 through 61.884, 350.600
PURSUANT TO: KRS 13.082, 151.125, 224.033, 224.035, 350.028, 350.050, 350.600
NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental

Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation sets forth requirements for obtaining oil shale exploration permits.

Section 1. Permit Required. No person shall engage in oil shale exploration without first having obtained a permit from the department.

Section 2. Term of Permits. An oil shale exploration permit shall be valid for two (2) years from the date of issuance.

Section 3. Publication of Notice of Intention to Explore and Opportunity to Comment. (1) A prospective applicant for a permit required by this regulation 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 the newspaper of largest bona fide circulation, according to the definition in KRS 424.120, in the county or counties wherein the proposed exploration 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 Conduct Oil Shale Exploration" and shall be in a manner and form precribed by the department and shall include, but 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 exploration site;

(d) A brief description of the kind of exploration activity proposed, together with a statement of the amount of acreage affected by the proposed operation; and

(e) The address of the department to which interested persons may submit written comments on the application.

(4) The applicant for a permit required under this regulation shall establish the date and place at which the "Notice of Intention to Conduct Oil Shale Exploration" was published by attaching to his application an affidavit from the publishing newspaper certifying the date, place, and content of the published notice.

(5) Any person with an interest which is or may be adversely affected shall have the right to file with the department written comments on the application within thirty (30) days of the publication of the notice in the newspaper.

Section 4. Contents of Application for Exploration Permit. (1) Each application for a permit shall contain, at a minimun, the following information:

(a) The name, address, and telphone number of the applicant;

(b) The name, address and telephone number of the representative of the applicant who will be present at and be responsible for conducting the exploration;

(c) A United States Geological Survey seven and one-half (7½) minute topographic map and a 1:6000 map showing the areas of land which may be affected by the proposed exploration and reclamation. The map shall also specifically show existing roads, structures, occupied dwellings, and pipelines; proposed location of trenches, roads, and other access routes and structures to be constructed; the location of land excavations to be conducted; water or oil shale exploratory holes and wells to be drilled or altered; earth or debris disposal areas; existing bodies of surface water; historic, cultural, topographic, and drainage features; and habitats of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(d) An exploration and reclamation operations plan, including:

1. A narrative description of the proposed exploration area, cross-referenced to the map required under (1)(c) of this Section, including surface topography; geological, surface water, and other physical features; vegetative cover; the distribution and important habitats of fish, wildlife, and plants, including, but not limited to, any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.); districts, sites, buildings, structures or objects listed on the National Register of Historic Places; and known archeological resources located within the proposed exploration area;

2. A narrative description of the methods to be used to conduct oil shale exploration and reclamation, including, but not limited to, the types and uses of equipment, drilling, blasting, road or other access route construction, and excavated earth and other debris disposal activities;

3. An estimated timetable for conducting and completeing each phase of the exploration and reclamation;

4. The estimated amounts of oil shale to be removed and a description of the methods to be used to determine those amounts; and

5. A description of the measures to be used to comply with the applicable performance standards of this regulation;

(e) The name and address of the owner of record of the surface land and of the subsurface mineral estate of the area to be explored; and

(f) If the surface is owned by a person other than the applicant, a description of the basis upon which the applicant claims the right to enter that land for the purpose of conducting exploration and reclamation.

(2) The application shall be accompanied by a cashier's check or money order payable to the Kentucky State Treasurer in the amount of $500 plus fifty dollars ($50) for each arce or fraction thereof of the area to be affected by the operation. No permit application will be processed unless such fees have been paid.

Section 5. Procedures for Processing of Application. (1) Five (5) separate copies of the complete application 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 twenty-one (21) days of receipt of an application for a permit to conduct oil shale exploration operations, the department shall provide written notification to the applicant as to the completeness of the application. A determination by the department that the application is complete shall not be construed to mean that the application is technically sufficient.

(3) The department shall act upon a complete application within sixty (60) days after the filing of the complete application.

(4) The department shall approve a complete application filed in accordance with this regulation, if it finds, in writing, that the applicant has demonstrated that the exploration and reclamation described in the application:

(a) Will be conducted in accordance with applicable statutes and regulations;
(b) Will not jeopardize the continued existence of an endangered or threatened species listed pursuant to Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) or result in the destruction or adverse modification of critical habitat of those species; and
(c) Will not adversely affect any cultural resources or districts, sites, buildings, structures, or objects listed on the National Register of Historic Places, unless the proposed exploration has been approved by both the department and the agency with management responsibility over such areas.
(5) Terms of approval. Each approval issued by the department shall contain conditions necessary to ensure that the exploration and reclamation will be conducted in compliance with all applicable statutes and regulations.

Section 6. Notice and Hearing. (1) The department shall notify the applicant and any other party who has requested such notification, in writing, of its decision to approve or disapprove the application. If the application is disapproved, the notice to the applicant shall include a statement of the reason for disapproval.
(2) Any person with an interest which is or may be adversely affected by a decision of the department pursuant to paragraph (1) of this Section, shall have the opportunity for administrative and judicial review.

Section 7. Compliance. (1) Permit conditions. Permits issued by the department may contain conditions necessary to ensure that the exploration and reclamation will be conducted in compliance with all applicable statutes and regulations.
(2) All oil shale exploration and reclamation operations shall be conducted in accordance with applicable statutes, regulations, and any conditions imposed by the department on the permit.

Section 8. Public Availability of Information. All information submitted to the department under this regulation shall be made available for public inspection and copying in accordance with KRS Chapter 61 and 405 KAR 30:150.

JACKIE SWIGART, Secretary
ADOPTED: June 30, 1981
RECEIVED BY LRC: June 30, 1981 at 4:15 p.m.
PUBLIC HEARING: Public hearings scheduled for 405 KAR 30:010 through 405 KAR 30:410 are listed on page 41 of this *Register*.

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

405 KAR 30:130. Oil shale operation permits.

RELATES TO: KRS 350.600
PURSUANT TO: KRS 13.082, 146.270, 151.125, 224.033, 350.028, 350.050, 350.600
NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation sets forth the requirements for obtaining an oil shale mining permit.

Section 1. Applicability. The provisions of this regulation shall apply to permits for all oil shale operations except for oil shale exploration operations.

Section 2. Permit Required. No person shall engage in oil shale operations without first having obtained a permit from the department.

Section 3. Term of Permits. (1) Except for pilot projects, an oil shale mining permit shall be valid for five (5) years from the date of issuance. A permit shall terminate, if the permittee has not substantially commenced the oil shale operation covered by the permit within three (3) years of the issuance of the permit.
(2) Pilot projects. A permit for a pilot project shall be valid for a term of two (2) years from the date of issuance.

Section 4. Preliminary Requirements. A person desiring a permit shall submit to the department the necessary preliminary application as prescribed by the department. The preliminary application shall contain pertinent information including, but not limited to, a U.S. Geological Survey seven and one-half (7½) minute topographic map and a 1:6000 map marked to show the boundaries of the area of land to be affected, and the location of the oil shale deposits to be mined, access roads, haul roads, spoil 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 examination of the area with the person or his representatives after which the person may submit a permit application.

Section 5. Publication of Notice of Intention to Mine. (1) An applicant for a permit shall place an advertisement in the newspaper of largest bona fide circulation, according to the definition of KRS 424.110 to 424.120, in the county or counties wherein the proposed oil shale operation is to be located.
(2) The advertisement shall be published at least once each week for four (4) consecutive weeks, with the first advertisement being published 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 Conduct Oil Shale Mining" and shall be in a manner and form prescribed by the department and shall include, but not be limited to, the following:
(a) The name and address of the applicant;
(b) The permit application number;
(c) A description which shall:
1. Clearly describe towns, rivers, streams, or other bodies of water, local landmarks, and any other information, including routes, streets, or roads and accurate distance measurements, necessary to allow local residents to readily identify the proposed permit area;
2. Clearly describe the exact location and boundaries of the proposed permit area; and
3. State the name(s) of the U.S. Geological Survey

seven and one-half (7½) minute quadrangle map(s) which contains the area shown or described.

(d) A description of the kind of mining activity proposed, together with a statement of the amount of acreage affected by the proposed operation;

(e) The address of the department to which interested persons may submit written comments on the application; and

(f) The location where a copy of the application is available for public inspection.

(4) The applicant for a permit required under this regulation shall establish the date and place at which the "Notice of Intention to Conduct Oil Shale Mining" was published by attaching to his application an affidavit from the publishing newspaper certifying the time, place and content of the published notice.

(5) Public inspection of the application. The applicant shall make a full copy of the complete application for a permit available for the public to inspect and copy. This shall be done by filing a copy of the application submitted to the department at the courthouse of the county where the mining is proposed to occur.

(6) Any person with an interest which is or may be adversely affected shall have the right to file with the department written comments on the application within thirty (30) days of the final notice of the application in the newspaper.

Section 6. Contents of the Permit Application. (1) A person desiring a permit shall submit the necessary application as prescribed by the department. The application shall be on forms provided by the department, and originals and copies of the application shall be prepared, assembled and submitted in the number, form and manner prescribed by the department with such attachments, plans, maps, certifications, drawings, calculations or other such documentation or relevant information as the department may require.

(2) The application shall include the following information:

(a) Each application shall contain the names and addresses of:

1. The permit applicant, including his or her telephone number;

2. Every owner of the surface of the area of land to be affected by the permit;

3. The owners of record of all surface areas contiguous to any part of the proposed permit area;

4. Every owner of the oil shale to be mined;

5. The holders of any leasehold interest in the property to be mined;

6. The contractor or other person, if different from the applicant, who will conduct surface mining activities on behalf of the applicant, including his telephone number; and

7. The resident agent of the applicant who will accept service of process, including his telephone number.

(b) Each application shall contain the following information:

1. A detailed description of the location and area of land to be affected by the operation, specifying the permit boundaries;

2. A description of access to the site from the nearest public highway;

3. The source of the applicant's legal right to mine oil shale on the land affected by the permit;

4. A copy of the applicant's published notice of intention to mine and an affidavit from the publisher, pursuant to Section 5 of this regulation;

5. The name of the proposed mine and the Mine Safety and Health Administration identification number for the mine and all sections, if applicable;

6. Proof, such as a power of attorney or a resolution of the board of directors, that the individual signing the application has the authority to represent the applicant in the permit matter;

7. Whether or not the applicant, any subsidiary, or affiliate; or any officer, partner, or director, or any individual owning, of record or beneficially, ten (10) percent or more of any class of stock of the applicant, holds or has held any other federal or state oil shale or any surface coal mining permit issued by the department and the identification of such permits.

(c) Each application shall contain the following compliance information:

1. A statement of whether the applicant, any subsidiary, or affiliate; or any officer, partner, director, or any individual owning, of record or beneficially, ten (10) percent or more of any class of stock of the applicant, has:

a. Had an oil shale or surface coal mining permit of the United States or any state suspended or revoked; or,

b. Forfeited an oil shale or surface coal mining performance bond or similar security deposited in lieu of bond.

2. If any such suspension, revocation, or forfeiture has occurred, the application shall contain a statement of the facts involved, including:

a. Identification number and date of issuance of the permit, and date and amount of bond or similar security;

b. Identification of the authority that suspended or revoked the permit or forfeited the bond and the stated reasons for that action;

c. The current status of the permit, bond, or similar security involved;

d. The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

e. The current status and results of these proceedings.

3. Each application shall contain a list of each violation notice pertaining to federal oil shale mining laws and the regulations promulgated pursuant thereto, and oil shale mining laws and applicable regulations of any state, received by the applicant in connection with any oil shale mining operation during the three (3) year period before the application date. Each application shall also contain a list of each violation notice pertaining to air or water environmental protection received by the applicant in connection with any oil shale mining operation during the three (3) year period before the application date. The application shall contain a statement of the facts involved, including:

a. The date of issuance and identity of the issuing regulatory authority, department, or agency;

b. A brief description of the particular violation alleged in the notice;

c. The date, location, and type of any administrative or judicial proceedings initiated concerning the violation; and

d. The current status and results of these proceedings.

(3) Maps. The application shall include five (5) copies of a United State Geological Survey seven and one-half (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 five (5) copies of an enlarged United States Geological Survey seven and one-half (7½) minute topographic map or other such map enlarged to a scale of 1:6000 or larger acceptable to the department and 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 oil shale 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 surface, underground, and in situ mining operations and the boundaries of surface properties and names of owners of the affected area and owners of properties contiguous to 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 within 1,000 feet of such area;

(f) Show by appropriate markings the boundaries of the area of land to be affected, the deposit of oil shale 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; and

(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 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 will transport oil shale or any product related to the oil shale mining operation.

(a) The plan shall specify the legal weight limits for each portion of any road or bridge over which the applicant proposes to transport oil shale or any product related to the oil shale operation.

(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. If the area to be mined has been designated as prime farmland, the application shall include a plan for the mining and restoration of prime farmland consistent with the requirements of 405 KAR 30:280.

(7) Postmining land use plan. The application shall include 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 30:220 regarding postmining land use.

(8) Use of explosives plan. The application shall include 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 30:250 with regard to use of explosives.

(9) Topsoil handling and restoration plan. The application shall include a plan for the handling and restoration of topsoil which shall demonstrate to the satisfaction of the department that the proposed operation will comply with the requirements of 405 KAR 30:290 with regard to topsoil handling.

(10) Backfilling and grading plan. The application shall include 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 30:390 with regard to backfilling and grading.

(11) Revegetation Plan. The application shall include a plan for the revegetation of all disturbed areas which shall demonstrate to the satisfaction of the department that the proposed operation will comply with the requirements of 405 KAR 30:400 with regard to revegetation.

(12) Spoil disposal plan. The application shall include a plan for the disposal of spoil in excess of that required to meet the backfilling and grading requirements of 405 KAR 30:390 which shall demonstrate to the satisfaction of the department that the proposed operation will comply with the requirements of 405 KAR 30:370 with regard to disposal of spoil.

(13) 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 and 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 30:360 with regard to disposal of wastes other than excess spoil material.

(14) Surface water control and monitoring plan. The application shall contain 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 30:300 with regard to protection of the hydrologic system;

(b) 405 KAR 30:320 with regard to water quality standards and surface water monitoring;

(c) 405 KAR 30:330 with regard to sediment control measures; and

(d) 405 KAR 30:310 with regard to diversions of surface flows and water withdrawal.

(15) Ground water control and monitoring plan. The application shall include 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 30:300 with regard to protection of the hydrologic system;

(b) 405 KAR 30:320 with regard to ground water; and

(c) 405 KAR 30:310 with regard to diversion of underground flows.

(16) Air resources protection plan. The application shall include an air resources protection plan which shall demonstrate to the satisfaction of the department that the proposed operation will comply with the requirements of

405 KAR 30:230 with regard to air resources protection.

(17) Fish and wildlife plan. The application shall include a fish and wildlife plan which shall demonstrate to the satisfaction of the department that the operation will comply with the requirements of 405 KAR 30:240 with regard to fish and wildlife.

(18) 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 ensure that the provisions of this chapter will be met. Such documentation may include but not be limited to detailed engineering drawings, engineering calculations, and monitoring and documentation prepared by qualified persons in other appropriate technical fields or sciences.

(19) The application shall be accompanied by a cashier's check or money order payable to the Kentucky State Treasurer in the amount of $500, plus fifty dollars ($50) for each acre or fraction thereof of the area to be affected by the operation. No permit application will be processed unless such fees have been paid.

Section 7. Procedures for Processing of Application. (1) Five (5) separate copies of the complete application 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 twenty-one (21) days of receipt of an application for a permit to conduct oil shale operations, the department shall provide written notification to the applicant as to the completeness of the application. A determination by the department that the application is complete shall not be construed to mean that the application is technically sufficient.

(3) The department shall act upon a complete application within 120 days after the filing of the complete application.

(4) The department shall approve a complete application filed in accordance with this regulation, if it finds, in writing, that the applicant has demonstrated that the oil shale operation described in the application:

(a) Will be conducted in accordance with applicable statutes and regulations;

(b) Will not jeopardize the continued existence of an endangered or threatened species listed pursuant to Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) or result in the destruction or adverse modification of critical habitat of those species; and

(c) Will not adversely affect any cultural resources or districts, sites, buildings, structures, or objects listed on the National Register of Historic Places, unless the proposed exploration has been approved by both the department and the agency with management responsibility over such areas.

Section 8. Notice and Hearing. (1) The department shall notify the applicant and any person who requests such notification, in writing, of its decision to approve or disapprove the application. If the application is disapproved, the notice to the applicant shall include a statement of the reason for disapproval.

(2) Any person with an interest which is or may be adversely affected by a decision of the department pursuant to paragraph (1) of this section, shall have the opportunity for administrative and judicial review.

Section 9. Compliance. (1) Permit conditions. Permits issued by the department may contain certain conditions necessary to ensure that the oil shale operation will be conducted in compliance with all applicable statutes and regulations.

(2) All oil shale operations shall be conducted in accordance with all applicable statutes and regulations and any conditions imposed by the department on the permit.

Section 10. Department Review of Outstanding Permits. (1) The department shall review each permit issued and outstanding under this chapter during the term of the permit. This review shall occur not later than the middle of the permit term.

(2) After this review, the department may, by order, require revision or modification of the permit provisions or may increase the amount of the bond to ensure compliance with all applicable statutes and regulations.

(3) Copies of the decision of the department shall be sent to the permittee.

(4) Any order of the department which requires revision or modification of the permit or increases the amount of the bond shall be based upon written findings and shall be subject to the provisions for administrative and judicial review.

Section 11. Permit Revisions. (1) A revision to a permit shall be obtained:

(a) For changes in the oil shale operation described in the original application and approved under the original permit;

(b) When required by an order issued under Section 10; or

(c) When there is an increase of the area under the permit.

(2) The application for a revision shall be filed with the department sixty (60) days prior to the date on which the permittee expects to revise the oil shale operation. The term of a permit shall remain unchanged by a revision.

(3) Application for changes in the method of operation or when required by an order issued under Section 10:

(a) An application for a revision under subsections (1)(a) or (b) of this section shall meet the following requirements:

1. The application for revision shall be submitted in the form prescribed by the department.

2. 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 the request for the revision, showing the status and extent of all oil shale operations on the existing permit.

3. The permittee shall provide evidence of any additional bond which the department might require.

4. The permittee shall provide public notice as required under Section 5 of this regulation.

(b) The revision shall be granted provided that:

1. The permittee is in compliance with the terms and conditions of the existing permit.

2. The present oil shale mining and reclamation operation is in compliance with all applicable statutes and regulations.

(c) The permit for the revision may contain conditions necessary to ensure compliance with all applicable statutes and regulations.

(4) Application for a revision to increase the area under permit. Upon application by the operator, the department

may amend a valid existing permit so as to increase 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.

(a) Application. The permittee shall file an application in the same form and with the same content as required for an original application under this regulation.

(b) Fees. The application shall be accompanied by a cashier's check or money order payable to the Kentucky State Treasurer in the amount of $500, plus fifty dollars ($50) for each acre or fraction thereof of the increased area. No application for a revision will be processed unless such fees have been paid.

(c) The operator shall file with the department a supplemental bond in an amount to be determined as provided under 405 KAR 30:040 for each acre or fraction of an acre of the increased area.

(5) Notice and hearing. (a) The department shall notify the applicant and any person who requests such notification, in writing, of its decision to approve or disapprove the application. If the application is disapproved, the notice to the applicant shall include a statement of the reason for disapproval.

(b) Any person with an interest which is or may be adversely affected by a decision of the department pursuant to paragraph (1) of this section shall have the opportunity for administrative and judicial review.

Section 12. Permit Renewals. (1) Any valid permit issued pursuant to KRS 350.600 and the regulations promulgated pursuant thereto shall carry with it the right of successive renewal upon expiration of the term of the permit. Successive renewal shall be available only for those areas specifically within the boundaries of the existing permit.

(2) Any permit renewal shall be for a term not to exceed the period of the original permit.

(3) An application for renewal of a permit shall be filed with the department at least sixty (60) days before the expiration date of the permit.

(4) If an application for renewal of a valid existing permit includes a proposal to extend the 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 a new application pursuant to KRS 350.600 and the regulations promulgated pursuant thereto, and a new and original application shall be required for such areas.

(5) The permit renewal shall be issued 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 prescribed by the department.

(b) The operator shall submit 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 oil shale operations on the existing permit.

(c) The permittee is in compliance with the terms and conditions of the existing permit.

(d) The present oil shale operation is in compliance with all applicable statutes and regulations.

(e) The permittee shall provide evidence of any additional bond which the department might require.

(f) The permittee shall provide public notice as provided for under Section 5 of this regulation.

(6) Notice and hearing. (a) The department shall notify the applicant and any person who requests such notification, in writing, of its decision to approve or disapprove the application. If the application is disapproved, the notice to the applicant shall include a statement of the reason for disapproval.

(b) Any person with an interest which is or may be adversely affected by a decision of the department pursuant to this section shall have the opportunity for administrative and judicial review.

Section 13. Criteria for Permit Approval and Denial. No application for a permit and no oil shale operation shall be approved or allowed, unless the application affirmatively demonstrates and the department determines on the basis of information set forth in the application, and other available information as necessary, that:

(1) The permit application is accurate, complete and that all requirements of KRS Chapters 151, 224, and 350 and the regulations promulgated pursuant thereto have been complied with.

(2) The oil shale operations proposed can be carried out under the method of operation contained in the application in a manner that will satisfy all requirements of KRS Chapters 151, 224, and 350, and the regulations promulgated pursuant thereto.

(3) The oil shale operations proposed have been designed to minimize adverse effects to the hydrologic balance.

(4) The proposed operation will not constitute a hazard to, or do physical damage to life, to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, other public property or to members of the public, their real and personal property. All necessary measures shall be included in the method of operation in order to eliminate such hazard or damage. If it is not technologically feasible to eliminate such hazard or damage by adopting specifications in the method of operation, then that part of the operation which constitutes the cause of the hazard or damage shall be deleted from the application.

(5) The proposed operation will not adversely affect fragile lands, natural hazard lands, a wild river established pursuant to KRS Chapter 146, or the continued existence of an endangered or threatened species listed pursuant to Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533), or result in the destruction or adverse modifications of the habitat of such a species.

(6) The applicant has with respect to prime farmland obtained either a negative determination or satisfied the requirements of Section 6(6) of this regulation and 405 KAR 30:280.

(7) The applicant has demonstrated the environmental impacts of the proposed operation as required by 405 KAR 30:020, Section 6(1). If the applicant cannot demonstrate to the satisfaction of the department the extent and magnitude of the environmental impacts of the proposed operation then the limitations of 405 KAR 30:020, Section 6(2) shall apply.

(8) The proposed operation will not be inconsistent with other oil shale operations anticipated to be performed in areas adjacent to the proposed permit area.

(9) The proposed permit area is:

(a) Not included within an area designated unsuitable for oil shale operations under 405 KAR 30:190 and 405 KAR 30:200;

(b) Not included within an area under study for designation as unsuitable for oil shale operations in an administrative proceeding begun under 405 KAR 30:190 and 405 KAR 30:200;

(c) Not included within the boundaries of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)), and the National Recreation Areas designated by Act of Congress;

(d) Not included within 300 feet, measured horizontally, of any public park, public building, school, church, community or institutional building;

(e) Not included within 100 feet, measured horizontally, of a cemetery;

(f) Not within 100 feet, measured horizontally, of the outside right-of-way line of any public road, except where mine access roads or haulage roads join such right-of-way. The department may permit such roads to be relocated or, in the area affected, to lie within 100 feet of such road, if the applicant has obtained necessary approval from the governmental authority with jurisdiction over the public road and if after public notice and opportunity for public hearing a written finding is made by the department that the interest of the public and the landowner affected thereby will be protected. The public notice required shall be published in the counties of the affected area in the newspaper(s) of largest bona fide circulation according to the definition in KRS Chapter 424;

(g) Not within 300 feet, measured horizontally, of an occupied dwelling unless the applicant submits with the permit application a written waiver from the owner of the dwelling consenting to such an operation within a closer distance of the dwelling specified in the waiver. The waiver must be knowingly and intelligently given and be separate from a lease or deed unless the lease or deed contains an explicit waiver; and

(h) Not within 100 feet of an intermittent or perennial stream unless the department specifically authorizes operations at a closer distance to, or through, the stream. Such authorization shall not be given unless the applicant demonstrates to the satisfaction of the department that such authorization is environmentally sound and that all other applicable laws and regulations have been complied with.

Section 14. Denial of Permit for Past Violations. (1) An operator or person whose permit has been revoked or suspended 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 with respect to all permits issued him.

(2) An operator or person who has forfeited any bond shall not 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.

(3) If the applicant, operator, any subcontractor of the applicant, or any person acting on behalf of the applicant, has either conducted activities with a demonstrated pattern of willful violations of KRS Chapter 350 or has repeatedly been in non-compliance of KRS Chapter 350, then the application should be denied; provided nothing contained herein shall be construed as to relieve a permittee of responsibility with respect to any permit issued to him.

(4) If the department determines that any activity regulated pursuant to KRS Chapter 350 which is owned or controlled by the applicant is currently in violation of any environmental law or regulation of the Commonwealth, then the department shall require the applicant, before the issuance of the permit, to either:

(a) Submit proof which is satisfactory to the department that the violation:

1. Has been corrected, or
2. Is in the process of being corrected in good faith; or

(b) Establish to the satisfaction of the department that the applicant has filed and is presently pursuing a good faith administrative or judicial appeal to contest the validity of the violation.

(5) If the applicant submits the proof specified in either subparagraph 2 of subsection (4)(a) or subsection (4)(b) of this section, then the department may issue the permit with an appropriate condition that either the reclamation work be continued in good faith until completion or that, if the applicant loses his action contesting the violation, such violation be corrected within a specified time. Failure to comply with any conditions shall be grounds for revocation of the permit.

(6) If the applicant disagrees with the department's determination under this section then the applicant has the right to request an administrative hearing pursuant to KRS 224.081(2).

JACKIE SWIGART, Secretary

ADOPTED: June 30, 1981

RECEIVED BY LRC: June 30, 1981 at 4:15 p.m.

PUBLIC HEARING: Public hearings scheduled for 405 KAR 30:010 through 405 KAR 30:410 are listed on page 41 of this *Register.*

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

405 KAR 30:140. Written approval required for transfer of permit; successor in interest.

RELATES TO: KRS 350.600

PURSUANT TO: KRS 13.082, 224.033, 350.028, 350.050, 350.600

NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation sets forth criteria for transfer for succession of permits.

Section 1. No Transfer or Succession Without Prior Written Approval. (1) No permit issued pursuant to this chapter shall be transferred by sale, assignment, lease, or otherwise except upon the prior written approval of the department. There shall be no succession on the permitted area without the prior written approval of the department. The initial permittee must notify the department in writing of any proposed succession, sale, assignment, lease or other transfer. The department may release the first operator from reclamation responsibility under this chapter as to that particular operation; provided, however, there shall be no release until the successor operator has

been issued a permit and has otherwise complied with the requirements of this chapter, and, further provided, that the successor immediately assumes as a part of his obligation under this chapter all liability for the reclamation of the area of land affected by the former permitted operation.

(2) If the department has given its prior written approval to the transfer, a successor in interest to a permittee who applies for a new permit within thirty (30) days of succeeding to such interest, and who obtains immediate bond coverage at least equivalent to the amount of the bond of the original permittee, may continue oil shale operations according to the approved permit plan of the original permittee until such successor's application is granted or denied. The bond coverage provided by the successor in interest must take effect immediately upon the commencement of operations by the successor.

JACKIE SWIGART, Secretary
ADOPTED: June 30, 1981
RECEIVED BY LRC: June 30, 1981 at 4:15 p.m.
PUBLIC HEARING: Public hearings scheduled for 405 KAR 30:010 through 405 KAR 30:410 are listed on page 41 of this *Register*.

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

405 KAR 30:150. Oil shale records open to public inspection; confidential nature of certain data.

RELATES TO: KRS 61.870 to 61.884, 350.600
PURSUANT TO: KRS 13.082, 61.870 to 61.884, 224.033, 224.035, 224.036, 350.028, 350.050, 350.600
NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation sets forth records open to public inspection and methods for determining the confidential nature of certain data.

Section 1. Designation of Records. (1) Any record or other information furnished to or obtained by the department relating to the prospecting, exploration, testing, development, mining, processing and reclamation of oil shale operations shall be open to reasonable public inspection except for any record or information which constitutes a trade secret or confidental business information and is designated as such by the department upon a satisfactory showing by the owner of such record.

Section 2. Access to Public Records. (1) Upon written application to the department, any person may, after adequately identifying the records, inspect and make abstracts and memoranda of the contents of any public record except those designated to be a trade secret or confidential business information. Copies of the proper written material shall be furnished to any person requesting them upon payment of a fee; copies of photographs, maps and other nonwritten material and records stored in the computer files or libraries if not of a confidential nature or a trade secret shall be furnished to any person requesting them upon payment of a fee equal to the actual cost to the department of producing the copies. The fee shall be collected before the copies are handed or sent to the person requesting them.

(2) The inspection of public records of the department shall in all cases be made in the presence of an employee of the department on departmental premises during the usual office hours.

Section 3. Procedure for Designation that a Record Constitutes a Trade Secret or Confidential Business Information. (1) Any owner of records furnished to or obtained by the department may assert a business confidentiality claim or any other claim applicable under KRS 61.870 et seq. Allegedly confidential portions or documents should be clearly identified by the owner and may be submitted separately to facilitate identification and handling. All assertions of a claim of confidentiality shall be made in writing to the appropriate bureau commissioner.

(2) No record or information designated by the owner to be either a trade secret or confidential business information shall be released to the public, to the federal government or to any other agency, department or officer of the Commonwealth without providing the owner fifteen (15) days written notice of the proposed departmental action.

Section 4. Departmental Reports, Analyses or Summaries. (1) Nothing herein shall be construed to prevent the use of records or information by the department in compiling or publishing reports, analyses or summaries relating to general conditions in the environment, nor shall anything herein prevent the use of any record or other information for the purposes of administration or enforcement of any federal, state or local law. No such report, analyses, summary or use shall directly or indirectly publicly reveal information otherwise confidential under this section.

JACKIE SWIGART, Secretary
ADOPTED: June 30, 1981
RECEIVED BY LRC: June 30, 1981 at 4:15 p.m.
PUBLIC HEARING: Public hearings scheduled for 405 KAR 30:010 through 405 KAR 30:410 are listed on page 41 of this *Register*.

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

405 KAR 30:160. Data requirements.

RELATES TO: KRS 350.600
PURSUANT TO: KRS 13.082, 151.125, 224.033, 350.028, 350.050, 350.600
NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation sets forth various data collection requirements.

Section 1. General. This regulation applies to any person who engages in an oil shale operation. The extent and duration of data collection will be determined by the department. Such determination will be made based on the proposed activity by the applicant and its potential for adverse environmental impacts on the area to be affected by such activity.

Section 2. Baseline and Background Data Requirements. (1) Any permit applicant shall submit with the application as determined by the department data collected on the following environmental parameters: air quality and meteorology, water quality, water quantity, aquatic flora and fauna, terrestrial flora and fauna, and historical, geological, pedological, and archaeological features.

(2) In the design and operation of the baseline data collection and monitoring programs, the permittee shall strive to collect data for the greatest period of time practicable as approved by the department with emphasis on acquisition of quality data. The minimum period of data collection shall be one (1) year. The permittee shall establish and implement a quality assurance program approved by the department to assure high quality data collection. This quality assurance program shall include but not be limited to: quality control by standard reference materials such as those available through the National Bureau of Standards; data validation through established criteria of acceptability; method and frequency of calibration and maintenance; and testing programs to identify and quantify data anomalies.

(a) Air quality and meteorology monitoring by the applicant will include a network of air sampling stations capable of repeated measurements of physical and chemical parameters including, but not limited to, windspeed and direction, minimum, maximum, and mean air temperature, humidity, precipitation, "pH" of precipitation, and concentrations of the following: SO_2, NO_x, CO, O_3, Pb, H_2S, Hg, F, total residual sulfur and total suspended particulates. The number and location of sampling sites shall be recommended by the applicant and approved by the department. Monitoring stations should be permanent sites. Temporary or mobile stations may be used if approved by the department.

(b) To assist in the identification of pollutants to be monitored under the permittee's monitoring program, the permittee shall submit to the department a detailed description of emissions anticipated during the development of the proposed site. The permittee shall also monitor source emissions at locations approved by the department.

(3) Surface water monitoring by the applicant shall include monitoring sites established on major streams, upstream and downstream from anticipated sources of pollution including adjacent impacted tributaries. Seasonal sampling (winter, spring, summer, and fall) is required with a minimum of six (6) samples taken in each affected perennial stream per year. A minimum of two (2) samples shall be taken during high flow and a minimum of two (2) samples shall be taken during low flow. Sampling for metals, organic compounds, and water quality assessment shall be performed during low flow periods. Sampling of intermittent streams shall be during the maximum flow regime. The sampling parameters for intermittent streams shall be recommended by the applicant and approved by the department. All sampling shall be performed by a qualified agency and the analyses performed by a qualified laboratory. The number and location of sampling sites shall be recommended by the applicant and approved by the department.

(4) Water sampling parameters shall include, but not be limited to, the following:

(a) Physical parameters monitored will include temperature, conductivity, alkalinity, non-carbonate hardness, pH, dissolved oxygen (DO) and total suspended solids.

(b) Chemical parameters will include sulfates, chlorides, silica, and metals. The metals will include iron, manganese and the following priority pollutants: antimony, arsenic, cadmium, lead, mercury, nickel, selenium, silver, thallium and zinc.

(c) Organic parameters will include the following priority pollutants: acenaphtene, acrolein, benzene, benzidine, beryllium, carbon tetrachloride, chlorinated benzenes, chlorinated ethenes, chloroalkyl ethers, chloronated naphthalene, chloronated phenols, chloroform, 2-chlorophenol, dichlorobenzenes, dichlorobenzidine, dichloroethylenes, 2, 4-dichlorophenol, dichloropopanes, 2, 4-dimethylphenol, dinitrotoluene, diphenylhydrazine, ethylbenzene, fluoranthene, haloethers, halomethanes, isophorone, naphthalene, nitrobenzene, nitrophenols, nitrosamines, pentachlorophenol, phenol, phthalate esters, polynuclear aromatic hydrocarbons, tetrachloroethylene, toluene.

(d) Biological parameters will include biological oxygen demand (BOD), chemical oxygen demand (COD), and total organic carbon (TOC).

(e) Radiological parameters will include gross alpha (once in high flow and once in low flow) and further testing as prescribed by the Department for Natural Resources and Environmental Protection if radioactivity is found.

(f) All chemicals and their by-products that will be involved in processing the shale will be sampled for seasonally in winter, spring, summer and fall including two (2) samples in each flow regime.

(5) Ground water will be monitored for the same parameters as surface water with the exceptions of biological oxygen demand (BOD), chemical oxygen demand (COD) and dissolved oxygen (DO). Sampling will be performed on a biennial basis during periods of surface high flow and low flow regimes and accomplished by using test wells whose number and location will be determined by the site plan. The wells will be placed after the submission of the site plan and prior to the start-up of the operation.

(6) Water quantity will be assessed during minimum, maximum, and average discharge conditions to identify critical low flow and peak discharge rates of streams to identify seasonal variations.

(7) Aquatic flora and fauna will be sampled quarterly at a minimum of five (5) stations. These stations will include at least one (1) above the point source, one (1) at the point source, at least one (1) in the same stream below the point source and one (1) in the next order higher stream below the point source. The location of these stations shall be acceptable to the Department for Natural Resources and Environmental Protection.

(a) Invertebrates will be sampled for qualitatively using a minimum of three (3) surber samples at a riffle at each station. If no riffles exist in the stream, then the pool at each station should be sampled by dredge.

(b) Aquatic vertebrates will be qualitatively sampled for at a pool and riffle at each station using small mesh minnow seines and portable electroshockers.

(c) Aquatic macroflora will be qualitatively sampled along the stream between the upstream and downstream stations.

(d) Sampling and identification will be performed by qualified personnel acceptable to the Department for

Natural Resources and Environmental Protection. The specimens will be identified at the collection site if possible and returned to place of capture unless record of species existance or further identification is needed whereupon the specimens will be deposited in a university museum or herbarium in the state.

(8) Terrestrial flora and fauna will be qualitatively sampled for species composition.

(a) Plant communities will be sampled to include canopy understory and ground cover. General age characteristics of forest communities will be assessed by either coring (preferably) or measuring the diameter breast high of three (3) of the largest trees and five (5) of the average size trees.

(b) Existing agencies should be utilized to determine if any federally listed, proposed or under review threatened or endangered plant or animal species are known on the proposed permit site or its vicinity and search shall be conducted for any species which could occur there. This search should take place at the peak flowering or activity season for each species which may be involved.

(c) Mammals should be sampled in late spring, summer and fall by randomly selecting three (3) plots per habitat type and trapping for four (4) nights with twenty-five (25) traps regularly placed in each plot. The plots should be selected from a grid based on twenty-five (25) by twenty-five (25) meters. The results should be reported in number of specimens per species per plot per season.

(d) Bird species should be observed in spring, summer, fall and winter for two (2) consecutive days each season. Observation should occur for one (1) hour periods in early morning, midday, and late afternoon or early evening. The results should be reported as number of individuals per species per unit time per season.

(e) Reptiles and amphibians should be searched for in the spring, summer and fall and reported in the same manner as the bird data.

(f) Wetlands, critical habitats and ecological areas which are off site but could be affected by the mining or processing should be identified.

(g) The data should be collected by qualified personnel acceptable to the Department for Natural Resources and Environmental Protection.

(h) All specimens of flora and fauna should be deposited at a university museum or herbarium in the state, in accordance with this regulation.

(9) Historical, geological, pedological, and archaeological data should be gathered from the appropriate agencies. Where insufficient data exists, the department may require the applicant to collect such data. Where no archaeological information exists, a survey or prediction analysis should be done in coordination with the state archaeologist.

Section 3. Technical and Engineering Data Requirements. (1) As determined by the applicant and approved by the department, sampling and monitoring locations used in the collection of baseline data shall be operated by the applicant during the active life of the operation and thereafter as deemed necessary to assess the environmental impacts of the operation.

(2) The department shall have the power to require the applicant to collect any technical or engineering data related to a specific oil shale operation as the department deems necessary to assess the impacts of such activities on the environment and natural resources of the affected area. The parameters to be monitored and the method of monitoring shall be determined on a case-by-case basis.

(3) Drilling and coring activities.

(a) Any person engaged in oil shale drilling or coring activities shall submit to the department records of all core or test holes. The records shall include a log of all strata penetrated and conditions encountered, such as water, gas, unusual conditions; and copies of analyses of all samples analyzed from strata penetrated shall be transmitted to the department as soon as obtained or at such time as specified by the department. All drill holes will be logged under supervision of a competent geologist or engineer. The permittee will furnish to the department a detailed lithologic log of each drill hole and all other in-hole surveys, such as electric logs, gamma ray neutron logs, sonic logs or other logs produced.

(b) Holes drilled for exploration, development, or related purposes may be converted to surveillance wells if approved by the department for the purpose of determining the effect of subsequent operations upon the quantity, quality, or pressure of ground water or gases.

(4) Data and information required in this section shall be subject to the provisions of 405 KAR 30:150 relating to confidentiality.

JACKIE SWIGART, Secretary

ADOPTED: June 30, 1981

RECEIVED BY LRC: June 30, 1981 at 4:15 p.m.

PUBLIC HEARING: Public hearings scheduled for 405 KAR 30:010 through 405 KAR 30:410 are listed on page 41 of this *Register*.

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

404 KAR 30:170. Citizen demands for enforcement.

RELATES TO: KRS 224.091, 350.250, 350.600

PURSUANT TO: KRS 13.082, 224.033, 224.091, 350.028, 350,050, 350.250, 350.600

NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations as to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation pertains to demands by citizens upon the department to enforce the statutes and regulations pertaining to oil shale operations. This regulation also delineates the procedural requirements of such demands.

Section 1. Citizen Demands for Enforcement. Any citizen of this Commonwealth having knowledge that any of the statutes and regulations pertaining to oil shale operations are willfully and deliberately not being enforced may bring such failure to enforce to the attention of the department according to the provisions of this regulation.

Section 2. Procedure. (1) All demands to enforce the law must be in writing, under oath, with facts set forth specifically stating the nature of the failure to enforce the law with sufficient information to identify the statutory provision, regulation, order, or permit condition allegedly violated and the act or omission alleged to constitute a violation.

(2) The demand shall state the name, address and telephone number of the person making the demand.
(3) The demand shall state the name, address and telephone number of legal counsel, if any, of the person making the demand.
(4) The stating of false facts and charges in such affidavit shall constitute perjury and shall subject the affiant to penalties under the law of perjury.
(5) The department shall investigate the allegations made in the demand and respond, in writing, to the person making such demand. The response shall specifically state the results of the investigation and the action, if any, the department has taken or intends to take.

Section 3. Citizen Suits. If the department neglects or refuses for any unreasonable time but in no event longer than sixty (60) days after demand to enforce such provision, any such citizen shall have the right to bring an action of mandamus in the circuit court of the county in which the operation which relates to the alleged lack of enforcement is being conducted. However, such action may be brought immediately after a demand for enforcement when the violation or order complained of constitutes an imminent threat to the health or safety of the complaining citizen or would immediately affect a legal interest of the complaining citizen.

JACKIE SWIGART, Secretary
ADOPTED: June 30, 1981
RECEIVED BY LRC: June 30, 1981 at 4:15 p.m.
PUBLIC HEARING: Public hearings scheduled for 405 KAR 30:010 through 405 KAR 30:410 are listed on page 41 of this *Register*.

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

405 KAR 30:180. Petitions for rulemaking.

RELATES TO: KRS 350.255, 350.600
PURSUANT TO: KRS 13.082, 224.033, 350.028, 350.050, 350.600
NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. Such regulations are to be based on sound scientific and engineering data and are to be reasonably necessary to protect the people and environment of the Commonwealth. This regulation specifies how any person may petition the secretary of the department to initiate rulemaking procedures. The regulation sets forth petition requirements, time limits, and other aspects of the rulemaking petition process.

Section 1. Petitions for Rulemaking. (1) Any person may petition the secretary to initiate a proceeding for the issuance, amendment, or repeal of any regulation promulgated pursuant to KRS Chapter 350. The department will not accept a petition relating to a regulation that is in the process of being promulgated or amended under the normal promulgation procedures of KRS Chapter 13 since the petitioner is provided an opportunity to be heard under those procedures. Similarly, the department will not accept a petition on an emergency regulation where the department is intending to or has initiated the regular promulgation process under KRS Chapter 13.
(2) The person petitioning for a rulemaking shall make his petition in writing and shall set forth the facts, technical justification and law which support the petition. The facts and the technical justification must be sufficient for the department to make a decision as to the merits of the petition within the time required below. Insufficient facts and technical justification shall be grounds for denial of the petition. The petition shall set forth the basis in law for the proposed rulemaking and shall justify the proposal as being consistent with the department's statutory duties.
(3) Upon submission of a petition, the petitioner shall publish notice of submission of the petition in newspapers pursuant to KRS Chapter 424. The notice shall briefly identify the subject of the petition, state that copies are on file for public review at the Frankfort office of the department, and state that any person may within fifteen (15) days of publication of the notice request a public hearing on the petition by written request to the department. The notice shall also state that anyone requesting a hearing will be informed by letter from the department of the time and place of the hearing.
(4) A petition will not be deemed complete until the petitioner submits to the department a copy of the published notice and proof of publication of the notice in the form of an affidavit from the publishers.
(5) The department will hold the requested public hearing within thirty (30) days of the filing of the complete petition. The hearing shall be legislative in nature.
(6) The secretary shall render a final order granting or denying the petition within thirty (30) days after the hearing or within sixty (60) days of the filing of the complete petition if no hearing was requested. The final order shall grant or deny the petition on the grounds that there is or is not a reasonable basis for the petitioned rule change or that such change is required or prohibited by law. The order shall be in writing and shall explicitly set forth the reasons for the decision.
(7) If a petition is granted proposing the issuance, amendment or repeal of regulations which were the subject of the petition, the secretary shall initiate a rulemaking proceeding pursuant to KRS Chapter 13 within thirty (30) days of the final order granting the petition.
(8) Any participant in the petition proceedings may seek review of an order of the secretary denying all or any portion of the action requested in a petition in the Franklin County Circuit Court.

Section 2. Frivolous Petitions. Nothing in this regulation shall require the department to process frivolous petitions. Should the department find that the petition is frivolous it shall notify the petitioner in writing and specify the reasons for the determination.

JACKIE SWIGART, Secretary
ADOPTED: June 30, 1981
RECEIVED BY LRC: June 30, 1981 at 4:15 p.m.
PUBLIC HEARING: Public hearings scheduled for 405 KAR 30:010 through 405 KAR 30:410 are listed on page 41 of this *Register*.

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

405 KAR 30:190. Process and criteria for designating lands unsuitable for oil shale operations.

RELATES TO: KRS 350.600
PURSUANT TO: KRS 13.082, 146.270, 151.125, 224.033, 350.028, 350.050, 350.600
NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations as to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation sets forth procedures and criteria for reviewing petitions seeking designations of lands as unsuitable for all or certain types of oil shale operations and for the termination of such designations.

Section 1. General. The following procedures and criteria establish a process enabling objective decisions to be made on which land areas, if any, are unsuitable for all or certain types of oil shale operations. These decisions shall be based on the best available, scientifically sound data and other relevant information.

Section 2. Lands Exempt From Designation. Petitions for designating lands as unsuitable for all or certain oil shale operations will not be considered for lands covered by a permit issued under KRS Chapter 350 or a permit application for which the public comment period has closed according to Section 3(5).

Section 3. Initial Processing of Petitions. (1) Within thirty (30) days of the receipt of a petition to designate or terminate, the department shall notify the petitioner by certified mail whether or not the petition is complete.

(2) If the department determines that the petition is incomplete, the department shall so notify the petitioner with a written statement of the reasons for the determination and the categories of information needed to make the petition complete.

(3) The department shall determine whether any identified oil shale resources exist in the area described in the petition. Should the department find that there are not identified oil shale resources in that area, the department shall so notify the petitioner.

(4) When considering a petition for an area which was previously and unsuccessfully proposed for designation, the department shall determine if the new petition presents new and substantial allegations of facts and supporting evidence. If the petition does not contain new and substantial allegations of facts, the department shall so notify the petitioner with a statement of its findings and a reference to the record of the previous designation proceedings.

(5) Petitions received after the public comment period on a permit application relating to the same area shall not prevent the department from issuing a decision on the permit application. The department shall notify the petitioner with a statement of why the department will not consider the petition. For the purposes of this regulation, close of the public comment period shall mean at the close of the period for filing written comments and objections in response to an applicant's advertisement of intent to conduct oil shale operations.

Section 4. Notification and Request for Information. (1) The department shall notify the petitioner of applications for a permit received which proposes to include any area covered by the petition. The department shall also notify permit applicants of petitions received which prepare to designate an area covered by the application as unsuitable for all or certain types of oil shale operations. The department shall begin this notification procedure only after it has determined that the petition is complete and has so notified the petitioner.

(2) Within twenty-one (21) days after the determination that a petition is complete, the department shall notify by newspaper advertisment the general public of the receipt of the petition and request submissions of relevant information. The advertisement shall be placed once a week for two (2) consecutive weeks and shall be published in the newspaper of largest bona fide circulation, according to the definition in KRS Chapter 424 in the county of the area covered by the petition.

(3) A person may intervene at the discretion of the hearing officer in the preceeding by filing:

(a) The intervenor's name, address, and telephone number;

(b) Identification of the intervenor's interest which is or may be adversely affected;

(c) A short statement identifying the petition; and

(d) Allegations of fact and supporting evidence which would tend to establish or dispute the allegations found in the petition.

Section 5. Hearing Requirements. (1) After receipt of a complete petition, the department shall hold a public hearing. If all petitioners and intervenors agree, the hearing need not be held. A verbatim record of the hearing shall be kept.

(2) The department shall give reasonable notice of the date, time, and location of the hearing to the petitioner and all intervenors.

(3) The department shall notify the general public of the date, time, and location of the hearing by placing an advertisement in the newspaper of largest circulation according to the definition in KRS Chapter 424 in the county of the area covered by the petition at least once two (2) weeks prior to the scheduled date of the public hearing. In the event a continuance is necessary, notice of the date and place where the hearing will be held shall be posted at the place and on the date where the original hearing was scheduled.

(4) The department may consolidate in a single hearing, the hearings required for each of several petitions which relate to areas in the same locale.

(5) In the event that all petitioners and intervenors stipulate agreement prior to the hearing, and should the interest of justice be further served, the petition may be withdrawn from consideration.

Section 6. Criteria and Decision. (1) The department shall designate an area as unsuitable for all or certain types of oil shale operations if, upon petition, it determines that such operations cannot be carried out in a manner consistent with all applicable statutes and regulations.

(2) The department may designate an area as unsuitable for all or certain types of oil shale operations if, upon petition, it is determined that the oil shale operations will:

(a) Affect fragile or historic lands in which the oil shale operations could result in significant damage to important historic, cultural, scientific, aesthetic values and natural systems;

(b) Affect renewable resource lands in which the oil shale operations would result in substantial loss or reduction of the long-range availability of water supplies;
(c) Affect renewable resource lands in which the oil shale operations could result in substantial loss or reduction of the long-range productivity of food and fiber products; or
(d) Affect natural hazard lands in which the oil shale operations could substantially endanger life and property.
(3) Prior to designating any land areas as unsuitable for oil shale operations, the department shall prepare a detailed statement, using existing and available information, on the potential oil shale resources of the area, the effect of the action on demand for, and supply of, Kentucky oil shale, and the environmental and economic impacts of designation.
(4) In reaching a decision, the secretary shall use all relevant information including:
(a) Relevant information provided by other governmental agencies; and
(b) Any other relevant information or analysis submitted during the comment period and public hearing.
(5) A final written decision shall be issued by the secretary including a statement of reasons, within sixty (60) days of completion of the public hearing, or, if no public hearing is held, then within twelve (12) months after receipt of the complete petition. The department shall send the decision by certified mail to the petitioner and all intervenors.

Section 7. Map. The department shall maintain a map of areas designated as unsuitable for all or certain types of oil shale operations.

JACKIE SWIGART, Secretary
ADOPTED: June 30, 1981
RECEIVED BY LRC: June 30, 1981 at 4:15 p.m.
PUBLIC HEARING: Public hearings scheduled for 405 KAR 30:010 through 405 KAR 30:410 are listed on page 41 of this *Register.*

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

405 KAR 30:200. Petition requirements to designate lands unsuitable.

RELATES TO: KRS 350.600
PURSUANT TO: KRS 13.082, 146.270, 151.125, 224.033, 350.028, 350.050, 350.600
NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation sets forth requirements for petitions seeking designation of certain lands as unsuitable for all or certain types of oil shale operations and for the termination of such designations.

Section 1. General. Under the following procedures, persons may petition the department to designate areas as unsuitable for all or certain types of oil shale operations. Additionally, there are procedures for citizens to petition the department to terminate a designation of unsuitability for mining. Petitions shall be mailed or delivered to: Kentucky Department for Natural Resources and Environmental Protection, Lands Unsuitable Progam, Bureau of Surface Mining Reclamation and Enforcement, Frankfort, Kentucky 40601.

Section 2. Right to Petition. Any person having an interest which is or may be adversely affected has the right to petition the department to have an area designated as unsuitable for all or certain types of oil shale operations, or to have an existing designation terminated.

Section 3. Designation Petition. A petitioner shall file a petition containing all information that the department requires including at least the following:
(1) The petitioner's name, address, and telephone numbers;
(2) Identification of the petitioner's interest which is or may be adversely affected;
(3) USGS seven and one-half (7½) minute topographic map(s) marked to show the location and size of the geographic area covered by the designation petition;
(4) A description of how oil shale operations in the area have or may adversely affect people, land, air, water or other resources; and
(5) Allegations of facts and supporting evidence which would tend to establish that the area is unsuitable for all or certain types of oil shale operations. Allegations of fact and supporting evidence shall address one (1) or more of the following:
(a) Oil shale operations cannot be carried out in a manner consistent with all applicable statutes and regulations.
(b) Oil shale operations will:
1. Affect fragile or historic lands in which oil shale operations would result in significant damage to important historic, cultural, scientific, or aesthetic values or natural systems;
2. Affect lands in which the oil shale operations would result in a substantial loss or reduction in the long-range availability of water supplies;
3. Affect renewable resource lands in which the oil shale operations would result in a substantial loss or reduction in the long-range productivity of food or fiber products; or
4. Affect natural-hazard lands in which oil shale operations would substantially endanger life and property.

Section 4. Termination Petition. A petitioner shall file a petition for termination containing all information that the department requires including at least the following:
(1) The petitioner's name, address, and telephone number;
(2) Identification of the petitioner's interest which is or may be adversely affected by the continuation of the designation of the area as unsuitable for all or certain types of oil shale operations;
(3) USGS seven and one-half (7½) minute topographic map(s) marked to show the location and size of the geographic area covered by the termination petition; and
(4) Allegation of facts with supporting evidence, not contained in the record of the proceeding in which the area was designated as unsuitable for all or certain types of oil shale operations, which would tend to establish the allegations that the designation should be terminated. Allega-

tions of fact and supporting evidence shall address one (1) or more of the following:

(a) Oil shale operations can now be carried out in a manner consistent with all applicable statutes and regulations, if the designation was based on a finding that oil shale operations could not be carried out in a manner consistent with all applicable statutes and regulations.

(b) Oil shale operations:

1. Will no longer result in significant damage to important historic, cultural, scientific, or aesthetic values or natural systems related to fragile or historic lands, if the designation was so based;
2. Will no longer result in substantial loss or reduction of long-range availability of water supplies if the designation was so based;
3. Will no longer result in substantial loss or reduction of long-range productivity of food and fiber products, if the designation was so based;
4. Will no longer affect natural hazard lands in which the oil shale operations would substantially endanger life and property, if the designation was so based.

Section 5. Frivolous Petitions. Nothing in this regulation shall require the department to process frivolous petitions. Should the department find that the petition is frivolous, it shall so notify the petitioner in writing and specify the reasons for the determination.

JACKIE SWIGART, Secretary

ADOPTED: June 30, 1981
RECEIVED BY LRC: June 30, 1981 at 4:15 p.m.
PUBLIC HEARING: Public hearings scheduled for 405 KAR 30:010 through 405 KAR 30:410 are listed on page 41 of this *Register.*

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

405 KAR 30:210. Signs and markers.

RELATES TO: KRS 350.600
PURSUANT TO: KRS 13.082, 224.033, 350.028, 350.050, 350.600
NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation sets forth requirements relating to the use of signs and markers at oil shale extraction and processing 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 metal. 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 oil shale operation 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 metal, 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 vegetative 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 oil shale extraction 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. Both stockpiles and areas where topsoil or other vegetation-supporting material are segregated shall be marked. Each soil horizon stockpile shall have a separate and appropriately marked sign. 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 along the exterior permit area at each point where the boundary changes bearing. 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.

JACKIE SWIGART, Secretary

ADOPTED: June 30, 1981
RECEIVED BY LRC: June 30, 1981 at 4:15 p.m.
PUBLIC HEARING: Public hearings scheduled for 405 KAR 30:010 through 405 KAR 30:410 are listed on page 41 of this *Register.*

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

405 KAR 30:220. Postmining land use.

RELATES TO: KRS 350.600
PURSUANT TO: KRS 13.082, 224.033, 350.028, 350.050, 350.600
NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation sets forth requirements for restoring land use capability after completion of mining activities, and specific criteria for approval of postmining land uses which differ from the premining land use.

Section 1. General. Prior to the final release of performance bond liability for affected areas, the areas shall be restored in a timely manner:
(1) To conditions capable of supporting the uses which the areas were capable of supporting before any mining; or
(2) To conditions capable of supporting higher or better alternative uses of which there is reasonable likelihood, as approved by the department under Section 5.

Section 2. Land Use Categories. Land use is categorized as follows and shall carry the meaning as defined in 405 KAR 30:010:
(1) Cropland;
(2) Developed water resources land;
(3) Fish and wildlife habitat;
(4) Forest land;
(5) Grazing land;
(6) Industrial/commercial land;
(7) Pastureland/hayland;
(8) Recreation land;
(9) Residential land; or
(10) Undeveloped land.

Section 3. Determining Minimum Acceptable Postmining Land Use Capability for Lands to be Restored to the Premining Land Use. (1) Unmined lands. On lands which have not been previously mined and have received proper management, the postmining land use capability shall equal or exceed the premining capability of the land to support the actual premining uses and a variety of other feasible uses.
(2) Previously mined lands. On lands which have been previously mined, the postmining land use capability shall equal or exceed the capability of the land prior to any mining to support the actual uses and a variety of other feasible uses, except that allowances shall be made for any irreparable damages to the land which have resulted from the previous mining.
(3) Improperly managed lands. On lands which have received improper management as compared to similar lands in surrounding areas, the postmining land use capability shall equal or exceed the capability of the land under proper levels of management to support the actual premining uses or a variety of other feasible uses, except that allowances shall be made for any irreparable damages to the land which have resulted from improper management.

Section 4. Historical Land Use. If the premining use of the land was changed within five (5) years of the date of application for a permit to conduct oil shale operations, the historical use of the land as well as the land use immediately preceding the date of application shall be considered in establishing the premining capability of the land to support a variety of feasible uses. The determination of minimum acceptable postmining land use capability shall be based upon the potential utility of the land to support a variety of feasible uses, and not only upon premining land uses which may have resulted from underutilization.

Section 5. Alternative Postmining Land Use. Alternative postmining land uses may be approved by the department after consultation with the landowner or the land management agency having jurisdiction over the lands, if the criteria of this section are met:
(1) (a) The proposed postmining land use is compatible with adjacent land use, and, where applicable, with existing local, state, or federal land use policies and plans.
(b) Authorities with statutory responsibilities for land use policies and plans shall have been provided opportunity to submit written statements of their views to the department within sixty (60) days of notice by the department.
(c) Any required approval of local, state, or federal land management agencies, including any necessary zoning or other changes required for the proposed alternative land use, shall be obtained and remain valid throughout the mining activities.
(2) Specific plans are prepared and submitted to the department which show the feasibility of the postmining land use as related to 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. 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) The applicant has demonstrated that there is reasonable likelihood that any necessary public facilities will be provided.
(4) Specific and feasible plans are submitted to the department which show that financing, attainment and maintenance of the postmining land use are feasible.
(5) Plans for the postmining land use are designed under the supervision of a registered professional engineer, who will ensure that the plans conform to applicable accepted standards for adequate land stability, drainage, vegetative cover, and esthetic design appropriate for the intended 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 pollution or diminution of water availability.
(7) The proposed use will not involve unreasonable delays in reclamation.
(8) Necessary approval of measures to prevent or mitigate adverse effects on fish, wildlife, and related environmental values and threatened or endangered plants is obtained from the department, and appropriate state and federal fish and wildlife management agencies have been provided a sixty (60) day period in which to review the plan.
(9) Proposals to change premining land uses of 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, are reviewed by the department to ensure that:

(a) The applicant has demonstrated that there is reasonable likelihood that the landowner or land manager will provide sufficient crop management after release of applicable performance bonds under 405 KAR 30:070, in order that the proposed postmining cropland use will remain practical and reasonable;

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

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

JACKIE SWIGART, Secretary

ADOPTED: June 30, 1981

RECEIVED BY LRC: June 30, 1981 at 4:15 p.m.

PUBLIC HEARING: Public hearings scheduled for 405 KAR 30:010 through 405 KAR 30:410 are listed on page 41 of this *Register*.

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

405 KAR 30:230. Air resources protection.

RELATES TO: KRS 350.600

PURSUANT TO: KRS 13.082, 224.033, 350.028, 350.050, 350.600

NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation sets forth requirements for the control and monitoring of air pollution from oil shale operations, with specific measures for the control of fugitive dust.

Section 1. Fugitive Dust Control. Each permittee shall plan and employ fugitive dust control measures as an integral part of an oil shale operation.

Section 2. Control Measures During Mining and Reclamation Operations. The fugitive dust control measures to be used shall include, as necessary, but not be limited to:

(1) Periodic watering of unpaved roads;

(2) Chemical stabilization of unpaved roads with proper application of nontoxic soil cement or dust palliatives;

(3) Paving of roads;

(4) Prompt removal of necessary dust-forming debris from roads and frequent scraping and compaction of unpaved roads to stabilize the road surface;

(5) Revegetating, mulching, or otherwise stabilizing the surface of all areas adjoining roads that are sources of fugitive dust;

(6) Restricting the travel of vehicles on other than established roads;

(7) Minimizing the area of disturbed land;

(8) Prompt revegetation or other stabilization of disturbed lands including disposal sites; and

(9) Planting of special windbreak vegetation at critical points in the permit area.

Section 3. Additional Measures. Where the department determines that application of fugitive dust control measures listed in Section 2 is inadequate, the department may require additional measures and practices as necessary.

Section 4. Each permittee shall comply with all applicable requirements of Title 401, Chapters 50 through 65.

JACKIE SWIGART, Secretary

ADOPTED: June 30, 1981

RECEIVED BY LRC: June 30, 1981 at 4:15 p.m.

PUBLIC HEARING: Public hearings scheduled for 405 KAR 30:010 through 405 KAR 30:410 are listed on page 41 of this *Register*.

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

405 KAR 30:240. Protection of fish, wildlife and related environmental values.

RELATES TO: KRS 350.600

PURSUANT TO: KRS 13.082, 224.033, 350.028, 350.050, 350.600

NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation sets forth specific requirements and measures for the protection of fish, wildlife, and related environmental values and the enhancement of such resources where practicable.

Section 1. Protection of Fish, Wildlife, and Related Environmental Values. (1) Any permittee shall, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the activities on fish, wildlife, and related environmental values, and achieve enhancement of such resources where practicable.

(2) A permittee shall promptly report to the department the presence in the permit area of any critical habitat of a threatened or endangered species listed by the Secretary of the Interior, any plant or animal listed by the Commonwealth of Kentucky as threatened or endangered or any bald or golden eagle, of which that person becomes aware and which was not previously reported to the department by that person.

(3) A permittee shall ensure that the design and construction of electric power lines and other transmission facilities used for or incidental to the oil shale operation on the permit area are in accordance with the guidelines set forth in "Environmental Criteria for Electric Transmission System" (USDI, USDA (1970)), or in alternative guidance manuals approved by the department. Distribution lines shall be designed and constructed in accordance with REA Bulletin 61-10, "Powerline Contacts by Eagles and Other Large Birds," or in alternative guidance manuals approved by the department.

(4) Each permittee shall, to the extent possible using the best technology currently available:

(a) Locate and operate haul and access roads and overland conveyor systems so as to avoid or minimize impacts to important fish and wildlife species or other species protected by state or federal law;

(b) Fence roadways where specified by the department to guide locally important wildlife to roadway underpasses. No new barrier shall be created in known and important wildlife migration routes;

(c) Fence, cover, or use other appropriate methods to exclude wildlife from ponds which contain hazardous concentrations of toxic-forming materials;

(d) Restore, enhance where practicable, or avoid disturbance to habitats of unusually high value for fish and wildlife;

(e) Restore, enhance where practicable, or maintain natural reparian vegetation on the banks of streams, lakes, and other wetland areas;

(f) Afford protection to aquatic communities by avoiding stream channels or restoring stream channels as required in 405 KAR 30:310, Section 2;

(g) Not use persistent pesticides on the area during operations, unless approved by the department;

(h) To the extent possible prevent, control, and suppress fires which are not approved by the department as part of a management plan;

(i) If fish and wildlife habitat is to be a primary or secondary postmining land use, the operator shall in addition to the requirements of 405 KAR 30:400:

1. Select plant species to be used on reclaimed areas, based on the following criteria: their proven nutritional value for fish and wildlife; their uses as cover for fish and wildlife; and their ability to support and enhance fish and wildlife habitat after release of bonds; and

2. Distribute plant groupings to maximize benefit to fish and wildlife. Plants should be grouped and distributed in a manner which optimizes edge effect, cover, and other benefits for fish and wildlife.

(j) Where cropland is to be the alternative postmining land use on lands diverted from a fish and wildlife premining land use, and where appropriate for wildlife and crop management practices, intersperse the fields with trees, hedges, or fence rows throughout the harvested area to break up large blocks of monoculture and to diversify habitat types for birds and other animals. Wetlands shall be preserved or created rather than drained or otherwise permanently abolished; and

(k) Where the primary land use is to be residential, public service, or industrial land use, intersperse reclaimed lands with greenbelts utilizing species of grass, shrubs and trees useful as food and cover for birds and small animals, unless such greenbelts are inconsistent with the approved postmining land use.

JACKIE SWIGART, Secretary

ADOPTED: June 30, 1981

RECEIVED BY LRC: June 30, 1981 at 4:15 p.m.

PUBLIC HEARING: Public hearings scheduled for 405 KAR 30:010 through 405 KAR 30:410 are listed on page 41 of this *Register*.

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

405 KAR 30:250. Use of explosives.

RELATES TO: KRS 350.600

PURSUANT TO: KRS 13.082, 224.033, 350.028, 350.050, 350.600

NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation sets forth the 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; and

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

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

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

Section 4. Public Notice of Blasting Schedule. At least ten (10) days, but not more than twenty (20) days before beginning a blasting program in which explosives that use more than the equivalent of five (5) pounds of TNT are detonated, the permittee shall publish a blasting schedule in a newspaper of general circulation in the locality of the proposed site. Copies of the schedule shall be distributed by mail to local governments and public utilities and to each residence within one-half (½) mile of the blasting sites described in the schedule. The permittee shall republish and redistribute the schedule by mail at least every three (3) months. Blasting schedules shall not be so general as to cover all working hours but shall identify as accurately as possible the location of the blasting sites and the time periods when blasting will occur. The blasting schedules shall contain at a minimum:

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

(2) Dates and time 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. If the change involves only a temporary adjustment of the frequency of blasts, the permittee may use alternate methods to notify the governmental bodies and individuals to whom the original schedule was sent.

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

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

(3) Warning and all-clear signals shall be given which are of different character and are audible within a range of one-half (½) mile from the point of the blast. All persons within the permit area shall be notified of the meaning of the signals through appropriate instructions and signs posted as required by 405 KAR 30:210 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 man-made dwelling or structure located within one-half (½) mile of the permit area.

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

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

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

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

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

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

(3) The maximum peak particle velocity of ground mo-

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

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

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

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

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

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

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

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

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

(1) Name of 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.

JACKIE SWIGART, Secretary

ADOPTED: June 30, 1981

RECEIVED BY LRC: June 30, 1981 at 4:15 p.m.

PUBLIC HEARING: Public hearings scheduled for 405 KAR 30:010 through 405 KAR 30:410 are listed on page 41 of this *Register*.

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

405 KAR 30:260. Access roads, haul roads, overland conveyor systems, pipelines, and other transport facilities.

RELATES TO: KRS 350.600

PURSUANT TO: KRS 13.082, 224.033, 350.028, 350.050, 350.600

NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation sets forth requirements for design, construction, maintenance and reclamation of access roads, haul roads, overland conveyor systems, pipelines, and other transport facilities.

Section 1. General. (1) Access, 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 30:320 shall not apply to drainage from access and haul roads located outside the disturbed area, as defined in 405 KAR 30:320, 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 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 lv:10h (ten (10) percent).

(b) The maximum grade greater than ten (10) percent shall not exceed lv:5h (twenty (20) 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-forming or acid-forming materials 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 this chapter.

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 in order to minimize erosion.

(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 shall be regraded and revegetated consistent with the requirements of 405 KAR 30:390 and 405 KAR 30:400, unless retention of a road is approved as part of a postmining land use under 405 KAR 30:220 as being necessary to support the postmining land use or necessary to adequately control erosion and the necessary maintenance is assured.

Section 6. Overland Conveyor Systems. All overland conveyor systems shall be designed, constructed, and maintained in a manner to control degradation of the air, water, vegetation and other natural resources of the surrounding area. Such protection shall be provided using the best control technology currently available. All such systems shall be completely removed and disposed of and the area reclaimed in accordance with these regulations.

Section 7. Pipelines. All pipelines shall be designed, constructed, and maintained in a manner to minimize effects on the environmental resources of the surrounding area. Such protection shall be provided using the best control technology currently available. All pipelines shall be completely removed and disposed of unless otherwise approved by the department and the area reclaimed in accordance with this chapter.

Section 8. 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.

Section 9. The department may at any time develop standards to achieve the requirements of this regulations.

JACKIE SWIGART, Secretary

ADOPTED: June 30, 1981

RECEIVED BY LRC: June 30, 1981 at 4:15 p.m.

PUBLIC HEARING: Public hearings scheduled for 405 KAR 30:010 through 405 KAR 30:410 are listed on page 41 of this *Register*.

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

405 KAR 30:270. Casing and sealing of drilled holes.

RELATES TO: KRS 350.600

PURSUANT TO: KRS 13.082, 151.125, 224.033, 350.028, 350.050, 350.600

NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation sets forth requirements for temporary and permanent casing, sealing or other management of drill holes, boreholes, wells, or other exposed underground openings.

Section 1. General Requirements. Each exploration hole, other drill hole or borehole, well, or other exposed underground opening shall be cased, sealed, or otherwise managed as approved by the department, as necessary to prevent acid or other toxic drainage from entering ground or surface waters, to minimize disturbance to the prevailing hydrologic balance and to ensure the safety of people, livestock, fish and wildlife, and machinery in the permit area and adjacent area. If these openings are uncovered or exposed by mining activities within the permit area, they shall be permanently closed, unless approved for water monitoring, or otherwise managed in a manner approved by the department. Use of a drilled hole or bore hole or monitoring well as a water well must meet the provisions of Section 4. This section does not apply to holes solely drilled and used for blasting.

Section 2. Temporary. Each exploration hole, other than drill or boreholes, wells and other openings approved by the department used to monitor ground water conditions, shall be temporarily sealed before use and protected during use by barricades, fences, or other protective devices approved by the department. These devices shall be periodically inspected and maintained in good operating condition by the permittee or other person approved by the department.

Section 3. Permanent. When no longer needed for monitoring or other use approved by the department upon a finding of no adverse effects, or unless approved for transfer as a water well under Section 4, each exploration hole, other drilled hole or borehole, well, and other exposed underground opening shall be capped, sealed, backfilled, or otherwise properly managed as required by the department under Section 1. Permanent closure measures shall be designed to prevent access to the workings by people, livestock, fish and wildlife, and machinery and to keep acid or other toxic drainage from affecting ground or surface waters.

Section 4. Transfer of Wells. (1) An exploratory or monitoring well may only be transferred by the permittee for further use as a water well with the prior approval of the department. That person and the surface owner of the land where the well is located shall jointly submit a written request to the department for that approval.

(2) Upon an approved transfer of a well, the transferer shall:

(a) Assume primary liability for damage to persons or property from the well;

(b) Plug the well when necessary, but not later than abandonment of the well; and

(c) Assume primary responsibility for compliance with other requirements of this regulation with respect to the well.

(3) Upon an approved transfer of a well, the transferer shall be secondarily liable for the transferrer's obligations under subsection (2) of this section, until release of the bond or other equivalent guarantee required by 405 KAR 30:070 for the area in which the well is located.

JACKIE SWIGART, Secretary

ADOPTED: June 30, 1981

RECEIVED BY LRC: June 30, 1981 at 4:15 p.m.

PUBLIC HEARING: Public hearings scheduled for 405 KAR 30:010 through 405 KAR 30:410 are listed on page 41 of this *Register*.

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

405 KAR 30:280. Prime farmland.

RELATES TO: KRS 350.600

PURSUANT TO: KRS 13.082, 151.125, 224.033, 350.028, 350.050, 350.600

NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and environment of the Commonwealth. This regulation specifies definition, determination and special requirements for the removal, stockpiling, replacement, and revegetation of prime farmland to assure its productivity for the production of food and fiber.

Section 1. Prime Farmland Definition. The criteria used by the United States Department of Agriculture, Soil Conservation Service for identification of prime farmland published in the Federal Register on August 23, 1977, is the basis of the definition for prime farmland to be used in these regulations. The definition is based on soil characteristics and the terms used are defined in United States Department of Agriculture publications: Soil Taxonomy Agricultural Handbook 436; Soil Survey Manual, Agricultural Handbook 18; Rainfall-Erosion Losses from Cropland, Agricultural Handbook 282. Prime farmland in Kentucky must meet the following criteria:

(1) Soils that have a udic moisture regime and sufficient available water capacity within a depth of forty (40) inches or in the rooting zone (root zone is the part of the soil that is penetrated or can be penetrated by plant roots). If the rooting zone is less than forty (40) inches deep, sufficient available water capacity must have been able to produce the adapted crop varieties seven (7) or more years out of ten (10);

(2) Soils that have a mesic or thermic temperature regime. These are soils that have a mean annual temperature of forty-seven degrees (47°) Fahrenheit or higher but lower than seventy-two degrees (72°) Fahrenheit and the difference between mean summer and mean winter temperature is more that nine degrees (9°) Fahrenheit at a depth of twenty (20 inches or at a lithic or paralithic contact, whichever is shallower;

(3) Soils that have a pH between 4.5 and 8.4 in all horizons within a depth of forty (40) inches or in the rooting zone if the rooting zone is less than forty (40) inches;

(4) Soils that 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 oil seed crops adapted to the area;

(5) Soils that are not flooded frequently during the growing season (less often than once in two (2) years);

(6) Soils that have a product of K factor (erodibility factor) X percent slope of less than two (2);

(7) Soils that have a permeability rate of at least six hundredths (0.06) inches 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 degrees (59°) Fahrenheit; the permeability rate is not a limiting factor if the mean annual soil temperature is fifty-nine degrees (59°) Fahrenheit or higher; and

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

Section 2. Prime Farmland Determination. The applicant shall before making a permit application investigate the proposed permit area to determine whether lands within the area may be prime farmland. Prime farmland shall be identified on the basis of soil surveys and conducted according to standards of the National Cooperative Soil Survey set forth in Soil Taxonomy, Agricultural Handbook 436; and Soil Survey Manual, Agricultural Handbook 18. A soil survey may be conducted by either soil scientists from the United States Department of

Agriculture, Soil Conservation Service or the Kentucky Department for Natural Resources and Environmental Protection, Division of Conservation, who have experience and knowledge in conducting soil surveys in accordance with the standards and procedures of the National Cooperative Soil Survey program.

(1) Soil survey for prime farmland determination shall include the following and any other data deemed necessary by the department:

(a) Location of permit boundaries, flood frequency data, water table, erosion characteristics, permeability and other information needed to make the prime farmland determination in accordance with the prime farmland definition in Section 1;

(b) The map must also delineate the exact location and extent of prime farmland;

(c) A detailed description of each soil mapping unit in the permit area; and

(d) A detailed soil description of the representative soil of each soil mapping unit in the permit area.

(2) Positive prime farmland determination. When a soil survey of the acreage within the proposed permit area contains soil mapping units which have been designated as prime farmlands and the area has been in agricultural use as defined in this regulation, the applicant shall submit an application, in accordance with 405 KAR 30:130, Section 6(6) for such designated land and must meet the requirements of Sections 3 through 9 of this regulation.

(3) Negative prime farmland determination. When a soil survey of the acreage within the proposed permit area contains soil mapping units which have not been designated as prime farmland after review by either the United States Department of Agriculture, Soil Conservation Service or Kentucky Department for Natural Resources and Environmental Protection, Division of Conservation soil scientist, the applicant shall submit with the permit application a request for negative determination. The applicant shall then submit an application, in accordance with 405 KAR 30:130, Section 6(9) for such non-designated prime farmland permits and must meet the requirements of 405 KAR 30:290 and 405 KAR 30:400.

Section 3. Restoration Plan for Prime Farmland Areas. 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 the following and any other data required by the department:

(1) Information contained in the soil survey as required in Section 2;

(2) A description of the original undisturbed soil profile, as determined from the soil survey of the permit area, showing the depth and thickness of each of the soil horizons to be removed, stored, and replaced in accordance with Sections 6, 7, and 8;

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

(4) The proposed method and type of equipment to be used for removal, storage, and replacement of the soil;

(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) Separate small areas of prime farmland located in the permit boundary may be combined and restored as one larger manageable prime farmland area upon the approval of the department. The number of prime farmland acres restored must be at least equal the number of prime farmland acres disturbed.

Section 4. Restoration Plan Approval and Consultation. The department will evaluate each proposed prime farmland mining restoration plan to assure the following:

(1) The applicant 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

(2) Will achieve compliance with the standards of Section 5 of this regulation.

(3) Before any permit is issued for areas that include prime farmlands, the department shall consult with the United States Soil Conservation Service and Kentucky Division of Conservation or other agencies to 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.

Section 5. Special Requirements. Oil shale operations conducted on prime farmland areas shall meet the following requirements:

(1) Soil materials to be used in the reconstruction of the prime farmland soil shall be removed before drilling, blasting, or mining, in accordance with Section 6 and handled in a manner that prevents mixing, compacting, or contaminating these materials with less desirable materials. Where removal of soil materials results in erosion or increased stormwater runoff that may cause air and water pollution, the permittee shall take appropriate action as approved by the department to control erosion or stormwater runoff from exposed overburden.

(2) Soil productivity will be restored to support equivalent or higher levels of yield as equally managed nonmined prime farmland of the same soil type in the surrounding area.

Section 6. Soil Removal. Oil Shale operations on prime farmland shall be conducted to:

(1) Remove separately the entire A horizon, B horizon, C horizon, a combination of B horizon and underlying C horizon, or other favorable soil material which will create a final soil having an equal or greater productive capacity than that which existed prior to mining.

(2) The minimum depth of soil and soil material (A horizon, B horizon, C horizon, a combination of B horizon and underlying C horizon, or other favorable soil materials) to be removed for use in reconstruction of prime farmland soils shall be sufficient to meet the soil replacements standards in Section 8.

Section 7. Soil Stockpiling. If not utilized immediately, the A horizon, B horizon, or other suitable soil materials specified in Section 6 shall be stored separately from each other and from soil. The stockpiles must be placed within the permit area and where they will not be disturbed or exposed to 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 shall be protected. Measures to accomplish this can be either of the following:

(1) An effective cover of nonnoxious, quick-growing annual and perennial plants, seeded or planted during the first normal period after removal for favorable planting conditions; or other methods demonstrated to and approved by the department to provide equal protection.

(2) Stockpiling of separate soil horizons shall also meet the requirements of 405 KAR 30:290, Section 3, with regard to storage of topsoil.

(3) Unless approved by the department, stockpiled soil and other materials shall not be moved until required for redistribution on a regraded area.

Section 8. Soil Replacement. Oil shale operations on prime farmland shall be conducted according to the following:

(1) The minimum depth of soil and soil material to be reconstructed for prime farmland shall be forty-eight (48) inches, or a depth equal to the depth of a subsurface horizon in the natural soil that inhibits root penetration, whichever is shallower. The department shall specify a depth greater than forty-eight (48) inches wherever necessary to restore productive capacity due to favorable soil horizons at greater depths. Soil horizons shall be considered as inhibiting root penetration if their densities, chemical properties, or water supplying capacities restrict or prevent penetration by roots of plants common to the vicinity of the permit area and can be proven to have little or no beneficial effect on soil productive capacity. However, in the case of a fragipan, if it can be shown that destruction of the fragipan material during soil removal proves beneficial and as a result is beneficial to plant growth the material can be required to be restored.

(2) Replace soil material only on land which has first been returned to final grade and scarified according to 405 KAR 30:390, unless site-specific evidence is provided and approved by the department showing that scarification will not enhance the capability of the reconstructed soil to achieve equivalent or higher levels of yield.

(3) Soil replacement starts with those soil horizons in the reverse order in which they were removed and stockpiled. The replacement of each soil horizon or other suitable soil material shall be done in such a manner that avoids excessive compaction.

(a) Replace the C horizon material or other suitable material approved for use as specified in paragraphs (a) and (b) of Section 6(1) to the thickness needed to meet the requirements of subsection (1) of this section.

(b) Replace the B horizon material or other suitable material approved for use as specified in paragraphs (a) and (b) of Section 6(1) to the thickness needed to meet the requirements of subsection (1) of this section.

(c) Replace the A horizon material or other suitable materials approved for use as specified in paragraphs (a) and (b) of Section 6(1) as the final surface soil layer. This surface soil layer shall equal or exceed the thickness of the original soil A horizon.

(4) The replacement of all soil horizons shall be done in a manner which prevents excessive compaction of the soil or reduces the permeability to less than six hundredths (0.06) inches per hour in the upper twenty (20) inches of the reconstructed soil profile.

(5) After the reconstruction of the soil profile is complete the soil shall be protected in such a manner to prevent erosion from wind and water before it is seeded or planted.

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

Section 9. Revegetation. Each permittee who conducts oil shale operations on prime farmland shall meet the following revegetation requirements during reclamation:

(1) Following soil replacement, the permittee shall establish a vegetative cover capable of stabilizing the soil surface with respect to erosion. All vegetation shall be in compliance with the plan approved by the department under Section 3, and carried out in a manner that encourages prompt vegetative cover and recovery of productive capacity. The timing and mulching provisions of 405 KAR 30:400, Sections 3 and 4 shall be met.

(2) The period of liability under the performance bond for prime farmland areas shall be for not less than seven (7) years. The liability period begins at the last time of substantially augmented seeding necessary to ensure successful revegetation.

(a) For the purposes of erosion control and soil reconstruction, during the first two (2) or three (3) growing seasons grasses and legumes will be allowed upon the approval of the department.

(b) If crop comparisons are to be used to demonstrate successful restoration of prime farmland, the remaining four (4) or five (5) years must be used for crops commonly grown, such as corn, soybeans, grain, sorghum, wheat, oats, barley, or other crops on surrounding prime farmland. Crops may be grown in rotation with hay or pasture crops as long as the crop shows equal or higher yields as compared to other rotation crops on surrounding prime farmland.

(c) If a soil survey is to be used to demonstrate successful restoration of prime farmland, the prime farmland area should be maintained in vegetation in accordance with 405 KAR 30:400, until the department has determined if the prime farmland has been restored successfully under subsection (3)(a) of this section.

(3) Success of prime farmland restoration. Soil productivity shall be restored to support equivalent or higher levels of yield as nonmined prime farmland of the same soil type in the surrounding area under equivalent levels of management. Successful restoration of soil productivity shall be demonstrated by either:

(a) A soil survey of the restored permit area. The soil survey must meet the standards of and be conducted by an individual with experience and knowledge of the standards and procedures of the National Cooperative Soil Survey and in accordance with the procedures set forth in United States Department of Agriculture Handbooks 436 (Soil Taxonomy, 1975) and 18 (Soil Survey Manual, 1951). In addition, the department may require other chemical and physical data, laboratory test and information to evaluate soil productivity of the permit area. The department shall make the determination on the success of restoration of prime farmland areas after consultation with United States Soil Conservation Service, Kentucky Division of Conservation, and other appropriate agencies; or

(b) A comparison of actual average annual crop production on the restored area for three (3) consecutive years prior to bond release, with predetermined estimated average annual yields (target yields) of similar crops on nonmined prime farmland of the same soil type in the surrounding area under equivalent levels of management. The department, in consultation with other appropriate agencies, shall develop the predetermined target yields for prime farmland soils for the area, in which crop com-

parison shall be evaluated to determine that the soil productivity has been restored.

JACKIE SWIGART, Secretary
ADOPTED: June 30, 1981
RECEIVED BY LRC: June 30, 1981 at 4:15 p.m.
PUBLIC HEARING: Public hearings scheduled for 405 KAR 30:010 through 405 KAR 30:410 are listed on page 41 of this *Register.*

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

405 KAR 30:290. Topsoil.

RELATES TO: KRS 350.600
PURSUANT TO: KRS 13.082, 224.033, 350.028, 350.050, 350.600
NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and environment of the Commonwealth. This regulation sets forth requirements for the removal, storage and redistribution of topsoil, and requirements for substitution of other materials for topsoil.

Section 1. General. (1) The applicant shall before making a permit application investigate the proposed permit area to determine whether lands within the area may be prime farmland according to 405 KAR 30:280, Section 2.

(2) Before disturbance of an area begins, topsoil and subsoils materials to be saved under Section 2 shall be separately removed and segregated from other material.

(3) After removal, topsoil shall either be immediately redistributed as required under Section 4 or stockpiled pending redistribution as required under Section 3.

(4) For surface areas which are without suitable topsoil, as a result of previous oil shale operations, the department shall approve and/or specify, on a site-specific basis, alternative practices designed to utilize those available materials which are most suitable for supporting successful revegetation. The department requires the application of nutrients and soil amendments as necessary for supporting successful revegetation.

(5) Topsoil handling and restoration plan. The applicant shall submit to the department a plan for the handling and restoration of topsoil material within the proposed permit boundaries. This plan shall be used by the department in judging the technological capability of the applicant to restore topsoil material. The plan shall include the following and any other data required by the department:

(a) Information contained in the soil survey as required in Section 1;

(b) A description of the original undisturbed soil profile, as determined from the soil survey of the permit area, showing the depth and thickness of each of the soil horizons to be removed, stored, and replaced in accordance with Sections 2, 3, and 4;

(c) The location of areas to be used for the separate stockpiling of the soil horizons and plans for soil stabilization during stockpiling;

(d) The proposed method and type of equipment to be used for removal, storage, and replacement of the soil;

(e) Plans for reclaiming 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

(f) Before any permit is issued the department may consult with the United States Soil Conservation Service and Kentucky Division of Conservation or other agencies to 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.

Section 2. Removal. (1) Topsoil shall be removed from areas to be disturbed, after vegetative cover that would interfere with the use of the topsoil is cleared from those areas, but before any drilling, blasting, mining, or other surface disturbance of those areas. The minimum depth of topsoil and subsoil material or topsoil substitute material to be restored on non-prime farmland areas shall be twenty-four (24) inches, in accordance with Section 4.

(2) All topsoil and subsoil material shall be removed in a separate layer from the areas to be disturbed, unless use of substitute or supplemental materials is approved by the department in accordance with subsection (6) of this section. If use of substitute or supplemental materials is approved, all materials to be redistributed shall be removed.

(3) A soil survey providing an inventory of the topsoil on the permit area will assist in determining the type of removal and handling required for the topsoil material.

(4) The A horizon as identified by the soil survey shall be removed as provided in this section and then replaced on disturbed areas as the surface soil layer.

(a) If the A horizon is less than six (6) inches, a six (6) inch layer that includes the A horizon and the necessary subsoil or unconsolidated material immediately below the A horizon as required to meet the twenty-four (24) inch minimum (or all unconsolidated material if the total available is less than six (6) inches and the necessary substitute material to meet the twenty-four (24) inch minimum), shall be removed and the mixture segregated and redistributed as the surface soil layer at a total minimum depth of twenty-four (24) inches.

(b) If the A horizon is more than six (6) inches, all of the A horizon and necessary subsoil shall be removed separately and restored to meet the twenty-four (24) inch minimum depth.

(5) The department shall require that a portion or all of the subsoil (B and C horizons) or other underlying layers demonstrated to have comparable quality for root development be segregated and replaced as necessary to obtain the minimum twenty-four (24) inch requirement or to obtain productivity consistent with the approved postmining land use.

(6) (a) Selected overburden materials or soil amendment may be substituted for or used as a supplement to, topsoil, if the department determines that the substitute material would be equal to or more suitable for sustaining vegetation than is the available topsoil or subsoil and the substitute material is the best available material in the permit area to support revegetation. This determination shall be based on:

1. The results of chemical and physical analyses of overburden and topsoil. These analyses shall include determinations of pH, net acidity or alkalinity, phosphorus, potassium, texture class, and other analyses as required by the department. The department may also require field-site trials, greenhouse tests or other demonstrations by the applicant to establish the feasibility of using these overburden materials.

2. Results of analyses, trials, and tests shall be submitted to the department. Certification of trials and tests shall be made by a laboratory approved by the department, stating that: the proposed substitute material is equal to or more suitable for sustaining the vegetation than is the available topsoil; the substitute material is the best available material to support the vegetation; and the trials and tests were conducted using approved standard testing procedures.

3. Consultation. Before any permit is approved for substitute materials, the department shall consult with the United States Soil Conservation Service and the Kentucky Division of Conservation or other appropriate agencies to provide a review of the proposed substitute material and comment on possible revisions that will result in a more favorable substitute material within the permit area to support revegetation.

(b) Substituted or supplemental overburden material shall be removed, segregated, and replaced in compliance with the requirements for topsoil under this Section.

(7) Where the removal of vegetative material, topsoil, or other materials may result in erosion which may cause air or water pollution:

(a) The size of the area from which topsoil is removed at any one time shall be limited;

(b) The soil horizons or substitute material shall be redistributed during favorable conditions in which temporary or permanent vegetative cover can be established to minimize erosion and protect the physical and chemical properties of the material; and

(c) Such other measures shall be taken as the department may approve or require to control erosion.

Section 3. Storage. (1) Topsoil and other materials removed under Section 2 shall be stockpiled only when it is impractical to promptly redistribute such materials on regraded areas.

(2) Stockpiled materials shall be selectively placed on a stable area within the permit area, not disturbed, and protected from wind and water erosion, unnecessary compaction, and contaminants which lessen the capability of the materials to support vegetation when redistributed.

(a) Protection measures shall be accomplished by:

1. An effective cover of nonnoxious, quick-growing annual and perennial plants, seeded or planted during the first normal period after removal for favorable planting conditions; or

2. Other methods demonstrated to and approved by the department to provide equal protection.

(b) Unless approved by the department, stockpiled topsoil and other materials shall not be moved until required for redistribution on a regraded area.

Section 4. Redistribution. (1) After final grading and before the replacement of topsoil and other materials segregated in accordance with Section 2, regraded land shall be scarified or otherwise treated as required by the department to eliminate slippage surfaces and to promote root penetration. If the permittee shows, through appropriate tests, and the department approves, that no harm will be caused to the topsoil and vegetation, scarification may be conducted after topsoiling.

(2) Topsoil and other materials shall be redistributed in a manner that:

(a) Soil replacement starts with those soil horizons in the reverse order in which they were removed or substitute and overburden materials replaced first with topsoil material last. The minimum depth of material to be redistributed is twenty-four (24) inches, in accordance with Section 2.

(b) Achieves an approximate uniform stable thickness consistent with the approved postmining land uses, contours, and surface water drainage system;

(c) Prevents excess compaction of the topsoil; and

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

Section 5. Nutrients and Soil Amendments. Nutrients and soil amendments in the amounts determined by soils tests shall be applied to the redistributed surface soil layer, so that it supports the approved postmining land use and meets the revegetation requirements of 405 KAR 30:400. All soil tests shall be performed by a qualified laboratory using standard methods approved by the department.

JACKIE SWIGART, Secretary

ADOPTED: June 30, 1981

RECEIVED BY LRC: June 30, 1981 at 4:15 p.m.

PUBLIC HEARING: Public hearings scheduled for 405 KAR 30:010 through 405 KAR 30:410 are listed on page 41 of this *Register.*

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

405 KAR 30:300. Protection of the hydrologic system.

RELATES TO: KRS 350.600

PURSUANT TO: KRS 13.082, 151.125, 224.033, 350.028, 350.050, 350.600

NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation sets forth requirements for minimizing disturbances to the hydrologic system.

Section 1. General. (1) Surface, underground, and in situ oil shale 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 such 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 and disposal 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) All exploration holes, other drill or boreholes, or wells shall be sealed in accordance with the provisions of 405 KAR 30:270 relating to the casing and sealing of drilled holes unless otherwise approved by the department.

(2) Shafts and other openings not covered under subsection (1) of this section shall be sealed or otherwise managed to prevent pollution of surface or ground water and to prevent mixing of ground water of significantly different quality.

(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 uses from an underground or surface source where such supply has been affected by contamination, diminution, or interruption resulting from an oil shale operation by the permittee.

JACKIE SWIGART, Secretary

ADOPTED: June 30, 1981

RECEIVED BY LRC: June 30, 1981 at 4:15 p.m.

PUBLIC HEARING: Public hearings scheduled for 405 KAR 30:010 through 405 KAR 30:410 are listed on page 41 of this *Register*.

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

405 KAR 30:310. Diversion of flows and water withdrawal.

RELATES TO: KRS 350.600

PURSUANT TO: KRS 13.082, 151.125, 224.033, 350.028, 350.050, 350.600

NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and environment of the Commonwealth. This regulation sets forth requirements for design and construction of temporary and permanent diversions of overland flow, shallow ground water flow, ephemeral streams, and intermittent and perennial streams and water withdrawals.

Section 1. Diversions and Conveyance of Overland Flow and Shallow Ground Water Flow, and Ephemeral Streams. Overland flow, including flow through litter, and shallow ground water flow from undisturbed areas, and flow in ephemeral streams, may be diverted away from disturbed areas by means of temporary or permanent diversions, if required or approved by the department as necessary to minimize erosion, to reduce the volume of water to be treated, and to prevent or remove water from contact with acid-forming or toxic-forming materials. The following requirements shall be met for all diversions and for all collection drains that are used to transport water into water treatment facilities and for all diversions of overland and shallow ground water flow and ephemeral streams:

(1) Temporary diversions shall be constructed to pass safely the peak runoff from a precipitation event with a two (?) year recurrence interval, or a larger event as specified by the department.

(2) To protect fills and property and to avoid danger to public health and safety, permanent diversions shall be constructed to pass safely the peak runoff from a precipitation event with a 100-year recurrence interval, or a larger event as specified by the department. Permanent diversions shall be constructed with gently sloping banks that are stabilized by vegetation. Asphalt, concrete, or other similar linings shall be used only when approved by the department to prevent seepage or to provide stability.

(3) Diversions shall be designed, constructed, and maintained in a manner which prevents additional contributions of suspended solids to streamflow and to runoff outside the permit area, to the extent possible using the best technology currently available. Appropriate sediment control measures for these diversions may include, but not be limited to, maintenance of appropriate gradients, channel lining, revegetation, roughness structures, and detention basins.

(4) No diversion shall be located so as to increase the potential for land slides. No diversion shall be constructed on existing land slides, unless approved by the department.

(5) When no longer needed, each temporary diversion shall be removed and the affected land regraded, topsoiled, and revegetated in accordance with 405 KAR 30:290, 405 KAR 30:390, and 405 KAR 30:400.

(6) Diversion design shall incorporate the following:

(a) Channel lining shall be designed using standard engineering practices to pass safely the design velocities.

(b) Freeboard shall be no less than 0.3 feet. Protection shall be provided for transition of flows and for critical areas such as swales and curves. Where the area protected is a critical area as determined by the department, the design freeboard may be increased.

(c) Energy dissipators shall be installed, when necessary, at discharge points, where diversions intersect with natural streams and exit velocity of the diversion ditch flow is greater than that of the receiving stream.

(d) Excess excavated material not necessary for diversion channel geometry or regrading of the channel shall be disposed of in accordance with 405 KAR 30:360.

(e) Topsoil shall be handled in compliance with 405 KAR 30:290.

Section 2. Stream Channel Diversions. (1) Flow from perennial and intermittent streams within the permit area may be diverted, except as provided in 405 KAR 30:380, if the diversions:

(a) Comply with applicable local, state, and federal statutes and regulations;

(b) Pass the design flow (100 year storm) without caus-

ing an increase of more than one (1) foot over existing flood heights; and

(c) Pass the design velocities without causing any significant increase in flow velocities.

(2) When streamflow is allowed to be diverted, the stream channel diversion shall be designed, constructed, and removed, in accordance with the following:

(a) The longitudinal profile of the stream, the channel, and the floodplain shall be designed and constructed to remain stable and to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or to runoff outside the permit area. These contributions shall not be in excess of requirements of state or federal law. Erosion control structures such as channel lining structures, retention basins, and artificial roughness structures shall be used in diversions only when approved by the department as being necessary to control erosion. These structures shall be approved for permanent diversions only where they are stable and will require infrequent maintenance.

(b) The combination of channel, bank, and floodplain configurations shall be adequate to pass safely the peak runoff of a ten (10) year, twenty-four (24) hour precipitation event for temporary diversions, a 100-year, twenty-four (24) hour precipitation event for permanent diversions, with drainage areas less than 200 acres, or larger events specified by the department for drainage areas greater than 200 acres. However, the capacity of the channel itself should be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream of the diversion.

(3) When no longer needed to achieve the purpose for which they were authorized, all temporary stream channel diversions shall be removed and the affected land regraded and revegetated, in accordance with 405 KAR 30:290, 405 KAR 30:390, and 405 KAR 30:400. At the time diversions are removed, downstream water treatment facilities previously protected by the diversion shall be modified or removed to prevent overtopping or failure of the facilities. This requirement shall not relieve the permittee from maintenance of a water treatment facility otherwise required under this Title or the permit.

(4) When permanent diversions are constructed or stream channels restored, after temporary diversions, the permittee shall:

(a) Restore, enhance where practicable, or maintain natural raparian vegetation on the banks of the stream;

(b) Establish or restore the stream to an environmentally acceptable meandering shape and gradient, as determined by the department; and

(c) Establish or restore the stream to a longitudinal profile and cross-section, including aquatic habitats (usually a pattern of riffles, pools, and drops rather than uniform depth) that approximate premining stream channel characteristics.

Section 3. Stream Buffer Zones. (1) No land within 100 feet of a perennial stream or a stream with a biological community determined according to subsection (3) of this section shall be disturbed by oil shale operations unless the department specifically authorizes such activities closer to or through such a stream under the following conditions.

(a) Any temporary or permanent diversion shall comply with all provisions of this regulation and shall be constructed prior to any disturbance of the buffer zone;

(b) That the original stream channel will be restored or relocated in a manner satisfactory to the department; and

(c) During and after the mining, the water quantity and quality from the stream section within 100 feet of the surface mining activities shall not be adversely affected.

(2) The area not to be disturbed shall be designated a buffer zone and marked as specified in 405 KAR 30:210.

(3) A stream with a biological community shall be determined by the existence in the stream at any time of an assemblage of two (2) or more species of arthropods or mulluscan animals which are:

(a) Adapted to flowing water for all or part of their life cycle;

(b) Dependent upon a flowing water habitat;

(c) Reproducing or can reasonably be expected to reproduce in the water body where they are found; and

(d) Longer than two (2) millimeters at some stage of the part of their life cycle spent in the flowing water habitat.

Section 4. Water withdrawals from public water supplies shall comply with requirements set forth in KRS 151.140, KRS 151.150, KRS 151.160, KRS 151.170 and 401 KAR 4:010.

JACKIE SWIGART, Secretary

ADOPTED: June 30, 1981

RECEIVED BY LRC: June 30, 1981 at 4:15 p.m.

PUBLIC HEARING: Public hearings scheduled for 405 KAR 30:010 through 405 KAR 30:410 are listed on page 41 of this *Register*.

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

405 KAR 30:320. Water quality standards, effluent limitations, and monitoring.

RELATES TO: KRS 350.600

PURSUANT TO: KRS 13.082, 224.033, 350.028, 350.050, 350.600

NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation sets forth water quality standards and monitoring requirements.

Section 1. Water Quality Standards. (1) For the purpose of this regulation, disturbed area shall not include those areas in which only diversion ditches or roads are installed and the upstream area is not otherwise disturbed by the oil shale operations. 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 oil shale operations must meet all applicable federal and state laws and regulations and at a minimum in the numerical limitations in Appendix A of this regulation. As sufficient data becomes available, the department may establish effluent limitations for other parameters.

(3) 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 Appendix A of this regulation.

(4) 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, 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 to characterize all discharges from the disturbed area;

(b) The frequency of sampling shall meet the approval of the department;

(c) Provide adequate data to describe the likely daily and seasonal variation in discharges from the disturbed area to the satisfaction of the department;

(d) Provide monitoring at appropriate frequencies to measure normal and abnormal variations in concentrations;

(e) Provide an analytical quality control system including standard methods of analysis as specified in 40 CFR 136; and

(f) Provide a regular report of all measurements and analyses 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 these regulations, 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 approve 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.

Section 3. 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 shall be restored to support the approved postmining land use and to minimize disturbances to the prevailing hydrologic balance to the mined area and in associated offsite areas. The permittee shall be responsible for monitoring according to Section 5 of this regulation to ensure that operations conform to this requirement.

Section 4. 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 5 of this regulation to ensure that operations conform to this requirement.

Section 5. Ground Water 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 oil shale 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 accurately 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 3 and 4 of this regulation.

Appendix A of 405 KAR 30:320

Effluent Limitations, in Milligrams per Liter (mg/l, except for pH)

Effluent characteristics[1]	Maximum allowable[2]	Average of daily values for 30 consecutive discharge days[2]
Iron, total[5]	7.0	3.5
Manganese, total[3]	4.0	2.0
Total suspended solids	70.0	35.0
pH[4]	Within the range 6.0 to 9.0	

1 To be determined according to collection and analytical procedures adopted by Environmental Protection Agency's regulations for wastewater analyses (40 CFR 136).

2 Based on representative sampling.

3 The manganese limitation shall not apply to untreated discharges which are alkaline as defined by the Environmental Protection Agency (40 CFR 434).

4 Where the application of neutralization and sedimentation treatment technology results in inability to comply with the manganese limitations set forth above, 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.

5 Discharges of iron from new sources, as defined under 40 CFR Section 434.11(i), shall be limited to 6.0 mg./l (maximum allowable) and 3.0 mg./l (average of daily values for thirty (30) consecutive discharge days).

JACKIE SWIGART, Secretary
ADOPTED: June 30, 1981
RECEIVED BY LRC: June 30, 1981 at 4:15 p.m.
PUBLIC HEARING: Public hearings scheduled for 405 KAR 30:010 through 405 KAR 30:410 are listed on page 41 of this *Register.*

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

405 KAR 30:330. Sediment control measures.

RELATES TO: KRS 151.250, 350.600
PURSUANT TO: KRS 13.082, 151.125, 224.033, 350.028, 350.050, 350.600
NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. 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 using the best technology currently available. 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 and grading, and timely revegetation;

(b) Consistent with the requirements of this chapter, shaping the backfill material to promote a reduction of the rate and 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) Maximum utilization shall be made of onsite sediment control practices.

(3) 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. 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.

(4) 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 30:290.

(5) All sediment ponds shall be designed by a registered professional engineer and at a minimum shall meet the following:

(a) Sediment ponds shall be designed, constructed, and maintained to prevent short-circuiting.

(b) Sediment ponds shall provide a detention period such that discharges from the pond resulting from the water inflow or runoff entering the pond from a ten (10) year, twenty-four (24) hour precipitation event and lesser events shall meet the effluent limitations of Appendix A of 405 KAR 30:320.

(c) There shall be no outflow through the emergency spillway during the passage through the sedimentation pond of the inflow or runoff resulting from the ten (10) year, twenty-four (24) hour precipitation event or lesser events.

(d) An appropriate combination of principal and emergency spillways shall be provided to safely discharge the runoff from a twenty-five (25) year, twenty-four (24) hour precipitation event, or larger event specified by the department. The elevation of the crest of the emergency spillway shall be a minimum of one (1) foot above the crest of the principal spillway. Emergency spillway grades and allowable velocities shall be approved by the department.

(e) Sediment control structures having an embankment that is more than twenty-five (25) feet in height, as measured from the natural bed of the stream or intercourse of the downstream toe of the embankment to the low point in the top of the embankment or a maximum impounding capacity of fifty (50) acre-feet or more shall be designed, constructed, and maintained in accordance with KRS Chapter 151 and regulations promulgated pursuant thereto.

(f) All sediment control structures shall be designed and constructed to achieve a minimum static safety factor of 1.5 or larger if specified by the department.

(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 30:020 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 permittee shall forward a certified copy of "as built" engineering plans for all dams or structures which meet either of the following criteria to the Department for Natural Resources and Environmental Protection, Division of Water, Frankfort, Kentucky 40601. Such plans shall be provided immediately after construction is completed.

(1) The embankment is twenty-five (25) feet or more in height measured from the natural bed of the stream or watercourse at the downstream toe of the fill to the low point in the top of the embankment; or

(2) The structure has an impounding capacity of fifty (50) acre-feet or more at the lowest point in the top of the embankment.

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

JACKIE SWIGART, Secretary

ADOPTED: June 30, 1981

RECEIVED BY LRC: June 30, 1981 at 4:15 p.m.

PUBLIC HEARING: Public hearings scheduled for 405 KAR 30:010 through 405 KAR 30:410 are listed on page 41 of this *Register*.

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

405 KAR 30:340. Leachate control.

RELATES TO: KRS 350.600

PURSUANT TO: KRS 13.082, 151.125, 224.033, 350.028, 350.050, 350.600

NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation sets forth requirements for leachate control.

Section 1. General. The permittee shall, using the best technology currently available, control the quantity and quality of leachate produced at an oil shale operation.

Section 2. Preventive Measures. The permittee shall control the quantity of leachate by limiting the exposure of leachate-producing materials to contact with water utilizing, but not limited to, the following practices;

(1) Constructing diversion structures around sources of leachate. Such structures shall meet the provisions of 405 KAR 30:310, Section 1(2).

(2) Placing such materials on impermeable surfaces;

(3) Minimizing exposure to precipitation;

(4) Avoiding excessive use of water to cool spent shale, control dust, and achieve optimum compaction;

(5) Protecting disposal areas from water by placing impermeable boundaries around leachate-producing materials; and

(6) Construction of leachate containment structures.

Section 3. Leachate Containment Structures. Where deemed necessary by the department, leachate containment structures shall be constructed below sources of leachate not meeting water quality standards. Such structures shall, at a minimum, meet the following provisions:

(1) Leachate containment structures shall be sized to contain all leachate until such leachate can be treated to meet applicable standards or otherwise disposed of as approved by the department;

(2) Leachate containment structures shall be lined with an impermeable material to prevent seepage;

(3) Leachate containment structures shall be located as close as possible to the source;

(4) Leachate containment structures shall not be used for sediment control unless specifically approved by the department;

(5) Leachate containment structures shall be maintained in a manner approved by the department and retained until leachate meets applicable water quality standards;

(6) Leachate containment areas shall be marked by signs meeting the criteria in 405 KAR 30:210;

(7) Leachate containment areas shall be fenced to prevent entry of livestock, wildlife, and unauthorized persons.

Section 4. The department may approve other criteria upon adequate demonstration by the permittee based on sound engineering principals that the requirements of this regulation are met.

Section 5. All leachate shall be handled, treated, and disposed of in accordance with all applicable federal and state laws and regulations.

Section 6. All areas containing leachate-producing materials shall remain under bond until the leachate being produced meets all applicable water quality standards.

JACKIE SWIGART, Secretary

ADOPTED: June 30, 1981

RECEIVED BY LRC: June 30, 1981 at 4:15 p.m.

PUBLIC HEARING: Public hearings scheduled for 405 KAR 30:010 through 405 KAR 30:410 are listed on page 41 of this *Register*.

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

405 KAR 30:350. Permanent impoundments.

RELATES TO: KRS 151.100, 350.600

PURSUANT TO: KRS 13.082, 151.125, 224.033, 350.028, 350.050, 350.600

NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental

Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation sets forth requirements for permanent water impoundments.

Section 1. General. (1) Permanent impoundments are prohibited unless authorized by the department, upon the basis of the following demonstration:

(a) The quality of the impounded water shall be suitable on a permanent basis for its intended use, and discharge of water from the impoundment shall not degrade the quality of receiving waters to less than the water quality standards established pursuant to applicable state and federal laws.

(b) The level of water shall be sufficiently stable to support the intended use.

(c) Adequate safety and access to the impounded water shall be provided for proposed water users.

(d) Water impoundments shall 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.

(e) The design, construction, and maintenance of dams or hazardous structures shall achieve the minimum design requirements as set forth in 401 KAR 4:030, 401 KAR 4:040 and Division of Water Engineering Memorandum Number 5 entitled "Design Criteria for Dams and Associated Structures." Structures not meeting the size criteria of a dam as defined in KRS 151.100(13) shall be designed, constructed and maintained in accordance with the criteria set forth in the United States Soil Conservation Service, Kentucky Standard and Specification for Pond (378) as a minimum.

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

(g) The impoundment will be suitable for its intended purposes.

(2) Excavations that will impound water during or after the mining operation shall have perimeter slopes that are stable and shall not be steeper than 1v:2h (fifty (50) percent). Where surface runoff enters the impoundment area, the side slope shall be protected against erosion.

(3) Slope protection shall be provided to minimize surface erosion at the site and sediment control measures shall be required where necessary to reduce the sediment leaving the site.

Section 2. Dams and Embankments. (1) All dams and embankments of permanent impoundments, and the surrounding areas and diversion ditches disturbed or created by construction, shall be graded, fertilized, seeded, and mulched to comply with the requirements of 405 KAR 30:400 immediately after the dam or embankment is completed, provided that the active, upstream face of the embankment where water will be impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated to comply with the requirements of 405 KAR 30:390, Section 7 and 405 KAR 30:400.

(2) All dams and embankments meeting the size or other criteria of KRS 151.100(13) shall be routinely inspected by a qualified registered professional engineer, or by someone under the supervision of a qualified registered professional engineer, in accordance with KRS 151.295.

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

(4) All dams and embankments that meet or exceed the size or other criteria of KRS 151.100(13) shall be certified to the department by a qualified registered professional engineer, immediately after construction and annually thereafter, as having been constructed and/or maintained to comply with the requirements of this regulation. All dams and embankments that do not meet the size or other criteria of KRS 151.100(13) shall be certified by a qualified registered professional engineer. Certification reports shall include statements on:

(a) Existing and required monitoring procedures and instrumentation;

(b) The design depth and elevation of any impounded waters at the time of the initial certification report or the average and maximum depths and elevations of any impounded waters over the past year for the annual certification reports;

(c) Existing storage capacity of the dam or embankments; and

(d) Any other aspects of the dam or embankment affecting stability.

(5) Plans for any enlargement, reduction in size, reconstruction, or other modification of dams or impoundments shall be submitted to the department and shall comply with the requirements of this regulation. Except where a modification is required to eliminate an emergency condition constituting a hazard to public health, safety, or the environment, the department shall approve the plans before modification begins.

Section 3. The permittee shall forward a certified copy of "as built" engineering plans for all dams or structures which meet either of the following criteria to the Department for Natural Resources and Environmental Protection, Division of Water, Frankfort, Kentucky 40601. Such plans shall be provided immediately after construction is completed.

(1) The embankment is twenty-four (24) feet or more in height measured from the natural bed of the stream or watercourse at the downstream toe of the fill to the low point in the top of the embankment.

(2) The structure has an impounding capacity of fifty (50) acre-feet or more at the lowest point in the top of the embankment.

JACKIE SWIGART, Secretary

ADOPTED: June 30, 1981

RECEIVED BY LRC: June 30, 1981 at 4:15 p.m.

PUBLIC HEARING: Public hearings scheduled for 405 KAR 30:010 through 405 KAR 30:410 are listed on page 41 of this *Register*.

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

405 KAR 30:360. Disposal of wastes other than excess spoil.

RELATES TO: KRS 350.600
PURSUANT TO: KRS 13.082, 151.125, 224.033, 350.028, 350.050, 350.600
NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation sets forth the requirements for the handling and disposal of wastes other than excess spoil.

Section 1. Acid-Forming and Toxic-Forming Mine Wastes. 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-producing 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 these regulations.

(5) All acid-forming or toxic-forming materials, combustible materials, shale processing waste materials, or other waste materials identified by the department that are exposed, used, or produced during oil shale operations shall be covered with a minimum of four (4) feet of nontoxic and noncombustible material and impermeable liner(s) as required by the department. 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 adequae 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.

Section 2. Other Mining Wastes. (1) Wastes including, but not limited to, grease, lubricants, paints, flammable liquids, garbage, abondoned machinery, lumber and other combustibles generated during oil shale activities shall be placed and stored in a controlled manner in a designated portion of the permit area. Placement and storage shall ensure that leachate and surface runoff do not degrade surface or ground water, that fires are prevented, and that the area remains stable and suitable for reclamation and revegetation compatible with the natural surroundings.

(2) Final disposal of such wastes shall be in a designated disposal site in the permit area or other appropriate disposal areas approved by the department. Disposal sites shall be designed and constructed with appropriate water barriers on the bottom and sides of the designated site. Wastes shall be routinely compacted and covered to prevent combustion and from becoming windborne. When the disposal is completed, a minimum of four (4) feet of nontoxic and noncombustible cover shall be placed over the site, soil material replaced in accordance with 405 KAR 30:290, slopes stabilized in accordance with 405 KAR 30:390, and the revegetation accomplished in accordance with 405 KAR 30:400. Operation of the disposal site shall be conducted in accordance with all local, state, and federal requirements.

Section 3. All processing wastes shall be disposed of in accordance with the requirements set forth in KRS Chapter 224 and regulations promulgated pursuant thereto.

Section 4. The department may require such tests and data as are necessary to determine, to the satisfaction of the department, whether waste materials are hazardous as defined in KRS 224.005. Such wastes as are determined to be hazardous shall be handled and disposed of in a manner consistent with the provisions contained in KRS Chapter 224 and regulations promulgated pursuant thereto.

JACKIE SWIGART, Secretary
ADOPTED: June 30, 1981
RECEIVED BY LRC: June 30, 1981 at 4:15 p.m.
PUBLIC HEARING: Public hearings scheduled for 405 KAR 30:010 through 405 KAR 30:410 are listed on page 41 of this *Register.*

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

405 KAR 30:370. Disposal of excess spoil materials.

RELATES TO: KRS 350.600
PURSUANT TO: KRS 13.082, 151.125, 224.033, 350.028, 350.050, 350.600
NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation sets forth specific requirements for the location of areas used for the disposal of excess spoil materials and the design, construction, and inspection of fill structures composed of such materials.

Section 1. General Requirements. (1) Spoil not disposed in the mine working shall be transported and placed in designated disposal areas within a permit area in a manner approved by the department. The spoil shall be placed in a controlled manner to ensure:

(a) That leachate and surface runoff from the fill will not degrade surface or ground waters or exceed the effluent limitations of 405 KAR 30:320;

(b) Stability of the fill; and

(c) That the land mass designated as the disposal area is suitable for reclamation and revegetation compatible with the natural surroundings.

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

(3) Vegetative and organic materials shall, either progressively or in a single operation, be removed from the disposal area and the topsoil shall be removed, segregated, and stored or replaced under 405 KAR 30:290. If approved by the department, organic material may be used as mulch or may be included in the topsoil to control erosion, promote growth of vegetation, or increase the moisture retention of the soil.

(4) Slope protection shall be provided to minimize surface erosion at the site. Diversion design shall conform with the requirements of 405 KAR 30:310. All disturbed areas, including diversion ditches that are not riprapped, shall be vegetated upon completion of construction.

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

(6) The spoil shall be transported and placed in horizontal lifts 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 ensure a long-term static safety factor of 1.5.

(7) The final configuration of the fill must be suitable for proposed postmining land uses approved in accordance with 405 KAR 30:220, except that no impoundments shall be allowed on the completed fill, and no depressions shall be allowed on the completed fill unless they are determined by the department to have no potential adverse effect on the stability of the fill and to have no potential for interference with the approved postmining land use.

(8) Terraces may be utilized to control erosion and enhance stability.

(9) Where the natural land slope in the disposal area exceeds 1v:2.8h (thirty-six (36) percent), or such lesser slope as may be designated by the department based on local conditions, keyway cuts (excavations to stable bedrock) or rock toe buttresses shall be constructed to stabilize the fill. Where the toe of the spoil rests on a downslope, stability analyses shall be performed to determine the size of rock toe buttresses and keyway cuts.

(10) The fill shall be inspected for stability by a registered engineer or other qualified person under the direct supervision of the responsible registered professional engineer experienced in the construction of earth and rockfill embankments at least monthly throughout construction and during the following critical construction periods: removal of all organic material and topsoil; placement of underdrainage systems; installation of surface drainage systems; placement and compaction of fill materials; and revegetation. The responsible registered professional engineer shall provide to the department a certified report within two (2) weeks after each inspection that the fill has been constructed as specified in the design approved by the department. A copy of the report shall be retained at the minesite.

(11) Oil shale processing wastes and spent shale shall not be disposed of in head-of-hollow or valley fills with excess spoil unless specific approval is granted by the department.

(12) If the disposal area contains springs, natural or manmade water-courses, or wet-weather seeps, an underdrain system consisting of durable rock shall be constructed from the wet areas in a manner that prevents infiltration of the water into the spoil material. The underdrain system shall be protected by an adequate filter and shall be designed and constructed using standard geotechnical engineering methods.

(13) The foundation and abutments of the fill shall be stable under all conditions of construction and operation. Sufficient foundation investigation and laboratory testing of foundation materials shall be performed in order to determine the design requirements for stability of the foundation. Analyses of foundation conditions shall include the effect of underground mine workings, if any, upon the stability of the structure.

Section 2. Valley Fills and Head-of-Hollow Fills. Disposal of excess spoil in valley fills and head-of-hollow fills shall meet all requirements of Section 1 and the additional requirements of this section, except as provided in Sections 3 and 4.

(1) The fill shall be designed to attain a long-term static safety factor of 1.5 based upon data obtained from subsurface exploration, geotechnical testing, foundation design, and accepted engineering analyses.

(2) A subdrainage system for the fill shall be constructed in accordance with the following:

(a) A system of underdrains constructed of durable rock shall meet the requirements of paragraph (d) of this subsection and:

1. Be installed along the natural drainage system;
2. Extend from the toe to the head of the fill; and
3. Contain lateral drains to each area of potential drainage or seepage.

(b) A filter system to ensure the proper functioning of the rock underdrain system shall be designed and constructed using standard geotechnical engineering methods.

(c) 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. Rock used in underdrains shall meet the requirement of paragraph (d) of this subsection. The main underdrain shall be sized so as to function properly under all probable conditions and must meet the approval of the department.

(d) Underdrains shall consist of nondegradable, nonacid or toxic-forming rock such as natural sand and gravel, sandstone, limestone, or other durable rock that will not slake in water and will be free of coal, clay or shale.

(3) Spoil shall be transported and placed in a controlled manner and concurrently compacted as specified by the department, in lifts no greater than four (4) feet. The department may require lifts of less than four (4) feet in order to:

(a) Achieve the densities designed to ensure mass stability;

(b) Prevent mass movement;

(c) Avoid contamination of the rock underdrain or rock core; and

(d) Prevent formation of voids.

(4) Surface water runoff from the area above the fill shall be diverted away from the fill and into stabilized diversion channels designed to pass safely the runoff from a 100-year, twenty-four (24) hour precipitation event or

larger event specified by the department. Surface runoff from the fill surface shall be diverted to stabilized channels off the fill which will safely pass the runoff from a 100-year, twenty-four (24) hour precipitation event. Diversion design shall comply with the requirements of 405 KAR 30:310, Section 1(2).

(5) The tops of the fill and any terrace constructed to stabilize the face shall be graded no steeper than 1v:20h (five (5) percent). The vertical distance between terraces shall not exceed fifty (50) feet.

(6) Drainage shall not be directed over the outslope of the fill.

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

(8) The department may approve other methods of design and construction if demonstrated by the applicant using sound engineering principles that such design and construction meets or exceeds the requirements of this regulation.

JACKIE SWIGART, Secretary

ADOPTED: June 30, 1981

RECEIVED BY LRC: June 30, 1981 at 4:15 p.m.

PUBLIC HEARING: Public hearings scheduled for 405 KAR 30:010 through 405 KAR 30:410 are listed on page 41 of this *Register*.

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

405 KAR 30:380. Spent shale disposal.

RELATES TO: KRS 350.600

PURSUANT TO: KRS 13.082, 151.125, 224.033, 350.028, 350.050, 350.600.

NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation sets forth requirements for the disposal of spent shale.

Section 1. General. Spent shale material shall be transported to and placed in approved disposal areas provided that such transport and placement is conducted in a controlled (engineered) manner approved by the department. Disposal areas shall be designed, constructed, and maintained in a manner so as to not adversely affect water quality and flow, vegetation, fish and wildlife resources; not present hazards to public health and safety; and not result in instability of the disposal area.

Section 2. Data Requirements. The applicant shall provide such chemical, physical, and engineering data on the material to be disposed of as the department may deem necessary to adquately characterize the spent shale material. Such baseline data as are necessary to assess site predisposal conditions consistent with 405 KAR 30:160 relating to data requirements may be required.

Section 3. General Design Requirements. Based on the data obtained pursuant to Section 2 and such other data as the department may require, spent shale disposal areas shall meet at a minimum the following general provisions:

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

(2) The bottom and sides of all spent shale disposal areas shall be lined with an impermeable material to prevent leachate from entering ground or surface waters.

(3) Spent shale shall be placed in layers and compacted to achieve optimum densities and stability as required by the department. Sufficient water may be applied to coat the shale and to achieve proper moisture levels to assure optimum compaction.

(4) Spent shale shall be cooled to a temperature approved by the department before covering.

(5) Spent shale disposal areas shall be covered with an impermeable material of sufficient depth to prevent surface water from entering the spent shale.

(6) A minimum of four (4) feet of nontoxic-forming and nonacid-forming material shall be placed on the impermeable cover. Greater depths may be specified by the department if deemed necessary. This four (4) foot cover does not include the topsoil required in 405 KAR 30:280.

(7) All fills shall be designed and constructed to achieve a minimum static safety factor of 1.5. The department may require a higher safety factor depending on specific site conditions.

(8) Fills shall not be constructed in the 100-year floodplain of any perennial stream. A stream channel may not be changed to circumvent this requirement.

(9) All surface drainage from the undisturbed area above the fill shall be diverted away from the fill by approved structures leading into water courses and shall be constructed in accordance with the provisions of 405 KAR 30:310, relating to permanent diversions.

(10) All fills shall be inspected for stability and design in accordance with the plans approved by the department by a registered engineer or other qualified professional specialist during critical construction periods and at least monthly throughout construction. The registered engineer or other qualified professional specialist shall provide to the department a certified report within two (2) weeks after each inspection that the fill has been constructed as specified in the design approved by the department.

(11) Leachate ponds shall be constructed below all spent shale disposal areas at locations approved by the department. Ponds shall be sized to contain all leachate from spent shale disposal areas. Leachate ponds shall be constructed in accordance with the requirements of 405 KAR 30:340.

(12) Spent shale disposal areas shall meet the topsoil and revegetation requirements in 405 KAR 30:290 and 405 KAR 30:400.

Section 4. Special Design Requirements for Spent Shale Disposal Areas Other than the Mine Workings. (1) All disposal areas shall be within the permit area and they must be approved by the department as suitable for spent shale disposal.

(2) All organic material shall be removed from the disposal area and the topsoil removed and segregated in accordance with the provisions of 405 KAR 30:290 prior to the place of spent shale in the area. Organic material may be used as mulch or included in the topsoil if approved by the department.

(3) Where deemed necessary by the department, a

durable rock underdrain shall be constructed to provide adequate drainage beneath the fill and to ensure stability.

Section 5. Other Disposal Requirements. The department may require other measures to ensure the protection of fish and wildlife, water, vegetation and other environmental resources of the area as well as public health and safety. Should the data and analyses required in Section 2 indicate the spent shale is a hazardous material as defined in KRS 224.005, the handling and disposal of the spent shale shall be in accordance with the provisions of KRS Chapter 224, regulations promulgated pursuant thereto and other applicable federal, state, and local laws.

JACKIE SWIGART, Secretary
ADOPTED: June 30, 1981
RECEIVED BY LRC: June 30, 1981 at 4:15 p.m.
PUBLIC HEARING: Public hearings scheduled for 405 KAR 30:010 through 405 KAR 30:410 are listed on page 41 of this *Register.*

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

405 KAR 30:390. Backfilling and grading.

RELATES TO: KRS 350.600
PURSUANT TO: KRS 13.082, 151.125, 224.033, 350.028, 350.050, 350.600
NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation sets forth requirements relating to the backfilling and grading of areas affected by oil shale operations.

Section 1. Postmining final graded slopes need not be uniform nor does the mined area have to be backfilled to achieve the approximate original contour of the land surface.

Section 2. Wastes may be disposed of in the mined area providing it is demonstrated to the satisfaction of the department by hydrological 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 for public health and safety; and will not cause instability in the backfilled area.

Section 3. All processing wastes shall be handled and disposed of in accordance with the requirements of KRS Chapter 224 and regulations promulgated pursuant thereof and all other applicable state and federal laws and regulations.

Section 4. Covering and Stabilizing. (1) Any acid-forming, toxic-forming combustible materials, or any other mining 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 the minimize adverse effects on plant growth and land uses. These four (4) feet of non-toxic, non-combustible material do not include the topsoil or topsoil substitute material required in 405 KAR 30:290 relating to topsoil and 405 KAR 30:280 covering prime farmland. 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 adversely affect the hydrologic balance. Acid-forming or toxic-forming mining wastes shall not be disposed of with spent shale unless specifically authorized by the department.

(2) Backfilled materials shall be selectively placed and compacted as 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.

(3) Where highwalls are created during mining which contain various geologic zones with substantially different weathering rates, the permittee shall, at a minimum, backfill all zones which are overlain by a formation with a much slower weathering rate.

(4) All backfilling shall be placed and compacted to achieve a minimum static safety factor of 1.5 or higher if deemed necessary by the department based on specific site conditions.

(5) Spent shale shall be disposed of in mined areas in accordance with the provisions in 405 KAR 30:380, Section 3(1) through (12).

Section 5. (1) Where deemed necessary by the department impervious liner(s) will be required in backfill areas to protect water quality, water flow, water quantity, and vegetation, and to prevent hazards to public health and safety.

(2) The department shall approve the type and order in which all materials are backfilled.

Section 6. Grading Along the Contour. All final grading, preparation of overburden before replacement of topsoil or topsoil substitute, and placement of topsoil, in accordance with the provisions of 405 KAR 30:290, 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 7. 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 or topsoil substitute material 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 30:400 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 8. Small Depresssions. If approved by the department, small depressions may be constructed to

minimize erosion, conserve soil moisture, or promote revegetation. The 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 9. Permanent Impoundments. If approved in the postmining land use plan, permanent impoundments may be retained on mined and reclaimed areas. No impoundments shall be constructed on top of areas in which mining and processing waste materials and spent shale are deposited. Impoundments shall not be used to meet the requirements of Section 4 of this regulation with regard to covering of acid-forming and toxic-forming materials, spent shale or other waste materials.

JACKIE SWIGART, Secretary
ADOPTED: June 30, 1981
RECEIVED BY LRC: June 30, 1981 at 4:15 p.m.
PUBLIC HEARING: Public hearings scheduled for 405 KAR 30:010 through 405 KAR 30:410 are listed on page 41 of this *Register*.

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

405 KAR 30:400. Revegetation.

RELATES TO: KRS 350.600
PURSUANT TO: KRS 13.082, 224.033, 350.028, 350.050, 350.600
NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation sets forth requirements for revegetation of areas affected by oil shale operations, including requirements for temporary and permanent vegetative cover, use of introduced species, timing of revegetation, mulching and other soil stablilizing practices, standards for measuring revegetation success, and reporting requirements.

Section 1. General Requirements. (1) Each permittee shall establish on all affected land a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the region or species that supports the approved postmining land use. For areas designated as prime farmland, the requirements of 405 KAR 30:280 shall apply.

(2) All revegetation shall be in compliance with the plans submitted under 405 KAR 30:130, as approved by the department and carried out in a manner that encourages a prompt vegetative cover and recovery of productivity levels compatible with the approved postmining land use.

(a) All disturbed land, except water areas and surface areas of roads that are approved as a part of the postmining land use, and other small incidental areas related to the fulfillment of the postmining land use plan subject to approval by the department, shall be seeded or planted to achieve a permanent vegetative cover of the same seasonal variety native to the region.

(b) The vegetative cover shall be capable of stabilizing the soil surface from erosion.

(c) Vegetative cover shall be considered of the same seasonal variety when it consists of a mixture of species of equal or superior utility for the approved postmining land use, when compared with the utility of naturally occurring vegetation during each season of the year.

(d) If both the premining and postmining land uses are cropland, successful establishment of the crops normally grown will meet the requirements of paragraphs (a), (b) and (c) of this subsection.

(e) Subject to the approval of the department, small incidental areas related to the fulfillment of the postmining land use may be exempted from the revegetation standards where no adverse environmental impact will occur if the exemption is granted.

Section 2. Use of Introduced Species. Introduced species may be substituted for native species only if approved by the department under the following conditions:

(1) The species are compatible with the natural plant and animal species of the region;

(2) The species meet the requirements of applicable state and federal seed or introduced species statutes and are not poisonous or noxious; and

(3) (a) After appropriate field trials or other demonstrations or studies satisfactory to the department have shown that the introduced species, if proposed as the permanent vegetation, can establish an effective and permanent cover compatible with the vegetation on surrounding areas and compatible with the approved postmining land use; or

(b) The species are necessary to achieve a quick, temporary and stabilizing cover that aids in controlling erosion, and measures to establish permanent vegetation are included in the approved plan submitted under 405 KAR 30:130.

(4) The department may require the use of particular species or mixtures when such species are determined to enhance fish and wildlife resources, to be more effective in controlling erosion, to be more effective in establishing permanent vegetation or to be more effective in achieving the approved postmining land use.

Section 3. Timing. Seeding and planting of a disturbed area 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, or as established by the department, for the type of plant materials selected. When necessary to effectively control erosion, any disturbed area shall be seeded and planted, as contemporaneously as practicable, within thirty (30) days of the completion of backfilling and grading, to establish a temporary cover of small grains, grasses, or legumes until a permanent cover is established.

Section 4. Mulching and Other Soil Stabilizing Practices. (1) Suitable mulch or other soil stabilizing practices shall be used on all regraded and topsoiled areas to control erosion, promote germination of seeds, or increase the moisture retention capacity of the soil. The department

may, on a case-by-case basis, suspend the requirement for mulch, if the department finds that alternative procedures proposed by the permittee will achieve the requirements of Section 6 and do not cause or contribute to air or water pollution.

(2) When required by the department, mulches shall be mechanically or chemically anchored to the soil surface to assure effective protection of the soil and vegetation.

(3) Annual grasses and grains may be used alone, as in situ mulch, or in conjunction with another mulch, when the department determines they will provide adequate soil erosion control and will later be replaced by perennial species approved for the postmining land use.

(4) Chemical soil stabilizers, alone or in combination with appropriate mulches, may be used in conjunction with vegetative covers approved for the postmining land use.

Section 5. Grazing. When the approved postmining land use is grazing or pasture land, the permittee may demonstrate successful revegetation by using the reclaimed land for livestock grazing at a grazing capacity approved by the department approximately equal to that for similar non-mined lands, for at least the last two (2) full years of liability required under Section 6(2), or by other appropriate demonstration approved by the department. It is recommended that grazing capacity be accomplished gradually so that over-grazing does not occur and damage the vegetation cover.

Section 6. Standards for Success. (1) Success of revegetation shall be measured by techniques approved by the department after consultation with appropriate state and federal agencies. Comparison of ground cover and productivity may be made on the basis of reference areas or through the use of technical guidance procedures published by USDA or other procedures approved by the department for assessing ground cover and productivity. Management of the reference area, if applicable, shall be comparable to that which is required for the approved postmining land use of the permit area.

(2) (a) Ground cover and productivity of living plants on the revegetated area within the permit area shall be at least equal to the ground cover and productivity of living plants on the approved reference area, or to the standards in technical guides approved by the department. Ground cover and productivity shall equal the approved standard for the last three (3) consecutive years of the responsibility period.

(b) Except as provided in subsection (2)(c) of this section, the period of extended responsibility under the performance bond requirements of this regulation begins at the last time of substantially augmented seeding, fertilizing, irrigation or other work necessary to ensure successful vegetation and continues for not less than seven (7) years.

(c) The ground cover and productivity of the revegetated area shall be considered equal if they are at least ninety (90) percent of the ground cover and productivity of the reference area with ninety (90) percent statistical confidence, or with eighty (80) percent statistical confidence on shrublands, or ground cover and productivity are at least ninety (90) percent of the standards in a technical guide approved pursuant to paragraph (a) of this subsection. Exceptions may be authorized by the department under the following standards:

1. For areas to be developed for industrial or residential use within two (2) years after regrading is completed, the ground cover of living plants shall not be less than the department determines to be necessary to control erosion; and

2. For areas to be used for cropland, success in revegetation of cropland shall be determined on the basis of crop production from the mined area as compared to the approved reference areas or other approved technical guidance procedures. For the purposes of erosion control and for efforts to rebuild the organic content in the soils, the first two (2) years grasses and legumes will be allowed upon approval of the department. Crop production from the mined area shall be equal to or greater than that of the approved standard for at least two (2) consecutive growing seasons out of the remaining five (5) year liability period established in paragraph (b) of this subsection. Production shall not be considered equal if it is less than ninety (90) percent of the production of the approved standard with ninety (90) percent statistical confidence. The applicable seven (7) year period of responsibility for revegetation shall commence at the date of initial planting of the crop being grown. Within thirty (30) days of planting, the permittee shall notify the department that the initial planting of the crop has been completed. Promptly thereafter, the department shall inspect the area to verify that the initial planting has been completed.

3. On areas to be developed for fish and wildlife management or forestland, successive vegetation shall be determined on the basis of tree, shrub or half-shrub stocking and ground cover. The tree, shrub or half-shrub stocking shall meet the standards described in Section 7. The area seeded to a ground cover shall be considered acceptable if it is at least eighty (80) percent of the ground cover of the reference areas with ninety (90) percent statistical confidence or if the ground cover is determined to be adequate to control erosion by the department. This subsection shall determine the responsibility period and the frequency of ground cover measurement.

(3) The permittee shall:

(a) Maintain any necessary fences and proper management practices; and

(b) Conduct periodic measurements of vegetation, soils, and water prescribed or approved by the department, to identify conditions during the applicable period of liability specified in subsection (2) of this section.

(4) For permit areas forty (40) acres or less in size, the following performance standards, if approved by the department, may be used to measure success of revegetation on sites that are disturbed.

(a) Areas planted only in herbaceous species shall sustain a vegetative ground cover of eighty (80) percent for the last three (3) full consecutive years of the five (5) year period of liability.

(b) Areas planted with a mixture of herbaceous and woody species shall sustain a herbaceous vegetative ground cover of eighty (80) percent for the last three (3) full consecutive years of the five (5) year period of liability and survival rate of 400 woody plants per acre at the end of the seven (7) years. On steep slopes, the minimum survival rate of woody plants shall be 600 per acre.

(5) For purposes of this section, herbaceous species means grasses, legumes, and nonleguminous forbs; woody plants means woody shrubs, trees, and vines; and ground cover means the area of ground covered by the combined aerial parts of vegetation and the litter that is produced naturally onsite, expressed as a percentage of the total area of measurement.

Section 7. Tree and Shrub Stocking. This section sets

forth standards for revegetation of areas for which the approved postmining land use requires woody plants as the primary vegetation, to ensure that a cover of commercial tree species, noncommercial tree species, shrubs or half-shrubs, sufficient for adequate use of available growing space, is established after mining activities.

(1) Stocking, i.e., the number of stems per unit area, will be used to determine the degree to which space is occupied by well-distributed, countable trees, shrubs or half-shrubs.

(a) Root crown or root sprouts over one (1) foot in height shall count as one (1) toward meeting the stocking requirements. Where multiple stems occur, only the tallest stem will be counted.

(b) A countable tree or shrub means a tree that can be used in calculating the degree of stocking under the following criteria:

1. The tree or shrub shall be in place at least three (3) growing seasons;
2. The tree or shrub shall be alive and healthy; and
3. The tree or shrub shall have at least one-third (⅓) of its length in live crown.

(c) Rock areas, permanent roads and surface water drainage ways on the revegetated area shall not require stocking.

(2) The following are the minimum performance standards for areas where commercial forest land is the approved postmining land use:

(a) The area shall have a minimum stocking of 450 trees or shrubs per acre.

(b) A minimum of seventy-five (75) percent of countable trees or shrubs shall be commercial trees species. and

(c) The number of trees or shrubs and the ground cover shall be determined using procedures described in Section 6(2)(c) and subsection (1) of this section and the sampling method approved by the department.

(d) Upon expiration of the seven (7) year responsibility period and at the time of request for bond release, each permittee shall provide documentation showing that the stocking of trees and shrubs and the ground cover on the revegetated area satisfy subparagraph 3 of Section 6(2)(c) and this subsection.

(3) The following are the minimum performance standards for areas where woody plants are used for wildlife management, recreation, shelter belts, or forest uses other than commercial forest land:

(a) The stocking of trees, shrubs, half-shrubs, and the groundcover established on the revegetated area shall approximate the stocking and groundcover on the reference area, or shall approximate the stocking and groundcover as approved in the mining and reclamation plan as appropriate for the approved postmining land use.

(b) Where a reference area is utilized, an inventory of trees, half-shrubs and shrubs shall be conducted on established reference areas according to methods approved by the department. This inventory shall contain but not be limited to:

1. Site quality;
2. Stand size;
3. Stand condition;
4. Site and species relations;
5. Appropriate forest land utilization considerations; and
6. Species types.

(c) Upon expiration of the seven (7) year responsibility period and at the time of request for bond release, each permittee shall provide documentation showing that:

1. The woody plants established on the revegetated site are equal to or greater than ninety (90) percent of the stocking of live woody plants of the same life form on the reference area or of the life form as approved in the permittee's mining and reclamation plan with eighty (80) percent statistical confidence; and
2. The ground cover on the revegetated area satisfies subparagraph 3 of Section 6(2)(c). Species diversity, seasonal variety and regenerative capacity of the vegetation of the revegetated area shall be evaluated on the basis of the results which could reasonably be expected using the revegetation methods described in the mining and reclamation plan.

Section 8. Planting Report. Prior to, or simultaneously with, the submittal of an application for the initial bond release on an area, the permittee shall file a certified planting report with the department on a form prescribed and furnished by the department, giving the following information:

(1) Identification of the operation;
(2) Permit number;
(3) The type of planting or seeding, including mixtures and amounts;
(4) The date of planting or seeding;
(5) Fertilizer rates or amounts and types of other soil amendments applied;
(6) The area of land planted; and
(7) Such other relevant information as the department may require.

JACKIE SWIGART, Secretary
ADOPTED: June 30, 1981
RECEIVED BY LRC: June 30, 1981 at 4:15 p.m.
PUBLIC HEARING: Public hearings scheduled for 405 KAR 30:010 through 405 KAR 30:410 are listed on page 41 this *Register*.

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

405 KAR 30:410. In situ operations.

RELATES TO: KRS 350.600
PURSUANT TO: KRS 13.082, 151.125, 224.033, 350,028, 350.050, 350.600
NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation sets forth certain requirements for in situ operations.

Section 1. (1) In situ operations shall be planned and conducted in a manner which minimizes disturbances to the prevailing hydrologic balance by:

(a) Avoiding discharge of fluids into holes or wells, other than those approved by the department;

(b) Injecting process recovery fluids only into geologic zones or intervals approved by the department;

(c) Avoiding annular injection between the wall of the drill hole and the casing;
(d) Preventing discharge of process fluid into surface waters; and
(e) Preventing radioactive gases or other hazardous gases from escaping into adjacent geologic zones.
(2) Anyone who conducts in situ operations shall submit to the department a plan that ensures that all acid-forming, toxic-forming, or radioactive gases, solids, or liquids constituting a fire, health, safety, or environmental hazard and caused by the mining and recovery process are promptly treated, confined, or disposed of in a manner that prevents contamination of ground and surface waters, damage to fish, wildlife, and related environmental values, and threats to the public health and safety.
(3) Each permittee who conducts in situ operations shall prevent flow of the process recovery fluid:
(a) Horizontally beyond the affected area identified in the permit; and
(b) Vertically into overlaying or underlying aquifers.
(4) Each permittee who conducts in situ operations shall restore the quality of affected ground water in the permit area and adjacent area, including ground water above and below the production zone to a state which equals or exceeds the premining level, to ensure that the potential for use of the ground water is not diminished.

Section 2. Anyone engaging in in situ operations shall submit a reclamation plan to the department as part of the application package which meets the department's approval.

Section 3. The terms of a permit for in situ operations may be modified by the department at any time if it determines that more stringent measures are necessary to protect the ground or surface waters, fish, wildlife, and related environmental values, or health and safety of the public.

Section 4. Monitoring. (1) Each person who engages in in situ operations shall monitor the quality and quantity of surface and ground water and the subsurface flow and storage characteristics as required by the department to measure changes in the quantity and quality of water in surface and ground water systems in the permit area and in the adjacent area.
(2) Air and water quality monitoring shall be conducted in accordance with monitoring programs approved by the department as necessary according to appropriate federal and state air and water quality standards.

JACKIE SWIGART, Secretary
ADOPTED: June 30, 1981
RECEIVED BY LRC: June 30, 1981 at 4:15 p.m.
PUBLIC HEARING: Public hearings scheduled for 405 KAR 30:010 through 405 KAR 30:410 are listed on page 41 of this *Register.*

EDUCATION AND ARTS CABINET
Department of Education
Bureau of Instruction

704 KAR 3:301. Repeal of 704 KAR 3:300.

RELATES TO: KRS 157.360
PURSUANT TO: KRS 13.082, 156.070, 156.360
NECESSITY AND FUNCTION: KRS 157.360 provides for the allocation by the Superintendent of Public Instruction of classroom units for administrative and special instructional services, as authorized by regulations of the State Board of Education. 704 KAR 3:025 provides for an instructional television coordinator ASIS unit, and, thus, 704 KAR 3:300 is not necessary.

Section 1. 704 KAR 3:300 is hereby repealed.

RAYMOND BARBER
Superintendent of Public Instruction
ADOPTED: June 23, 1981
RECEIVED BY LRC: July 1, 1981 at 2:45 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Mr. Fred Schultz, Secretary, Kentucky State Board of Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Banking and Securities

808 KAR 2:030. Records maintained by cemetery companies.

RELATES TO: KRS 307.120, 307.130, 307.140
PURSUANT TO: KRS 13.082, 287.020
NECESSITY AND FUNCTION: This regulation is necessary to clarify what records must be maintained by cemetery companies relating to perpetual care and maintenance funds and merchandise trust funds.

Section 1. Every cemetery company shall keep and maintain adequate records including, but not limited to, the following:
(1) A cash receipts journal, listing monies received in chronological order. The journal shall contain dates of all such monies received, amounts received, and identification of the purchasers.
(2) A cash disbursement journal, containing the same information as subsection (1) for monies disbursed. If a separate bank account is kept exclusively for any such funds, the checkbook could be used as a cash disbursement journal.
(3) A "reconciliation" for each contract, done at least once every six (6) months. The reconciliation shall indicate the beginning balance in the trust account, payments received during the period, interest earned during the period, disbursements during the period, and the ending balance for the period. The ending balance for each period is determined as follows:

Beginning Balance
+ Payments Received
+ Interest
— Disbursements
Ending Balance

(4) Documentation files, containing each contract, and containing and supporting the reconciliation. Each file, consisting of a separate file folder for each contract, shall include the names and addresses of the purchaser, the beneficiary and the financial institution in which the trust funds were deposited. Passbooks, certificates, and other evidence of the account with the financial institution should be kept with the individual files, depending on the safety and the security of the files.

H. FOSTER PETTIT, Secretary
ADOPTED: July 15, 1981
RECIEVED BY LRC: July 15, 1981 at 4 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Andrew J. Palmer, General Counsel, Department of Banking and Securities, 911 Leawood Drive, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Banking and Securities

808 KAR 8:010. Pre-need funeral contracts.

RELATES TO: KRS 316.360
PURSUANT TO: KRS 13.082, 287.020, 316.370
NECESSITY AND FUNCTION: This regulation is necessary to clarify what records must be maintained by any person, firm, partnership, association or corporation licensed to accept and/or hold payments made on pre-need funeral contracts and relating to the trust funds for such pre-need funeral contracts.

Section 2. Every person, firm, partnership, association or corporation licensed to accept and/or hold payments made on pre-need funeral contracts shall keep and maintain adequate records including, but not limited to the following:

(1) A cash receipts journal, listing monies received in chronological order, dates, and amounts received, and identification of the payor or purchaser.

(2) A cash disbursement journal, containing the same information as subsection (1) for monies disbursed. If a separate bank account is kept exclusively for any such funds, the checkbook could be used as a cash disbursement journal.

(3) A "reconciliation", done at least once every six (6) months. The reconciliation shall indicate the beginning balance in the trust account, payments received during the period, interest earned during the period, disbursements on either cancellation or the death of the beneficiary, and the ending balance for the period. The ending balance for each period is determined as follows:

Beginning Balance
+ Payments Received
+ Interest
— Disbursements
Ending Balance

(4) Documentation files, supporting the reconciliation and containing the Pre-Need Burial Contract. Each file, consisting of a separate file folder for each contract, should include the name and addresses of the purchaser, the beneficiary, and the financial institution in which the trust funds were deposited. Passbooks, certificates, and other evidence of the account with the financial institution should be kept with the individual files, depending on the safety and security of the files.

H. FOSTER PETTIT, Secretary
ADOPTED: July 15, 1981
RECEIVED BY LRC: July 15, 1981 at 4 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Andrew J. Palmer, General Counsel, Department of Banking and Securities, 911 Leawood Drive, Frankfort, Kentucky 40601

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance

904 KAR 1:008. Out-patient surgical clinics.

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 coverage provisions and method for establishing payment for out-patient surgical clinics.

Section 1. Scope of Coverage. The department shall cover medically necessary services rendered by participating licensed out-patient surgical clinics.

Section 2. Basis for Payment. Freestanding out-patient surgical clinics shall be reimbursed on the basis of 100% of their reasonable charge for the procedure performed. After the first full year of participation by the facility in the program, the facility schedule of charges shall be appropriately indexed for inflation, and the payment shall be the lesser of the actual reasonable charge or the indexed charge. Hospital based out-patient surgical clinics shall be reimbursed in the same manner as hospital out-patient services as specified in 904 KAR 1:015.

WILLIAM L. HUFFMAN, Commissioner
ADOPTED: July 13, 1981
ADOPTED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: July 15, 1981 at 2:40 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the July 1, 1981 Meeting

(Subject to subcommittee approval at its August 1, 1981 meeting.)

The Administrative Regulation Review Subcommittee held its scheduled meeting on July 1, 1981, at 10 a.m., in Room A, Capitol Annex. Present were:

Members: Representative William T. Brinkley, Chairman; Senators James Bunning and William Quinlan; and Representatives James E. Bruce, Albert Robinson and Gregory D. Stumbo.

Guests: Representative Bruce Blythe; C. M. Jenkins and A. R. Romine, Department of Transportation; Clifford Jennings, Laura Scritchfield, Omar Greeman, Greg Lawther, Ked Fitzpatrick, James Gooding, Donna Smith, and Diane Simmons, Department for Human Resources; Mike Fulkerson, Department of Finance; Gene Lorenz, Kentucky Hospital Association; John Leinenbach, Blue Grass Chapter, Association of General Contractors; Jim Ahler, State Board of Accountancy; Mike Salyers, Department of Labor; Jay Spurrier and Carl Larsen, Harness Racing Commission; Edna French Look Johnstone, E. J. McGrath, Christopher Johnson, and Keene Daringerfield, Kentucky State Racing Commission; W. L. Huff and Calvert R. Bratton, Department of Revenue; H. Joseph Schutte, James Garrett and Joseph M. Schutte, Pharmacare, Inc.; Vincent Peak and Paul Davis; Kentucky Pharmacists Association; and Sarah Mindwell Jackson.

LRC Staff: O. Joseph Hood, Susan Harding, Cindy De Reamer, Garnett Evins, Scott Payton and Vince Straub.

Press: Mark Hebert, WKED.

Chairman Brinkley announced that a quorum was present and called the meeting to order. On motion of Senator Quinlan, seconded by Representative Stumbo, the minutes of the June meeting were approved.

The following emergency regulations were reviewed by the subcommittee.

DEPARTMENT OF TRANSPORTATION
Bureau of Highways
Traffic

603 KAR 5:110E. Permits for moving mobile homes. (On motion of Representative Bruce, seconded by Senator Quinlan the regulation was accepted. Senator Bunning and Representative Robinson voted "No".)

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance
Medical Assistance

904 KAR 1:033E. Payments for dual licensed pediatrics facility services. (This regulation was reviewed by the subcommittee and on motion of Representaive Bruce, seconded by Representative Stumbo, no action was taken.)

The following regulations were deferred until the August meeting at the request of the issuing agency.

DEPARTMENT OF HOUSING, BUILDINGS AND CONSTRUCTION
Plumbing

815 KAR 20:141. Standards for subsurface sewage disposal systems.

Mobile Homes and Recreational Vehicles

815 KAR 25:020. Recreational vehicles.

On motion of Representative Bruce, seconded by Representative Stumbo the following regulations were deferred by the subcommittee until the August meeting, because a representative from the issuing agency was not present.

DEPARTMENT OF FINANCE
Division of Occupations and Professions
Board of Examiners and Registration of Architects

201 KAR 19:025. Application of architects
201 KAR 19:035. Qualifications for examination.
201 KAR 19:040. Types of examinations required.
201 KAR 19:085. Fees.

The following regulations were deferred by the subcommittee until pending litigation has been settled.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance
Medical Assistance

904 KAR 1:022. Skilled nursing facility services.
904 KAR 1:024. Intermediate care facility services.

The following regulations were accepted without objections and ordered filed:

DEPARTMENT OF REVENUE
Ad Volorem Tax; Administration

103 KAR 5:015. Technical services contracts.

DEPARTMENT OF FINANCE
Division of Occupations and Professions
Board of Accountancy

201 KAR 1:035. Technical services contracts.

DEPARTMENT OF TRANSPORTATION
Bureau of Highways
Traffic

603 KAR 6:066. Weight limits for trucks.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Labor
Occupational Safety and Health

803 KAR 2:016. Construction industry standard.
803 KAR 2:020. Adoption of 29 CFR Part 1910.
803 KAR 2:021. Identification, classification and regulation of potential occupational carcinogens.
803 KAR 2:030. Adoption of 29 CFR Part 1926.

State Racing Commission
Thoroughbred Racing Rules

810 KAR 1:013. Entries, subscriptions and declarations.

Kentucky Harness Racing Commission
Harness Racing Rules
811 KAR 1:015. Review and appeal.
811 KAR 1:125. Pari-mutuel rules.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Administrative Services
Vital Statistics
901 KAR 5:031. Reporting of terminations of pregnancies; live births.

Bureau for Health Services
Certificate of Need and Licensure Board
902 KAR 20:130. Certificate of need expenditure minimums.

Bureau for Social Insurance
Medical Assistance
904 KAR 1:020. Payment for drugs.
904 KAR 1:022. Skilled nursing facility services. (Deferred from June meeting.)
904 KAR 1:024. Intermediate care facility services. (Deferred from June meeting.
904 KAR 1:033E. Payments for dual licensed pediatrics facility services.
904 KAR 2:015. Supplemental programs for the aged, blind and disabled.
904 KAR 2:088. Home energy assistance program (HEAP).

On motion of Senator Quinlan, seconded by Representative Bruce, the meeting was adjourned at 12:15 p.m. until August 5, 1981.

Administrative Register of kentucky

Cumulative Supplement

Locator Index—Effective Dates

NOTE: Emergency regulations expire upon being repealed, replaced or sine die adjournment of the next regular session of the General Assembly.

Volume 7

Emergency Regulation	7 Ky.R. Page No.	Effective Date
103 KAR 35:020E	394	10-6-80
200 KAR 2:006E	288	9-4-80
200 KAR 5:308E	395	9-19-80
401 KAR 51:016E	293	9-11-80
401 KAR 51:051E	293	9-11-80
807 KAR 5:001E	709	3-4-81
807 KAR 5:006E	714	3-4-81
807 KAR 5:011E	721	3-4-81
807 KAR 5:016E	725	3-4-81
807 KAR 5:021E	726	3-4-81
807 KAR 5:026E	735	3-4-81
807 KAR 5:031E	737	3-4-81
807 KAR 5:036E	738	3-4-81
807 KAR 5:041E	739	3-4-81
807 KAR 5:046E	746	3-4-81
807 KAR 5:051E	746	3-4-81
807 KAR 5:056E	747	3-4-81
807 KAR 5:061E	748	3-4-81
807 KAR 5:066E	753	3-4-81
807 KAR 5:071E	758	3-4-81
815 KAR 20:030E	898	5-1-81
902 KAR 14:005E	396	10-14-80
902 KAR 14:015E	397	10-14-80
902 KAR 20:007E	79	7-24-80
902 KAR 20:010E	80	8-8-80
902 KAR 20:015E	93	8-8-80
902 KAR 20:017E	95	8-8-80
902 KAR 20:020E	98	7-24-80
902 KAR 20:025E	106	8-8-80
902 KAR 20:030E	115	7-24-80
902 KAR 20:035E	118	7-24-80
902 KAR 20:040E	125	7-24-80
902 KAR 20:045E	127	7-24-80
902 KAR 20:047E	136	7-24-80
902 KAR 20:050E	138	7-24-80
902 KAR 20:055E	147	7-24-80
902 KAR 20:057E	154	8-8-80
902 KAR 20:059E	157	8-8-80
902 KAR 20:065E	161	8-8-80
902 KAR 20:070E	165	8-8-80
902 KAR 20:075E	172	8-8-80
902 KAR 20:077E	172	8-8-80
902 KAR 20:080E	176	7-24-80
902 KAR 20:085E	179	8-8-80
902 KAR 20:090E	183	8-8-80
902 KAR 20:095E	185	8-8-80
902 KAR 20:100E	193	8-8-80
902 KAR 20:105E	201	8-8-80
902 KAR 20:110E	205	8-8-80
904 KAR 1:020E	587	1-7-81
904 KAR 1:022E	802	4-1-81
904 KAR 1:024E	804	4-1-81
904 KAR 2:007E	897	4-27-81
904 KAR 2:088E	590	1-7-81

Regulation	7 Ky.R. Page No.	Effective Date
200 KAR 6:035	694	
201 KAR 19:025 Amended	913	
201 KAR 19:035 Amended	913	
201 KAR 19:040 Amended	913	
201 KAR 19:085 Amended	914	
401 KAR 59:250	937	
401 KAR 59:255	939	
723 KAR 1:005 Amended	49	
815 KAR 20:030 Amended	684	
815 KAR 20:050 Amended	220	10-1-80
Amended	845	
815 KAR 20:141 Amended	213	8-6-80
Amended	851	
815 KAR 25:020 Amended	684	
904 KAR 1:022 Amended	857	
904 KAR 1:024 Amended	357	11-6-80
Amended	857	
904 KAR 1:060 Amended	580	
904 KAR 2:005 Amended	787	

Volume 8

Emergency Regulation	8 Ky.R. Page No.	Effective Date
603 KAR 5:110E	41	6-30-81
904 KAR 1:033E	43	6-30-81
904 KAR 2:010E	44	7-1-81

Regulation	8 Ky.R. Page No.	Effective Date
31 KAR 1:020 Amended	1	6-3-81
103 KAR 8:090 Amended	68	
106 KAR 1:020 Amended	1	6-3-81
108 KAR 1:010 Amended	6	
200 KAR 4:005 Amended	3	6-3-81
201 KAR 20:057	33	
301 KAR 2:047 Amended	4	6-3-81
401 KAR 61:132 Amended	7	
401 KAR 63:030	86	
405 KAR 30:010	87	
405 KAR 30:020	91	
405 KAR 30:030	92	
405 KAR 30:040	93	
405 KAR 30:060	94	
405 KAR 30:070	95	
405 KAR 30:080	96	
405 KAR 30:090	96	
405 KAR 30:100	97	
405 KAR 30:110	98	
405 KAR 30:120	98	
405 KAR 30:130	100	
405 KAR 30:140	105	
405 KAR 30:150	106	
405 KAR 30:160	106	
405 KAR 30:170	108	
405 KAR 30:180	109	
405 KAR 30:190	110	
405 KAR 30:200	111	
405 KAR 30:210	112	
405 KAR 30:220	113	
405 KAR 30:230	114	
405 KAR 30:240	114	
405 KAR 30:250	115	
405 KAR 30:260	117	
405 KAR 30:270	118	
405 KAR 30:280	119	
405 KAR 30:290	122	
405 KAR 30:300	123	
405 KAR 30:310	124	
405 KAR 30:320	125	
405 KAR 30:330	127	
405 KAR 30:340	128	
405 KAR 30:350	128	
405 KAR 30:360	130	
405 KAR 30:370	130	
405 KAR 30:380	132	
405 KAR 30:390	133	
405 KAR 30:400	134	
405 KAR 30:410	136	
601 KAR 1:090 Amended	68	
602 KAR 20:020 Amended	9	

Regulation	8 Ky.R. Page No.	Effective Date
603 KAR 3:010 Amended	9	
603 KAR 5:070 Amended	12	
603 KAR 5:110 Amended	13	
704 KAR 3:025 Amended	69	
704 KAR 3:052 Amended	71	
704 KAR 3:301	137	
704 KAR 3:304 Amended	14	
704 KAR 4:010 Amended	72	
704 KAR 4:020 Amended	15	
704 KAR 10:022 Amended	17	
704 KAR 20:005 Amended	17	
704 KAR 20:229 Amended	72	
704 KAR 20:230 Amended	72	
704 KAR 20:235 Amended	73	
704 KAR 20:245 Amended	74	
704 KAR 20:255 Amended	75	
705 KAR 1:010 Amended	18	

Regulation	8 Ky.R. Page No.	Effective Date
804 KAR 9:010 Amended	18	
808 KAR 1:060 Amended	19	
808 KAR 1:080	34	
808 KAR 2:030	137	
808 KAR 3:030 Amended	20	
808 KAR 7:020	34	
808 KAR 8:010	138	
808 KAR 10:150	35	
815 KAR 7:050 Amended	46	
902 KAR 8:010 Amended	21	
902 KAR 13:030 Amended	22	
902 KAR 20:006 Amended	22	
902 KAR 20:012	36	
902 KAR 20:115 Amended	27	
902 KAR 20:120	36	
904 KAR 1:003 Amended	75	
904 KAR 1:008	138	
904 KAR 1:033 Amended	29	
904 KAR 1:040 Amended	77	
904 KAR 1:054 Amended	30	
904 KAR 2:010 Amended	31	
904 KAR 3:010 Amended	79	
904 KAR 3:020 Amended	80	
904 KAR 3:035 Amended	82	
904 KAR 3:060 Amended	83	

Regulation	8 Ky.R. Page No.	Effective Date

Regulation	8 Ky.R. Page No.	Effective Date

KRS Index

Subject Index