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IN THIS ISSUE

Public Hearings Scheduled

DEPARTMENT OF INSURANCE

A public hearing will be held on August 2, 1982, at the Department of Insurance, 151 Elkhorn Court, Frankfort, on the regulations listed below at the following times:

9:00 a.m. 806 KAR 7:090. Custodial accounts for investment securities of insurance companies. [9 Ky.R. 89]
9:15 a.m. 806 KAR 13:016. Repeal of 806 KAR 13.015. [9 Ky.R. 91]
9:15 a.m. 806 KAR 13:031. Repeal of 806 KAR 13:030. [9 Ky.R. 91]
9:15 a.m. 806 KAR 13:040. Automobile fleet insurance defined. [9 Ky.R. 44]
9:15 a.m. 806 KAR 13:051. Repeal of 806 KAR 13:050. [9 Ky.R. 92]
9:15 a.m. 806 KAR 13:061. Repeal of 806 KAR 13:060. [9 Ky.R. 92]
9:15 a.m. 806 KAR 13:070. Kentucky Automobile Insurance Plan. [9 Ky.R. 45]
9:15 a.m. 806 KAR 13:081. Repeal of 806 KAR 13:080. [9 Ky.R. 92]
9:15 a.m. 806 KAR 14:005. Rate and form filing. [9 Ky.R. 45]
10:00 a.m. 806 KAR 9:161. Repeal of 806 KAR 9:160. [9 Ky.R. 91]

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET

A public hearing will be held on July 1, 1982, at 10:00 a.m. at the auditorium, Capital Plaza Tower, Frankfort, on the following regulations:

401 KAR 50:010. Definitions and abbreviations. [8 Ky.R. 1420]
401 KAR 59:005. General provisions. [8 Ky.R. 1422]
401 KAR 59:010. New process operations. [8 Ky.R. 1425]
401 KAR 61:005. General provisions. [8 Ky.R. 1427]
401 KAR 61:015. Existing indirect heat exchangers. [8 Ky.R. 1431]
401 KAR 61:020. Existing process operations. [8 Ky.R. 1437]
401 KAR 61:075. Steel plants and foundries using existing electric arc furnaces. [8 Ky.R. 1438]
401 KAR 61:140. Existing by-product coke manufacturing plants. [8 Ky.R. 1441]
401 KAR 63:010. Fugitive emissions. [8 Ky.R. 1443]

A public hearing will be held on July 21, 1982, at 7:00 p.m. at the Farmers Bank Building, Frankfort, Kentucky, on the following regulations:

405 KAR 30:010. Definitions. [9 Ky.R. 17]
405 KAR 30:020. General provisions. [9 Ky.R. 21]
405 KAR 30:130. Oil shale operation permits. [9 Ky.R. 23]
405 KAR 30:160. Data requirements. [9 Ky.R. 82]
405 KAR 30:190. Process and criteria for designating land unsuitable for oil shale operations. [9 Ky.R. 28]
405 KAR 30:200. Petition requirements to designate lands unsuitable. [9 Ky.R. 30]
405 KAR 30:250. Use of explosives. [9 Ky.R. 31]
405 KAR 30:320. Water quality standards, effluent limitations, and monitoring. [9 Ky.R. 34]
405 KAR 30:360. Waste management provisions. [9 Ky.R. 84]
405 KAR 30:370. Disposal of excess spoil materials and spent shale. [9 Ky.R. 85]
405 KAR 30:390. Backfilling and grading. [9 Ky.R. 35]

A public hearing* will be held July 29, 1982 at 7:00 p.m. at the auditorium, Capital Plaza Tower, Frankfort, on the following regulations:

405 KAR 1:005 to 405 KAR 24:040. Primacy regulations. [8 Ky.R. 1460-1599]

* Please submit comments to Laurie Keller, Natural Resources and Environmental Protection Cabinet, Department for Surface Mining and Reclamation, by July 29, 1982.

Amended Regulations Now In Effect

COMMERCE CABINET
Department of Fish and Wildlife Resources
As Amended

301 KAR 2:047. Specified areas; seasons, limits for birds and small game.

RELATES TO: KRS 150.025, 150.170, 150.175, 150.176, 150.330, 150.340, 150.360, 150.370
PURSUANT TO: KRS 13.082
EFFECTIVE: June 2, 1982
NECESSITY AND FUNCTION: This regulation pertains to the hunting seasons, bag and possession limits for upland game birds and animals on specified wildlife management areas and refuges. This regulation is necessary for the continued protection of the species listed herein, and to insure a permanent and continued supply of the wildlife resource for the purpose of furnishing sport and recreation for present and future residents of the state. The function of this regulation is to provide for the prudent taking of upland game birds and animals within reasonable limits based upon an adequate supply. *This amendment is necessary because of changes in season dates.*

Section 1. All statewide and specified area regulations, seasons, bag and possession limits apply to the following wildlife management areas, and refuges unless exceptions are listed herein.

Section 2. The following wildlife management areas are closed to all hunting at all times except for deer hunting as authorized by regulation 301 KAR *2:115* [2:112].
(1) Grayson Wildlife Management Area in Carter and Elliott Counties.
(2) Cane Creek Wildlife Management Area, including all private inholdings, in Laurel County.
(3) Robinson Forest Wildlife Management Area in Breathitt, Perry and Knott Counties.
(4) Mill Creek Wildlife Management Area, including all private inholdings, in Jackson County.
(5) Dewey Lake Wildlife Management Area located in Floyd County.

Section 3. Exceptions to Statewide Small Game Hunting Regulations for Wildlife Management Areas and Refuges:
(1) West Kentucky Wildlife Management Area located in McCracken County.
(a) Quail: Third Thursday in November through February *28* [15] on Tracts 2, 3, 6 and 7.
(b) Rabbit: Third Thursday in November through *the last day in February [28]* [January 31] on Tracts 2, 3, 6 and 7. *December 12 through the last day in February [28] on Tracts 1, 2, 3, 4, 5, 6 and 7.* [Other tracts may be opened and will be designated at the check station].
(c) Squirrel (gray and fox): Third Saturday in August through October 31 on Tracts 1, 2, 3, 4, 5 and 6. Third Thursday in November through December 31 on Tract 6 only.
(d) Raccoon and opossum: During the regular statewide season with gun or dog on Tracts 1, 2, 3, 4, 5 and 6 [and night training on all tracts] and shake-out on Tracts 1 through 6. *Night training is permitted on all tracts September 1 through October 21 only.*
(e) Rabbit and quail hunters must check in and out at the designated check station.
(f) All tracts designated by number followed by the letter "A" are closed to gun hunting.
(g) Weapon restrictions. No rifles, or ball or slug ammunition of any type shall be permitted for taking small game on this area.
(h) Dog training: Dog training is permitted on all tracts September 1 through April 30 only, except that night training is prohibited after October 21.
(2) Land Between the Lakes Wildlife Management Area located in Trigg and Lyon Counties. Areas open to hunting for the following species are located north of the state line to Barkley Canal, except that no hunting is allowed in developed public use areas, safety zones and posted areas unless otherwise noted.
(a) Squirrel (gray and fox): Third Saturday in August through October 1; December 1 through January 31 and October *6* [7] through November *7* [8] only by legally licensed and equipped deer archery hunters.
(b) Quail: December 1 through February.
(c) Rabbit: December 1 through *February* [January].
(d) Raccoon and opossum: Mondays, Tuesdays, Fridays and Saturdays during the period December 1 through January. Daily bag limit two (2) per person per night, *with no more than three (3) per party or two (2) or more hunters.*
(e) Raccoon field trials: *September 1 through* October *31* [22, 23, 24] and December 1 through March 31. Scheduled basis only. Written requests must be received by Land Between the Lakes at least ten (10) days prior to the proposed hunt date. Approval must be given by Land Between the Lakes and the Department of Fish and Wildlife Resources District Supervisor. Field trials must be recognized club hunts and each participant must be on a club roster for that hunt and must have a valid score card in his or her possession.
(f) Fox chasing: From sunset to sunrise; Third Saturday in August through October 1 south of highway 68 to state line.
(g) Gray fox and coyote taking: Daylight hours only; Gun and archery on December 1 through February. October *6* [7] through November *7* [8] only by legally licensed and equipped deer archery hunters. Any hand, mouth, mechanical or electronic recording and amplifying devices are legal to use in calling gray fox and coyote.
(h) Woodchuck: Hunting during daylight hours only. March *16* [18] through March 31 and June 1 through June 15. October *6* [7] through November *7* [8] *and December 11 through December 31* only by legally licensed and equipped deer archery hunters. No hunting in the Environmental Education Center Area including a one-quarter (¼) mile safety zone around the outside boundary. No hunting within one-quarter (¼) mile of The Trace, U.S. Highway 68, Energy Lake Road and Shaw Branch Road. All woodchucks harvested must be removed from the area. Legal weapons include center-fire rifles .17 caliber or larger, .22 caliber rimfire magnum rifles, muzzle-loading rifles, and longbows and compound bows according to state regula-

tions. All other weapons are prohibited. Bow hunting only allowed in Hunt Area 8 and in that portion of Hunt Area 9 designated as the ORV Area.

(i) Bird dog and beagle hound training season: During the entire month of October on Turkey Creek portion of the ORV Area only. A permit is required from Land Between the Lakes.

(j) For Land Between the Lakes hunting rules refer to regulation 301 KAR 2:050.

(k) Permits. All required permits may be obtained by writing the Wildlife Management Section, Land Between the Lakes, Golden Pond, Kentucky 42231, or in person during open hours at the two information stations or the main office.

(l) Weapon restrictions: Unless otherwise specified, small game hunting is limited to muzzle-loading and breech-loading shotguns using No. 2 shot or smaller, rifles using .22 caliber rimfire ammunition, muzzle-loading rifles and arrows with blunt-tipped or field points.

(3) Reelfoot National Wildlife Refuge located in Fulton County.

(a) Squirrel (gray and fox): August *28* [22] through October 15 only in areas designated by signs as open to public hunting.

(b) Raccoon: September *22* [23] through September *25* [26] and September *29* [30] through October *2* [3] on the Long Point refuge unit, with hunting allowed only during the hours of 7:30 p.m. to 12:00 midnight. No bag or possession limits.

[(c) Permits: All hunters are required to have a special hunting permit which can be obtained at refuge headquarters, P.O. Box 295, Samburg, Tennessee 38254, or at designated check stations.]

(c) [(d)] Age limit. Hunters under age seventeen (17) must be accompanied by an adult. For safety reasons, the ratio should be one (1) adult to one (1) juvenile, but in no case more than two (2) juveniles per adult.

(d) [(e)] Firearms. Only shotguns incapable of holding more than three (3) shells and .22 caliber rimfire rifles are permitted.

(e) [(f)] Dogs are permitted only for raccoon hunting.

(f) [(g)] Open fires and cutting trees are not permitted.

(4) Ballard County Wildlife Management Area located in Ballard County.

(a) Squirrel (gray and fox): Third Saturday in August through October 14 on the whole management area except for designated areas that will be closed.

(b) All statewide game seasons, bag and possession limits apply only to the wooded area south of Terrell Landing Road and designated by signs reading "Wildlife Management Area for Public Hunting."

(5) Central Kentucky Wildlife Management Area located in Madison County.

(a) Squirrel (gray and fox): Third Saturday in August through October 14.

(b) This area is closed to all hunting except dove (see statewide dove regulation) and squirrel.

(6) Curtis Gates Lloyd Wildlife and Recreation Area located in Grant County: Areas closed to hunting are designated by refuge signs. All statewide hunting seasons apply to remainder of the area.

(7) Pioneer Weapons Wildlife Management Area located in Bath and Menifee Counties. Hunters on this area are restricted to pioneer weapons only. These include muzzle-loading rifles, muzzle-loading pistols, muzzle-loading shotguns, longbows and crossbows. Muzzle-loading shotguns for taking squirrels, quail, grouse and rabbits must not use shot larger than No. 2 in size.

(8) Fort Campbell Wildlife Management Area located in Christian and Trigg Counties. [;] *There will be no hunting on Mondays or Tuesdays except when Monday or Tuesday is a federal holiday or as follows: November 29-30, December 20-21, and 27-28, then hunting will be permitted. There will no hunting on December 24 and 25.* [there will be no hunting on December 25 and January 1 and Mondays and Tuesdays except when Monday or Tuesday is a federal holiday and Tuesday, September 1, then hunting will be permitted.]

(a) Seasons, bag and possession limits:

1. Squirrel (gray and fox): *August 15* [September 1] through September *19* [20], November *25* [26] through December *3* [11], December *4* [12] through December 31 on selected areas; and January 2 through January *30* [31].

2. Quail: November *25* [26] through December *3* [11], December *4* [12] through December 31 on selected areas; January 2 through February *27*.

3. Rabbit: November *25* [26] through December *3* [11], December *4* [12] through December 31 on selected areas; January 2 through February *27*; bag limit five (5); possession limit ten (10).

4. Raccoon and opossum: Taking with gun and/or dogs, November *25* [26] through December *3* [11], December *4* [12] through December 31 on selected areas. January 2 through January *30* [31]; possession limit one (1) per person.

5. Gray fox and woodchuck: September 1 through September *19* [20]. January 2 through February *27*.

6. Red fox: November *25* [26] through December *3* [11], December *4* [12] through December 31 on selected areas. January 2 through January *30* [31].

7. Bobcat: The season is closed on bobcat.

(b) Permission must be obtained for each hunt at building #6645 and hunters must stay within their assigned area. A hunting permit costing fifteen dollars ($15) is required and is good for all species hunting for the season.

(c) All hunters between the ages of twelve (12) and sixteen (16), must possess a valid hunter safety certificate.

(9) Clay Wildlife Management Area located in Nicholas County is closed to the training of all dogs during the period October 1 through November 15.

(10) Pine Mountain Wildlife Management Area located in Letcher County is closed to training of all dogs during the period March 1 through August 1.

(11) Red Bird Wildlife Area located in Leslie and Clay Counties.

(a) Squirrel (gray and fox): *December 18* [October 17] through *December 31* [October 30].

(b) Grouse and quail: *December 18* [January 16] through *December 31* [January 29].

(c) *Raccoon: December 18 through December 31* [Firearms: Only shotguns incapable of holding more than three (3) shells are permitted].

(d) *Rabbits: December 18 through December 31* [Dogs: Dogs are permitted for hunting all the wildlife species listed in this subsection].

(e) *Firearms: Only shotguns incapable of holding more than three (3) shells are permitted.*

(f) This area is closed to all other hunting except deer as authorized by regulation 301 KAR *2:115* [2:112].

(12) Beaver Creek Wildlife Area located in McCreary and Pulaski Counties.

(a) Squirrel (gray and fox): *December 18* [October 17] through *December 31* [October 30].

(b) Grouse and quail: *December 18* [January 16] through *December 31* [January 29].

(c) *Raccoon: December 18 through 31* [Firearms: Only

shotguns incapable of holding more than three (3) shells are permitted].

(d) *Rabbits: December 18 through 31* [Dogs: Dogs are permitted for hunting all the wildlife species listed in this subsection].

(e) *Firearms: Only shotguns incapable of holding more than three (3) shells are permitted.*

(f) This area is closed to all other hunting except deer as authorized by regulation 301 KAR *2:115* [2:112].

CARL E. KAYS, Commissioner
CHARLES E. PALMER, JR., Chairman
ADOPTED: March 1, 1982
APPROVED: W. BRUCE LUNSFORD, Secretary
RECEIVED BY LRC: April 13, 1982 at 10:30 a.m.

CABINET FOR HUMAN RESOURCES
Department for Health Services
As Amended

902 KAR 4:020. Care of eyes.

RELATES TO: KRS 211.180
PURSUANT TO: KRS 13.082, 194.050, 211.090
EFFECTIVE: June 2, 1982
NECESSITY AND FUNCTION: KRS 211.180 directs the Department for Human Resources to prevent and control communicable, chronic and degenerative diseases and to protect the health of infants. The purpose of this regulation is to protect the eyes of the newborn in order to reduce the risk of blindness.

Section 1. Approved Agents. [The Kentucky Department for Human Resources hereby [designates and approves] establishes that the physician, or the nurse or midwife under the supervision of a physician, shall use any of] The following agents are [as the] standard prophylaxis [prophylactic] against ophthalmia neonatorum when administered in accordance with the manufacturer's instructions [; to wit]:

(1) Silver nitrate ($AgNO_3$) - (1%) aqueous solution;
(2) Erythromycin - (0.5%) ophthalmic ointment;
(3) Tetracycline - (1%) ophthalmic ointment;
(4) Erythromycin - (0.5%) ophthalmic drops; and
(5) Tetracycline - (1%) ophthalmic drops.

[Section 1. Care of Eyes of Newborn. The physician or midwife in attendance at childbirth shall use the following procedure: Cleanse around the eyes of the newborn infant immediately after birth with sterile water, wipe dry with clear absorbent cotton, open the eyelids carefully and deposit one (1) or two (2) drops of one (1) percent solution of Silver Nitrate ($AgNO_3$) into the conjunctival sac. Single dose containers of Silver Nitrate ($AgNO_3$) shall be used. Subsequent irrigation of the eyes is not recommended.]

Section 2. Care of Eyes of Newborn. Prophylaxis shall be given shortly after birth and shall be applied as follows:

(1) Silver nitrate.

(a) [The physician, nurse or midwife shall] Carefully clean eyelids and surrounding skin with sterile cotton, which may be moistened with sterile water.

(b) Gently open baby's eyelids and instill one (1) or two (2) drops of silver nitrate on the conjunctival sac. Carefully manipulate lids to insure spread of the drops. Repeat in other eye. Single dose containers of silver nitrate shall be used.

(c) After one (1) minute, gently wipe excess silver nitrate from eyelids and surrounding skin with sterile water. Subsequent irrigation of the eyes is not recommended.

(2) Ophthalmic ointment (Erythromycin or Tetracycline).

(a) Carefully clean eyelids and surrounding skin with sterile cotton, which may be moistened with sterile water.

(b) Gently open baby's eyelids and place a thin line of ointment, at least one-half (½) inch (one (1) to two (2) cm), along the junction of the bulbar and palpebral conjunctiva of the lower lid. Try to cover the whole conjunctival area. Carefully manipulate lids to ensure spread of the ointment. Be careful not to touch the eyelids or eyeballs with the tip of the tube. Repeat in the other eye. Use one (1) tube per baby.

(c) After one (1) minute, gently wipe excess ointment from eyelids and surrounding skin with sterile water. Subsequent irrigation of the eyes is not recommended.

(3) Ophthalmic drops (Erythromycin or Tetracycline). Apply as silver nitrate.

DAVID T. ALLEN, Commissioner
ADOPTED: April 14, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: April 15, 1982 at 3:30 p.m.

Amended After Hearing

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

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Amended After Hearing

904 KAR 1:004. Resource and income standard of medically needy.

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 requirements of 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 resource and income standards by which eligibility of the medically needy is determined.

Section 1. Resource Limitations of the Medically Needy: An applicant for or recipient of medical assistance is permitted to retain:

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

(2) Equity of $6,000 in income-producing, non-homestead property;

(3) Equity of $3,000 in non-income producing, non-homestead property;

(4) Savings, stocks, bonds, totaling no more than $1,500 for family size of one (1); $3,000 for family size of two (2); and fifty dollars ($50) for each additional member.

(5) Burial reserves in the form of pre-paid burial, trust fund or life insurance policies are exempt from consideration if the reserve does not exceed $1,500 per individual. If burial reserves have a face value in excess of the above amount, the cash surrender value is determined and any excess of the allowable reserve added to total liquid assets in determining eligibility.

Section 2. Income and Resource Exemptions: Income and resources which are exempted from consideration for purposes of computing eligibility for the comparable money payment program (Aid to Families With Dependent Children and Supplemental Security Income) shall be exempted from consideration by the department, except that the AFDC earned income disregard (first thirty dollars ($30) and one-third (⅓) of the remainder) may not be allowed in determining eligibility for medical assistance only. *For individuals in long term care, amounts in excess of the resource maximums which are accumulated from the twenty-five dollar ($25) personal needs allowance or the month of entry disregard, and which are maintained in separately identifiable accounts, shall be exempted from consideration.*

Section 3. Income Limitations of the Medically Needy: Eligibility from the standpoint of income is determined by comparing adjusted income as defined in Section 4, of the applicant, applicant and spouse, or applicant, spouse and minor dependent children with the following scale of income protected for basic maintenance:

Size of Family	Annual	Monthly
1	2,200	183
2	2,600	217
3	3,100	258
4	3,800	317
5	4,400	367
6	5,000	417

For each additional member, $600 annually or fifty dollars ($50) monthly is added to the scale.

Section 4. Additional Income Considerations: In comparing income with the scale as contained in Section 3, gross income is adjusted as follows in all cases with exceptions as contained in Section 5:

(1) In cases of adults and children, the standard work related expenses of adult members and out-of-school youth are deducted from gross earnings. For those with full-time employment (defined as employment of thirty (30) hours per week or 130 hours per month or more) the standard work expense deduction is seventy-five dollars ($75) per month. For those with part-time employment (defined as employment of twenty-nine (29) hours per week or 129 hours per month or less) the standard work expense deduction is forty dollars ($40) per month. All earnings of an in-school child are disregarded.

(2) In cases of adults and children, dependent care as a work expense is allowed not to exceed $160 per child or incapacitated adult per month for full-time employment (as defined in subsection (1)) or $110 per child or incapacitated adult per month for part-time employment (as defined in subsection (1)). A dependent care work expense deduction is allowed only when the dependent is included in the assistance unit.

[(3) In all cases, verified fixed and measurable medical costs, including cost of health insurance premiums and expenses for medical services, recognized under state law but outside the scope of the medical assistance program, are deducted from income before comparison with the scale.]

Section 5. Individuals in Chronic Care Institutions: For aged, blind or disabled individuals in chronic care facilities, the following requirements with respect to income limitations and treatment of income shall be applicable. [:]

(1) In determining eligibility, the appropriate medically needy standard is used as are appropriate disregards and exclusions from income. In determining patient liability for the cost of institutional care, gross income is used as shown in subsections 2 and 3.

(2) [(1)] Income protected for basic maintenance is twenty-five dollars ($25) monthly in lieu of the figure shown in Section 3. All income in excess of twenty-five

dollars ($25) is applied to the cost of care except as follows:

(a) *Available income in excess of twenty-five dollars ($25) is first conserved as needed to provide for needs of the spouse and minor children up to the appropriate family size amount from the scale as shown in Section 3, including any additional amount needed to cover the verified medical expenses of the spouse or minor children.* [Available income in excess of the twenty-five dollars ($25) is first applied to the cost of non-covered medical expenses and to other verified fixed and measurable medical expenses; and]

(b) *Remaining available income is then applied to the incurred costs of medical and remedial care that are not subject to payment by a third party, including Medicare and health insurance premiums and medical care recognized under state law but not covered under the state's Medicaid plan.* [Remaining income of the patient is conserved as needed to provide for needs of the spouse and minor children up to the appropriate family size amount from the scale as shown in Section 3, including any additional amount needed to cover the verified fixed and measurable medical expenses of the spouse or minor children.]

(3) [(2)] The basic maintenance standard allowed the individual during the month of entrance into or exit from the long term care facility shall reasonably take into account home maintenance costs. However, an individual entering a facility on the first day of the month, and who remains institutionalized for the remainder of the month, would not receive a disregard for home maintenance.

Section 6. Spend-Down Provisions: No technically eligible individual or family is required to utilize protected income for medical expenses before qualifying for medical assistance. Individuals with income in excess of the basic maintenance scale as contained in Section 3 may qualify for any part of a three (3) month period in which medical expenses incurred during the period have utilized all excess income anticipated to be in hand during that period.

Section 7. Consideration of State Supplementary Payments. For an individual receiving state supplementary payments, that portion of the individual's income which is in excess of the basic maintenance standard is applied to the special need which results in the supplementary payment and is thus disregarded as a [fixed and measurable] medical expense. When an individual loses eligibility for a supplementary payment due to entrance into a participating long term care facility, and the supplementary payment is not discontinued on a timely basis, the amount of any overpayment is considered as available income to offset the cost of care (to the medical assistance program) if actually available for payment to the provider.

Section 8. Special Needs Contributions for Institutionalized Individuals. Voluntary payments made by a relative or other party on behalf of a long term care facility resident or patient shall not be considered as available income if made to obtain a special privilege, service, or item not covered by the medical assistance program. Examples of such special services or items include television and telephone service, private room and/or bath, private duty nursing services, etc.

Section 9. Pass-through Cases. Increases in social security payments due to cost of living increases which are solely responsible for ineligibility of the individual for supplemental security income benefits or state supplementary payments, and which are received after April 1, 1977, shall be disregarded in determining eligibility for medical assistance benefits; such individuals shall remain eligible for the full scope of program benefits with no spend-down requirements.

Section 10. Relative Responsibility. For purposes of the medical assistance program, spouses are considered responsible for spouses and parents are considered responsible for dependent minor children. Stepparents are responsible for their stepchildren as shown in Section 11. This responsibility, with regard to income and resources, is determined as follows:

(1) "Living with" is defined as sharing a common living arrangement or household, including living in the same room in a long term care facility. "Living apart" is defined as not sharing a common household, whether due to estrangement, disability, or illness.

(2) In cases of aged, blind, or disabled applicants or recipients living with their spouse, total resources and adjusted income of the couple is considered in relation to the resource and income limitations for a family size of two (2), or if other dependents live with the couple, the appropriate family size including the dependents.

(3) In cases of aged, blind, or disabled couples, living apart, both of whom are concurrently applying for or receiving MA only, income is considered in relation to resource and income limitations for a family size of two (2), or if other dependents live with either spouse, the family size including such dependents, but only for the first six (6) months after the month of separation, that such couple lives apart. After the six (6) month period, each is considered as a single individual.

(4) In cases of an aged, blind, or disabled individual living apart from a spouse who is not a recipient of MA only, the applicant or recipient is considered as a single individual in the month after separation and only that individual's income and resources are considered.

(5) For an individual whose case is being worked as if he were a single individual due to living apart from his spouse, as shown in Section 10(3) and (4), who has jointly held resources with his spouse, one-half (½) of the jointly held resource would be considered a resource; except that the entire amount of a jointly held checking or savings account is considered a resource if the resource may be accessed independently of the spouse.

(6) Total resources and adjusted income of parent(s) and children for whom application is made is considered in relation to limitations for family size. Excluded, however, is the income and/or resources of an SSI parent and the SSI essential person spouse whose medical assistance eligibility is based on inclusion in the SSI case. Resources and income of an SSI essential person, spouse or non-spouse, whose medical assistance eligibility is not based on inclusion in the SSI case must be considered.

(7) In cases of a blind or disabled child under eighteen (18), or age eighteen (18) through twenty (20) if in school, living with his parent(s), total resources and adjusted income of the parent(s) is related to limitations for family size, including the applicant or recipient child and other dependent children of parent.

(8) Income and resources of parent(s) are not considered available to a child living apart from the parent(s) for a period in excess of thirty (30) days, but any continuing contribution actually made is considered as income. Living apart may mean living in a medical institution, special school or in foster care and such status continues even if the child makes visits to the parent(s) home. For comparison with the resource and income limitations, the

child's individual resources and/or income are considered in relation to family size of one (1).

(9) When a recipient in a family case has income and resources considered in relation to family size and enters a long term care facility, his income and resources are considered in the same manner as previously for up to one (1) year. For such an individual, the twenty-five dollars ($25) maintenance standard is not applicable since his needs are considered with that of other family members. The eligibility of the individual, with regard to income and resources, must be determined on the basis of living apart from the other family members whenever it becomes apparent that the separation will last for more than one (1) year.

Section 11. Treatment of Income of the Stepparent and Effect on Eligibility of the Assistance Group. An incapaciatated (as determined by the department) stepparent's income is considered in the same manner as for a parent if the stepparent is included in the family case. When the stepparent living in the home is not being included in the family case on the basis of incapacity, the stepparent's gross income is considered available to the assistance group subject to the following exclusions/disregards:

(1) The first seventy-five dollars ($75) of the gross earned income of the stepparent who is employed full time or the first forty dollars ($40) of the gross earned income of the stepparent who is employed part time (with full-time and part-time employment as defined in Section 4(1)).

(2) An amount equal to the medically needy income limitations scale as shown in Section 3 for the appropriate family size, for the support of the stepparent and any other individuals living in the home but whose needs are not taken into consideration in the medical assistance eligibility determination and are claimed by the stepparent as dependents for purposes of determining his/her federal personal income tax liability.

(3) Any amount actually paid by the stepparent to individuals not living in the home who are claimed by him/her as dependents for purposes of determining his/her personal income tax liability.

(4) Payments by the stepparent for alimony or child support with respect to individuals not living in the household.

(5) Income of a stepparent receiving Supplemental Security Income.

(6) Verified [fixed and measurable] medical expenses for the stepparent and his/her dependents in the home.

Section 12. Companion Cases. When spouses or parent(s) and children living in the same household apply separately for assistance, relative responsibility must be taken into consideration.

(1) In the case of an application for assistance for a dependent child(ren), the income, resources and needs of the parent(s) must be included in the determination of need of the child(ren) even when the parent(s) applies for assistance for himself on the basis of age, blindness, or disability (except as shown in subsection 3).

(2) In the case of a spouse, income and resources of both spouses are combined and compared against the medically needy income and resources limits for a family size of two (2) even though a separate determination of eligibility must be made for each individual.

(3) In the case of families with children with a parent eligible for supplemental security income (SSI), neither the income, resources, nor needs of the SSI eligible individual are to be included in the determination of eligibility of the children.

Section 13. Treatment of Lump-Sum Income. Lump-sum income is prorated over a three (3) month period [by dividing the appropriate family size amount from the basic maintenance scale in Section 3 into the lump-sum amount].

Section 14. Transferred Resources. When an applicant or recipient transfers a nonexcluded 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:

(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) 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) For those recipients who were receiving assistance on February 28, 1981, this section is applicable only with respect to resources transferred subsequent to that date.

JOHN CUBINE, Commissioner
ADOPTED: June 15, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: June 15, 1982 at 4 p.m.

Proposed Amendments

LEGISLATIVE RESEARCH COMMISSION
(Proposed Amendment)

1 KAR 1:010. Form of administrative regulations; Administrative Register; codification.

RELATES TO: KRS Chapter 13
PURSUANT TO: KRS 13.090
NECESSITY AND FUNCTION: KRS 13.090 requires the Legislative Research Commission to prescribe rules governing the manner and form in which regulations shall be prepared. This proposed regulation is to assure uniformity of all proposed regulations submitted for publication in the Administrative Register.

Section 1. Subject to the exceptions set forth in KRS 13.080, the regulations required to be filed to be effective include every regulatory document, promulgated by an agency of the Commonwealth, which is intended to have general future applicability and legal effect and will be relied upon by the agency as authority for, or invoked or used in the discharge of, any of its functions or activities. An agency may incorporate by reference material, the publication of which would be unduly cumbersome, bulky or expensive. The regulation incorporating this material by reference shall include a summary of the subject matter, the date of incorporation by reference and information on how the material may be obtained. The material shall be regulatory only in the form existing at the date of incorporation by reference. The complete text of the material incorporated by reference shall be forwarded to the Legislative Research Commission at the time the proposed regulation incorporating the material is forwarded.

Section 2. Each proposed regulation forwarded to the Legislative Research Commission and each duplicate shall be typewritten or mechanically reproduced on a separate sheet of white paper size 8½ x 11 inches. The Cabinet and Department of the administrative body shall be listed at the top of each page. A space at least two (2) inches square in the upper right hand corner shall be left clear for the Legislative Research Commission's stamp showing the date and time of receipt of the proposed regulation. Each proposed regulation shall include in the upper left hand corner the statute number to which the regulation relates or which will be affected by the regulation, and a citation of the statutory authority pursuant to which it was adopted. Beneath these citations shall be a brief statement which sets forth the necessity for issuing the regulation and a summary of the functions intended to be implemented by the regulation. A proposed regulation affecting an existing regulation shall set forth the number of the regulation being amended, superseded or repealed as the case may be. No regulation may be amended by reference to a section only. The proposed amendment shall contain the full text of the regulation being amended. Each proposed regulation shall bear the date of adoption. The original copy shall be signed by the proper authority of the adopting administrative body and by an attorney, officially representing the agency, certifying that he has examined and approved the proposed regulation as to form and legality. Each proposed regulation shall state the place and manner in which interested persons may submit their views or request a hearing pursuant to KRS 13.085(4).

Section 3. In proposed regulations amending a regulation that has become effective after July 1, 1974, the new wording shall be underlined and the deleted wording shall be placed in brackets. Generally the new wording should precede the bracketed wording but there may be exceptions for the sake of clarity. [Regulations repromulgated between July 1, 1974 and July 1, 1975 are new regulations and exempt from this requirement.]

Section 4. The Administrative Register shall be published the first day of each month and shall include all proposed regulations received by the Legislative Research Commission *by* [prior to] the fifteenth day of the preceding month. When the fifteenth day falls on a Saturday, Sunday, or holiday the deadline is the working day which immediately precedes the Saturday, Sunday, or holiday.

Section 5. The administrative body shall immediately upon receipt of a request for a public hearing pursuant to KRS 13.085, notify in writing the Administrative Regulations Compiler of the date, time and place of the scheduled hearing. Following completion of the hearing, the administrative body shall promptly forward to the Legislative Research Commission a copy of the regulation accompanied by a statement indicating any changes in the original wording, a summary of any comments submitted at the hearing, and a statement of affirmative consideration as required by KRS 13.085(4). Upon receipt of these documents, the proposed regulation will be submitted to the *Legislative Research Commission* [Administrative Regulations Review Subcommittee]. Proposed regulations for which no hearing is requested will be submitted to the [Administrative Regulations Review Subcommittee by the] Legislative Research Commission *within forty (40)* [thirty (30)] days following publication.

Section 6. The Administrative Regulations Compiler shall codify prior to publication all regulations received by the Legislative Research Commission. The numbering within the body of the regulation shall be the responsibility of the promulgating body. However, the Compiler retains the authority to divide or renumber a regulation if necessary for clarity. The following formula shall be employed by the administrative body in the numbering of each regulation. Each section shall begin with the word "Section" followed by an arabic number. Subsections shall be designated by an arabic number in parentheses.

VIC HELLARD, JR., Director
ADOPTED: June 2, 1982
RECEIVED BY LRC: June 3, 1982 at 10 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Director, Legislative Research Commission, Room 300, State Capitol, Frankfort, Kentucky 40601.

HIGHER EDUCATION ASSISTANCE AUTHORITY
(Proposed Amendment)

11 KAR 5:010. Authority, purpose, name of grant programs.

RELATES TO: KRS 164.740 to 164.764, 164.780, 164.785
PURSUANT TO: KRS 13.082, 164.748(4)
NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority administers grant programs to provide financial asistance to students to attend Kentucky educational institutions. This regulation sets forth the purpose and names of these grant programs.

Section 1. The State Student Incentive Grant Program (SSIG) authorized under KRS 164.740 to 164.764 provides eligible Kentucky residents grant assistance in order to pursue eligible courses of study at Kentucky educational institutions.

Section 2. The Kentucky Tuition Grant Program (KTG) authorized under KRS 164.780 and 164.785 provides qualified Kentucky residents who bear the major costs of attending accredited independent colleges and universities within the Commonwealth a tuition or fees grant as supplementary aid where need exists.

Section 3. Awards from the State Student Incentive Grant Program, the Kentucky Tuition Grant Program, or a combination of the two (2) may be referred to as KHEAA grants.

Section 4. The KHEAA grant programs are administered in accordance with procedures established by the authority and delineated in the *1982-83* KHEAA Grant Manual, incoporated herein by reference. A current copy of the manual shall be maintained on file with the legislative research commission. Copies of the manual may be obtained upon request to the authority.

PAUL BORDEN, Executive Director
ADOPTED: May 12, 1982
RECEIVED BY LRC: June 15, 1982 at 1:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601.

DEPARTMENT OF REVENUE
(Proposed Amendment)

103 KAR 18:110. Withholding methods.

RELATES TO: KRS *141.310,* 141.370
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: KRS 141.370 requires the department to establish individual income tax withholding tables by regulation. This regulation establishes such withholding tables and describes procedure for supplement and mechanical withholding. *KRS 141.310 requires the department to revise the tables to compensate for substantial changes in the deductible federal income tax.* These tables are revised to reflect *decreases in the federal tax rates made by the 1981 Economic Recovery Tax Act* [the standard deduction increase enacted by the 1976 General Assembly].

Section 1. General. The Department of Revenue is required by KRS 141.370 to prescribe tables for withholding Kentucky individual income tax from salaries and wages of employees. These tables withhold the tax levied by KRS 141.020 and reflect the standard deductions ($650) prescribed by KRS 141.081, and the deductible federal income tax referred to in KRS 141.310. The tables referred to in Section 4 are hereby prescribed by the Department of Revenue.

Section 2. Supplemental Withholding. In addition to tax required to be withheld by the tables in Section 4, an employee may authorize his employer to withhold additional Kentucky income tax. An employee may authorize additional withholding by filing an amended Withholding Exemption Certificate (Revenue Form K-4) with his employer. The amended certificate may claim fewer personal exemptions than he is allowed, authorize the employer to withhold a specific amount of additional tax, or both.

Section 3. Mechanical Withholding. The department provides a computer formula for withholding Kentucky income tax, and any employer with suitable equipment may use the formula in lieu of the tables referred to in Section 4. No other formula or withholding method may be used unless specific written approval is granted by the department.

Section 4. Withholding Tables. Employers shall withhold Kentucky individual income tax from wages and salaries, paid on and after July 1, *1982* [1976], in accordance with the tables filed herein by reference and which are obtainable from the [Income Tax Division] Department of Revenue, Frankfort, Kentucky, 40601.

RONALD G. GRAY, Commissioner
ADOPTED: June 14, 1982
RECEIVED BY LRC: June 14, 1982 at 10 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Department of Revenue, Capitol Annex Building, Frankfort, Kentucky 40620.

FINANCE AND ADMINISTRATION CABINET
Department for Administration
Division of County and Municipal Accounting
(Proposed Amendment)

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

RELATES TO: KRS 29A.180
PURSUANT TO: KRS 29A.180
NECESSITY AND FUNCTION: KRS 29A.180, as amended by the 1978 General Assembly, requires the [Executive Department for] Finance and Administration *Cabinet* to promulgate regulations establishing the method of reimbursing law enforcement officers for expenses in-

curred for sequestered jurors, for transporting jurors or other authorized persons to views of the scene, for providing specialized security personnel, equipment, or services to the court.

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

(1) For the actual cost of meals, tips, and delivery service upon the presentation of an invoice for such expense. This includes [only] those meals for jurors and *for the sheriff, city police, city marshal, and deputies, as appropriate,* [does not include meals for the officer] or any guards employed.

(2) For the actual cost of housing [jurors] upon the presentation of an invoice for such expense. This includes [only] housing for jurors and *for the sheriff, city police, city marshal, and deputies, as appropriate,* [does not include housing for the officer] or any guards employed.

(3) For any other expense incurred in service to sequestered grand or petit jurors upon the presentation of an invoice for such expense. This includes [only] those expenses for jurors and *for the sheriff, city police, city marshal, and deputies, as appropriate,* [does not include expenses for the officer] or any guards employed.

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

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

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

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

GEORGE E. FISCHER, Secretary

ADOPTED: June 11, 1982

RECEIVED BY LRC: June 11, 1982 at 4:30 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: M. E. Combs, Director, County and Municipal Accounting, Room 231, New Capitol Annex, Frankfort, Kentucky 40601.

FINANCE AND ADMINISTRATION CABINET
Kentucky Board of Pharmacy
(Proposed Amendment)

201 KAR 2:020. Examinations.

RELATES TO: KRS Chapter 315

PURSUANT TO: KRS 13.082, 315.050(2), 315.191(1), (2), (4)

NECESSITY AND FUNCTION: The Kentucky Board of Pharmacy is directed by KRS 315.191(4) to prescribe the time, place, method, manner, scope and subjects of examination of applicants for license to practice pharmacy in the Commonwealth. This regulation will establish continued fair and impartial examinations.

Section 1. No license to practice pharmacy, other than one issued by reciprocity in accordance with the provisions of this regulation, shall be issued except upon the successful passage of an examination prescribed by the Kentucky Board of Pharmacy.

Section 2. All examinations held by the Kentucky Board of Pharmacy shall be conducted at such locations within the state as may be designated by the board, and shall be held at least twice annually. Detailed information as to the time and place of examinations may be procured from the secretary of the board.

Section 3. Examinations shall be adequate to test the knowledge, education and competency of applicants.

Section 4. No person shall be deemed to have successfully passed an examination conducted by the Kentucky Board of Pharmacy unless he or she obtains the following scores:

(1) General average of seventy-five (75) on all examinations;

(2) At least seventy-five (75) on any operative/practical examination;

(3) At least eighty-five (85) on jurisprudence;

(4) No less than sixty (60) on any other subject; provided, however, that the jurisprudence [, oral] and operative examination grades shall not be used in computing the average of the applicant.

Section 5. In the event an applicant fails one (1) or two (2) sections or subjects or fails to obtain a general average of seventy-five (75), he may upon proper application, retake such subject or subjects upon the payment of a fee of *sixty dollars ($60)* [forty dollars ($40)]. An applicant for re-examination must sit for such examination within one (1) year from the date he first fails the examination. An applicant shall be permitted only one (1) partial re-examination. An additional fee equal to the original examination fee shall be submitted with the application for each subsequent re-examination.

Section 6. All results of examinations (including one (1) set of questions) shall be preserved. The questions shall be prepared or approved by the board. Written examinations shall be conducted in such manner that the results shall be entirely fair and impartial, the applicant being known only by numbers so that no examiner or member of the board may identify the paper of the applicant until after the examiners certify the results thereof.

Section 7. An examination fee shall not be refunded after an application has been accepted by the board.

J. H. VOIGE, Executive Secretary
ADOPTED: June 9, 1982
RECEIVED BY LRC: June 14, 1982 at 10 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Executive Secretary, Kentucky Board of Pharmacy, P.O. Box 553, Frankfort, Kentucky 40602.

FINANCE AND ADMINISTRATION CABINET
Kentucky Board of Pharmacy
(Proposed Amendment)

201 KAR 2:050. Licenses and permits; fees.

RELATES TO: KRS Chapter 315
PURSUANT TO: KRS 13.082, 315.035, 315.050, 315.060, 315.110(1), (2), 315.191(2), 315.195, 315.210
NECESSITY AND FUNCTION: This regulation is to provide reasonable fees for this agency to perform all the functions for which it is responsible and to operate within its budget. All monies are held in a trust and agency fund to the credit of the board.

Section 1. The following fees shall be paid in connection with pharmacist examinations and licenses, pharmacy permits, *intern certificates* and the issuance and renewal of licenses and permits:

Application for a registered pharmacist license by examination including a license issued as a result thereof *but does not include any direct costs for test materials and supplies*	$*100* [75]
Application for a registered pharmacist license by reciprocity including license issued as a result thereof	$*150* [100]
Certifying the grades of a licentiate of Kentucky to the licensing agency of another state	$ 3
Annual renewal of a pharmacist license	$ *50* [35]
Delinquent renewal penalty	$ *50*
[Annual renewal of an assistant pharmacist license	$ 25]
Annual renewal inactive pharmacist license	$ *10*
Pharmacy intern certificate valid four (4) years	$ *25*
Duplicate pharmacist license certificate	$ *20* [10]
Application for a permit to operate a pharmacy	$*100* [50]
Renewal of permit to operate a pharmacy	$ 50
Delinquent renewal penalty	$ *50*
Change of location or change of ownership of a pharmacy permit	$ *50* [35]

J. H. VOIGE, Executive Secretary
ADOPTED: June 9, 1982
RECEIVED BY LRC: June 14, 1982 at 10 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Executive Secretary, Kentucky Board of Pharmacy, P.O. Box 553, Frankfort, Kentucky 40602.

FINANCE AND ADMINISTRATION CABINET
Board of Hairdressers and Cosmetologists
(Proposed Amendment)

201 KAR 12:030. License required.

RELATES TO: KRS 317A.010, 317A.020, 317A.060
PURSUANT TO: KRS 317A.050
NECESSITY AND FUNCTION: KRS 317A.010 and 317A.020 require anyone practicing cosmetology to be licensed.

Section 1. Every person licensed by this board, *with the exception of licensed manicurist or cosmetologist exclusively practicing manicuring in a licensed barber shop,* shall practice in an establishment licensed by this board.

Section 2. No establishment or licensee of this board shall employ an unlicensed person to perform or practice cosmetology.

CARROLL ROBERTS, Administrator
ADOPTED: April 5, 1982
RECEIVED BY LRC: June 7, 1982 at 10:30 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Carroll Roberts, Administrator, Board of Hairdressers and Cosmetologists, 314 West Second Street, Frankfort, Kentucky 40601.

STATE BOARD OF PODIATRY
(Proposed Amendment)

201 KAR 25:011. Approved schools; *examination application,* [licensing examination,] fees.

RELATES TO: KRS 311.420
PURSUANT TO: KRS 311.410(4)
NECESSITY AND FUNCTION: KRS 311.420 requires all persons engaging in the practice of podiatry in the State of Kentucky to be licensed by the State Board of Podiatry. KRS 311.420 provides that each applicant shall submit to an examination conducted by the board. This regulation sets out the procedures to be followed in obtaining an application, the fees to be charged and the procedures relating to the examination and issuance of a license to practice podiatry in this state.

Section 1. (1) The board recognizes the following schools or colleges of podiatry as having those standards and requirements adequate to comply with the provisions of KRS 311.420(1)(d). Those schools and colleges are as follows:

(a) California College of Podiatric Medicine, 1770 Eddy Street, San Francisco, California 94115.

(b) *Dr. William M. Scholl* [Illinois] College of Podiatric Medicine, 1001 N. Dearborn Street, Chicago, Illinois 60610.

(c) Pennsylvania College of Podiatric Medicine, Race and Eighth Streets, Philadelphia, Pennsylvania 19107.

(d) New York College of Podiatric Medicine, 53 East 124th Street, New York, New York 10035.

(e) Ohio College of Podiatric Medicine, 10515 Carnegie Avenue, Cleveland, Ohio 44106.

(2) The board will evaluate the academic standards of schools and colleges of podiatry desiring to be approved by the board following receipt by the board of applications for approval from said schools or colleges.

Section 2. All applications for examination mentioned herein shall be submitted on application forms prescribed and provided by the board, accompanied by such evidence, statements, or documents as therein required, and shall be filed with the board at its principal office within the times prescribed herein.

(1) Every applicant, eligible to take the examination pursuant to the provisions of KRS 311.420, must submit an application to the secretary of the board at least thirty (30) days prior to the date of the examination.

(2) The fee for the examination shall be the sum of $100 and must be paid at the time the application for examination is filed with the board. The sum shall be payable by certified check, cashier's check or postal money order.

[(3) In order for the applicant to successfully pass the examination he must receive an average of not less than seventy-five (75) percent on the entire examination and not less than seventy (70) percent on each subject.]

(3) [(4)] Any applicant who fails to attain a passing score as required by the board may apply to the board for re-examination by submitting another application to the secretary of the board at least thirty (30) days prior to the date of the next examination.

(4) [(5)] If the applicant has failed to attain a score of at least seventy (70) percent in one (1) or two (2) of the subjects, but shall have attained an average of seventy-five (75) percent or better on the total examination, then he may only be re-examined on the subject or subjects in which he failed to attain a score of at least seventy (70) percent.

(5) [(6)] The fee for re-examination in one (1) or two (2) subjects shall be twenty-five dollars ($25) and the fee for re-examination for the total examination shall be fifty dollars ($50).

[Section 3. Examinations shall be held at such times and places as shall be determined by the board. A schedule of the dates, time and place of the examination shall be mailed to each applicant whose application is accepted by the board.]

Section *3.* [4.] The board shall not refund the examination fee except where good and sufficient cause for refunding all or a portion of the fees are shown to the board within a reasonable time prior to the date of the examination.

CHESTER A. NAVA, Secretary
ADOPTED: May 6, 1982
RECEIVED BY LRC: May 17, 1982 at 1 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Dr. Chester Nava, Secretary, State Board of Podiatry, 110 North Hubbard Lane, Louisville, Kentucky 40202.

STATE BOARD OF PODIATRY
(Proposed Amendment)

201 KAR 25:031. Continuing education.

RELATES TO: KRS 311.450
PURSUANT TO: KRS 311.410
NECESSITY AND FUNCTION: Sets forth those requirements concerning annual courses of study of subjects relating to the practice of podiatry for compliance with the continuing education requirement for relicensure.

Section 1. (1) Each podiatrist licensed by this board shall be required to annually complete twelve (12) hours of study of courses in subjects relating to the practice of podiatry.

(2) [Six (6) of] The twelve (12) hours required pursuant to subsection (1) of this section shall be taken from those programs conducted or *approved* [sponsored] by the Kentucky State Board of Podiatry.

[(3) No more than four (4) hours may be earned in any one (1) subject or practice area of podiatry.]

Section 2. (1) Continuing education hours for credit other than those earned pursuant to Section 1 may be compiled in the following areas:

(a) Cassette and audio-visual presentation;
(b) Professional seminars;
(c) Accredited school of podiatry continuing education programs;
(d) Correspondence courses;
(e) Continuing education television series;
(f) Other programs as approved by the board.

(2) Prior approval must be secured from the board for certification of all programs other than those in Section 1.

(3) Licensee requesting approval of continuing education programs shall submit an application containing such information as the board may require on forms provided by the board.

(4) Licensees who have been determined to be in non-compliance with this regulation may appeal to the board.

Section 3. (1) Licensees must keep valid records, receipts, and certifications of continuing education programs completed.

(2) Each licensee shall submit, with the annual renewal, a list of all accredited continuing education programs completed by the licensee during the previous license year. Failure to do so shall result in non-renewal of the license.

CHESTER A. NAVA, Secretary
ADOPTED: May 6, 1982
RECEIVED BY LRC: May 20, 1982 at 1 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Dr. Chester Nava, Secretary, Kentucky State Board of Podiatry, 110 North Hubbard Lane, Louisville, Kentucky 40202.

COMMERCE CABINET
Department of Fish and Wildlife Resources
(Proposed Amendment)

301 KAR 1:055. Angling; limits and seasons.

RELATES TO: KRS 150.025, 150.470, 150.990
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: In order to perpetuate and protect the size and well being of fish populations, it is necessary to govern the size and numbers fishermen can harvest. The Commissioner, with the concurrence of the Commission, finds it consistent with established fish management practices to include hybrids under game fish protection. *This amendment is necessary to achieve management objectives for specific waters.*

Section 1. The statewide season, creel limits and size limits for taking fish by angling shall be as follows except as specified in Section 2 of this regulation for:

Species	Daily Creel Limits	Possession Limits	Size Limits Inches
Black bass (largemouth, smallmouth, Kentucky and Coosa bass)	10	20	12
Rock bass (known as goggle-eye or redeye)	15	30	None
Walleye and hybrids	10	20	15
Sauger	10	20	None
Muskellunge and hybrids	2	2	30
Northern pike	5	10	None
Chain pickerel	5	10	None
White bass and yellow bass	60	60	None
Rockfish and hybrids	5	5	15
Crappie	60	60	None
Trout (all species)	8	8	None
Bull frogs	15	30	None

Seasons for all species, except bull frogs, is year round. Bull frog season is May 15 to October 31, annually.

Section 2. The following *special* limits apply*:* [to] *(1)* Grayson Lake only:

	Daily Creel Limits	Possession Limits	Size Limits Inches
Black bass (large mouth, small mouth, Kentucky & Coosa bass)	10	20	15
Crappie	None	None	None
(2) Herrington Lake only:			
White bass, rockfish, and hybrids	*20*	*40*	*See (a)*

No more than five (5) fish of a daily limit or ten (10) fish of a possession limit may be fifteen (15) inches or longer.

All other angling limits and seasons apply as set forth in Section 1 above.

Section 3. All fish must be measured from the terminal end of the lower jaw to the tip of the longest tail fin. All fish caught that are smaller than those prescribed minimum lengths must be returned immediately to the waters from which they were taken in the best physical condition possible. Under no circumstances may a fisherman remove the head or the tail or part thereof of any of the above named fish while in the field and before he has completed fishing for the day.

CARL E. KAYS, Commissioner
ADOPTED: June 11, 1982
APPROVED: W. BRUCE LUNSFORD, Secretary
RECEIVED BY LRC: June 15, 1982 at 9:30 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, No. 1 Game Farm Road, Frankfort, Kentucky 40601.

COMMERCE CABINET
Department of Fish and Wildlife Resources
(Proposed Amendment)

301 KAR 2:080. Propagation of game; pet permits.

RELATES TO: KRS 150.025, 150.180, 150.280, 150.290, 150.305, 150.320, 150.330, 150.360, 150.370, 150.470
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: This regulation pertains to the buying, selling, transporting, propagating, and possessing of all native or exotic, resident or migratory, wildlife. This regulation is necessary to control the indiscriminate capture and possession of wildlife and to insure that wildlife is treated humanely and properly cared for; to protect the public and our native wildlife from contracting wildlife-borne diseases and to prevent the introduction of wildlife that might be detrimental to our native fauna and flora. The function of this regulation is to provide for the prudent taking and possession of wildlife by persons for legitimate purposes and to prevent the introduction of wildlife species that might be harmful to our citizens and native flora and fauna. *This amendment is necessary to broaden the guidelines under which legally propagated wildlife may be sold, delete references permit prices covered under another regulation, and repeal a related regulation governing the sale of bobwhite quail.*

Section 1. Rules for Taking and Possessing *Wildlife. The only wildlife which can be held in captivity is that which is legally taken or possessed. Any person holding live wildlife must apply for a permit within ten (10) days after the wildlife is acquired.* [Wild Birds and Wild Mammals. The only wild birds, except order Falconiformes, starling, crow, and English sparrow, or wild mammals, except woodchuck, coyote and gray fox which can be taken and held in captivity are those which can be legally taken during a prescribed open season. Persons taking protected wildlife must possess a valid license unless exempted by KRS 150.170(2), (3), (5) or (6). Any person legally taking and holding protected or unprotected wildlife during the open season must apply for a permit within ten (10) days after the wildlife is acquired.]

Section 2. Types of Permits and Conditions. (1) Commercial pet and propagation permit. No person shall buy, sell, possess, propagate or exhibit any wildlife for commercial purposes except *that which is* [those] listed in Section 3 without obtaining an annually renewable (from date of

issue) [twenty-five dollar ($25)] permit from the department [within ten (10) days after the wildlife is acquired]. Wildlife must be legally obtained from a permitted or qualified source as determined by the commissioner. Determination of wildlife permitted to be possessed, transported, bought, sold or exhibited will be made by the commissioner or his appointed representative, based upon the merits of each case.

(2) Non-commercial pet and propagation permit. No person shall possess, purchase or propagate any wildlife without obtaining an annually renewable (from date of issue) [five dollars ($5)] permit from the department within ten (10) days after the wildlife is acquired. Wildlife must be legally obtained from the wild or from a permitted or qualified source as determined by the commissioner.

(3) Transportation permit. Any person, resident or nonresident, importing or transporting any live wildlife into Kentucky or receiving shipment into the state, must first obtain a free transportation permit by application through any conservation officer; or if living out of state, but receiving or picking up wildlife shipments into the state, may apply directly to the Kentucky Department of Fish and Wildlife Resources, Frankfort, Kentucky 40601.

(a) Transported by vehicle. Wildlife transported by vehicle into the state from without the state must be accompanied by a transportation permit.

(b) Importation prohibited. The following wildlife cannot be imported and possessed by residents of Kentucky except for certain educational, scientific, exhibition or research purposes approved by the commissioner: wild hogs, jack rabbits, monk parakeet, javelina, nutria, wild turkey, San Juan rabbits, bears, bobcat, cougar and wolves.

(c) Health certificate. All shipments of wildlife must be accompanied by a veterinarian's certificate stating that the wildlife is free of symptoms of disease. A federal quarantine certificate may be substituted for the veterinarian's certificate.

Section 3. Exemptions from Pet or Propagation Permit. Possessing, buying, selling, or exhibiting any of the following wildlife does not require a pet or propagation permit: Love-birds, cockatiels, white rats, exotic finches, hamsters, guinea pigs, canaries, mice, reptiles, mynah birds, gerbils, toucans, and primates (monkeys).

Section 4. Applying for Permits, Inspections and Facilities. (1) Applying for Permits. All applications for a pet or propagation permit shall be made on standard forms obtained from any conservation officer when obtaining or holding any native or exotic, resident or migratory wildlife, except those exempted in Section 3 [, subsection (1)]. The person applying for a pet or propagation permit must indicate the source of supply to the conservation officer. After the permit is issued, a bill of sale or other written proof must be retained to show that the wildlife was obtained from legal source. This bill of sale or written proof must be shown to the conservation officer upon request.

(2) Confining facilities and inspections. [If the wildlife is to be confined for safety, propagation, sale, scientific, educational, or exhibition purposes, the conservation officer must inspect the applicant's facilities used for confinement.] The confining facilities must be large enough to allow reasonable space for exercise, shelter, and maintenance of sanitary conditions. If the application is approved by the conservation officer, it shall be returned to the Department of Fish and Wildlife Resources with the required annual fee. The holder of a pet or propagation permit must allow inspection of facilities by a conservation officer at any reasonable time. If at any time inspection by the conservation officer reveals that wildlife is being kept under unsanitary or inhumane conditions, the officer shall immediately notify the permit holder and the Commissioner of the Department of Fish and Wildlife Resources. After ten (10) days, the officer shall make a second inspection, and if the unsatisfactory conditions have not been corrected, the permit shall be revoked and all captive wildlife shall be confiscated immediately. If it becomes apparent that an application was not made in good faith, or if the permit holder is convicted of any law violation concerning the species for which he holds a permit, the pet or propagation permit shall be revoked and all wildlife confiscated. Fees will not be refunded for permits which are revoked.

Section 5. Conditions for Selling Wildlife. *Wildlife or parts thereof produced at or on a licensed propagation facility may be sold at any time, except that the carcasses of deer, turkey, wild rabbit or squirrel may not be sold.* [The holder of a propagation permit may sell for propagation or pet purposes, live birds, eggs, or mammals produced at or on his propagation facilities at any time.] The pelts or furbearers may be sold during the regular open season and at other times by written permission of the commissioner. [Pheasants and other exotic game birds produced or held on propagation farms or hatcheries may be sold for food purposes directly or for resale by restaurants, stores, and hotels at any time.] All wildlife sold alive for propagation purposes or to commercial shooting preserves[,] shall bear a tag on each crate stating the name and address of the propagator and permit number. The tags may be obtained from the Department of Fish and Wildlife Resources, Frankfort, Kentucky 40601, at cost. All propagated wildlife to be sold for food purposes shall be [individually] tagged with tags obtained at cost from the department.

Section 6. Sale of Bobwhite Quail for Food Purposes. (1) Food purposes permit. In order to sell bobwhite quail as described in Section 2, the seller must have a "food purposes permit" obtainable upon application from the Department of Fish and Wildlife Resources. This "food purposes permit" is valid for one (1) year from date of issue. This permit shall be in addition to all other permits required for the operation of propagation farms.

(2) Receipts and reporting. The seller holding a "food purposes permit" shall present to the buyer, in three (3) copies, an invoice reflecting the number of birds and the date of sale. The seller shall have such invoice signed by the purchaser and one (1) copy thereof shall be retained by the seller, one (1) copy thereof shall be mailed by the seller to the Department of Fish and Wildlife Resources, and one (1) copy thereof kept by the purchaser. Said invoice shall be kept by the seller and the purchaser, available for inspection, for a period of not less than one (1) year.

(3) Sale for food certificate. No sale shall be made hereunder to any restaurant or store at any time unless the purchaser for said restaurant or store shall present a certificate allowing sale of bobwhite quail for food, obtained from the Department of Fish and Wildlife Resources. Said certificate shall be issued in duplicate annually, and one (1) copy shall be posted in said restaurant or store.

Section 7. 301 KAR 2:060, Sale of bobwhite quail for food purposes, is hereby repealed.

CARL E. KAYS, Commissioner
ADOPTED: March 1, 1982
APPROVED: W. BRUCE LUNSFORD, Secretary
RECEIVED BY LRC: June 15, 1982 at 9:30 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Department of Fish and Wildlife, Arnold L. Mitchell Building, No. 1 Game Farm Road, Frankfort, Kentucky 40601.

COMMERCE CABINET
Department of Fish and Wildlife Resources
(Proposed Amendment)

301 KAR 4:040. Sale of abandoned mounted specimens by taxidermists.

RELATES TO: KRS 150.025, 150.175, *150.180,* 150.411
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: This regulation pertains to the sale of abandoned mounted wildlife by taxidermists. Its function is to permit licensed taxidermists to sell mounts that have been abandoned by a person for whom the taxidermy work was performed so some involved expenses may be recovered. The Commissioner, with the concurrence of the Commission, finds it necessary to permit, yet control the manner in which these mounts are sold, so as to prevent the abusive marketing of protected wildlife. *This amendment is necessary to redefine abandoned mounts and rescind permit issuance restrictions.*

Section 1. The commissioner may issue a permit, except as prohibited by federal regulations, authorizing licensed taxidermists to sell mounted specimens of fish or wildlife that have been abandoned by the owner. [For the purposes of this regulation, unclaimed mounts that have been in the possession of a taxidermist more than twelve (12) months shall be considered abandoned.]

Section 2. A taxidermist wishing to sell abandoned mounts shall apply to the commissioner by letter [during January]. The letter shall identify the mounts to be sold, with the name and address of the person for whom it was mounted, and the date that each specimen was accepted for mounting. Upon receipt of the required information, the commissioner may issue a permit authorizing sale of the described mounts during a sixty (60) day period beginning with the date the permit is issued. Taxidermists conducting a sale shall provide a written report to the commissioner within ten (10) days of such sale, listing the name and address of the purchaser and a description of the mount(s) purchased.

[Section 3. Only those taxidermists whose monthly reports are current, as required by KRS 150.411, will be issued permits to sell abandoned mounts.]

CARL E. KAYS, Commissioner
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NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department of Surface Mining
Reclamation and Enforcement
(Proposed Amendment)

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 have a pH of less than 4.5 or that contain sulfide minerals or other materials which, if exposed to air, water, weathering, or microbiological 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 within 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 in sufficient quantities for a specific use.

(9) "Area" as used Title 405, Chapter 30, means a geographic unit in which the criteria alleged in the petition pursuant to 405 KAR 30:190, Sections 3 and 4, and 405 KAR 30:200, Section 8, occur throughout and form a significant feature.

(10) [(9] "Atmospheric water" means water that has traveled back to the atmosphere through evaporation from surfaces and transpiration through the porous outer barriers of plants and animals.

(11) [(10)] "Barrel" means the unit of liquid volume for the petroleum and related products equal to forty-two (42) gallons (158.9 liters).

(12) [(11)] "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.

(13) [(12)] "Borehole" means a narrow, cylindrical hole drilled into the ground, usually for the purpose of geological or hydrological investigation and for placement of charges for blasting operations.

(14) [(13)] "Casing" means a metal *or plastic* pipe or tube used as lining for water, oil or gas wells.

(15) [(14)] "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.

(16) [(15)] "Compaction" means increasing the density of a material by reducing the voids between the particles by mechanical effort.

(17) [(16)] "Complete application" means an application for a permit, which contains all information required under Title 405, Chapter 30.

(18) [(17)] "Corehole" means a cylindrical sample of rock or other strata obtained through the use of a hollow drill bit which cuts and retains a section of rock or other strata penetrated.

(19) [(18)] "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.

(20) [(19)] "Department" means the Department for Natural Resources and Environmental Protection.

(21) [(20)] "Deposit" means a consolidated or unconsolidated material that has accumulated by a natural process or agent.

(22) [(21)] "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.

(23 [(22)] "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.

(24) [(23)] "Diversion" means a channel, embankment,

or other manmade structure constructed to divert water from one (1) area to another.

(25) [(24)] "Downslope" means the land surface below the projected outcrop of the lowest bench elevation from which oil shale is being mined.

(26) [(25)] "Effluent limitations" means any restrictions or prohibitions established under state law which include, but are not limited to, effluent limitations, standards of performance for new sources, and toxic effluent standards on quantities, rates and concentrations of chemical, physical, biological and other constituents which are discharged into the waters.

(27) [(26)] "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.

(28) [(27)] "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow or ice and which has a channel that is always above the local water table.

(29) [(28)] "Fish and wildlife habitat" means land dedicated wholly or partially to the production, protection or management of species of fish or wildlife.

(30) [(29)] "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.

(31) [(30)] "Fragile lands" means geographic areas containing significant 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.

(32) [(31)] "Fragipan" is a loamy, brittle, subsurface horizon low in porosity and content of organic matter and low or moderate in clay but high in silt or very fine sand. A fragipan appears cemented and restricts roots. When dry, it is hard or very hard and has a higher bulk density than the horizon or horizons above. When moist, it tends to rupture suddenly under pressure rather than to deform slowly.

(33) [(32)] "Fugitive dust" means that particulate matter which becomes airborne due to wind erosion or mechanical operations.

(34) [(33)] "Government-financed construction" means construction funded fifty percent (50%) or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds, but shall not mean government financing agency guarantees, insurance, loans, funds equivalent, or in-kind payments.

(35) [(34)] "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.

(36) [(35)] "Ground water" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

(37) [(36)] "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.

(38) [(37)] "Highwall" means the face of exposed overburden and/or oil shale in an open cut of a surface oil shale mining operation.

(39) [(38)] "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.

(40) [(39)] "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.

(41) [(40)] "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.

(42) [(41)] "Impermeable" means materials which exhibit a coefficient of permeability (K) value less than 10-6 cm/sec.

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

(44) [(43)] "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.

(45) [(44)] "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.

(46) [(45)] "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.

(47) [(46)] "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.

(48) [(47)] "Leaching" means the removal of soluble constituents from a solid substance by the action of a percolating liquid.

(49) [(48)] "Leachate" means the liquid that has passed through or emerged from any solid and contains soluble, suspended or miscible materials removed from such solids.

(50) [(49)] "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.

(51) [(50)] "Monitoring" means the collection of environmental, scientific, or engineering data by either continuous or periodic sampling methods.

(52) [(51)] "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.

(53) [(52)] "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, cave-ins, subsidence, substantial erosion, unstable geology, or frequent flooding.

(54) [(53)] "Noxious plants" means species classified under *KRS 250.010* [Kentucky law] as noxious plants.

(55) [(54)] "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.

(56) [(55)] "Oil shale" is a laminated, sedimentary rock which contains refractory, insoluble organic material (kerogen) that can be treated by pyrolysis to yield liquid fuels.

(57) [(56)] "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.

(58) [(57)] "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.

(59) [(58)] "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. Government-financed construction activities in which oil shale is incidentally extracted are excluded from this definition.

(60) [(59)] "Outslope" means the face of the spoil, waste, or embankment sloping downward from the highest elevation to the toe.

(61) [(60)] "Overburden" means material of any nature, consolidated or unconsolidated, that overlies an oil shale deposit, excluding topsoil and vegetation.

(62) [(61)] "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.

(63) [(62)] "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.

(64) [(63)] "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.

(65) [(64)] "Permit" means written approval issued by the department to conduct oil shale operations.

(66) [(65)] "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.

(67) [(66)] "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.

(68) [(67)] "Person" means an individual, partnership, association, society, joint venture, joint stock company, firm, company, government agency, utility, corporation, or other business organization.

(69) [(68)] "pH" means the negative logarithm (base 10) of the hydrogen ion concentration of a solution and is a measure of the acidity or alkalinity of a solution.

(70) [(69)] "Precipitation event" means a quantity of water resulting from drizzle, rain, snow, sleet, or hail in a specified period of time.

(71) [(70)] "Processing" means the crushing, preparation, distillation, refining, upgrading, retorting, or any other operation used in the extraction of shale oil or other products from oil shale.

(72) [(71)] "Property to be mined" means both the surface and mineral estates on and underneath lands which are within the permit area.

(73) [(72)] "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.

(74) [(73)] "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.

(75) [(74)] "Public road" means any publicly owned

thoroughfare for the passage of vehicles.

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

(77) [(76)] "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.

(78) [(77)] "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.

(79) [(78)] "Recurrence interval" means the interval of time in which an event is expected to occur once, on the average.

(80) [(79)] "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.

(81) [(80)] "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.

(82) [(81)] "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.

(83) [(82)] "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.

(84) [(83)] "Sedimentation pond" means a primary sediment control area 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.

(85) [(84)] "Shale fines" means those shale particles which have been produced through handling, crushing, transporting, and other associated processes.

(86) [(85)] "Shale oil" is a volatile and condensible crude-oil-like material produced upon pyrolysis or oil shale or kerogen from oil shale.

(87) [(86)] "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.

(88) [(87)] "Slurry" means a suspension of pulverized solid in a liquid.

(89) [(88)] "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.

(90) [(89)] "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.

(91) [(90)] "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.

(92) [(91)] "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.

(93) [(92)] "Spoil" means overburden that has been removed during oil shale operations.

(94) [(93)] "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.

(95) [(94)] "Surber" is a method of taking quantitative bottom samples of streams. The surber covers one (1) square foot and is designed for use in flowing waters of shallow streams and cannot be used satisfactorily in fast water over eighteen (18) inches in depth or in bottoms where the substrata is composed of large rubble and boulders.

(96) [(95)] "Surface water" means water, either flowing or standing, on the surface of the earth.

(97) [(96)] "Suspended solids", expressed as milligrams per liter, means organic or inorganic materials carried or held in the liquid phase in the procedure outlined by the Environmental Protection Agency's regulations for waste water and analyses.

(98) [(97)] "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.

(99) "Ten (10) year, twenty-four (24) hour frequency event" means the maximum twenty-four (24) hour precipitation event with a probable reoccurrence interval of once in ten (10) years as defined by the National Weather Service and Technical Paper No. 40, "Rainfall Frequency Atlas of the U.S.," May, 1961, and subsequent amendments, or equivalent regional or waterfall probability information developed therefrom.

(100) [(98)] "Topsoil" means the A horizon soil layer.

(101) [(99)] "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.

(102) [(100)] "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 microbiological action, or physical effects is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

(103) [(101)] "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.

(104) [(102)] "Valley fill" means a fill structure consisting of any 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.

(105) [(103)] "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.

(106) [(104)] "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 A. SWIGART, Secretary
ADOPTED: June 15, 1982
RECEIVED BY LRC: June 15, 1982 at 4 p.m.
See public hearings scheduled on page 1.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department of Surface Mining Reclamation and Enforcement
(Proposed Amendment)

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, and hearings.

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 to comply with the requirements of KRS Chapter 350 and the requirements of this chapter except:

(1) The extraction of oil shale by a land owner for his own noncommercial use on land owned or leased by him; and

(2) The extraction of oil shale as an incidental part of government-financed construction. Provided, however, that any person extracting oil shale incidental to government financed construction shall maintain, on the site of the extraction operation and available for inspection, documents which show:

(a) A description of the construction project;

(b) The exact location of the construction, right-of-way or the boundaries of the area which will be directly affected by the construction; and

(c) The government agency which is providing the financing and the kind and amount of public financing, including the percentage of the entire construction costs represented by the government financing.

Section 2. Conflicting Provisions. The provisions of Chapter 30 of Title 405 are to be construed as being compatible with and complimentary to each other. In the event that provisions within this chapter are found to be contradictory, the more stringent provisions shall apply.

Section 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 the upstream structure.

Section 5. 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 and reasonable control of these impacts, its size shall be limited to a total surface disturbance of 100 acres per year. 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, land 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.

Section *7.* [6.] Nothing in this chapter shall be construed to relieve the permittee of any responsibility for any of the obligations of 405 KAR Chapter 30.

Section *8.* [7.] Hearings. (1) The provisions of KRS 224.081 shall apply to any departmental order or determination made pursuant to 405 KAR Chapter 30.

(2) Hearings shall be conducted pursuant to KRS 224.083 and appeals may be taken from any final order of the department as allowed by KRS 224.085.

JACKIE A. SWIGART, Secretary
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See public hearings scheduled on page 1.

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department of Surface Mining
Reclamation and Enforcement
(Proposed Amendment)

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) Each permit shall be issued for a fixed term not to exceed five (5) years. A longer fixed permit term may be granted at the discretion of the department only if:

(a) The application is full and complete for the specified longer term; and

(b) The applicant shows that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing of the operation, and this need is confirmed, in writing, by the applicant's proposed source for the financing.

(2) A permit shall terminate if the permittee has not begun the oil shale operation covered by the permit within three (3) years of the issuance of the permit. The permittee shall be deemed to have commenced oil shale operations at the time that the construction of the processing plant is initiated or at the time that mining of the shale begins, whichever is first.

(a) The department may grant reasonable extensions of the time for commencement of these operations, upon receipt of a written statement showing that such extensions of time are necessary, if:

1. Litigation precludes the commencement or threatens substantial economic loss to the permittee; or

2. There are conditions beyond the control and without the fault or negligence of the permittee.

(b) Extensions of time granted by the department under this subsection shall be specifically set forth in the permit and notice of the extension shall be made to the public.

Section 4. [3.] 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. [4.] 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. [5.] 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 one (1) copy 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 one (1) copy 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) 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;

(c) Be of a scale between 400 feet to the inch and 600 feet to the inch;

(d) 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;

(e) 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;

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

(g) 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) 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.

(6) 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.

(7) 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.

(8) 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.

(9) 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.

(10) 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.

(11) Spoil *and spent shale* disposal plan. The application shall include a plan for the disposal of spoil *and spent shale* 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 and spent shale.*

(12) Plan for handling of waste materials and acid-forming and toxic-forming materials. The application shall include a plan for the handling of acid-forming 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* [applicable laws and regulations].

(13) 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.

(14) 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.

(15) 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.

(16) 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.

(17) In the required operational plans specified in subsections (5) through *(16)* [(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.

(18) Each application submitted to the Bureau of Surface Mining Reclamation and Enforcement for an oil shale operation permit shall be accompanied by a fee determined by the department. The amount of such fee shall be $500, plus fifty dollars ($50) for each acre or fraction thereof of the land to be affected under the permit; provided however, such fee shall not exceed the actual or anticipated cost of reviewing the permit. The fee shall accompany the application in the form of a cashier's check or money order payable to the Kentucky State Treasury. No application shall be processed unless such fee has been paid. The payment of such fee shall only cover the permit required by the Bureau of Surface Mining Reclamation and Enforcement and shall not relieve the applicant from the obligation to pay additional fees for any other permits required from the department.

Section 7. [6.] 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.* [7.] 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.* [8.] 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.* [9.] 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.* [10.] 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 submitted to the Bureau of Surface Mining Reclamation and Enforcement for a revision to an oil shale operation permit shall be accompanied by a fee determined by the department. The amount of such fee shall be $500, plus fifty dollars ($50) for each acre or fraction thereof of the increased area; provided however, such fee shall not exceed the actual or anticipated cost of reviewing the permit. The fee shall accompany the application in the form of a cashier's check or money order payable to the Kentucky State Treasurer.* [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 fee[s] *has* [have] been paid. *The payment of such fee shall only cover the permit required by the Bureau of Surface Reclamation and Enforcement and shall not relieve the applicant from the obligation to pay additional fees for any other permits required from the department.*

(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.* [11.] 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.* [12.] 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 proposed operation will not be inconsistent with other oil shale operations anticipated to be performed in areas adjacent to the proposed permit area.

(8) 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, 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.

(9) If the department is unable to determine whether the proposed oil shale operation is located within the distances or boundaries of any of the lands identified in subsections (5), (6), and (8) of this section, the department shall transmit a copy of the relevant portions of the permit application to the appropriate federal, state, or local government agency for a determination or clarification of the relevant boundaries or distances, with a notice to the agency that it must respond in writing within thirty (30) days of receipt of the request. Upon failure of the agency to res-

pond in writing within the thirty (30) day period, the department shall presume that the proposed oil shale operation is not located within the boundaries of any such lands.

Section *14.* [13.] 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 A. SWIGART, Secretary
ADOPTED: June 15, 1982
RECEIVED BY LRC: June 15, 1982 at 4 p.m.
See public hearings scheduled on page 1.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department of Surface Mining Reclamation and Enforcement
(Proposed Amendment)

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 *405 KAR 30:130, Section 4(6)* [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 *petition shall be returned to the petitioner with a statement of findings* [department shall so notify the petitioner].

(4) The department may reject petitions for designation or terminations which are found to be frivolous. If the department that the petition is frivolous, it shall return the petition to the petitioner with a written statement of the reasons for the determination.

(5) [(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 *new* allegations of facts and *objective* [supporting] evidence. If the petition does not contain new and substantial allegations of facts, the department shall *return the petition* [so notify the petitioner] with a statement of its findings and a reference to the record of the previous designation proceedings.

(6) [(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 *may return such a petition to* [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 *under 405 KAR 30:130, Section 4(6)* [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 *periodically* 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 circulate copies of the petition form to and request submission of relevant information from:

(a) Other interested government agencies;

(b) Areawide development district agencies;

(c) The petitioner;

(d) Intervenors; and

(e) Other persons known to the department to have an interest in the property.

(3) [(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 *by a newspaper advertisement. The notice shall identify the petitioner and provide the mailing address of the petitioner. The notice shall request submissions of relevant information and shall request that persons with an ownership or other interest of any hearing identify themselves to the department* [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.]

(a) In the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county of the area covered by the petition; and

(b) In the newspaper of largest circulation in the state.

(4) [(3) A] *Until three (3) days before the department holds a public hearing on the petition pursuant to Section 7, any* person may intervene [at the discretion of the hearing officer] in the preceeding by filing:

(a) The intervenor's name, address, [and] telephone number*, and notarized signature*;

(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 *objective* [supporting] evidence which would tend to establish or dispute the allegations found in the petition.

Section 5. Public Information. (1) Beginning immediately after the department determines that a petition is complete, it shall compile and maintain a record consisting of all documents relating to the petition filed with or prepared by the department. This record shall be maintained at the central office of the bureau in Frankfort and the regional office within whose district the petition site is located.

(2) The department shall make the record available for public inspection, pursuant to KRS 61.870 et seq.

(3) The department shall provide information on the petition procedures necessary to designate (or terminate a designation of) an area as unsuitable for oil shale operations.

Section *6.* [5.] Hearing Requirements. (1) *Within ten (10) months after receipt of a complete petition, the department shall hold a public hearing in the locality of the area covered by the petition; provided that when a permit application is pending before the department at the time of petition receipt and such application involves an area in a petition, the department shall hold the hearing on the petition within ninety (90) days of its receipt. If all petitioners and intervenors agree, the hearing need not be held. The hearing shall be legislative in nature, without cross-examination of witnesses.* [After receipt of a complete petition, the department shall hold a public hearing. The hearing shall be held within ten (10) months after receipt of a complete petition provided that when a permit application is pending before the department and such application involves an area in a petition, the department shall hold the hearing on the petition within ninety (90) days of its receipt. 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.]

(a) Local, areawide, state, and federal agencies which may have an interest in the decision of the petition;

(b) The petitioner and the intervenors; and

(c) Any person with an ownership or other interest in the area covered by the petition who has identified himself or herself to the department as set forth in Section 4(3) or who is otherwise actually known to the department.

(3) Notice of the hearing shall be sent by certified mail to the petitioner and any intervenors and by regular mail to the persons designated in subsection (2)(a) and (c) of this section, and be post-marked not less than thirty (30) days before the scheduled date of the hearing.

(4) [(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 *once a week for two (2) consecutive weeks and during the week prior to the scheduled date of the public hearing. The consecutive weekly advertisement must be published four (4) and five (5) weeks before the scheduled date of the public hearing* [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].

(5) [(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.

(6) [(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 *7.* [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 *reclamation is not technologically and economically feasible under the performance standards of Title 405,*

Chapter 30, at the time of designation [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) Be incompatible with existing land use policies, plans, or programs adopted by state, areawide, or local agencies with management responsibilities for the areas which would be affected by such oil shale operations;

(b) [(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;

(c) [(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;

(d) [(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

(e) [(d)] Affect natural hazard lands in which the oil shale operations could substantially endanger life and property.

(3) If the department does not designate a petitioned area under subsection (2) of this section, the secretary may direct that any future permits issued for the area contain specific requirements for minimizing the impact of oil shale operations on the feature that was the subject of the petition.

(4) [(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.

(5) [(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.

(6) [(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.

[(6) If the department does not designate a petitioned area under subsection (2) of this section, the Secretary may direct that any future permits issued for the area contain specific requirements for minimizing the impact of oil shale operations on the feature that was the subject of the petition.]

Section 8. Administrative and Judicial Review. (1) Following any order or determination of the department concerning completeness or frivolousness of a petition, any person with an interest which is or may be adversely affected may request a hearing on the reasons for the order or determination in accordance with KRS 224.081. Any person with an interest which is or may be adversely affected and who has participated in an administrative hearing under this subsection shall have the right to judicial review as provided in KRS 224.085.

(2) Any person with an interest which is or may be adversely affected by a final decision of the secretary under Section 7(6) shall have the right to judicial review as provided in KRS 224.085.

Section *9.* [7.] Map. The department shall maintain a *current* map of areas designated as unsuitable for all or certain types of oil shale operations *at each regional office and* at the central office in Frankfort. Copies of such maps will be available for inspection and copying as prescribed in the Open Records Act, KRS *61.872* [61.870] to 61.884. *Such maps will periodically be distributed to appropriate federal, state, areawide, and local government agencies.*

JACKIE A. SWIGART, Secretary
ADOPTED: June 15, 1982
RECEIVED BY LRC: June 15, 1982 at 4 p.m.
See public hearings scheduled on page 1.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department of Surface Mining Reclamation and Enforcement
(Proposed Amendment)

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. *(1)* A petitioner shall file a petition containing all information that the department requires *pursuant to this section using forms provided by the department.* [including at least the following:]

(2) The petition for designation shall include the information described in subsections (3) through (7) of this section.

(3) [(1)] The petitioner's name, address, [and] telephone numbers *and notarized signature*;

(4) [(2)] Identification of the petitioner's interest which is or may be adversely affected. [;]

(5) [(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;

(6) [(4)] A description of how oil shale operations in the area have or may adversely affect people, land, air, water or other resources. [; and]

(7) [(5)] Allegations of facts and *objective* [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 *objective* [supporting] evidence shall *be specific as to the petitioned "area" as defined in 405 KAR 30:010 and shall* address one (1) or more of the following:

(a) *Reclamation is not technologically and economically feasible under the provisions of Title 405, Chapter 30;* [Oil shale operations cannot be carried out in a manner consistent with all applicable statutes and regulations.]

(b) Oil shale operations will:

1. Be incompatible with existing land use policies, plans, or programs adopted by state, areawide, or local agencies with management responsibilities for the areas which would be affected by such oil shale operations;

2. [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;

3. [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;

4. [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

5. [4.] Affect natural-hazard lands in which oil shale operations would substantially endanger life and property.

Section 4. Termination Petition. *(1)* A petitioner shall file a petition for termination *of designation of an area as unsuitable for all or certain types of oil shale operations using forms provided by the department containing all information that the department requires pursuant to this section. The petition for termination may cover all or any portion of the specific geographical area that was previously designated as unsuitable for oil shale operations and shall address those criteria upon which designation was based.* [containing all information that the department requires including at least the following:]

(2) The petition for termination shall include the information described in subsections (3) through (6) of this section.

(3) [(1)] The petitioner's name, address, [and] telephone number, *and notarized signature.* [;]

(4) [(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. [;]

(5) [(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]

(6) [(4)] Allegation of facts with *objective* [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. Allegations of fact and *objective* [supporting] evidence shall address one (1) or more of the following:

(a) *Reclamation is now technologically and economically feasible, if the designation was based on a finding that reclamation was either technologically or economically feasible.* [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 not now be incompatible with land use policies, plans, or programs, adopted by state, areawide, or local agencies with management responsibilities for the designated area, if the designation was based on a finding of such incompatibility;

2. [1.] Will *not now* [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;

3. [2.] Will *not now* [no longer] result in substantial loss or reduction of long-range availability of water supplies if the designation was so based;

4. [3.] Will *not now* [no longer] result in substantial loss or reduction of long-range productivity of food and fiber products, if the designation was so based;

5. [4.] Will *not now* [no longer] affect natural hazard lands in which the oil shale operations would substantially endanger life and property, if the designation was so based.

(7) Termination petitions shall be mailed or delivered to: Kentucky Department for Natural Resources and Environmental Protection, Lands Unsuitable Program, Bureau of Surface Mining Reclamation and Enforcement, Frankfort, Kentucky 40601.

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 A. SWIGART, Secretary
ADOPTED: June 15, 1982
RECEIVED BY LRC: June 15, 1982 at 4 p.m.
See public hearings scheduled on page 1.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department of Surface Mining Reclamation and Enforcement
(Proposed Amendment)

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. *Copies sent to residences shall be accompanied by information advising the owner or resident how to request a pre-blasting survey.* 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 *the values specified in Appendix A of this regulation at any dwelling, public building, school, church, or commercial or institutional structure, unless such structure is owned by the permittee and is not leased to any other person. If a building owned by the permittee is leased to another person, the lessee may sign a waiver relieving the permittee from meeting the airblast limitations of this subsection.* [128 decibel linear-peak at any man-made dwelling or structure located within one-half (½) mile of the permit area.]

(a) In cases except the C-weighted, slow response, the measuring systems used shall have a flat frequency response of at least 200 Hz at the upper end. The C-weighted shall be measured with a Type I sound level meter that meets the standard American National Standards Institute (ANSI) S 1.4-1971 specifications.

(b) The permittee may satisfy the provisions of this subsection by meeting any of the four (4) specifications in the chart in Appendix A of this regulation.

(c) The department may require an airblast measurement of any or all blasts, and may specify the location of such measurements.

(7) Except where lesser distances are approved by the department, based upon a preblasting survey, *seismic investigations,* or other appropriate investigations, *and based upon the provisions of 405 KAR 30:130,* blasting shall not be conducted within:

(a) *Three hundred (300)* [One thousand (1,000)] feet of any building used as a dwelling, school, church, hospital, or nursing facility;

(b) *Three hundred (300)* [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) *Provided that blasting is conducted in such manner as to prevent adverse impacts on any underground mine and changes in the course, channel, or availability of ground or surface water outside the permit area, then the maximum peak particle velocity limitation of this section shall not apply at the following locations:* [The maximum peak particle velocity of ground motion does not apply to property inside the permit area that is owned or leased by the permittee.]

(a) At structures owned by the permittee or the person conducting the blasting operation, and not leased to another party; and

(b) At structures owned by the permittee of the person conducting the blasting operation, and leased to another party, if a written waiver by the lessee is submitted to the department prior to blasting.

(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, *including temperature, wind direction, and approximate velocity*;
(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) *Initiation system* [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) Sketch of the delay pattern;
(18) Number of persons in the blasting crew; and
(19) [(17)] Seismograph records, if required pursuant to Section 8.

APPENDIX A OF 405 KAR 30:250

Airblast Limitations

Lower frequency limit of measuring system, Hz (+3dB)	*Maximum level in dB*
0.1 Hz or lower-flat response	*135 peak*
2 Hz or lower-flat response	*132 peak*
6 Hz or lower-flat response	*130 peak*
C-weighted, slow response	*109 C*

JACKIE A. SWIGART, Secretary
ADOPTED: June 15, 1982
RECEIVED BY LRC: June 15, 1982 at 4 p.m.
See public hearings scheduled on page 1.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department of Surface Mining Reclamation and Enforcement
(Proposed Amendment)

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) Any overflow or other discharge of surface water from the disturbed area demonstrated by the permittee to result from a precipitation event larger than a ten (10) year, twenty-four (24) hour frequency event, will not be subject to the effluent limitations of subsection (2) of this section.
(4) [(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.
(5) [(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 be twice a month or as deemed necessary by 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 quarterly report of all measurements and analyses to the department, 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 repor-

ting 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 as determined by the department.

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/1, 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 A. SWIGART, Secretary

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See public hearings scheduled on page 1.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department of Surface Mining Reclamation and Enforcement
(Proposed Amendment)

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 provided 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 thereto and all other applicable state and federal laws and regulations.

Section 4. Covering and Stabilizing. (1) Any acid-forming or toxic-forming materials, combustible materials, or any other mining waste materials that are exposed, used, or produced during mining shall be covered with a minimum of four (4) feet of non-toxic and non-acid forming material; or, if necessary, treated 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-acid forming 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.

(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 *1.3* [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 requirements of KRS Chapter 224 and regulations promulgated pursuant thereto and all other applicable state and federal laws and regulations.

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 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 Depressions. 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 or 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 A. SWIGART, Secretary
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See public hearings scheduled on page 1.

EDUCATION AND ARTS CABINET
Department of Education
Bureau of Administration and Finance
(Proposed Amendment)

702 KAR 1:005. Textbook program plan.

RELATES TO: KRS 156.400 to 156.476, 157.100 to 157.190

PURSUANT TO: KRS 13.082, 156.410, 156.437, 156.447, 156.474, 156.476, 157.100, 157.110, 157.120, 157.130, 157.140, 157.150, 157.160

NECESSITY AND FUNCTION: KRS 156.400 to 156.476 sets up the Kentucky Textbook Commission and the statutory policies and procedures for the adoption, purchase, use and distribution of textbooks to be utilized in the schools of the Commonwealth. KRS 157.100 to 157.190 require that the Department of Education purchase textbooks for certain grades and set up management procedures for the textbook program. This regulation establishes the standards and procedures which are necessary to carry out such statutory requirements dealing with textbooks.

Section 1. *Effective July 15, 1982, and thereafter,* the subjects included in the "Program of Studies for Kentucky Schools" shall be arranged into *six (6)* [five (5)] groups as

follows: Group I—Social Studies K-12; Group II—Language Arts K-12 (except Reading K-8 *and Literature K-12*)[, Art Education K-12, and Foreign Language 3-12]; Group III—Science K-12[, Health and Physical Education K-12]; Group IV—Mathematics K-12; [and] Group V—Reading K-8, Music K-12, Industrial Arts 7-12, Business Education 7-12, Vocational Education 7-12, and Trades and Industry 11-12*; and Group VI—Literature K-12, Art Education K-12, Foreign Language 3-12, Driver Education 9-12, Health and Physical Education K-12.*

Section 2. (1) The Division of Free Textbook Services shall requisition *and* [from] publishers submitting bids *shall ship* adequate textbook samples to [be used by] the *Division of Free Textbook Services* [State Textbook Commission] and [by] individual *State Textbook* Commission members, reviewers, and curriculum committees during the selection and adoption process. All *available* textbook samples, program descriptions, *list of gratis items for districts adopting or purchasing books,* and other pertinent information shall be provided before the bid opening. Samples and [other] information not available at bid opening shall be *shipped* [forwarded] to the Division of Free Textbook Services, [for distribution to] commission members, *reviewers and curriculum committees as soon as possible and not later than the date of the commission hearing held under Section 3 hereof.*

[(2) The State Textbook Commission shall conduct a working conference for the purpose of interviewing publisher agents and representatives before each listing.]

(2) [(3)] When the selection process has been completed and the individual commission members, *reviewers and curriculum committees* have no further need for [any] samples [that may be] in their possession, such shall be disposed of in the following manner:

(a) Reclaimed by publishers;

(b) Transferred to local school districts, institutions of higher education, or other appropriate agencies; or

(c) Sold by the State Board of Education.

All sales and transfers shall be properly receipted and filed in the Division of Free Textbook Services. Official adoption samples, however, must be disposed of in accordance with KRS 156.470.

Section 3. (1) Each adoption year before the September listing, the State Textbook Commission shall conduct a hearing for the purpose of interviewing publisher agents and representatives and providing an opportunity for agents and representatives to make presentations on textbooks submitted for listing.

(2) The commission shall hear any person or organization that may have complaints or concerns about a textbook being considered for listing at the publisher hearing or the September listing.

(3) Parties desiring to be heard shall file with the Secretary of the State Textbook Commission a request two (2) weeks prior to either meeting to assure a place on the agenda. The request need not be in any prescribed form but must clearly state:

(a) Name and address of the person or organization requesting the hearing;

(b) Title, author and copyright date of the textbook in question;

(c) Sections of the textbook being questioned and nature of concern;

(d) Anticipated problems that would be created if the textbook is placed in use; and

(e) Suggested alternatives.

(4) A reasonable amount of time shall be assigned to the agenda for the hearing and one (1) spokesperson shall represent a group or organization.

(5) The commission's position and/or action shall be forwarded to the concerned parties after the September listing has been concluded.

Section 4. [3.] (1) The Kentucky State Textbook Commission has the right to inquire into and ascertain if any publisher has violated this regulation or the Kentucky Revised Statutes; or if the publisher has used undue influence or unethical tactics to secure bids or to assure local adoption. *Undue influence or* unethical tactics shall include, but not necessarily be limited to, unsolicited contact by agents and representatives of *individual* publishers with members of the State Textbook Commission and the buying for or giving to State Textbook Commission members *and local district selection committee members* meals, gifts, trips, entertainment, or any other items [or services] of monetary value *to assure the listing, adoption, and purchase of their textbooks.* If there is sufficient evidence that publishers are guilty of any of the aforementioned, they shall be *called before the State Textbook Commission to determine if violations did occur and what course of action should be taken* [barred from participation in the bidding and adoption process].

(2) Publishers proposing to give local districts free-of-charge items, including but not limited to kits, duplicating masters, workbooks, and extra textbooks, if said district would adopt and purchase their textbooks, shall file a list of gratis items as an official part of their bid. Publishers not complying would be considered in violation of statute and this regulation.

(3) [(2)] The State Textbook Commission shall have the right to *refuse to execute or to* cancel a publisher contract upon discovery that said publisher *has violated any part of this regulation or* does not have the ability to perform all the terms and conditions of the contract.

(4) [(3)] All bidders for textbook contracts shall file with the Division of Free Textbook Services the name of a Kentucky person, firm, or corporation upon whom process may be served. The name of the process agent, together with such other information concerning said agent, shall be made available to the proper authorities for the purpose of serving process.

Section 5. Publishers and local school districts may agree to pilot new textbook programs for one (1) school year on a selective and controlled basis to determine the effectiveness of a particular textbook program. Piloting shall not be conducted during the adoption year (July-April) for a subject being considered for adoption by the local districts. The Superintendent of Public Instruction shall approve all piloting programs.

Section 6. Any school administrator or teacher that receives directly or indirectly any gift, reward, or promise of a reward for his influence in reviewing and selecting textbooks shall be subject to the penalties of KRS 156.480.

Section 7. [4.] (1) The "Manufacturing Standards and Specifications for Textbooks," developed and approved by the National Association of State Textbook Administrators, in consultation with the Association of American Publishers and the Book Manufacturers' Institute, as revised February, *1982* [1980], shall apply to all textbooks submitted for adoption in Kentucky. Said edition is incorporated by reference and *is on file in and* can be obtained from the Division of Free Textbook Services.

(2) Publishers who have filed an *old copyright with the*

official bid on or before July 15 may substitute the revised edition at the *commission hearing* [same price. This substitution shall be made on or before September 20, which is the date the State Textbook Commission meets to compile the State Multiple List of Textbooks]. Publishers may submit a galley proof, [or] incomplete book, *or statement of intent* with the official bid; however, the book shall be complete and on file with the State Textbook Commission on or before *the date of the commission hearing* [September 20, which is the date the Textbook Commission meets to compile the State Multiple List of Textbooks]. Ancillary materials, including workbooks and teacher editions, shall be completed on or before *the July 1 contract date* [September 20].

Section *8.* [5.] Defective binding, workmanship or material shall be reported as soon as detected. Publishers shall be held responsible for all defective textbooks. Textbooks that show manufacturing defects in the first or second year *of use* shall be replaced by the publisher on a one-for-one basis. After the first two (2) years *of use,* replacement agreement must be reached with the publishers. *School districts shall start the replacement process as soon as it has been determine that textbooks are defective.*

Section *9.* [6.] (1) Request to substitute revised editions of textbooks under contract shall be considered at the regular meetings of the State Textbook Commission to be held on or before May 1 and on or before September 20.

(2) Substitutions shall not be permitted for textbooks to be used the last year of a contract.

(3) The publisher shall agree to supply either the listed or the substituted textbook in accordance with local school district's request.

(4) The revised edition shall be at the same price *at which the book is bid and sold elsewhere in the United States at the date of the substitution approval* and the content *shall be* compatible for use with the old edition.

(5) The physical materials and workmanship of the revised edition shall be of equal or better quality than the older edition.

(6) Ancillary materials for a substituted textbook or program shall be available at the time the publisher submits substitution request.

(7) Publishers shall provide *thirty (30) days prior to date of the commission meeting* a sample textbook and a [concise] summary *description of* [that describes] the revised edition *that* [and] compares it with the textbook and/or program presently on the State Multiple List.

Section *10.* [7.] *(1) Multi-volume textbook programs for a single subject or a series for more than one (1) grade level is defined as two (2) or more books initially planned, written, designed, bound, sequential and identifiable as one (1) program.*

(2) A district may implement *curriculum* [the reading] programs [listed] in grades kindergarten through *twelve (12)* [eight (8), or any combination thereof,] through the [adoption and] purchase of *adopted* textbooks from one (1), two (2), or three (3) *textbook* [reading] programs *for grades kindergarten through eight (8) and up to ten (10) programs for grades nine (9) through twelve (12).* [A reading program from one (1) publisher shall consist of a basic reading program of readiness, preprimers, primers, and readers for grades kindergarten through six (6) or kindergarten through eight (8). All textbooks in the program shall be sequential and indentifiable as one (1) series.]

(3) A reading program from one (1) publisher shall consist of a basic reading program of readiness, preprimers, primers, and readers for grades kindergarten through six (6) or kindergarten through eight (8).

Section *11.* [8.] (1) The wholesale and exchange prices in Kentucky shall not exceed the lowest wholesale and exchange prices at which textbooks are to be bid and sold elsewhere in the United States for the same adoption period. If reductions in prices are made elsewhere in the United States on the same textbooks being sold in Kentucky, publishers shall lower the price in Kentucky. [The retail price to be used in Kentucky shall not be more than twenty percent (20%) in excess of the publisher wholesale price.]

(2) The retail price to used in Kentucky shall not be more than twenty percent (20%) in excess of the publisher wholesale price.

(3) [(2)] The publisher contract shall state that upon settlement, the lowest exchange price, except on consumable textbooks, is the price to be paid for textbooks by the state to publishers who during the term of the contract give in exchange an old textbook of corresponding kind and grade, and may be of a different series to that provided for in the contract.

Section *12.* [9.] (1) Local school districts are hereby authorized to use up to thirty percent (30%) of the elementary school textbook funds and up to thirty percent (30%) of the high school textbook funds for the optional purchase of supplementary textbooks, print and non-print media materials and audio-visual equipment other than those selected by the State Textbook Commission. Optional textbook funds may be used to purchase *basal* textbooks *or* [and] instructional materials *to be used in lieu of a basal textbook* for the following:

(a) Courses and programs appearing in the "Program of Studies for Kentucky Schools, Grades K-12" for which textbooks are not listed on the State Multiple List;

(b) Courses and programs appearing in the "Program of Studies for Kentucky Schools, Grades K-12" that have organizational patterns and teaching methodology that require a variety of instructional materials;

(c) Kindergarten programs;

(d) Special education classes; and

(e) Courses and programs requiring State Board of Education annual approval.

Basal *programs* [textbooks for the regular program and textbooks and/or instructional materials] for the aforementioned courses and *basal textbooks for* [programs] *all other subjects in the State Board of Education approved "Program of Studies for Kentucky Schools, Grades K-12"* shall be purchased before optional textbook funds are used to purchase supplementary materials.

(2) The following materials are eligible to be purchased with optional textbook funds:

(a) Pre-printed organized materials including reference books, pamphlets, magazines, weekly readers, workbooks, worktexts, textbooks not on the State Multiple List, kits, master units, programmed instructional materials, and similar qualifying materials.

(b) Pre-processed organized audio-visual materials including films, film loops, tapes, slides, filmstrips, recordings, graphic materials, transparencies, globes, maps, charts, art objects, and similar qualifying materials.

(c) Pre-printed or pre-processed programs including kits and materials being used in lieu of textbooks for particular curriculum areas.

(d) Minor audio-visual equipment needed to utilize the audio-visual materials being purchased with optional funds.

(3) The following materials are not eligible to be purchased with optional funds:

(a) Rebinding, equipment other than minor audio-visual, furniture, personnel services, teachers' guides and manuals, testing programs, supplies and materials consumed in initial use and raw and/or blank materials.

(b) Major audio-visual installations such as public address systems, sound laboratories for language, *computers,* and televisions (including *receiving* sets and related equipment).

(4) School districts with special instructional material needs may exceed the designated optional portion of their textbook funds by making written application to the Division of Free Textbook Services. Annual approval must be obtained before funds are obligated if there is a need to exceed the designated thirty percent (30%) option. Application to exceed the thirty percent (30%) option of elementary (K-8) and secondary (9-12) textbook funds shall be filed on separate forms. The application signed by the district superintendent shall include a detailed description stating name of the program or course, rationale for the program, and percent of funds requested.

(5) After acquisition of eligible supplementary textbooks, materials, and equipment and payment of invoices, a request for reimbursement shall be submitted to the Division of Free Textbook Services on Form FT-21 before March 1. All claims submitted for the purchase of instructional materials for enrichment programs and programs not listed in the "Program of Studies for Kentucky Schools, Grades K-12" must include a copy of the State Board of Education approval of the program and the instructional materials to be used.

Section *13.* [10.] (1) The school districts shall make textbook adoptions for all the subjects in the *six (6)* [five (5)] adoption groups. The number of adopted textbooks, however, shall not exceed three (3) textbooks and/or programs per subject in any one (1) grade in grades kindergarten through eight (8) and ten (10) textbooks and/or programs per subject in any one (1) grade in grades nine (9) through twelve (12).

(2) School districts shall indicate their tentative first, second and third choices in grades kindergarten through twelve (12). A summary of the choices shall be provided to the publisher for inventory purposes and shall in no way restrict purchases to any particular choice.

(3) Districts may purchase any or all adopted textbooks and/or programs in any number and combination based on identified pupil needs rather than grade level assignment.

Section *14.* [11.] (1) Pupils in grades kindergarten through twelve (12) with impaired vision shall be considered eligible for the use of textbooks and materials in clear type of eighteen (18) to twenty-four (24) points upon certification by an eye specialist as follows:

(a) Pupils who cannot read more than 20/70 on a Standard Snellan Chart with the better eye after correction.

(b) Pupils with progressive eye difficulties, including those with progressive myopia, even though glasses may bring the vision nearly to normal, and pupils who suffer from noncommunicable diseases of the eye or diseases of the body that seriously affect the vision.

(2) Certification of pupils' visual impairment shall be made on forms supplied to local school districts by the *Bureau of Education for Exceptional Children,* Department of Education.

(3) Request for large print textbooks and material shall be directed to the Division of Materials and Curriculum.

(4) [(3)] The local board of education shall assume responsibility for the care of textbooks and return them to the *Resource Bank Distribution Center* [Division of Free Textbook Services] when no longer needed.

(5) [(4)] *Large print textbooks and materials* [These textbooks shall be] purchased *by the Division of Free Textbooks Services* [through the Department of Education and] are not charged to the textbook account of the local school district.

Section *15.* [12.] (1) The Division of Free Textbook Services shall prepare textbook budgets annually and allocate funds to local school districts, based upon the Kentucky General Assembly biennial appropriation, *for the purpose of purchasing full basal textbook programs during the first year of each adoption and/or funding. After basal textbook needs have been met, surplus funds may be used to purchase supplementary materials.*

(2) When allocating funds for the purchase of textbooks, the Division of Free Textbook Services shall use the pupil membership at the close of the first month of the current school year.

(3) A statement of high school funds and a statement of elementary school funds allocated to each school district shall be mailed to the superintendent after March 1. Each statement shall reflect the balances from the previous year, allotment for the ensuing year, sales and fines for the past year, and growth adjustments.

(4) School districts shall utilize their textbook allocation by March 1 of the year for which the funds were allocated.

Section *16.* [13.] (1) The Division of Free Textbook Services shall provide Annual Report and requisition forms to all school districts. These *forms* [reports] shall be *prepared* [made] in duplicate. The original copy shall be sent to the Division of Free Textbook Services and the second copy retained by the district. The Annual Report (FT-8) and requisition (FT-9) may be filed after *March* [January] 1 and shall be filed by June 30.

(2) The Division of Free Textbook Services, upon receipt and approval of a requisition for textbooks from any school district, shall issue a *local* purchase order. A copy of the *local* purchase order shall be sent to the publisher, *two (2)* [four (4)] copies sent to the local district and two (2) copies retained by the Division of Free Textbook Services.

(3) All adopted textbooks [(grades K-12)] purchased with state textbook funds shall be purchased through the office of the Division of Free Textbook Services.

(4) Publishers shall ship direct to local school districts by prepaid freight or United Parcel Service and issue invoices in triplicate to the Division of Free Textbook Services.

(5) Upon receipt of textbooks, the school district shall check items of shipment against the *local* purchase order (receiving report) and if all textbooks were received in satisfactory condition, certify this fact by mailing *one (1)* [three (3)] copy [ies] of the *local* purchase order (receiving report), dated and signed to the Division of Free Textbook Services. *The Division of Free Textbook Services may then order payment.*

(6) All textbooks shall be labeled as property of the Commonwealth of Kentucky. For economy in administration, the uniform label is affixed by the publishers in accordance with the "Manufacturing Standards and Specifications for Textbooks." *School districts shall record the purchase date and the issue date on the uniform label.*

(7) Textbook uniform labels shall not be completed until an examination of the shipment shows that it agrees in

detail with the purchase order. A textbook with label completed is classified as a used textbook.

(8) A complete record shall be kept by the school district for all free textbooks delivered to teachers or principals of the different schools. Form FT-5 or a comparable form shall be used. Form FT-5 will be furnished upon request *in quantities equal to number of teachers or principals.*

(9) When textbooks are issued, a requisition card shall be filled out in duplicate for each pupil. Form FT-6 or a comparable form shall be used. Form FT-6 will be furnished upon request *in quantities equal to pupil membership.*

Section 17. The Division of Free Textbook Services shall encourage and facilitate the transfer of surplus textbooks that may be in local school districts' textbook depositories. The Division of Free Textbook Services shall, at appropriate times during a school year, solicit from the districts a list of surplus textbooks and mail to all districts a master list of available textbooks. Districts that need textbooks on the master list will request the Division of Free Textbook Services to initiate a transfer. The district having possession of the surplus textbooks requested by a district shall ship the books and notify the Division of Free Textbook Services the number of books shipped and cost of transportation. Upon receipt of the books, the receiving district will notify the Division of Free Textbook Services. The Division of Free Textbook Services shall inter-account funds by transferring the cost of the textbooks and transportation cost from the receiving district to the shipping district's textbook account. The cost to the receiving district of all transferred textbooks shall be fifty percent (50%) of the wholesale price plus transportation.

Section *18.* [14.] *Pupils or parents* [School districts] shall [be] compensate[d] *school districts* for textbooks lost, damaged, or destroyed *while in their possession* [by pupils] *and the compensation shall be as follows: 100 % of retail cost for one (1) and two (2) year old textbooks; seventy-five percent (75%) of retail cost for three (3) and four (4) year old textbooks; and twenty-five percent (25%) of retail cost for five (5) and six (6) year old textbooks.* [The following scale will serve as a guide for compensating the loss of textbooks: textbooks in the first year of use, 100 percent of retail price; second year of use sixty percent (60%); third year, twenty-five percent (25%); fourth year, fifteen percent (15%); and ten percent (10%) during the fifth year of use.]

Section *19.* [15.] *(1) Textbooks to be rebound shall not qualify for publisher replacement under Section 8 hereof. Textbooks with five (5) or more years of use shall be rebound only in extreme cases of shortage and emergencies.*

(2) Textbooks in need of rebinding shall be reported on Form FT-16 to the Division of Free Textbook Services with the Annual Report. After approval, the request is forwarded to the bindery under contract with the Commonwealth of Kentucky. The bindery shall pick up books or instruct the districts to ship the books collect. Rebound books shall be returned to the school district by the bindery with shipping charges prepaid. The bindery shall mail the invoice to the Division of Free Textbook Services for payment. Such payments shall not be charged to the textbook account of local school districts.

Section *20.* [16.] (1) District superintendents shall make an accurate count of all free textbooks *under adoption that* [which] are [no longer] suitable for classroom instruction and report same on the Annual Report (FT-8).

(2) The Division of Free Textbook Services shall file an annual exchange report with publishers identifying the titles and number of textbooks purchased to replace textbooks no longer suitable for classroom instruction. [Also,] A claim requesting credit memorandums in the amount of the difference between the wholesale and exchange price for each textbook purchased shall be filed with publishers. The credit memorandums shall be used in payment of invoices for textbooks purchased from said publishers during the next purchase year. Publishers shall relinquish their claim for exchange textbooks if not claimed within a reasonable period of time after replacement.

(3) *The local superintendent shall assume responsibility for the disposal of unclaimed textbooks no longer suitable for classroom instruction and may dispose of them in the following manner:*

(a) Make the unclaimed textbooks available to teachers for use in grouping, reference, supplementary and other classroom activities.

(b) Make the unclaimed textbooks available to pupils within the district.

(c) Publicize in the local newspaper that unclaimed textbooks are available to individual residents of the local district. Unclaimed textbooks disposed of in this manner shall not be made available to used textbook dealers.

(d) Make the unclaimed textbooks available to civic organizations for the purpose of distribution to undeveloped countries.

(e) Make the unclaimed textbooks available to recycling operations.

(f) Destroy unclaimed textbooks in any manner that is practical and in the best interest of the state and local school district. Any funds from the sale of unclaimed textbooks shall be paid into the state treasury. [The local school superintendent shall assume responsibility for the disposal of unclaimed textbooks no longer suitable for classroom instruction in any manner that he deems practical and in the best interest of the school district and the state, with any funds accruing from the sale of such textbooks to be paid into the state treasury.]

RAYMOND BARBER
Superintendent of Public Instruction

ADOPTED: May 11, 1982
RECEIVED BY LRC: May 18, 1982 at 4:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Mr. L. W. True, 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 3:285. Programs for the gifted and talented.

RELATES TO: KRS 158.600 to 158.620
PURSUANT TO: KRS 13.082, 156.070, 156.130, 156.160
NECESSITY AND FUNCTION: This regulation relates to the funding and operation of experimental programs for gifted and talented pupils and directs the Department of Education to administer the Gifted and Talented Education Act of 1978.

Section 1. Pursuant to the authority vested in the Kentucky State Board *of* [for Elementary and Secondary] Education by KRS 156.070 and 156.160, the "Guidelines for Gifted and Talented Programs" *as adopted on May 11, 1982,* are presented herewith for filing with the Legislative Research Commission, and incorporated by reference.

Section 2. The "Guidelines for Gifted and Talented Programs" shall be followed by local school districts in developing programs to apply for state funds to operate such programs.

Section 3. Each local school district receiving state funds for the operation of a gifted and talented program shall be evaluated by the State Department of Education, Bureau of Instruction, to determine the effectiveness of the program.

RAYMOND BARBER
Superintendent of Public Instruction
ADOPTED: May 11, 1982
RECEIVED BY LRC: May 18, 1982 at 4:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Mr. L. W. True, 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 5:050. Public school programs.

RELATES TO: KRS 157.312, 157.315, 157.360, 158.030, 158.090]
PURSUANT TO: KRS 13.082, 156.070, 157.315, 157.360
NECESSITY AND FUNCTION: KRS 157.312 and 158.090 authorize public school kindergartens; KRS 157.315 requires the State Board of Education to adopt regulations defining and prescribing the criteria for kindergartens in the common schools; KRS 157.360 allows the Superintendent of Public Instruction to allot kindergarten units under regulations of the State Board; and KRS 158.030 sets forth the kindergarten entrance age requirements. This regulation sets forth the criteria for public school kindergartens, the procedure for allotment of units, and entrance requirements.

Section 1. Personnel qualified to serve in an approved unit for kindergarten shall hold Kentucky teacher certification as follows:
(1) A Kentucky certificate endorsement for kindergarten teaching; or
(2) A Kentucky certificate valid for kindergarten teaching; or
(3) A Kentucky certificate valid for elementary classroom teaching initially issued prior to September 1, 1971.

Section 2. (1) State funding for a kindergarten unit shall be made on *twenty-five (25)* [twenty-three (23)] average daily attendance for the end of the previous school year; except for the 1981-82 school year, which shall be made on the end of year average daily attendance.
(2) The average daily attendance for programs operating under subsections (2) or (3) of Section 3 shall be calculated by dividing the total aggregate days attendance for the year by the actual number of days the school is in session. The average daily attendance for programs operating under any other plan shall have the total aggregate days attendance divided by two (2) before the average daily attendance for the year is calculated.
(3) If the total kindergarten units appropriated in the state biennium budget bill are not allocated based on the average daily attendance requirement, the Superintendent of Public Instruction may make a percentage reduction in the average daily attendance requirement. This reduction shall not be lower than twenty (20) average daily attendance.

Section 3. Scheduling for a kindergarten unit shall meet one (1) of the following plans, with a kindergarten school day to consist of six (6) hours unless shortened as provided for in KRS 158.060:
(1) Conduct half-day session(s) for the school year.
(2) Conduct all day session(s) for the first semester. Conduct all day session(s) for the second semester. The second semester enrollment shall be children that have not previously enrolled in a kindergarten session in the district.
(3) Conduct alternate day session(s) all year.

Section 4. Any child who is five (5) years of age or who may become five (5) years of age by October 1, 1980, and any year thereafter, shall be permitted to enroll in a public school kindergarten.

Section 5. The program shall include appropriate developmental experiences in social living, physical development, emotional growth and stability, creative expression and in academic areas including math, language, science, and social studies. The program shall provide opportunities and experiences in accordance with each child's level of comprehension and maturation.

Section 6. The facilities shall be in compliance with the regulations of the Department of Education's Division of Buildings and Grounds.

Section 7. Non-public kindergartens that voluntarily comply with the State Board of Education's regulations dealing with kindergarten programs may, upon annual written request, receive a statement to that effect from the Superintendent of Public Instruction.

RAYMOND BARBER
Superintendent of Public Instruction
ADOPTED: May 11, 1982
RECEIVED BY LRC: May 18, 1982 at 4:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Mr. L. W. True, Secretary, Kentucky State Board of Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

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

705 KAR 1:010. Annual program plan.

RELATES TO: KRS 156.112, 163.020, 163.030
PURSUANT TO: KRS 13.082, *156.112*
NECESSITY AND FUNCTION: *KRS 156.112 designates the State Board of Education as the sole state agency for approving state plans required by federal law as prerequisites to receiving federal funds for vocational education; KRS 163.020 accepts and agrees to comply with federal vocational education acts; and KRS 163.030 gives the State Board and the Department of Education authority to comply with state and federal vocational education laws.* The *1983-87* [1982] Kentucky *Five-Year* [Annual Program] Plan and *1981* [1980] Accountability Report for Vocational Education is necessary in order to be eligible to receive federal funds under P.L. 94-482, *and this regulation formally adopts such.*

Section 1. Pursuant to the authority vested in the Kentucky State Board of Education, the *1983-87* [1982] Kentucky *Five-Year* [Annual Program] Plan and *1981* [1980] Accountability Report for Vocational Education shall be prepared and approved by the State Board of Education, in accordance with the appropriate federal guidelines, and submitted annually to the U.S. Commissioner of Education by June 30, *1982* [1981], for his approval. This document is incorporated by reference and hereinafter shall be referred to as the *1983-87* [1982] Kentucky *Five-Year* [Annual Program] Plan and *1981* [1980] Accountability Report for Vocational Education. Copies of the document may be obtained from the Bureau of Vocational Education, State Department for Occupational Education.

RAYMOND BARBER
Superintendent of Public Instruction
ADOPTED: May 11, 1982
RECEIVED BY LRC: May 18, 1982 at 4:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Mr. L. W. True, Secretary, Kentucky State Board of Education, 17th Floor, Capital Plaza Office Tower, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Labor
(Proposed Amendment)

803 KAR 1:075. Exclusions from minimum wage and overtime.

RELATES TO: KRS 337.275, 337.285
PURSUANT TO: KRS 13.082, 337.295
NECESSITY AND FUNCTION: KRS 337.010 excludes certain types of employes from being subject to the minimum wage and overtime provisions of the act and KRS 337.285 excludes certain employes from its coverage. The function of this regulation is to define these exclusions. These definitions will guide the department in carrying out its responsibilities under the law and assist employers who may be concerned with the provisions of the law in understanding their obligations under the law.

Section 1. Definitions. (1) The term "retail store or service industry" shall mean an establishment seventy-five percent (75%) of whose annual dollar volume of sales of goods or services (or of both) is not for resale and is recognized as retail sales or services in the particular industry.

(2) The term "hotel" means an establishment known to the public as a hotel, which is primarily engaged in providing lodging or lodging and meals for the general public. Included are hotels operated by membership organizations and open to the general public and apartment hotels which provide accommodations for transients. However, an establishment whose income is primarily from providing a permanent place of residence or from providing residential facilities complete with bedrooms and kitchen for prolonged periods would not be considered a hotel.

(3) The term "motel" means an establishment which provides services similar to that of a hotel described in subsection (2) of this section, but which caters mostly to the motoring public, providing it with motor car parking facilities either adjacent to the room or cabin rented or at some other easily accessible place. Included in the term "motel" are those establishments known to the public as motor hotels, motor lodges, motor courts, motor inns, tourist courts, and tourist lodges.

(4) The term "restaurant" means an establishment which is primarily engaged in selling and serving to purchasers at retail prepared food and beverages for consumption. This includes such establishments commonly known as lunch counters, refreshment stands, cafes, cafeterias, coffee shops, diners, dining rooms, lunch rooms, or tea rooms. The term "restaurant" does not include drinking establishments, such as bars or cocktail lounges, whose sale of alcoholic beverages exceed the receipts from sales of prepared foods and non-alcoholic beverages or establishments offering meal service on a boarding or term basis or providing such service only as an incident to the operation of a business of another kind and primarily to meet institutional needs for continuing meal service to persons whose continued presence is required for such operation, such as a boarding house, dining facilities of a boarding school, college or university which serves its students and faculty, lunchroom facilities for private and public day school students, and other institutional food service facilities providing long-term meal service to stable groups of individuals as an incident to institutional operations in a manner wholly dissimilar to the typical transactions between a restaurant and its customers.

(5) "Excise taxes" are taxes levied on the manufacture, sale or consumption of a commodity, and taxes levied on license to pursue certain occupations and corporate privileges.

Section 2. Hotel or Motel. The primary function of a hotel or motel, is to provide lodging facilities to the public. In addition, most hotels or motels provide food for their guests and many sell alcoholic beverages. These establishments also may engage in some minor revenue producing activities; such as, the operation of valet services offering cleaning and laundering service for the garments of their guests, news stands, hobby shops, renting out of their public rooms for meetings, lectures, dances, trade exhibits and weddings. The exemption provided for hotels and motels in KRS 337.010(2)(a)(vi) and KRS 337.285 will

not be defeated simply because a hotel or a motel engages in all or some of these activities, if it is primarily engaged in providing lodging facilities, food and drink to the public.

Section 3. Exemptions from Minimum Wage and Overtime. (1) Employes of retail stores, service industries, hotels, motels, and restaurant operations whose average annual gross volume of sales made for business done is less than $95,000 for the five (5) preceding years exclusive of excise taxes at the retail level are exempt from both the minimum wage and overtime provisions of the act.

(2) To qualify for this exemption, the establishment must be recognized as retail in the particular industry. Typically a retail or service establishment is one which sells goods or services to the general public. It serves the everyday needs of the community in which it is located. The retail or service establishment performs a function in the business organization which is at the very end of the stream of distribution, disposing in small quantities of the products and skills of such organization and does not take part in the manufacturing process.

(3) (a) To compute the average annual gross volume of sales made for business done, it will be necessary for the business to add all the sales made for business done for the five (5) preceding years, exclusive of excise taxes at the retail level, and divide by five (5). If this average is less than $95,000, the establishment would be exempt.

(b) If the establishment has been in business for less than five (5) years, the gross sales will be totaled for the years the establishment has been in business and divided by the number of years. If this average is less than $95,000, the establishment would be exempt.

(c) If the establishment has been in business for less than one (1) year, the gross sales will be totaled for the number of months the establishment has been in business and divided by the number of months. This amount will then be multiplied by twelve (12). If this amount is less than $95,000, the establishment would be exempt.

(d) Excise taxes at the retail level are not computed in totaling the gross volume of sales. Excise taxes which are *levied* [leveled] at the manufacturer's, wholesaler's or other distributive level will not be excluded in calculating the dollar volume of sales.

Section 4. Exemptions from Overtime. (1) Employes of retail stores whose principal duties are connected with the selling, purchasing, and distributing of goods and employes of a restaurant, hotel and motel operation; [,] *any employe with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of section 204 of the Motor Carrier Act, 1935; any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles, trucks, or farm implements, if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers; or any salesman primarily engaged in selling trailers, boats, or aircraft, if he is employed by a nonmanufacturing establishment primarily in the business of selling trailers, boats, or aircraft to ultimate purchasers;* and any driver employed by an employer engaged in the business of operating taxi cabs *or to employes whose function is to provide twenty-four (24) hour residential care on the employer's premises in a parental role to children who are primarily dependent, neglected and abused and who are in the care of private nonprofit child-caring facilities licensed by the Department for Human Resources under KRS Chapter 199,* are exempt from the overtime provisions of KRS 337.285.

(2) Employes of a retail store whose principal duties are not connected with the selling, purchasing, and distributing of the goods will not be considered as exempt employes, nor will employes of a service establishment which does not sell goods, but is in the business of selling a service.

Section 5. 803 KAR 1:050, Contractors' records, is hereby repealed.

JOHN CALHOUN WELLS, Commissioner
ADOPTED: May 24, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: May 28, 1982 at 11:30 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Charles E. McCoy, Director, Division of Employment Standards and Mediation, Kentucky Department of Labor, U.S. 127 South Building, Frankfort, Kentucky 40601.

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

803 KAR 2:090. Unwarranted inspections; complaint.

RELATES TO: KRS 338.121
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: Pursuant to the authority granted *the Commissioner of Labor by KRS 338.121,* [the Kentucky Occupational Safety and Health Standards Board by KRS 338.051,] the following procedure has been formulated, which an employee is to follow in filing a complaint *alleging* [that] a violation of KRS Chapter 338 [exists]. The function of this regulation is to outline this procedure to be followed by the employee in filing his complaint; the regulation also outlines the procedure to be followed by the Commissioner of the Department of Labor if he reviews the complaint and finds an inspection *is* not [to be] warranted. [Subsections (4) and (5) of Section 1 have been added, which were not a part of OSH 107. These subsections clarify the rights of the complainant after an inspection has been made as a result of his complaint.]

Section 1. Complaints by Employees. (1) Any employee or representative of employees who believes that a violation of KRS Chapter 338 exists in any workplace where such employee is employed may request an inspection of such workplace by giving notice of the alleged violation to the Commissioner of the Department of Labor. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy shall be provided the employer or his agent by the commissioner no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available by the Department of Labor.

(2) If upon receipt of such notification the commissioner determines that the complaint meets the requirements set forth in subsection (1) of this section, and that there are reasonable grounds to believe that the alleged violation exists, he shall cause an inspection to be made as soon as practicable, to determine if such alleged violation exists. Inspections under this section shall not be limited to matters referred to in the complaint.

(3) Prior to or during any inspection of a workplace, any employee or representative of employees employed in such workplace may notify the Commissioner of the Department of Labor in writing of any violation of KRS Chapter 338 which he has reason to believe exists in such workplace. Any such notice shall comply with the requirements of subsection (1) of this section.

(4) If, after an inspection based on a complaint, a citation is issued covering a violation or danger set forth in the complaint, a copy of the citation should be sent to the complainant at the same time it is sent to the employer.

(5) If, after an inspection based on a complaint, the *Commissioner* [director of compliance] determines that a citation is not warranted with respect to a danger or violation [whose existence was] alleged in the complaint, the complainant must be informed in writing of such determination [by letter]. At the same time, the complainant should be notified of his rights of review of such determination. The complaining party may obtain review by submitting a written statement of position *to* [with] the Commissioner of the Department of Labor [and, at the same time, providing the employer with a copy of such statement by certified mail].

(6) KRS 338.121(3)(a) provides: "No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this chapter."

Section 2. Inspection Not Warranted; Informal Review. (1) If the Commissioner of the Department of Labor determines that an inspection is not warranted because there are no reasonable grounds to believe that a violation or danger exists with respect to a complaint under Section 1, he shall notify the complaining party in writing of such determination. The complaining party may obtain review of such determination by submitting a written statement of position *to* [with] the commissioner [and, at the same time, providing the employer with a copy of such statement by certified mail. The employer may submit an opposing written statement of position with the commissioner and, at the same time, provide the complaining party with a copy of such statement by certified mail]. Upon request of the complaining party [of the employer], the commissioner, at his discretion, may hold an informal conference in which the complaining party [and the employer] may orally present *his* [their] views. After considering all written and oral views presented, the commissioner shall affirm, modify, or reverse his determination and furnish the complaining party [and the employer] a written notification of his decision and the reasons therefor. The decision of the commissioner shall be final and not subject to further review.

(2) If the commissioner determines that an inspection is not warranted because the requirements of Section 1 have not been met, he shall notify the complaining party in writing of such determination. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of Section 1.

JOHN CALHOUN WELLS, Commissioner
ADOPTED: June 9, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: June 15, 1982 at 11:30 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Executive Director, Kentucky Department of Labor, Occupational Safety and Health Program, U.S. 127 South, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(Proposed Amendment)

806 KAR 13:040. Automobile fleet insurance defined.

RELATES TO: *KRS 304.13-121* [KRS 304.12-020, 304.13-030, 304.12-080, 304.12-090]
PURSUANT TO: KRS 13.082, 304.2-110
NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This regulation provides a uniform definition for purposes of "fleet" insurance on automobiles.

Section 1. A fleet of automobiles for either vehicle damage or liability coverage is defined as five (5) or more private passenger or commercial automobiles owned and operated by an individual partnership, firm, or corporation.

Section 2. For the purposes of this definition, a leased automobile may be constured as an "owner automobile," provided there is a written agreement of lease for a term of not less than one (1) year. The lease agreement shall stipulate that lessor shall not enjoy the use of control of the leased vehicle during the term of the lease. Buses leased to and operated by the Commonwealth through any of its agencies or the common school system may be written as a fleet even though the period of the lease is for a term of less than one (1) year and notwithstanding the fact that the lessor operates or controls said leased vehicles; however, the term of the insurance must not be for a longer period than the term of the lease.

DANIEL D. BRISCOE, Commissioner
ADOPTED: June 11, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: June 15, 1982 at 4 p.m.
See public hearings scheduled on page 1.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(Proposed Amendment)

806 KAR 13:070. Kentucky Automobile Insurance Plan.

RELATES TO: *KRS 304.13-151* [KRS 304.13-290]
PURSUANT TO: KRS 13.082, 304.2-110
NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. Since the Kentucky Automobile Insurance Plan has replaced the Assigned Risk Plan, this change of the regulation beings the regulation in conformity with the name of the plan.

Section 1. As a condition to its authority to transact automibile liability insurance in this state, every insurer writing automobile liability insurance shall be signatory to the Kentucky Automobile Insurance Plan formulated among such insurers, and each insurer's participation therein shall continue as long as its Certificate of Authority remains in effect and *an exception to its participation is not granted by the membership and approved by the Commissioner* [its free surplus does not fall below $300,000].

DANIEL D. BRISCOE, Commissioner
ADOPTED: June 14, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: June 15, 1982 at 4 p.m.
See public hearing scheduled on page 1.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(Proposed Amendment)

806 KAR 14:005. Rate and form filing.

RELATES TO: KRS 304.4-010, 304.14-120, 304.14-190
PURSUANT TO: KRS 13.082, 304.2-110
NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This regulation provides rate and form filing procedures.

Section 1. Every insurer [or licensed rating or advisory organization] required by law *or licensed advisory organization permitted by law* to file rates, rating plans, policy forms or endorsements, underwriting rules, statistical plans, [deviations,] advertising and sales materials, or other documents shall file with such documents a fully completed and signed "face sheet and verification form." In addition, property and casualty insurers must file a "synopsis form."

Section 2. The "face sheet and verification form" shall be labeled as such and be in such form as the commissioner may from time to time determine and prescribe.

Section 3. *(1)* A filer may include in a filing any number of forms or documents, filed together on a particular date, pertaining to a single subject or coverage of insurance, and each filing must be accompanied by a fee of *five dollars ($5)* [two dollars ($2)], which shall in no event be refundable. [Documents required by the company admissions officer shall not be included in a filing and shall be accompanied by a fee of two dollars ($2) for each document submitted.]

(2) Notwithstanding subsection (1) of this section, the fee for a rate level revision filing in a noncompetitive market pursuant to KRS Chapter 304.13 shall be $100.

Section 4. Since by the provisions of KRS 304.4-010 all fees and charges payable under the insurance code are required to be collected in advance, the period of time in which the commissioner may affirmatively approve or disapprove the filing shall not begin to run until both the filing and appropriate fee are received by the department.

Section 5. No policy or contract form shall be used in Kentucky until *it has been approved, and, if rates for such form are required by law to be approved,* the appropriate rate schedule therefor has been approved.

Section 6. Whenever a filing includes a form which amends, replaces, or supplements a form which has been previously filed and not disapproved, it shall be accompanied by a letter of explanation from the filer setting forth all changes contained in the newly filed form, the effect, if any, such changes have upon the hazards purported to be assumed by the policy, and the rates applicable thereto.

Section 7. (1) Facsimile signatures of company officers, attorneys-in-fact, employes and representatives are not required and shall not be submitted with any filing.
(2) A change of signature of the executing officer on a policy form shall not, because of such change alone, require a new filing.

Section 8. Forms entitled "Face Sheet and Verification Form" and "Kentucky Filing Synopsis" are prescribed by the department and herein filed by reference. Copies may be obtained from the Department of Insurance, *151 Elkhorn Court, P.O. Box 517* [Capital Plaza Tower], Frankfort, Kentucky *40602* [40601].

DANIEL D. BRISCOE, Commissioner
ADOPTED: June 14, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: JUne 15, 1982 at 4 p.m.
See public hearings scheduled on page 1.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Banking and Securities
(Proposed Amendment)

808 KAR 10:090. Issuers' reports.

RELATES TO: KRS Chapter 292
PURSUANT TO: KRS 13.082, 292.500(3)
NECESSITY AND FUNCTION: To provide a method by which issuers may keep a registration statement current beyond the initial one (1) year period of registration.

Section 1. The person who files a registration statement pursuant to KRS 292.360, except a registration statement which relates only to redeemable securities issued by an open-end management company as defined in the Investment Company Act of 1940, may keep the registration statement current by filing the following:

(1) A copy of the issuer's annual report on Form 10-K as filed with the Securities and Exchange Commission pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934, or a document containing equivalent information acceptable to the director.

(2) A statement of the aggregate amount of securities sold in the state of Kentucky during the preceding twelve (12) month period.

(3) All post-effective amendments to the issuer's federal registration statement.

TRACY FARMER, Secretary
ADOPTED: June 9, 1982
RECEIVED BY LRC: June 14, 1982 at 10 a.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 Housing, Buildings and Construction
(Proposed Amendment)

815 KAR 20:070. Plumbing fixtures.

RELATES TO: KRS Chapter 318
PURSUANT TO: KRS 13.082, 318.130
NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This regulation relates to the kind, type and quality of plumbing fixtures that are to be used in the construction of plumbing systems.

Section 1. Materials. All receptacles used as water closets, urinals, or otherwise for the disposal of human excreta, shall be of vitrified earthenware, hard natural stone, or cast-iron with a light color porcelain enameled on the inside, except as indicated in Section 4.

Section 2. Installation. All plumbing fixtures shall be installed free and open in a manner to afford access for cleaning. Where practical, all pipes from fixtures shall be run to the wall and no trap or pipe shall extend nearer to the floor than twelve (12) inches except laundry trays or similar fixtures.

Section 3. Water Closet Bowls. Water closet bowls shall be made of one (1) piece and of such form as to hold a sufficient quantity of water when filled to the trap overflow to prevent fouling of its interior surfaces, and it shall be provided with an integral flushing rim so constructed as to flush the entire interior of the bowl.

Section 4. Plastic Water Closet Bowl and Tank. Plastic water closet bowl and tank shall be made with a polypropylene lining inside the one (1) piece bowl and tank. The outer surface of the bowl shall be constructed of PVC material and the filler material between the two (2) surfaces shall be made of polyurethane foam. The bowl shall have a three (3) inch water seal and shall have a two and one-eighth (2 1/8) inch waste opening passage.

Section 5. Frost-Proof Closet. A frost-proof water closet may be installed only in a building that has at least a twelve (12) inch air break between it and any building used for habitation or occupancy. The room shall be tightly enclosed and accessible from the outside only. The soil pipe between the trap and hopper shall be of extra heavy cast-iron, four (4) inches in diameter and shall be light colored porcelain enamel on the inside. The building must have a non-absorbent floor. Each frost-proof water closet shall have a four (4) inch vent.

Section 6. (1) Floor drains and shower drains. A floor drain or a shower drain is considered a plumbing fixture and shall be provided with a strainer.

(2) Shower drain pan construction. Shower drain pans shall be constructed of sheet lead weighing not less than four (4) pounds per square foot, non-plasticized chlorinated polyethylene conforming to ASTM D-412-66, D-1204-54 and D-568-61 not less than 0.040 inches or other approved material. Shower pans shall be constructed without seams and shall extend to a minimum height of six (6) inches on all vertical walls. Shower pans shall not be required on a concrete floor below the outside grade level.

(3) Fiberglass bathtubs, showers, tub enclosures and shower stalls. Fiberglass bathtubs and tub enclosures shall conform to Commercial Standards CS 221-59. Acrylic-faced bathtubs shall conform to ASTM E-84B or E-162. Fiberglass shower stalls and shower receptors shall conform to Commercial Standards CS 222-59.

(4) Metamorphosed carbonate aggregate polyester resinous martrix-marbleoid bathtubs, lavatories and shower stalls. Metamorphosed carbonate aggregate polyester resinous martrix-marbleoid bathtubs, lavatories and shower stalls shall conform to *ANSI Z-124-3* [Commercial Standards CS 111-43].

Section 7. Floor Drains, Shower Drains or Urinal Drains in Inaccessible Places. Floor drains, shower drains or urinal drains shall have a cast-iron P trap when installed under concrete floors or in inaccessible places. They shall be either caulk or screw type.

Section 8. Fixture Strainers. All fixtures other than water closets and pedestal urinals shall be provided with a fixed strong, metallic or porcelain strainer. The total outlet area shall not be less than that of the interior area of the trap.

Section 9. Fixture Overflow. The overflow pipe from a fixture shall be connected to the inlet side of a trap and be so arranged that it may be readily and effectively cleaned.

Section 10. Ventilation of Rooms Containing Fixtures. Plumbing fixtures, except bedroom lavatories, shall not be located in any room which does not contain a window placed in an external wall or is not otherwise provided with adequate ventilation. The minimum size of the external fresh air inlet shall be two and one-fourth (2¼) square feet of opening. Where forced ventilation is used, the minimum change of air shall be six (6) times per hour and the vent must be extended to the outside of the building or a ductless fan may be used, provided:

(1) The unit bears the label of the Underwriter's Laboratories, Inc.;

(2) The unit is installed so as to operate at all times when the lighting circuit is activated;

(3) The unit be installed in either the wall or ceiling;

(4) The unit is installed in accordance with the manufacturer's recommendations;

(5) The manufacturer make available cartridges that will be replaced on a six (6) month basis;

(6) A unit be provided for each 800 cubic feet of room volume.

Section 11. Fixture Additions. Any fixture or fixtures added to a plumbing system shall be installed to comply with the other sections of this code, and the discharge from the additional fixture or fixtures shall enter the soil pipe below the lowest vented opening.

Section 12. Defective Fixtures. All newly installed fixtures found defective or old fixtures found to be in an unsanitary condition, shall be repaired, replaced, or removed within thirty (30) days upon written notice from the department.

Section 13. Water Heaters. Water heaters shall be properly connected to the hot and cold water supply and shall be connected to an adequate size flue or chimney, but in no case shall this be connected to a flue serving a coal burning apparatus. The flue or chimney shall extend two (2) feet above the roof and be properly flashed and shall not terminate within six (6) feet of a door or window. If a water heater is placed in a closed room or closet the door must be a louver door.

CHARLES A. COTTON, Commissioner
ADOPTED: June 2, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: June 11, 1982 at 9:15 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Carl VanCleve, Director, Division of Plumbing, Department of Housing, Buildings and Construction, The 127 Building, Frankfort, Kentucky 40601.

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

815 KAR 20:080. Waste pipe size.

RELATES TO: KRS Chapter 318
PURSUANT TO: KRS 13.082, 318.130
NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This regulation relates to the sizes of waste piping that are needed to serve various types of plumbing fixtures and appurtenances.

Section 1. The minimum size (nominal inside diameter) of traps, soil or waste branches for a given fixture shall not be less than that given in the following table:

	Minimum Size (in inches)		Fixture
	Trap	Branch	Unit
Automatic clothes washer	2	2	2
Basement floor drain	3	3	3
Bath: sitz	1½	1½	2
Bathtub	1½	1½	1½
Combination fixture	2	2	2
Dental cuspidor	2	2	2
Dishwashers	1½ up	1½ up	1½ up
Disposal Unit	1½	1½	1½
Drinking Fountain	1¼	1¼	1
Floor drain in toilet room	3	3	3
Floor drain in utility room	3	3	3
Industrial floor drain	4	4	4
Kitchen sink unit	1½ up	1½ up	1½ up
Laundry tray	1½	1½	1½
Lavatories	1¼	1¼	1
Santistand	3	4	6
Shower Stall	1½	1½	1½
Sinks: bar or soda fountain	1½	1½	1½
Sinks: Barium	2	2	2
Sinks: Chemical	1½ up	1½ up	1½ up
Sink: Clinic	3	4	6
Sinks: Kitchen, residence	1½	1½	1½
Sink: Plaster	2	2	2
Sink: Service	3	3	3
Sink: Service wall type	2	2	2
Sink: three compartment	2	2	2
Urinal: lip	1½	1½	1½
Urinal: pedestal	3	3	3
Urinal: stall	2 up	2 up	2 up
Urinal: trough	1½	1½	1½
Water closet	3	*3 or* 4	6
[Water closet on 3 inch stack only	3	3	6]

CHARLES A. COTTON, Commissioner
ADOPTED: June 2, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: June 11, 1982 at 9:15 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Carl VanCleve, Director, Division of Plumbing, Department of Housing, Buildings and Construction, The 127 Building, Frankfort, Kentucky 40601.

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

815 KAR 20:100. Joints and connections.

RELATES TO: KRS Chapter 318
PURSUANT TO: KRS 13.082, 318.130
NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This regulation relates to the methods that must be used in joining certain types of piping materials together as well as denoting the methods that must be used in securing plumbing fixtures to waste piping outlets.

Section 1. Water and Air-Tight Joints. All joints and connections shall be made permanently gas and water tight.

Section 2. Vitrified Pipe Joints; Concrete Pipe Joints; House Sewers-Combined Sewers. Joints in vitrified clay pipe shall conform to ASTM specification C-425. Joints in concrete pipe shall conform to commercial standard C-443. When it is necessary to use piping in other than standard lengths hot poured joints may be used. Joints between cast iron pipe and vitrified clay pipe or concrete pipe shall be made either of hot poured bitumastic compound or by a preformed elastomeric ring. The ring shall completely fill the annular space between the cast iron spigot and the vitrified clay or concrete pipe hub. Joints in pipe and fittings of not more than two (2) pipe sizes between vitrified clay, asbestos cement, acrylonitrile-butadiene-styrene or polyvinyl chloride to cast iron pipe and fittings or the joining of either material to the other may be made with proper fittings by the use of a dispersion grade polyvinyl chloride ring conforming to ASTM C-443, C-425, C-594, C-564 and D-1829 or elastomeric polyvinyl chloride coupling.

Section 3. Caulked Joints. All caulk joints shall be firmly packed with oakum or hemp and shall have at least one (1) inch of pure lead properly caulked. No paint, varnish or putty will be permitted until tests have been performed.

Section 4. (1) Screw Joints. All screw joints shall be American Standard screw joints and all burrs or cuttings shall be removed.

(2) Mechanical Joint Couplings for Hot and Cold Water. Mechanical joint couplings for hot and cold water may be used above ground provided the couplings are galvanized and the gaskets conform to ASTM D-735-61, grade N-R-615 BZ.

(3) Mechanical Joint Couplings for Storm Water Piping. Mechanical joint couplings for storm water piping may be used above ground provided the couplings are either black iron or galvanized and the gaskets conform to ASTM D-735-61, grade N-R-615 BZ.

(4) Joints in PVC and ABS Schedule 40 or 80 Pipe and Fittings. Joints in polyvinyl chloride schedule 40 or 80 pipe and fittings shall be solvent welded joints and shall conform to ASTM D-2665-69. Joints in acrylonitrile-butadiene-styrene pipe and fittings shall be solvent welded joints and shall conform to ASTM D-2661-69. Acrylonitrile-butadiene-styrene and polyvinyl chloride sewer piping that conforms to ASTM 3033 and 3034 shall be joined by solvent cement conforming to ASTM C-2665-69 for acrylonitrile-butadiene-styrene and ASTM D-2661-69 for polyvinyl chloride or with an elastomeric joint conforming to D-3212-73.

(5) Copper Pipe, Brass and Stainless Steel Tubing Joints. Copper pipe, brass and stainless steel tubing joints shall be soldered joints.

(6) Expansion. Every expansion joint shall be of approved type and its material shall conform with the type of piping in which it is installed.

(7) Brazed Joints. Brazed joints shall be made by first cleaning the surfaces to be joined down to the base metal, applying flux approved for such joints and for the filler metal to be used, and making the joint by heating to a temperature sufficient to melt the approved brazing filler metal on contact.

(8) Tapered Couplings. Every joint in bituminized fiber pipe shall be made with tapered type couplings of the same material as the pipe. Joints between bituminized fiber pipe and metal pipe shall be made by means of an approved adapter coupling properly caulked.

(9) Elastomeric Polyvinyl Chloride Coupling. Elastomeric polyvinyl chloride couplings may be used for connecting cast iron, vitrified clay, concrete, cement asbestos or plastic pipe or the combination of these pipe materials. This coupling shall be provided with # 305 stainless steel clamps.

(10) Joints in Corrugated Polyethylene Subsoil Drainage Tubing. Joints in corrugated polyethylene subsoil drainage tubing shall be made by slip joints using appropriate fittings.

Section 5. Cast Iron Soil Pipe Joints. *(1)* Joints in cast iron shall either be caulked, screwed, or joints made with the use of neoprene gaskets. Neoprene gaskets shall conform to either ASTM C-564-70 or CS 301-72. Joints that conform to commercial standard 301-69T shall have a stainless steel clamp.

(2) Cast iron coupling for joining hubless cast iron pipe shall consist of neoprene gasket conforming to ASTM C-564, cast iron clamps conforming to ASTM A-48 and stainless steel bolts and nuts conforming to ANSI B-18.2.1 and ANSI B-18.2.2.

Section 6. Borosilicate Joints. Joints and gaskets used for borosilicate pipe shall be made in a manner approved by the department.

Section 7. (1) Steel, Brass and Copper Connections to Cast Iron Pipe. Steel, brass and copper joints when connected to cast iron pipe shall be either screwed or caulked joints. All caulked joints shall be made by the use of a caulking spigot.

(2) PVC and ABS Pipe and Fitting Connections to Steel, Brass, Copper and Cast Iron Pipe. Polyvinyl chloride and acrylonitrile-butadiene-styrene pipe and fitting connections to steel, brass, copper or cast iron pipe shall either be a screwed or caulk joint. Joints between Schedule 40 PVC or ABS pipe and cast iron pipe may be made by the use of a neoprene gasket conforming to ASTM C-564-70. All caulk joints shall be made with the use of either a polyvinyl chloride or acrylonitrile-butadiene-styrene or cast iron caulking spigot.

(3) Stainless Steel Tubing to Cast Iron Pipe to Galvanized Steel Pipe and to Copper Tubing. Stainless steel tubing to cast iron pipe shall be made by caulking spigot. Stainless steel tubing to galvanized steel pipe or copper pipe shall be made by the use of an adaptor.

(4) Joints in Acid Waste Piping. Joints in vitreous glazed piping shall be made in a manner and of a material approv-

ed by the department. Joints in polyethylene and polypropylene piping must be made by the heat fusion process. Joints in polypropylene may also be made with a union joint. Joints in borosilicate pipe may be a stainless steel mechanical joint. Joints between silicon iron pipe may be either caulk joint or stainless steel mechanical joint.

Section 8. Lead Pipe. Joints in lead pipe or between lead pipe and brass or copper pipes, ferrules, soldering nipples, or trap, shall be fullwiped joints, with an exposed surface of the solder at each side of the joint of not less than three-quarters (¾) of an inch. The minimum thickness of the thickest part of the joint shall be at least as thick as the material being used. In the event lead pipe is used for acid waste lines the pipe may be joined by burning.

Section 9. Lead Pipe to Cast Iron, Steel, or Wrought Iron Pipe. The joints between lead to cast iron, steel or wrought iron shall be made by means of a caulking ferrule or a soldering nipple.

Section 10. Wall or Floor Flange Joints. Wall or floor flange joints shall be made by using a lead ring or brass flange and shall be properly soldered.

Section 11. Soil Pipe, Iron Pipe, Copper Pipe; Tubular Trap Joints. Joints between soil pipe, iron pipe, copper pipe and tubular traps shall be made by the use of a heavy red cast brass adaptor. Tubular traps shall be soldered to the adaptor in a manner approved by the department.

Section 12. Slip Joints. Slip joints shall be permitted only on the inlet side of a trap.

Section 13. Unions. Unions shall be ground faced and shall not be concealed or enclosed.

Section 14. Roof Joints. The joint of the roof shall be made water-tight by use of copper, lead or other approved flashing or flashing material. It shall extend not less than six (6) inches from the pipe in all directions and shall extend upward twelve (12) or more inches and turn down into the pipe. A hub flashing may be used provided it is constructed so it can be caulked into a hub above the roof.

Section 15. Increasers and Reducers. When different size pipes or pipes and fittings are to be concealed, the proper size increaser or reducer pitched at an angle of forty-five (45) degrees between the two (2) sizes, shall be used.

Section 16. Prohibited Joints and Connections. Any fitting or connection which has an enlargement chamber, or recess with a ledge shoulder, or reduction of the pipe area in the direction of the flow is prohibited.

Section 17. Hangers and Supports. All piping and fixtures shall be adequately supported by hangers or anchors securely attached to the building construction.

Section 18. Welded Pipe for Soil, Waste and Vent Systems. Mild steel pipe may be welded for a soil waste and vent system provided the welds are mechanically sound and the bore of the piping is smooth throughout its length. The welded piping shall be covered with a metallic continuous coating. Written permission shall be secured from the department for such a system.

CHARLES A. COTTON, Commissioner
ADOPTED: June 2, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: June 11, 1982 at 9:15 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Carl VanCleve, Director, Division of Plumbing, Department of Housing, Buildings and Construction, The 127 Building, Frankfort, Kentucky 40601.

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

815 KAR 20:120. Water supply and distribution.

RELATES TO: KRS Chapter 318
PURSUANT TO: KRS 13.082, 318.130
NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This regulation relates to the types of piping, pipe sizes for a potable water supply system and the methods to be used to protect and control it.

Section 1. Quality. The bacteriological and chemical quality of the water supply shall comply with the regulations of the department.

Section 2. Distribution. The water supply shall be distributed through a piping system entirely independent of any other piping system.

Section 3. Water Service. The water service piping to any building shall be not less than three fourths (¾) inch but shall be of sufficient size to permit a continuous and ample flow of water to all fixtures on all floors at all times. The water service may be laid in the same trench with the house sewer provided the water piping is benched eighteen (18) inches above the sewer.

Section 4. Water Supply to Fixtures. Plumbing fixtures shall be provided with a sufficient supply of water for flushing to keep them in a sanitary condition. Every water closet or pedestal urinal shall be flushed by means of an approved tank or flush valve. The tank or valves shall furnish at least a four (4) gallon flushing capacity for a water closet and at least a two (2) gallon capacity for a urinal. When a water closet, urinal, or similar fixture is supplied directly from the water supply system through a flushometer or other valve, such valves shall be set above the fixture in a manner so as to prevent any possibility of polluting the potable water supply by back siphonage. All such fixtures shall have a vacuum breaker. Plumbing fixtures, devices or appurtenances shall be installed in a manner that will prevent any possibility of a cross connection between the potable water supply system, drainage system or other water system.

Section 5. Water Supply to Drinking Fountains. The orifice of a drinking fountain shall be provided with a pro-

tective cowl to prevent any contamination of the potable water supply system.

Section 6. Sizing of Water Supply Piping. (1) The minimum size water service from the property line to the water heater shall be three-fourths (¾) inch. The hot and cold water piping shall extend three-fourths (¾) inch in size to the first fixture branch regardless of the kind of material used. When galvanized iron pipe is used the distribution piping shall be arranged so that no two (2) one-half (½) inch fixture branches are supplied from any one-half (½) inch pipe.

(2) The following schedule shall be used for sizing the water supply piping to fixtures:

Fixture Branches	Size Minimum Inches
Sill Cocks	1/2
Hot water boilers	3/4
Laundry trays	1/2
Sinks	1/2
Lavatories	3/8
Bathtubs	1/2
Water closet tanks	3/8
Water closet flush valves	1

Section 7. Water Supply Pipes and Fittings, Materials. Water supply piping for a potable water system shall be of galvanized wrought iron, galvanized steel, brass, Types K, L, and M copper, cast iron, Types R-K, R-L, and R-M brass tubing, standard high frequency welded tubing conforming to ASTM B-586-73, fusion welded copper tubing conforming to ASTM B-447-72 and ASTM B-251, DWV welded brass tubing conforming to B-587-73, seamless stainless steel tubing, Grade H conforming to CS A-268-68, reinforced thermosetting resin pipe conforming to ASTM D-2996 (red thread for cold water use and silver and green thread for hot and cold). Polyethylene plastic pipe conforming to ASTM D-2239-69, PVC plastic pipe conforming to ASTM 1785, and CPVC plastic pipe conforming to CS D-2846-70, PVC SDR 21 and SDR 26 conforming to ASTM D-2241, polybutylene pipe conforming to ASTM D-3309 with brass, copper or celcon fittings, *Quicktite connection using a celcon asetal copolymer, polybutylene cone and stainless steel ring,* plastic pipe and fittings shall bear the NSF seal of approval. Polybutylene hot and cold water connectors to lavatories, sinks and water closets shall conform to ASTM 3309, and polybutylene plastic pipe conforming to ASTM 2662 for cold water applications only. Fittings shall be brass, copper or approved plastic or galvanized cast iron or galvanized malleable iron. Piping or fittings that have been used for other purposes shall not be used for the water distribution system. All joints in the water supply system shall be made of screw, solder, or plastic joints. Cast iron water pipe joints may be caulked, screwed, or machine drawn. When Type M Copper pipe, Type R-M brass tubing, standard high frequency welded tubing or stainless steel tubing is placed within a concrete floor or when it passes through a concrete floor it shall be wrapped with an approved material that will permit expansion or contraction. In no instance shall Polythylene, PVC or CPVC be used below ground under any house or building.

Section 8. Temperature and Pressure Control Devices for Shower Installations. Temperature and pressure control devices shall be installed on all shower installations that will maintain an even temperature and pressure and will provide non-scald protection. Such devices shall be installed on all installations other than in homes or apartment complexes.

Section 9. Water Supply Control. A main supply valve shall be placed inside a foundation wall. Each fixture or each group of fixtures shall be valved and each lawn sprinkler opening shall be valved.

Section 10. Water Supply Protection. All concealed water pipes, storage tanks, cisterns, and all exposed pipes or tanks subject to freezing temperatures shall be protected against freezing. Water services shall be installed at least thirty (30) inches in depth.

Section 11. Temperature and Pressure Relief Devices for Water Heaters. Temperature and pressure relief devices shall be installed on all water heaters on the hot water side not more than three (3) inches from the top of the heater. Temperature and pressure relief devices shall be of a type approved by the department. When a water heater is installed in a location that has a floor drain the discharge from the relief device shall be piped to within two (2) inches of the floor; when a water heater is installed in a location that does not have a floor drain, the discharge from the relief device shall be piped to the outside of the building with an ell turned down and piped to within four (4) inches of the surface of the ground. Relief devices shall be installed on a pneumatic water system.

Section 12. Protection of a Private Water Supply or Source. Private water supplies or sources shall be protected from pollution in a manner approved by the department. Such approval shall be obtained before an installation is made.

[Section 13. Trap Primer Valves. Trap primer valves that conform to ASSE 1018 shall be installed on all traps connected to floor drains in all buildings except residential complexes with less than eight (8) units as well as traps that serve condensate drains for either heating or air-conditioning equipment.]

Section *13.* [14.] Domestic Solar Water Heaters. Domestic solar water heaters may have a "single wall heat exchanger" provided the solar panel and the water heater exchanger use a nontoxic liquid such as propylene glycol or equal, and that the heat exchanger is pretested by the manufacturer to 450 PSI and that the water heater has a warning label advising that a nontoxic heat exchanger fluid must be used at all times and that a pressure relief valve is installed at the highest point in the solar panel.

Section *14.* [15.] Domestic Water Heater Preheating Device. A domestic water heater preheating device may be used and connected with the high pressure line from the compressor of a domestic home air-conditioner. This device must be equipped with a temperature limit control that would actuate a pump that would circulate hot water from the water heater to the preheater device.

Section *15.* [16.] Water Distribution and Connections to Mobile Homes. (1) An adequate and safe water supply shall be provided to each mobile home conforming to the requlations of the department.

(2) All materials, including pipes and fittings used for connections shall conform with the other sections of this code.

(3) An individual water connection shall be provided at an appropriate location for each mobile home space. The

connection shall consist of a riser terminating at least four (4) inches above the ground with two (2) three-fourths (¾) inch valve outlets with screw connection, one (1) for the mobile home water system and the other for lawn watering and fire control. The ground surface around the riser pipe shall be graded so as to divert surface drainage. The riser pipe shall be encased in an eight (8) inch vitrified clay pipe or equal with the intrervening space filled with an insulating material to protect it from freezing. An insulated cover shall be provided which will encase both valve outlets but not prevent connection to the mobile home during freezing weather. A shut-off valve may be placed below the frost depth on the water service line, but in no instance shall this valve be a stop-and-waste cock.

CHARLES A. COTTON, Commissioner
ADOPTED: June 2, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: June 11, 1982 at 9:15 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Carl VanCleve, Director, Division of Plumbing, Department of Housing, Buildings and Construction, The 127 Building, Frankfort, Kentucky 40601.

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

815 KAR 45:035. Education incentive.

RELATES TO: KRS Chapter 95A
PURSUANT TO: KRS 95A.240
NECESSITY AND FUNCTION: KRS 95A.240(1) authorizes the Commission on Fire Protection Personnel Standards and Education to issue such regulations as are necessary to properly administer the Professional Firefighters Foundation Program Fund. This regulation establishes the procedures and criteria which shall be utilized to determine the eligibility of local governments and individual firefighters to share in the fund.

Section 1. Definitions. As employed in the Kentucky Professional Firefighters Program Fund administrative regulations, the following words and phrases have the following meanings:

(1) "Annual salary" means base pay for forty (40) hours and any required scheduled overtime.

(2) "Certified training" means firefighter training given by a certified inspector and approved and recorded by the commission.

(3) "Commission" means the Commission on Fire Protection Personnel Standards and Education established pursuant to KRS 95A.020.

(4) "Department" means the Department of Housing, Buildings and Construction.

(5) "Fiscal year" means the period July 1 through June 30 of each twelve month period.

(6) "Full-time firefighters" means individuals who work a minimum of 2,080 hours per year as a member of a fire department or fire protection district.

(7) "Fund" means Professional Firefighters Foundation Program Fund.

(8) "Incentive pay" means monies from the fund used to supplement compensation paid to full-time paid firefighters.

(9) "Local government" means any city or county, or any combination thereof, or urban county government of the Commonwealth.

(10) "Member," for purposes of determining initial eligibility under the fund, shall mean an individual who has completed a 200-hour basic training course if hired prior to July 15, 1982 or a 400-hour basic training course if hired on or after July 15, 1982 in fire suppression, extinguishment and self-protection as approved by the commission and whose job position is such that the individual may be subject to responding to an emergency situation at the direction of the fire chief. This definition is intended to cover jobs involving the suppression, investigation, inspection and prevention of emergency situations. Janitorial, maintenance, and clerical personnel are specifically exempted from this definition.

(11) [(10)] "Professional firefighter" means any sworn member of a paid municipal fire department organized under KRS Chapter 95 or a fire protection district organized under KRS Chapter 75, or a county fire department created pursuant to Chapter 67.

(12) [(11)] "Scheduled overtime" means those working hours required beyond forty (40) hours a week in order to meet the requirements of KRS Chapter 95 concerning firefighters working hours.

(13) [(12)] "Total annual compensation" means the base pay, including longevity, plus scheduled overtime.

Section 2. Eligibility. Each local government which meets the following requirements shall be eligible to participate and share in the distribution of funds when it has made application on forms prescribed by the commission and the commission has determined that the local government has met the eligibility criteria. Those criteria are:

(1) Employs one or more firefighters.

(2) Pays a minimum annual salary of $8,000.

(3) Maintains as a minimum educational requirement, for anyone newly employed as a firefighter after August 1, 1980, high school graduation or its equivalent.

(4) Requires all firefighters *employed on or after July 15, 1982* to successfully complete within one (1) year of the date of employment a basic training course of a minimum of *400* [200] hours *as mandated by the commission as to subject matter and number of hours for each subject* at a school or by a method certified or recognized by the commission.

(5) Local units which have not previously participated in the fund shall require all firefighters who have been employed for at least one (1) year by the local unit on the date of initial participation to have completed a basic training course certified or recognized by the commission of at least *400* [200] hours duration. All firefighters employed less than one (1) year prior to or hired after the date of initial participation shall complete the basic training within one (1) year of the date of employment as required for participating local units.

(6) Requires all firefighters to successfully complete in each calendar year an in-service training program appropriate to the firefighter's rank and responsibilities of at least 100 hours duration at a school or through a method certified or recognized by the commission.

(7) The commission shall review the qualifications of firefighters employed by local units after the effective date of this regulation, to determine the basic training, if any, which the firefighter may be required to successfully complete prior to being eligible to participate in the fund.

(8) Requires compliance with all rules and regulations issued by the commission to facilitate the administration of the fund and further the provisions of KRS Chapter 95A.

(9) Requires compliance with all provisions of law applicable to local firefighters.

(10) Any firefighter who does not possess a high school degree or its equivalent and who has been deemed eligible to participate in the fund pursuant to KRS Chapter 95A who terminates firefighter service forfeits such eligibility and must meet the minimum educational requirement to reparticipate in the fund.

(11) Any firefighter who possesses sufficient training to meet the basic training requirements established by the commission and who terminates firefighter service for a period exceeding one (1) year (365 days) forfeits such eligibility and must meet the minimum training requirements to reparticipate in the fund. If his separation does not exceed one (1) year, he shall be considered eligible for participation in the fund.

(12) A copy of the high school diploma or GED certificate for each firefighter where required must be maintained by the local unit and must be available for review by appropriate commission personnel.

(13) If, after having successfully completed a certified basic training course, a firefighter transfers from one (1) participating local unit to another, he shall be eligible to receive payments from the fund providing he continues to meet the requirements of the fund as set down by the commission.

(14) If a firefighter transfers from one (1) fire department to another, paid or volunteer, all certified training received by him/her shall be recognized by the fire department to which he/she transferred and shall be considered toward his/her eligibility for participation in the fund.

Section 3. Participation Requirements. (1) *Beginning July 1, 1982, an eligible local government shall be entitled to receive annually a supplement of $2,500 for each qualified professional firefighter it employes.* [An eligible local government shall be entitled to receive up to an amount equal to fifteen percent (15%) of each firefighter's annual compensation from the fund to be paid to each firefighter in addition to his annual compensation.]

(2) Each qualified professional firefighter, whose local government receives a supplement pursuant to subsection (1) of this section, shall be paid by that local government the supplement which his qualifications brought to the local government. The supplement paid each qualified firefighter shall be in addition to his regular salary.

(3) [(2)] Participation in the Professional Firefighter's Incentive Pay Program during the first fiscal year of the program's existence (January 1-June 30, 1981) shall require that application be made to the commission within the dates of August 1, 1980 through October 20, 1980. Thereafter, application must be made annually by local governments for new or continued participation. Applications shall be accepted from February 1 through April 30 of each year. Local governments failing to make application within the specified dates shall not be considered for participation until the next application filing period.

(4) [(3)] The commission shall determine which local governments are eligible to share in the fund and may withhold or terminate payments to any local government that does not comply with the requirements of KRS Chapter 95A or the rules and regulations issued by the commission thereunder.

Section 4. Local Use of Funds. Funds made available to local governments shall be received, held and expended in accordance with the provisions of this act, any rules and regulations issued by the commission, and the following specific restrictions: (1) Funds provided shall be used only as a direct monetary supplement to firefighters' compensation.

(2) Funds provided shall be used only to compensate firefighters who have complied with subsection (3), (4), and (6) of Section 2.

(3) Each firefighter shall be entitled to receive the state supplement which his qualifications brought to the local government.

(4) Funds shall not be used to supplant existing salaries or as a substitute for normal salary increases periodically due to a firefighter.

(5) No firefighter shall receive monies from this fund for employment with more than one (1) employer and in no instance shall receive dual payment.

Section 5. Certification of Funds. The Department of Finance, on the certification of the commission, shall draw warrants as specified on the State Treasury for the amount of the fund due each eligible local government. Checks shall be issued by the State Treasurer and transmitted to the commission for distribution to the proper officials or participating local governments which have complied with the provisions of KRS Chapter 95A and this regulation. Beginning January 1, 1981, and on the first day of each month thereafter, the share of each eligible local unit shall be distributed from the fund.

Section 6. Available Funds. (1) If funds appropriated by the General Assembly and otherwise made available to the fund are insufficient to provide the amount of money required by Section 3(1), the commission shall make a uniform percentage reduction in the allotment of funds available.

(2) Funds appropriated by the General Assembly and unexpended by the commission at the close of the fiscal year for which the funds were appropriated *and otherwise made available to this fund pursuant to KRS 136.340 to 136.400, KRS Chapter 42 and KRS 95A.220* shall not lapse but shall be carried forward into the following fiscal year.

Section 7. Transmittal of Funds. (1) Request for funds by the local unit shall be submitted to the department not later than thirty (30) days prior to the beginning of the month in which the funds are to be expended.

(2) The department shall mail fund checks by the first day of each month to all local units which have filed timely requests for funds.

(3) The local unit shall acknowledge receipt of funds to the department on forms provided for that purpose.

Section 8. Local Unit Distribution of Funds. (1) The local unit shall include the incentive compensation paid to each firefighter from the fund as a part of the firefighter's salary in determining all payroll deductions.

(2) The local unit shall provide each firefighter with a check stub or separate receipt upon which the gross amount of incentive funds paid to the firefighter is identified.

(3) The local unit shall disburse incentive funds during the month for which the funds are requested.

(4) The local unit shall maintain a separate account for all incentive funds which it receives pursuant to KRS Chapter 95A and this regulation.

(5) The local unit shall maintain records to document that each firefighter devotes sufficient hours performing

firefighter's duties and training to qualify him for incentive funds consistent with his annual salary.

Section 9. Quarterly Reports. (1) Each participating local unit shall submit quarterly reports to the department within fifteen (15) days of the close of the quarter falling on March 31, June 30, September 30 and December 31 of each year.

(2) The quarterly report shall include the name, rank, social security number, date of employment, annual compensation and the amount of incentive funds received for each firefighter and any other information specifically requested on the respective quarterly report form.

Section 10. Local Audits. (1) The local unit may be audited by the department pursuant to established procedures.

(2) For audit purposes, the local unit shall maintain accurate financial records. Such records shall include, but are not limited to, books of original entry, source documents supporting accounting transactions, the general ledger, subsidiary ledgers, personnel and payroll records, cancelled checks and any related document and record.

(3) These records shall be retained by the local unit until destruction is authorized by the commission.

Section 11. False or Fraudulent Statements. (1) Any person who knowingly or willfully makes any false or fraudulent statement or representation in any record or report to the commission under KRS Chapter 95A or this regulation shall cause the unit of government which he represents to become ineligible for further funds and that unit of government may be responsible for the return to the State Treasury of those funds which were received through these false or fraudulent statements or representations. Eligibility can be reestablished by submitting a new application as outlined in Section 2 after settlement has been completed to the satisfaction of the commission.

(2) Any person who knowingly or willfully makes a false or fraudulent statement or representation in any record or report to the commission under this act shall be fined not less than $100 *nor more than $500* or imprisoned for not less than thirty (30) days nor more than one (1) year or both.

Section 12. Appeals. (1) No decision of the commission which negatively affects the eligibility of a firefighter to be a recipient of the fund shall be final until said firefighter shall have been afforded an opportunity to be heard on the matters.

(2) An appeal may be taken from a final decision of the commission to withhold or terminate payment from the fund to any local government. Said appeal shall be to the circuit court of the circuit where the controversy originated.

CHARLES A. COTTON, Commissioner
ADOPTED: June 5, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: June 11, 1982 at 9:15 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, U.S. 127 South, Frankfort, Kentucky 40601.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 9:010. Environmental health.

RELATES TO: KRS 211.920 to 211.945
PURSUANT TO: KRS 13.082, 194.050, 211.090, 211.925
NECESSITY AND FUNCTION: KRS 211.920 to 211.945 authorizes the *Cabinet* [Department] for Human Resources to adopt rules, regulations, and standards relating to the public health or health aspects of the operation of state [and local] confinement facilities. This regulation establishes uniform standards to safeguard the environmental health of persons confined in state [and local] confinement facilities.

Section 1. Definitions. As used in this regulation: *(1) "Cabinet" means Cabinet for Human Resources and the local health department having jurisdiction and their duly designated representatives.*

(2) [(1)] "Cell" means a room used to confine one (1) inmate;

(3) [(2)] "Dayroom" means a room used to confine inmates during the day;

[(3) "Department" means the Department for Human Resources and the local health department having jurisdiction and their duly designated representatives;]

(4) "Dormitory" means a room used to confine two (2) or more inmates;

(5) "Inmate" means any person confined in a state or local confinement facility.

Section 2. Sanitary Facilities and Controls. (1) The water supply shall be potable, adequate and from an approved source and shall be developed and approved in accordance with applicable requirements of the Department for Natural Resources and Environmental Protection.

(2) All sewage and liquid waste matter shall be disposed of into a public sewerage system, if available. In the event a public sewerage system is not available, disposal shall be made into a private system designed, constructed and operated in accordance with the requirements of the state plumbing code; provided, however, if a public sewerage system subsequently becomes available, connections shall be made thereto and the confinement facilitiy's sewerage system shall be discontinued.

(3) A drinking fountain with a diagonal jet orifice or single service drinking cups shall be provided for each cell, dormitory and dayroom. The use of a common drinking vessel is prohibited.

(4) Each cell shall be provided with a modern prison-type commode. Dayrooms and dormitories shall be provided with one (1) commode for every eight (8) inmates or fraction thereof. Urinals may be substituted for one-half (½) the commodes in facilities used to house male inmates. All commodes and urinals shall be kept clean and in good repair. An adequate supply of toilet tissue shall be provided at each commode.

(5) Each cell shall be provided with a modern prison-type lavatory. Dayrooms and dormitories shall be provided with one (1) lavatory for every eight (8) inmates or fraction thereof. All lavatories shall be kept clean and in good repair. Each lavatory shall be equipped with hot and cold running water, hand-cleansing soap and approved sanitary towels or other approved hand-drying devices.

(6) Showers shall be provided on a ratio of one (1)

shower for each fifteen (15) inmates or fraction thereof. All showers shall be kept clean and in good repair. Under normal operating conditions, each inmate shall be permitted to take one (1) shower per day. An adequate supply of soap and individual towels shall be available for showers. Each shower shall be equipped with hot and cold running water.

(7) All hot water outlets in confinement areas shall have controls to prevent the distribution of water at a temperature which would scald an inmate.

(8) All plumbing shall comply with the state plumbing code.

(9) All garbage and rubbish shall, prior to disposal, be kept in leakproof, nonabsorbent containers and such containers shall be kept covered with tight-fitting lids when stored. Containers used in confinement areas shall be flame-retardant. Adequate cleaning facilities shall be provided and containers shall be kept clean. All garbage and rubbish shall be removed from confinement areas on a daily basis and shall be disposed of at least weekly or more often if necessary, and in such a manner as to prevent a nuisance.

Section 3. Facilities and Equipment. (1) Each cell shall:

(a) Have at least forty-eight (48) square feet of floor space;

(b) Have at least eight (8) foot ceilings;

(c) Contain a bed; and

(d) Provide facilities for storage of the inmate's personal belongings, including clothing and towels.

(2) Each dormitory shall:

(a) Have at least eight (8) foot ceilings;

(b) Provide at least fifty (50) square feet of floor space per inmate;

(c) Not serve more than fifteen (15) inmates at any one time;

(d) Contain a bed for each inmate; and

(e) Provide facilities for storage of inmates' personal belongings, including clothing and towels.

(3) All floors, walls, ceilings, and equipment shall be constructed of easily cleanable material, kept in good repair and clean. All parts of the confinement facility and its premises shall be kept clean, neat and free of litter and rubbish.

(4) A separate confinement unit shall be provided in all confinement facilities used to confine persons who may be intoxicated. Each such unit shall be equipped with concrete bunks at least twenty-four (24) inches wide and not over four (4) inches in height, and edges shall be rounded smooth. Each unit shall be equipped with a prison-type commode, a flush action floor drain, and a lavatory with a drain adequate to accommodate the refuse commonly associated with such units.

(5) Separate cells and dormitories shall be provided for: adult males; adult females; male juveniles; and female juveniles. Physical, visual and audible separation shall be provided. Separate confinement cells shall be provided for mentally disturbed inmates.

(6) A medical examining room physically and visually separated from cells and dormitories shall be provided.

Section 4. Lighting. Each cell, dayroom, and dormitory room shall be provided with natural or artificial light sufficient to provide fifty (50) foot candles of light for reading purposes. Lighting shall be available for all areas of the confinement facility equal to twenty (20) foot candles to permit observation, proper cleaning and maintenance. All light fixtures shall be kept in good repair and clean.

Section 5. Heating and Cooling. Adequate automatic standard heating equipment shall be provided. If radiators are provided they shall be located in the inspection corridor and adequately shielded to prevent accidental injury. In no case shall the heating system constitute a fire or safety hazard. Cells, dormitories, dayrooms and other areas of confinement facilities used to house inmates shall be properly heated so the inside temperature does not fall below sixty-five (65) degrees Fahrenheit, and an adequate cooling and ventilation system shall be provided and maintained to prevent the inside temperature from rising above eighty-five (85) degrees Fahrenheit.

Section 6. Ventilation. Cells, dormitories, and dayrooms shall be provided with natural or mechanical ventilation which admits fresh air and removes disagreeable odors.

Section 7. Vermin Control. (1) The confinement facility premises shall be free of vermin at all times. Effective measures to eliminate the presence of rodents, flies, roaches, and other vermin on the premises shall be utilized. The premises shall be kept in such condition as to prevent the harborage or breeding of vermin.

(2) Openings to the outside shall be effectively protected against the entrance of rodents, insects and other vermin by tight-fitting, self-closing doors, closed windows, screening, controlled air currents, or other means. Screen doors shall be self-closing, and screens for windows, doors, skylights, transoms and other openings to the outside shall be tight-fitting and free of breaks. Screening material shall not be less than sixteen (16) mesh to one (1) inch.

Section 8. Bedding. As a minimum each inmate detained [overnight] in a confinement facility shall be provided with: (i) an approved flame-retardant and water-repellent mattress and pillow; (ii) a pillowcase; (iii) a sheet or cloth mattress cover; and (iv) a blanket. Provided; however, that if in the sound discretion of the [jailer or other] appropriate person in charge of the confinement facility, any items listed in this section would constitute a danger or hazard to the inmate confined due to a behavior or mental condition or intoxication, such items may be withheld. Mattresses, pillows, blankets, sheets, pillowcases, and mattress covers shall be kept in good repair and clean. Sheets, pillow cases and mattress covers, if used without sheets, shall be changed and laundered at least weekly and before being issued to another inmate.

Section 9. Supplies for Inmates. An inmate detained for more than twelve (12) hours shall be provided a clean cloth towel. Thereafter, the inmate shall be provided a clean cloth towel at least every fourth day. Clothing worn by inmates shall be kept clean.

Section 10. Exercise, Visitation and Multi-Purpose Areas. Adequate space shall be provided to allow all inmates an opportunity to obtain adequate exercise. Adequate individual visitation space shall be provided. Separate areas for educational and other multi-purpose uses shall be provided in confinement facilities housing fifteen (15) or more inmates.

Section 11. Food Service. All confinement facilities shall comply with the food service provisions of KRS 219.011 to 219.081 and 219.991 and the state food service code. If food for inmates is not prepared by the confinement facility, food shall be obtained from a commercial

food service establishment holding a valid permit from the department.

Section 12. Food Manufacturing. All food manufacturing and processing conducted at confinement facilities shall be operated in accordance with applicable public health laws and the *cabinet's* [department's] regulations relating thereto.

Section 13. Existing Facilities and Equipment. Notwithstanding the other provisions of this regulation, facilities and equipment being used by existing confinement facilities, which do not fully meet the design and construction requirements of this regulation, may be continued in use, if in good repair, capable of being maintained in a sanitary condition, and creates no health hazard.

Section 14. Plan Review of Future Construction. Plans for alteration or new construction of *state confinement facilities* [jails] shall be submitted and approved in accordance with KRS 441.410 to 441.450. Plans for alteration or new construction of other confinement facilities shall be submitted to [the department,] the State Fire Marshal, the Department for Natural Resources and Environmental Protection and the *Department* [Bureau] of Corrections for approval. All such plans and specifications shall show building layout, type of construction material, size and location of fixed equipment and facilities, and a plumbing riser diagram. All plans *pertaining to state confinement facilities* shall be initially submitted to the local health department concerned to be reviewed and forwarded to the department.

Section 15. Inspection of Confinement Facilities. (1) At least once each six (6) months, the *cabinet* [department] shall inspect each confinement facility and shall make as many additional inspections and reinspections as are necessary for carrying out the provisions of this regulation.

(2) Whenever an agent of the department makes an inspection of a confinement facility, he shall record his findings on an official department inspection report form and provide the appropriate official of the confinement facility with a copy of the report. The inspection report shall set forth the specific deficiencies found.

DAVID T. ALLEN, Commissioner
ADOPTED: June 15, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: June 15, 1982 at 4 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary, Cabinet for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Certificate of Need and Licensure Board
(Proposed Amendment)

902 KAR 20:006. Certificate of need process.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1), (2)
PURSUANT TO: KRS 13.082, 216B.040, 216B.075 [, 216B.080]
NECESSITY AND FUNCTION: [KRS 216B.040 authorizes the Certificate of Need and Licensure Board to promulgate administrative regulations.] *KRS 216B.040 and* KRS 216B.075 authorize[s] the Certificate of Need and Licensure Board to promulgate administrative regulations respecting application and review procedures. *This regulation sets forth the application and review procedures and requirements for batching, review of substantial changes in projects and cost escalations and progress reports.* [KRS 216B.080 authorizes the Certificate of Need and Licensure Board to promulgate administrative regulations establishing criteria for the issuance or denial of certificate of need and for the allowance or disallowance of exemptions.]

Section 1. Definitions. Except as otherwise provided, for purposes of this regulation, the following definitions shall apply:

(1) "Affected persons" means the applicant; [the health systems agency for the health service area in which the proposed project is to be located; health systems agencies serving contiguous health service areas or located within the same standard metropolitan statistical area;] any person residing within the geographic area served or to be served by the applicant; any person who regularly uses health [care] facilities within that geographic area; health [care] facilities [and health maintenance organizations (HMOs)] located in the health service area in which the project is proposed to be located which provides services similar to the services of the facility under review; health [care] facilities [and HMOs] which, prior to receipt by the agency or the proposal being reviewed, have formally indicated an intention to provide similar services in the future; *the department and* third party payors who reimburse health [care] facilities for services in the health service area in which the project is proposed to be located [; and any agency which establishes rates for health care facilities or HMOs located in the health service area in which the project is proposed to be located].

(2) "Batching" means the *formal* review *in the same review cycle* and comparative consideration of all filed applications *(other than those given non-substantive review pursuant to KRS 216B.095)* pertaining to similar types of services, facilities or equipment affecting the same health service area.

(3) "Board" means the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board.

(4) "Capital expenditure authorized" means the amount of the capital expenditure approved by the board to implement a proposal.

(5) "Certificate of need" means an authorization by the board to proceed to acquire, to establish, to offer, to substantially change the bed capacity or to substantially change a health service as covered by KRS Chapter 216B.

[(5) "Complete application" means an application in which all questions have been answered and all information and documentation required has been provided.]

(6) "Department" means the Department for Human Resources.

(7) "Executive director" means the executive director of the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board.

(8) "Formal review process" means the ninety (90) day certificate of need review conducted by the board.

[(6) "Date of public notice" means the date on which the first notice appears in a newspaper of general circulation in the health service area affected by the proposal.]

(9) [(7)] "Health service" means clinically related services [within a health facility,] provided within the Commonwealth to two (2) or more persons, including but not limited to diagnostic, treatment, or rehabilitative services, and includes alcohol, drug abuse, and mental health services.

(10) "Local health planning agency" means a health planning agency organized for a particular geographical area of the Commonwealth and designated by the governor.

(11) "Nonsubstantive review" means an expedited review conducted by the department of an application for a certificate of need as authorized under KRS 216B.095.

(12) "Party to the proceedings" means the applicant for a certificate of need and any affected person who appears at a hearing on the matter under consideration and enters an appearance of record.

(13) "Public information channels" means the office of communications and council affairs in the Department for Human Resources.

[(8) "Planning subarea" means area development district as defined in KRS 147A.050.]

[(9) "Special purpose emergency care ambulance service" means an ambulance licensed pursuant to 902 KAR 20:115 which is owned and operated by industrial enterprises solely for the emergency transportation of their employees.]

[(10) "Substantial change in health service" means:]

[(a) The addition of a health service not provided in or through the health facility within the previous twelve (12) months which requires a capital expenditure of any amount or which entails an annual operating cost of at least $75,000; or]

[(b) The termination of a health service; or]

[(c) The addition or replacement of a health facility or health service which requires a license under KRS 216B.105.]

[(11) "To obligate" means:]

[(a) To enter any enforceable contract for the construction, acquistion, lease, or financing of a capital asset. A contract shall be considered enforceable when all contigencies and conditions in such contract have been met. An option to purchase or lease which is not binding shall not be considered an enforceable contract; or]

[(b) The taking of formal action by a governing body of a health care facility to commit its own funds for a construction project undertaken by the health care facility as its own contractor; or]

[(c) To accept a donation of property. In the case of donated property an obligation shall be deemed incurred on the date on which the gift is completed under applicable state law.]

Section 2. Criteria. [All decisions of the board to issue a certificate of need shall be consistent with the state health plan, except in emergency circumstances that pose an imminent threat to public health.] In determining whether to issue or deny a certificate of need, the board *and the department* shall utilize the following criteria [and considerations]:

(1) Consistency with plans. The proposal should be consistent with *the state health plan* [appropriately established plans for the development of health facilities and services in the state and in the applicable health service area]. *Consideration should be given to the other applicable appropriately adopted plans developed by local health planning agencies. In case of inconsistency between the state health plan and other plans considered, the state health plan shall prevail.* The fact that the [plans adopted by a health systems agency or the] state health plan *does* [do] not address the specific type of proposal being reviewed does not constitute grounds for disapproval of the proposal. To determine conformance with this criterion the applicant *and the department* shall address and the board shall consider the relationship of the proposal to:

(a) The state health plan;

(b) The applicable *appropriately adopted plans developed by local health planning agencies* [health systems plan and annual implementation plan];

[(c) The long-range development plan, if any, of the applicant.]

(2) Need and accessibility. The proposal should meet an identified need in a defined geographic[al] area and be accessible to all residents of the area. To determine conformance with this criterion the applicant shall address and the board *and the department* shall consider:

(a) The need that the population served or to be served has for the services proposed to be offered or expanded, and the extent to which all residents of the area, and in particular low income persons, racial and ethnic minorities, women, handicapped persons and other underserved groups are likely to have access to those services.

(b) In the case of a reduction or elimination of a service, including the relocation of a facility or a service, the need that the population presently served has for the service; the extent to which that need will be met adequately by the proposed relocation or by alternative arrangements; and the effect of the reduction, elimination, or relocation of the service on the ability of low income persons, racial and ethnic minorities, women, handicapped persons, and other underserved groups to obtain needed health care.

(c) The contribution of the proposed service in meeting the health related needs of members of medically underserved groups which have traditionally experienced difficulties in obtaining equal access to health services (for example, low income persons, racial and ethnic minorities, women and handicapped persons), particularly those needs identified in the applicable *appropriately adopted plans developed by local health planning agencies* [health systems plan, annual implementation plan,] and *the* state health plan as deserving of priority. In this regard, the board *and the department* shall consider:

1. The extent to which medically underserved populations currently use the applicant's services in comparison to the percentage of the population in the applicant's service area which is medically underserved, and the extent to which medically underserved populations will use the proposed services if approved;

2. The past performance of the applicant in meeting its obligation, if any, under any applicable federal regulations requiring provision of uncompensated care, community service, or access by minorities and handicapped persons to programs receiving federal financial assistance (including the existence of any civil rights access complaints against the applicant);

3. The extent to which physicians with admitting

privileges at the applicant's facility admit Medicare and Medicaid patients; and

4. The extent to which the applicant offers alternative means, other than through admission by a physician, by which a person will have access to its services (e.g., admission through a clinic or emergency room).

(d) The effect of the means proposed for the delivery of health services on the clinical needs of health professional training programs in the area in which the services are to be provided.

(e) If proposed health services are to be available in a limited number of facilities, the extent to which the health professions schools in the area will have access to the services for training purposes.

(f) Special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service areas in which the entities are located or in adjacent health service areas. These entities may include medical or other health professions schools, multidisciplinary clinics and specialty centers.

(g) The special needs and circumstances of biomedical-behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages.

(3) Interrelationships and linkages. The proposal should serve to accomplish appropriate and effective linkages with other services, facilities, and elements of the health care system in the region and state accompanied by assurance of effort to achieve comprehensive care, proper utilization of services and efficient functioning of the health care system. To determine conformance with this criterion the applicant shall address and the board *and the department* shall consider:

(a) The relationship of the services to be provided to the existing health care system of the area in which the services are proposed to be provided.

(b) The relationship, including the organizational relationship, of the health services proposed to be provided to ancillary or support services.

(c) In the case of health services or facilities proposed to be provided, the efficiency and appropriateness of the use of existing services and facilities similar to those proposed.

(4) Costs, economic feasibility, and resource availability. The proposal when measured against the cost of alternatives for meeting needs, is judged to be an effective and economical use of resources, not only in terms of capital investment, but also in terms of ongoing requirements for health manpower and operational financing. To determine conformance with this criterion the applicant shall address and the board *and the department* shall consider:

(a) The availability of less costly or more effective alternative methods of providing the services to be offered, expanded, reduced, relocated, or eliminated.

(b) The immediate and long-term financial feasibility of the proposal, as well as the probable impact of the proposal *on* [or] the cost of and charges for providing health services by the person proposing the service.

(c) The availability of resources (including health personnel, management personnel, and funds for capital and operating needs) for the provision of the services proposed to be provided and the availability of alternative uses of these resources for the provision of other health services.

(d) In the case of construction projects:

1. The costs and methods of the proposed construction, including the costs and methods of energy provision; and

2. The probable impact of the construction project reviewed on the costs of providing health services by the persons proposing the construction project and on the costs and charges to the public of providing health services by other persons.

(e) The special circumstances of health care facilities with respect to the need for conserving energy.

(f) The factors which affect the effect of competition on the supply of the health services being reviewed.

(g) Improvements or innovations in the financing and delivery of health services which foster competition, and serve to promote quality assurance and cost effectiveness.

(5) Quality of services. The applicant should be prepared to and capable of undertaking and carrying out the responsibilities involved in the proposal in a manner consistent with appropriate standards and requirements assuring the provision of quality health care services. To determine conformance with this criterion the applicant shall address and the board *and the department* shall consider the quality *of* care provided by the applicant in the past.

(6) Special needs and circumstances of health maintenance organizations. In the case of a health maintenance organization (HMO) or an ambulatory care facility or health care facility controlled[,] directly or indirectly by an HMO, the proposal should be consistent with the special need and circumstances of HMOs. The applicant shall address and the board *and the department* shall [only] consider *only*:

(a) The needs of enrolled members and reasonably anticipated new members of the health maintenance organizations for the health services proposed to be provided by the organization; and

(b) The availability of the new health services from non-health maintenance organization providers or other health maintenance organizations in a reasonable and cost effective manner which is consistent with the basic method of operation of the health maintenance organization. In assessing the availability of these health services the board *and the department* shall consider only whether the services from these providers:

1. Would be available under a contract of at least five (5) years duration;

2. Would be available and conveniently accessible through physicians and other health professionals associated with the health maintenance organization[.] (*e.g.*, [For example—]whether physicians associated with the health maintenance organization have or will have full staff privileges in a non-health maintenance organization hospital.);

3. Would cost no more than if the services were provided by the health maintenance organization; and

4. Would be available in a manner which is administratively feasible to the health maintenance organization.

Section 3. Required Approvals *for HMOs.* [(1)] Nothwithstanding the general review criteria established in Section 2, if an HMO or a health [care] facility which is controlled, directly or indirectly, by an HMO applies for a certificate of need, the board shall approve the application if it finds, in accordance with the criterion set out in Section 2(6) that:

(1) [(a)] Approval of the application is required to meet the needs of the members of the HMO and the new members which the HMO can reasonably be expected to enroll; and

(2) [(b)] The HMO is unable to provide, through services or facilities which can reasonably be expected to be available to the HMO, its health services in a reasonable and cost-effective manner which is consistent with the basic method of operations of the HMO and which makes these services available on a long-term basis through physi-

cians and other health professionals associated with it.

[(2) Code, licensure, or certification deficiencies. Applications proposing capital expenditures required to correct code, licensure or certification deficiencies shall be approved if the proposal meets the requirements of KRS 216B.095(3) and Section 7(3).]

[Section 4. No person shall acquire major medical equipment; offer a new institutional health service; or make a substantial expenditure in preparation for the acquisition of such equipment or the offering of such service; or make or obligate a capital expenditure without first obtaining a certificate of need for such equipment, service or expenditure from the board.]

Section *4.* [5.] Exemptions. (1) A certificate of need shall not be required for any project which meets the applicable requirements of KRS 216B.065, [or] 216B.070, *or Section 14 of the 1982 Act.* If a person acquires major medical equipment not located in a health [care] facility without a certificate of need and proposes at any time to use that equipment to serve inpatients of a hospital, the proposed new use must be reviewed unless the equipment will be used to provide services to inpatients of a hospital only on a temporary basis in the case of *an emergency,* a natural disaster, a major accident, or *an* equipment failure. For the purposes of this section "temporary basis" means *on an occasional and irregular basis or* until the applicant's proposal for permanent acquisition *or regular use by a hospital* is reviewed under the *formal* [substantive] or nonsubstantive review process.

Section *5. Formal* [6. Substantive] Review. (1) At least thirty (30) days prior to submitting a certificate of need application *for a construction project,* a letter of intent shall be filed with the executive director [of the board]. No letter of intent is required when an applicant proposes to alter an outstanding certificate of need *for a construction project.* The letter of intent shall be filed on a form provided by the board.

(2) A letter of intent is valid for a period of one (1) year.

(3) [(2)] The executive director [of the board] shall [send the health systems agency a copy of the letter of intent,] acknowledge receipt of the letter of intent, *send a copy to the respective local health planning agency, if any,* and send appropriate forms and instruction sheets to the applicant.

[(3) A certificate of need application may not be submitted more than one (1) year after receipt of the letter of intent.]

(4) *The original* [One (1) copy of the] certificate of need application *and one (1) copy* shall be submitted to the executive director [of the board] and two (2) copies shall be submitted to the *respective local* health *planning* [systems] agency, *if any.*

(5) *Within fifteen (15) days of receipt of the application* the executive director [of the board] shall acknowledge receipt [of the application] in writing to the applicant and the *respective local* health *planning* systems agency, *if any,* and shall notify the applicant whether or not the application is complete.

(6) If the application is not complete, the notice to the applicant shall give the applicant the option of submitting the additional information or of notifying the executive director that he elects for the application to be processed as originally submitted.

(7) [(6)] All applications shall be deemed filed upon *the determination of completeness by the executive director, upon receipt of the requested additional information by the executive director, or upon receipt of a letter from the applicant stating that he elects for the application to be processed as originally submitted* [receipt of a complete application].

(8) [(7)] Applications not filed within a year from the date the application was received shall not be retained by the board.

(9) [(8)] The executive director [of the board] shall notify the applicant of the date the appliation was filed and the date public notice has been given of the commencement of the review process. Applications must be filed at least six (6) working days prior to the date of public notice in order to be included in such notice.

(10) [(9)] The executive director shall give written notice to affected persons of the beginning of a review. The notice shall include the schedule for the review[,] and the period within which a public hearing may be requested by affected persons. The review notice to members of the public and third party payors shall be provided through *public information channels* [newspapers of general circulation in the health service area affected by the proposal]. Notice to all other affected persons shall be by mail.

(11) [(10)] The review period shell commence on the date of public notice. *No review shall take longer than ninety (90) days from the commencement of the review unless the applicant agrees to a deferral of action.* [The date of public notice shall be at least ninety (90) days prior to the board meeting.] Applications proposing the same or similar types of services, equipment, or facilities *affecting the same health service area* shall be batched in the review cycles so they can be *given comparative review, if applicable* [considered in relation to each other]. Batching review cycles for *formal* [substantive] reviews shall be as follows:

Type of Proposal	Month of public notice, ninety (90) days prior *to* meeting date	Month of certificate of need board meeting, Third Wednesday of:
(a) Hospital facilities and services including: general medical, surgical, psychiatric, obstetric and pediatric beds; primary care *centers,* renal disease *facilities,* [out-patient clinics] and ambulatory care *clinics,* ambulatory surgical centers, and rural health clinic*s* [facilities and services].	October, February, June	January, May September
(b) Long term care facilities and services including: skilled nursing, intermediate care, personal care, *and* nursing home*s* [and family care]; and proposals for home health services, [emergency care ambulance services,] and any other type *of* proposal not listed in paragraph (a) of this subsection. [;]	December, April, August	March, July, November

[(11) All applications filed after the first public notice following the effective date of this regulation shall be reviewed according to the batching cycles in subsection (10) of this section. Upon request, the timetable of batching cycles shall be available from the executive director of the board.]

[(12) All reviews shall be completed within ninety (90) days from the date of public notification unless action on the application is deferred with the written consent of the applicant.]

(12) [(13)] Any person directly affected by the proposal may request a public hearing within thirty (30) days of the date of public notice.

(13) [(14)] The *local* health *planning* [systems] agency shall notify the executive director [of the board] of its recommendation for approval or disapproval within sixty (60) days from the date of public notice. The recommendation shall set forth the basis for the recommendation and findings with respect to the criteria. In the event that no recommendation is received from the *local* health *planning* [systems] agency, the board shall proceed without a recommendation.

(14) [(15)] The executive director of the board shall notify the applicant, the *local* health *planning* [systems] agency and any *party to the proceeding* [person directly affected who appears on record at the public hearing] of the board's final action on a certificate of need application.

(a) If the application is approved, the written notification shall include:

1. Verification that criteria for determining need have been met and that the current accessibility of the facility as a whole has been taken into account, if applicable, as specified in the federal certificate of need regulation, except in the following cases:

a. Where the application is approved pursuant to the requirements of Section 2(6). In such case, the written findings shall verify that the conditions for required approvals under Section 3 have been met; or

[b. Where the application is approved pursuant to Section 7(3); or]

b. [c.] Where the project is a proposed capital expenditure not directly related to the provision of health services or to beds or major medical equipment.

2. Amount of capital expenditure authorized, where applicable.

(b) If the application is disapproved, the written notification shall include:

1. The [written] decision of the board.

2. Notice of appeal rights.

(c) If the board's action on a certificate of need application is inconsistent with a recommendation made by the *local* health *planning* [systems] agency, [the goals of the applicable health systems plan, or the priorities of the applicable annual implementation plan,] the executive director [of the board] shall submit to the *local* health *planning* [systems] agency and to the applicant a written detailed statement of the reasons for the inconsistency.

Section *6.* [7.] Nonsubstantive Review. (1) *An applicant* [The board] may waive the procedures for *formal* [a substantive] review of an application for a certificate of need and *request* [substitute] a nonsubstantive review. *In addition to the projects specified in KRS 216B.095(3)(a-f), nonsubstantive review status will be granted to an application to change the location of a proposed health service, so long as the application to change the location is submitted no later than one (1) year after the issuance of the original certificate of need. If a change of location of a proposed health facility is requested more than one (1) year after the certificate of need was issued, a formal review shall be required.*

[(2) In emergency circumstances that pose a threat to public health, projects which would normally be subject to substantive review shall be assigned nonsubstantive review status although the proposed project involves capital expenditures or modifications of health facilities or services. Emergency circumstances shall include acts of God, fire, vandalism, structural and/or mechanical failure and other similar situations which if not promptly acted upon would pose a threat to public health. Any applicant acting under this section must file an application for a nonsubstantive review with the executive director of the board within thirty (30) days of such an occurrence.]

[(3) Unless the board finds the facility or service with respect to which a capital expenditure is proposed is not needed or unless obligation of the capital expenditure is not consistent with the state health plan, applications proposing capital expenditures required for the purposes listed below shall be granted nonsubstantive review status and, notwithstanding the criteria adopted by the board, shall be approved if the proposed capital expenditure is required:]

[(a) To eliminate or prevent imminent safety hazards as defined by federal, state, or local fire, building, or life safety codes or regulations; or]

[(b) To comply with licensure standards; or]

[(c) To comply with accreditation or certification standards, compliance with which is required to receive reimbursements under Title XVIII of the social security act or payments under a state plan for medical assistance approved under Title XIX of such act.]

[(4) Applications proposing capital expenditures required for the purposes listed below shall be granted nonsubstantive review status and shall be reviewed using the criteria adopted by the board for substantive review if the capital expenditure is required:]

[(a) To replace or repair worn equipment provided such equipment has been used by the applicant in a health facility for five years or more and provided that the replacement does not result in a substantial change in the health services offered by the applicant.]

[(b) To make repairs, alterations, or improvements to a health facility which do not result in a substantial change in beds or a substantial change in health services offered by the applicant. In no event shall repairs, alterations or improvements be construed to mean replacement of a health facility.]

(2) [(5)] Procedures. Procedures for nonsubstantive review shall be as follows:

(a) *The original certificate of need application and* one (1) copy [of the certificate of need application], with a request for nonsubstantive review shall be submitted to the executive director [of the board] and two (2) copies of the application shall be submitted to the *respective local* health *planning* [systems] agency, *if any.*

(b) *Within fifteen (15) days of the receipt of the application* the executive director [of the board] shall acknowledge receipt of the application in writing to the applicant and the *local* health *planning* [systems] agency, *if any,* and *shall* notify the applicant whether or not the application is complete.

(c) If the application is not complete, the notice to the applicant shall give the applicant the option of submitting the additional information or of notifying the executive director that he elects for the application to be processed as originally submitted.

(d) [(c)] All applications shall be deemed filed upon the *determination of completeness by the executive director, upon receipt of the requested additional information by the executive director, or upon receipt of a letter from the applicant that he elects for the application to be processed as originally submitted* [receipt of a complete application].

(e) [(d)] Within fifteen (15) days after the application is filed, the executive director *functioning as the representative of the department* [of the board] shall determine

whether the application meets the criteria for nonsubstantive review and shall notify affected persons of the decision to grant or deny nonsubstantive review status. The notice to members of the public and third party payors shall be provided through *public information channels* [newspapers of general circulation in the health service area affected by the proposal]. Notice to all other affected persons shall be by mail. [A schedule of public notice dates and board meeting dates shall be available upon request from the executive director of the board.]

(f) [(e)] *Within fifteen (15) days of the department's notice to conduct a nonsubstantive review* any affected person *other than the applicant* may request a public hearing *before the department* on an application granted nonsubstantive review status.

(g) [(f)] The *local* health *planning* [systems] agency, *if any,* shall recommend approval or disapproval of applications granted nonsubstantive review status *within thirty (30) days of the date of public notice* [prior to the applicable board meeting]. In the event that no recommendation is received from the *local* health *planning* [systems] agency, the *department* [board] shall proceed without a recommendation.

(h) [(g)] The department [board] shall approve or disapprove applications for [a] certificate*s* of need within forty-five (45) days from the *date of public notice to conduct a* [determination of] nonsubstantive review [status].

(i) [(h)] If the applicant's proposed project is denied nonsubstantive review status *the application will automatically be placed in the next appropriate batching cycle of the formal review process* [or is denied a certificate of need following a nonsubstantive review, the applicant may apply for a certificate of need under the substantive review procedure. In such a case, the application which was granted nonsubstantive review status shall be considered a letter of intent and an application for the purpose of substantive review].

(j) If a certificate of need is denied following a nonsubstantive review, the applicant may request that the application be placed in the next appropriate batching cycle of the formal review process or may pursue a judicial appeal. If a formal review is requested, no letter of intent shall be required, but the filing of the request for nonsubstantive review shall be considered compliance with any requirement for a letter of intent.

Section 7. [8.] Conditions Relative to a Certificate of Need. (1) *No person shall transfer an approved certificate of need for the establishment of a new health facility or the replacement of an existing facility without first obtaining a certificate of need.* A certificate of need which was issued for modification of an existing health facility or service may be transferred to the new owner of the facility or service if a change of ownership occurs prior to implementation of the project for which the certificate of need was issued.

(2) A certificate of need issued for *establishment of a new health facility or the replacement of an existing* [construction of a new health] facility [is not transferable] and is issued only [to the person and] for the location stated on the certificate.

(3) [(2)] Cost escalations. *(a)* A certificate of need shall not be required for *an* escalation[s] *of* [in] the capital expenditure authorized [, where the escalation does not exceed twenty percent (20%) or $100,000, whichever is greater,] provided that the scope of the project as approved is not altered and the amount of the escalation does not exceed*:* [$1,000,000.]

1. Twenty percent (20%) of the capital expenditure authorized or $100,000, whichever is greater, in the case of projects with a capital expenditure of less than $500,000;

2. Twenty percent (20%) of the capital expenditure authorized, in the case of projects with a capital expenditure of $500,000 or greater, but less than $5,000,000;

3. Ten percent (10%) of the amount in excess of $5,000,000, plus $1,000,000, in the case of projects with a capital expenditure of $5,000,000 or greater, but less than $25,000,000;

4. Five percent (5%) of the amount in excess of $25,000,000, plus $3,000,000, in the case of projects with a capital expenditure of $25,000,000 or greater, but less than $50,000,000; or

5. Two percent (2%) of the amount in excess of $50,000,000, plus $4,250,000 in the case of projects with a capital expenditure of $50,000,000 or greater.

(b) The certificate of need holder shall submit, to the executive director, a standardized escalation form approved by the Board which includes the amount of the escalation, the factors pertaining to the escalation, and information to assure that the scope of the project as approved originally by the Board has not changed. The executive director shall review the form submitted and within thirty (30) days of receipt shall notify the certificate of need holder whether the proposed escalation meets the requirements *of subsection (a)* of this section. Capital expenditures for escalations within the limits prescribed in this section shall not be obligated until the certificate of need holder has received this notice. A certificate of need shall be required for escalations in the capital expenditure authorized which exceeds the limits prescribed in this section or entails a change in the scope of the proposal which was originally approved.

(c) The certificate of need holder shall, prior to obligating any escalation of the capital expenditure authorized, submit to the executive director any additional certificate of need application fee required by the increased capital expenditure pursuant to the requirements of 902 KAR 20:135.

Section *8.* [9.] Progress Reports. (1) As one of the conditions of a certificate of need, the *certificate of need holder* [applicant] shall submit a report of progress [toward the completion of the project] every six (6) months or more frequently if required by the board *until the project is complete.*

(2) All *certificate of need holders* [applicants] shall be notified in writing that certificates of need will be revoked by the board if satisfactory evidence towards the implementation of a proposal is not made within the time limits set by this regulation. The applicant shall provide the necessary evidence on forms provided by the executive director [of the board every six (6) months or as specified by the board until the project is complete]. The board may revoke the certificate of need for failure to submit progress reports as required.

(3) Procedures for submission of progress reports:

(a) The executive director [of the board] shall send notice to the *certificate of need holder* [applicant] specifying the date *each* [the] progress report is due. The first six-month report shall be due six (6) months from the date the certificate was issued.

(b) The applicant shall send one (1) copy of the six-month progress report form to the board and two (2) copies to the *local* health *planning* [systems] agency, *if any.*

(4) Criteria for review of progress:

(a) The first six-month progress report shall include the following:

1. On all projects for purchase of equipment only, a copy of the purchase order.
2. For all construction projects, a copy of the deed or the option to acquire the site.

(b) In the event [that] the *certificate of need holder* [applicant] wishes to change the location of the project from the site specified on the certificate of need, the *certificate of need holder* [applicant] shall note the proposed change of location on the first progress report form and shall submit a certificate of need application for nonsubstantive review. [A copy of the option or deed of purchase of the new site must be included with the application, as well as updated financial information.]

(c) Within one (1) year after a certificate of need *is* [has been] issued, the second six-month report shall include *documentation that* [the following]:

1. All projects for conversion of beds *are* [shall be] complete[d] (ready for licensure);
2. All projects for addition of new services, not involving construction, *are* [shall be] complete[d];

[3. All construction projects shall include evidence of the following:]

3. [a. Submission of] schematic plans *have been submitted* to the Department of Housing, Buildings and Construction and the Department for Human Resources *for construction projects. The second six-month report for all construction projects shall also include:*

a. [b.] Schedule for project completion with projected dates;

b. [c.] Evidence of preliminary negotiation with financial agent;

c. [d.] Evidence of preliminary negotiation with contractors.

(d) Within eighteen (18) months after a certificate of need has been issued, the third six-month report shall include the following information regarding all construction projects:

1. Copy of deed or lease of land;
2. Evidence that applicant has sufficient capital obligated to complete the project. If the source of capital is to be a financing agreement, the applicant must have evidence that a final enforceable agreement or note has been executed;
3. *Documentation that* [Submission of] final plans *have been submitted* to the Department of Housing, Buildings and Construction and the Department for Human Resources;
4. Enforceable contract with construction contractor;

(e) [5.] On all projects for purchase of equipment only, evidence that equipment has been installed.

(f) [(e)] Within two (2) years after a certificate of need has been issued, the fourth six-month report shall verify that all construction projects have the walls and roof up and plumbing roughed in.

[(f) No change in location shall be considered one (1) year or more after a certificate of need has been issued for a proposal. A new application must be submitted.]

FRANK W. BURKE, SR., Chairman
ADOPTED: May 19, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: June 11, 1982 at 4:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Frank W. Burke, Sr., Chairman, Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board, 275 East Main Street, Frankfort, Kentucky 40621.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Certificate of Need and Licensure Board
(Proposed Amendment)

902 KAR 20:008. Health facilities and health service; licensure and fee schedule.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1),(2)
PURSUANT TO: KRS 13.082, 216B.040, 216B.105(3)
NECESSITY AND FUNCTION: KRS 216B.040 and 216B.105(3) mandate that the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board regulate health facilities and health services. This regulation provides for the requirements for obtaining a license to operate a health facility or health service and establishes the fee schedule for a license.

Section 1. Licenses. (1) No person shall operate any health facility or health service in this Commonwealth without first obtaining the appropriate license therefor.

(2) The license shall be conspicuously posted in a public area of the facility.

(3) All applications for licensure shall be filed with the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board, 275 East Main Street, Frankfort, Kentucky 40621.

(4) All applicants for licenses shall, as a condition precedent to licensure, be in compliance with the applicable regulations relating to the particular health facility or health service.

(5) All licenses shall expire on December 31 following the date of issuance unless otherwise expressly provided in the license certificate.

(6) Licenses may be renewed upon:

(a) Payment of the prescribed fee;

(b) Compliance with the applicable provisions of the Certificate of Need and Licensure Board's regulations; and

(c) Submission of reports including health services provided, health manpower employed and utilization of health services and any special reports required by the Board. Commencing with the required reports for calendar year 1982, the data elements to be included in said reports will be circulated for notification at least sixty (60) days in advance of the requests.

(7) Each license to operate shall be issued only for the person or persons and premises, including the number of beds (if applicable), named in the application and shall not be transferable. A new application shall be filed in the event of change of ownership. Change of ownership for licenses shall be defined as follows:

(a) Sole proprietorship: Where a health facility/service is owned by a single individual, a transfer of any part of the title to the facility/service to another person or firm shall constitute a change in ownership.

(b) Partnership: Where a health facility/service is owned by a partnership, the addition, deletion or the substitution of any individual or transfer of any part of the title to the facility/service to another person or firm shall constitute a change in ownership.

(c) Closely held corporation: Where a health facility/service is owned by a corporation of ten (10) or fewer stockholders, any change of shares of stock or transfer of any part of the title to the facility/service to another person or firm shall constitute a change in ownership.

(d) Proprietary corporation: Where the health facility/service is owned by a corporation of more than ten (10)

stockholders, any transfer of any part of the title to the facility/service to another person or firm as well as any consolidation with another corporation or change of name or transfer of any part of the title to the facility/service shall constitute a change in ownership.

(e) Lease: Where any person or firm leases the health facility/service or any part thereof to another person or firm it shall constitute a change in ownership.

(8) Upon the filing of a new application for a license because of change of ownership, the new license shall be automatically issued for the remainder of the current licensure period. No additional fee will be charged for the remainder of the licensure period.

(9) There shall be full disclosure to the licensure board of the name and address (and any changes) of:

(a) Each person having (directly or indirectly) ownership interest of ten (10) percent or more in the facility;

(b) Each officer and director of the corporation, where a facility is organized as a corporation; and

(c) Each partner, where a facility is organized as a partnership.

Section 2. Fee Schedule. (1) Fees for review of plans and specifications for construction of health facilities shall be as follows:

License Type	*Rate*
(a) Hospitals	
Plans and specifications review (initial through final)	25 per sq. ft. x $.001 $1,500 maximum
(b) All other health facilities plans and specifications review (initial through final)	25 per sq. ft. x $.001 $800 maximum

(2) Annual fees. The annual licensure fee (including renewals) for health services shall be as follows:

License Type	*Rate*
(a) Alternative Birth Centers	*$100*
(b) [(a)] Ambulatory surgicial center	$100
(c) [(b)] Community mental health and mental retardation center	$500 per catchment area
(d) [(c)] Day health care	$50
(e) [(d)] Emergency care ambulance service (per service)	$50
(f) [(e)] Family care homes	$25
(g) [(f)] Group homes mentally retarded/developmentally disabled	$50
(h) [(g)] Health maintenance organizations	$3 per each 100 patients
(i) [(h)] Home health agencies	$50
(j) [(i)] Homemaker	$50
(k) [(j)] Hospice	$10
Hospitals	
1. Accredited hospital	$3 per bed $100 minimum $1,000 maximum
2. Non-accredited hospital	$5 per bed $100 minimum $1,000 maximum
(l) [(k)] Intermediate care facilities	$5 per bed $100 minimum $1,000 maximum
(m)[(l)] Medical alcohol emergency detoxification services	$5 per bed
(n) [(m)] Nursing home	$5 per bed $100 minimum $1,000 maximum
(o) [(n)] Outpatient clinics and ambulatory care facilities	$100
(p) [(o)] Personal care home	$2 per bed $50 minimum $500 maximum
(q) [(p)] Primary care center	$100 $15 per satellite
(r) [(q)] Rehabilitation (outpatient)	$50
(s) [(r)]Renal dialysis	$10 per station
(t) [(s)] Rural health clinics	$50
(u) [(t)] Skilled nursing facilities	$5 per bed $100 minimum $1,000 maximum

FRANK W. BURKE, SR., Chairman
ADOPTED: May 19, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: June 11, 1982 at 4:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Frank W. Burke, Sr., Chairman, Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board, 275 East Main Street, Frankfort, Kentucky 40621.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Certificate of Need and Licensure Board
(Proposed Amendment)

902 KAR 20:126. Licensure hearings.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990 (1)(2)
PURSUANT TO: KRS 13.082, 216B.105
NECESSITY AND FUNCTION: KRS 216B.105 authorizes the Certificate of Need and Licensure Board to deny, *revoke, modify or* suspend[, probate, modify or revoke] a license. This regulation sets forth the hearing process for licensure actions.

Section 1. Notice of Action and Request for Hearing. Any applicant or licensee *who has been notified of the board's intent to deny, revoke, modify or suspend a* [whose] license to operate a health facility or health service [has been denied, suspended, modified, probated, or revoked by the board shall be notified of the board's action by certified mail, and] may request an evidentiary hearing regarding the board's *intent* [action]. The request must be filed with the executive director of the board within thirty (30) days of the date of mailing of notice of the board's *intent* [action].

Section 2. Notice of Hearing. Notice of date, time and location of the hearing shall be given by certified mail at least ten (10) days before the date of the hearing.

Section 3. Continuances. Continuances may be granted by the board or its designated hearing officer [only] upon the showing of extraordinary circumstance. A request for a continuance shall be submitted in writing to the designated hearing officer and shall state the grounds for the request.

Section 4. Subpoenas. The applicant or licensee may subpoena witnesses and relevant records. Requests for sub-

poenas shall be made in writing to the executive director of the board or *to the* designated hearing officer.

Section 5. Disqualification[s] of Hearing Officer. No hearing officer *or board member* shall participate in any hearing with which he has had within the past twelve (12) months preceding the hearing, any substantial ownership, employment, staff, fiduciary, contractual, creditor or consultative relationship with the applicant or licensee.

Section 6. Hearing Procedure. (1) The applicant or licensee may be present at the hearing in person or by counsel, or both, and may introduce testimony by witnesses, or if permitted, by depositions. No depositions shall be permitted for the purpose of discovery; however, depositions of witnesses, who for good cause shown cannot be present at the hearing, may be authorized at the discretion of the board or designated hearing officer.

(2) The licensee or applicant *and the licensing agency* may present evidence relevant to the charges prompting the appeal, and may question all witnesses. The board or hearing officer may, if deemed necessary to secure full information on the issues, examine each party and each witness.

(3) The board or hearing officer may take additional evidence if deemed necessary. If additional evidence is taken, all interested parties shall be afforded the opportunity of examining and refuting the same. All additional evidence shall be submitted to the board or hearing officer within ten (10) days of the hearing.

(4) All persons testifying at hearings shall testify under oath, administered by the board or its designated hearing officer.

(5) All hearings shall be conducted informally without regard to common law, statutory or technical rules of procedure, and in such manner as to maintain the substantial rights of the parties. The hearing shall be tape recorded. Any party of the proceeding may request a transcript of the proceeding and must pay the entire cost of preparation of transcript.

(6) In lieu of an evidentiary hearing, the parties to a proceeding, with the consent of the board or designated hearing officer, may file written stipulations of relevant facts. The board or hearing officer may decide the appeal on the basis of such stipulation or may schedule a hearing and take such further evidence as deemed necessary.

(7) The board or designated hearing officer may, at his discretion, grant a continuance of a hearing in order to secure necessary evidence.

Section 7. Findings and Recommendations. (1) After the conclusion of the hearing, the hearing officer or the board shall prepare written findings of fact and recommendations with a synopsis of the evidence contained in the record on the issue(s) involved; provided, that if the applicant or licensee fails to appear and prosecute his appeal, the board or hearing officer may dismiss or recommend dismissal of the appeal.

(2) Findings and recommendations shall be sent by certified mail to the applicant or licensee *and to the licensing agency* who may submit exceptions within ten (10) days of receipt.

(3) If the hearing is before a designated hearing officer, within thirty (30) days from the conclusion of the hearing the hearing officer shall transmit his findings and recommendations to the board.

(4) [(3)] The board shall consider and make its final decision at the first board meeting following receipt of the hearing officer's findings and recommendations, but not less than ten (10) days after receipt of the findings and recommendations by the applicant or licensee pursuant to subsection (2) of this section.

(5) The decision of the board shall be final for purposes of judicial appeal upon mailing of notice of the board's decision.

[Section 8. Adminstrative Review. (1) The applicant or licensee shall be notified of the board's decision by certified mail, and may request an administrative review of the decision, stating the specific grounds for appeal. The request must be filed with the executive director of the board within thirty (30) days of the date of mailing of notice of the board's action.]

[(2) The executive director of the board shall forward a certified record of the board's proceedings to the attorney general within ten (10) days of the receipt of the notice of appeal. The cost of such record shall be taxed as costs upon appeal. The charge per page shall be the same as the per page charge under the Commonwealth's current price contract for court reporters. In lieu of filing of such record an abstract thereof may be filed if all parties to the appeal agree.]

[(3) The record shall contain:]

[(a) Material submitted by the Department for Human Resources to the board for the board's preliminary order;]

[(b) Relevant correspondence between the applicant or licensee and the executive director of the board;]

[(c) Transcript or tape of the administrative hearing with any exhibits;]

[(d) Findings and recommendations of the hearing officer; and]

[(e) Final order of the board.]

FRANK W. BURKE, SR., Chairman
ADOPTED: May 19, 1982
APPROVED: W. GRADY STUMBO, Secrerary
RECEIVED BY LRC: June 11, 1982 at 4:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Frank W. Burke, Sr., Chairman, Kentucky Health Facilities and Health Services, Certificate of Need and Licensure Board, 275 East Main Street, Frankfort, Kentucky 40621.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Certificate of Need and Licensure Board
(Proposed Amendment)

902 KAR 20:127. Certificate of need hearings.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1), (2)

PURSUANT TO: KRS 13.082, 216B.040, 216B.085, 216B.090[, 216B.110]

NECESSITY AND FUNCTION: KRS 216B.040 authorizes the Certificate of Need and Licensure Board to promulgate administrative regulations. KRS 216B.085 authorizes the Certificate of Need and Licensure Board to conduct public hearings on certificate of need applications *and* [,] certificate of need revocations [, or requests for exemptions]. KRS 216B.090 authorizes *public hearings for* reconsideration *of decisions of the board pertaining to cer-*

tificates of need or revocation of certificates of need [hearings. KRS 216B.110 authorizes administrative review]. This regulation sets forth the process for public hearings *on certificate of need applications in the formal review process, certificate of need revocations, and reconsideration of decisions of the board pertaining to certificates of need or revocations of certificates of need* [, reconsideration hearings and administrative review].

Section 1. Definitions. (1) "Affected persons" means the applicant; [the health systems agency for the health service area in which the proposed project is to be located; health systems agencies serving contiguous health service areas or located within the same standard metropolitan statistical area;] any person residing within the geographic area served or to be served by the applicant; any person who regularly uses health [care] facilities within that geographic area; health [care] facilities [and health maintenance organizations (HMOs)] located in the health service area in which the project is proposed to be located which provides services similar to the services of the facility under review; health [care] facilities [and HMOs] which, prior to receipt by the agency or the proposal being reviewed, have formally indicated an intention to provide similar services in the future; *the department and* third party payors who reimburse health [care] facilities for services in the health service area in which the project is proposed to be located [; and any agency which establishes rates for health care facilities or HMOs located in the health service area in which the project is proposed to be located].

(2) "Board" means the Kentucky health facilities and health services certificate of need and licensure board.

(3) "Department" means the Department for Human Resources.

(4) "Executive director" means the executive director of the Kentucky health facilities and health services certificate of need and licensure board.

(5) "Party to the proceedings" means the applicant for a certificate of need and any affected person who appears at a hearing on the matter under consideration and enters an appearance of record.

(6) "Public information channels" means the office of communications and council affairs in the Department for Human Resources.

(7) [(2)] "Review commences" means the date of public notice *of the appropriate batching cycle for the particular application after it is deemed complete* [as established by regulation.]

Section 2. Request for *Public* Hearing. (1) The following persons have the right to request a public hearing:

(a) Any affected person *(in the case of an application submitted for formal review)*;

(b) A certificate of need holder who has been notified of the board's intent to revoke his certificate of need; *and*

(c) Any party to the proceedings who shows "good cause" pursuant to KRS 216B.090(1) and Section 10(3) of this regulation may request a hearing to reconsider a decision of the board pertaining to a certificate of need or the revocation of a certificate of need.

[(c) Any health maintenance organization which has been denied an exemption under KRS 216B.070, and the regulations promulgated thereunder;]

[(d) Any person who has been notified by the board that his acquisition of major medical equipment or health facility requires a certificate of need.]

(2) The request for a hearing shall be made in writing to the executive director [of the board] and must be received by the executive director*:*

(a) Within thirty (30) days of the date the review commences *in the case of hearings requested under subsection (1)(a) of this section;* [or]

(b) Within thirty (30) days of the date the certified letter was mailed notifying the person of a board decision under subsection (1)(b) *of this section; and*

(c) Within fifteen (15) days of the date the notice of the board's decision is mailed in the case of a hearing requested under subsection (1)(c)[, (c) or (d)] of this section.

(3) Any affected person who has failed, after appropriate notice of the matter has been given a public hearing within the time periods set out in subsection (1) of this section is deemed to have waived his right to require a hearing to be held.

Section 3. Notice of Hearings. Notice of the date, time and location of the hearing shall be mailed to all affected persons except third party payors and members of the public [by mail] at least seven (7) days before the date of the hearing. Notice to third party payors and members of the public shall be provided through *public information channels* [newspapers of general circulation].

Section 4. Hearing Officer. (1) Hearings shall be before a quorum of the board, or at the request of the chairman, before a hearing officer designated by the secretary of the Department for Human Resources.

(2) In accordance with KRS 216B.040*(3)* [(2)] (c) and 216B.085(1), the board and the hearing officer may administer oaths and issue subpoenas.

Section 5. Disqualifications. No member of the board or hearing officer shall participate in any hearing concerning an applicant or certificate of need holder with which he has had, within the past twelve (12) months preceding the hearing, any substantial ownership, employment, staff, fiduciary, contractual, creditor or consultative relationship.

Section 6. Hearing Procedure. *(1) Public hearings shall be completed within the following time periods:*

(a) Hearings on applications in the formal review process shall be completed within the ninety (90) day formal review cycle unless the applicant agrees in writing to a deferral of the board's decision;

(b) Hearings on the board's initial decision to revoke a certificate of need shall be completed within the thirty (30) days after the request for the hearing is filed unless the certificate of need holder agrees in writing to a later date not to exceed thirty (30) days. If a hearing is held the board shall make a final decision at its next regularly scheduled meeting after the hearing; and

(c) Reconsideration hearings shall be held within thirty (30) days after the decision to grant the request for reconsideration. The board shall make its decision on reconsideration at its next regularly scheduled meeting after the public hearing.

(2) The hearing officer may conduct a prehearing conference to resolve issues not in dispute or not requiring an evidentiary record and may issue prehearing orders which shall determine the form and the manner in which the evidentiary hearing is conducted.

(3) [(1)] Any *party to the proceedings* [person] shall have the right to be represented by counsel, to present arguments and evidence relevant to the subject of the hearing and may conduct reasonable cross examination of persons who present evidence or testimony.

(4) [(2)] All testimony shall be recorded but need not be transcribed unless the board's decision is appealed.

[(3) Any affected person who appears on record at the hearing or, in the absence of a hearing, any affected person who submits written information to the board shall be deemed to be a party to the proceedings.]

(5) [(4)] The board or hearing officer may place reasonable time limits upon the presentation of testimony, evidence and argument, and may terminate or exclude irrelevant or redundant evidence, testimony or argument.

Section 7. Findings and Recommendations. (1) After the conclusion of the hearing, the hearing officer or the board shall prepare written findings of fact, conclusions of law and recommendations.

(2) The executive director shall [forthwith] transmit a copy of the findings, conclusions and recommendations to each member of the board, the person requesting the hearing and all persons deemed parties to the proceeding.

(3) *Each* [The person requesting the hearing and each person who has been deemed to be a] party to the proceedings may file exceptions with the executive director prior to the *next regularly scheduled* board meeting.

Section 8. Decisions of the Board [and Record]. (1) Any decision of the board to approve, disapprove or revoke a certificate of need [or to approve or disapprove a request for an exemption, as defined in Section 2(1)(c) or (d),] shall be based solely on the record established with regard to the matter.

(2) *In addition to the requirements of KRS 216B.015(21),* the record shall *also* include[:]

[(a) The application filed and any information provided by the applicant at the request of a health systems agency or the board;]

[(b) Any information provided by a holder in response to a notice of intent to revoke a certificate of need;]

[(c) Any staff reports, memoranda or documents prepared by or for a health systems agency or the board regarding the matter under review which were introduced at any hearing;]

[(d) The recommendations made by a health systems agency to the board;]

[(e) Any information provided by affected persons which was introduced at a hearing;]

[(f) Any other evidence admitted in a hearing held with respect to the matter under review;]

[(g) The findings of fact, conclusions of law and recommendation of the board or the hearing officer; and]

[(h)] Any exceptions *timely* filed.

(3) [(4)] All decisions granting, denying, *or* modifying [or revoking] a certificate of need shall be made by the board in writing and shall be recorded in the minutes of the board. The board shall notify the parties to the proceedings of the decision, by certified mail. The decision shall *be* [become] final *for purposes of judicial appeal* [and conclusive thirty (30) days after notice thereof is mailed] unless *a request for reconsideration is filed* [an administrative appeal is taken].

Section 9. Ex parte Contacts. [(1)] *No person shall have ex parte contact with any member of the board regarding a certificate of need application from the commencement of the review to the final decision. In the event an ex parte contact occurs, it shall promptly made a part of the record and identified as such. In no event shall the information conveyed in an ex parte contact be relied upon or considered in reaching a decision.* [After a hearing is convened before the board or hearing officer and before a decision is made on a certificate of need application, a proposed revocation of a certificate of need, or a request for an exemption from filing a certificate of need application, there shall be no ex parte contacts with regard to the pending action between any board member or other person associated with the board who exercises any discretion respecting the application, proposed revocation or exemption; and:]

[(a) The certificate of need applicant, or the holder of the certificate proposed to be revoked, or the person requesting an exemption; or]

[(b) Any person acting on behalf of such certificate of need applicant, certificate of need holder, or person requesting an exemption from filing a certificate of need application; or]

[(c) Any person opposed to the issuance of the certificate of need or in favor of the revocation of the certificate.]

[(2) In the event that an ex parte contact occurs, the contact shall be reported to the board at the beginning of the first board meeting after the contact occurred. Board members shall orally report the name of the person making the contact and on whose behalf the contact was made or submit, for inclusion in the record, documents received.]

Section 10. Reconsideration Hearings. (1) Any *party to the proceeding* [person] may, for good cause shown, request in writing a hearing for purposes of reconsideration of a board decision *in respect to certificate of need applications or revocations of certificates of need.*

(2) The request shall be filed with the executive director within fifteen (15) days of the date the notice of the board's decision is mailed.

(3) A reconsideration hearing for good cause shall be granted only if the request for reconsideration:

(a) Presents significant, relevant information not previously available for consideration by the board; or

(b) Demonstrates that there have been significant changes in the factors or circumstances relied upon by the board in reaching its decision; or

(c) Demonstrates that the board has materially failed to follow its adopted procedures in reaching its decision.

(4) The board shall *consider* [act on] requests for reconsideration *at its next regularly scheduled meeting* [in a summary manner].

(5) If a public hearing for reconsideration is granted by the board, it shall be *conducted in accordance with the requirements of this regulation for public hearings* [held within thirty (30) days after the decision to grant the request for reconsideration].

(6) The decision of the board shall be final for purposes of judicial appeal.

[(6) If the request for a reconsideration hearing is granted, such hearing shall be before a quorum of the board, or at the request of the chairman, before a hearing officer designated by the Secretary of the Department for Human Resources and shall be conducted in accordance with the provisions of this regulation.]

[(7) Notification of the date, time and place of the reconsideration hearing shall be sent to the person requesting the hearing, the person proposing the project and the health systems agency in which the project is proposed and to others upon request.]

[(8) Written findings stating the basis of the decision shall be made within forty-five (45) days after the conclusion of the hearing and shall be recorded in the minutes of the board. The decision shall become final and conclusive thirty (30) days after the date the notice of finding is mailed unless an administrative appeal is taken.]

[Section 11. Administrative Review. (1) Pursuant to KRS 216B.110, within thirty (30) days of the date the

notice of the final decision of the board is mailed, any person adversely affected by a final decision of the board may file a request for an administrative review. If a reconsideration hearing was requested, the running of the appeal time for an administrative review shall be stayed until the date on which notice is mailed of the board's decision to deny the reconsideration hearing, or if the request is granted, until the date on which notice is mailed of the board's final decision. The request for an administrative review shall be filed in writing with the executive director of the board, and shall state the specific grounds for the appeal.]

[(2) The executive director of the board shall forward a certified record of the board's proceedings to the Office of the Attorney General within ten (10) days of the receipt of the notice of appeal. The cost of such record shall be taxed as costs upon appeal. The charge per page shall be the same as the per page charge under the Commonwealth's current price contract for court reporters. In lieu of filing of such record an abstract thereof may be filed if all parties to the appeal agree.]

[(3) Appeals shall be on the certified record or abstract thereof. No new or additional evidence may be introduced. The record shall contain:]

[(a) The record as specified in Section 8;]

[(b) The transcript or tape of the public hearing and reconsideration hearing, if any;]

[(c) All correspondence relevant to the board's action;]

[(d) The record of all ex parte contacts which occurred in violation of Section 9, which record shall be separately identified;]

[(e) The final order of the board.]

[(4) The appeals officer appointed by the Office of the Attorney General shall review the case upon the certified record or abstract thereof, and shall dispose of the case in a summary manner within forty-five (45) days after the conclusion of the review and shall reverse or remand the case to the board for reconsideration if, he finds that the board acted outside its jurisdiction, or is arbitrary or capricious, or that the findings of fact in issue are not supported by substantial evidence and are clearly erroneous.]

[(5) If the case is remanded to the board by the appeals officer, the action of the board upon reconsideration shall be a final order for the purposes of judicial appeal. If the decision of the board is affirmed or reversed on review, the appeals officer's decision shall be the final decision for judicial review pursuant to KRS 216B.115 and 216B.120.]

FRANK W. BURKE, SR., Chairman
ADOPTED: May 19, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: June 11, 1982 at 4:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Frank W. Burke, Sr., Chairman, Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board, 275 East Main Street, Frankfort, Kentucky 40621.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
(Proposed Amendment)

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

RELATES TO: KRS 205.520
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The Department for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the department, by regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the method for determining amounts payable by the department for dual licensed pediatric facility services.

Section 1. Dual Licensed Pediatric Facilities. In accordance with federal law and/or regulations, 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 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 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) The state will set a uniform rate year (July 1-June 30) for facilities in this class in the same manner as for SNFs and ICFs, with allowable costs trended to the beginning of the rate year. The trended allowable costs will then be indexed for the rate year; however, there will be no administratively established upper limit. Fixed or capital costs are neither trended nor indexed. Since projected costs for new facilities reflect the best estimate of actual costs, these are also neither trended nor indexed.

(c) [(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.]

(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) *The SNF* [A] cost incentive and investment factor (CIIF) *schedule* [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. *The* [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 shall be fifty-five dollars ($55).]

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 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.

Section 4. Implementation of Uniform Rate Year. The first uniform rate year shall be July 1, 1981 through June 30, 1982. Payments based on the uniform rate year methodology shall begin effective April 1, 1982.

JOHN CUBINE, Commissioner
ADOPTED: June 9, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: June 11, 1982 at 4:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
(Proposed Amendment)

904 KAR 3:045. Coupon issuance procedures.

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 coupon issuance procedures used by the department in the administration of the Food Stamp Program.

Section 1. Basic Issuance Requirements. The department is responsible for the timely and accurate issuance of coupons to eligible households. In issuing coupons the department must insure that:

(1) Only certified households receive benefits;

(2) Coupons are accepted, stored, and protected after delivery to receiving points within the state;

(3) Program benefits are distributed in the correct amounts; and

(4) Coupon issuance and reconciliation activities are properly conducted in accordance with 7 CFR Parts 274.5 and 274.6 and accurately reported to the Food and Nutrition Service.

Section 2. Issuance System. The department shall choose one (1) of the following systems to issue coupons to eligible households:

(1) Direct delivery is a system wherein eligible households pick up and redeem their ATP card at a specified issuance center. Regular mail issuance shall be available to those households which are unable to get to their assigned issuance centers, as determined by the department.

(2) Direct mail is a system wherein coupons are mailed, using at least first class mail, directly to the eligible household.

[(a) After two (2) reports of non-delivery from the same household, the department shall mail the household's coupons to the county office for pickup for a period of six (6) monthly issuances. Any household reporting a loss after having been removed from direct mail in a previous period is placed on local office pickup for twelve (12) monthly issuances.]

[(b) In areas experiencing excessive mail loss, as identified by the department, any household reporting one (1) mail loss is immediately placed on local office pickup for the following six (6) monthly issuances. A household reporting a loss after having been removed from direct mail in a previous period is placed on local office pickup for twelve (12) monthly issuances. When portions of a county experience a high mail loss, all recipients in that portion of the county will either receive their coupons by certified mail or be required to pick up their coupons at a specified location in the county.]

(3) Alternate issuance is a system used, in accordance with 7 CFR 274.3(c)(3), when circumstances exist which indicate a household may not receive their benefits through the normal issuance system.

(a) Local office pickup is a system whereby a household's benefits are mailed to the local office for the household to pick up.

(b) Certified mail is a system whereby benefits are sent via the postal system and must be signed for before they are obtained.

(c) As determined by the department, other issuance systems may be utilized to ensure receipt of benefits by the eligible household.

Section 3. Issuance Cycles. (1) For ongoing cases the monthly coupon packet/ATP card is mailed to the household/issuance center over the first ten (10) to twenty (20) days of the issuance month, based on the last digit of the recipient's social security number.

(2) New approvals, reapprovals and current month recertifications shall have their coupon packet/ATP card mailed to their home/issuance center within thirty (30) days after the date of application.

(a) Households eligible for expedited service shall have their coupon packet/ATP card made available no later than three (3) days after the date of application.

(b) Residents of drug addiction/alcoholic treatment centers and group living arrangement facilities eligible for expedited service shall have their coupon packet/ATP card made available no later than seven (7) days after the date of application.

Section 4. Replacement Issuances. A total of only two (2) replacements of any kind shall be made during a six (6) month period, except as specified in subsection 4 of this section. Replacements will be issued in accordance with 7 CFR 273.11(g), 274.2(h) and 274.3(c) as follows:

(1) Non-receipt of coupons/ATP cards must be reported in the period of intended use. Replacements shall be issued no more than ten (10) days after report of non-delivery is received and shall be limited to two (2) times during a six (6) month period. If coupons/ATP cards were returned to central office, non-receipt did not occur and the limit stated above does not apply.

(2) Destruction, in an individual household disaster, of coupons/ATP cards after receipt must be reported within ten (10) days of the incident or within the period of intended use, whichever is earlier. Replacements shall be issued within ten (10) days of receipt of request and shall be limited to one (1) time during a six (6) month period. Where FNS has issued a disaster declaration and the household is eligible for emergency food stamp benefits the household shall not receive both the disaster allotment and a replacement allotment under this provision.

(3) Theft of ATP cards after receipt must be reported within ten (10) days of the incident or within the period of intended use, whichever is earlier. Replacements shall be issued within ten (10) days of receipt of request and shall be limited to one (1) time during a six (6) month period.

(4) Improperly manufactured or mutilated coupons shall be replaced with an amount equal to the affected coupons in accordance with 7 CFR 273.11(g)(5). There is no limit on the number of times this type of replacement may be made.

(5) Food purchased with food stamps which is subsequently destroyed in an individual disaster, as well as in a natural disaster affecting more than one (1) household, which affects the participating household, may be eligible for replacement of the actual value of loss, not to exceed one (1) month's food stamp allotment. The disaster must be reported within ten (10) days and verified. A replacement shall be issued or the opportunity to obtain a replacement given within ten (10) days of the reported loss and shall be limited to two (2) times during a six (6) month period. Where FNS has issued a disaster declaration and the household is eligible for emergency food stamp benefits the household shall not receive both the disaster allotment and a replacement allotment under this provision.

Section 5. Authorization-to-Participate Card. The ATP card is used in areas participating in a direct delivery system.

(1) The ATP card shall be valid for the entire month of issuance unless it is issued after the twenty-fifth (25th) day of the month. Those issued after that date are valid through the last day of the following month.

(2) The household shall be provided with a means of designating an emergency authorized representative who can transact the ATP card in their stead.

(3) Households which report two (2) consecutive mail losses of an ATP card must be provided with an alternate means of delivery.

Section 6. Coupon Controls. Regardless of which issuance system is used, the department shall:

(1) Establish a coupon inventory management system which insures that coupons are requisitioned and inventories are maintained in accordance with 7 CFR Parts 274.4(a)1 and 2;

(2) Establish control and security procedures to safeguard coupons similar to those used to protect currency outlined in 7 CFR Part 274.4(b);

(3) Arrange for the ordering of coupons and the prompt verification and written acceptance of each coupon shipment in accordance with 7 CFR Part 274.4(c);

(4) Ensure that coupon issuers and bulk storage points promptly verify and acknowledge, in writing, the contents of each coupon shipment or coupon transfer delivered to them and shall be responsible for the custody, care, control and storage of coupons pursuant to 7 CFR Part 274.5;

(5) Maintain issuance records for a period of three (3) years from the month of origin as outlined in 7 CFR Part 274.7;

(6) Control all issuance documents which establish household eligibility while the documents are transferred and processed within the state agency in accordance with 7 CFR Part 274.7(b); and

(7) Provide security and control for all issuance accountability documents pursuant to 7 CFR Part 274.7(c).

JOHN CUBINE, Commissioner
ADOPTED: June 11, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: June 11, 1982 at 4:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

CABINET FOR HUMAN RESOURCES
Department for Social Services
(Proposed Amendment)

905 KAR 2:010. Standards for all *child day care* facilities.

RELATES TO: KRS 199.892 to 199.896
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: KRS 199.896 grants authority to establish regulations and standards for day care of children. The function of this regulation is to set minimum standards for all child day care facilities.

Section 1. Definitions. The following definitions shall apply to all child day care regulations and standards:

(1) "Day care" means care of a child away from his own home and is designed to supplement, but not substitute for, the parent's responsibility for the child's protection, development and supervision, when it is necessary or desirable for the parent or child to be out of the home for all or part of the day or night. The term shall not include child care facilities operated by religious organizations while religious services are being conducted, or kindergarten or nursery schools which have as their primary function educational instruction. [In those instances where there is a question as to whether the facility should be licensed by the Department of Education, the

determination will be made by the two (2) state departments. Full-time boarding care shall not be permitted in a day care facility.] Day care includes:

(a) "Type I day care facility" means (i) any facility other than a dwelling unit which regularly receives four (4) or more children for day care; (ii) any facility, including a dwelling unit, which regularly provides day care for thirteen (13) or more children. If pre-school children of any day care staff receive care in the facility, they shall be included in the number for which the facility is licensed.

(b) "Type II day care facility" means any home or dwelling unit which regularly provides care apart from parents for four (4), but not more than twelve (12) children. The director's own pre-school children shall be included in the number for which the home is licensed.

(2) *"Cabinet"* ["Department"] means the Kentucky *Cabinet* [Department] for Human Resources.

(3) "Secretary" means the Secretary of the *Cabinet* [Department] for Human Resources.

(4) "Child" means a person under eighteen (18) years of age.

(5) "Director" means the person responsible for the day-to-day operation of a facility for the care of children.

(6) "Day care staff" means all persons, including volunteers, who work in a Type I or Type II day care facility.

(7) "Facility" shall include both Type I and Type II day care facilities.

(8) "Regularly" means the provision of day care services at a facility on more than one (1) day in any one (1) week *or more than ten (10) hours per week, whichever is greater.*

[(9) "Full-time boarding care" means twenty-four (24) hour foster care, which provides substitute family life for a planned period of time, for a child who, of necessity, must be separated from his natural or legal parents.]

(9) "School-age child" shall be considered one attending first grade or above.

(10) "Infant/toddler" shall be considered to be under two (2) years of age.

(11) "Nighttime care facilities" are defined as facilities in which children are received for periodic care during the night.

Section 2. Reponsibilities of the *Cabinet* [Department. (1)] Licensing Authority. The *cabinet* [department] has responsibility for the licensing and supervision of any agency, association, organization, group, or individual who regularly provides full or part-time care during any time of the day or night for four (4) or more children not related to the *licensee* [director] by blood, marriage or adoption. Authorized representatives of the *cabinet* [department] shall at all times have the right to inspect premises, records required by [Section 11,] and programs of day care facilities. *Inspection by the cabinet shall be unannounced.* [The Office of the State Fire Marshal, or his designee, shall have the right to inspect premises, records, and programs insofar as such inspections relate to fire safety requirements.]

[(2) Consultation and training. The department has the responsiblity to provide consultation services to day care facilities through individual and group meetings with the staffs and boards, and to provide periodic scheduled workshops and training sessions.]

Section 3. Licensing Issuance. (1) The license shall be issued for a specified physical location and for operation by a designated [director and] sponsor or owner, for specific hours of operation, and for a specified maximum number of children on the premises at any one time. The number for which the facility is licensed shall be determined by available space, *as determined by the state fire marshal's office;* adequacy of program, equipment, and staff *as defined in these regulations.*

(2) Types of licenses:

(a) A regular license shall be issued when the facility has met all requirements provided for by the regultions of the department under KRS 199.892 to 199.896.

(b) A provisional license shall be issued when the facility does not meet the requirements for a regular license but there is sufficient reason for belief that the facility will comply with minimum regulations within the time period designated by the licensing authority. A provisional license shall be issued for a period not to exceed *six (6) months* [one (1) year] and shall not be renewable.

(3) A license is not transferable. A change in ownership of a facility requires a new application and fee. When circumstances covered by the license change (i.e., [a] number of children to be served, location, [director,] hours of operation[,] when the difference is over one (1) hour), notification shall be made *in writing* to the *Division for Licensing and Regulation. Notification shall be made within the time established under Section 11 of this regulation.* [department so that a revised license can be issued. This does not require an additional fee. In all cases except change of director, notification shall be made in advance.]

(4) The license shall be posted in a conspicuous place.

Section 4. (1) Licensing fees shall be:

(a) *Fifty dollars ($50)* [Twenty-five dollars ($25)] for all new *Type I* facilities.

(b) Twenty-five dollars ($25) for all new Type II facilities.

(c) [(b)] *Twenty-five dollars ($25)* [Ten dollars ($10)] annual renewal fee for all facilities.

(2) A check or money order payable to the Kentucky State Treasurer shall be attached to the license application.

Section 5. Licensing Procedure. (1) To qualify for a license, a day care facility shall comply with regulations and standards established by the *cabinet* [department].

(2) *An applicant for licensure shall:* [Prior to application, a prospective director contacts the department to obtain a copy of standards and regulations. A representative from the department will be assigned to work with the prospective operator. After conferring with the representative, applicant applies for license.]

(a) Complete three (3) copies of the application [provided by representative];

(b) Send application fee, and two (2) completed applications to *Cabinet* [Department] for Human Resources, Division of Licensing and Regulation, [or its successor,] Frankfort, Kentucky;

(c) Keep one (1) copy on file.

(3) *To obtain the license to open, a day care facility must have:* [Prior to opening, all day care personnel shall obtain a statement from a physician verifying satisfactory conditions of health and negative reports of VDRL and TB tests. All adults who reside on premises shall have a current report of negative TB test.]

(a) A current report of negative TB test on all day care personnel and adults who reside on the premises.

(b) Approval of Office of the State Fire Marshal or his designee.

(c) Approval of the Cabinet, Department for Health

Services, or its designee as to adequate health and sanitation standards.

(d) Adequate equipment, supplies, and staff to serve initial enrollment of children.

(e) Been surveyed by a representative of the Cabinet for Human Resources to determine if the facility qualifies for licensing, based on the regulations.

(4) No facility subject to licensing shall begin operation without a license to operate from the Cabinet for Human Resources.

[Section 6. Permission to Open. (1) No facility subject to licensing shall begin operation without permission to open from the department. In order to open, the facility shall have:]

[(a) Approval of Office of the State Fire Marshal or his designee.]

[(b) Approval of the Department, Bureau for Health Services, or its designee as to adequate health and sanitation standards.]

[(c) Adequate equipment, supplies, and staff to serve initial enrollment of children.]

[(2) Once a facility is serving children, license evaluation study will be made by a representative of the department to determine if the facility qualifies for licensing, based on the regulations.]

Section *6.* [7.] License Renewal Procedure. (1) Facilities shall be relicensed annually from the date of issuance of the original license.

(2) *To be eligible for relicensure, a day care facility shall:* [The department shall notify the facility when a renewal application shall be filed.]

(a) *Submit a renewal application and fee prior to the expiration date of the current license.* [Renewal application shall be mailed to a facility at least six (6) weeks prior to expiration date.]

(b) *Comply with the applicable provisions of the day care licensure regulations. Compliance will be verified through on-site inspection by representatives of the Cabinet for Human Resources.* [Health and safety inspections shall be requested by the department.]

[(c) A licensing representative shall visit and make recommendations for relicensing.]

Section *7.* [8.] Basis for Revocation or Denial. The secretary may deny, suspend, or revoke a license at any time the day care facility fails to meet the *requirements* [minimum standards] as set *forth* [out] in the regulations.

Section *8.* [9.] Right of Appeal. (1) When a license has been denied, suspended, or revoked, the *licensee* [director, owner, or president of the governing board,] shall be notified in writing of the right to appeal [to the secretary or his authorized representative for a hearing]. The request for a hearing shall be made in writing within fifteen (15) days after receiving the notice of the action of the secretary.

(2) Upon receipt of the request for a hearing, the secretary or his representative shall notify the *licensee* [director, owner, or president of the governing board] in writing within fifteen (15) days of the time and place of the hearing. *The secretary shall appoint a hearing officer to review the record, take additional evidence, and make recommendations upon the matter appealed.*

(3) Based upon the record and upon the information obtained at the hearing, the hearing officer shall affirm or overturn the initial decision of negative action. Such decision shall be considered final. The licensee shall be notified in writing of the decision of the hearing officer. Where license denials, suspensions or revocations are upheld, the cabinet's notification shall specify the date by which the facility shall close.

(4) [(3)] A day care facility continuing to have children in attendance after the closing date established by the secretary, shall be subject to legal action by the *cabinet* [department] as provided by law. Likewise, a facility operating without having *received a license* [made license application] shall be subject to legal action.

Section *9.* [10.] Administrative Responsibilities. (1) General:

[(a) The person, corporation, partnership, voluntary association, or other public or private organization ultimately responsible for the overall operation of a child day care facility must be sufficiently familiar with the provisions of the day care regulations to ensure continuing compliance.]

(a) [(b)] *The licensee* [One (1) person designated as director] shall have primary responsibility to the *cabinet* [department] for maintaining adequate standards of operation in accordance with the child day care regulations.

(b) [(c)] Staff shall be instructed in the requirements for operation and a copy of the minimum standards must be available for their use.

[(d) Sufficient funds shall be available and utilized to ensure adequate care of the children in accordance with these regulations. No child shall be exploited in fund raising or advertising campaigns. Liability insurance shall be carried by the facility.]

(c) [(e)] All information concerning children, their parents, relatives, or guardian shall be kept in strict confidence by the staff, except for sharing information with individuals who are personally or professionally responsible for the well-being of the child.

(d) The licensee shall provide a safe and supervised environment which will protect children from hazardous situations.

(2) Services. The services to be provided within the day care facility shall be clearly stated at the time of the application. [The department shall be notified of any change in services.] A written statement of services and policies shall be *given to* [shared with] parents.

(3) Staff-child ratios:

(a) Minimum staff-child ratios for all facilities shall be maintained throughout the times that a facility is in operation, as follows:

Age of Children	Ratio
Under one year	1 staff for 6 children
1 to 2 years	1 staff for *7* [6] children
2 to 3 years	1 staff for *10* [8] children
3 to 4 years	1 staff for *12* [10] children
4 to 5 years	1 staff for *14* [12] children
5 to 7 years	1 staff for 15 children
7 [8] and older	*1 staff for 25 children (for before and after school)*
	1 staff for 20 children *(for full day of care)*

(b) When only one (1) staff member is present in the facility, the age of the youngest child determines the staff-child ratio. In no case may one (1) adult alone provide care for more than ten (10) pre-school children, or for more than fifteen (15) school-age children.

(c) Children under care shall never be left without [competent] adult supervision. Additional staff shall be employed during cooking and cleaning periods if necessary to insure adequate supervision of the children.

(d) In facilities where more than one (1) staff member is present, the following apply: Mixed age groups including children under two (2) years, one (1) staff for *seven (7)* [six (6)] children; mixed age groups children, age two (2) to six (6), one (1) staff for ten (10) children; mixed age groups children, age six (6) and older, one (1) staff for *twenty (20)* [fifteen (15)] children.

Section *10.* [11.] Records of the following shall be maintained at the facility: (1) Sufficient records to identify the individual children and to enable the person in charge to communicate with the parents or persons designated as being responsible for the child either at their home or place of employment, and in a medical emergency, with the family physician.

(2) Each child's medical history, along with authorization for emergency medical care, signed by the parent or guardian and left with the center director at the time of enrollment.

(3) *Immunization certificates for pre-school children shall be on file within thirty (30) days of admission.* [Permission for children to be toilet trained, signed by the parent or guardian.]

(4) Permission for trips off the premises, signed by the parent or guardian.

[(5) Records of non-center sponsored activities attended by school-age children, signed by the parent.]

(5) [(6)] Daily attendance records of children.

(6) Current negative TB test reports for all staff.

[(7) Health records of all staff.]

(7) [(8)] A written schedule of staff working hours.

(8) [(9)] Records of staff training.

(9) [(10)] A written plan for staff *development* [training].

(10) [(11)] Records of monthly fire drills.

(11) Written plan outlining the course of action in the event of natural or man-made disaster.

Section *11.* [12.] Reports of the following shall be made to the *cabinet* [department]: (1) Any serious occurrences involving children including accident or injury requiring extensive medical care and/or hospitalization; or death; or any form of child abuse; or fire or other emergency situations; or any incident which results in legal action by or against the center which affects any child or children or personnel; within twenty-four (24) hours.

(2) Change of ownership, sponsorship or director; within one (1) week.

(3) Change of location; sufficiently in advance to allow for approval of the facility.

(4) Change of hours of operation [(if change exceeds one (1) hour per day);] in advance.

(5) Change of *services* [staff;] within *one (1) week* [two (2) weeks].

(6) Change in number of children to be served; increase in capacity must notify the cabinet and the state fire marshal for the purpose of relicensure.

Section 12. Child Abuse or Neglect. (1) Each licensed facility shall maintain a child care program which assures affirmative steps are taken to protect children from abuse or neglect while said children are under the supervision of employees of the facility. Such program is to include procedures to inform employees of the licensee of the laws of the Commonwealth pertaining to child abuse or neglect.

(2) No day care facility may employ any person convicted of child abuse or neglect.

Section 13. Staff. (1) The director shall be a literate adult who shall assume responsibility for supervision and conduct of staff.

(2) The director shall provide a child care program which meets the regulations herein set forth.

(3) All members of the child care staff shall provide good care and maintain responsible supervision.

(4) Staff shall have practical knowledge of first aid.

(5) At all times one (1) adult shall be designated as being in charge. At no time shall children be left without adult supervision.

(6) A minimum of two (2) qualified substitutes with current negative tuberculin test reports shall be available in case of need.

(7) The licensee shall assure that additional staff is available during cooking or cleaning to maintain supervision of the children.

(8) The number of adult workers in a center shall be sufficient to ensure that minors under eighteen (18) years of age and student trainees are at all times under direct supervision. No staff person under age of sixteen (16) shall be counted as part of the staff-child ratio.

(9) The total child care staff shall be qualified by experience and training to provide the services for which the facility is licensed considering the hours of care given, the program offered, the size of the facility, and the number and ages of children under care. Experience and training may be obtained on the job.

Section 14. Physical Facilities. (1) Building.

(a) The building shall be suitable for the purpose intended and should maintain a minimum of thirty-five (35) square feet of space per child used for play, exclusive of the kitchen, bathroom, and storage areas. It shall be kept clean and in good repair.

(b) If all or any portion of the building is used for purposes other than day care, necessary provisions shall be made to avoid interference with the day care program.

(c) The building shall be so constructed that it is dry, adequately heated, ventilated, lighted, that windows, doors, stoves, heaters, furnaces, pipes, and stairs are protected; that screening is provided on windows and doors which are left open.

(d) There shall be a minimum of one (1) toilet and wash basin for each twenty (20) children. Toilet facilities shall be cleaned and sanitized daily.

(e) The kitchen shall be clean and equipped for the proper preservation, storage, preparation, and serving of food, and shall not be used for any other activities of the center.

(f) The center shall be equipped with a telephone accessible to the rooms used by the children.

(g) If care is provided school-age children, a separate area or room shall be provided.

(h) Separate toilet facilities for males and females, or a plan whereby the same facilities are used at separate times, shall be provided for school-age children.

(i) If the only food served by the center is an afternoon snack for the school-age children, a kitchen is not required if adequate refrigeration is available.

(j) Indoor areas for infants/toddlers shall be provided separated from areas used by older children. The infants/toddlers may participate in activities with older children for short periods of time.

(k) There shall be adequate crawling space for infants/toddlers protected from older children away from

general traffic patterns of the center.

(l) Each area used for infants shall have direct access to handwashing facilities.

(m) A protected outdoor area, with sun and shade and out of the traffic pattern of older children, shall be provided if infants or toddlers are cared for.

(n) Plans and specifications for new buildings and/or additions which are to be constructed for day care facilities shall be approved prior to construction by health and fire safety officials having jurisdiction.

(2) Grounds. There shall be a fenced outdoor play area free from litter, glass, rubbish, and inflammable materials and adequate in size to accommodate the number of children using the area at a particular time. The outdoor area shall be suitably surfaced and drained.

(3) Equipment.

(a) There shall be safe play equipment in good repair, both indoors and outdoors, to meet the physical and other developmental needs and interests of children of different age groups.

(b) Each center shall have enough toys and play apparatus to provide each child with a variety of activities during the day as specified in Section 15.

(c) Tables and chairs shall be of a suitable size for children.

(d) There shall be storage space in the form of low open shelves accessible to the children.

(e) Individual space for children's clothing shall be provided.

(f) An individual cot, crib, baby bed or two (2) inch thick mat shall be provided for each child, as appropriate. For sanitary reasons, individual sheets and covers shall be provided for each child and shall be laundered as needed. Where mats are used, floors shall be warm and free from drafts and dampness. Cots and all other equipment and furnishings shall be properly spaced so as to allow free and safe movement by children and adults.

(g) Tiered cribs shall not be allowed.

(h) Supplies shall be stored so that the adult may reach them without leaving the child unattended.

(i) There shall be a variety of safe washable toys, appropriate to the age levels and number of children present. Toys shall be too large to swallow, durable, and without sharp points or edges.

(j) Chairs shall be provided for staff to use when feeding, holding or playing with children.

(k) There shall be equipment that encourages crawling, walking, and climbing.

Section 15. Care of the Children. (1) Program. The day care center shall provide a planned program of activities geared to the individual needs and developmental levels of the children served. These activities shall provide experiences which promote the individual child's physical, emotional, social and intellectual growth and well-being. Activities of anyone living in the facility shall not interfere with the day care program. The daily program shall be under adult supervision and shall provide:

(a) A variety of creative activities which may include the following: art, music, dramatic play, stories and books, science, and block building.

(b) Indoor and outdoor play in which the children make use of both small and large muscles.

(c) A balance of active and quiet play, including group and individual activities, both indoors and outdoors.

(d) Opportunities for a child to have some free choice of activities and to play alone, if he/she desires, or with others.

(e) Opportunities to practice self-help procedures in respect to clothing, toileting, handwashing, and feeding.

(f) Activity areas, equipment, and materials so arranged that the child's activities are visible to the supervising staff.

(g) Regularity of physical routines to afford the child the security of knowing what is coming next.

(h) Sufficient time for activities and routines so that children can progress at their own developmental rate.

(i) No long waiting periods between activities or prolonged periods during which children must stand or sit.

(j) Diapering and toilet training shall be a relaxed, pleasant activity. Toilet training shall be coordinated with parent or guardian.

(k) Adequate quantities of freshly laundered or disposable diapers and clean clothing shall be always on hand.

(l) The infants/toddlers shall be kept clean, dry and comfortable throughout the day. Diapers and/or wet clothing shall be changed promptly.

(m) Soiled diapers shall be stored in covered containers temporarily and shall be washed at least once a day.

(n) When a child is diapered, the child shall be placed on a fresh washable surface or disposable covering.

(o) Individual washcloths and towels shall be used to thoroughly dry the child's buttocks.

(p) When training chairs are used, they shall be emptied promptly and sanitized at least once a day.

(q) Caregivers shall wash hands after diapering or toileting each child.

(r) The infant's formula shall be prepared and provided by the parent.

(s) Bottles shall be individually labeled and promptly refrigerated.

(t) Caregivers shall wash hands immediately before feeding children.

(u) At no time shall a child be placed in bed with a propped bottle.

(v) Infants/toddlers' shoes and restrictive clothing shall be removed for sleep periods.

(2) Discipline. Disciplinary methods shall be in writing and implemented through positive guidance to help the individual child develop self-control and assume responsibility for his acts. The center shall:

(a) Establish simple and consistent rules both for children and staff that set the limits of behavior.

(b) Not subject children to harsh or physical discipline; loud, profane or abusive language shall not be used.

(c) Not associate discipline with rest, toileting, or food.

(3) Health.

(a) Sufficient first aid supplies shall be available to provide prompt and proper first aid treatment. Written provisions shall be made for obtaining emergency medical care.

(b) Any child showing any signs of illness may not be admitted. If a child becomes ill during the day, he/she shall be placed in a supervised area isolated from the rest of the children, until arrangements can be made for him/her to be taken home.

(c) No medication shall be given to a child except as prescribed by a duly licensed physician or on written request of the parent or guardian. The center shall keep a written record of the administration of each medication, including time, date and amount.

(d) Good personal hygiene shall be practiced by all persons in the center and children shall be helped with their personal care and cleanliness.

(e) The children in attendance shall have sufficient supervised rest for their ages and for the number of hours spent at the facility.

(f) The water supply shall be approved by the local health department. Drinking water shall be freely available and individual drinking cups provided where no fountains are provided.

(g) Toilet articles such as combs, brushes, toothbrushes, towels and washcloths used by children shall be individual and plainly marked.

(h) All children present at meal time shall be served a meal which includes a food from each of the four (4) basic food groups. Adequate amounts of food shall be available. The center shall provide a mid-morning and mid-afternoon snack. All school-age children shall be provided a snack after school.

(i) Children shall be seated at eating time with sufficient room to manage food and tableware.

(j) Individual eating utensils shall be of size and design that children can handle easily.

(k) Weekly menus shall be prepared, dated and posted in advance in a conspicuous place. Menus shall be kept on file for thirty (30) days.

(4) Nighttime care.

(a) No child in care is permitted to spend more than sixteen (16) hours in the facility during one (1) twenty-four (24) hour period or day.

(b) Staff members shall remain awake while on duty.

(c) At least one (1) staff member shall be stationed in an area on the same floor with children, either in or adjacent to each sleeping room.

(d) A nighttime care facility, if children are present for extended periods of time during their waking hours, shall provide a program of well-balanced and constructive activities geared to the age levels and developmental needs of the chidren served.

(e) Children sleeping three (3) hours or more shall sleep in pajamas or nightgowns. School children shall be offered breakfast if they go to school from the center.

Section 16. Health and Sanitation. (1) All Type I facilities are to have an operational dishwasher at the facility for the purpose of washing and sanitizing all dishes, silverware, eating and cooking utensils after use.

(2) Type I and Type II facilities shall conform to the following minimum food servcie and sanitation guidelines for day care homes and centers:

(a) Food supplies. All food shall be from sources approved or considered satisfactory by the health authority and shall be clean, free from spoilage, free from adulteration and misbranding and safe for human consumption. No hermetically sealed, non-acid and low-acid food which has been processed in a place other than a commercial food-processing establishment shall be used. Food served shall be from a source which is in compliance with applicable state and local laws and regulations. Established commercial food stores may be assumed to be an acceptable source.

(b) Food protection.

1. All food, while being stored, prepared and displayed or served shall be protected against contamination from dust, flies, rodents and other vermin; unclean utensils and work surfaces; unnecessary handling; coughs and sneezes, flooding, drainage and overhead leakage.

2. All potentially hazardous food shall, except when being prepared and served, be kept in a safe environment for preservation.

3. Frozen food shall be kept at such temperatures as to remain frozen, except when being thawed for preparation or use. Potentially hazardous frozen food shall be thawed at refrigerator temperatures or under cool, potable running water, or quickthawed as part of the cooking process, or by any other method satisfactory to the health authority.

4. Each cold-storage facility used for storage of perishable food in non-frozen state shall be provided with an indicating thermometer or other appropriate temperature measuring device.

5. Convenient and suitable utensils, such as forks, knives, tongs, spoons or scoops, shall be provided and used to minimize handling of food at all points where food is prepared.

6. Poultry, pork and their products which have not been specially treated to destroy bacteria, including trichinae, shall be thoroughly cooked. Fruits and vegetables shall be washed before cooking or serving.

7. Meat salads, poultry salads, potato salads, and cream filled pastries shall be prepared with utensils which are clean and shall, unless served immediately, be refrigerated pending service.

8. All food shall be stored in clean racks, shelves or other clean surfaces. Food in non-absorbent type containers may be stored on the floor when it is maintained in an acceptable sanitary condition.

9. Individual portions of food once served to a child shall not be served again; provided, however, that wrapped food, other then potentially hazardous food, which is still wholesome and has not been unwrapped may be re-served.

10. All poisonous and toxic material shall be properly identified and stored in cabinets which are used for no other purpose, or stored in a place outside food-storage, food-preparation, and utensil-storage areas.

(c) Personnel.

1. Health and disease controls: No person while infected with any disease in a communicable form, or while a carrier of such disease, or while afflicted with boils, infected wounds, sores, or an acute respiratory infection, shall work in any area of a facility in any capacity in which there is a likelihood of such person contaminating food or food-contact surfaces with pathogenic organisms or transmitting disease to other individuals. If the manager or person in charge of the facility has reason to believe any employee has contracted a disease, he shall advise that employee to seek appropriate treatment.

2. Cleanliness. All employees shall maintain personal cleanliness and conform to hygienic practices while on duty. They shall wash their hands thoroughly before starting work, and as often as necessary to remove soil and contamination. No employee shall resume work after visiting the toilet room without first washing his hands.

(d) Food equipment and utensils.

1. All food-contact surfaces of equipment and utensils used in a facility shall be smooth, free of breaks, open seams, cracks, chips, and also be accessible for cleaning, and non-toxic.

2. Cleanliness of equipment and utensils. All eating and drinking utensils shall be cleaned after each usage. All kitchenware and food-contact surfaces of equipment, exclusive of cooking surfaces of equipment, used in preparation or serving of food or drink, and all food storage utensils, shall be cleaned after each use. Cooking surfaces of equipment shall be cleaned at least once a day. All utensils and food-contact surfaces of equipment used in preparation, service, display, or storage of potentially hazardous food shall be cleaned prior to such use. Non-food contact surfaces of equipment shall be cleaned at such intervals as to keep them in a clean and sanitary condition. After cleaning and until use, all food-contact surfaces of equipment and utensils shall be stored and handled as to be protected from contamination. All single-service articles shall be

stored, handled, and dispensed in a sanitary manner, and shall be used only once.

(e) Sanitary facilities and controls. All facilities shall have lavatories located in or immediately adjacent to all toilet rooms.

(f) Vermin control.

1. Effective control measures shall be utilized to minimize the presence of rodents, flies, roaches, and other vermin on the premises.

2. Unless flies and other flying insects are absent from the immediate vicinity of the establishment, all openings to the outer air shall be effectively protected against the entrance of such insects by self-closing doors, closed windows, screening, controlled air current, or other effective means.

(g) Other facilities and operations (floors, walls and ceilings). Walls and ceilings shall be smooth and constructed to be easily cleanable. All walls and ceilings shall be kept clean and in good repair.

(h) Ventilation. The kitchen in a facility shall be adequately ventilated to the outside air.

(i) Water supply. The water supply for the facility shall be properly located, protected and operated, and shall be adequate and of an approved source.

1. The water supply is favorably located away from all possible sources of contamination and is easily accessible to encourage its use. The approved distance from toilets, septic tanks, etc., may vary, depending upon type of soil, topography, etc. The source of water supply is a public water supply, approved by the Department for Natural Resources and Environmental Protection, or a spring, or well, or cistern which complies with the specifications for construction and protection required by the Department for Natural Resources and Environmental Protection.

2. The water supply is adequate in quantity and pressure to permit unlimited use.

3. All ground water supplies are chlorinated before use in a manner approved by the Department for Natural Resources and Environmental Protection. The bacteriological quality or samples of water shall comply with the Department for Natural Resources and Environmental Protection. Have water sample checked by health department if not from public source.

4. Individual drinking cups or paper cups are required.

(j) Sewage and solid waste disposal. All sewage and solid waste shall be properly disposed of and solid waste shall be kept in suitable receptacles.

1. All sewage and liquid wastes are disposed of in a public sewer or, in the absence of a public sewer, by a method approved by the Department for Natural Resources and Environmental Protection. Consultation will be sought from the Department for Natural Resources and Environmental Protection or the local sanitarian having jurisdiction on facilities in which the adequacy of the plumbing is questioned.

2. All waste paper and solid waste is disposed of in a manner approved by the state and local health regulations. Easily cleanable containers shall be provided for storage of waste materials. All garbage and rubbish containing food waste shall be stored in containers and kept covered.

(k) Toilet and handwashing facilities. Each facility shall be provided with adequate and conveniently located toilet and handwashing facilities. Toilets shall be kept in clean condition, in good repair, lighted and ventilated. In case privies are permitted and used, they shall be of sanitary type, contructed and operated in conformity with the standards of the Department for Human Resources. Hot and cold water under pressure, soap and approved towels shall be provided at lavatories. Covered waste receptacles shall be provided in each toilet room.

1. Adequate toilet facilities, in desirable locations are provided. Handwashing facilities shall be adequate and conveniently located. Privies shall be constructed and operated in accordance with the standards of the Cabinet for Human Resources.

2. Each toilet room shall be lighted, ventilated to the outside air, and kept in good repair.

3. A supply of toilet paper is to be on hand at all times. Soap and individual cloth or paper towels are provided. Most new commercial soap dispensers are satisfactory.

4. No child shall return from the toilet to activities without first washing hands.

5. Easily cleanable receptacles shall be provided for waste materials.

6. Handwashing facilities are of such type that the washing of hands under warm running water may be accomplished.

7. All openings to the outer air in the toilet rooms are effectively screened.

Section 17. Transportation. (1) When transportation is provided directly, contracted for or arranged by a day care facility, these requirements shall apply:

(a) There shall be conformance to state laws pertaining to vehicles, drivers and insurance.

(b) The staff-child ratio set in this regulation in Section 9, subsection (3), shall apply when not inconsistent with special requirements or exceptions in this section.

(c) Any center providing transportation service shall have an individualized written plan and statement of transportation policies and procedures.

(d) Each child shall have a seat and remain seated while the vehicle is in motion.

(e) On any vehicle equipped with seat belts, these shall be used to secure individual children.

(f) All vehicles used to transport children shall be designed and offered with seats for each passenger as manufactured standard equipment.

(g) A vehicle containing children shall never be left unattended.

(h) The maximum number of children under the age of six (6) a driver shall supervise alone is five (5). No children under two (2) years of age shall be transported unless restrained in an approved safety seat or accompanied by another adult.

(i) A child under age six (6) shall not be left unattended at the time of delivery.

(j) If the parent, or a person authorized by the parent to accept the child, is not present upon delivery of the child, a note shall be left explaining where the child can be picked up.

(k) If anyone other than authorized person is to receive the child, such arrangements shall be made by the parent or guardian.

(2) Vehicle shall not pick up and deliver children to a location which would require the child to cross the street or highway unless accompanied by an adult.

(3) The following standards shall be met when transportation is provided by any means other than licensed public transportation:

(a) The vehicle shall be maintained in good mechanical/operable condition at all times.

(b) A thorough inspection of the vehicle shall be made and documented by a qualified mechanic at least every six (6) months.

(c) Vehicles used to transport children, which require

other traffic to stop while loading and unloading children at their various homes along public roads, shall be equipped with a system of signal lamps, identifying color and words.

(d) The motor shall be turned off, keys removed, and brake set any time the driver is not in the driver's seat.

Section 18. The following regulations are repealed: 905 KAR 2:020, Type I facility standards; 905 KAR 2:025, Type II facility standards; 905 KAR 2:030, School-age children care; 905 KAR 2:035, Infants and toddlers care; 905 KAR 2:040, Nighttime care; 905 KAR 2:060, Transportation standards.

SUZANNE TURNER, Commissioner
ADOPTED: June 15, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: June 15, 1982 at 4 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary, Cabinet for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

Proposed Regulations

LEGISLATIVE RESEARCH COMMISSION

1 KAR 4:010. Statewide notice of public hearings.

RELATES TO: KRS 202A.026
PURSUANT TO: KRS 7.320, 13.082
NECESSITY AND FUNCTION: This regulation provides for statewide notification of public hearings to be conducted by the Legislative Research Commission for the purpose of receiving comments on block grant applications.

Section 1. The Legislative Research Commission shall provide statewide notification of public hearings to be conducted for receiving comments on block grant applications by placing advertisements otherwise conforming to the requirements of KRS Chapter 424 in:

(1) A newspaper which is distributed in at least ninety (90) counties throughout the state; or

(2) At least one (1) newspaper published in each congressional district provided that such newspaper is distributed in at least one-half (½) of the counties in the congressional district.

VIC HELLARD, JR., Commissioner
ADOPTED: June 2, 1982
RECEIVED BY LRC: June 3, 1982 at 3:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Director, Legislative Research Commission, Room 300, State Capitol, Frankfort, Kentucky 40601.

KENTUCKY HIGHER EDUCATION STUDENT LOAN CORPORATION

15 KAR 1:010. Qualifications of applicants.

RELATES TO: KRS 164A.060(1), 164A.060(8)
PURSUANT TO: KRS 13.082, 164A.060(8)
NECESSITY AND FUNCTION: To establish policies for the making of Guranteed Student Loans and Loans to Parents directly by the Kentucky Higher Education Student Loan Corporation. The Kentucky Higher Education Student Loan Corporation is authorized by statute to finance, make, and purchase Guaranteed Student Loans and Loans to Parents. The Kentucky Higher Education Assistance Authority, which insures these loans, requires that a lender exercise due diligence in the making, servicing, and collecting of such loans. Failure of the Kentucky Higher Education Student Loan Corporation to exercise due diligence could result in severe penalties such as limitation, suspension, or termination of participation to continue to make such loans and the inability to sell its bonds, notes, or other securities in the public market, at reasonable rates, to finance such loans. Adoption of reasonable lending policies is necessary to minimize defaults and other losses of fund assets and to continue its direct lending of Guaranteed Student Loans and Loans to Parents.

Section 1. General Requirements. To qualify for any direct loan, a borrower must meet the following conditions:

(1) Borrower must meet the eligibility criteria of the program for which they are applying as specified on the application.

(2) Borrower must be a resident of the Commonwealth of Kentucky as defined by the Council on Higher Education's policy on the classification of Kentucky residents.

(3) Borrower msut have a minimum of two (2) personal references who reside in the Commonwealth of Kentucky and are not attending an educational institution.

(4) Borrower must not have an adverse credit history as evidenced by a credit report from a commercial consumer credit reporting agency and/or credit information provided by individual creditors.

(5) Borrower's total monthly payment obligations may not exceed fifty (50) percent of their net monthly income, or, in lieu thereof, must obtain a qualified endorser.

(6) Borrower's total debts, not including mortgage, may not exceed five (5) times their monthly gross income, or, in lieu thereof, must obtain a qualified endorser.

(7) Borrower's total unsecured debts may not exceed three (3) times their monthly income or, in lieu thereof, must obtain a qualified endorser.

(8) The minimum loan amount to be processed through the Kentucky Higher Education Student Loan Corporation Direct Loan Program is $500. The maximum loan amounts are those established by federal regulation for each program.

(9) No Kentucky Higher Education Student Loan Corporation Direct Loans will be made which do not, if made

by another participating lender, qualify for Kentucky Higher Education Student Loan Corporation purchase.

Section 2. Guaranteed Student Loans (GSL). An individual applying for a GSL must meet the following conditions:

(1) The borrower must be unable to obtain a GSL from a private Kentucky lending institution as evidenced in writing, signed by a loan program officer at a participating lending institution.

(2) If the borrower is an undergraduate student and the applicable adjusted gross income is $30,000 or less, the student must apply for and receive a decision concerning eligibility for financial aid through the Pell Grant, Supplemental Grant, College Work-Study and National Direct Loan, or, if a graduate student, apply for and receive a decision from the school regarding the availability for institutionally administered financial assistance before applying for a Kentucky Higher Education Student Loan Corporation Direct Loan. Such applications and the decision related thereto shall be certified by an authorized school official to the Kentucky Higher Education Student Loan Corporation.

(3) Borrower must have a prior record of repaying credit obligations according to terms, or in lieu thereof, must obtain a qualified endorser.

Section 3. Parent Loans for Undergraduate Students (PLUS). An individual applying for a direct loan under the PLUS program must meet the following conditions:

(1) For purposes of a parent borrowing under the PLUS program, both the parent and student must be eligible.

(2) Parents borrowing under the PLUS program must be currently employed in a job they have held for at least one (1) year and have a minimum of a three (3) year history of employment. Exceptions to this policy may be made by the Director of Loan Programs upon showing of cause.

(3) Borrower must have a prior record of repaying credit obligations according to terms, or, in lieu thereof, must obtain a qualified endorser.

Section 4. Qualified Endorser. For purposes of any direct loan a qualified endorser must:

(1) Be a resident of the Commonwealth of Kentucky;

(2) Be twenty-one (21) years of age or older;

(3) Be currently employed in a job for at least one (1) year and have a minimum of a three (3) year history of employment (exceptions to this policy may be made by the Director of Loan Programs upon showing of cause);

(4) Not have an adverse credit history as evidenced by a credit report from a commercial consumer credit reporting agency and/or credit information provided by individual creditors;

(5) Have a prior record of repaying credit obligations according to terms;

(6) Not have total monthly payment obligations that exceed fifty (50) percent of their net monthly income;

(7) Not have total debts, excluding mortgage, that exceed five (5) times their monthly gross income; and

(8) Not have total unsecured debts that exceed three (3) times their monthly gross income.

PAUL P. BORDEN, Executive Director
ADOPTED: May 12, 1982
RECEIVED BY LRC: June 15, 1982 at 1:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Executive Director, Kentucky Higher Education Student Loan Corporation, 1050 U.S. 127 South, Frankfort, Kentucky 40601.

KENTUCKY HIGHER EDUCATION STUDENT LOAN CORPORATION

15 KAR 1:020. Lending and purchasing policies.

RELATES TO: KRS 164A.060(2), 164A.060(8)
PURSUANT TO: KRS 13.082, 164A.060(8)
NECESSITY AND FUNCTION: To establish policies for the purchase of Guaranteed Student Loans. The Corporation is authorized by statute to finance, make, and purchase Guaranteed Student Loans. The capability to finance such loans requires the adoption of reasonable lending and purchase policies to minimize defaults and other losses of fund assets.

Section 1. The Kentucky Higher Education Student Loan Corporation will continue purchasing all eligible loans from participating lenders under the terms of the operative Kentucky Higher Education Student Loan Corporation Loan Purchase Agreement until the occurrence of one (1) of the following conditions:

(1) Ten (10) percent of the original disbursed principal amount of all loans made by a participating lender and owned by the Kentucky Higher Education Student Loan Corporation have come due for repayment (matured paper) and the default rate (total dollar amount of default claims paid divided by matured paper) on those loans exceeds ten (10) percent.

(2) Ten (10) percent of the original disbursed principal amount of all loans owned by Kentucky Higher Education Student Loan Corporation made by all participating lenders to students for attendance at a single educational institution have come due for repayment (matured paper) and the default rate (total dollar amount of default claims paid divided by matured paper) on those loans exceeds ten (10) percent.

Section 2. When the condition of Section 1(1) occurs, the following action will taken:

(1) Kentucky Higher Education Student Loan Corporation will immediately cease making purchase commitments to that lender.

(2) The lender will be notified in writing signed by the Kentucky Higher Education Student Loan Corporation Executive Director and will have the opportunity to appeal, within thirty (30) days after the date of such notification, the policy application to the Kentucky Higher Education Student Loan Corporation Board at their next regularly scheduled meeting or within thirty (30) days, whichever is earlier.

(3) The Kentucky Higher Education Student Loan Corporation Board will prescribe appropriate remedies within thirty (30) days of hearing such an appeal.

Section 3. When the condition of Section 1(2) occurs, the following action will be taken:

(1) The Kentucky Higher Education Student Loan Corporation will immediately cease making purchase commitments to participating lenders on loans made to students to attend that school.

(2) The school will be notified in writing, signed by the Kentucky Higher Education Student Loan Corporation Executive Director, and will have the opportunity to appeal, within thirty (30) days after the date of such notification, the policy application to the Kentucky Higher Education Student Loan Corporation Board at their next scheduled meeting or within thirty (30) days, whichever is earlier.

Section 4. The Kentucky Higher Education Student Loan Corporation Executive Director, in order to avoid unnecessary administrative actions involving lenders or schools with low volumes of matured paper, has the authority to delay any action until the next scheduled Kentucky Higher Education Student Loan Corporation Board meeting. However, each instance in which this authority is exercised shall be brought to the attention of the board at its next meeting.

Section 5. This policy shall be effective July 1, 1982, or when this regulation becomes effective, whichever is later. Prior to that date, schools and lenders will be provided with a copy of this policy and a report showing their loan volumes, matured paper and current default rates. Such a report will be provided to participating schools and lenders on a monthly basis when the institution approaches the limits in Section 1, and at least quarterly to all other institutions.

Section 6. Once terminated under this policy, a school or lender will not be offered a new purchase contract until the default rate falls below six (6) percent.

PAUL P. BORDEN, Executive Director
ADOPTED: May 27, 1982
RECEIVED BY LRC: June 15, 1982 at 1:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Executive Director, Kentucky Higher Education Student Loan Corporation, 1050 U.S. 127 South, Frankfort, Kentucky 40601.

FINANCE AND ADMINISTRATION CABINET
Kentucky Board of Pharmacy
(Proposed Amendment)

201 KAR 2:105. Permits for drug manufacturers and wholesalers.

RELATES TO: KRS Chapter 315
PURSUANT TO: KRS 13.082, 315.010, 315.036, 315.191
NECESSITY AND FUNCTION: The purpose of this regulation is to establish uniform procedures, and fees for the registration of all drug manufacturers and wholesalers.

Section 1. Qualifications for Permits. (1) No permit shall be issued pursuant to this regulation unless and until the applicant has furnished proof satisfactory to the Board of Pharmacy:
(a) That the applicant is in compliance with all applicable federal and state laws and regulations relating to drugs and is of good moral character or if the applicant be an association or corporation that the managing officers are of good moral character; and
(b) That the applicant is equipped as to land, buildings, and security to properly carry on the business described in his application.
(2) No permit shall be granted to any person who has been convicted of a misdemeanor involving any controlled substance or who has been convicted of any felony.
(3) A permit issued pursuant to this regulation may be suspended or revoked for cause.

Section 2. Permit Fees; Renewals. All applications for a permit under the provisions of this regulation shall be submitted to the Board of Pharmacy on forms furnished by it and shall contain such information as the board may require. Each application shall be accompanied by an annual fee of seventy-five dollars ($75). All permits shall expire on September 30 following date of issuance and be renewable annually thereafter upon proper application accompanied by the renewal fee of seventy-five dollars ($75) and shall be non-transferable.

J. H. VOIGE, Executive Secretary
ADOPTED: June 9, 1982
RECEIVED BY LRC: June 14, 1982 at 10 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Executive Secretary, Kentucky Board of Pharmacy, P.O. Box 553, Frankfort, Kentucky 40602.

STATE BOARD OF PODIATRY

201 KAR 25:012. Licensing examinations.

RELATES TO: KRS 311.420
PURSUANT TO: KRS 311.410(4)
NECESSITY AND FUNCTION: This regulation sets out the scope and subject matter of the licensing examination.

Section 1. (1) Examination to obtain licensure shall consist of two (2) parts: a written examination and a clinical examination.
(2) Examinations shall be held at such times and places as shall be determined by the board. A schedule of the dates, times, and places of the examinations shall be mailed to each applicant whose application is accepted by the board.
(3) The board in its discretion may accept certified, successful national board of podiatry examinations in lieu of the written portion of its examination.

Section 2. (1) Written examination. To successfully complete the written portion of the examination, the applicant must receive an average grade of not less than seventy-five (75) percent on the entire written examination and not less than seventy (70) percent on each subject.
(2) This requirement must be satisfied prior to admission to the clinical portion of the Kentucky Board of Podiatry's licensure examination.
(3) Scope of examination. Examinations shall be adequate to test the knowledge, education and training of applicants in all subjects relating to the practice of podiatry, but must remain within the subjects contained in the regular curriculum of accredited schools of podiatry.

Section 3. (1) Clinical examination. The requirements of the clinical examination shall be within the discretion of the board as to subject matter but must remain within the subjects contained in the regular curriculum of accredited schools of podiatry.

(2) Scope of examination. Examinations shall be adequate to test the ability of the applicants to apply their knowledge, education, and training in a clinical setting.

CHESTER A. NAVA, Secretary
ADOPTED: May 6, 1982
RECEIVED BY LRC: May 17, 1982 at 1 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Dr. Chester Nava, Secretary, State Board of Podiatry, 110 North Hubbard Lane, Louisville, Kentucky 40202.

STATE BOARD OF PODIATRY

201 KAR 25:051. Procedure for denial, suspension, nonrenewal or revocation hearings.

RELATES TO: KRS 311.490
PURSUANT TO: KRS 311.410(4)
NECESSITY AND FUNCTION: To outline the administrative adjudication procedure before the Board in license denial, suspension, nonrenewal and revocation hearings.

Section 1. Scope and Definitions. (1) These regulations govern the procedure for the Kentucky Board of Podiatry in all proceedings before the board in which the legal rights, duties or privileges of any person is required by statute or by these rules to be determined after an opportunity for a hearing. These rules shall be construed to secure a just, speedy and inexpensive determination of every proceeding.

(2) For purposes of administrative adjudicatory procedure unless the context otherwise requires:

(a) "Party" means any person or agency named or admitted as a party, to any proceedings of the board and shall include only persons who have a real interest in a matter before the board.

(b) "Person" means any individual, partnership, corporation, association or public or private organization of any character other than an agency.

(c) "Order" means the whole or any part of a final disposition of an adjudication.

(d) "Contested case" means an adjudicatory proceeding before the board in which the legal rights, duties or privileges of any person are required by law to be determined after an opportunity for a hearing, without regard to whether the proceeding is instituted by the board or by some other person.

(e) "Board" means the Kentucky Board of Podiatry.

Section 2. Complaints and Investigations. (1) Complaints. A complaint may be made by any person against the holder of a license by the filing of written charges with the board's offices. The written complaint shall contain the name and address of any person making charges as well as the name and address of the person or persons against whom charges are being made and a clear and concise statement of the facts giving rise to the complaint. Any complaint or charge filed with the board will be forwarded to the licensee involved and the licensee will be given thirty (30) days to resolve the problem or to make a full satisfactory reply thereto. Any defamatory matter in a formal written complaint will be exercised by the board prior to being forwarded to the licensee. The person filing the complaint or charge will be informed of the resolution or reply received from the licensee.

(2) Investigations. Upon the receipt of a complaint and following the expiration of the thirty (30) days provided for in subsection (1), the board or its appointed committee may cause an investigation to be made by an individual board member, by any investigation committee, by the full board or by any agent or representative appointed by the board. Upon the completion of any investigation, the person or persons making such investigation shall submit a full written report to the board containing a succinct statement of the facts disclosed by the investigation.

Section 3. Commencement of Adjudicatory Proceedings. Upon the receipt of any investigative report referred to in Section 2(2) or after the expiration of the thirty (30) day period referred to in Section 2(1) where an investigation is not made, the board may begin formal adjudicatory proceedings in accordance with the following procedure:

(1) If it is determined that the facts alleged in the complaint and/or investigative report could constitute grounds for the suspension, probation or revocation of a license, a hearing shall be scheduled before the board on these allegations. In any case in which the board has denied an application for or failed to renew a license, a hearing will only be scheduled upon receipt by the board of a written request submitted by or on behalf of the person whose application for license was denied or not renewed. Any required hearing will be held within three (3) months, or as soon thereafter as practicable, after the announcement of the proceedings by receipt of a complaint or after receipt of the investigation report, whichever is later, or within three (3) months, or as soon thereafter as practicable, after the board's receipt of a written request for a hearing. In any contested case, whether it be instituted by the board or by some other person, all the parties to the proceeding shall be given reasonable notice and an opportunity to be heard.

(2) Notice. The notice provided for shall be issued in the name of the board by the chairman thereof and shall state:

(a) The time, date, place and nature of the hearing;

(b) The legal authority and jurisdiction under which the hearing is to be held;

(c) The particular sections of the statutes or rules involved; and

(d) A short and plain statement of the complaint or charges which are being preferred and the remedy which is being sought.

The notice shall be personally served or mailed to the last known address of the party or parties not less than twenty (20) days before the date of the hearing.

(3) Appearance and service. In any contested case, the parties to the proceeding shall have the right to appear personally at the hearing, and by counsel, and shall have the right to cross-examine witnesses appearing against them and to produce witnesses on their own behalf. When a party has appeared by an attorney, or otherwise designated an attorney as his representative, all communications, notices, orders or other correspondence shall be served on such attorney; service on the attorney will be considered as service on the party and the board shall be notified of any change in such attorney.

(4) Hearing tribunal. Any member or members of the board who were appointed as individuals or as a committee for investigation of a complaint or charge against a licensee will not sit on the board for adjudicatory purposes in connection with the same complaint or charge investigated. The remaining members of the board will constitute a hear-

ing committee which will conduct all hearings before the board. The chairman of the board or his designate will preside over the hearing proceedings; if the chairman is unavailable or ineligible to preside at such hearing the vice-chairman of the board shall preside.

(5) Authority to administer oaths. In hearings before the board any oath or affirmation required may be administered by any person authorized to administer oaths by the laws of the Commonwealth of Kentucky.

(6) Presentation of evidence. The evidence against the licensee or other person concerning the pending complaint or charge will be presented by the individual member or committee of the board who conducted the investigation, if any, or by any other qualifying person or persons. Additionally or in the alternative, any witness or other evidence may be questioned or introduced by any member of the hearing committee of the board.

Section 4. Conduct of Hearings; Witnesses; Burden of Proof; Evidence. (1) The board may hear testimony of any person present at the hearing who has information to offer bearing on the subject matter of such hearings. The board may ask any witness questions as may be required for a full and true disclosure of the facts. The board shall have only one (1) witness before them at any one (1) time or other witnesses may be excluded from the hearing room while any one (1) witness is being questioned.

(2) The hearing in a contested case involving a suspension, probation or revocation of a license shall proceed in the following order, unless the board, for special reasons otherwise directs:

(a) The party filing the complaint or preferring the charges or the persons appointed or designated to present the evidence against the license must briefly state the substance of the charges and the evidence by which he expects to sustain them.

(b) The party against whom a complaint has been filed or charges otherwise preferred may briefly state the substance of his defense and the evidence which he expects to offer in support of it.

(c) The party filing the complaint or otherwise preferring the charges or the person(s) appointed or designated to present the evidence against the licensee shall have the burden of proof in the whole action, therefore he must produce his evidence first; the party against whom a complaint has been filed or charges preferred may then produce his evidence. The board, however, may regulate the order of proof in any proceeding to expedite the hearing and to enable the board to obtain a clear view of the whole evidence.

(d) The parties will then be confined to rebuttal evidence, unless the board, in its discretion, permits them to offer additional evidence in chief.

(e) The parties may then submit the matter to the board for decision, or present arguments on the issues involved. In the arguments, the party filing the complaint or otherwise preferring the charges or the person appointed or designated to present the evidence against the licensee shall have the conclusion and the party against whom the complaint was filed or charges otherwise preferred shall have the opening.

(3) In a hearing requested in writing by a person whose application for a license has been denied or not renewed, the burden of proof and order of proceedings delineated in Section 4(2) shall be reversed.

(4) In any contested case, the board will as far as practical adhere to the following rules of evidence:

(a) Any evidence which would be admissable under the statutes of the Commonwealth of Kentucky, and under the rules of evidence followed by circuit courts of the Commonwealth of Kentucky, will be admitted in hearings before the board; however, in the board's discretion, such matter may be admitted if the board deems it necessary for a full and true disclosure of the facts and the matter will be of assistance to the board in determining the rights of the parties.

(b) Every party shall have the right to present such oral or documentary evidence, exhibits and rebuttal evidence and conduct such cross-examination as may be required for a full and true disclosure of the facts. Documentary evidence may be introduced in the form of copies or excerpts, if the original is not readily available; provided that upon request the parties or the board shall be given an opportunity to compare the copy with the original.

(c) When a hearing will be expedited and the interests of the parties will not be substantially prejudiced thereby, all or part of the evidence may be received in written form by affidavit or prepared statement. Prepared statements shall not be read or made a part of the record until the party against whom the statement is offered has been given a reasonable time for review and objection.

(d) Irrelevant, immaterial or unduly repetitious evidence will be excluded and the board will give effect to the rule of privilege recognized by the laws of the Commonwealth of Kentucky.

(e) The board may take notice of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the board's specialized knowledge; provided, however, the parties shall be afforded an opportunity to contest the facts so noticed.

(f) Objections to evidentiary offers may be made and shall be noted in the record.

(g) When necessary to ascertain facts which cannot otherwise be proved, evidence not admissible under the foregoing rules may be admitted (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs.

(5) The parties to any hearing may agree to waive any one (1) or more of the procedural steps which would otherwise precede the reaching of a final decision by the board, but such waiver shall not be binding on the board.

Section 5. Deliberations; Records; Final Order. (1) Deliberations. During any hearing and after the case has been submitted to the board for final decision, the deliberations of the board will be governed by the following principles:

(a) Ex-parte investigations. Members of the board shall make findings of fact and conclusions of law in a contested case or who shall render a decision in a contested case, shall not, once a hearing has commenced, consult with any person or party in connection with any issue of fact or law, except upon notice and opportunity for all parties to participate; provided, however, that any board member may consult with other members of the board, and may have the aid and advice of one (1) or more personal assistants, including the assistance of counsel.

(b) Separation of functions. No member, officer or employee of the board who is engaged in the performance of investigative or prosecuting functions for the board in a contested area shall, in that or a factually related case, participate or advise in the decision, except as a witness or counsel in the public hearing.

(c) Examination of evidence. The board shall personally consider the whole record or such portions thereof as may be cited by the parties, and the board's technical competence and specialized knowledge may be utilized in the evaluation of the evidence.

(d) The board at its discretion may recess a hearing for

the taking of additional discovery and evidence as required.

(2) Record. The record shall include all pleadings, motions, exhibits, documentary and testimonial evidence received or considered, a statement of matters officially noticed and questions and offers of proof and rulings thereon. A record or transcript of the oral proceedings need not be made by the board. Should any party desire a written transcript of the oral proceedings it will be necessary that they pay for said transcript.

(3) Final order. The final decision in any case in which a hearing is required or requested shall be in writing and shall be made a part of the office record. It shall include a concise and explicit statement of the findings of facts and conclusions of law, separately stated, and shall be signed by the presiding officer. The original thereof shall be filed as a part of the record of the case and shall be retained in the custody of the board unless an appeal is taken therefrom and one (1) copy of the order shall forthwith be served on each party to the proceeding.

CHESTER A. NAVA, Secretary
ADOPTED: May 6, 1982
RECEIVED BY LRC: May 17, 1982 at 1 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Dr. Chester Nava, Secretary, State Board of Podiatry, 110 North Hubbard Lane, Louisville, Kentucky 40202.

STATE BOARD OF PODIATRY

201 KAR 25:061. Reciprocity.

RELATES TO: KRS 311.475(2)
PURSUANT TO: KRS 311.410(4)
NECESITY AND FUNCTION: KRS 311.475(2) authorizes the board to issue licenses by reciprocity and to waive examination. This regulation sets forth the proper procedure and standard which an applicant must meet to obtain a license by reciprocity.

Section 1. Any person who has been issued a license by the appropriate authority of their state to practice podiatry may be licensed by the board, in its discretion, without examination; provided, however, that his qualifications for licensing in his state were at the time of the issuance of said license equal to or higher than those requirements for the issuance of a license in the State of Kentucky.

Section 2. The foreign applicant shall file with the board, on the form provided for licensing, such information as shall be required thereon, together with a fee of $150, no part of which shall be returned, and shall file with the board three (3) affidavits attesting to the good moral character of said applicant.

Section 3. The board in its discretion may require the personal attendance, of the applicant before it, or one (1) of its members designated for that purpose, to interrogate said applicant in such way or manner as is desired to finally ascertain his fitness for licensing in this state.

CHESTER A. NAVA, Secretary
ADOPTED: May 6, 1982
RECEIVED BY LRC: May 17, 1982 at 1 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Dr. Chester Nava, Secretary, State Board of Podiatry, 110 North Hubbard Lane, Louisville, Kentucky 40202.

STATE BOARD OF PODIATRY

201 KAR 25:071. Residency and examination results.

RELATES TO: KRS 311.420
PURSUANT TO: KRS 311.410(4)
NECESSITY AND FUNCTION: KRS 311.420 requires licensees to be residents of Kentucky. Licensure examinations are to ensure competency of licensees. This regulation ensures compliance with the statutory requirement of residency and, in order to protect the public, ensures that examination results reflect the current knowledge and competency of the applicant.

Section 1. (1) No license shall be issued to an applicant until such time as he has established residency in Kentucky.

(2) The board shall require any applicant who has not received a license, due to his failure to establish residency, within six (6) months after the successful completion of his examinations to show cause why he should not be required to retake his examinations.

(3) In no event shall the results of any examination taken for the purpose of licensure be valid for a period longer than two (2) years after the examination was taken.

Section 2. (1) Participation in a certified residency program shall be deemed to be sufficient cause for failure to establish residency within six (6) months of completion of an examination for purposes of Section 1.

(2) Participants in a certified residency program shall have six (6) months from the completion of the residency program to establish Kentucky residency or show cause why the board should not require the applicant to retake the licensure examination.

CHESTER A. NAVA, Secretary
ADOPTED: May 6, 1982
RECEIVED BY LRC: May 17, 1982 at 1 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Dr. Chester Nava, Secretary, Kentucky State Board of Podiatry, 110 North Hubbard Lane, Louisville, Kentucky 40202.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department of Natural Resources

405 KAR 2:010. Waiving liens against privately owned land.

RELATES TO: KRS 350.575
PURSUANT TO: KRS 350.028(1)
NECESSITY AND FUNCTION: This regulation is necessary to establish the requirements for waiving liens against privately owned lands upon which the Department for Natural Resources and Environmental Protection implements measures to restore, reclaim, abate, control or prevent adverse effects of past coal mining practices.

Section 1. Liens against privately owned lands upon which the Department for Natural Resources and Environmental Protection implements measures to restore, reclaim, abate, control or prevent adverse effects of coal mining practices may be waived under the following conditions:

(1) The department may waive the lien if the reclamation measures implemented do not result in a significant increase in the fair market value of the land reclaimed.

(2) The department may waive the lien if the reclamation work to be performed on private land primarily benefits health, safety or environmental values of the greater community or area in which the land is located, or if reclamation is necessitated by an unforeseen occurrence and the work performed to restore the land will not result in a significant increase in the market value of the land as it existed immediately before the occurrence.

JACKIE SWIGART, Secretary
ADOPTED: May 18, 1982
RECEIVED BY LRC: May 20, 1982 at 9:25 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Dave Rosenbaum, Director, Division of Abandoned Lands, 404 Ann Street, Frankfort, Kentucky 40601.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department of Surface Mining Reclamation and Enforcement

405 KAR 26:001. Operations of two (2) acres or less.

RELATES TO: KRS Chapter 350, 350.010, 350.020, 350.028, 350.050, 350.055, 350.057, 350.060, 350.062, 350.064, 350.070, 350.085, 350.090, 350.093, 350.095, 350.100, 350.110, 350.113, 350.130, 350.135, 350.151, 350.445, 350.450, 350.465, 350.990
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.050, 350.060, 350.064, 350.093, 350.130, 350.135, 350.151, 350.450, 350.465
EFFECTIVE: May 24, 1982
NECESSITY AND FUNCTION: The 1980 and 1982 General Assembly enacted amendments to KRS Chapter 350 which would change certain regulatory requirements for surface coal mining and reclamation operations of two (2) acres or less. Several of those changes become applicable upon the effective date of the approval by the U.S. Secretary of the Interior of Kentucky's permanent regulatory program under the 1977 Surface Mining Control and Reclamation Act. The effective date of that approval is May 18, 1982, and this regulation is necessary to implement the required changes in a timely manner. This regulation continues the existing regulatory program for such operations, but deletes requirements for highwall elimination; decreases the maximum amount of performance bond required; specifies when performance bond may be filed; reduces the time for processing applications; specifies boundaries which must be identified for underground mines; establishes conditions under which cessation orders may not be issued; and increases permit fees and acreage fees.

Section 1. Applicability. This regulation shall apply to surface coal mining and reclamation operations of two (2) acres or less which are exempt from the requirements of Title 405, Chapters 7 through 24.

Section 2. Notwithstanding the provisions of 405 KAR 1:005E and 405 KAR 3:005E, the provisions of Title 405, Chapters 1 and 3 shall remain in effect for surface coal mining and reclamation operations of two (2) acres or less which are exempt from the requirements of Title 405, Chapters 7 through 24, except as provided in this section.

(1) Highwall elimination. Elimination of highwalls left by such operations shall not be required.

(2) Performance bonds. The required bond amount of such operations shall not be more than $1,000 per acre or fraction thereof. The applicant shall not be required to submit the required performance bond until after the applicant has received written notice of the department's decision to issue the permit.

(3) Processing of applications. Complete applications for permits shall be processed within thirty (30) calendar days, except that periods of temporary withdrawal shall not be counted against the thirty (30) calendar days.

(4) Underground mines. Applications for permits for the surface effects of underground mining shall clearly identify the boundaries of surface areas above the proposed underground mining operations.

(5) Cessation orders. The department shall not issue orders requiring the cessation of operations solely for failure to abate a violation.

(6) Fees. On and after July 15, 1982, the basic fee for applications for permits shall be $375, and the acreage fee shall be seventy-five dollars ($75) for each acre or fraction thereof.

ELMORE C. GRIM, Commissioner
ADOPTED: May 18, 1982
APPROVED: JACKIE A. SWIGART, Secretary
RECEIVED BY LRC: May 24, 1982 at 4:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurie Keller, Commissioner's Office, Department for Natural Resources and Environmental Protection, Bureau of Surface Mining and Reclamation, Capital Plaza Tower, 3rd Floor, Frankfort, Kentucky 40601.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department 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 it's 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, terrestorial flora and fauna, and historic, geologic, pedologic, 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.

(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, pH, dissolved oxygen (DO) and total suspended solids.

(b) Chemical parameters will include alkalinity, noncarbonate hardness, 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: acenaphthene, acrolein, benzene, benzidine, beryllium, carbon terrachloride, chlorinated benzenes, chlorinated ethanes, chloroalkyl ethers, chlorinated naphthalene, chlorinated phenols, chloroform, 2-chlorophenol, dichlorobenzenes, dichlorobenzidine,

dichloroethylenes, 2, 4-dichlorophenol, dichloropropanes, 2, 4-dimethylphenol, dinitrotoluene, diphenylhydrazine, ethylbenzene, fluoranthene, haloethers, halomethanes, isophorone, naphthalene, nitrobenzene, nitrophenols, nitrosamines, pentachlorophenol, phenol, phthalate esters, polynuclear aromatic hydrocarbons, tetrochloroethylene, and toluene.

(d) Biological parameters will include biochemical 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 of 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 biochemical 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 of 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 of 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) x 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.

Section 4. Variance Procedures. (1) The department may authorize in writing such exceptions and variances to the requirements of this regulation as the department may deem necessary to reasonably and properly address site specific conditions. A written finding shall be made by the department that the public and the environment will, in the administration of this variance, be provided adequate protection consistent with the purposes of KRS 350.600. The permittee shall publish a Notice of Intention to Request a Variance.

(2) Publication of notice of intention to request a variance. An applicant for a variance 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. The advertisement shall be published at least once each week for four (4) consecutive weeks with the first advertisement to be published not less than ten (10) nor more than thirty (30) days prior to the filing of the variance application with the department. The public notice of intention to file an application for a variance shall be entitled "Notice of Intention to File for a Variance from Kentucky Oil Shale Mining Regulations" 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 or permit application number;
(c) The location of the permit or proposed permit area;
(d) A brief description of the kind of variance proposed together with a statement of the amount of acreage affected by the proposed variance and the number of the departmental regulation from which a variance is being sought;
(e) The address of the department to which interested persons may submit written comments on the variance; and
(f) The location where a copy of the variance application is available for public inspection.

(3) The applicant for a variance shall establish the date and place at which the "Notice of Intention to File for a Variance from Kentucky Oil Shale Mining Regulations" was published by attaching to his application an affidavit from the publishing newspaper certifying the time, place, and content of the published notices. The applicant shall make a full copy of the complete application for a variance available for the public to inspect and copy. This shall be done by filing a copy of the variance submitted to the department at the courthouse of the county or counties where the mining is proposed to occur. 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 for a variance within thirty (30) days of the final publication in the newspaper.

JACKIE SWIGART, Secretary
ADOPTED: June 15, 1982
RECEIVED BY LRC: June 15, 1982 at 4 p.m.
See public hearings scheduled on page 1.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department of Surface Mining Reclamation and Enforcement

405 KAR 30:360. Waste management provisions.

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 and spent shale.

Section 1. General Requirements. (1) Waste from oil shale mining activities not disposed in the mine workings shall be tranported and placed in designated disposal areas within the permit area in a manner approved by the department. The waste shall be placed in a controlled manner to ensure:

(a) That leachate and surface runoff from the disposal site will not degrade surface or groundwater or exceed the effluent limitations as specified in 405 KAR 30:320;
(b) That the area designated as the disposal site is suitable for reclamation and revegetation compatible with the natural surroundings; and
(c) That the waste is compacted and covered to prevent combustion and becoming windborne.

(2) At a minium, the permit applicant shall conduct tests to determine the active and potential acid levels from disposal of mining wastes and an EP toxicity test. The department will use the results of these tests to determine if the proposed disposal methods will fulfill the requirements of Section 1(1). The department may require additional tests as necessary to make this determination.

(3) The permit applicant shall determine if the waste streams from oil shale mining activities are hazardous as defined in 401 KAR 2:050 and 401 KAR 2:075. If a waste stream from oil shale mining activities exhibits the characteristics of a hazardous waste or is a listed hazardous waste as described in 40 CFR 261, then the waste must be handled and disposed of in a manner consistent with the provisions of KRS Chapter 224 and regulations promulgated pursuant thereto. If hazardous wastes will be treated, stored or disposed on site, the applicant must comply with the provisions of P.L. 94-580, the Resource Conservation and Recovery Act of 1976 and applicable hazardous waste laws and regulations.

Section 2. Acid-forming and Toxic-forming Mine Wastes. Drainage from acid-forming and toxic-forming materials in soil, overburden, spoil, spent shale, waste, and in other materials, shall be controlled in accordance with 405 KAR 30:340, or 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 judgment of the department, will be toxic to vegetation or that will adversely affect water quality if not treated or buried.
(2) Preventing or removing water from contact with acid-producing or toxic-producing deposits.
(3) Burying or otherwise treating all toxic or harmful materials within thirty (30) days, if such materials are sub-

ject 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 that are exposed, used, or produced during oil shale operations shall be covered with a minimum of four (4) feet of nontoxic and non-acid forming material. Covering the material with an impermeable liner(s) may be required by the department. If necessary, such materials shall be treated 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 to erosion, to provide an adequate depth for plant growth, or to otherwise meet local conditions, the department shall specify greater depths of cover using nontoxic material.

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

Section 3. Other Mining Wastes. (1) Wastes including, but not limited to, grease, lubricants, paints, flammable liquids, garbage, abandoned machinery, lumber and other combustibles generated during the mining operation 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 as specified in 405 KAR 30:320, 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. Appropriate water barriers shall include but not be limited to impervious liners, impermeable liners or subdrainage systems as specified in Section 3(2) in 405 KAR 30:370. Wastes shall be routinely compacted and covered to prevent combustion and becoming windborne. When the disposal is completed a minimum of four (4) feet of nontoxic and non-acid forming material shall be placed over the site. Soil material shall be replaced as specified in 405 KAR 30:290, slopes shall be stabilized consistent 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 concerning the permit area.

Section 4. All processing wastes shall be disposed of in accordance with the requirements set forth in KRS Chapter 224 and regulations promulgated pursuant thereto. If the processing wastes are hazardous as defined in 401 KAR 2:050 and 401 KAR 2:075 then the management of the wastes shall be regulated in accordance with the provisions of KRS 224.017, KRS 224.880, 401 KAR 2:050 and 401 KAR 2:060. If the processing wastes are non-hazardous then the waste shall be handled in accordance with the provisions of KRS 224.017, KRS 224.255, KRS 224.855, KRS 224.880, KRS 224.884, and regulations promulgated pursuant thereto.

Section 5. 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 promulated pursuant thereto.

JACKIE SWIGART, Secretary

ADOPTED: June 15, 1982
RECEIVED BY LRC: June 15, 1982 at 4 p.m.
See public hearings scheduled on page 1.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department of Surface Mining Reclamation and Enforcement

405 KAR 30:370. Disposal of excess spoil materials and spent shale.

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 spent shale and the design, construction, and inspection of fill structures composed of such materials.

Section 1. General Requirements. (1) Spoil and spent shale not disposed of in the mine workings shall be transported and placed in designated disposal areas within a permit area in a manner approved by the department. The spoil and spent shale shall be placed in a controlled manner to ensure:

(a) That leachate and surface runoff from the fill will not degrade surface or groundwaters 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) All surface drainage from the undisturbed area above the fill shall be diverted away from the fill. 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. Slope protection shall be provided to minimize surface erosion at the site. 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 and spent shale 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 1.3.

(7) A minimum of four (4) feet of nontoxic- and nonacid-forming material shall be placed on the final layer of spent shale. In addition, the department may require an impermeable cover between the final layer of spent shale and the four (4) feet of nontoxic- and nonacid-forming material. 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 30:290.

(8) 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.

(9) Fills shall not be contructed in the 100-year floodplain of any perennial stream. A stream channel may not be changed to circumvent this requirement.

(10) Terraces may be utilized to control erosion and enhance stability.

(11) 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 contructed 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.

(12) 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 mine site.

(13) 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 excess spoil and spent shale disposal areas. Leachate ponds shall be constructed in accordance with the requirements of 405 KAR 30:340.

(14) 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.

(15) 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.

(16) 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. Additional Requirements for Spent Shale Disposal. (1) At a minimum, the permit applicant shall conduct tests to determine the active and potential acid levels of spent shale and an EP toxicity test to identify toxic contaminants. The results of these tests shall be submitted to the department prior to receiving a permit. The department will use the results of these tests to determine if the proposed handling method for spent shale in conjunction with excess spoil will fulfill the requirements of Section 1(1). The department may require additional tests as necessary to make this determination.

(2) If the department determines that the proposed handling method for spent shale in combination with excess spoil will not adequately fulfill the requirements of Section 1(1) spent shale shall be handled according to the provisions of 405 KAR 30:360. Excess spoil shall be handled in accordance with the provisions of Section 1 excluding (7) and (13).

(3) Spent shale shall be cooled to a temperature approved by the department, prior to disposal.

Section 3. 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 Section 2.

(1) The fill shall be designed to attain a long-term static safety factor of 1.3 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 insure 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 requirement of this regulation.

Section 4. 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.

JACKIE SWIGART, Secretary

ADOPTED: June 15, 1982
RECEIVED BY LRC: June 15, 1982 at 4 p.m.
See public hearings scheduled on page 1.

EDUCATION AND HUMANITIES CABINET
Department of Education
Bureau of Administration and Finance

702 KAR 1:025. Extended employment.

RELATES TO: KRS 157.390
PURSUANT TO: KRS 13.082, 156.070
NECESSITY AND FUNCTION: KRS 157.390 provides that the amount to be paid through the Minimum Foundation Program for teachers' salaries for certain units be increased proportionately if the personnel for such units are employed for longer than the regular school term and such employment is approved by the Superintendent of Public Instruction under regulations of the State Board of Education. This regulation implements that function by providing for approved employment beyond the regular school term for funding purposes under the Minimum Foundation Program, for personnel staffing the statutorily permissible units for administrative and special instructional services, supervisors of instruction, directors of pupil personnel, vocational education and superintendents.

Section 1. School districts to be alloted teachers salaries for more than 185 days by the Minimum Foundation Program in accordance with KRS 157.390(2)(a) for those foundation program units alloted under the provisions of KRS 157.360(5), (7), (8), (9) and (11) shall be allotted days of extended employment based on the categories of employment and positions enumerated in Sections 4 and 9 of this regulation. Allotments shall be limited to the lesser of:

(1) The number of days of employment in the position beyond 185 days; or

(2) The maximum number of days beyond the 185 day term approved by the Superintendent of Public Instruction in the plan submitted by the local district board of education.

Section 2. The board of education of each local school district shall, on or before March 15, on forms provided by the State Department of Education, submit a plan for the use of extended employment based upon a tentative allocation of extended employment days for each category of extended employment provided by the Superintendent of Public Instruction which may include, but not be limited to, program objectives to be achieved, calendars showing the days worked beyond the 185 day school term, and the execution of such evaluation instruments as are necessary to appraise the efficiency of the extended employment program.

Section 3. On or before April 15 of each year the Superintendent of Public Instruction shall advise the local districts of the maximum number of days of extended employment funded in the Foundation Program appropriation for the subsequent school year which will be available to the local school district for the categories of employment specified in Sections 4 and 9 of this regulation as calculated in Sections 6, 7 and 9 of this regulation.

Section 4. For the purposes of allotting extended employment in accordance with Sections 6 and 7 of this regulation, eligible positions will be categorized as follows:

(1) Central Based Adminstration:

(a) Assistant Superintendent;

(b) Finance Officer;

(c) School Business Administrator;

(d) District Director of Vocational Education; and

(e) Director, Coordinator, or Manager of district-wide services as coded on the Professional Staff Data Form.

(2) Central Based Supervision of Instruction and Student Activities:

(a) Supervisor of Instruction; and

(b) Director of Pupil Personnel.

(3) School Based Administration and Supervision:

(a) Principal;

(b) Assistant Principal; and

(c) Vocational School Director.

(4) Librarian.

(5) Guidance Counselor.

(6) District-Employed Vocational Teacher:

(a) Agri-Business;

(b) Business and Office;

(c) Marketing and Distributive Education;

(d) Health and Personal Services;
(e) Home Economics;
(f) Public Service;
(g) Special Vocational Programs; and
(h) Industrial Education Level III.

Section 5. The days of extended employment calculated in accordance with Section 6 and allotted to the categories of extended employment as specified in Section 4 may be transferred to meet program priorities in the following manner:

(1) The days of extended employment in subsection (1) of Section 4 may be transferred to subsection (2) of Section 4.

(2) The days of extended employment in subsections (1) and (2) may be transferred to subsections (3), (4), (5) and (6).

(3) The days of extended employment in subsections (4), (5) and (6) may be transferred among those subsections.

Section 6. The days calculated for each category enumerated in Section 4, subsections (1) through (5) for each school district shall be the state total days allotted for the prior year in each such category divided by the sum of the state total units allotted for the prior year for basic, exceptional children, district-employed vocational, plus kindergarten times the sum of the units allotted the prior year in each district for basic, exceptional children, district-employed vocational plus kindergarten.

Section 7. The days calculated for the category enumerated in subsection (6) of Section 4 shall be the state total days allotted for the prior year district-employed vocational units divided by the state total units allotted for the prior year for the types of district-employed vocational units approved for the subsection (6), Section 4 category times the units allotted the prior year in each district for the types of district-employed vocational units approved for such category.

Section 8. Days allotted for extended employment for each category of extended employment for each school district shall be adjusted annually to a level not to exceed the appropriation contained in the biennial budget.

Section 9. In addition to the extended employment allotted to the categories of employment specified in Section 4, each school district will be allotted fifty-five (55) days of extended employment for the superintendent of that district and each contract vocational education teacher employed in a state operated school may be allotted up to twenty (20) days of extended employment provided a work program for that position has been approved by the Superintendent of Public Instruction.

Section 10. This regulation shall be effective for the 1983-84 school year and any preparatory steps in anticipation thereof enumerated herein, and school years thereafter, and to such extent supersedes 702 KAR 1:020.

Section 11. 702 KAR 1:020 is hereby rescinded effective June 30, 1983.

RAYMOND BARBER
Superintendent of Public Instruction
ADOPTED: May 11, 1982
RECEIVED BY LRC: May 18, 1982 at 4:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Mr. L. W. True, Secretary, Kentucky State Board of Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

EDUCATION AND ARTS CABINET
Department of Education
Bureau of Instruction

704 KAR 3:314. Repeal of 704 KAR 3:312.

RELATES TO: KRS 156.030, 156.070
PURSUANT TO: KRS 13.082, 156.070, 156.160
NECESSITY AND FUNCTION: In accordance with the Economic Opportunity Act of 1964, the Kentucky Department of Education must serve as the administrative agency to allow local school districts participating in the Follow-Through Program to receive the benefits of the Technical Assistance Grant.

Section 1. 704 KAR 3:312, Follow-through plan for technical assistance, is hereby repealed.

RAYMOND BARBER
Superintendent of Public Instruction
ADOPTED: May 11, 1982
RECEIVED BY LRC: May 18, 1982 at 4:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Mr. L. W. True, Secretary, Kentucky State Board of Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

EDUCATION AND ARTS CABINET
Department of Education
Bureau of Instruction

704 KAR 5:011. Repeal of 704 KAR 5:010.

RELATES TO: KRS 158.300, 158.310, 158.320, 158.330, 158.340, 158.350
PURSUANT TO: KRS 13.082, 156.070, 156.160
NECESSITY AND FUNCTION: KRS 158.300(1) states: "'Kindergarten-Nursery School' means any private kindergarten or nursery school which provides educational experiences for four (4) or more children, between the ages of three (3) and six (6) years, in return for tuition, fees or other forms of compensation; provided, that the kindergarten or nursery school shall not include any public, private school or college operating under the accreditation program of the State Department of Education."

Section 1. 704 KAR 5:010, Private programs, is hereby repealed.

RAYMOND BARBER
Superintendent of Public Instruction
ADOPTED: May 11, 1982
RECEIVED BY LRC: May 18, 1982 at 4:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Mr. L. W. True, Secretary, Kentucky State Board of Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Labor
Kentucky Occupational Safety and Health

803 KAR 2:190. Employees refusal to work when dangerous conditions exist.

RELATES TO: KRS 338.121(3)(a)
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: The Commissioner of Labor has the authority and responsibility for promulgating regulations necessary to accomplish the purposes of this Chapter. The function of this regulation is to afford employees the right to refuse to be exposed to dangerous conditions without subsequent employer discrimination.

Section 1. Employee Refusal to Work. (1) Where an employee is confronted with a choice between not performing assigned tasks or being subjected to death or serious injury arising from a dangerous condition at the workplace, such employee may refuse in good faith to expose himself/herself to the dangerous condition. The condition causing the employee's apprehension of death or injury must be of such a nature that a reasonable person under the same or similar circumstances then confronting the employee would conclude that there is a real danger of death or serious injury and that there is insufficient time, due to the urgency of the situation, to eliminate the danger through resort to regular statutory enforcement channels. In addition, in such circumstances, the employee, where possible, must also have sought corrective action from his/her employer, and been unable to obtain a correction of the dangerous condition.

(2) When an employee in good faith refuses to expose himself/herself to a dangerous condition at the workplace he/she shall not be subjected to subsequent discrimination by the employer.

(3) Provided, however, that the provisions of this regulation shall not apply if it is found that the employee acted unreasonably or in bad faith.

JOHN CALHOUN WELLS, Commissioner
ADOPTED: June 9, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: June 15, 1982 at 11:30 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Executive Director, Kentucky Department of Labor, Occupational Safety and Health Program, U.S. 127 South, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

806 KAR 7:090. Custodial accounts for investment securities of insurance companies.

RELATES TO: KRS 304.7-360
PURSUANT TO: KRS 13.082, 304.2-110, 304.7-360
NECESSITY AND FUNCTION: HB 658 Section 1 requires the Commissioner of Insurance to promulgate regulations governing the deposit by insurers of securities with clearing corporations, the Federal Reserve book-entry system, or custodian banks.

Section 1. Definitions. Terms defined in KRS 304.7-360 shall have the same meaning when used herein.

Section 2. Standards for Custodial Agreements. Pursuant to KRS 304.7-360, an insurance company may provide by agreement for the custody of its securities with a custodian bank meeting the qualifications set forth in Section 3 of this regulation which securities may be held by the custodian bank, its nominee, in a clearing corporation, or in the Federal Reserve book-entry system. Such securities, whether held by the custodian bank, its nominee, in a clearing corporation, in the Federal Reserve book-entry system, or in any combination of these entities, are referred to herein as "custodied securities." Any such agreement shall contain provisions to comply with the following standards:

(1) The agreement shall be in writing and shall be authorized by a resolution of the Board of Directors of the insurance company or of an authorized committee thereof.

(2) Certificated securities held by the custodian bank may be so held separate from the securities of the custodian bank and of all its other customers or in a fungible bulk of securities as part of a Filing of Securities by Issue (FOSBI) arrangement.

(3) Securities so held in a fungible bulk by the custodian bank and securities in a clearing corporation or the Federal Reserve book-entry system shall be separately identified on the custodian bank's official records as being owned by the insurance company. Said records shall identify which custodied securities are held by the custodian bank or by its nominee and which securities are in a clearing corporation or the Federal Reserve book-entry system. If the securities are in a clearing corporation or the Federal Reserve book-entry system, said records shall also identify where the securities are and, if in a clearing corporation, the name of the clearing corporation or, if held in nominee name, the name of the nominee.

(4) All custodied securities that are registered shall be registered in the name of the insurance company, in the name of a nominee of the insurance company, in the name of the custodian bank or its nominee, or, if in a clearing corporation, in the name of the clearing corporation or its nominee.

(5) Custodied securities shall be held subject to the instructions of the insurance company and shall be withdrawable upon the demand of the insurance company.

(6) The custodian bank shall arrange for execution of transactions in custodied securities in accordance with the insurance company's instructions and shall not exercise discretionary authority to effect transactions in custodied securities except in such limited or special circumstances as the insurance company may authorize.

(7) The custodian bank shall be required to send or cause to be sent to the insurance company a confirmation of all transfers of custodied securities to or from the account of the insurance company. In addition, the custodian bank shall be required to furnish the insurance company with reports of holdings of custodied securities at such times and containing such information as may be reasonably requested by the insurance company, but not less frequently than monthly.

(8) During the course of the custodian bank's regular business hours, any officer or employee of the insurance company, any independent accountant selected by the insurance company, on the premises of the custodian bank, the custodian bank's records relating to custodied securities and the custodied securities, but only upon furnishing the custodian bank with written instructions to that

effect from an appropriate officer of the insurance company or the Commissioner.

(9) The custodian bank and its nominee shall be required to send to the insurance company:

(a) All reports which they receive from a clearing corporation or the Federal Reserve book-entry system on their respective systems of internal accounting control; and

(b) Reports prepared by outside auditors with respect to the respective systems of internal accounting control of the custodian bank and its nominee pertaining to custodial record keeping as the insurance company may reasonably request from time to time.

(10) The custodian bank shall maintain records sufficient to determine and verify information relating to custodied securities that may be reported in the insurance company's annual statement and supporting schedules as filed with various regulatory authorities and in connection with any audit of the financial statements of the insurance company.

(11) The custodian bank shall provide upon request appropriate affidavits substantially in the form attached hereto (Appendix A) with respect to custodied securities.

(12) The custodian bank shall be obligated to indemnify the insurance company for any loss of custodied securities, except that the custodian bank shall not be so obligated to the extent that such loss was caused by other than the negligence or dishonesty of the custodian bank.

(13) In the event that there is a loss of custodied securities for which the custodian bank shall be obligated to indemnify the insurance company as provided in subsection (12) of this section, the custodian bank shall promptly replace the securities or the value thereof and the value of any loss of rights or privileges resulting from said loss of securities.

(14) The agreement may provide that the custodian bank will not be liable for any failure to take any action required to be taken under the agreement in the event and to the extent that the taking of such action is prevented or delayed by war (whether declared or not and including existing war), revolution, insurrection, riot, civil commotion, act of God, accident, fire, explosion, stoppage of labor, strikes or other differences with employees, laws, regulations, orders or other acts of any governmental authority, or any other cause whatever beyond its reasonable control.

(15) In the event that entry in a clearing corporation or in the Federal Reserve book-entry system is gained through a direct participant or a member bank, there shall be an agreement between the custodian and the direct participant or member bank under which the direct participant or member bank shall be subject to the same liability for loss of custodied securities as the custodian bank; provided, however, that, if the direct participant or member bank shall be subject to regulation under the laws of a jurisdiction which is different from the jurisdiction the laws of which regulate the custodian bank, the commissioner may accept a standard of liability applicable to the direct participant or member bank which is different from the standard of liability applicable to the custodian bank.

(16) The agreement must be terminable by the insurance company on not more than thirty (30) days' notice.

Section 3. Qualifications of Custodian Banks. Any custodian bank selected by an insurance company to act as custodian under an agreement authorized by KRS 304.7-360 shall possess the following qualifications:

(1) Its custodial functions for the insurance company shall be carried out under its trust department;

(2) It shall be audited annually by independent public accountants whose audit report, together with the related financial statements, and whose report on internal controls are made available to the insurance company and the commissioner;

(3) It must be organized under the laws recognizing that the custodied securities are "special deposits" rather than "general deposits," remain the specific property of the insurance company, and are not subject to any creditor relationship of the custodian bank.

(4) It must maintain blanket bond coverage relating to its custodial functions with limits equal to or exceeding those suggested by the American Bankers Association.

(5) Its capital and surplus funds shall equal or exceed $25,000,000; and

(6) It must have demonstrated sufficient experience in handling custodial accounts.

Section 4. Effective Date. This regulation shall become effective upon its approval pursuant to KRS Chapter 13.

APPENDIX A

CUSTODIAN AFFIDAVIT

STATE OF _____)
) SS:
COUNTY OF _____)

_____, being duly sworn deposes and says that he is _____ of _____, a banking corporation organized under and pursuant to the laws of the _____ with its principal place of business at _____ (hereinafter called the "Bank"):

That his duties involve supervison of activities of the Bank as custodian and records relating thereto;

That the Bank is custodian for certain securities of _____, having its principal place of business at _____ (hereinafter called the "insurance company") pursuant to an agreement between the Bank and the insurance company;

A. With respect to any securities entrusted to Bank's care and not redeposited elsewhere:

1. That the schedule attached hereto is a true and complete statement of securities (other than those caused to be deposited with The Depository Trust Company or like entity or a Federal Reserve Bank under the Federal Reserve book-entry procedure) which were in the custody of the Bank for the account of the insurance company as of the close of business on _____; that, unless otherwise indicated on the schedule, the next maturing and all subsequent coupons were then either attached to coupon bonds or in the process of collection; and that, unless otherwise shown on the schedule, all such securities were in bearer form or in registered form in the name of the insurance company or its nominee or of the Bank or its nominee, or were in the process of being registered in such form; and

2. That the Bank as custodian has the responsibility for the safekeeping of such securities as that responsibility is specifically set forth in the agreement between the Bank as custodian and the insurance company; and

B. With respect to any securities entrusted to Bank's care and redeposited with a clearing corporation:

1. That the Bank has caused certain of such securities to be deposited with _____, and that the schedule attached hereto is a true and complete statement of the securities of the insurance company of which the

Bank was custodian as of the close of business on _____, and which were so deposited on such date; and

2. That the Bank as custodian has the responsibility for the safekeeping of such securities both in the possession of the Bank or deposited with _____, as is specifically set forth in the agreement between the Bank as custodian and the insurance company; and

C. With respect to any securities entrusted to Bank's care and evidenced by a book entry at a Federal Reserve Bank:

1. That it has caused certain securities to be credited to its book-entry account with the Federal Reserve Bank of _____ under the Federal Reserve book-entry procedure; and that the schedule attached hereto is a true and complete statement of the securities of the insurance company of which the Bank was custodian as of the close of business on _____ which were in a "General" book-entry account maintained in the name of the Bank on the books and records of the Federal Reserve Bank of _____ at such date; and

2. That the Bank has the responsibility for the safekeeping of such securities both in the possession of the Bank or in said "General" book-entry account as is specifically set forth in the agreement between the Bank as custodian and the insurance company; and

That, to the best of his knowledge and belief, unless otherwise shown on the schedules, said securities were the property of said insurance company and were free of all liens, claims or encumbrances whatsoever.

Subscribed and sworn to before me this _____ day of _____, 19 _____.

_____ (L.S.)
Vice President or other
authorized officer

DANIEL D. BRISCOE, Commissioner
ADOPTED: June 11, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: June 15, 1982 at 4 p.m.
See public hearings scheduled on page 1.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

806 KAR 9:161. Repeal of 806 KAR 9:160.

RELATES TO: KRS 13.082, 304.2-110
PURSUANT TO: KRS 13.082, 304.2-110
NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. 806 KAR 9:160 clarifies several provisions of the Kentucky Insurance Code relating to the prohibition against holding both an insurance consultant and an insurance agent license. Effective July 15, 1982, such combined licensing is no longer prohibited. Therefore, 806 KAR 9:160 is no longer necessary and is being repealed.

Section 1. 806 KAR 9:160, Consultants, is hereby repealed.

Section 2. This regulation shall become effective upon its approval pursuant to KRS Chapter 13.

DANIEL D. BRISCOE, Commissioner
ADOPTED: June 14, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: June 15, 1982 at 4 p.m.
See public hearings scheduled on page 1.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

806 KAR 13:016. Repeal of 806 KAR 13:015.

RELATES TO: KRS 13.082, 304.2-110
PURSUANT TO: KRS 13.082, 304.2-110
NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable rules and regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code. KRS 304.13-060 (repealed effective July 15, 1982) requires the commissioner to suspend or modify the filing requirements of KRS Chapter 304.13 as to any kind of insurance for which the rates cannot practicably be filed prior to use. 806 KAR 13:015 establishes the procedure for the suspension of modification of the requirements of KRS Chapter 304.13. Because KRS 304.13-060 is being repealed, 806 KAR 13:015 is unnecessary and is being repealed.

Section 1. 806 KAR 13:015, Suspension or modification of filing requirements, is hereby repealed.

Section 2. This regulation shall become effective upon its approval pursuant to KRS Chapter 13.

DANIEL D. BRISCOE, Commissioner
ADOPTED: June 11, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: June 15, 1982 at 4 p.m.
See public hearings scheduled on page 1.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

806 KAR 13:031. Repeal of 806 KAR 13:030.

RELATES TO: KRS 13.082, 304.2-110
PURSUANT TO: KRS 13.082, 304.2-110
NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable rules and regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code. KRS 304.13-200 (repealed effective July 15, 1982) allows insurers to file deviations from class rates. 806 KAR 13:030 establishes procedures for rate deviation filings. Because KRS 304.13-200 is being repealed, 806 KAR 13:030 is no longer necessary.

Section 1. 806 KAR 13:030, Rate deviations, is hereby repealed.

Section 2. This regulation shall become effective upon approval pursuant to KRS Chapter 13.

DANIEL D. BRISCOE, Commissioner
ADOPTED: June 11, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: June 15, 1982 at 4 p.m.
See public hearings scheduled on page 1.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

806 KAR 13:051. Repeal of 806 KAR 13:050.

RELATES TO: KRS 13.082, 304.2-110
PURSUANT TO: KRS 13.082, 304.2-110
NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable rules and regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code. KRS 304.13-230 and 304.13-250 (both repealed effective July 15, 1982) require that rating organizations and insurers making their own rates furnish insureds affected by these rates but all pertinent information as to such rates. 806 KAR 13:050 requires charges for furnishing this information to be approved by the commissioner. Because KRS 304.13-230 and 304.13-250 are being repealed, 806 KAR 13:050 is no longer necessary.

Section 1. 806 KAR 13:050, Rate information; excessive charge prohibited, is hereby repealed.

Section 2. This regulation shall become effective upon approval pursuant to KRS Chapter 13.

DANIEL D. BRISCOE, Commissioner
ADOPTED: June 11, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: June 15, 1982 at 4 p.m.
See public hearings scheduled on page 1.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

806 KAR 13:061. Repeal of 806 KAR 13:060.

RELATES TO: KRS 13.082, 304.2-110
PURSUANT TO: KRS 13.082, 304.2-110
NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable rules and regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code. KRS 304.13-270 (repealed effective July 15, 1982) requires insurers to file their loss experience with a rating organization of which they are a member. 806 KAR 13:060 requires the filing of loss experience data to accompany a rate increase. Because KRS 304.13-270 is being repealed, this regulation is no longer required.

Section 1. 806 KAR 13:060, Loss experience data filing, is hereby repealed.

Section 2. This regulation shall become effective upon its approval pursuant to KRS Chapter 13.

DANIEL D. BRISCOE, Commissioner
ADOPTED: June 11, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: June 15, 1982 at 4 p.m.
See public hearings scheduled on page 1.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

806 KAR 13:081. Repeal of 806 KAR 13:080.

RELATES TO: KRS 13.082, 304.2-110
PURSUANT TO: KRS 13.082, 304.2-110
NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable rules and regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code. KRS 304.13-310 (repealed effective July 15, 1982) permits a group of insurers to make a single rate filing. 806 KAR 13:080 clarifies the procedure of making this single filing. Because KRS 304.13-310 is being repealed, 806 KAR 13:080 is no longer required.

Section 1. 806 KAR 13:080, Groups of insurers defined; rate filings, is hereby repealed.

Section 2. This regulation shall become effective upon its approval pursuant to KRS Chapter 13.

DANIEL D. BRISCOE, Commissioner
ADOPTED: June 11, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: June 15, 1982 at 4 p.m.
See public hearings scheduled on page 1.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Banking and Securities

808 KAR 3:050. Conduct.

RELATES TO: KRS 290.020, 290.030, 290.040, 290.050
PURSUANT TO: KRS 290.070
NECESSITY AND FUNCTION; KRS 290.070 requires the Department of Banking and Securities to prescribe rules and regulations for the proper conduct and regulation of credit unions. This regulation is to assure the proper conduct of credit unions.

Section 1. Definitions. As used in this chapter:
(1) The term "department" means the Department of Banking and Securities of the Commonwealth of Kentucky.

(2) The term "commissioner" means the Commissioner of the Department of Banking and Securities.

(3) The term "Act" means the Kentucky Credit Union Act (Chapter 290 of the Kentucky Revised Statutes, as amended).

(4) The term "Federal Credit Union" means a credit union organized under the provisions of the Federal Credit Union Act (73 Stat. 628, 12 U.S.C. 1751-1772).

Section 2. Organization and Operation of Credit Unions. (1) Persons desiring to form a credit union shall submit, in triplicate, on forms prescribed by the department, proposed Articles of Incorporation. Articles of Incorporation shall be subscribed to before an officer competent to administer oaths by not less than eight (8) natural persons who have a common bond of occupation, or association, or are within a well defined neighborhood, community, or rural district, and shall specifically state:

(a) The proposed name of the association.

(b) The location of the proposed credit union and the territory in which it will operate.

(c) The names and addresses of the subscribers to the Articles of Incorporation and the number of shares subscribed by each.

(d) The proposed field of membership, specified in detail.

(e) The term of existence of the corporation, which may be perpetual.

(f) The name and address of the person named as agent for the service of process.

(g) The fact that these Articles of Incoporation are filed to enable such persons to avail themselves of the advantages of the Kentucky Credit Union Act, as amended.

(h) Copies of the form of Articles of Incorporation may be obtained from the department.

(2) Five (5) executed copies of the proposed Articles of Incorporation shall be submitted to the commissioner together with a check or money order payable to the Secretary of State in the amount of fifteen dollars ($15) in payment of the Articles of Incorporation filing fee. The commissioner will investigate and make recommendations as to whether the proposed articles conform to the Act; as to the general character and fitness of the subscribers thereto and as to the economic advisability of establishing the proposed credit union. The commissioner shall approve or disapprove the proposed organization, and if approved the Certificate of Incorporation shall be the Charter of the state credit union. If the organization is disapproved, the incorporators shall be notified of the basis for such action and the Articles of Incorporation fee shall be returned to them.

Section 3. Standard Form of Bylaws. (1) Proposed bylaws, in form and content approved by the commissioner, shall be submitted by the incorporators to the commissioner for his approval at the time of submitting the Articles of Incorporation to the department.

(2) Specimen copies of the standard form of bylaws may be obtained from the Department of Banking and Securities, Frankfort, Kentucky 40601.

Section 4. Amendments to the Bylaws of a Credit Union May Be Adopted. Amendments to the Articles of Incorporation may be adopted as provided in the Kentucky Business Corporation Act. No amendment of the bylaws or of the Articles of Incorporation shall become effective, however, until approved, in writing, by the commissioner. Five (5) executed copies of the proposed amendments to the Articles of Incorporation shall be submitted to the commissioner together with a check or money order payable to the Secretary of State in payment of the amendment to the Articles of Incorporation fee of fifteen dollars ($15).

Section 5. Loans by Credit Unions to Other Credit Unions. Based on a resoltuion of its board of directors, a credit union may lend its funds to other state-chartered credit unions or to federal credit unions in the total amount not exceeding twenty-five (25) percent of its paid-in and unimpaired capital and surplus. The terms of such loans shall not exceed one (1) year and the rate of interest shall not exceed that established in the Act. Prior to making the loan, the credit union shall require the borrowing credit union to furnish the following:

(1) A current financial report;

(2) A copy of the latest supervisory committee audit report;

(3) A certified copy of the resolution of the board of directors authorizing such borrowing; and

(4) A certificate from the secretary of the borrowing credit union that the persons negotiating the note are officials of the credit union and are authorized to act in its behalf, and that such borrowing does not exceed the maximum borrowing power of the borrowing credit union.

Section 6. Retirement Benefits for Employees of Credit Unions. Credit unions may make provision for reasonable retirement benefits for employees and for officers who are compensated in conformance with the Act and bylaws, but no credit union shall undertake to directly administer its own retirement plan as trustee. A copy of said retirement plan shall be submitted for the prior approval of the Commissioner.

Section 7. Refund of Interest. When an interest refund is authorized by the board of directors pursuant to the Act, it shall be recorded in the books of the credit union as a reduction of interest income from loans for that year or period.

Section 8. Advertising. No credit union shall represent by any means nor permit any representation by any means (including any means of advertisement) that it is under the supervision or regulation of the Department of Banking and Securities.

Section 9. Fee for Examination. (1) Each credit union shall pay the department a fee for each examination in accordance with the schedule of fees fixed by this section.

(2) In establishing such fees, the commissioner shall consider the anticipated aggregate cost of the examination program of the department including supervision, salaries, travel, and all other items which affect the cost of the examination program along with the ability of credit unions to pay such fees.

(3) The schedule of examination fees shall be as follows:

(a) Newly organized credit unions. No fee will be charged a newly organized credit union for the first examination made within a year of the date of its organization being approved.

(b) Credit unions with assets of less than $25,000; a fee of $100.

(c) Credit unions with assets of $25,000 to $500,000; a fee of $100 plus $1.20 per $1,000 of assets over $25,000.

(d) Credit unions with assets of $500,000 to $1,000,000; a fee of $670 plus $.60 per $1,000 of assets over $500,000.

(e) Credit unions with assets of over $1,000,000; a fee of $970 plus $.30 per $1,000 of assets over $1,000,000.

Section 10. 808 KAR 3:010, Conduct and regulation, is hereby repealed.

TRACY FARMER, Secretary
ADOPTED: June 9, 1982
RECEIVED BY LRC: June 14, 1982 at 10 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Andrew J. Palmer, General Counsel, Department of Banking and Securities, 911 Leawood Drive, Frankfort, Kentucky 40601.

CABINET FOR HUMAN RESOURCES
Department for Health Services

902 KAR 14:010. EMS personnel funding assistance.

RELATES TO: KRS 211.950 to 211.958
PURSUANT TO: KRS 13.082, 211.952
NECESSITY AND FUNCTION: KRS 211.952 authorizes the Cabinet for Human Resources to maintain a program for the planning, development, and improvement of emergency medical services throughout the state utilizing, among other factors, the system components described in Public Law 93-154, the Emergency Medical Services Act of 1973. The function of this regulation is to establish standards and criteria governing the allocation of funding assistance for payment of salaries of trained emergency medical services personnel to maintain essential services in accordance with KRS 211.956 and to provide for ambulance and equipment funding for volunteer services pursuant to KRS 211.958.

Section 1. Application for Personnel Funding Assistance. Any city or county may apply to the Cabinet for Human Resources with the assistance of the applicable emergency medical services system for funding assistance to maintain an adequate number of trained personnel to staff its ambulance service in accordance with KRS 211.956. The application shall include the total ambulance service operating budget, a summary of the total city or county general fund budget, and itemization of sources and amounts of city or county revenues utilized in the provision of ambulance services. Application forms may be obtained from the Cabinet for Human Resources.

Section 2. Funding Criteria and Allocation. To qualify for funding assistance pursuant to KRS 211.956, the applicant city or county must budget a minimum of five percent (5%) of its available general fund dollars as budgeted and reported to the Department for Local Government toward the cost of ambulance service operations, except that revenues raised by an ambulance service district tax may be applied to reduce the amount of general funds necessary on a one-for-one direct reduction basis.

(1) The maximum amount of matching funds for which the city or county may qualify shall be determined as follows:

(a) The first five percent (5%) of city or county general funds budgeted and any other funds earmarked for ambulance service including the balance of ambulance service district tax revenues not applied to meet the five percent (5%) general fund requirement, shall be deducted from the total ambulance service operating budget.

(b) The percentage of actual personnel costs to the total ambulance service budget shall be determined, and such percentage applied to the total ambulance service operating cost remaining after deductions in paragraph (a) of this subsection.

(c) The city or county shall be eligible for no more than fifty percent (50%) of the amount derived from paragraphs (a) and (b) of this subsection up to a maximum of $40,000 per county, including grants to cities within counties.

(2) An eligible applicant shall receive a matching portion of available state funds prorated on the basis of total population served by all eligible applicants. Total per capita grants shall be not less than eighty percent (80%) of the amount of General Fund appropriation budgeted for salary payment assistance.

(3) Up to ten percent (10%) of the amount budgeted may be allocated by the cabinet to eligible applicants for special needs based on utilization rates, the number of emergency transports, or upon determination of a financial emergency of an applicant that would drastically alter or eliminate essential services without special assistance from the state.

(4) Allocations from the personnel fund may be made to cities or counties for purchase of vehicles and equipment where at least fifty percent (50%) of ambulance personnel are volunteers (non-compensated) or in which at least fifty percent (50%) of the ambulance services are operated by volunteers on a twenty-four (24) hour basis. Funding for equipment pursuant to KRS 211.958 shall not exceed ten percent (10%) of the total amount available in the personnel fund.

Section 3. Matching Requirement. The matching requirement of fifty percent (50%) for personnel salaries shall be budgeted from city or county general funds or from ambulance district tax revenues only.

DAVID T. ALLEN, Commissioner
ADOPTED: June 15, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: June 15, 1982 at 4 p.m.
SUBMIT COMMENT OR REQUEST FOR PUBLIC HEARING TO: Secretary, Cabinet for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

CABINET FOR HUMAN RESOURCES
Department for Health Services

902 KAR 14:020. Allocation of funding assistance for purchase of EMS equipment.

RELATES TO: KRS 211.950 to 211.958
PURSUANT TO: KRS 13.082, 211.952
NECESSITY AND FUNCTION: KRS 211.952 authorizes the Cabinet for Human Resources to maintain a program for the planning, development, and improvement of emergency medical services throughout the state utilizing, among other factors, the system components described in Public Law 93-154, the Emergency Medical Services

Act of 1973. The function of this regulation is to establish standards and criteria governing the allocation of funding assistance to local governments for the purchase of ambulances and equipment to maintain essential services in accordance with KRS 211.954.

Section 1. Application for Funding Assistance. Any city or county may apply to the Cabinet for Human Resources with the assistance of the applicable emergency medical services system for funding assistance toward the purchase of an ambulance or for essential equipment to be used solely in the operation of its respective ambulance service in accordance with KRS 211.954. Application forms may be obtained from the Cabinet.

Section 2. Ambulance Criteria; Equipment. (1) All ambulances purchased pursuant to this regulation shall meet Federal Ambulance Design Criteria (GSA KKK-A-1822).

(2) Major items of equipment fundable under this regulation shall include, but need not be limited to:

(a) Any essential equipment required by 902 KAR 20:115;
(b) Mobile radio, UHF or VHF;
(c) Portable radio, UHF or VHF;
(d) Pagers for on-call personnel;
(e) Portable infant transport incubators;
(f) Portable monitor/defibrillator, complete;
(g) Anti-shock trousers;
(h) "Jaws of life."

Section 3. Title, Use, and Disposition of Ambulances and Equipment. Legal title to ambulances and equipment purchased pursuant to this regulation shall vest in the grantee. The grantee shall maintain property records for each ambulance and item of equipment for which funds were provided by the Cabinet for Human Resources and shall notify the cabinet of any changes in its intended use or current status. In the event the grantee desires to dispose of an ambulance or item of equipment, prior approval shall be obtained from the cabinet.

Section 4. Priorities for Allocation of Funds. Priorities for allocation of funds for ambulances and equipment shall be based on the following criteria:

(1) First priority—cities or counties which demonstrated need for replacement of essential equipment and/or ambulances which are totally inoperable, or at least seven (7) years old or driven in excess of 70,000 miles and in poor condition, to maintain essential ambulance services; and cities or counties in need of new equipment or ambulances to establish an essential ambulance service where none exists to cover the proposed service area.

(2) Second priority—cities or counties which document the need for additional equipment and/or ambulances to provide adequate coverage within the designated service area.

(3) Third priority—cities or counties in which a new ambulance service is being established to fulfill a documented need for additional service.

DAVID T. ALLEN, Commissioner
ADOPTED: June 15, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: June 15, 1982 at 4 p.m.
SUBMIT COMMENT OR REQUEST FOR PUBLIC HEARING TO: Secretary, Cabinet for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Certificate of Need and Licensure Board

902 KAR 20:131. Repeal of 902 KAR 20:130.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1),(2)
PURSUANT TO: KRS 13.082, 216B.040, 216B.105(3)
NECESSITY AND FUNCTION: KRS 216B.040 and 216.105(3) mandate that the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board regulate health facilities and health services.

Section 1. 902 KAR 20:130, Certificate of need expenditure minimums, is hereby repealed.

FRANK W. BURKE, SR., Chairman
ADOPTED: May 19, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: June 11, 1982 at 4:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Frank W. Burke, Sr., Chairman, Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board, 275 East Main Street, Frankfort, Kentucky 40621.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Certificate of Need and Licensure Board

902 KAR 20:150. Alternative birth centers.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1)(2)
PURSUANT TO: KRS 13.082, 216B.040, 216B.105(3)
NECESSITY AND FUNCTION: KRS 216B.040 and 216B.105(3) mandate that the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board regulate health facilities and health services. This regulation provides for the licensure requirements for the operation and services and facility specifications of alternative birth centers.

Section 1. Scope of Operations and Services. Alternative birth centers are establishments with permanent facilities which provide perinatal care to low risk childbearing women. An alternative birth center provides a homelike environment for pregnancy and childbirth including prenatal, labor, delivery, and postpartum care related to medically uncomplicated pregnancies.

Section 2. Definitions. (1) "Center" means alternative birth center.

(2) "Low risk" means a normal uncomplicated prenatal course as determined by adequate prenatal care and prospects for a normal uncomplicated birth including criteria recognized by the American College of Obstetrics and Gynecologists in their Standards for Obstetric-Gynecologic Services, as amended.

Section 3. Adminstration and Operation. (1) Licensee.

(a) The licensee shall be responsible for the management and operation of the center and for compliance with federal, state and local laws and regulations pertaining to its operation.

(b) The licensee shall appoint an administrator whose qualifications, responsibilities, authority and accountability shall be defined in writing.

(2) Administrator.

(a) The administrator shall be responsible for the daily management and operation of the center.

(b) In the absence of the administrator, responsibility shall be delegated to a similarly qualified staff person.

(3) Administrative records and reports.

(a) Administrative reports shall be established, maintained and utilized as necessary to guide the operation, measure productivity and reflect the program of the center. Such reports shall include financial records and reports, personnel records, inspection reports and other pertinent reports made in the regular course of business.

(b) Licensure inspection reports and plans of correction shall be made available at the center to the public upon request.

(4) Policies.

(a) Administrative policies. The licensee shall adopt written administrative policies covering all aspects of the center's operation, to include:

1. A description of the organizational structure, staffing and allocation of responsibility and accountability;
2. A description of referral linkages with physician(s), inpatient facilities and other providers;
3. Policies and procedures for the guidance and control of personnel performances;
4. A description of services included in the center's program;
5. A description of the administrative and patient care records and reports;
6. A policy approved by the medical director to specify emergency medical procedures;
7. A policy approved by the medical director which fully identifies the criteria which would exclude a pregnant woman or mother from the center's program;
8. A policy approved by the medical director which fully identifies the criteria which would preclude management of newborns at the center.

(b) Patients' rights policies. The licensee shall adopt written policies regarding the rights and responsibilities of patients. These patients' rights policies shall assure that each patient:

1. Is informed of these rights and of all rules and regulations governing patient conduct and responsibilities including a procedure for handling patient grievances;
2. Is fully informed of the services and treatment offered at the center and of related charges, separately identifying those charges not covered by third party payor arrangements;
3. Is encouraged and assisted to understand and exercise her patient rights and to this end may voice grievances and recommend changes in policies and services. Upon the patient's request the grievances and recommendations will be conveyed within a reasonable time to an appropriate decision making level within the organization which has the authority to take corrective action;
4. Is assured confidential treatment of her records and afforded the opportunity to approve or refuse their release to any individual not involved in her care except as required by law or third party payment contract;
5. Is treated with consideration, respect and full recognization of her dignity and individuality including privacy in treatment.

(5) Personnel.

(a) The licensee shall establish personnel policies for the center. These policies shall be reviewed, revised and approved on an annual basis.

(b) There shall be an individual personnel record for each person employed by the center which shall include the following:

1. Pre-employment and annual physical examination to include a tuberculin skin test or chest x-ray and rubella antibody titer. No employee with direct patient contact having an infectious disease shall appear at work until the infectious disease can no longer be transmitted;
2. Evidence of education, training and experience of the individual along with a copy of the current license or certification credentials if applicable; and
3. Evidence that employees have received orientation to the center's personnel policies and emergency medical procedures during the first week of employment.

(6) Staffing.

(a) The center shall have a staff that includes a medical director, at least one (1) nurse-midwife and at least one (1) registered nurse. In centers where an obstetrician provides perinatal care, a nurse-midwife is not required. The center shall employ such other staff or ancillary personnel that are necessary to provide the services essential to the center's operation. Staffing schedules, time work schedules and on-call records shall be maintained and available in the center at all times. These records shall be maintained for three (3) years.

1. Medical director. The center shall have a medical director who is a licensed physician with experience in obstetrics and newborn care. If the medical director is not a practicing board-eligible or board-certified obstetrician, the center shall have a written agreement with a board-eligible or board-certified obstetrician and pediatrician for consultation, referral, and, if necessary, hospital admission. If the medical director is a practicing obstetrician or a practicing board-eligible or board-certified obstetrician, the center shall have a written agreement with a board-eligible or board-certified pediatrician. Either the medical director, consultant obstetrician or pediatrician shall have admitting privileges in a local hospital which offers obstetrics services.
2. Nurse-midwife. Nurse-midwife services shall be provided within the respective scope of practice pursuant to KRS Chapter 314 and regulations promulgated thereunder. There shall be written protocols developed by the nurse-midwife and medical director and approved by the medical director. These protocols shall be reviewed, revised, signed and dated on an annual basis.
3. Nursing services shall be provided by licensed nurses within their respective scope of practice pursuant to KRS Chapter 314 and any regulations promulgated thereunder. Nurses shall have at least one (1) year of experience in perinatal care.

(b) In-service training. The licensee shall provide ongoing in-service training programs for all personnel relating to their respective job activities. These programs shall emphasize professional competence and the human relationship necessary for effective health care.

(7) Medical records. The center shall maintain a medical record for pregnant women and mothers to include at least the following:

(a) Prenatal history to include any physical or health problems;

(b) Past medical, menstrual, obstetric, contraceptive and

immunization history including progress of current pregnancy;

(c) Complete initial physical examination including blood pressure, weight, height, examination of skin, eyes, teeth, throat, neck, thyroid, breasts, heart, lungs, abdomen, height of fundus, fetal position and ausculation, pelvic adequacy, including rectum and size of uterus, fetal heart sounds, edema, and determination of gestational age;

(d) Initial laboratory tests to include hemoglobin or hematocrit and white blood count, urinalysis for sugar and protein determination, pap smear, serologic tests for syphilis and rubella antibody titer, blood type, Rh factors and screen for Rh and irregular antibodies, when indicated, tuberculin skin test and chest x-ray or evidence of physician follow-up when skin test is positive, sickle cell test when indicated and gonorrhea culture;

(e) Nutritional assessment;

(f) High risk identification and referral;

(g) Records of subsequent visits with recorded weight, blood pressure, urinalysis for protein, sugar, height of fundus, abdominal findings on palpation; rate and location of fetal heart tones, estimation of gestational age, edema, unusual signs, symptoms or quickening, third trimester hemoglobin or hematocrit, repeat veneral disease test, Rh and irregular antibody screen for Rh negative unsensitized women; and repeat antibody titers at twenty-six (26) weeks, thirty-two (32) weeks, and thirty-six (36) weeks;

(h) Parturient initial record of intercurrent problems, physical examination, temperature, pulse, respiration, blood pressure, head, heart, lungs, abdomen for lie and presentation position, fundal height and engagement, re-evaluation of pelvic adequacy, recording of time of ruptured membranes, record of hemoglobin or hematocrit and urine for protein and sugar;

(i) Progress of labor, monitoring of contractions and fetal heart rate, dilatation, effacement, station, urinary output, medications, complications and action taken;

(j) Delivery time, newborn's Apgar score, episiotomy, placenta delivery time, medications given, abnormalities, and any complications along with actions taken;

(k) Puerperium-time records for at least six (6) hours, including postpartum blood pressure, respirations, pulse, temperature, urine output, report of breasts and breastfeeding status, legs for thrombophlebitis, hemoglobin or hematocrit, appropriate RhD immune globin administration at the center; record of follow-up assessment within seventy-two (72) hours; and

(l) A four (4) to six (6) week follow-up examination to include record of weight, blood pressure, breast, abdominal, pelvic including rectal examination, appropriate cervico vaginal cytologic study, hematocrit or hemoglobin, and urinalysis.

(8) A health report of the newborn shall be maintained and include the following:

(a) Duration of ruptured membranes;

(b) Maternal antenatal blood serology, rubella titer, blood type, Rh factors and when indicated, a Coombs Test;

(c) Complete description of the progress of labor and delivery (including complications, if any);

(d) Condition of the newborn infant including the Apgar score, resuscitation, time of sustained respirations, (where indicated, details of physical abnormalities, pathological states observed and treatments given before transfer to appropriate nursery);

(e) Any abnormalities of placenta and cord vessels;

(f) Date and hour of birth, birth weight, sex, and period of gestation;

(g) Written verification of eye prophylaxis pursuant to 902 KAR 4:020 (or documentation of refusal based on religious belief with parent signature);

(h) Report of initial physical examination including any abnormalities;

(i) Discharge-physical examination including weight, head circumference and body length unless previously recorded, recommendations and designation of responsible physician for care immediately upon discharge and thereafter; and

(j) Progress notes describing first and subsequent feedings type, time of first voiding, stools passage, body temperature, Vitamin K prophylaxis, blood metabolic screen for phenylketonuria and hypothyrodism, galactosemia (documentation of parental refusal for religious reasons including parent signature in record), notations of abnormal respiratory rate, dyspnea, color, cyanosis, periodic pallor, lethargy, vomiting, condition of eyes, umbilical cord and other relevant factors as indicated by the condition of the newborn.

(9) In the event emergency hospital care is needed during the pregnancy, delivery, or post-delivery period, the pregnant woman or mother's record or a complete copy of the record must accompany the pregnant woman or mother or newborn at the time of transfer.

(10) All health records shall be safeguarded against loss, destruction or unauthorized use.

(11) Patient records of mother and newborn shall be maintained at the center for five (5) years or in case of a minor mother, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

(12) An up-to-date register of all deliveries shall be maintained and contain the following information:

(a) Infant's full name, sex, date, time of birth and weight;

(b) Mother's full name, including maiden name, address, birthplace and age at time of this birth;

(c) Father's full name, birthplace, and age at time of this birth, if provided; and

(d) Full name of attending physician or nurse-midwife.

(13) A certificate of birth shall be filed in accordance with the provisions of KRS Chapter 213 and regulations promulgated thereunder.

(14) Linkage agreements. The center shall have linkages through written agreements with providers of other levels of care which may be medically indicated to supplement the services available in the center. These linkages shall include:

(a) Hospital(s);

(b) A board-eligible or board-certified obstetrician and pediatrician unless the medical director is a practicing board-eligible or board-certified obsetrician;

(c) A board-eligible or board-certified pediatrician if the medical director is a practicing obstetrician or a practicing board-eligible or board-certified obstetrician;

(d) Registered pharmacist; and

(e) Licensed emergency medical transportation services with appropriate equipment for transporting pregnant woman/mother and infant.

Section 4. Provision of Services. (1) Medical services.

(a) Perinatal services shall be available twenty-four (24) hours a day, seven (7) days a week on an on-call basis.

(b) There shall be sufficient staff coverage for all aspects of the center in keeping with the size and scope of the operation.

(2) Nursing services.

(a) A nurse-midwife or physician and a registered nurse shall be on duty at all times when a pregnant woman is

laboring in the center. A registered nurse shall be present at all times when a woman or mother and newborn are at the center. The registered nurse shall have at least one (1) year of perinatal experience.

(b) The center shall insure that phones are answered twenty-four (24) hours a day, seven (7) days a week, in order to alert the on-call staff. Telephone numbers of emergency services and staff shall be posted by all telephones in large legible print.

(3) Laboratory services.

(a) The center shall provide laboratory services either directly, through arrangement with a laboratory in a licensed hospital or a medical laboratory licensed pursuant to KRS Chapter 333. If laboratory services are provided directly, the laboratory shall be licensed pursuant to KRS Chapter 333.

(b) If services are provided through arrangement with other providers, a copy of the signed and dated report shall be included in the patient's medical record. Laboratory tests conducted at the center shall be entered in the patient's record, dated, and signed by the individual performing the test.

(4) Radiology services. Radiology services shall be provided directly or through arrangement. The radiology service and personnel shall have a current license or registration pursuant to KRS 211.842 and 211.890 and any regulations promulgated thereunder, as applicable. A signed and dated report of any radiology examination shall be entered into the pregnant woman's or mother's record.

(5) Drug distribution.

(a) There shall be a list approved by the medical director of all drugs and biologicals including intravenous solutions which are retained for use in the center.

(b) The list of drugs and biologicals shall include the identity of center staff authorized to administer the drugs, biologicals and intravenous solutions. Oxytocic drugs shall not be used to induce or augment labor.

(c) Drugs and biologicals shall be administered only by persons legally authorized.

(d) Drugs and biologicals shall be stored in a locked cabinet and, when refrigeration is necessary, they shall be stored in a locked container in a refrigerator.

Section 5. Compliance with Building Codes, Ordinances and Regulations. (1) Nothing stated herein shall relieve the licensee from compliance with building codes, ordinances, and regulations which are enforced by city, county, or state jurisdiction.

(2) The following requirements shall apply where applicable and as adopted by the respective agency authority:

(a) Requirements for safety pursuant to 815 KAR 10:020, as amended;

(b) Requirements for plumbing pursuant to 815 KAR 20:010-191, as amended;

(c) Requirements for making buildings and facilities accessible to and usable by the physically handicapped pursuant to KRS 198B.260 and regulations promulgated thereunder.

(3) The facility shall be currently approved by the Fire Marshall's office in accordance with the Life Safety Code before licensing or relicensure is granted by the licensing agency.

(4) All facilities shall receive any necessary approval from appropriate agencies prior to occupancy and licensure.

Section 6. Clinical Facilities (1) Examination room(s). At least one (1) examination room shall be provided. Each room shall have a minimum clear floor area of eighty (80) square feet excluding such other spaces as vestibule, toilet, closet, and work counter. Arrangement shall permit at least thirty (30) inches of clear space at each side and at the foot of examination table. A lavatory or sink with handwashing facility and counter or shelf space for writing shall be provided.

(2) Birthing room(s). There shall be at least two (2) birthing rooms each with a minimum clear floor area of 225 square feet exclusive of fixed and movable cabinets and shelves and with a minimum dimension of fifteen (15) feet.

(3) Each birthing room shall be equipped with the following:

(a) Adequate lighting, including a spotlight suitable for use during delivery;

(b) Infant warmer with radiant heat source;

(c) Resuscitation equipment for mother and infant;

(d) Oxygen with a selection of mask sizes;

(e) Suction equipment for mother and newborn;

(f) Intubation equipment for mother and newborn; and

(g) Wall clock with a second hand.

(4) The service areas for the birthing room shall include:

(a) Sterilizing facilities with high speed autoclave(s) conveniently located to serve all birthing rooms;

(b) Scrub facilities provided near the birthing room entrance;

(c) A clean holding room for storage and distribution of clean supply materials; and

(d) A soiled holding room as part of a system for the collection and disposal of soiled materials.

(5) Formula room. The following shall be provided unless commercially-prepared formula is used:

(a) Work counter with built-in sink with gooseneck-type spout and knee or foot control;

(b) Lavatory;

(c) Hot plate;

(d) Refrigerator;

(e) Sterilizer (autoclave); and

(f) Bottle washer.

(6) Physical and sanitary environment.

(a) The condition of the physical plant and the overall center environment shall be maintained in such a manner that the safety and well being of patients, personnel and visitors are assure.

(b) A person or persons shall be designated as responsible for each of the following areas:

1. Plant maintenance;
2. Housekeeping; and
3. Laundry operations (if applicable).

(c) The center shall develop written infection control policies and procedures to minimize and control possibilities of infection which shall include:

1. The sterilization of supplies;
2. Policies for the protection of patients from employees who have a communicable disease; and
3. Infection control measures including birth room cleaning and waste disposal.

(d) The center building, equipment and surroundings shall be kept in a condition of good repair, neat, clean, free from all accumulations of dirt and rubbish, and free from foul, stale or musty odors.

1. Written housekeeping procedures shall be established for cleaning of all areas and copies shall be made available to personnel.
2. Equipment and supplies shall be provided for cleaning of all surfaces. Such equipment shall be maintained in a safe sanitary condition.
3. Hazardous cleaning solutions, compounds and substances shall be labeled, stored in proper containers and

kept separate from other cleaning materials.

(e) The center shall have available at all times a quantity of linen essential to the proper care and comfort of patients.

1. Linens shall be handled, stored, and processed so as to control the spread of infection.

2. Clean linen and clothing shall be stored in clean, dry, dust-free areas designated exclusively for this purpose.

3. Soiled linen and clothing shall be placed in suitable bags or closed containers and stored in an area designated exclusively for this purpose.

(f) The center shall have an emergency source of lighting for exam, labor, and birthing room(s) to protect the health and safety of the pregnant woman or mother in the event the normal supply is interrupted.

(g) The center shall establish a written policy for the handling and disposal of waste materials. Any incinerator used shall be in compliance with 401 KAR 59:020 or 401 KAR 61:010, as applicable.

FRANK W. BURKE, SR., Chairman
ADOPTED: May 19, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: June 11, 1982 at 4:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Frank W. Burke, Sr., Chairman, Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board, 275 East Main Street, Frankfort, Kentucky 40621.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance

904 KAR 1:037. Payments for skilled nursing and intermediate care facility services.

RELATES TO: KRS 205.520
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The Department for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the department, by regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the provisions relating to skilled nursing facility services and intermediate care facility services furnished by a licensed hospital for which payment shall be made by the Medical Assistance Program in behalf of both the categorically needy and the medically needy.

Section 1. Definition. "Hospital furnished skilled nursing facility services and intermediate care facility services" means such services provided in a licensed hospital bed by a facility which has entered into an agreement with the secretary, Department of Health and Human Services, pursuant to Section 1883 of the Social Security Act.

Section 2. Participation Requirements. The hospital must be licensed and certified to participate in the Medical Assistance Program; any beds to be used for hospital furnished skilled nursing facility services and intermediate care facility services must be appropriately certified; and the Certificate of Need Board must approve the use of the beds in such a manner.

Section 3. Provision of Service. Payment for services shall be limited to those services provided to eligible individuals meeting the criteria for provision of skilled nursing services as determined in accordance with 904 KAR 1:022 or intermediate care services as determined in accordance with 904 KAR 1:024.

Section 4. Utilization Review. The facility shall have in place a program of utilization review which meets the requirements specified in 42 CFR 456, subparts C, E, and F, for hospitals, skilled nursing facilities, and intermediate care facilities. The facility shall be responsible for cooperating with the department and/or its designated agents in the establishment of patient status and performance of utilization review and/or control.

Section 5. Implementation of Coverage. Services may be covered under the provisions of this regulation beginning July 1, 1982.

JOHN CUBINE, Commissioner
ADOPTED: June 9, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: June 11, 1982 at 4:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance

904 KAR 1:042. Amounts payable for hospital furnished skilled nursing and intermediate care facility services.

RELATES TO: KRS 205.520
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The Department for Human Resources has responsibility to administer the program for 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 hospital furnished skilled nursing facility and intermediate care facility services.

Section 1. Reimbursement for Hospital Furnished Skilled Nursing and Intermediate Care Services. To qualify for reimbursement, any hospital(s) providing skilled nursing facility services and intermediate care facility services must have in effect an agreement with the secretary, Department of Health and Human Services, pursuant to Section 1883 of the Social Security Act. Such hospital(s) shall be paid at

a rate equal to the average rate per patient-day paid for routine services during the previous calendar year under the state's Title XIX plan to skilled nursing and intermediate care facilities, respectively, located in the state in which the hospital is located. Ancillary services shall be paid based on reasonable cost which shall be determined in the same manner as the reasonable cost of ancillary services provided for inpatient hospital services.

Section 2. Rate Review and Adjustment. Any participating facility may appeal its established rates using either the customary appeals mechanism for providers of hospital inpatient services or for providers of skilled nursing and intermediate care facility services.

Section 3. Eligibility for Reimbursement. A facility shall be eligible for reimbursement only when considered to be a participating vendor, and reimbursement shall be made only for covered services rendered eligible Title XIX recipients meeting patient status as determined in accordance with applicable regulations.

Section 4. Implementation of the Payment System. Payments based on this system shall begin July 1, 1982 for any participating hospital which is appropriately licensed, and which has been certified and authorized to provide such skilled nursing and intermediate care services.

JOHN CUBINE, Commissioner
ADOPTED: June 9, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: June 11, 1982 at 4:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance

904 KAR 2:105. Summer energy program; eligibility criteria.

RELATES TO: KRS 194.050
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The Department for Human Resources is authorized by KRS 194.050 to administer a program to provide assistance for eligible low income households within the Commonwealth of Kentucky to offset the rising costs of home energy that are excessive in relation to household income. This regulation sets forth the eligibility and payments criteria for the Summer Energy Program under the Home Energy Assistance Program (HEAP). Federal authorization for the program is provided by Public Law 97-35, Title XXVI.

Section 1. Application. Each household requesting assistance shall be required to complete an application and provide such information as may be deemed necessary to determine eligibility and payment amount in accordance with the procedural requirements prescribed by the department.

Section 2. Definitions. Terms used in this regulation are defined as follows:

(1) "Principal residence" is that place where a person is living voluntarily and not on a temporary basis; the place he/she considers home; the place to which, when absent, he/she intends to return; and such place is identifiable from other residences, commercial establishments, or institutions.

(2) "Energy" is defined to include electricity, natural gas, or propane which is used to operate cooling equipment.

(3) "Household" is defined as one (1) or more persons who share common living arrangements in a principal residence within the Commonwealth of Kentucky.

(4) A "fully vulnerable household" is any household living in non-subsidized housing which pays all energy costs directly to the energy provider or any household which rents non-subsidized housing whose energy costs are included in the rent payment.

Section 3. Eligibility Criteria. A household must meet the following conditions of eligibility for receipt of a payment:

(1) The household must contain at least one (1) member who is elderly (age sixty (60) or older) or is a recipient of benefits under Titles II, XVI, or XIX of the Social Security Act based on disability.

(2) The household must be fully vulnerable for energy cost.

(3) For purposes of determining eligibility, the amount of continuing and non-continuing earned and unearned gross income including lump sum payments received by the household during the calendar month preceding the month of application will be considered.

(4) Gross income for the calendar month preceding the month of application must be at or below the applicable amount shown in the income scale for the appropriate size household. Excluded from consideration as income are payments received by a household from a federal, state, or local agency designated for a special purpose and which the applicant must spend for that purpose, payments made to others on the household's behalf, loans, reimbursements for expenses, incentive payments (WIN and CETA) normally disregarded in AFDC, federal payments or benefits which must be excluded according to federal law, and Supplemental Medical Insurance premiums.

Income Scale

Family Size	Monthly	Yearly
1	$ 539	$ 6,465
2	711	8,535
3	884	10,605
4 or more	1,056	12,675

(5) Applicants must attest financial need for assistance for cooling purposes.

(6) The household must have total liquid assets at the time of application of not more than $5,000. Excluded assets are cars, household or personal belongings, primary residence, cash surrender value of insurance policies, and prepaid burial policies.

(7) Households are eligibile to receive assistance only once under the Summer Energy Program.

ed to households with lowest incomes and highest energy costs in relation to income, taking into account family size.

(1) Payment to eligible households will be made for the full benefit amount based on type of energy for cooling, monthly household income, and household size as specified in the following benefit scales.

Benefit Scales

Scale A.
Energy Sources: LP Gas (Propane), Electricity

Monthly Household Income	Payment Amount Household Size 1 and 2	Household Size 3 or more
$ 0-$250	$225	$250
$251-$500	$189	$213
over $500	$150	$175

Scale B.
Energy Source: Natural Gas

Monthly Household Income	Payment Amount Household Size 1 and 2	Household Size 3 or more
$ 0-$250	$175	$200
$251-$500	$138	$163
over $500	$100	$125

(2) If the applicant incurs an indirect fuel cost through a rent payment, the amount of the payment shall be the amount of rent owed for arrearages and the current month, not to exceed the maximum in the benefit chart.

Section 5. Payment Methods. Payments to eligible households will be made by two-party check made payable to the recipient and the energy provider (or landlord if home energy costs are included as an undesignated portion of the rent). A one-party check will be made payable to the recipient only when the provider/landlord refuses to accept the two-party check.

Section 6. Right to a Fair Hearing. Any individual has a right to request and receive a fair hearing in accordance with 904 KAR 2:055.

Section 7. Time Standards. The department shall make an eligibility determination promptly after receipt of a completed and signed application but not to exceed thirty (30) days.

Section 8. Effective Dates. The following shall be the implementation and termination dates for the Summer Energy Program.

(1) Applications shall be accepted beginning June 14, 1982, and must be postmarked no later than August 15, 1982.

(2) Applications shall be processed in the order received. The Summer Energy Program shall be terminated when applications postmarked no later than August 15, 1982, have been processed or by the secretary when actual and projected program expenditures have resulted in utilization of available funds, whichever is earlier.

Section 9. Availability of Funds. Up to $2,000,000 shall be allocated for the Summer Energy Program.

Section 10. Energy Provider Responsibilities. Any provider accepting payment from HEAP for energy provided to eligible recipients is required to comply with the following:

(1) Reconnection of utilities and/or delivery of fuel must be accomplished upon certification for payment;

(2) The household must be charged in the normal billing process the difference between the actual cost of the home energy and the amount of payment made through this program. For balances remaining after acceptance of the HEAP payment, the customer must be offered the opportunity for a deferred payment arrangement or a level payment plan;

(3) HEAP recipients shall not be treated differently than households not receiving benefits; and

(4) The household on whose behalf benefits are paid shall not be discriminated against, either in the costs of goods supplied or the services provided.

(5) A landlord shall not increase the rent of recipient households on the basis of receipt of this payment.

Section 11. This regulation shall expire at the close of business on September 30, 1982.

Section 12. 904 KAR 2:100, Home energy assistance program; eligibility criteria, is hereby repealed.

JOHN CUBINE, Commissioner
ADOPTED: June 10, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: June 11, 1982 at 4:30 p.m.
SUMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

CABINET FOR HUMAN RESOURCES
Department for Social Services

905 KAR 3:010. Limitations on use of grant funds.

RELATES TO: KRS 199.420, 205.204, 209.030
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: This regulation specifies Kentucky's limitations on the use of Title XX —Social Services Block Grant funds in accordance with limitations specified in Section 2005(a) of the Social Security Act as set forth in the Omnibus Budget Reconciliation Act of 1981, P.L. 97-35 and 45 CFR 96.71.

Section 1. Limitations. Title XX—Social Services Block Grant funds are available for the provision of social services provided to eligible individuals pursuant to Kentucky's Title XX plan only if the requirements set forth in this regulation are met.

Section 2. Medical Care. Social Services Block Grant funds are not available for the provision of medical care unless it is an integral but subordinate part of a service authorized in Kentucky's Title XX plan. Medical care is deemed to be integral but subordinate if it is minor but essential to the social service of which it is a part and is necessary to achieve the objective of that service.

Section 3. Room and Board. Social Services Block Grant funds are not available for the provision of room and board unless it is an integral but subordinate part of a service authorized in Kentucky's Title XX plan. Room and board is deemed to be integral but subordinate if it is minor but essential to the social service of which it is a part and is necessary to achieve the objective of that service. However, in no instance shall room and board be provided for a period in excess of six (6) consecutive months for any one (1) placement.

Section 4. Emergency Shelter Care. Social Services Block Grant funds are available to provide emergency shelter care on a temporary basis for a period up to thirty (30) calendar days in any one (1) twelve (12) month period.

SUZANNE TURNER, Commissioner
ADOPTED: June 7, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: June 11, 1982 at 4:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

CABINET FOR HUMAN RESOURCES
Department for Social Services

905 KAR 3:020. Technical eligibility.

RELATES TO: KRS 199.420, 205.204, 209.030
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility under the provisions of KRS Chapters 194, 199, 208, and 209 to administer the social services program in accordance with Title XX—Social Services Block Grant, P.L. 97-35. This regulation sets forth technical eligibility requirements for social services.

Section 1. Residence. Except as otherwise provided by law or regulations, to be eligible to apply for social services a person must be living in Kentucky or a juvenile classified as a runaway.

Section 2. Eligibility. (1) Need. To be eligible for social services a person must have a need identified by the cabinet's social service staff that could be addressed by the services available.

(2) Income limitations. Where income is a part of the eligibility criteria for social services, the maximum amount of gross income cannot exceed eighty percent (80%) of the 1982 median income for the Commonwealth of Kentucky adjusted by family size except for in-home services for the elderly. The percentage of the median income that constitutes eligibility may vary by service up to the maximum and is established and made public by the Department for Social Services. The percentage of the median income that constitutes eligibility may be increased or decreased by the same ratio as the increase or decrease in federal funds available to Kentucky under the Social Services Block Grant. The amount of gross income for in-home services for the elderly cannot exceed $10,000 annually for a one (1) person family and $13,000 annually for a two (2) person family.

(3) Special eligibility requirements.

(a) For child day care, in addition to meeting the need and income status, applicants will be served in the following priority order:

1. Children on whom there has been a documented report of abuse, neglect, or exploitation.
2. Working parents/caregivers.
3. Parents/caregivers seeking work not to exceed two (2) calendar months in any twelve (12) month period.
4. Overburdened parents.
5. AFDC parents in educational or training programs.

(b) For in-home services for the elderly, in addition to meeting the need and income status, the applicant must be sixty (60) years of age or older and have functional disabilities or chronic health and social problems as defined by program guidelines.

(c) For maternity home care, in addition to meeting the need and income status, pregnant females will be accepted according to the following priorities:

1. Females committed to the cabinet.
2. Females under eighteen (18) years of age desiring maternity home placement.
3. Females over eighteen (18) years of age who meet Title XX income requirements.

(4) Committed or court ordered. A child who is committed to the cabinet (or an agency recognized by the cabinet) by a court of competent jurisdiction, or voluntarily by the parents, or a child that a court of competent jurisdiction has ordered the cabinet to serve is eligible for services.

Section 3. Determination and Redetermination of Eligibility. Initial eligibility shall be determined within thirty (30) calendar days of application and redetermined any time thereafter when there is a change in circumstances but not less often than annually.

Section 4. Fees for Service. Providers of services under contract to serve eligible Title XX clients may require clients to pay a fee for certain services based on sliding fee scales related to the client's income. Allowable fees for services appear within Appendix V of the state's Title XX plan and are hereby incorporated by reference. Fees may vary by geographic area. A copy of the state's Title XX plan may be obtained by a request in writing made to the Commissioner of Social Services, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

SUZANNE TURNER, Commissioner
ADOPTED: June 9, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: June 11, 1982 at 4:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

CABINET FOR HUMAN RESOURCES
Department for Social Services

905 KAR 3:030. Matching requirements.

RELATES TO: KRS 199.420, 205.204, 209.030
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The Omnibus Budget Reconciliation Act of 1981 substantially reduced the amount of federal funds the Commonwealth receives through the Title XX "Social Services Block Grant" and the "Community Services Block Grant" established under said Reconciliation Act of 1981. Matching requirements are being established to encourage and assure local support and sharing in service provision; and to reduce, to the extent possible, the full impact of federal reductions in funds.

Section 1. Definitions. As used in this regulation, the following terms shall have the meanings as set forth below:
(1) "Certified expenditures" means any cash expenditure incurred by the local provider of services through the Social Services or Community Services Block Grant funds when such expenditures are determined to be allowable, reasonable, and necessary under applicable laws and procedures of the Commonwealth and federal laws and regulations for the Block Grants. Such certified expenditures may be incurred by the provider of service whether public or private non-profit, or may be certified on behalf of the provider by a third party which may also be a public or private non-profit organization.
(2) "In-kind contributions" means property or services which directly benefit the service purchased; which are contributed by the provider or a non-federal third party without expenditure by the local provider; and would have been an allowable, reasonable and necessary cost in accordance with applicable laws and procedures of the Commonwealth and federal laws and regulations for the Block Grants if purchased by the provider.
(3) "Local matching funds" means any cash received from a local organization or individual, local taxes, state funds received by local agencies, or federal general revenue sharing funds received for use by local governments. No other federal funds shall be allowed as matching and no other funds identified in this regulation for match shall satisfy this requirement if used to match other state or federal funds.

Section 2. All contractors who provide social services funded by Title XX—Social Services Block Grant, P.L. 97-35, shall be required to provide matching on a seventy-five (75) percent/twenty-five (25) percent ratio. Local match shall be cash in the form of certified expenditures except that in-kind contributions are authorized for in-home services for the elderly and the State Department of Health Services may provide state fund cash match for mental health/mental retardation services. The local match shall consist of one (1) dollar for every three (3) dollars in federal funds expended for in-kind in the same ratio.

Section 3. Community Services Block Grant. Contractors utilizing Community Services Block Grant funds, P.L. 97-35, shall meet the same requirements set forth in Section 2, except that the matching ratio shall be eighty (80) percent federal and twenty (20) percent local matching funds, and in-kind contributions may be used for all CSBG contracts.

Section 4. (1) Certified expenditures for local match shall require documentation sufficient to determine that the requirements of this regulation are met by the provider and/or a third party when certified by a third party. Third party entities shall enter a contractual agreement with the provider as to the type of expenses and methods of documentation to be used for all the certified expenditures. The contractual agreement shall include at least a requirement to make records available for audit by the provider, Cabinet for Human Resources, and/or entities authorized by the Cabinet for Human Resources to audit said records. The provider may be subject to disallowances and reimbursement to the Commonwealth if such expenditures are not documented by the provider or the third party.
(2) In-kind contributions for local match shall require documentation sufficient to determine that the requirements of this regulation are met by the provider and/or third party. Values placed on in-kind contributions shall be based on 45 CFR Part 74, Subpart G, Cost Sharing or Matching, as printed June 9, 1982 and as subsequently amended, except as otherwise authorized in this regulation.
(3) State fund cash match may be inter-accounted to the Cabinet for Human Resources' Department for Social Services for disbursement with the federal funds matched. Inter-accounted funds shall require documentation sufficient to determine that the requirements of this regulation are met.

SUZANNE TURNER, Commissioner
ADOPTED: June 9, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: June 11, 1982 at 4:30 p.m.
SUMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

CABINET FOR HUMAN RESOURCES
Department for Social Services

905 KAR 5:010. Standards.

RELATES TO: KRS 209.030(1), 209.160, House Bill 295, §52d of the 1982 General Assembly
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: House Bill 295, §52d of the 1982 General Assembly authorizes the Cabinet for Human Resources to establish, by administrative regulations, reasonable performance standards for qualifying applicants for state appropriated funds related to spouse abuse shelters and crisis centers, and KRS 209.160 authorizes additional funds from marriage licenses to be used for spouse abuse shelters. There are no licensing requirements for spouse abuse shelters or crisis centers.

Section 1. Definitions. (1) "Challenging grant formula" means the formula authorized to allocate state funds appropriated under House Bill 295, §52d to spouse abuse shelters and crisis centers. The formula shall allocate, to the extent appropriated funds permit, one dollar ($1) for each dollar raised by qualifying applicants from non-state resources up to a maximum of fifty percent (50%) of the proposed annual budget, such percentage to decline in each subsequent year of application following

fiscal year 1983 by five percent (5%) to a minimum floor of twenty-five percent (25%) state funding support.

(2) "Cabinet" means Cabinet for Human Resources.

(3) "Crisis center" means counseling and domestic violence crisis intervention services for abused spouses and their children.

(4) "Department" means Department for Social Services.

(5) "Non-state resources" means cash, certified expenditures or in-kind contributions used in the programs that are derived from other than state funds.

(6) "Qualified applicant" means any public or non-profit incorporated agency.

(7) "Spouse abuse shelter" means a home-like facility which provides temporary or emergency shelter, food, counseling, and information and referral for abused spouses and their children.

Section 2. Staff. (1) In all spouse abuse shelters or crisis centers one (1) staff person shall be designated as director.

(2) The facility shall maintain and/or assure the provision of such competent staff to provide services at the center or shelter. Staff and volunteers are to be at least eighteen (18) years of age unless under the direct supervision of an adult, have education, training or experience to perform their particular job, and a willingness to work with others, including people under stress, and to share responsibilities.

(3) The facility shall have written personnel policies.

(4) The facility shall maintain written job descriptions for each job category for all staff.

(5) The facility shall submit to the department a staffing pattern and indicate areas of responsibility, as well as lines of authority and supervision.

(6) The facility shall provide and/or secure orientation and in-service training for staff and volunteers responsbile for services under this contract.

Section 3. Physical Facilities. (1) The facility shall comply with applicable local, state and federal building, fire and health codes.

(2) Bedrooms shall be equipped with a bed or, when necessary as a result of overcrowding, a two (2) inch thick mat.

(3) Bed linen shall be kept clean.

(4) Each facility shall maintain a security system to provide for the physical safety of the client.

(5) The facility shall comply with the grievance and complaint procedures established by the cabinet and the department.

Section 4. Medical and Dental. The facility shall assure emergency medical and dental services are available by referral.

Section 5. Meals. The facility shall provide all clients with three (3) meals per day, each including foods from the four (4) basic food groups.

Section 6. Services. (1) The spouse abuse shelter or crisis center shall maintain and provide services on a continuing basis and for such hours as are necessary to meet the needs of eligible persons.

(2) Staff of the facility are to apprise clients of resources available through the facility or by referrals which may assist them in the solution of their problems.

(3) Upon entrance into the spouse abuse shelter or crisis center, a written record shall be made which shall include identification of the reason for intake, and a summary of services available to assist the client through the facility. Each record maintained by the shelter or center shall contain, at a minimum, the information set forth in Section 7 of this regulation.

(4) The facility shall maintain records of services provided the client by the facility. In the event social services are provided by referral, a copy of the referral, together with the records of services provided by the agency or organization to the client, shall be maintained by the spouse abuse shelter or crisis center. In the event the state Department for Social Services provides assistance, copies of those records may be provided the spouse abuse shelter or crisis center only upon the affirmative showing in writing of a tangible or legitimate interest in the matter.

Section 7. Records. (1) Client records are to be maintained on each individual or family unit residing in the shelter or center during the time wherein that client or family unit is in residence at the facility.

(2) The client record is to maintain, at a minimum:

(a) The information set forth in Section 6, subsection (3) of this regulation.

(b) Name, age, sex, address and marital status of the individual.

(c) The names and ages of any accompanying dependents.

(d) Identification of any physical unjury and any medical attention to be obtained.

(e) Identification of any physical condition or ailment which may impact upon the services to be offered the client.

(f) Referrals of the client for services outside the shelter or center, identifying the agency by name and address.

(g) Any prior contacts with spouse abuse shelters or centers by the client specifying the date and reason for the contact.

(3) Records of the spouse abuse shelter or crisis center shall be maintained as confidential and shall not be shared without the prior written authorization of the client. Any records of the Cabinet for Human Resources, Department for Social Services, in the possession of the spouse abuse shelter or crisis center are strictly confidential and shall be shared with other agencies, individuals, or organizations only as provided in KRS 209.140 and KRS 194.060 and with the prior written permission of the Department for Social Services.

(4) The Cabinet for Human Resources, Department for Social Services, shall have access to the records of the spouse abuse shelter or crisis center, including financial records for the purpose of audit, in order to determine compliance with the provisions of these regulations.

Section 8. Budget. (1) Prior to the disbursement of any funds to the shelter or center, the facility is to provide the department with a proposed budget indicating sources of income and amounts therefrom, together with the proposed use of funds received.

(2) During the fiscal year, the facility is to maintain financial records to document income and expenditures.

Section 9. (1) Daily program activities shall be offered with emphasis upon the client's physical, intellectual and social needs.

Section 4. Payment Levels. Payment amounts are set at a level to serve a maximum number of households while providing a reasonably adequate payment relative to energy costs. The highest level of assistance will be provid-

(2) No client shall maintain in his/her possession any weapon, alcohol or drug while in the facility.

(3) In no instance shall harsh, cruel or unusual punishment be used.

SUZANNE TURNER, Commissioner
ADOPTED: June 15, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: June 15, 1982 at 4 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary, Cabinet for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the June 2, 1982 Meeting

(Subject to subcommittee approval at the July meeting.)

The Administrative Regulation Review Subcommittee held its monthly meeting on Wednesday, June 2, 1982, at 10 a.m., in Room 104 of the Capitol Annex. Present were:

Members: Representative William T. Brinkley, Chairman; Senator James Bunning and Helen Garrett; and Representatives James Bruce, Albert Robinson and Gregory Stumbo.

Guests: Mary Onley-Linder, Jim Thompson, Ked R. Fitzpatrick, Sharon Perry and Greg Lawther, Department for Human Resources; Judith Walden, Department of Housing, Buildings and Construction; Carl B. Larsen, Kentucky Harness Racing Commission; James R. Axon, Bill Graves and Don R. McCormick, Department of Fish and Wildlife; Stephen R. Schmidt and Gordon C. Duke, Kentucky State Fair Board; Ellyn Elise Crutcher and M. Dell Coleman, PSC; Sidney Simandle, Conley Manning, Don Hart, W. L. Hampton and Gary Bale, Department of Education; Andrew Cammack, Environmental Quality Commission; Bill Doll, Kentucky Medical Association; James S. Judy, KAHCF; Tony Sholar, Kentucky Chamber of Commerce; John D. Hinkle, Kentucky Retail Federation; and Jack Emory Farley, Public Advocate.

Staff: Susan Harding, Cindy De Reamer, O. Joseph Hood, Garnett Evins, Tina Williams, Susan Breckel and Scott Payton.

Press: Brian Malloy, UPI; Ed Ryan, Courier-Journal; and Herb Sparrow, AP.

Chairman Brinkley announced that a quorum was present and called the meeting to order. On motion of Representative Stumbo seconded by Senator Bunning, the minutes of the May meeting were approved.

The following regulation was withdrawn at the request of the issuing agency:

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance
Public Assistance
904 KAR 2:100. Home energy assistance program; eligibility criteria.

The following regulation was deferred by the subcommittee until the July meeting:

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Health Service
Controlled Substances
902 KAR 55:010. Licensing of manufacturers and wholesalers.

The following regulations were accepted by the subcommittee and ordered filed without objection:

CABINET FOR DEVELOPMENT
Department of Fish and Wildlife Resources
Fish
301 KAR 1:085. Mussel shell harvest.
301 KAR 1:122. Importation, possession, live fish.
301 KAR 1:130. Live bait for personal use.
301 KAR 1:140. Special commercial fishing permit.
Game
301 KAR 2:047. Specified areas; seasons, limits for birds and small game.
301 KAR 2:050. Land Between the Lakes hunting rules.
301 KAR 2:111. Deer and turkey hunting on special areas.
Kentucky State Fair Board
Fairgrounds and Exposition Center
303 KAR 1:100. Exposition Center grounds; sales and dissemination of real property, fixtures and goods, solicitation of contributions or sales during annual State Fair; rental of space.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining and Reclamation
Oil Shale Operations
405 KAR 30:050. Bonding requirements for long-term facilities and structures.
405 KAR 30:121. Oil shale exploration.
405 KAR 30:125. Oil shale exploration performance standards.

DEPARTMENT OF EDUCATION
Bureau of Instruction
Instructional Services
704 KAR 3:290. Title I, ESEA migrant plan.
704 KAR 3:292. Title I, ESEA annual program plan.
Health and Physical Education Programs
704 KAR 4:020. Comprehensive school health. (As amended subject to approval of the school board.)
Teacher Certification
704 KAR 20:120. Emergency certification.
704 KAR 20:210. Substitute teachers.
Bureau of Vocational Education
Adult Education
705 KAR 7:050. Adult plan.

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission
Utilities
807 KAR 5:011. Tariffs. (Replaces 807 KAR 5:011E; amended after hearing.)
Kentucky Harness Racing Commission
Harness Racing Rules
811 KAR 1:025. Farm and stable name.
811 KAR 1:032. Eligibility standards; enforcement.
811 KAR 1:125. Pari-mutuel rules.

Department of Housing, Buildings and Construction
Elevator Safety
815 KAR 4:010. Elevators, dumbwaiters, escalators and moving walks standards.
Kentucky Building Code
815 KAR 7:060. Facilities for the physically disabled in new construction. (Repeals 815 KAR 40:010.)

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Health Services
Maternal and Child Health
902 KAR 4:020. Care of eyes. (Amended after hearing.)
Certificate of Need and Licensure Board
902 KAR 20:101. Facility specifications; ambulatory surgical center.
Bureau for Manpower Services
Human Services
903 KAR 2:010. Weatherization.
Bureau for Social Insurance
Medical Assistance
904 KAR 1:080. Payments for rural health clinic services.
904 KAR 1:082. Rural health clinic services.

On motion of Senator Bunning seconded by Representative Bruce the meeting was adjourned at 12 noon to meet again on call of the Chairman.

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NOTE: Emergency regulations expire upon being repealed or replaced.

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