Administrative Register of Kentucky

LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

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WEDNESDAY, DECEMBER 1, 1982

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NOTE: The December meeting of the Administrative Regulation Review Subcommittee will be a TWO-DAY meeting—Monday, December 20, and Tuesday, December 22, 1982, at 10 a.m. in Room 103 of the Capitol Annex.

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

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

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

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

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Administrative Register of Kentucky

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Public Hearings Scheduled

CABINET FOR HUMAN RESOURCES

A public hearing has been scheduled on December 3, 1982, at 1:30 p.m. in the Vital Statistics Conference Room, 1st Floor, DHR Building, 275 East Main Street, Frankfort, Kentucky, on the following regulation:

900 KAR 2:030. Quality of care rating system for long term care facilities. [9 Ky.R. 661]

A public hearing has been scheduled on December 7, 1982, at 10 a.m. in Room G-II, Capital Plaza Tower, Frankfort, Kentucky, on the following regulation:

405 KAR 7:050. Coal processing waste disposal sites. [9 Ky.R. 634]

CORRECTIONS CABINET

A public hearing has been scheduled on December 7, 1982, at 10 a.m. in Room 109 of the Capitol Annex, Frankfort, Kentucky, on the following regulations:

501 KAR 3:010. Definitions. [9 Ky.R. 635]
501 KAR 3:020. Administration; management. [9 Ky.R. 636]
501 KAR 3:030. Fiscal management. [9 Ky.R. 637]
501 KAR 3:040. Personnel. [9 Ky.R. 637]
501 KAR 3:050. Physical plant. [9 Ky.R. 639]
501 KAR 3:060. Security; control. [9 Ky.R. 642]
501 KAR 3:070. Safety; emergency procedures. [9 Ky.R. 643]
501 KAR 3:080. Sanitation; hygiene. [9 Ky.R. 644]
501 KAR 3:090. Medical services. [9 Ky.R. 644]
501 KAR 3:100. Food services. [9 Ky.R. 645]
501 KAR 3:110. Classification. [9 Ky.R. 646]
501 KAR 3:120. Admission, release. [9 Ky.R. 646]
501 KAR 3:130. Inmate programs; services. [9 Ky.R. 647]
501 KAR 3:140. Inmate rights. [9 Ky.R. 648]

DEPARTMENT OF INSURANCE

A public hearing has been scheduled on December 10, 1982, at 9:30 a.m. at 151 Elkhorn Court, Frankfort, Kentucky, on the following regulation:

806 KAR 12:080. Life insurance; replacement of. [9 Ky.R. 655]

A public hearing has been scheduled on January 5, 1983, at 9:30 a.m. at 151 Elkhorn Court, Frankfort, Kentucky, on the following regulation:

806 KAR 38:070. Health maintenance organization subscriber fee filings. [9 Ky.R. 754]

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11. I certify that the statements made by me above are correct and complete. SIGNATURE AND TITLE OF EDITOR, PUBLISHER, BUSINESS MANAGER, OR OWNER: Assistant Director

PS Form 3526, July 1983 (See instruction on reverse) (Page 1)

Emergency Regulation Now In Effect

(NOTE: Emergency regulations expire upon being repealed or replaced.)

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 82-951
November 3, 1982

EMERGENCY REGULATION
Department of Agriculture
Division of Livestock Sanitation

WHEREAS, the Kentucky Department of Agriculture cooperates with the United States Department of Agriculture in monitoring certain livestock diseases, including Contagious Equine Metritis (CEM), and for the purpose of preventing infection of American livestock ensurers that diseased livestock are not imported into the United States and the Commonwealth; and

WHEREAS, the equine population of the Commonwealth and the United States is at risk of exposure to CEM from equine livestock imported for breeding purposes; and

WHEREAS, in order to prevent exposure of the equine population to CEM it is necessary to implement as rapidly as possible regulations which are consistent with the various federal regulations governing examinations and treatment of CEM; and

WHEREAS, the Commissioner of the Department of Agriculture has determined that it is necessary to control the sale and transportation of animals that have been in contact with infected animals or have in fact been infected with CEM; and

WHEREAS, the Commissioner of the Department of Agriculture has approved regulations covering the sale and treatment of infected stallions and high-risk and medium-risk mares and has determined in writing that an emergency exists with respect to these regulations:

NOW, THEREFORE, I, John Y. Brown, Jr., Governor of the Commonwealth of Kentucky, by virtue of the authority vested in me by Section 13.088(1) of the Kentucky Revised Statutes, hereby acknowledge the finding of the Commissioner of Agriculture that an emergency exists and direct that the attached regulation become effective immediately upon being filed with the Legislative Research Commission as provided in Chapter 13 of the Kentucky Revised Statutes.

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

COMMERCE CABINET
Department of Agriculture
Division of Livestock Sanitation

302 KAR 20:130E. Treatment of contagious equine metritis.

RELATES TO: KRS 257.020
PURSUANT TO: KRS 13.082, 257.030
EFFECTIVE: November 4, 1982
NECESSITY AND FUNCTION: Establishes the required treatment standards for equines quarantined for the purpose of controlling contagious equine metritis (CEM) within the Commonwealth.

Section 1. Definitions. (1) "High risk mare" is a mare that is culture positive and/or CF positive after being bred to an infected stallion before stallion was removed from service and treated.

(2) "Medium risk mare" is a mare that is CF negative and culture negative but bred to an infected stallion prior to treatment.

(3) "Infected stallion" is a breeding stallion proven or believed to be a carrier of the CEM organism.

Section 2. Sale and Movement of CEM Infected or Exposed Equines. No CEM high risk, medium risk or imported mares or stallions shall be sold or transported unless authorization from the state veterinarian is obtained prior to such sale or movement.

Section 3. High risk mares quarantined under the provisions of KRS 257.030 shall not be released from quarantine until the state veterinarian shall certify that the treatment and conditions prescribed in this regulation have been fully met and all requirements fulfilled.

(1) Surgical removal of clitoral sinuses.

(a) Prior to surgery a culture will be taken from the clitoral fossa.

(b) The excised sinuses will be refrigerated and immediately submitted to the Livestock Disease Diagnostic Center, Newtown Pike, Lexington, Kentucky.

(2) Post-surgical treatment (to be started no sooner than seven (7) days after surgery).

(a) Mechanically clean the external genitalia with clean, warm water.

(b) Apply a chlorhexidine-containing surgical scrub liberally and using sufficient water to obtain sudsing, cleanse thoroughly paying particular attention to the clitoral fossa.

(c) Wash with clean, warm water and dry.

(d) Apply Furacin ointment liberally insuring filling the clitoral fossa.

(e) Repeat the treatment daily for five (5) days (series of five (5) treatments).

(3) Post-treatment culture requirements (to be started no sooner than seven (7) days after treatment). Three (3) consecutive sets of negative cultures will be taken from the endometrium and clitoral fossa. These cultures taken at not less than seven (7) day intervals. One (1) endometrial culture shall be taken at estrus.

(4) Prebreeding cultures (to be taken in following year). One (1) set of cultures will be taken from the endometrium. Three (3) sets of the clitoral fossa taken no less than seven (7) day intervals.

(5) High risk mares will require a breeding permit and must be bred last in line and the stallion scrubbed and treated after breeding.

(6) High risk mares that do not conceive on the first heat period shall have an additional set of cultures taken in early estrus and submitted to the laboratory prior to cover for the subsequent heat period. Laboratory results need not be completed.

(7) High risk mares will not be released until they have had one (1) set of negative cultures taken after January 1st of the following year. The endometrial culture for foaling mares must be taken at not less than seven (7) days after foaling.

Section 4. Medium risk mares quarantined under the provisions of KRS 257.030 shall not be released from quarantine until the state veterinarian shall certify the treatment and conditions prescribed in this regulation have been fully met and all requirements fulfilled.

(1) Surgical removal of clitoral sinuses.

(a) Prior to surgery a culture will be taken from the clitoral fossa.

(b) The excised sinuses will be refrigerated and immediately submitted for culture to the Livestock Disease Diagnostic Center, Newtown Pike, Lexington, Kentucky.

(2) Pretreatment culture requirements. Following surgery three (3) negative cultures from the clitoral fossa will be required. The first not less than seven (7) days following surgery and each culture taken not less than intervals of seven (7) days (the third culture would therefore be taken no sooner than day twenty-one (21) following surgery).

(3) Treatment.

(a) Mechanically clean the external genitalia with clean, warm water.

(b) Apply a chlorhexidine-containing surgical scrub liberally and using sufficient water to obtain sudsing, cleanse thoroughly paying particular attention to the clitoral fossa.

(c) Wash with clean, warm water and dry.

(d) Apply Furacin ointment liberally insuring filling of the clitoral fossa.

(e) Repeat the treatment daily for five (5) days (series of five (5) treatments).

(4) Post-treatment culture requirements—cultures to be taken no sooner than seven (7) days after treatment and after January 1st of following year.

(a) Foaling mares. Three (3) cultures from the clitoral fossa at not less than seven (7) day intervals will be required. One (1) endometrial culture shall be taken no less than seven (7) days after foaling. The foal will have one (1) culture; if female, from the vaginal vestibule; if male, from the prepuce.

(b) Barren mares which qualified for breeding during current season will also have one (1) endometrial culture taken during early estrus and three (3) clitoral fossa cultures at not less than seven (7) day intervals.

(5) Medium risk mares that do not meet the above requirements for quarantine release will be treated as high risk.

Section 5. Stallions quarantined under the provisions of KRS 257.030 shall not be released from quarantine until the state veterinarian shall certify the treatment and conditions prescribed in this regulation have been fully met and all requirements fulfilled.

(1) The following treatment must be carried out with the stallion in full erection and with the operator wearing disposable gloves and using disposable equipment:

(a) Mechanically clean the external genitalia with clean, warm water.

(b) Apply a chlorhexidine-containing surgical scrub liberally and using sufficient water to obtain sudsing, cleanse thoroughly paying particular attention to the urethral fossa/sinus and the folds of the sheath.
(c) Wash with clean, warm water and dry.
(d) Apply Furacin ointment liberally, insuring filling of the urethral fossa/sinus and penetration of the folds of the sheath.
(e) Repeat the treatment daily for five (5) days (series of five (5) treatments).

(2) The stallion may be returned to service twenty-four (24) hours after the final treatment. The first two (2) mares bred by the stallion must be cultured from the cervix, clitoral fossa and clitoral sinus on days two (2) and four (4) after being covered and each of the first two (2) mares must have a CF test for CEM performed on days fifteen (15) and twenty-five (25) after being covered.

ALBEN W. BARKLEY II, Chairman
ADOPTED: October 22, 1982
RECEIVED BY LRC: November 4, 1982 at 10:30 a.m.

Amended Regulations Now In Effect

DEPARTMENT FOR ADMINISTRATION
Division of Occupations and Professions
Board of Examiners and Registration of Architects
As Amended

201 KAR 19:025. Application for examination.

RELATES TO: KRS 323.050, 323.215
PURSUANT TO: KRS 323.210
EFFECTIVE: November 3, 1982
NECESSITY AND FUNCTION: To clarify the procedure for making application for admission to the examinations.

Section 1. Application for Examination and Registration. All applications must be made upon the printed forms issued by the board and in strict accordance with the instructions to applicants submitted therewith. Otherwise they will not be accepted or considered.

Section 2. When to Submit Applications. Applications for examination will be received at all times but must be received at the board's office *at least ninety (90) days before the date of the scheduled examinations which the applicant wishes to take. This allows time for completion of the applicant's record prior to the board's pre-examination meeting which is held several weeks before the examination. At that meeting the board will determine whether the applicant is eligible for admission to the examination.* [not later than August 1 for applicants for the December professional examination part B and not later than February 1 for applicants for the June qualifying test and/or design test, professional examination part A. This allows time for completion of the applicant's record prior to the board's pre-examination meeting which is held several weeks before each examination. At that meeting the board will determine whether or not he is eligible to take the examination he wishes to enter.]

Section 3. Time and Place of Examinations. *The actual dates and locations for the administration of the examination will be determined by the board. Applicants will be notified well in advance to allow for preparation.* [The qualifying test and design test, professional examination part A will be administered in June of each year. The professional examination part B will be administered in December of each year. Actual dates and locations for the administration of the examinations will be determined by the board.]

Section 4. The provisions of this regulation shall be effective January 1, 1983.

L. WAYNE TUNE, Executive Director
ADOPTED: September 14, 1982
RECEIVED BY LRC: September 15, 1982 at 3 p.m.

DEPARTMENT FOR ADMINISTRATION
Division of Occupations and Professions
Board of Examiners and Registration of Architects
As Amended

201 KAR 19:030. Examination; general provisions.

RELATES TO: KRS 323.050, 323.210
PURSUANT TO: KRS 323.210
EFFECTIVE: November 3, 1982
NECESSITY AND FUNCTION: This regulation defines the general provisions in taking the examinations.

Section 1. Reporting for Written Examination. All candidates taking the full examination shall present themselves promptly on the morning of the first day of the examination at the time and place designated by the board. Any candidate who does not appear at the time and place prescribed will not be permitted to enter the examination; except that those candidates taking only certain parts of the [qualifying] examination shall present themselves in accordance with the instructions of the board.

Section 2. Materials Required for Written Examinations. *Candidates will be notified as to reference material permitted and equipment necessary for the examination.* [Candidates for the qualifying examination shall bring all necessary drawing instruments, T-Squares, triangles, scales, erasers and pencils. Also reference books where permitted. Candidates for the professional examination shall bring the mission statement and resource material, pencils and erasers.]

Section 3. Fairness in Grading: In order to preserve the anonymity of the candidate until the examining committee has rated the papers and exhibits, each candidate shall be directed to draw a number which he will place in an envelope and seal. He shall use this number to mark all papers and exhibits.

Section 4. Language Provisions: All examinations shall be held in the English language, without the use of an interpreter and under such auspices and environment as will insure their proper conduct under dignified surroundings.

Section 5. The provisions of this regulation shall be effective January 1, 1983.

L. WAYNE TUNE, Executive Director
ADOPTED: September 14, 1982
RECEIVED BY LRC: September 15, 1982 at 3 p.m.

DEPARTMENT FOR ADMINISTRATION
Division of Occupations and Professions
Board of Examiners and Registration of Architects
As Amended

201 KAR 19:035. Qualifications for examination.

RELATES TO: KRS 323.050, 323.060
PURSUANT TO: KRS 323.210
EFFECTIVE: November 3, 1982
NECESSITY AND FUNCTION: To further define eligibility of applicants for admission to the examinations.

Section 1. Eligibility to Take the State Board Examination. (1) Any person who possesses the qualifications prescribed in KRS 323.050, and as further defined in other sections of these regulations, shall be eligible to take the examinations.

(2) It should be understood, however, that the education and experience required are more than mere vehicles to admission. These requirements and the examination are two (2) distinct exercises on the road to registration. Each supplements and sustains the other, but neither can replace the other as a vital part of professional training.

Section 2. General Requirements for Examination. Applicants for examination must meet the following requirements: (1) Must be a graduate of an accredited school of architecture, or the equivalent thereof; as determined by board regulations, with such additional experience as the board may prescribe and approve.

(2) Be a legal resident of the Commonwealth of Kentucky unless specifically exempted by the board therefrom for a justifiable reason.

(3) Be at least twenty-five (25) years of age.

(4) Be of good moral character. One (1) or more of the following may be sufficient to prevent an applicant from being considered to be of "good moral character:"

(a) Conviction of a felony.

(b) Chronic alcoholism, persistent drug abuse, or any such acts of behavior which would, if he were licensed, jeopardize or impair his judgment to meet his professsional responsibility as an architect to the public welfare and safety.

(c) Submitting a misstatement or misrepresentation of facts in an application or in supplementary information.

(d) Violating any provision of KRS Chapter 323 or board rules and regulations either before or after admission to examination.

(e) Violating the registration law of any other state, territory, or country.

(5) The board will review and evaluate the candidate's record of education, employment, experience, personal character, professional affiliations, and civic activities.

(6) The applicant may, at the board's discretion, be asked to appear for a personal audience so that the board may have the opportunity to judge his general qualifications for the practice of architecture, his ethical precepts, his resourcefulness, initiative and purpose in seeking a career in architecture and his general talents therefor.

(7) The candidate must demonstrate to the board that his qualifications and preparation for examination are adequate.

Section 3. Experience Required and Equivalancies Allowed. (1) A graduate from an accredited school of architecture shall, in addition thereto, have at least three (3) years of architectural experience satisfactory to the board. In general, an applicant who does not hold a degree from an accredited school of architecture will be required to have two (2) additional years of satisfactory experience for each calendar year of deficiency in architectural education, or a total of twelve (12) years.

(2) To be eligible for examination an applicant must present authentic evidence, by means of college transcripts and letters from employers, architects and other that he has met all the requirements noted in other sections and that he has had well diversified and satisfactory training in the many areas of architectural practice.

(3) In order to give the applicant a better understanding of the time and nature of the required experience, including related types of work which may be applied thereto, the board has adopted the NCARB "Table of Equivalents for Education, Training and Experience" as a guide. A copy is included with each request for application forms, or may be obtained individually from the board office. The current edition shall apply.

(4) Training and experience acquired up *to one (1) month prior to the month of the examinations* [through April for non-graduates and through October for graduates] if supported by supplementary documentation may be counted as credit.

Section 4. The provisions of this regulation shall be effective January 1, 1983.

L. WAYNE TUNE, Executive Director
ADOPTED: September 14, 1982
RECEIVED BY LRC: September 15, 1982 at 3 p.m.

DEPARTMENT FOR ADMINISTRATION
Division of Occupations and Professions
Board of Examiners and Registration of Architects
As Amended

201 KAR 19:040. Types of examinations required.

RELATES TO: KRS 323.050, 323.215
PURSUANT TO: KRS 323.210
EFFECTIVE: November 3, 1982
NECESSITY AND FUNCTION: To state the eligibility of candidates for examinations as to education requirements and nature of examinations.

Section 1. *Examination Required. (1) The Architect Registration Examination (ARE) is required to be taken and passed by all applicants for license.*

(2) Applicants who have entered the examination process prior to January 1, 1983 may transition from previous examination models to the ARE and will be required to take and pass only those sections and/or subsections of the ARE that equate to previous examination sections failed. Applicants making transition to the ARE will retain credit for equivalent sections or parts passed from previous examinations. [Types of Examinations Required. (1) The qualifying test and the professional examination part A (design test) are required to be taken by all applicants not holding a professional degree from a program of architecture accredited by the National Architectural Accrediting Board (NAAB) and by all applicants holding a degree from an accredited program in architecture who have not been admitted to the December professional examination part B prior to January 1, 1980.]

[(a) Applicants not holding a degree must pass the qualifying test and the design test (professional examination part A) before admission to the December professional examination part B.]

[(b) Applicants holding a degree from an accredited program in architecture may take the qualifying test and the design test (professional examination part A) at any time offered after obtaining the degree, but may be admitted to the December professional examination when eligible before passing the qualifying test and the design test (professional examination part A).]

[(2) The December professional examination part B is required to be taken and passed by all applicants for license.]

[(a) Applicants holding a degree from an accredited program in architecture and subsequently admitted to the December professional examination part B prior to January 1, 1980 shall not be required to pass the qualifying test and the design test (professional examination part A) before being granted license.]

[(b) Candidates who have failed to pass the professional examination within the three (3) year period of eligibility shall be required to pass both the qualifying and the professional examinations before being granted registration.]

Section 2. Description of Examinations; *Grading. (1) The Architect Registration Examination (ARE) is prepared by the cooperative effort of all state boards through the auspices of the National Council of Architectural Registration Boards and is administered in all states. The examination, its sections and supporting documents are available only to the state registration boards and cannot be viewed, copied or studied by other persons.*

(a) The Architect Registration Examination (ARE) is designed to evaluate the applicant's competence so as to protect the public health, safety and welfare by demonstrating the applicant's ability to provide architectural services of pre-design, site design, building design, building systems and construction documents and services, as these relate to the social/cultural aspects of the built environment, natural and physical forces, the design process, methods and materials and other external constraints.

(b) The ARE is divided into several sections and subsections each testing for minimum competence in the several areas of architectural expertise. Content and format is as determined by the board through its participating membership in the National Council of Architectural Registration Boards. Details of the examination subject matter of the several sections and subsections along with a schedule of the time permitted for each and dates of administration will be given to each active applicant well in advance of the examination dates.

(2) The grading and determination of the pass/fail scores for each section and subsection of the ARE shall be as established by the board in cooperation with all state boards through its participating membership in the National Council of Architectural Registration Boards and with advisory reports of its examination consultants.

(a) Those sections and subsections of the ARE which have multiple choice selections of answers or other methods of written simulation are machine graded.

(b) The sections and subsections of the ARE which have graphic or drawing solutions to the test problems are evaluated and graded independently by professionally qualified and trained graders under controlled conditions organized and authorized by all state boards through the National Council of Architectural Registration Boards or its regional subdivisions.

(3) The applicant will receive credit as determined by the board for those sections or subsections of the ARE which he/she has passed and must only retake those sections or subsections which he/she has failed.

[(1) The qualifying test and the professional examination, parts A and B, are prepared annually by the cooperative effort of all state boards through the auspices of the National Council of Architectural Registration Boards and are identically administered in all states. The tests and supporting documents are available only to the state registration boards and cannot be viewed, copied or studied by other persons.]

[(2) The qualifying test is designed to determine if the applicant has the knowledge and skill normally acquired in an accredited school of architecture.]

[(a) The qualifying test is a multiple choice written examination and each of the four (4) sections are machine graded. The grading of each part shall be as determined by the board in cooperation with all state boards through the auspices of the National Council of Architectural Registration Boards and its examination consultants.]

[(b) A candidate who fails to pass all sections of the qualifying test will retain credit for those sections passed and will be required to repeat only those sections failed.]

[(3) (a) The professional examination part A is to test a candidate's ability to apply the principals, theories and determinants of architectural design and site planning in the development of a graphic solution to a specific architectural problem.]

[(b) The professional examination part A is evaluated and graded independently by professionally qualified and trained graders under controlled conditions organized and authorized by all the state boards through the National Council of Architectural Registration Boards or its regional subdivisions. Grades awarded are either pass or fail.]

[(4) The professional examination part B is designed to place a candidate in areas relating to actual architectural situations whereby his/her ability to exercise competent value judgments will be tested and evaluated.]

[(a) The examination is a multiple choice written examination and each of the four (4) parts is machine graded. The grading of each part shall be as determined by the board in cooperation with all state boards through the auspices of the National Council of Architectural Registration Boards and its examination consultants.]

[(b) Credit allowed for any of the parts passed shall be as determined by the board for each administration of the examination.]

Section 3. Notification. (1) Candidates will be notified well ahead of the date of the examination to which they have been admitted and must advise the board promptly if they will appear at that time.

(2) A statement from a candidate that he will appear must be accompanied by a check made out to the State Treasurer of Kentucky covering the actual cost to the board of the sets of questions required.

Section 4. The provisions of this regulation shall be effective January 1, 1983.

L. WAYNE TUNE, Executive Director
ADOPTED: September 14, 1982
RECEIVED BY LRC: September 15, 1982 at 3 p.m.

DEPARTMENT FOR ADMINISTRATION
Division of Occupations and Professions
Board of Examiners and Registration of Architects
As Amended

201 KAR 19:050. Re-examination; reconsideration.

RELATES TO: KRS 323.090, 323.210
PURSUANT TO: KRS 323.210
EFFECTIVE: November 3, 1982
NECESSITY AND FUNCTION: This regulation is necessary to define the period of eligibility for re-examination and reconsideration of applicants denied admission to examination.

Section 1. Three Year Period of Eligibility Defined. (1) If a candidate fails to pass all parts of the first examination to which he is admitted, then the three (3) year period during which he may retake the examinations failed, by payment for the examination questions at the time prescribed by the board, shall be from the last day of the month in which his first examination was given.

(2) If an applicant fails to attend the first examination to which he is admitted, then the three (3) year period during which he may take the entire examination or parts thereof, by payment for examination questions at the time prescribed by the board, shall be from the last day of the month in which the examination he failed to attend was given.

(3) Provided, however, that the board may, in its discretion, grant extensions of time if examinations are cancelled or changed during that period or if illness or other reasonable circumstances prevent the candidate from attending any regular examination.

(4) At the end of the three (3) year period of eligibility, the candidate must submit a new application, containing pertinent supplemental information, in order to continue taking the examinations, but a candidate [in the qualifying examination] may retain credit for those *sections or subsections* [parts] of the examination he has previously passed.

Section 2. Reconsideration of Applicants Who Were Denied Admission to Examination. (1) An applicant whose original application for admission to the examination was denied may request reconsideration by letter to the board with evidence that he has made up the deficiencies which caused the denial. No formal application or application fees will be required for such a request if made within a period of three (3) years from the date denied.

(2) After three (3) years a new application must be submitted containing relative information on training and experience subsequent to the original application.

Section 3. The provisions of this regulation shall be effective January 1, 1983.

L. WAYNE TUNE, Executive Director
ADOPTED: September 14, 1982
RECEIVED BY LRC: September 15, 1982 at 3 p.m.

DEPARTMENT FOR ADMINISTRATION
Division of Occupations and Professions
Board of Examiners and Registration of Architects
As Amended

201 KAR 19:085. Fees.

RELATES TO: KRS 323.080, 323.110
PURSUANT TO: KRS 323.210
EFFECTIVE: November 3, 1982
NECESSITY AND FUNCTION: To define the basis of fees and fee payments.

Section 1. Annual Renewal Fee. (1) The annual renewal fee shall be due and paid before the first day of July each year. Anyone failing to pay the annual fee on or before the 30th day of August, who has not voluntarily surrendered his registration by that date, shall be guilty of violation of the law and his license is automatically revoked.

(2) Licenses granted on July 1 and thereafter through December 31 shall be first renewed before the first day of July following. Licenses granted January 1 and thereafter through June 30 following shall be first renewed before the first day of July in the year following. This rule shall also apply to licenses restored or reinstated.

(3) During a period of active military duty an architect in the service may, upon written application to the board, be excused from paying the annual fee until such time as his military service is terminated and he wishes to resume practice. An identification card or renewal certificate will be issued upon notification of his return from duty and payment of the current annual renewal fee.

(4) An architect whose license has been revoked for failure to pay the annual renewal fee, who wishes to have his license reinstated, shall make a written request therefor, giving the reason why he neither surrendered his registration nor paid the fee within the time prescribed by law and thereafter bide by the Board's decisions and follow its instructions in applying for reinstatement.

Section 2. Examination Applications. *(1) An application for admission to the Architect Registration Examination (ARE) must be accompanied by a total fee of fifty dollars ($50). Upon successful completion of the examination, the applicant shall pay a fee of twenty-five dollars ($25) to obtain the license certificate.*

(2) (a) Applicants who either fail to pass the entire examination, or who were not admitted to the examination, within the prescribed three (3) year eligibility period must submit another application, updated to the time of submission with supplemental information. These applicants will be required to pay an additional fifty dollar ($50) examination fee.

(b) Applicants receiving credit from the previous full examination sequence will not be required to pay additional examination fees during their three (3) year period of eligibility.

(3) Applicants who have applied for the previous partial examination (Qualifying Test and/or Design Test with payment of twenty dollars ($20) fee) may convert to the ARE by payment of the additional fee of thirty dollars ($30) as balance of fee for administration of the examination.

[(1) An application for the administration of the qualifying test and/or professional examination part A (design test) to graduates of accredited programs in architecture shall be accompanied by a twenty dollar ($20) fee. An application for admission to the professional examination part B must be accompanied by a total fee of fifty-five dollars ($55). (Thirty dollars ($30) for administration of the examination and twenty-five dollars ($25) for license certificate.) An application for admission to the qualifying test, professional examinations A and B sequence must be accompanied by a total fee of seventy-five dollars ($75). (Fifty dollars ($50) for administration of the examinations and twenty-five dollars ($25) for license certificate.)]

[(2) Applicants who fail to pass the examination, or who were not admitted to the examination, within the prescribed three (3) year eligibility period, must submit another application, updated to the time of submission, with supplemental information. Applicants will be required to pay only the examination fee, however, and not another fee for license cerificate.]

Section 3. Fee Schedule. (1) Application for admission to, and administration of the *Architect Registration Examination* *$50*
[qualifying test and/or professional examination part A (graduates) ..... $20]

(2) *Re-application for admission to and administration of the Architect Registration Examination after original application has expired* *$50*
[Application for admission to, and administration of, the professional examination part B ..... $30]

(3) Application for admission to, and administration of *the Architect Registration Examination by converting from previous partial examinations (Qualifying Test and/or Design Test)* *$30*
[the qualifying test and the professional examination parts A and B sequence for non-graduates ..... $50]

(4) Application for a license certificate $25

(5) Application for a license by reciprocity $75

(6) Application for restoration of a voluntarily surrendered license $50

(7) Application for reinstatement of license revoked for failure to pay renewal fee: renewal fees from date of revocation plus application as directed plus $50

(8) Annual renewal fee: determined each year by board. Not to exceed $35

(9) No fee shall be refunded in whole or in part. All payments must be by check made payable to "State Treasurer of Kentucky." All must be certified except those for the annual renewal fee, [administration of qualifying test and/or professional examination part A (graduates),] and examination questions.

Section 4. Charges for Examination Questions. Candidates will be charged, at actual cost to the board, for the use of each set of examination questions required. Payment must be made when the board is notified by the candidate that he intends to appear. Such charges will be made each time the examinations are taken and will not be refunded.

Section 5. The provisions of this regulation shall be effective January 1, 1983.

L. WAYNE TUNE, Executive Director
ADOPTED: September 14, 1982
RECEIVED BY LRC: September 15, 1982 at 3 p.m.

TRANSPORTATION CABINET
Department of Financial and Legal Affairs
As Amended

603 KAR 4:035. Advertising devices; placement along limited access roadways of four (4) or more lanes.

RELATES TO: KRS 177.830 to 177.890
PURSUANT TO: KRS 13.082, 177.860, 177.865
EFFECTIVE: November 3, 1982
NECESSITY AND FUNCTION: KRS 177.860 authorized the Commissioner of Highways to prescribe by regulations reasonable standards for the placement of advertising devices along specified roadways. This regulation sets forth the criteria to be followed in the erection and maintenance of specific motorist signing designed to inform motorists where travel related services are available.

Section 1. Definitions. The following terms when used in the regulation shall have the following meaning:

(1) "Specific information panel" means an official sign placed within the highway right-of-way with the words "GAS," "FOOD," "LODGING," or "CAMPING," or combinations thereof, and space for one (1) or more individual business signs which may be attached to the panel.

(2) "Business sign" means a separately attached sign mounted on the specific information panel to show the brand name or trademark of qualified motorist services available on the crossroad near the interchange.

(3) "Business location" means a place of business where more than one (1) motorist service is available.

(4) "Logo" means a distinctive symbol or sign used by a motorist service business as a means of identification of its products or business.

(5) "Single exit interchange" means a grade separated crossing of roadways having one (1) mainline off-ramp to provide access to the crossroad.

(6) "Double exit interchange" means a grade separated crossing of roadways having two (2) mainline off-ramps to provide access to the crossroad.

(7) "Intersection" means a junction of two (2) roads at the same grade level.

(8) "Motorist service" means a place of business or a business location providing gas, food, lodging, or camping facilities or a combination thereof.

(9) "Primary motorist service" means a business location which gives precedence to one (1) motorist service over any other motorist service available at that business location.

(10) "Secondary or incidental motorist service" means one (1) or more motorist service available at a business location which are subordinate to the primary motorist service.

Section 2. General Provisions. The Commissioner, Department of Highways, shall authorize the placement of specific motorist service information panels with business signs within the right-of-way of limited access highways of four (4) or more travel lanes in conformance with the Federal Highway Administration's (FHWA's) adopted standards as contained in FHPM 6-8-3-8. The Department of Highways shall control the erection and maintenance of said panels and signs in accordance with the Manual on Uniform Traffic Control Devices (MUTCD) and the following criteria:

(1) A specific information panel bearing separately attached business signs shall be erected between the previous interchange and 800 feet in advance of the exit direction sign at the interchange where motorist services are available. Spacing between each specific information panel shall also be a minimum of 800 feet and shall not conflict or interfere with other highway guide signs.

(2) Business signs separately attached on a specific information panel shall show the logo, name, brand, and/or trademark of motorist services conveniently accessible from the interchange. All business signs shall be furnished to the Department of Highways by the business at no cost to the Department and shall be manufactured to the standard specifications of the Department.

(3) No specific information panels may be erected at an interchange or intersection which intersects another limited access facility nor at any interchange or intersection which does not have a convenient re-entry in the desired direction of travel. No more than one (1) specific information panel for "GAS," "FOOD," "LODGING," or "CAMPING" shall be erected in each direction for an interchange or intersection. In the direction of travel, the successive panels shall be for "CAMPING," "LODGING," "FOOD," and "GAS," in that order.

(4) Specific information panels may be permitted inside urban areas where interchange spacing is a minimum of two (2) miles and where the roadside development or terrain is such that motorist services are not readily identifiable from the traveled way for a reasonable distance in advance of an exit.

(5) For single exit interchanges, a standard full-size panel shall accommodate a maximum of six (6) business signs for "GAS" and four (4) business signs for "FOOD," "LODGING," and "CAMPING." In instances when the number of businesses does not warrant a full-size panel, a half-size panel may be used. Where service facilities are not visible from a ramp terminal, supplemental "GAS," "FOOD," "LODGING," or "CAMPING" logos shall be placed along the ramp or at the ramp terminal with a directional arrow and mileage to the service.

(6) For double exit interchanges, the specific information panel shall consist of two (2) sections, one (1) for each exit, mounted on the same base. The top section shall display business signs for the first exit and the lower section shall display business signs for the second exit. This panel shall accommodate a maximum of three (3) business signs for "GAS" and two (2) business signs for "FOOD," "LODGING," and "CAMPING" per exit. Where a type of motorist service is to be signed for only one (1) exit, one (1) section of the specific information sign may be omitted or a single exit interchange sign may be used.

(7) Criteria for installation of specific information panels with intersections at grade is significantly different. Provisions of distance from the crossroad, size of information panels and business signs, number of business signs per panel, distance between panels, and selection of businesses for qualification for business signs shall conform to standards and specifications as described in FHPM 6-8-3-8 and the state MUTCD.

(8) If a business ceases to exist or is not in operation for any reason, in accordance with the standards under which a business sign was placed on a specific information panel, the business sign shall be covered or removed as circumstances of each closing or cessation of business dictate.

(9) Any business which operates on a seasonal basis shall make provisions for removing or covering business signs during the off season. Businesses of this type shall notify the Department of Highways in writing thirty (30) days before such opening and closing occurs.

(10) Only one (1) business sign pertaining to a business location shall be permitted in each direction of travel in advance of an interchange or intersection; except that in the absence of adequate motorist service business signs to fill a specific information panel with primary service signs, secondary or incidental motorist service business signs may be allowed on those unfilled panels.

(11) At a business location where more than one (1) motorist service is available, only the primary motorist service shall be considered for the purpose of permitting business signs on a specific information panel; except that if a space is not available for the primary motorist service, a secondary or incidental motorist service may be considered if space is available on a specific information panel for that type service sign.

(12) Secondary or incidental motorist services shall not be considered until all businesses with a primary motorist service have been allowed an opportunity to have their business signs placed on the specific information panel pertaining to that type motorist service.

(13) In selecting secondary or incidental services, the same criteria as required for primary motorist services shall be used to determine their qualification for a business sign.

(14) Only those businesses within a three (3) mile limit in *any* [each] direction from [the point of distance measurement of] a four (4) lane limited access road shall be eligible to place signs on information panels except that, *if within that three (3) mile limit services of the type being considered are not available,* the Commissioner of Highways may extend the [three (3) mile] limit *in three (3) mile increments until services of the type being considered, or fifteen (15) miles are reached.* [for any motorist service if he determines that such extension is necessary and desirable in order to provide necessary motorist service information to the traveling public.]

(15) In the absence of exit number guide signs, the words

"Next Right/Left" shall be used.

(16) A business with one (1) or more signs in violation of KRS 177.830 thru 177.890 on any route controlled by this statute and regulations pertaining thereto, shall not be eligible to qualify for a business sign until all violations have been removed.

(17) Descriptive advertising phrases or slogans shall not be allowed on a business sign; i.e., "Biggest Little . . . ," "We're No. 1," "Trying Harder," etc.

(18) Directional business signs may be erected on crossroads if the motorist service is at a distance or in a location which requires extended direction.

Section 3. Requirements for Obtaining Business Signs. A motorist service business located at, or conveniently accessible from, an interchange or intersection shall be eligible for placement of a business sign on a specific information panel if it qualifies under the following conditions:

(1) Each business shall offer written assurance that it conforms with all applicable laws concerning the provision of public accommodations with regard to race, religion, color, sex, age, handicap, or national origin.

(2) To qualify for a "GAS" business sign, a business must be in operation seven (7) days a week, sixteen (16) hours a day, and, as a minimum, have fuel, oil, restroom facilities, and telephone available.

(3) To qualify for a "FOOD" business sign, a business must be licensed or approved by the appropriate state and/or local regulatory agency, and, as a minimum, be in operation seven (7) days a week, sixteen (16) hours a day to serve three (3) meals a day beginning no later than 7:00 a.m., and have a reasonable seating capacity for sit-down, eat-in service.

(4) To qualify for a "LODGING" business sign, a facility must be licensed or approved by the appropriate state and/or local regulatory agency, have adequate sleeping accommodations, and have a public telephone.

(5) To qualify for a "CAMPING" business sign, a facility must be licensed or approved by the appropriate state and/or local regulatory agency, have adequate parking accommodations, modern sanitary facilities, and drinking water.

(6) Qualifying businesses nearest to the interchange or intersection shall receive preference in the selection process. If a new qualifying business comes into existence nearer the interchange or intersection than one which already has a business sign displayed on a fully utilized panel, the new business may have its business sign displayed and the business farthest from the interchange will have its business sign removed at the end of the contract year.

(7) The qualifying business shall pay to the Department an annual fee of $600, in advance, for each mainline business sign for gas, food, and lodging and $300 for camping. The annual fee for the first year must accompany the initial application. The yearly renewal fee shall be due thirty (30) days prior to the annual renewal date. The payment of this fee guarantees that the business sign will be displayed for one (1) contract year as long as the business violates no part of their agreement with the Department of Highways.

(8) If a business sign must be removed for any reason, a fee of $100 shall be charged for the reinstallation of a sign for the same business.

(9) Business sign logos shall be delivered to the appropriate Highway General Manager within sixty (60) days of notification of approval by the Division of Roadside Regulation Director. Failure to deliver the business sign within this specified time period may result in the forfeiture of the fee, and another business or businesses may be given the opportunity to qualify for the vacated space.

(10) The qualifying business shall be responsible for damages to business signs caused by acts of vandalism or natural causes requiring repair or replacement of business signs. No business sign shall be displayed which will misinform the traveling public or which is unsightly, badly faded, or in a state of delapidation. In such instances the business shall provide a new or renovated business sign.

Section 4. Measurements. (1) Measurements in the selection of qualified businesses for business signs shall be from the juncture of the center line, measured between the outer edges of the main traveled way of a four (4) lane limited access road and the center line of a non-limited access crossroad.

(2) Selection of businesses for display of business signs shall begin at the point of measurement described in subsection (1) of this section to the nearest point of vehicle travel to the exit from the crossroad to the particular motorist service.

Section 5. Application forms, criteria for selection of businesses with motorist services, standards of quality of business logos and any other information relative to the activities and functions necessary and authorized by KRS 177.860, 177.865 and this regulation, to implement and administer such law and regulations may be obtained by writing the Division of Roadside Regulation, Room 224, State Office Building Annex, Frankfort, Kentucky 40622.

Section 6. Revocation of Business Sign Contract. Failure to comply with any of the regulations set forth herein shall be cause for the revocation of a business sign contract. In such instances the Department of Highways shall notify the business in writing of the violation(s). If the business fails to comply within fifteen (15) days after receiving such notification, the Department of Highways shall take immediate action to remove, replace, or cover any such business signs.

Section 7. Appeal of Revocation Action. Any business or person aggrieved by the action taken by the Department of Highways in administering these rules and regulations may request a formal hearing before the Commissioner of the Department of Highways. The request for the formal hearing shall be filed in writing and shall set forth the nature of the complaint and the grounds for the appeal.

FRANK R. METTS, Secretary

ADOPTED: September 14, 1982

RECEIVED BY LRC: September 15, 1982 at 11:30 a.m.

EDUCATION AND HUMANITIES CABINET
Department of Education
Bureau of Administration and Finance
As Amended

702 KAR 1:025. Extended employment.

RELATES TO: KRS 157.390
PURSUANT TO: KRS 13.082, 156.070
EFFECTIVE: November 9, 1982
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 *reporting* [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, *including, but not limited to, Director of School Food Service and Director of Special Education.*

(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.

Properly certified full-time or part-time personnel performing eligible extended employment duties of the above-listed positions on a part-time basis shall be eligible for extended employment on a pro rata basis.

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 (3), (4), (5) and (6) may be transferred among those subsections.

[*Each school district with an existing approved vocational agriculture program shall maintain the equivalent of at least one (1) full-time teacher of agriculture for fifty-five (55) days for supervision of students for work experience and other related functions.*]

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: September 14, 1982
RECEIVED BY LRC: September 15, 1982 at 4 p.m.

CABINET FOR HUMAN RESOURCES
Department for Health Services
As Amended

902 KAR 12:020. Patient's rights.

RELATES TO: KRS Chapters 202A, 202B
PURSUANT TO: KRS 13.082, 194.050, *202A.191, 202A.196,* [202A.180], 202B.060
EFFECTIVE: November 3, 1982
NECESSITY AND FUNCTION: KRS Chapters 202A and 202B, relating to the hospitalization of mentally ill and mentally retarded persons, direct that the Secretary for the *Cabinet* [Department] for Human Resources shall adopt rules and regulations which insure proper admnistration and enforcement of these chapters. The function of this regulation is to *describe* [prescribe] the rights of mentally ill and mentally retarded patients and to establish rules for the use of seclusion, [and] restraint, *and treatment under emergency situations,* in the treatment of such patients.

Section 1. Title. This regulation may be cited as the "Kentucky Mental Patients' Bill of Rights."

Section 2. Right to be Adequately Informed. (1) Each patient shall be adequately informed as to his individual treatment plan.

(a) A written individual treatment plan shall be prepared and entered into the medical record of each patient. Such treatment plan shall be subject to periodic review and shall be modified in the event of substantive changes;

(b) Each patient *and his or her authorized representative* shall have access to a written copy of his individual treatment plan;

(c) Upon written request, each patient *and his or her authorized representative* shall also be provided access to his entire medical record. In the event that full access to the medical record is refused, the patient shall be given a response in writing documenting the reasons for such refusal;

(d) In the case of minors or other persons who appear incapable of reading or understanding a written treatment plan, a summary of pertinent features of the treatment plan may be presented orally, and the responses of parents, guardians or other members of the immediate family shall be entered into the medical record if such persons can be located.

(2) For purposes of this regulation, the following definitions shall apply:

(a) "Individual treatment plan" means a written document which is a part of each patient's medical record and which must contain, but is not limited to:

1. A statement of the diagnosis of the patient;
2. The short and long-range objectives of care and treatment;
3. The methods of treatment to be employed;
4. The names of persons responsible for preparing and implementing the plan.

(b) "Substantive changes" means those changes which reflect distinct changes in goals of treatment, methods to be employed and the names of persons primarily responsible for overall review or implementation of the individual treatment plan:

1. Changes in the amount, frequency of administration, or specific type of medication shall not be considered substantive changes unless such changes involve introduction of new classes of medication including anti-psychotic or anti-convulsant drugs;
2. Changes in the frequency, duration, place or supervision of daily activities shall not be considered substantive changes unless such changes exclude participation in the activities previously identified in the treatment plan or initiation of new activities which could not be reasonably anticipated on the basis of short and long-term treatment goals.

(c) "Emergency situation" means the presence of a situation in which a patient's behavior in his present environment is such that it presents an immediate and substantial danger or threat of immediate or substantial danger to that person or to others.

1. Behavior included in this definition extends to verbal threats or abuse toward other patients which creates a substantial risk that such other patients may react in a manner which poses an immediate substantial danger or threat of immediate substantial danger to themselves or others, or which will interfere in a substantial manner with the realistic opportunity of other patients to improve their own level of functioning through care and treatments in a hospital or residential treatment center;
2. Substantial deviation from an individual treatment plan which is formulated with the mutual consent of the staff and the patient or which is approved pursuant to a court hearing, or the overt or repetitious violation of rules and procedures of the hospital or residential treatment center by the patient may also be considered as an emergency situation, provided the patient has previously been fully informed as to the content of his individual treatment plan and as to the rules and procedures which may be applicable to his behavior.

(d) "Restraint" means the application of any physical device, the application of physical body pressure by another person in such a way as to control or limit physical

activity, or the introvenous, intramuscular, or subcutaneous administration of any pharmacologic or chemical agent to a mentally ill patient *or mentally retarded resident* with the sole or primary purpose of controlling or limiting the physical activities of the patient *or resident.*

(e) "Seclusion" means the confinement of a mentally ill or mentally retarded patient alone in a locked room.

(f) "Authorized representative" means the patient's attorney, guardian of a disabled adult, parent or guardian of a juvenile, or an individual authorized in writing by the patient to act in the patient's behalf.

Section 3. Right to Assist in Treatment Plan. Each patient shall have the right to assist in the planning of his treatment program.

(1) Each patient shall be informed of the contents of his individual treatment plan and his verbal, written or behavorial responses to this information shall be entered in the medical records. Whenever possible, the responses of a patient to his treatment plan shall be used to review and modify its contents including, but not limited to, the objectives and methods of treatment to be employed;

(2) In the cases of minors and other patients who appear incapable of reading or understanding their treatment plans, the responses of parents, guardians, or other members of the immediate family shall be entered into the medical records if such persons can be located.

Section 4. Right to Refuse Treatment. (1) Patients may, under certain conditions, refuse treatment offered to them by the hospital. Such refusal shall be clearly documented in the medical records.

(a) In the case of voluntary patients and patients who are minors admitted with the consent of their parents or guardian, treatment plans may be implemented or continued until such time as the patient or his parents or guardian request the discharge of the patient *or requests the review of the treatment plan*;

(b) In the case of mentally ill or mentally retarded patients involuntarily admitted without a court order [under KRS 202A.030, 202A.040], or pursuant to a hearing [under KRS 202A.050], treatment in accordance with the initial or revised treatment plan may be implemented or continued until such time as a formal application for further hospitalization is submitted and a hearing held on the matter.

[1.]In the event that a hearing for further hospitalization is requested, the attorney for the respondent and the judge shall be informed prior to the time of the hearing of the current individual treatment plan and recent use of medication which might affect the ability of the respondent to communicate with his attorney or the judge;

[2. In order to obtain a court order implementing the treatment plan most likely to benefit the patient, a formal application for further hospitalization made at the time of the hearing shall contain sufficient reference to those areas of refusal and shall further document reasons why the refusal should be waived.]

[(c)If an involuntary patient is transferred to voluntary status, his current treatment plan may be continued without his written consent until he refuses treatment or his parents or guardian request his discharge.]

(c) [(d) In all other instances where] *If* no court findings exist to support the implementation of a specific treatment plan which is unacceptable to the patient, such treatment may be implemented or continued only in the event of an emergency situation documented in the medical records of the patient.

[(2)Each patient shall have the right, under certain circumstances, to seek relief from participating in any separate and individual treatment activity provided for in his treatment plan.]

(2) [(a) Such] Refusal *to participate in the treatment plan* shall be clearly documented in the medical record and shall be honored unless an emergency situation exists or the activity has been reviewed and approved in a court hearing.

(3) [(b)] In the absence of an emergency situation, the patient shall not be subjected to loss of any other privileges which he has at the time of his refusal unless such privileges are clearly documented in the individual treatment plan as being contingent upon his participation in that area where participation has been refused.

(4) If the emergency situation persists for a period of more than seventy-two (72) hours, the treatment team shall evaluate the treatment plan and make changes necessary to meet the needs of the patient. If the patient refuses the revised treatment program, emergency treatment may continue as long as the emergency continues to be documented in the patient's record and the Treatment Review Committee shall be informed and the committee shall proceed according to law.

Section 5. Right to Personal Effects. (1) Each patient shall have the right to maintain, keep, and use personal effects, items or money except in the following instances:

(a) Retention of the item would be contrary to the patient's individual treatment plan;

(b) Retention of the item poses a threat of subjecting the patient or others to substantial physical harm;

(c) Retention of the item would subject it to a substantial risk of loss, theft or destruction by the patient or other persons;

(d) Retention of the item would substantially impair the opportunity of the patient or other patients to benefit from care and treatment in the hospital; or

(e) Retention of the item is contrary to rules and regulations of the hospital which are reasonably related to the health and safety of the patient or other patients, except that such rules and regulations shall be waived when possession of such item is a part of the patient's individual written treatment plan.

(2) After written notice to a discharged patient, hospitals and residential treatment centers may dispose of all unclaimed personal items 180 days after discharge. Any proceeds from the sale of such items shall be used for the benefit of persons residing at the hospital or residential treatment center.

Section 6. Right to Receive Visitors. (1) All patients shall have the right to meet with friends and relatives. This right shall not be waived except in the following instances:

(a) Exercise of the right would be inconsistent with the written provisions of the individual treatment plan, or

(b) An emergency situation exists.

(2) Each hospital or residential treatment center shall establish and post conspicuously rules governing visitors and visiting hours.

(3) All patients shall also have the right to refuse to meet with friends or relatives except that such right may be waived if such meetings are prescribed in the patient's individual treatment plan.

(4) Patients shall have the right to meet their authorized representative during non-visitation hours, if suitable arrangements are made in advance with the hospital or residential treatment centers.

Section 7. Right to Receive Compensation for Work Done. Each patient shall have the right to receive payment for work performed on behalf of the hospital.

(1) All patients shall be provided compensation as designated by appropriate federal and state statutes and regulations for work performed at a hospital or residential treatment center where such work is of consequential economic benefit to the hospital or residential treatment center, any person, agency, or organization outside the hospital or the Commonwealth of Kentucky.

(2) The patient shall have the absolute right to refuse to perform any and all work except activities of immediate and direct benefit to the patient and his personal comfort.

Section 8. Right to Refuse Intrusive Treatment. All patients shall have the right to refuse intrusive treatments including electroshock therapy or psychosurgery, subject to the following limitation[s]:

[(1)] Any patients committed on an involuntary basis or who are minors, *or who have been declared disabled pursuant to KRS Chapter 387,* may *only* be provided electroshock therapy or psychosurgery pursuant to a court order with a determination that such treatment is in the best interest of the patient as providing him the optimal opportunity to reasonably benefit from care and treatment in the hospital or residential treatment center. [;]

[(2)Notwithstanding the provisions of subsection (1) of this section, in instances in which a serious suicidal danger is present which cannot be controlled or relieved by other forms of treatment, electroshock treatments may be provided prior to a court hearing. In such cases, outside consultation from at least two (2) physicians not otherwise regularly employed on a full-time basis by the hospital or residential treatment center must be secured and a finding made that no other available form of treatment other than seclusion, removal of all personal possessions, or placement in a maximum security facility are likely to relieve the threat of suicide.]

[Section 9. Rights of Minor Patients. Patients who are minors and who are voluntarily admitted to the hospital or residential treatment center on the consent of their parents or guardians have additional personal rights independent of the wishes, desires, or demands of their parents or guardian.]

[(1) Patients who are minors shall have the right to seek relief from actions for or against hospitalization and discharge approved by their parents or guardian;]

[(2) In the absence of an appropriate court order requiring hospitalization or placement in a residential treatment center, minors shall be provided an adequate opportunity to seek independent counsel and to request a hearing regarding further hospitalization. This requirement may be satisfied by means of any of the following procedures:]

[(a) The hospital or residential treatment center shall obtain the written or verbal consent of the minor to the individual treatment plan including admission to the hospital or residential treatment center.]

[1. Such consent shall be obtained in the presence of an adult witness who is not employed by the hospital or residential treatment center to which the minor was admitted;]

[2. If the minor subsequently withdraws his consent, further hospitalization or retention in a residential treatment facility shall be in accordance with procedures applicable to an adult voluntarily admitted.]

[(b) The hospital or residential treatment center shall provide each minor the opportunity for a court hearing and final decision within twenty-one (21) days after admission; or]

[(c)The hospital or residential treatment center shall appoint a patient's rights review officer in the facility who actively represents the interest of the minor by insuring him of an opportunity to seek legal counsel, to receive independent psychiatric and psychological consultation, to communicate with the secretary, and to fully afford minor patients due process available to patients who are involuntarily committed. To assist in setting standards regarding the needs for hospitalization and the appropriateness of individual treatment plans, the patient's rights review officer may establish a patient's rights advisory committee.]

Section *9.* [10.] Use of Seclusion and Restraint. The use of seclusion and other mechanical restraints in hospitals or residental treatment facilities shall be limited and shall be carried out only with appropriate precautions.

(1) Seclusion and other mechanical restraints used for the sole or principal purpose of controlling behavior which is the result of mental illness shall be instituted only when part of an individual treatment plan or in the event of an emergency situation.

(2) If use of seclusion or restraints is warranted under this section, the following rules shall apply:

(a) The medical records shall document the conditions which prevail at the time of the use of such treatments and shall include the order of a licensed physician prescribing or justifying such treatment;

[(b)Seclusion or restraint based upon an emergency situation must be reviewed, confirmed, and documented by a physician responsible for the care of the patient at least every seventy-two (72) hours;]

(b) [(c)] Mentally ill persons placed in seclusion or subjected to the use of mechanical restraints other than to prevent or treat self-inflicted injury or to treat a concomitant medical or surgical disorder shall be individually observed and the need for continuing restraints or seclusion determined by a hospital or residential treatment facility employee at least every fifteen (15) minutes. In addition, the patient shall be seen daily by a physician and the reasons for continued use of this treatment procedure shall be documented in the medical records;

(c) [(d)] The patients shall be permitted access to toilet facilities at least every two (2) hours and to bathing facilities every forty-eight (48) hours;

(3) No order by a licensed physician for seclusion or use of mechanical restraints shall be effective longer than twenty-four (24) hours after such treatment is implemented, and must be renewed if such treatment continues to be necessary, except where such treatment is prescribed to prevent or treat self-inflicted injury or a concomitant medical or surgical disorder*; provided that any renewal order shall state the necessity for such continued treatment.*

(4) In no circumstances shall restraints or seclusion be used principally or solely for the treatment of mental illness except as part of the documented individual treatment plan or in response to a documented emergency unless such treatment has received a review and approval by the court.

DAVID T. ALLEN, M.D., Commissioner
ADOPTED: September 15, 1982
APPROVED: BUDDY ADAMS, Secretary
RECEIVED BY LRC: September 15, 1982 at 4 p.m.

CABINET FOR HUMAN RESOURCES
Department for Health Services
As Amended

902 KAR 12:040. Convalescent patient status.

RELATES TO: KRS *202A.181* [202A.130]
PURSUANT TO: KRS 13.082, 194.050, *202A.191* [202A.180], 202B.060
EFFECTIVE: November 3, 1982
NECESSITY AND FUNCTION: KRS Chapters 202A and 202B, relating to the hospitalization of mentally ill or mentally retarded persons, direct that the Secretary for the *Cabinet* [Department] for Human Resources shall adopt rules and regulations relating to the release of patients to less restrictive alternative modes of treatment on convalescent status. The function of this regulation is to establish standards to be employed in determining whether a person should be released on [or committed directly to] convalescent status.

Section 1. Release on Convalescent Status. An authorized staff physician may release from a hospital an involuntarily committed mentally ill person on convalescent status, or an authorized staff person may release from a residential treatment center an involuntarily committed mentally retarded person on convalescent status, if the staff member concludes that such person would not present [an immediate] danger or [immediate] threat of danger to self or others if provided continued medical supervision in a less confining environment. While on convalescent status the patient shall remain the responsibility of the hospital or residential treatment center from which he was released.

[Section 2. Direct Committment to Convalescent Status. A person may be committed by a court directly to a designated treatment center on convalescent status as an alternate mode of treatment by the use of the procedures contained in the seven (7), sixty (60) or 360-day involuntary committments upon a finding by the court that although such person meets all the other criteria for such involuntary hospitalization, admission to a hospital or residential treatment center would constitute an excessively restrictive mode of treatment. The convalescent status commitment shall only be used when a written opinion by a court-appointed physician indicates that there are alternate care and treatment facilities available and adequate financial resources to provide treatment which is likely to benefit the patient.]

Section *2.* [3.] Rights of Patients on Convalescent Status. Patients on convalescent status shall enjoy all the rights and privileges afforded to an involuntarily committed patient except that patients on convalescent status who have been directly committed to convalescent status under Section 2 may be involuntarily admitted to a hospital or residential treatment center only upon a further court hearing and order [or consistent with the procedures specified in KRS 202A.040].

Section 4. Termination of Convalescent Status. The convalescent status of a patient shall terminate upon the cessation of care and treatment or when the court order governing the patient's hospital admission or placement in convalescent status expires or is terminated.

Section 5. Definition. For purposes of this regulation, the term "less confining environment" shall include, but not be limited to, a personal residence, a skilled nursing facility, an intermediate care or personal care facility or any other facility providing a supervised residential living situation.

DAVID T. ALLEN, M.D., Commissioner
ADOPTED: September 15, 1982
APPROVED: BUDDY ADAMS, Secretary
RECEIVED BY LRC: September 15, 1982 at 4 p.m.

CABINET FOR HUMAN RESOURCES
Department for Health Services
As Amended

902 KAR 12:050. Transfer of patients to other facilities.

RELATES TO: KRS Chapters 202A, 202B
PURSUANT TO: KRS 13.082, 194.050, *202A.191* [202A.180], 202B.060
EFFECTIVE: November 3, 1982
NECESSITY AND FUNCTION: KRS Chapters 202A and 202B, relating to the hospitalization of mentally ill and mentally retarded persons, direct that the Secretary for the *Cabinet* [Department] for Human Resources shall adopt rules and regulations relating to the transfer of mental patients. The function of this regulation is to prescribe the standards to be used in determining whether a patient should be transferred to another hospital, forensic pyschiatric facility or residential treatment center.

Section 1. Transfer of Patients. A patient may be transferred between hospitals, between hospitals and forensic psychiatric facilities, between hospitals and residential treatment centers or between residential treatment centers upon the mutual agreement of the administrative officer, his designated representative or an authorized staff physician of each facility, provided such agreement is based upon one (1) of the following findings by the officers, representatives or physicians:

(1) That the transfer will improve the opportunities of the patient to receive care and treatment most likely to be of benefit to him; or

(2) That the transfer will permit the patient to receive care and treatment in the least *restrictive alternative mode of treatment* [confining environment], considering the degree of [immediate] danger or [immediate] threat of danger to self or others which the patient presents; or

(3) That the transfer is part of an individual treatment plan which has been reviewed and approved by a court.

DAVID T. ALLEN, M.D., Commissioner
ADOPTED: September 15, 1982
APPROVED: BUDDY ADAMS, Secretary
RECEIVED BY LRC: September 15, 1982 at 4 p.m.

Amended After Hearing

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

KENTUCKY HIGHER EDUCATION
STUDENT LOAN CORPORATION
Amended After Hearing

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 *loans* [Guaranteed 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 *loans* [Guaranteed Student Loans and Loans to Parents]. The *Corporation is required to* [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 *under applicable programs,* 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 *programs* [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. *Exceptions may be made by the Director of Loan Programs upon showing of cause.*

[(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.]

(5) [(9)] No Kentucky Higher Education Student Loan Corporation Direct Loans *shall* [will] be made which *would be ineligible for purchase by the Corporation pursuant to 15 KAR 1:020, except that if such loan is eligible for purchase pursuant to 15 KAR 1:020 from any lender, a direct loan may be made which is endorsed by a surety acceptable to the Corporation and disbursed in multiple disbursements in accordance with this regulation and the regulations, policies, and procedures of the Kentucky Higher Education Assistance Authority and/or the federal government pertaining to such loans* [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 *guaranteed student loan* [GSL] from a private Kentucky lending institution [as evidenced in writing, signed by a loan program officer at a participating lending institution]. *The Corporation reserves the right to refer applicants to other lending institutions prior to considering the application for a direct loan.*

(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 programs; or, if a graduate student, *the borrower must* 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 *institutional* [school] official to the Kentucky Higher Education Student Loan Corporation. *In lieu thereof, the unavailability of such funds shall be certified by an authorized institutional official.*

[(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.

(4) Borrower's total monthly payment obligation, excluding educational loans, may not exceed fifty (50) per-

cent of his/her net monthly income, or, in lieu thereof, must obtain a qualified endorser.

(5) Borrower's total debts, excluding mortgage and educational loans, may not exceed five (5) times his/her monthly gross income, or, in lieu thereof, must obtain a qualified endorser.

(6) Borrower's total unsecured debts, excluding educational loans, may not exceed three (3) times his/her monthly income, 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: October 21, 1982
RECEIVED BY LRC: November 1, 1982 at 9:30 a.m.

KENTUCKY HIGHER EDUCATION STUDENT LOAN CORPORATION
Amended After Hearing

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 *Kentucky Higher Education Student Loan* Corporation *(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. *Purchase Conditions.* The [Kentucky Higher Education Student Loan] Corporation will *purchase* [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 originally disbursed principal amount of loans made by a single participating lender to borrowers for attendance at a single educational institution, and owned by the 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) [(1)] Ten (10) percent of the originally disbursed principal amount of all loans made by a *single* 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.

(3) [(2)] Ten (10) percent of the original disbursed principal amount of all loans, *purchased or made* [owned] by *the* [Kentucky Higher Education Student Loan] Corporation, *to borrowers* [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.

(4) Ten (10) percent of the originally disbursed principal amount of all loans purchased, or made, by the Corporation to borrowers 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 fifteen (15) percent.

Section 2. *Suspension of Purchases.* When *a* [the] condition *enumerated in* [of] Section 1[(1)] occurs, the *Corporation will suspend making purchase commitments as follows* [following action will taken]:

(1) *When a condition of Section 1(1) occurs, the* [Kentucky Higher Education Student Loan] Corporation will immediately *suspend* [cease] making purchase commitments to that lender *for loans to borrowers for attendance at that educational institution.*

(2) *When a condition of Section 1(2) occurs, the Corporation will immediately suspend making purchase commitments to that lender.* [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) *When a condition of Section 1(3) occurs, the Corporation will immediately suspend making purchase commitments to any lender for loans to borrowers for attendance at that educational institution, unless the loans are endorsed by a surety acceptable to the Corporation and disbursed in multiple disbursements in accordance with regulations, policies or procedures established by the Corporation, Kentucky Higher Education Assistance Authority or the federal government pertaining to such loans. (This does not preclude the Corporation from otherwise requiring endorsements or multiple disbursements based upon individual credit criteria.)* [The Kentucky Higher Education Student Loan Corporation Board will prescribe appropriate remedies within thirty (30) days of hearing such an appeal.]

(4) When a condition of Section 1(4) occurs, the Corporation will immediately suspend making purchase commitments to all lenders for loans to borrowers for attendance at that educational institution.

Section 3. *Reports, Notification and Appeal. Reports containing the necessary data on loan volumes, matured*

loans and current default rates will be produced by the Corporation effective the last business day of each month and forwarded to each participating lender and to each Kentucky educational institution by the 10th business day of the following month. When, on the basis of such reports, any of the conditions specified in Section 1 of this regulation occur and action is to be taken under Section 2 of this regulation, the affected lender(s) will be notified by letter enclosed with such reports, signed by the Corporation Executive Director. A copy of such letter and applicable parts of such reports will be provided to any educational institution whose students may be affected by such action. The suspension specified in Section 2 of this regulation will be effective on the date the mailing is certified for delivery by the U.S. Postal Service. Any interested party or parties may appeal the policy application by submitting a written request for a hearing to the Executive Director or to the Chairman of the Corporation Board. The Corporation Board will subsequently hear the appeal at their next regularly scheduled meeting or will schedule a special meeting within thirty (30) days, whichever is earlier. When purchases are suspended under this regulation, they will be resumed only upon approval by the Corporation Board. [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. *Delay of Suspension of Purchases.* The [Kentucky Higher Education Student Loan] Corporation Executive Director *may delay implementation of the administrative actions provided in Section 2 of this regulation when the applicable volume of matured paper is less than $100,000.* [, 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 *regular* meeting.

Section 5. *Effective Date.* This *regulation* [policy] shall be effective *December 1* [July 1], 1982, or when *approved under KRS 13.082* [this regulation becomes effective], whichever is later. Prior to *the effective* [that] date, [schools and] lenders *and educational institutions* will be provided with a copy of this *regulation* [policy] and a report showing *applicable* [their] loan volumes, matured *loans* [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: October 21, 1982
RECEIVED BY LRC: November 1, 1982 at 9:30 a.m.

FINANCE AND ADMINISTRATION CABINET
Kentucky Board of Pharmacy
Amended After Hearing

201 KAR 2:110. Drug products for which there is insufficient data.

RELATES TO: KRS Chapter 217
PURSUANT TO: KRS 13.082, 217.814(7)(8), 217.819(1)
NECESSITY AND FUNCTION: KRS 217.819 directs the Kentucky Board of Pharmacy to prepare a non-equivalent drug product formulary of drugs which should not be interchanged by pharmacists. In conformance with the publication cited, "Approved Prescription Drug Products with Therapeutic Equivalence Evaluations," this regulation lists drug products for which there is insufficient data to determine the equivalency.

Section 1. The following are determined to be non-interchangeable:
Drug products for which there is insufficient data to determine the equivalency.
Disulfiram—oral; tablet
[Erythromycin base—oral; tablet]
Erythromycin base, stearate or estolate *oral* may not be interchanged *one for the other.*
Prednisolone—oral; tablet
Prednisone—oral; tablet

J. H. VOIGE, Executive Secretary
ADOPTED: October 30, 1982
RECEIVED BY LRC: November 12, 1982 at 2:30 p.m.

FINANCE AND ADMINISTRATION CABINET
Kentucky Board of Pharmacy
Amended After Hearing

201 KAR 2:115. Controlled release tablets, capsules and injectables.

RELATES TO: KRS Chapter 217
PURSUANT TO: KRS 13.082, 217.814(7)(8), 217.819(1)
NECESSITY AND FUNCTION: KRS 217.819 directs the Kentucky Board of Pharmacy to prepare a non-equivalent drug product formulary of drugs which should not be interchanged by pharmacists. In conformance with

the publication cited, "Approved Prescription Drug Products with Therapeutic Equivalence Evaluations," this regulation lists controlled release tablets, capsules and injectables as non-interchangeable.

Section 1. The following are determined to be non-interchangeable: Controlled release tablets, capsules and injectables—these dosage forms are subject to bioavailability and bioequivalence differences, primarily because different manufacturers developing controlled release products for the same active ingredient do not employ the same approach to formulating their controlled release products. *Approved controlled release products for which bioequivalence data are available and considered as meeting necessary bioequivalence requirements are exempted from this regulation.*

J. H. VOIGE, Executive Secretary
ADOPTED: October 20, 1982
RECEIVED BY LRC: November 12, 1982 at 2:30 p.m.

FINANCE AND ADMINISTRATION CABINET
Kentucky Board of Pharmacy
Amended After Hearing

201 KAR 2:120. Enteric coated oral dosage forms.

RELATES TO: KRS Chapter 217
PURSUANT TO: KRS 13.082, 217.814(7)(8), 217.819(1)
NECESSITY AND FUNCTION: KRS 217.819 directs the Kentucky Board of Pharmacy to prepare a non-equivalent drug product formulary of drugs which should not be interchanged by pharmacists. In conformance with the publication cited "Approved Prescription Drug Products with Therapeutic Equivalence Evaluations," this regulation lists enteric coated oral dosage forms.

Section 1. The following are determined to be non-interchangeable: Enteric coated oral dosage forms—drug products in enteric coated dosage forms containing the same ingredients are subject to significant differences in absorption. Such products, in general, cannot be considered pharmaceutically equivalent because they do not necessarily meet similar standards. *If studies have demonstrated the bioequivalence of enteric coated oral products and the drug products have met necessary bioequivalence requirements they are exempted from this regulation.*

J. H. VOIGE, Executive Secretary
ADOPTED: October 20, 1982
RECEIVED BY LRC: November 12, 1982 at 2:30 p.m.

FINANCE AND ADMINISTRATION CABINET
Kentucky Board of Pharmacy
Amended After Hearing

201 KAR 2:135. Drug products with bioinequivalence problems.

RELATES TO: KRS Chapter 217
PURSUANT TO: KRS 13.082, 217.814(7),(8), 217.819(1)
NECESSITY AND FUNCTION: KRS 217.819 directs the Kentucky Board of Pharmacy to prepare a non-equivalent drug product formulary of drugs which should not be interchanged by pharmacists. In conformance with the publication cited "Approved Prescription Drug Products with Therapeutic Equivalence Evaluations," this regulation lists drug products with active ingredient and/or dosage forms with bioinequivalence problems.

Section 1. The following are determined to be non-interchangeable:

Drug products with active ingredient and/or dosage forms with bioinequivalence problems.

Aminophylline—oral; tablet
Levodopa—oral; capsule; tablet
Propylthiouracil—oral; tablet
Theophylline—oral; tablet; *capsule*
Warfarin sodium—oral; tablet
Phenytoin sodium—oral; capsule.

J. H. VOIGE, Executive Secretary
ADOPTED: October 20, 1982
RECEIVED BY LRC: November 12, 1982 at 2:30 p.m.

FINANCE AND ADMINISTRATION CABINET
Kentucky Board of Pharmacy
Amended After Hearing

201 KAR 2:145. Drug products with potential bioequivalence issues.

RELATES TO: KRS Chapter 217
PURSUANT TO: KRS 13.082, 217.814(7),(8), 217.819(1)
NECESSITY AND FUNCTION: KRS 217.819 directs the Kentucky Board of Pharmacy to prepare a non-equivalent drug product formulary of drugs which should not be interchanged by pharmacists. In conformance with the publication cited "Approved Prescription Drug Products with Therapeutic Equivalence Evaluations," this regulation lists drug products with active ingredients and/or dosage forms with potential bioequivalence issues.

Section 1. The following are determined to be non-interchangeable:

Drug products with active ingredient and/or dosage forms with potential bioequivalence issues.

Alseroxylin—oral; tablet
[Amitriptyline hydrochloride—oral; tablet]
Amitriptyline hydrochloride; perphenazine—oral; tablet
Benzthiazide—oral; tablet
Chlorothiazide; reserpine—oral; tablet
Chlorpromazine hydrochloride—oral; tablet
Colchicine; probenicid—oral; tablet
Cortisone acetate—oral; tablet
Cyclothiazide—oral; tablet
Dapsone—oral; tablet
Dichlorphenamide—oral; tablet
Diethylstilbestrol—oral; tablet
Dydrogesterone—oral; tablet
Dyphylline—oral; tablet
Ethinyl estradiol—oral; tablet
Ethoxzolamide—oral; tablet
Fluoxymesterone—oral; tablet
Fluphenazine hydrochloride—oral; tablet
Hydralazine hydrochloride hydrochorothiazide—oral; tablet [; capsule]
Hydralazine HCl Hydrochlorothiazide; reserpine—oral; tablet
Hydralazine HCl; reserpine—oral; tablet
Hydrochlorothiazide; reserpine—oral; tablet
Hydrocortisone—oral; tablet
[Imipramine hydrochloride—oral; tablet]
Liothyronine sodium—oral; tablet
Mazindol—oral; tablet
Medroxyprogesterone *acetate*—oral; tablet
Methyclothiazide—oral; tablet
Methylprednisolone [Methylprednis-olone]—oral; tablet
Methyltestosterone—oral; tablet; capsule; buccal/sublingual tablets
Nortriptyline hydrochloride—oral; capsule
Promethazine hydrochloride—oral; tablet
Rauwolfia serpentina—oral; tablet
Reserpine—oral; tablet
Reserpine; trichlormethiazide—oral; tablet
[Sulfasoxazole—oral; tablet]
Sulfasalazine—oral; tablet
Terbutaline sulfate—oral; tablet
Testosterone—implantation; pellet
Thyroglobulin—oral; tablet
Triamcinolone—oral; tablet
Trichlormethiazide—oral; tablet

All injectable suspensions containing an active ingredient suspended in an aqueous or oleaginous vehicle.

Approved drug products that FDA considers to be therapeutically equivalent to other pharmaceutically equivalent products with no potential bioequivalence issues are exempted from this regulation.

J. H. VOIGE, Executive Secretary
ADOPTED: October 20, 1982
RECEIVED BY LRC: November 12, 1982 at 2:30 p.m.

FINANCE AND ADMINISTRATION CABINET
Kentucky Board of Pharmacy
Amended After Hearing

201 KAR 2:150. Topical products.

RELATES TO: KRS Chapter 217
PURSUANT TO: KRS 13.082, 217.814(7),(8), 217.819(1)
NECESSITY AND FUNCTION: KRS 217.819 directs the Kentucky Board of Pharmacy to prepare a non-equivalent drug product formulary of drugs which should not be interchanged by pharmacists. In conformance with the publication cited "Approved Prescription Drug Products with Therapeutic Equivalence Evaluations," this regulation lists topical products.

Section 1. The following are determined to be non-interchangeable: Topical products—different topical dosage forms are not pharmaceutically equivalent even though they may contain the same active ingredient(s), and, therefore, they are considered therapeutically inequivalent.

Section 2. This regulation refers to topical, ophthalmic, otic, rectal and vaginal administration and includes solutions, creams, ointments, gels, lotions, pastes, sprays, and suppositories.

Section 3. Drug products in the same topical dosage forms, are, in the absence of contrary data, considered therapeutically equivalent if they are pharmaceutically equivalent.

J. H. VOIGE, Executive Secretary
ADOPTED: October 20, 1982
RECEIVED BY LRC: November 12, 1982 at 2:30 p.m.

CABINET FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Department of Surface Mining Reclamation and Enforcement
Amended After Hearing

405 KAR 7:020. Definitions and abbreviations.

RELATES TO: KRS Chapter 350
PURSUANT TO: KRS 13.082, 350.028, 350.465
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to surface coal mining and reclamation operations under the permanent regulatory program. This regulation provides for the defining of certain essential terms used in Title 405, Chapters 7 through 24.

Section 1. Definitions. Unless otherwise specifically defined or otherwise clearly indicated by their context, terms in Title 405, Chapters 7 through 24 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 surface coal mine and reclamation operation or from an area affected by surface coal mining and reclamation operations.

(2) "Acid-forming materials" means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering 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, wildlife, vegetation or other resources protected by KRS Chapter 350 may be adversely impacted by surface coal mining and reclamation operations.

(4) "Affected area" means any land or water upon which surface coal mining and reclamation operations are conducted or located, and land or water which is located above 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 cabinet to conduct surface coal mining and reclamation operations or approval to conduct coal exploration operations pursuant to KRS Chapter 350 and all applicable regulations.

(7) "Application" means the documents and other information filed with the cabinet for the issuance for exploration approval or a permit.

(8) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated. Permanent water impoundments may be permitted where the cabinet has determined that they comply with KRS Chapter 350, 405 KAR 16:100, 405 KAR 16:060, Section 10, and 405 KAR 16:210; or 405 KAR 18:100, 405 KAR 18:060, Section 9, and 405 KAR 18:220.

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

(10) "Area" as used in Title 405, Chapter 24, means a geographic unit in which the criteria alleged in the petition pursuant to 405 KAR 24:020, Sections 3 and 4 and 405 KAR 24:030, Section 8, occur throughout and form a significant feature.

(11) "Auger mining" means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface and shall also include all other such methods of mining in which coal is extracted from beneath the overburden by mechanical devices located at the face of the cliff or highwall and extending laterally into the coal seam, such as extended depth, secondary recovery systems.

(12) "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 and minimize, to the extent possible, disturbances and adverse impacts 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 cabinet, 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 Title 405, Chapters 16 and 18. The cabinet shall have the discretion to determine the best technology currently available on a case-by-case basis, as authorized by KRS Chapter 350 and Title 405, Chapters 7 through 24.

(13) *"Cabinet" means the Natural Resources and Environmental Protection Cabinet.* ["Bureau" means the Bureau of Surface Mining Reclamation and Enforcement.]

(14) "Cemetery" means any area where human bodies are interred.

(15) "Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77.

(16) "Coal exploration" means the field gathering of:

(a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

(b) Environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of Title 405, Chapters 7 through 24 where such activity may cause any disturbance of the land surface or may cause any appreciable effect upon land, air, water or other environmental resources.

(17) "Coal processing plant" means a collection of facilities, including all associated support facilities and operations, where run-of-the-mine coal is subjected to chemical or physical processing and separated from its impurities.

(18) "Coal processing waste" means earth materials which are separated from product coal, and slurred or otherwise transported from coal preparation plants, after physical or chemical processing, cleaning, or concentrating of coal.

(19) "Collateral bond" means an idemnity agreement in a sum certain payable to the cabinet executed by the permittee and which is supported by the deposit with the cabinet of cash, negotiable certificates of deposit or an irrevocable letter of credit of any bank organized and authorized to transact business in the United States.

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

(21) "Community or institutional building" means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings, or functions of local civic organizations or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental health or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation or sewage treatment.

(22) "Compaction" means increasing the density of a material by reducing the voids between the particles by mechanical effort.

(23) "Complete application" means an application for exploration approval or permit, which contains all information required under KRS Chapter 350 and Title 405, Chapters 7 through 24.

(24) "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.

(25) "Date of primacy" means the effective date of the Secretary of Interior's unconditional or conditional approval of Kentucky's permanent regulatory program under Section 503 of the 1977 Surface Mining Control and Reclamation Act (PL 95-87).

(26) "Day" means calendar day unless otherwise specified to be a working day.

(27) "Department" means the Department for *Surface Mining Reclamation and Enforcement* [Natural Resources and Environmental Protection].

(28) "Developed water resources land" means land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply.

(29) "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining 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 10 is released.

(30) "Diversion" means a channel, embankment, or other manmade structure constructed to divert water from one (1) area to another.

(31) "Downslope" means the land surface below the projected outcrop of the lowest coalbed being mined along each highwall.

(32) "Embankment" means a man-made 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.

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

(34) "Existing structure" means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations for which construction begins prior to *January 18, 1983* [the applicability date of this regulation as specified in Section 3].

(35) "Experimental practice," as used in 405 KAR 7:060, means the use of alternative surface coal mining and reclamation operation practices for experimental or research purposes.

(36) "Extraction of coal as an incidental part" means the extraction of coal which is necessary to enable the construction to be accomplished. Only that coal extracted from within the right-of-way, in the case of a road, railroad, utility line or other such construction, or within the boundaries of the area directly affected by other types of government-financed construction, may be considered incidental to that construction. Extraction of coal outside the right-of-way or boundary of the area directly affected by the construction shall be subject to the requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24.

(37) "Federal lands" means any land, including mineral interests, owned by the United States, without regard to how the United States acquired ownership of the lands or which agency manages the lands. It does not include Indian lands.

(38) "Federal lands program" means a program established by the Secretary of the Interior pursuant to Section 523 of the Surface Mining Control and Reclamation Act of 1977 (PL 95-87, 91 Stat. 445 (30 USC Section 1201 et. seq.)) to regulate surface coal mining and reclamation operations on federal lands.

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

(40) "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.

(41) "Fragile lands" means geographic areas containing natural, ecologic, scientific or aesthetic resources that could be damaged or destroyed by surface coal mining 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 concentration 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 surface coal mining is prohibited, and important, unique or highly productive soils or mineral resources other than coal.

(42) "Fugitive dust" means that particulate matter which becomes airborne due to wind erosion from exposed surfaces.

(43) "General area" means, with respect to hydrology, the topographic and ground water basin surrounding a permit area which is of sufficient size, including areal extent and depth, to include one (1) or more watersheds containing perennial streams and ground water zones and to allow assessment of the probable cumulative impacts on the quality and quantity of surface and ground water systems in the basins.

(44) "Government-financed construction" means construction funded fifty (50) percent 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 obtained through industrial revenue bonds or their equivalent, or in-kind payments.

(45) "Government financing agency" means a federal, Commonwealth of Kentucky, county, municipal, or local unit of government, or a department, bureau, agency or office of the unit which, directly or through another unit of government, finance construction.

(46) "Grazingland" 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.

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

(48) "Half-shrub" means a perennial plant with a woody base whose annually-produced stems die back each year.

(49) "Head-of-hollow fill" means a fill structure consisting of any material, other than coal processing waste

and 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.

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

(51) "Historic lands" means historic or cultural districts, places, structures or objects, including but not limited to sites listed on or eligible for listing on a State or National Register of Historic Places, National Historic Landmarks, archaeological and paleontological sites, cultural or religious districts, places, or objects, or sites for which historic designation is pending.

(52) "Historically used for cropland" means that: (a) lands have been used for cropland for any five (5) years or more out of the ten (10) years immediately preceding:

1. The application; or

2. The acquisition of the land for the purpose of conducting surface coal mining and reclamation operations.

(b) Lands meeting either paragraph (a)1 or paragraph (a)2 above shall be considered "historically used for cropland."

(c) In addition to the lands covered by paragraph (a), other lands shall be considered "historically used for cropland" as described below:

1. Land that would likely have been used as cropland for any five (5) out of the last ten (10) years immediately preceding the acquisition or the application but for some fact of ownership or control of the land unrelated to the productivity of the land; and

2. Lands that the cabinet determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, are clearly cropland but fall outside the specific five (5) years in ten (10) criterion.

(d) Acquisition includes purchase, lease, or option of the land for the purpose of conducting or allowing through resale, lease or option, the conduct of surface coal mining and reclamation operations.

(53) "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.

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

(55) "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 in a surface coal mining and reclamation 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.

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

(57) "Incidental boundary revision" means an extension to a permit area that is necessary for reasons unforeseen at the time the original permit application was prepared and that is small in relation to the permit area (surface operations area for underground mining activities).

(a) Where an extension includes new areas from which coal will be removed, it will be considered as an incidental boundary revision only if the extension is no more than ten (10) percent of the permit area acreage or five (5) acres, whichever is less.

(b) Where an extension is for new areas not involving extraction of coal, it will be considered an incidental boundary revision only if the extension is no more than ten (10) percent of the permit area acreage (surface operations area acreage for underground mining activities) or two (2) acres, whichever is greater.

(c) Cumulative acreage added by successive revisions may not exceed the above limitations.

(58) [(57)] "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. Land used for facilities in support of these operations which is adjacent to or an integral part of that operation is also included.

(b) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments. Lands used for facilities in support of commercial operations which is adjacent to or an integral part of these operations is also included.

(c) Commercial agriculture activities including pasturing, grazing, and watering of livestock, and the cropping, cultivation and harvesting of plants for sale or resale.

(59) [(58)] "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 coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.

(60) [(59)] "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 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.

(61) [(60)] "Irreparable damage to the environment," as used in 405 KAR 8:010, Sections 13(4) and 14(9) only, means any damage to the environment that cannot be corrected by actions of the applicant.

(62) [(61)] "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.

(63) [(62)] "Monitoring" means the collection of environmental data by either continuous or periodic sampling methods.

(64) [(63)] "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.

(65) [(64)] "Natural hazard lands" means geographic areas in which natural conditions exist that pose or, as a result of surface coal mining 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.

(66) [(65)] "Notice of noncompliance and order for remedial measures" means a written document and order prepared by an authorized representative of the cabinet which sets forth with specificity the violations of KRS Chapter 350, Title 405, Chapters 7 through 24, or permit conditions which the authorized representative of the cabinet determines to have occurred based upon his inspection, and the necessary remedial actions, if any, and the time schedule for completion thereof, which the authorized representative deems necessary and appropriate to correct the violations.

(67) [(66)] "Notice of violation" means any written notification from a governmental entity of a violation of law, whether by letter, memorandum, legal or administrative pleading, or other written communication.

(68) [(67)] "Noxious plants" means species classified under Kentucky law as noxious plants.

(69) [(68)] "Occupied dwelling" means any building that is currently being used on a regular or temporary basis for human habitation.

(70) [(69)] "Operations" means surface coal mining and reclamation operations, all of the premises, facilities, roads and equipment used in the process of producing coal from a designated area or removing overburden for the purpose of determining the location, quality or quantity of a natural coal deposit or the activity to facilitate or accomplish the extraction or removal of coal.

(71) [(70)] "Operator" means any person, partnership, or corporation engaged in surface coal mining and reclamation operations.

(72) [(71)] "Order for cessation and immediate compliance" means a written document and order issued by an authorized representative of the cabinet when:

(a) A person to whom a notice of noncompliance and order for remedial measures was issued has failed, as determined by cabinet inspection, to comply with the terms of the notice of noncompliance and order for remedial measures within the time limits set therein, or as subsequently extended; or

(b) The authorized representative finds, on the basis of a cabinet inspection, any condition or practice; or any violation of KRS Chapter 350, Title 405, Chapters 7 through 24, or any condition of a permit or exploration approval which:

1. Creates an imminent danger to the health or safety of the public; or

2. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.

(73) [(72)] "Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

(74) [(73)] "Overburden" means material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil.

(75) [(74)] "Pastureland" 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 which is adjacent to or an integral part of these operations is also included.

(76) [(75)] "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."

(77) [(76)] "Performance bond" means a surety bond, collateral bond, cash bond, letter of credit or a combination thereof, by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, Title 405, Chapters 7 through 24, and the requirements of the permit and reclamation plan.

(78) [(77)] "Permanent diversion" means a diversion remaining after surface coal mining and reclamation operations are completed which has been approved for retention by the cabinet and other appropriate Kentucky and federal agencies.

(79) [(78)] "Permit" means written approval issued by the cabinet to conduct surface coal mining and reclamation operations.

(80) [(79)] "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 surface coal mining and reclamation operations under that permit.

(81) [(80)] "Permittee" means an operator or a person holding or required by KRS Chapter 350 or Title 405, Chapters 7 through 24 to hold a permit to conduct surface coal mining and reclamation operations during the permit term and until all reclamation obligations imposed by KRS 350 and Title 405, Chapters 7 through 24 are satisfied.

(82) [(81)] "Person" means any individual, partnership, association, society, joint stock company, firm, company, corporation, or other business organization, or any agency, unit, or instrumentality of federal, state, or local government, including any publicly owned utility or publicly owned corporation of federal, state, or local government.

(83) [(82)] "Person having an interest which is or may be adversely affected" or "person with a valid legal interest" shall include any person:

(a) Who uses any resource of economic, recreational, aesthetic, or environmental value that may be adversely affected by coal exploration or surface coal mining and reclamation operations, or by any related action of the cabinet; or

(b) Whose property is or may be adversely affected by coal exploration or surface coal mining and reclamation operations, or by any related action of the cabinet.

(84) [(83)] "Petitioner" means a person who submits a petition under Title 405, Chapter 24 to designate a specific area as unsuitable for all or certain types of surface coal mining and reclamation operations, or who submits a petition under Title 405, Chapter 24 to terminate such a designation.

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

(86) [(85)] "Prime farmland" means those lands which are defined by the Secretary of Agriculture in 7 CFR 657 and which have historically been used for cropland as that phrase is defined above.

(87) [86)] "Principal shareholder" means any person who is the record or beneficial owner of ten (10) percent or more interest of the applicant.

(88) [(87)] "Probable cumulative impacts" means the expected total qualitative, and quantitative, direct and indirect effects of surface coal mining and reclamation operations on the hydrologic regime.

(89) [(88)] "Probable hydrologic consequences" means the projected results of proposed surface coal mining and reclamation operations which may reasonably be expected to change the quantity or quality of the surface and ground water; the surface or ground water flow, timing and pattern; and the stream channel conditions on the permit area and adjacent areas.

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

(91) [(90)] "Public building" means any structure that is owned by a public agency or used principally for public business, meetings or other group gatherings.

(92 [(91)] "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.

(93) [(92)] "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.

(94) [(93)] "Public road" means any publicly owned thoroughfare for the passage of vehicles.

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

(96) [(95)] "Reclamation" means the reconditioning and restoration of areas affected by surface coal mining operations as required by KRS Chapter 350 and Title 405, Chapters 7 through 24 under a plan approved by the cabinet.

(97) [(96)] "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, and other undeveloped recreational uses.

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

(99) [(98)] "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 cabinet. Reference areas must be representative of geology, soil, slope and vegetation in the permit area.

(100) [(99)] "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.

(101) [(100)] "Residential land" means tracts employed for single and multiple-family housing, mobile home parks, and other residential lodgings. Also included is land used for support facilities such as vehicle parking, open space, and other facilities which directly relate to the residential use of the land.

(102) [(101)] "Road" means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or surface coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, surface, and such contiguous appendages as are necessary for the total structure. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration or surface coal mining and reclamation operations, including use by coal hauling vehicles leading to transfer, processing, or storage areas. The term does not include pioneer or construction roadways used for part of the road construction procedure and promptly replaced by a road pursuant to Title 405, Chapters 16 and 18 located in the identical right-of-way as the pioneer or construction roadway. The term also excludes any roadway within the immediate mining pit area.

(103) [(102)] "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.

(104) [(103)] "Secretary" means the Secretary of the Cabinet for Natural Resources and Environmental Protection.

(105) [(104)] "Sedimentation pond" means a primary sediment controlled structure designed, constructed and maintained in accordance with 405 KAR 16:090 or 405 KAR 18:090 and including but not limited to a barrier, dam, or excavated depression 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 overland flow velocity, reduce runoff volume or trap sediment, to the extent that such secondary sedimentation structures drain to a sedimentation pond.

(106) [(105)] "Significant, imminent environmental harm" is an adverse impact on land, air, or water resources which resources 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 cabinet'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.

(107) [(106)] "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.

(108) [(107)] "Slurry mining" means the hydraulic breakdown of subsurface coal with drill-hole equipment, and the eduction of the resulting slurry to the surface for processing.

(109) [(108)] "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 mineral 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 relative-

ly unaffected by biologic activity.

(110) [(109)] "Soil survey" means a field or other investigation, resulting in a map showing the geographic distribution of different kinds of soils 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.

(111) [(110)] "Spoil" means overburden that has been removed during surface coal mining operations.

(112) [(111)] "Stabilize" means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

(113) [(112)] "Steep slope" means any slope of more than twenty (20) degrees.

(114) [(113)] "Successor in interest" means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

(115) [(114)] "Substantially disturb" means for purposes of coal exploration, to impact significantly upon land, air or water resources by such activities as blasting, mechanical excavation, drilling or altering coal or water exploratory holes or wells, construction of roads and other access routes, and the placement of structures, excavated earth, or other debris on the surface of land.

(116) [(115)] "Surety bond" means an idemnity agreement in a sum certain payable to the cabinet executed by the permittee which is supported by the performance guarantee of a corporation licensed to do business as a surety in the Commonwealth of Kentucky where the surface or underground coal mining operation subject to the indemnity agreement is located.

(117) [(116)] "Surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam before recovering the coal, by auger coal mining, by extraction of coal from coal refuse piles, or by recovery of coal from slurry ponds.

(118) [(117)] "Surface coal mining operations" means activities conducted on the surface of lands in connection with a surface coal mine and surface operations and surface impacts incident to an underground coal mine. Such activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the use of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and cleaning, concentrating, or other processing or preparation, and the loading of coal at or near the mine-site. Such activities shall not include the extraction of coal by a landowner for his own noncommercial use from land owned or leased by him, except that noncommercial use shall not include the extraction of coal by one (1) unit of an integrated company or other business entity which uses the coal in its own manufacturing or power plants; the extraction of coal as an incidental part of federal, state, or local government financed highway or other construction; or the extraction of, or intent to extract, 250 tons or less of coal by any person by surface coal mining operations within twelve (12) successive calendar months. Surface coal mining operations shall also include the areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities. This definition includes the terms "strip mining of coal" and the surface effects of underground mining of coal as defined in KRS Chapter 350.

(119) [(118)] "Surface coal mining and reclamation operations" means surface coal mining operations and all activities necessary and incident to the reclamation of such operations.

(120) [(119)] "Suspended solids" or nonfilterable residue, expressed as miligrams per liter, means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the Environmental Protection Agency's regulations for waste water and analyses (40 CFR 136).

(121) [(120)] "Temporary diversion" means a diversion of a stream or overland flow which is used during coal exploration or surface coal mining and reclamation operations and not approved by the cabinet to remain after reclamation as part of the approved postmining land use.

(122) [(121)] "Ton" means 2,000 pounds avoirdupois (.90718 metric ton).

(123) [(122)] "Topsoil" means the A soil horizon layer of the three (3) major soil horizons.

(124) [(123)] "Toxic-forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical conditions in soils or water that are detrimental to biota or uses of water.

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

(126) [(125)] "Transfer, assignment or sale of rights" means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the cabinet.

(127) [(126)] "Underground development waste" means waste rock mixtures of coal, shale, claystone, siltstone, sandstone, limestone, or related materials that are excavated, moved, and disposed of during development and preparation of areas incident to underground mining activities.

(128) [(127)] "Underground mining activities" means a combination of:

(a) Surface operations incident to underground extraction of coal or in situ processing, including construction, use, maintenance, and reclamation of roads; above-ground repair areas, storage areas, processing areas, and shipping areas; areas upon which are sited support facilities including hoist and ventilating ducts, areas utilized for the disposal and storage of waste, and areas on which materials incident to underground mining operations are placed; and

(b) Underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities, in situ processing, and

underground mining, hauling, storage, and blasting.

(129) [(128)] "Undeveloped land or no current use or land management" means land that is undeveloped or, if previoulsy developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

(130) [(129)] "Unwarranted failure to comply" means the failure of the permittee due to indifference, lack of diligence or lack of reasonable care:

(a) To prevent the occurrence of any violation of any applicable requirement of KRS Chapter 350, the regulations of Title 405, Chapters 7 through 24, or permit conditions; or

(b) To abate any violation of any applicable requirement of KRS Chapter 350, the regulations of Title 405, Chapters 7 through 24, or permit conditions.

(131) [(130)] "Valley fill" means a fill structure consisting of any material other than coal waste and organic material that is placed in a valley where side slopes of the existing valley measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than ten (10) degrees.

(132) [(131)] "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.

(133) [(132)] "Willful violation" means an act or omission which violates the Surface Mining Control and Reclamation Act (PL 95-87), KRS Chapter 350, the regulations of Title 405, Chapters 7 through 24, or any permit condition, committed by a person who intends the result which actually occurs.

Section 2. Abbreviations. As used in Title 405, Chapters 7 through 24, the following abbreviations shall have the meanings given below:

ac—acre
CFR—Code of Federal Regulations
dB—decibels
FDIC—Federal Deposit Insurance Corporation
FSLIC—Federal Savings and Loan Insurance Corporation
Hz—hertz
KAR—Kentucky Administrative Regulations
KRS—Kentucky Revised Statutes
l—liter
mg—milligram
MRP—mining and reclamation plan
MSHA—Mine Safety and Health Administration
NPDES—National Pollutant Discharge Elimination System
OSM—Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior
SCS—Soil Conservation Service
SMCRA—Surface Mining Control and Reclamation Act of 1977, PL 95-87
USDA—United States Department of Agriculture
USDI—United States Department of the Interior
U.S. EPA—United States Environmental Protection Agency
USGS—United States Geological Survey

JACKIE A. SWIGART, Secretary
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RECEIVED BY LRC: October 27, 1982 at 4 p.m.

CABINET FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Department of Surface Mining Reclamation and Enforcement
Amended After Hearing

405 KAR 12:010. General provisions for inspection and enforcement.

RELATES TO: KRS 350.020, 350.028, 350.050, 350.085, 350.113, 350.130, 350.151, 350.465, 350.990
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.050, 350.130, 350.465
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to rigidly enforce regulations promulgated to control the injurious effects of surface coal mining and reclamation operations. This regulation generally sets forth a rigid enforcement and inspection policy for the cabinet. This regulation directs that inspections be made at irregular intervals and without need of a warrant or prior notice to the operator. This regulation requires certain frequencies for inspections and complete preservation of the evidence, records and observations made during inspections. This regulation also sets forth the general policy of public participation in the enforcement process and references the civil and criminal penalties of KRS Chapter 350.

Section 1. Applicability. The provisions of this chapter shall apply to all surface coal mining and reclamation operations and coal exploration operations.

Section 2. Inspection and Enforcement. In accordance with the provisions of this chapter, the cabinet shall conduct or cause to be conducted such inspections, studies, investigations or other determinations as it deems reasonable and necessary to obtain information and evidence with which to ensure that surface coal mining and reclamation operations and coal exploration operations are conducted in accordance with the provisions of KRS Chapter 350, Title 405, Chapters 7 through 24, and all terms and conditions of the permit.

Section 3. Timing and Conduct of Inspections. (1) Right of entry and access. Authorized representatives of the cabinet shall have unrestricted right of entry and access to all parts of the permit area for any purpose associated with their proper duties pursuant to KRS Chapter 350 and this Title, including but not limited to the purpose of making inspections.

(2) Presentation of credentials. Authorized representatives of the cabinet shall present credentials for identification purposes upon request by a representative of the permittee on the permit area.

(3) Prior notice. The cabinet shall have no obligation to give prior notice that an inspection will be conducted.

(4) Timing. Inspections shall ordinarily be conducted at irregular and unscheduled times during normal workdays, but may be conducted at night or on weekends or holidays when the cabinet deems such inspections necessary to properly monitor compliance with KRS Chapter 350, Title 405, Chapters 7 through 24, and conditions of the permit.

(5) Frequency of inspections.

(a) Partial inspections. A partial inspection is an onsite review of a permittee's compliance with some of the permit conditions and requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24. The cabinet shall conduct an

average of at least one (1) partial inspection per month of each surface coal mining and reclamation operation permitted under Title 405, Chapter 8 at least until phase I reclamation, as defined in 405 KAR 10:040, has been completed on the entire permit area. The cabinet shall continue such partial inspections until the cabinet determines that the permit area is sufficiently stable with respect to mass stability, erosion, revegetation, water quality and other reclamation requirements so that the quarterly complete inspections required under paragraph (b) of this subsection will provide adequate inspection of the permit area.

(b) Complete inspections. A complete inspection is an onsite review of a permittee's compliance with all permit conditions and requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24, within the entire area disturbed or affected by surface coal mining and reclamation operations. The cabinet shall conduct an average of at least one (1) complete inspection per calendar quarter of each surface coal mining and reclamation operation permitted under Title 405, Chapter 8.

(c) The cabinet shall conduct periodic inspections of all coal exploration operations.

Section 4. Record of Inspections. (1) Authorized representatives of the cabinet shall make and maintain written records of inspections and other activities including observations made and factual matters discovered. A copy of such record shall be made available to the permittee and shall be available for public inspection at the appropriate regional office of the department in accordance with the Kentucky Open Record Laws, KRS 61.870 through KRS 61.884.

(2) Upon inspection of surface coal mining and reclamation operations, authorized representatives of the cabinet shall collect evidence of every observed violation of a permit condition or requirement of KRS Chapter 350 or regulations promulgated pursuant thereto.

(3) The cabinet shall preserve collected evidence, where appropriate, in order that such evidence may be presented at hearings held pursuant to 405 KAR 7:090.

Section 5. Penalties and Sanctions. Any person who violates any provision of KRS Chapter 350 or any provision of Title 405, Chapters 7 through 24, or any permit condition, or who fails to perform the duties imposed by such provisions, or who fails to comply with a determination or order of the cabinet pursuant to such provisions, shall be subject to civil and criminal penalties as set forth in KRS 350.465(3)(h), 350.990, 405 KAR 7:090, or any other applicable provision of law, and shall be subject to applicable sanctions as set forth in KRS 350.130, or any other applicable provision of law. Violations by any person conducting surface coal mining and reclamation operations or exploration operations on behalf of the permittee shall be attributed to the permittee, unless the permittee establishes that they were acts of deliberate sabotage.

Section 6. Public Participation. Any person [having an interest which is or may be adversely affected by a surface coal mining and reclamation operation or coal exploration operation] shall have the opportunity to *request* [cause] an inspection and to participate in enforcement actions of the cabinet as provided in 405 KAR 12:030.

Section 7. Formal Review. Any person having an interest which is or may be adversely affected by the issuance, modification, vacation, or termination of a notice or order, may request review of that action pursuant to 405 KAR 7:090. The filing of a request for a hearing shall not operate as a stay of any notice or order or any modification, termination or vacation thereof.

JACKIE A. SWIGART, Secretary
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CABINET FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Department of Surface Mining Reclamation and Enforcement
Amended After Hearing

405 KAR 16:060. General hydrologic requirements.

RELATES TO: KRS 350.100, 350.410, 350.420, 350.421, 350.440, 350.465

PURSUANT TO: KRS 13.082, 350.028, 350.100, 350.420, 350.465

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during surface mining activities and for restoration and reclamation of surface areas affected by mining activities. This regulation sets forth general requirements for protection of the hydrologic balance, including general requirements for protection of surface and groundwater quantity and quality, control of erosion and sediment, protection of groundwater recharge capacity, protection of streams, and protection of water rights.

Section 1. General Requirements. (1) Surface mining activities shall be planned and conducted to minimize changes to the prevailing hydrologic balance in both the permit area and adjacent areas, in order to prevent long-term adverse changes in that balance that could result from those activities.

(2) Changes in water quality and quantity, in the depth to groundwater, and in the location of surface water drainage channels shall be minimized so that the approved postmining land use of the permit area is not adversely affected.

(3) In no case shall federal and state water quality statutes, regulations, standards, or effluent limitations be violated.

(4) Operations shall be conducted to minimize water pollution and, where necessary, treatment methods shall be used to control water pollution.

(a) Each permittee shall emphasize mining and reclamation practices that prevent or minimize water pollution. Changes in flow of drainage shall be used in preference to the use of water treatment facilities.

(b) Acceptable practices to control and minimize water pollution include, but are not limited to:

1. Stabilizing disturbed areas through land shaping;
2. Diverting runoff;
3. Achieving quickly germinating and growing stands of temporary vegetation;

4. Regulating channel velocity of water;
5. Lining drainage channels with rock or vegetation;
6. Mulching;
7. Selectively placing and sealing acid-forming and toxic-forming materials; and
8. Selectively placing waste materials in bankfill areas.

(c) If the practices listed in paragraph (b) of this subsection are not adequate to meet the requirements of this chapter, the permittee shall operate and maintain the necessary water treatment facilities for as long as treatment is required under this chapter.

Section 2. Sediment Control Measures. (1) Appropriate sediment control measures shall be designed, constructed, and maintained using the best technology currently available to:

(a) Prevent, to the extent possible, additional contributions of sediment to streamflow or to runoff outside the permit area;

(b) Meet the requirements of 405 KAR 16:070, Section 1(1)(g); and

(c) Minimize erosion to the extent possible.

(2) Sediment control measures include practices carried out within and adjacent to the disturbed area. The sediment storage capacity of measures in and downstream from the disturbed areas shall reflect the degree to which successful mining and reclamation techniques are applied to reduce erosion and control sediment. Sediment control measures consist of the utilization of proper mining and reclamation methods and sediment control practices, singly or in combination. Sediment control methods include but are not limited to:

(a) Disturbing the smallest practicable area at any one (1) time during the mining operation through progressive backfilling, grading and prompt revegetation as required in 405 KAR 16:200, Section 1(2).

(b) Stablizing the backfilled material to promote a reduction in the rate and volume of runoff, in accordance with the requirements of 405 KAR 16:190, Section 1.

(c) Retaining sediment within disturbed areas;

(d) Diverting runoff away from disturbed areas;

(e) Diverting runoff using protected channels or pipes through disturbed areas so as not to cause additional erosion;

(f) Using straw dikes, riprap, check dams, mulches, vegetative sediment filters, dugout ponds, and other measures that reduce overland flow velocity, reduce runoff volume, or trap sediment; and

(g) Treating with chemicals.

Section 3. Discharge Structures. Discharge from sedimentation ponds, permanent and temporary impoundments, coal processing waste dams and embankments, and diversions shall be controlled, by energy dissipators, riprap channels, and other devices, where necessary, to reduce erosion, to prevent deepening or enlargement of stream channels, and to minimize disturbance of the hydrologic balance. Discharge structures shall be designed according to standard engineering design procedures.

Section 4. Acid-forming and Toxic-forming Spoil. Drainage from acid-forming and toxic-forming spoil into ground and surface water shall be avoided by:

(1) Identifying, burying, and treating where necessary, spoil which the cabinet determines, based on information in the permit application or other appropriate information, may be detrimental to vegetation or may adversely affect water quality if not treated or buried;

(2) Preventing water from coming into contact with acid-forming and toxic-forming spoil in accordance with 405 KAR 16:190, Section 3, and other measures as required by the cabinet; and

(3) Burying or otherwise treating all acid-forming or toxic-forming spoil within thirty (30) days after it is first exposed on the mine site, or within a lesser period required by the cabinet. Temporary storage of the spoil may be approved by the cabinet upon a finding that burial or treatment within thirty (30) days is not feasible and will not result in any material risk of water pollution or other environmental damage. Storage shall be limited to the period until burial or treatment first becomes feasible. Acid-forming or toxic-forming spoil to be stored shall be placed on impermeable material and protected from erosion and contact with surface water.

Section 5. Ground Water Protection. (1) Backfilled materials shall be placed so as to minimize contamination of ground water systems with acid, toxic, or otherwise harmful mine drainage, to minimize adverse effects of mining on ground water systems outside the permit area, and to support approved postmining land uses.

(2) To control the effects of mine drainage, pits, cuts, and other mine excavation or disturbance shall be located, designed, constructed, and utilized in such manner as to prevent or control discharge of acid, toxic, or otherwise harmful mine drainage waters into ground water systems and to prevent adverse impacts on such ground water systems or on approved postmining land uses.

Section 6. Protection of Ground Water Recharge Capacity. (1) Surface mining activities shall be conducted in a manner that facilitates reclamation which will restore approximate pre-mining recharge capacity, through restoration of the capability of the reclaimed areas as a whole, excluding coal processing waste and underground development waste disposal areas and fills, to transmit water to the ground water system.

(2) The recharge capacity shall be restored to a condition which:

(a) Supports the approved postmining land use;

(b) Minimizes disturbances to the prevailing hydrologic balance in the permit area and in adjacent areas; and

(c) *Approximates the premining conditions, except when otherwise approved by the department.* [Provides a rate of recharge that approximates the pre-mining recharge rate.]

Section 7. Transfer of Wells. (1) An exploratory or monitoring well may only be transferred by the permittee for further use as a water well with the prior approval of the cabinet. That person and the surface owner of the lands where the well is located shall jointly submit a written request to the cabinet for that approval.

(2) Upon an approved transfer of a well, the transferee shall:

(a) Assume primary liability for damages to persons or property from the well;

(b) Plug the well when necessary, but in no case later than abandonment of the well; and

(c) Assume primary responsibility for compliance with 405 KAR 16:040 with respect to the well.

(3) Upon an approved transfer of a well, the transferor shall be secondarily liable for the transferee's obligations under subsection (2) of this section, until release of the bond or other equivalent guarantee required by Title 405, Chapter 10 for the area in which the well is located.

Section 8. Water Rights and Replacement. Any permittee shall replace the water supply of an owner of interest in real property who obtains all or part of his or her supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source, where the water supply has been affected by contamination, diminution, or interruption proximately resulting from the surface mining activities.

Section 9. Discharge of Water Into an Underground Mine. Surface water shall not be diverted or otherwise discharged into underground mine workings, unless the permittee demonstrates to the cabinet that the discharge:

(1) Will abate water pollution or otherwise eliminate public hazards resulting from surface mining activities; and

(2) Will be discharged as a controlled flow, meeting the effluent limitations of 405 KAR 16:070 for pH and total suspended solids *or settleable solids*, except that the pH and total suspended solid*s or settleable solids* limitations may be exceeded, if approved by the cabinet, and is limited to:

(a) Coal processing waste;

(b) Fly ash from a coal-fired facility;

(c) Sludge from an acid mine drainage treatment facility;

(d) Flue gas desulfurization sludge;

(e) Inert materials used for stabilizing underground mines; or

(f) Underground mine development wastes.

(3) Not cause or contribute to a violation of applicable water quality standards or effluent limitations due to the resulting discharge from the underground mines to surface waters. The most likely points of discharge to surface waters, if any, shall be located on a map as a part of the permit application;

(4) Minimizes disturbance to the hydrologic balance; and

(5) Meets with the approval of the MSHA.

Section 10. Postmining Rehabilitation of Sedimentation Ponds, Diversions, Impoundments, and Treatment Facilities. Before abandoning the permit area, the permittee shall renovate all permanent sedimentation ponds, diversions, impoundments, and treatment facilities as necessary to meet criteria specified in the detailed design plan for the permanent structures and impoundments.

Section 11. Stream Buffer Zones. (1) No land within 100 feet of *an intermittent or* [a] perennial stream [or a stream with a biological community determined according to subsection (3) of this section] shall be disturbed by surface mining activities, unless the cabinet specifically authorizes surface mining activities closer to or through such a stream under the following conditions:

(a) Any temporary or permanent diversions shall comply with 405 KAR 16:080 and shall be constructed prior to any disturbance of the buffer zone;

(b) That the original stream channel will be restored or relocated in a manner satisfactory to the cabinet; and

(c) During and after the mining, the water quantity and quality of the stream shall not be adversely affected by the surface mining activities as determined by state and federal water quality standards.

(2) The area not to be disturbed shall be designated a buffer zone and marked as specified in 405 KAR 16:030.

[(3) A stream with a biological community shall be determined by the existence in the stream at any time of an assemblage of two (2) or more species of arthropods or mulluscan animals which are:]

[(a) Adapted to flowing water for all or part of their life cycle;]

[(b) Dependent upon a flowing water habitat;]

[(c) Reproducing or can reasonably be expected to reproduce in the water body where they are found; and]

[(d) Longer than two (2) millimeters at some stage of the part of their life cycle spent in the flowing water habitat.]

Section 12. Discharges of Accumulated Water. (1) Any accumulated water to be removed from a pit, bench, or other disturbed area shall be pumped, siphoned, or otherwise conveyed in a controlled manner to a natural or constructed drainway as approved by the cabinet.

(2) Such accumulated water may be discharged from the permit area without treatment only if the untreated discharge meets the requirements of 405 KAR 16:070, Section 1(1)(g).

(3) The moving of spoil or overburden or the disturbance of the natural barrier required by 405 KAR 16:010, Section 4, in order to release such accumulated water is prohibited, except when specifically authorized by the cabinet.

JACKIE A. SWIGART, Secretary
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CABINET FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Department of Surface Mining Reclamation and Enforcement
Amended After Hearing

405 KAR 16:090. Sedimentation ponds.

RELATES TO: KRS 350.020, 350.100, 350.420, 350.465

PURSUANT TO: KRS 13.082, 350.028, 350.100, 350.420, 350.465

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during surface mining activities and for restoration and reclamation of surface areas affected by mining activities. This regulation sets forth specific requirements for the location, design, construction, and removal or retention of sedimentation ponds.

Section 1. General Requirements. Sedimentation ponds shall be used individually or in series and shall:

(1) Be constructed and certified under Section 5(14) before any disturbance of the undisturbed area to be drained into the pond;

(2) Be located as near as possible to the disturbed area, and out of perennial streams unless approved by the cabinet;

(3) Meet all the criteria of this regulation;

(4) Be removed pursuant to Section 5(18) unless approved for retention under Section 5(19).

Section 2. Sediment Storage Volume. Sedimentation ponds shall provide a [minimum] sediment storage volume *as approved on a case-by-case basis by the cabinet based upon the anticipated volume of sediment to be collected and a feasible time schedule for clean-out operations. The sediment storage volume shall be the anticipated volume of sediment that will be collected by the pond between scheduled clean-out operations. The proposed clean-out schedule shall be included in the design and will be approved if the cabinet determines that the proposed schedule is feasible.* [, as measured at the crest of the principal spillway, of 0.125 acre-feet for each acre of disturbed area within the upstream drainage area, or such larger volume as necessary to achieve compliance with the requirements of 405 KAR 16:070, Section 1(1)(g).]

Section 3. Detention Time. Sedimentation ponds shall provide detention time such that discharges from the pond shall meet the requirements of 405 KAR 16:070, Section 1(1)(g).

Section 4. Dewatering. The water storage resulting from inflow shall be removed by a nonclogging dewatering device or a conduit spillway approved by the cabinet. The dewatering device shall not be located at a lower elevation than the maximum elevation of the sediment storage volume.

Section 5. Other Requirements. (1) Each permittee shall design, construct, and maintain sedimentation ponds to prevent short-circuiting to the extent possible.

(2) The design, construction, and maintenance of a sedimentation pond or other sediment control measures in accordance with this regulation shall not relieve the permittee from compliance with 405 KAR 16:070, Section 1(1)(g).

(3) There shall be no outflow through an emergency spillway during the passage through the sedimentation pond of the runoff resulting from the ten (10) year, twenty-four (24) hour precipitation event or lesser events.

(4) Sediment shall be removed from sedimentation ponds when the designed sediment storage volume has filled with sediment.

(5) An appropriate combination of principal and emergency spillways shall be provided to safely discharge the runoff from a twenty-five (25) year, twenty-four (24) hour precipitation event, or larger event specified by the cabinet. The elevation of the crest of the emergency spillway shall be a minimum of 1.5 feet above the crest of the principal spillway. Emergency spillway grades and allowable velocities shall be approved by the cabinet. The cabinet may establish size and other criteria under which a pond design may be approved which provides for a *single* [principal spillway, but no emergency] spillway.

(6) The minimum elevation at the top of the settled embankment shall be 1.0 foot above the water surface in the pond with the emergency spillway flowing at design depth. For embankments subject to settlement, this 1.0 foot minimum elevation requirement shall apply at all times, including the period after settlement.

(7) The constructed height of the dam shall be increased a minimum of five (5) percent over the design height to allow for settlement, unless it has been demonstrated to the cabinet that the material used and the design will ensure against all settlement.

(8) The minimum top width of the embankment shall not be less than the quotient of (H + 35)/5, where H is the height, in feet, of the embankment as measured from the upstream toe of the embankment.

(9) The combined upstream and downstream side slopes of the settled embankment shall not be less than 1v:5h, with neither slope steeper than 1v:2h. Slopes shall be designed to be stable in all cases, even if flatter side slopes are required.

(10) The embankment foundation area shall be cleared of all organic matter, all surfaces sloped to no steeper than 1v:1h, and the entire foundation surface scarified.

(11) The fill material shall be free of sod, large roots, other large vegetative matter, and frozen soil, and in no case shall coal-processing waste be used.

(12) The placing and spreading of fill material shall be started at the lowest point of the foundation. The fill shall be brought up in horizontal layers of such thickness as is required to facilitate compaction and meet the design requirement of this regulation. Compaction shall be conducted as specified in the design approved by the cabinet.

(13) If a sedimentation pond has an embankment that is more than twenty (20) feet in height, as measured from the upstream toe of the embankment to the crest of the emergency spillway, or has a storage volume of twenty (20) acre-feet or more, the following additional requirements shall be met:

(a) An appropriate combination of principal and emergency spillways shall be provided to discharge safely the runoff resulting from a 100-year, twenty-four (24) hour precipitation event, or a larger event specified by the cabinet.

(b) The embankment shall be designed and constructed with a static safety factor of at least 1.5, or a higher safety factor as designated by the cabinet to ensure stability.

(c) Appropriate barriers shall be provided to control seepage along conduits that extend through the embankment.

(d) The criteria of the MSHA as published in 30 CFR 77.216 shall be met.

(14) Each pond shall be designed and certified by a registered professional engineer; shall be inspected during construction by or under the direct supervision of the responsible registered professional engineer; and after construction shall be certified by the responsible registered professional engineer as having been constructed in accordance with the approved design plans.

(15) The entire embankment including the surrounding areas disturbed by construction shall be stabilized with respect to erosion by a vegetative cover or other means immediately after the embankment is completed. The active upstream face of the embankment where water will be impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated in accordance with 405 KAR 16:190, Section 6.

(16) All ponds, meeting or exceeding the size or other criteria of 30 CFR 77.216(a), shall be examined for structural weakness, erosion, and other hazardous conditions and reports shall be made to the cabinet, in accordance with 30 CFR 77.216-3. Such inspections shall be made by a qualified registered professional engineer, by someone under the supervision of a qualified registered professional engineer, or by a person approved by MSHA for such inspections. Ponds not meeting these criteria (30 CFR 77.216(a)) shall be examined four (4) times per year for structural weakness, erosion and other hazardous conditions and reports of the inspection shall be submitted to the cabinet.

(17) Sedimentation ponds shall be properly maintained and shall not be removed until the requirements of 405 KAR 16:070, Section 1(1)(b), have been met.

(18) Sedimentation ponds shall be removed prior to final release of bond liability for the permit area unless retention of the pond is approved by the cabinet under subsection (19) of this section. When a sedimentation pond is removed, the affected land shall be regraded and revegetated in accordance with 405 KAR 16:190 and 405 KAR 16:200.

(19) If the cabinet approves retention of a sedimentation pond as a permanent impoundment, the sedimentation pond shall meet all the requirements for permanent impoundments under 405 KAR 16:060 and 405 KAR 16:100, Section 10.

(20) Notwithstanding other provisions of this regulation, all dams as defined by KRS 151.100(13) and other impoundments classified as Class B—moderate hazard or Class C—high hazard, shall comply with 405 KAR 7:040, Section 5 and with 401 KAR 4:030.

JACKIE A. SWIGART, Secretary
ADOPTED: October 26, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: October 27, 1982 at 4 p.m.

CABINET FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Department of Surface Mining Reclamation and Enforcement
Amended After Hearing

405 KAR 16:110. Surface and groundwater monitoring.

RELATES TO: KRS 350.100, 350.405, 350.420, 350.465,
PURSUANT TO: KRS 13.082, 350.028, 350.420, 350.465
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during surface mining activities and for restoration and reclamation of surface areas affected by mining activities. This regulation sets forth requirements for the monitoring and reporting of surface water quality and quantity, and groundwater levels and quality and aquifer conditions, and the required duration of such monitoring.

Section 1. Groundwater. (1) Groundwater levels, infiltration rates, subsurface flow and storage characteristics, and the quality of groundwater shall be monitored in a manner approved by the cabinet, to determine the effects of surface mining activities on the recharge capacity of reclaimed lands and on the quantity and quality of water in groundwater systems in the permit area and adjacent areas.

(2) When surface mining activities may affect the groundwater systems which serve as aquifers which significantly ensure the hydrologic balance of water use on or off the permit area, groundwater levels and groundwater quality shall be periodically monitored. Monitoring shall include measurements from a sufficient number of wells, or springs where appropriate, that are adequate to reflect changes in groundwater quantity and quality resulting from those activities. Monitoring shall be adequate to plan for modification of surface mining activities, if necessary, to minimize disturbance of the prevailing hydrologic balance.

(3) As specified and approved by the cabinet, the permittee shall conduct additional hydrologic tests, including drilling, infiltration tests, and aquifer tests and shall submit the results to the cabinet, to demonstrate compliance with 405 KAR 16:060, Sections 5 and 6 and this regulation.

Section 2. Surface Water. (1) Surface water monitoring and reporting shall be conducted in accordance with the monitoring program submitted under 405 KAR 8:030, Section 32(2)(d) and approved by the cabinet. The cabinetshall determine the nature of data, frequency of collection, and reporting requirements. Monitoring shall:

(a) Be adequate to measure accurately and record water quantity and quality of the discharges from the permit area;

(b) Include, but not be limited to, monitoring and reporting of all water quality parameters for which effluent limitations must be met under 405 KAR 16:070, Section 1(1)(g);

(c) All cases in which analytical results of the sample collections indicate noncompliance with a permit condition or applicable standard has occurred shall result in the permittee notifying the cabinet within five (5) days. Where a National Pollutant Discharge Elimination System (NPDES) permit effluent limitation noncompliance has occurred, the permittee shall forward the analytic results concurrently with the written notification to the cabinet; and

(d) Result in quarterly reports to the cabinet, to include analytical results from each sample taken during the quarter. In those cases where the discharge for which water monitoring reports are required is also subject to regulation by a NPDES permit issued under the Clean Water Act of 1977 (30 USC Sec. 1251-1378) and where such permit includes provisions for equivalent reporting requirements and requires filing of the water monitoring reports within ninety (90) days or less of sample collection, the permittee may submit to the cabinet on the same time schedule as required by the NPDES permit or within ninety (90) days following sample collection, whichever is earlier, a copy of the completed reporting form filed to meet NPDES permit requirements.

(2) Surface water flow and quality shall continue to be monitored as long as the *water quality standards and* effluent limitations of 405 KAR 16:070, Section 1(1)(g) are applicable [, or such additional period as is necessary to demonstrate compliance with applicable water quality standards and achievement of the postmining land use capability].

(3) Equipment, structures, and other devices necessary to measure and sample accurately the quality and quantity of surface water discharges from the disturbed area shall be properly installed, maintained, and operated and shall be removed when no longer required.

JACKIE A. SWIGART, Secretary
ADOPTED: October 26, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: October 27, 1982 at 4 p.m.

CABINET FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION
Department of Surface Mining
Reclamation and Enforcement
Amended After Hearing

405 KAR 16:130. Disposal of excess spoil.

RELATES TO: KRS 350.090, 350.410, 350.440, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.465
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during surface mining activities and for restoration and reclamation of surface areas affected by mining activities. This regulation sets forth specific requirements for the location of areas used for the disposal of excess spoil materials and the design, construction, and inspection of fill structures composed of such materials.

Section 1. General Requirements. (1) Spoil not required to achieve the approximate original contour within the area where overburden has been removed shall be transported and placed in designated disposal areas within a permit area in a manner approved by the cabinet. The spoil shall be placed in a controlled manner to ensure:

(a) That leachate and surface runoff from the fill will not degrade surface or groundwaters or exceed the requirements of 405 KAR 16:070; and

(b) Stability of the fill.

(2) The fill shall be designed and certified by a registered professional engineer and approved by the cabinet.

(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 16:050. If approved by the cabinet, organic material may be used as mulch or may be included in the topsoil to control erosion, promote growth of vegetation, or increase the moisture retention of the soil.

(4) Slope protection shall be provided to minimize surface-erosion at the site. Diversion design shall conform with the requirements of 405 KAR 16:080, Section 1. 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 cabinet. If such placement provides additional stability and prevents mass movement, fill materials suitable for disposal shall be placed upon or above a natural terrace, bench, or berm.

(6) The spoil shall be transported and placed in horizontal lifts in a controlled manner, concurrently compacted as necessary to ensure mass stability and prevent mass movement, covered, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings and ensure a long-term static safety factor of 1.5.

(7) The final configuration of the fill must be suitable for reclamation and revegetation compatible with the natural surroundings and suitable for the proposed postmining land uses approved in accordance with 405 KAR 16:210, 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 cabinet to have no potential adverse effect on the stability of the fill and to have no potential for interference with the approved postmining land use.

(8) Terraces may be utilized to control erosion and enhance stability if approved by the cabinet consistent with 405 KAR 16:190, Section 2(3) except that the safety factor shall be 1.5 and the twenty (20) feet maximum terrace width shall not apply.

(9) Where the toe of the spoil rests on a downslope or other area, where the natural land slope exceeds 1v:2.8h (thirty-six (36) percent) or such lesser slope as may be designated by the cabinet based on local conditions, keyway cuts (excavations to stable bedrock) or rock toe buttresses shall be constructed to stabilize the fill. Stability analyses shall be performed in accordance with 405 KAR 8:030, Section 27(3) to determine the size of the rock toe buttresses and keyway cuts.

(10) The fill shall be inspected for stability by a qualified registered professional 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 quarterly 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 certify to the cabinet within two (2) weeks after each inspection that the fill has been constructed as specified in the design approved by the cabinet. A copy of the report shall be retained at the minesite.

(11) If approved by the cabinet, excess spoil and underground development waste may be disposed of in coal processing waste banks in accordance with 405 KAR 16:140E or 405 KAR 18:140E. However, coal processing waste shall not be disposed of in head-of-hollow or valley fills designed and approved for excess spoil or underground development waste, and may only be disposed of in other fills designed and approved for underground development waste or excess spoil if such coal processing waste is:

(a) Placed in accordance with 405 KAR 16:140E, Section 4;

(b) Demonstrated to be non-toxic and non-acid forming; and

(c) Demonstrated to have no adverse effect upon the stability of the fill.

(12) If the disposal area contains springs, natural or manmade water-courses, or wet-weather seeps, an underdrain system consisting of durable rock shall be constructed from the wet areas in a manner that prevents infiltration of the water into the spoil material. The underdrain system shall be protected by an adequate filter and shall be designed and constructed using standard geotechnical engineering methods.

(13) The foundation and abutments of the fill shall be stable under all conditions of construction and operation. Sufficient foundation investigations, including any necessary laboratory testing of foundation materials, shall be performed in order to determine the stability of the foundation. Analyses of foundation conditions shall include the effect of underground mine workings, if any, upon the stability of the structure.

(14) Excess spoil may be returned to underground mine workings, but only in accordance with a disposal program approved by the cabinet and MSHA upon the basis of a plan submitted under 405 KAR 8:040E, Section 27.

Section 2. Valley Fills and Head-of-Hollow Fills. Disposal of excess spoil in valley fills and head-of-hollow fills shall meet all requirements of Section 1 and the additional requirements of this section, except as provided in Sections 3 and 4.

(1) The fill shall be designed to attain a long-term static safety factor of 1.5 based upon data obtained from subsurface exploration, geotechnical testing, foundation design, and accepted engineering analyses.

(2) A subdrainage system for the fill shall be constructed in accordance with the following:

(a) A system of underdrains constructed of durable rock shall meet the requirements of paragraph (d) of this subsection and:

1. Be installed along the natural drainage system;
2. Extend from the toe to the head of the fill; and
3. Contain lateral drains to each area of potential drainage or seepage.

(b) A filter system to ensure the proper functioning of the rock underdrain system shall be designed and constructed using standard geotechnical engineering methods.

(c) In constructing the underdrains, no more than ten (10) percent of the rock may be less than twelve (12) inches in size and no single rock may be larger than twenty-five (25) percent of the width of the drain. Rock used in underdrains shall meet the requirements of paragraph (d) of this subsection. The minimum size of the main underdrain shall be as specified in Appendix A of this regulation unless the applicant demonstrates through detailed engineering analysis to the satisfaction of the cabinet that a smaller drain will provide adequate long-term capacity for drainage at the site.

(d) Underdrains shall consist of nondegradable, non-acid 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. However, alternative materials may be used if the applicant demonstrates through detailed engineering analysis to the satisfaction of the cabinet that the alternative materials will provide adequate long-term capacity for drainage at the site. *Such alternative materials shall be nondegradable, and non-acid or toxic-forming.*

(3) Spoil shall be transported and placed in a controlled manner and concurrently compacted as specified by the cabinet, in lifts no greater than four (4) feet.

(a) The cabinet may require lifts of less than four (4) feet in order to:

1. Achieve the densities designed to ensure mass stability;
2. Prevent mass movement;
3. Avoid contamination of the rock underdrain or rock core; and
4. Prevent formation of voids.

(b) The cabinet may approve lifts of greater than four (4) feet, or alternate methods of controlled placement, if the permittee demonstrates through appropriate engineering analysis in the permit application to the cabinet's satisfaction that the provisions of subparagraphs 1 through 4 of paragraph (a) of this subsection will be met.

(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 cabinet. 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 16:080, Section 1(6).

(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 cabinet may require a flatter slope.

Section 3. Rock Core Chimney Drains. (1) A rock core chimney drain may be utilized as provided in this section instead of the subdrain and surface runoff diversion system required under Section 2(2) and (4) for:

(a) All head-of-hollow fills; and

(b) All valley fills associated with contour mining and placed at or near the coal seam, which do not exceed 250,000 cubic yards in volume.

(2) The rock core chimney drain shall be designed and constructed as follows:

(a) The fill shall have, along the vertical projection of the main buried stream channel or rill a vertical core of durable rock at least sixteen (16) feet thick which shall extend from the toe of the fill to the head of the fill, and from the base of the fill to the surface of the fill. A system of lateral rock underdrains shall connect this rock core to each area of potential drainage or seepage in the disposal area. Rocks used in the rock core and underdrains shall meet the requirements of Section 2(2).

(b) A filter system to ensure the proper functioning of the rock core shall be designed and constructed using standard geotechnical engineering methods.

(c) The grading may drain runoff from the fill surface away from the outslope of the fill and toward the rock core. The maximum slope of the top of the fill shall be 1v:33h (three (3) percent). Notwithstanding the requirement of Section 1(7) prohibiting depressions and impoundments, a drainage pocket may be maintained at the head of the fill during and after construction, to intercept runoff from the fill surface and discharge the runoff through or over the rock drain, if stability of the fill is not impaired. The drainage pocket and rock core shall not be used to intercept and discharge runoff from the drainage area upstream from the fill. In no case shall this drainage pocket have a potential for impounding more than 10,000 cubic feet of water. Terraces on the fill shall be graded with a three (3) to five (5) percent grade toward the fill and a one (1) percent slope toward the rock core.

(3) The drainage control system shall be capable of passing safely the runoff from a 100-year, twenty-four (24) hour precipitation event, or larger event specified by the cabinet.

Section 4. Hard Rock Spoil. (1) In lieu of the requirements of Section 2 and of the requirement in Section 1(6) to place spoil in horizontal lifts in a controlled manner and for concurrent compaction, the cabinet may approve alternate methods for disposal of hard rock spoil, which may include fill placement by dumping in a single lift, on a site specific basis, provided the services of a registered professional engineer experienced in the design and construction of earth and rockfill embankments are utilized, and provided the requirements of this section and all other requirements of Section 1, including the factor of safety, are met. For this section, hard rock spoil shall be defined as rockfill consisting of at least eighty (80) percent by volume

of sandstone, limestone, or other rocks that do not slake in water. Resistance of the hard rock spoil to slaking shall be determined by using the slake index and slake durability tests in accordance with guidelines and criteria established by the cabinet.

(2) Spoil is to be transported and placed in a specified and controlled manner which will ensure stability of the fill.

(a) The method of spoil placement shall be designed to ensure mass stability and prevent mass movement in accordance with the additional requirements of this section.

(b) Loads of noncemented clay shale and/or clay spoil in the fill shall be mixed with hard rock spoil in a controlled manner to limit on a unit basis concentrations of noncemented clay shale and clay in the fill. Such materials shall comprise no more than twenty (20) percent of the fill volume as determined by tests performed by a registered engineer and approved by the cabinet.

(3) (a) Stability analyses shall be made by a registered professional engineer. Parameters used in the stability analyses shall be based on adequate field reconnaissance, subsurface investigations including necessary borings, and laboratory tests.

(b) The embankment which constitutes the valley fill or head-of-hollow fill shall be designed with the factors of safety in Appendix B of this regulation.

(4) The design of a head-of-hollow fill shall include an internal drainage system which will ensure continued free drainage of anticipated seepage from precipitation and from springs or wet weather seeps.

(a) Anticipated discharge from springs and seeps and due to precipitation shall be based on appropriate records and/or field investigations to determine seasonal variation. The design of the internal drainage system shall be based on the maximum anticipated discharge.

(b) All granular material used for the drainage system shall be free of clay and consist of durable particles such as natural sands and gravels, sandstone, limestone or other durable rock which will not slake in water.

(c) When necessary to ensure proper long-term functioning of the internal drainage system, the internal drain shall be protected by a properly designed filter system.

(5) Surface water runoff from the areas adjacent to and above the fill shall not be allowed to flow onto the fill and shall be diverted into stabilized channels which are designed to safely pass the runoff from a 100-year, twenty-four (24) hour precipitation event. Diversion design shall comply with the requirements of 405 KAR 16:080, Section 1(6).

(6) The top surface of the completed fill shall be graded such that the final slope after settlement will be no steeper than 1v:20h (five (5) percent) toward properly designed drainage channels in natural ground along the periphery of the fill. Surface runoff from the top surface of the fill shall not be allowed to flow over the outslope of the fill.

(7) Surface runoff from the outslope of the fill shall be diverted off the fill to properly designed channels which will safely pass a 100-year, twenty-four (24) hour precipitation event. Diversion design shall comply with the requirements of 405 KAR 16:080, Section 1(6).

(8) Terraces shall be constructed on the outslope if required for control of erosion or for roads included in the approved postmining land use plan. Terraces shall meet the following requirements:

(a) The slope of the outslope between terrace benches shall not exceed 1v:2h (fifty (50) percent).

(b) To control surface runoff, each terrace bench shall be graded to a slope of 1v:20h (five (5) percent) toward the embankment. Runoff shall be collected by a ditch along the intersection of each terrace bench and the outslope.

(c) Terrace ditches shall have a five (5) percent slope toward the channels specified in subsection (7) of this section, unless steeper slopes are necessary in conjunction with approved roads.

Section 5. Disposal on Existing Benches. (1) When approved by the cabinet, excess spoil may be disposed of on existing benches created by surface coal mining operations conducted prior to May 3, 1978.

(a) The applicant shall demonstrate to the satisfaction of the cabinet that the spoil to be placed on the existing benches is in excess of the spoil necessary to eliminate the highwall and return to approximate original contour on the active mining bench.

(b) All areas to be affected shall be included in the permit area.

(c) The excess spoil shall be placed only on solid portions of the existing bench, and shall be placed in a controlled manner to eliminate as much of the existing highwall as practicable.

(d) The excess spoil shall be placed in horizontal lifts, concurrently compacted as necessary to ensure mass stability and prevent mass movement with a long-term static safety factor of 1.3, and graded to allow surface and subsurface drainage compatible with the natural surroundings. The final graded slopes shall not exceed 1v:2h (fifty (50) percent); except that the cabinet may approve steeper slopes which provide a minimum safety factor of 1.3, provide adequate control over erosion, and closely resemble the surface configuration of the land prior to mining.

(2) Gravity transport of spoil.

(a) When approved by the cabinet, excess spoil may be moved by controlled gravity transport from an actively mined upper bench to an existing lower bench, if the highwall of the lower bench intersects the upper bench with no natural slope between them other than the natural slope of the undisturbed natural barrier required by 405 KAR 16:010.

(b) The gravity transport points shall be determined by the applicant on a site specific basis and approved by the cabinet to minimize hazards to health and safety and to ensure that damage will be minimized if the spoil should accidentally move off the existing bench to the downslope.

(c) All excess spoil placed on the lower bench by gravity transport, including the spoil immediately below the points of gravity transport, shall be rehandled and placed as required under subsection (1) of this section. Spoil remaining on the lower bench from prior operations need not be rehandled except when necessary to ensure stability of the fill.

(d) A safety berm shall be constructed on the solid portion of the lower bench prior to gravity transport of the excess spoil to the lower bench. The safety berm shall be of sufficient height, width, and length to prevent the gravity transported spoil from moving off the lower bench to the downslope. Where there is insufficient material from previous operations remaining on the lower bench to construct the safety berm, only that amount of excess spoil necessary for construction of the safety berm may be gravity transported to the lower bench prior to construction of the safety berm. The safety berm shall be removed during final grading operations.

Appendix A of 405 KAR 16:130

Minimum Drain Size

Total amount of fill material	Predominant type of fill material	Minimum size of drain, in feet	
		Width	Height
Less than 1,000,000 yd³	Sandstone	10	4
Do.	Shale	16	8
More than 1,000,000 yd³	Sandstone	16	8
Do.	Shale	16	16

Appendix B of 405 KAR 16:130

Safety Factors

Case	Design condition	Minimum factor of safety
I	End of construction	1.5
II	Earthquake	1.1

JACKIE A. SWIGART, Secretary
ADOPTED: October 26, 1982
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CABINET FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Department of Surface Mining Reclamation and Enforcement
Amended After Hearing

405 KAR 16:140. Disposal of coal processing waste.

RELATES TO: KRS 350.410, 350.420, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.465
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during surface mining activities and for restoration and reclamation of surface areas affected by mining activities. This regulation sets forth requirements for the disposal of coal processing waste, including design and construction requirements for coal processing waste banks, site inspection requirements, water control measures, provisions for extinguishing burning coal waste and utilization of burned coal waste, and the return of coal processing waste to underground mine workings.

Section 1. General Requirements. (1) All coal processing waste shall be transported and placed in a manner approved by the cabinet in disposal areas approved by the cabinet for this purpose. These areas shall be within a permit area. The disposal area shall be designed, constructed, and maintained:

(a) In accordance with 405 KAR 16:130, Sections 1 and 2, and this regulation; and
(b) To prevent combustion.

(2) Coal processing waste materials from activities located outside the permit area, such as those activities at other mines or abandoned mine waste banks may be disposed of in the permit area only if approved by the cabinet. Approval shall be based on a showing by the permittee, using hydrologic, geotechnical, physical, and chemical analyses, that disposal of these materials does not:

(a) Adversely affect water quality, water flow, or vegetation;
(b) Create public health hazards; or
(c) Cause instability in the disposal areas.

Section 2. Site Inspection. (1) All coal processing waste banks shall be inspected on behalf of the permittee by a qualified registered professional engineer or other qualified person under the direct supervision of the responsible registered professional engineer.

(a) Inspections shall occur at least quarterly, beginning within seven (7) days after preparation of the disposal area begins. The cabinet may require more frequent inspection based upon an evaluation of the potential danger to the health or safety of the public and the potential harm to land, air and water resources. Inspections may terminate when the coal processing waste bank has been graded, covered in accordance with Section 4 of this regulation, topsoil has been distributed on the bank in accordance with 405 KAR 16:050, Section 4, or at such a later time as the cabinet may require.

(b) Inspections shall include such observations and tests as may be necessary to evaluate the potential hazard to human life and property, to ensure that all organic material and topsoil have been removed and that proper construction and maintenance are occurring in accordance with the plan submitted under 405 KAR 8:030, Section 34, and approved by the cabinet.

(c) The engineer shall consider steepness of slopes, seepage, and other visible factors which could indicate potential failure, and the results of failure with respect to the threat to human life and property.

(d) The responsible registered professional engineer shall certify to the cabinet within two (2) weeks after each inspection that the coal processing waste bank has been constructed as specified in the design approved by the cabinet. Copies of the inspection findings shall be maintained at the mine site.

(2) If any inspection discloses that a potential hazard exists, the cabinet shall be informed promptly of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the cabinet shall be notified immediately. The cabinet shall then notify the appropriate emergency agencies that other emergency procedures are required to protect the public from the coal processing waste area.

Section 3. Water Control Measures. (1) Except where the cabinet approves alternative practices which ensure structural integrity of the waste bank and protection of ground and surface water quality, a properly designed subdrainage system shall be provided, which shall:

(a) Intercept all ground water sources;
(b) Be protected by an adequate filter; and
(c) Be covered so as to protect against the entrance of surface water or leachate from the coal processing waste.

(2) *Upon final construction,* all surface drainage from the area above the coal processing waste bank and from the crest and face of the waste disposal area shall be diverted, in accordance with 405 KAR 16:130, Section 2(4). *During construction, such drainage shall be diverted as approved by the cabinet.*

(3) Slope protection shall be provided to minimize surface erosion at the site. All disturbed areas, including diversion ditches that are not riprapped, shall be vegetated upon completion of construction.

(4) All water discharged from a coal processing waste bank shall comply with 405 KAR 16:060, Sections 1, 2 and 9; 405 KAR 16:070; 405 KAR 16:090; 405 KAR 16:110.

Section 4. Construction Requirements. (1) Coal processing waste banks shall be constructed in compliance with 405 KAR 16:130, Sections 1 and 2, except to the extent that the requirements of those sections are varied in this section.

(2) Coal processing waste banks shall have a minimum static safety factor of 1.5.

(3) Compaction requirements during construction or modification of all coal processing waste banks shall meet the requirements of this subsection, instead of those specified in 405 KAR 16:130, Section 2(3). The coal processing waste shall be:

(a) Spread in horizontal layers no more than twenty-four (24) inches in thickness; and

(b) Compacted to attain ninety (90) percent of the maximum dry density to prevent spontaneous combustion and to provide the strength required for stability of the coal processing waste bank. Dry densities shall be determined in accordance with the American Association of State Highway and Transportation Officials (AASHTO) Specification T99-74 (Twelfth Edition) (July 1978) or an equivalent method.

(c) Variations may be allowed in these requirements for the disposal of dewatered fine coal waste (minus twenty-eight (28) sieve size) with approval of the cabinet.

(4) Following grading of the coal processing waste bank, the site shall be covered with a minimum of four (4) feet of the best available non-toxic and non-combustible material, in accordance with 405 KAR 16:050, Section 2(5), and in a manner that does not impede flow from subdrainage systems. The coal processing waste bank shall be revegetated in accordance with 405 KAR 16:200. The cabinet may allow less than four (4) feet of cover material based on physical and chemical analyses which show that the requirements of 405 KAR 16:200 will be met.

Section 5. Burning Coal Waste. Coal processing waste fires shall be extinguished by the permittee, in accordance with a plan approved by the cabinet and the MSHA. The plan shall contain, at a minimum, provisions to ensure that only those persons authorized by the permittee, and who have an understanding of the procedures to be used, shall be involved in the extinguishing operations.

Section 6. Burned Waste Utilization. Before any burned coal processing waste, other materials, or refuse is removed from a permitted disposal area, approval shall be obtained from the cabinet. A plan for the method of removal, with maps and appropriate drawings to illustrate the proposed sequence of the operation and method of compliance with this chapter shall be submitted to the cabinet. Consideration shall be given in the plan to potential hazards which may be created by removal to persons working or living in the vicinity of the disposal area. The plan shall be prepared by a qualified registered professional engineer.

Section 7. Return to Underground Workings. Coal processing waste may be returned to underground mine workings only in accordance with the waste disposal program approved by the cabinet and MSHA under 405 KAR 8:040, Section 27.

JACKIE A. SWIGART, Secretary
ADOPTED: October 26, 1982
APPROVED: ELMORE C. GRIM, Commissioner
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CABINET FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Department of Surface Mining Reclamation and Enforcement
Amended After Hearing

405 KAR 16:220. Roads.

RELATES TO: KRS 350.020, 350.028, 350.085, 350.465
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.465
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during surface mining activities and for restoration and reclamation of surface areas affected by mining activities. This regulation sets forth requirements for the location, design, construction, maintenance, and removal or permanent retention of roads and associated drainage structures.

Section 1. General. (1) Each permittee shall design, construct, utilize, and maintain roads and restore the area to meet the requirements of this regulation and to control or minimize erosion and siltation, air and water pollution, and damage to public or private property.

(2) To the extent possible using the best technology currently available, roads shall not cause damage to fish, wildlife and related environmental values and shall not cause additional contributions of suspended solids to streamflow or to runoff outside the permit area. Any such contributions shall not be in excess of limitations of state or federal law.

(3) The design and construction of roads shall be certified by a qualified registered professional engineer as being in accordance with Sections 2 through 5, except to the extent that alternative specifications are used. Alternative specifications may be used only after approval by the cabinet upon a demonstration by a qualified registered professional engineer that they will result in performance, with regard to safety, stability and environmental protection, equal to or better than that resulting from roads complying with the specifications of this regulation.

(4) All roads shall be removed and the affected land regraded and revegetated in accordance with the requirements of Section 7 unless:

(a) Retention of the road is approved as part of the approved postmining land use or as being necessary to control erosion adequately;

(b) The necessary maintenance is assured; and
(c) All drainage is controlled according to Section 4.

Section 2. Location. (1) Roads shall be located, insofar as possible, on ridges or on the most stable available slopes to minimize erosion.

(2) No part of any road shall be located in the channel of an intermittent or perennial stream unless specifically approved by the cabinet.

(3) Stream fords are prohibited unless they are specifically approved by the cabinet as temporary routes during periods of construction. The fords shall not adversely affect stream sedimentation or fish, wildlife, and related environmental values. All other stream crossings shall be made using bridges, culverts, or other structures designed, constructed, and maintained to meet the requirements of Section 4.

Section 3. Design and Construction. Roads shall be designed and constructed in compliance with the following standards in order to control subsequent erosion and disturbance of the hydrologic balance.

(1) The roadway width shall be appropriate for the anticipated volume of traffic and the size, weight, and speed of vehicles to be used.

(2) Vertical alinement. Except where lesser grades are necessary to control site-specific conditions, maximum road grades shall be as follows:

(a) The maximum grade shall not exceed lv:6.5h (fifteen (15) percent).

(b) There shall be not more than 300 feet of grade exceeding ten (10) percent within any consecutive 1,000 feet of road.

(3) Horizontal alinement. Roads shall have horizontal alinement as consistent with the existing topography as possible, and shall provide the alinement required to meet the performance standards of this regulation. The alinement shall be determined in accordance with the anticipated volume of traffic and weight and speed of vehicles to be used. Horizontal and vertical alinement shall be coordinated to ensure that one will not adversely affect the other and to ensure that the road will not cause environmental damage.

(4) Temporary erosion control measures shall be implemented during construction to minimize sedimentation and erosion until permanent control measures can be established.

(5) Excess or unsuitable material from excavations shall be disposed of in accordance with 405 KAR 16:060, Section 4; 405 KAR 16:140, Section 1; 405 KAR 16:190, Section 3.

(6) Vegetation shall not be cleared for more than the width necessary for road and associated ditch construction, to serve traffic needs and for utilities.

(7) Road cuts.

(a) Cut slopes shall not be steeper than specifically authorized by the cabinet, and shall not be steeper than lv:1.5h in unconsolidated materials or lv:0.25h in rock, except that steeper slopes may be specifically authorized by the cabinet if geotechnical analysis demonstrates that a minimum safety factor of 1.5 can be maintained.

(b) All cut slopes except solid rock cut slopes shall be revegetated as soon as possible to minimize erosion.

(8) Road embankments. Embankment sections shall be constructed in accordance with the following provisions:

(a) All vegetative material and topsoil shall be removed from the embankment foundation during construction to increase stability, and no vegetative material or topsoil shall be placed beneath or in any road embankment.

(b) Where an embankment is to be placed on side slopes exceeding lv:5h (twenty (20) percent), the existing ground shall be plowed, stepped, or, if in bedrock, keyed in a manner which increases the stability of the fill. The keyway shall be a minimum of ten (10) feet in width and shall extend a minimum of two (2) feet below the toe of the fill.

(c) Embankment shall be placed in horizontal layers and shall be compacted as necessary to ensure that the embankment is adequate to support the anticipated volume of traffic and weight and speed of vehicles to be used, In selecting the method to be used for placing embankment material, consideration shall be given in the design to such factors as the foundation, geological structure, soils, type of construction, and equipment to be used.

(d) Embankment slopes shall not be steeper than lv:2h, except that where the embankment material is a minimum of eighty-five (85) percent rock, slopes shall not be steeper than lv:1.35h if it has been demonstrated to the cabinet that embankment stability will result.

(e) The minimum safety factor for all embankments shall be 1.25, or such higher factor as the cabinet may specify.

(f) The road surface shall be sloped to prevent ponding of water on the surface.

(g) All material used in embankments shall be reasonably free of organic material, coal or coal blossom, frozen or excessively wet materials, peat material, natural soils containing organic matter, or any other material considered unsuitable by the cabinet for use in embankment construction.

(h) Acid-producing materials shall be permitted for constructing embankments for only those roads constructed on coal processing waste banks and only if it has been demonstrated to the cabinet that no additional acid will leave the confines of the coal processing waste bank. In no case shall acid-bearing refuse material be used outside the confines of the coal processing waste bank. Restoration of the road shall be in accordance with the requirements of 405 KAR 16:190, Sections 3 through 6; and 405 KAR 16:200.

(i) All embankment slopes shall be revegetated as soon as possible to minimize erosion.

Section 4. Drainage. (1) General. Each road shall be designed, constructed, and maintained to have adequate drainage, using structures such as, but not limited to, ditches, cross drains, and ditch relief drains. The water-control system shall be designed to safely pass, at a minimum, the peak runoff from a ten (10) year, twenty-four (24) hour precipitation event or a greater event if required by the cabinet.

(2) Natural drainage. Natural channel drainageways shall not be altered or relocated for road construction without the prior approval of the cabinet in accordance with 405 KAR 16:080. The cabinet may approve alterations and relocations only if the natural channel drainage is not blocked and there is no adverse impact on adjoining landowners.

(3) Stream crossings. Drainage structures are required for stream channel crossings. Drainage structures shall not adversely affect fish migration and aquatic habitat or related environmental values, and shall not adversely affect the normal flow or gradient of the stream or cause increased flow depths which would adversely affect upstream properties outside the permit area.

(4) Ditches.

(a) Drainage ditches shall be placed at the toe of all cut slopes. A ditch shall be provided on both sides of a throughcut and on the inside shoulder of a cut-and-fill section, with ditch relief cross drains spaced according to grade. Water shall be intercepted before reaching a switchback or large fill and drained safely away in accordance with this section. Water from a fill or switchback shall be released below the fill, through conduits or in riprapped channels, and shall not be discharged onto the fill.

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

(5) Culverts and bridges.

(a) 1. Culverts shall pass the ten (10) year, twenty-four (24) hour precipitation event without causing overtopping of the road and without causing adverse effects upon upstream properties outside the permit area. Bridges and approach fills shall pass *the 100 year flood event or where appropriate* the 100 year, twenty-four (24) hour precipitation event or a larger event, as specified by the cabinet, without causing increases in flow depths which would adversely affect upstream properties outside the permit area.

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

3. All culverts shall be covered by compacted fill to a minimum depth of one (1) foot.

4. Culverts shall be designed, constructed, and maintained to sustain the structural load from the fill and the weight of vehicles to be used.

(b) Culverts for road surface drainage only shall be constructed in accordance with the following:

1. Unless otherwise authorized or required under subparagraphs 2 or 3 of this paragraph, culverts shall be spaced as follows: spacing shall not exceed 1,000 feet on grades of zero (0) to three (3) percent; spacing shall not exceed 800 feet on grades of three (3) to six (6) percent; spacing shall not exceed 500 feet on grades of six (6) to ten (10) percent; spacing shall not exceed 300 feet on grades of ten (10) percent or greater.

2. Culverts at closer intervals than the maximum in subparagraph 1 of this paragraph shall be installed if required by the cabinet as appropriate for the erosive properties of the soil or to accommodate flow from small intersection drainages.

3. Culverts may be constructed at greater intervals than the maximum indicated in subparagraph 1 of this paragraph if authorized by the cabinet upon a finding that greater spacing will not increase erosion.

4. The inlet end shall be protected by a rock headwall or other protection approved by the cabinet as adequate protection against erosion at the inlet. The water shall be discharged below the toe of the fill through conduits or in riprapped channels and shall not be discharged onto the fill.

Section 5. Surfacing. (1) Roads shall be surfaced with rock, crushed gravel, asphalt, or other material approved by the cabinet as sufficiently durable for the anticipated volume of traffic and weight and speed of vehicles to be used.

(2) Acid- or toxic-forming substances shall not be used in road surfacing.

Section 6. Maintenance. (1) Roads shall be maintained in such a manner that the required or approved design standards are met throughout the life of the road.

(2) Road maintenance shall include repairs to the road surface such as grading, filling of potholes, and replacement of surfacing. It shall include revegetating of cut and fill slopes, watering for dust control, and minor reconstruction as necessary.

(3) Roads damaged by events such as floods or landslides, or by structural failures such as sliding or slumping of the embankment, shall be repaired as soon as practicable after the damage has occurred.

Section 7. Restoration. (1) As soon as practicable after a road is no longer needed for mining and reclamation operations or monitoring, unless the cabinet approves retention of a road as suitable for the approved postmining land use:

(a) The road shall be closed to vehicular traffic;

(b) The natural-drainage patterns shall be restored;

(c) All bridges and culverts shall be removed;

(d) Roadbeds shall be ripped, plowed, and scarified;

(e) Fill slopes shall be rounded or reduced and shaped to conform the site to adjacent terrain and to meet natural-drainage restoration standards;

(f) Cut slopes shall be shaped to blend with the natural contour;

(g) Cross drains, dikes, and water bars shall be constructed to minimize erosion;

(h) Terraces shall be constructed as necessary to prevent excessive erosion and to provide long-term stability in cut-and-fill slopes; and

(i) Road surfaces shall be topsoiled in accordance with 405 KAR 16:050, Section 4(2) and revegetated in accordance with 405 KAR 16:200, Sections 1 through 6.

(2) Unless otherwise authorized by the cabinet, all road surfacing materials shall be removed and disposed of under 405 KAR 16:150, Section 1.

JACKIE A. SWIGART, Secretary
ADOPTED: October 26, 1982
APPROVED: ELMORE C. GRIM, Commissioner
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CABINET FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Department of Surface Mining Reclamation and Enforcement
Amended After Hearing

405 KAR 18:060. General hydrologic requirements.

RELATES TO: KRS 350.100, 350.151, 350.420, 350.421, 350.440, 350.465

PURSUANT TO: KRS 13.082, 350.028, 350.100, 350.151, 350.420, 350.465

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This regulation sets forth general requirements for protection of the hydrologic balance, including general requirements for protection of surface and groundwater quantity and quality, prevention and control of drainage from underground

workings, control of erosion and sediment, protection of streams, and control of discharges into underground workings.

Section 1. General Requirements. (1) Underground mining activities shall be planned and conducted to minimize changes to the prevailing hydrologic balance in both the permit area and adjacent areas, in order to prevent long term adverse changes in that balance that could result from those activities.

(2) Changes in water quality and quantity, in the depth to ground water, and in the location of surface water drainage channels shall be minimized so that the approved postmining land use of the permit area is not adversely affected.

(3) In no case shall federal and state water quality statutes, regulations, standards, or effluent limitations be violated.

(4) Operations shall be conducted to minimize water pollution and, where necessary, treatment methods shall be used to control water pollution.

(a) Each permittee shall emphasize mining and reclamation practices that prevent or minimize water pollution. Changes in flow of drainage shall be used in preference to the use of water treatment facilities.

(b) Acceptable practices to control and minimize water pollution include, but are not limited to:

1. Stabilizing disturbed areas through land shaping;
2. Diverting runoff;
3. Achieving quickly germinating and growing stands of temporary vegetation;
4. Regulating channel velocity of water;
5. Lining drainage channels with rock or vegetation;
6. Mulching;
7. Selectively placing and sealing acid-forming and toxic-forming materials;
8. Designing mines to prevent or control gravity drainage of acid waters;
9. Sealing;
10. Controlling subsidence; and
11. Preventing acid mine drainage.

(c) If the practices listed at paragraph (b) of this subsection are not adequate to meet the requirements of this chapter, the permittee shall operate and maintain the necessary water treatment facilities for as long as treatment is required under this chapter.

Section 2. Sediment Control Measures. (1) Appropriate sediment control measures shall be designed, constructed, and maintained using the best technology currently available to:

(a) Prevent, to the extent possible, additional contributions of sediment to streamflow or to runoff outside the permit area;

(b) Meet the requirements of 405 KAR 18:070, Section 1(1)(g); and

(c) Minimize erosion to the extent possible.

(2) Sediment control measures include practices carried out within and adjacent to the disturbed area. The sediment storage capacity of measures in and downstream from the disturbed areas shall reflect the degree to which successful mining and reclamation techniques are applied to reduce erosion and control sediment. Sediment control measures consist of the utilization of proper mining and reclamation methods and sediment control practices, singly or in combination. Sediment control methods include but are not limited to:

(a) Disturbing the smallest practicable area at any one (1) time during the mining operation through progressive backfilling, grading and prompt revegetation as required in 405 KAR 18:200, Section 1(2);

(b) Stabilizing the backfilled material to promote a reduction in the rate and volume of runoff, in accordance with the requirements of 405 KAR 18:190;

(c) Retaining sediment within disturbed areas;

(d) Diverting runoff away from disturbed areas;

(e) Diverting runoff using protected channels or pipes through disturbed areas so as not to cause additional erosion;

(f) Using straw dikes, riprap, check dams, mulches, vegetative sediment filters, dugout ponds, and other measures that reduce overland flow velocity, reduce runoff volume, or trap sediment;

(g) Treating with chemicals; and

(h) Treating mine drainage in underground sumps.

Section 3. Discharge Structures. Discharge from sedimentation ponds, permanent and temporary impoundments, coal processing waste dams and embankments, and diversions shall be controlled, by energy dissipators, riprap channels, and other devices, where necessary, to reduce erosion, to prevent deepening or enlargement of stream channels, and to minimize disturbance of the hydrologic balance. Discharge structures shall be designed according to standard engineering design procedures.

Section 4. Acid-forming and Toxic-forming Materials. Drainage from acid-forming and toxic-forming underground development waste and spoil, if any, into ground and surface water shall be avoided by:

(1) Identifying, burying, and treating, where necessary, waste and spoil which the cabinet determines, based on information in the permit application or other appropriate information, may be detrimental to vegetation or may adversely affect water quality if not treated or buried;

(2) Preventing water from coming into contact with acid-forming and toxic-forming materials in accordance with 405 KAR 18:190, Section 3, and other measures as required by the cabinet, and;

(3) Burying or otherwise treating all acid-forming or toxic-forming underground development waste and spoil within thirty (30) days after they are first exposed on the mine site, or within a lesser period required by the cabinet. Temporary storage of such materials may be approved by the cabinet upon a finding that burial or treatment within thirty (30) days is not feasible and will not result in any material risk of water pollution or other environmental damage. Storage shall be limited to the period until burial or treatment first becomes feasible. Acid-forming or toxic-forming underground waste and spoil to be stored shall be placed on impermeable material and protected from erosion and contact with surface water.

Section 5. Underground Mine Entry and Access Discharges. (1) Surface entries and accesses to underground workings, including adits and slopes, shall be located, designed, constructed, and utilized to prevent or control gravity discharge of water from the mine.

(2) Gravity discharge of water from an underground mine, other than a drift mine subject to subsection (3) of this section, may be approved by the cabinet if it is demonstrated that:

(a) 1. The discharge, without treatment, satisfies the water quality effluent limitations of 405 KAR 18:070 and all applicable state and federal water quality standards; and

2. That discharge will result in changes in the prevailing hydrologic balance that are minimal and approved postmining land uses will not be adversely affected; or

(b) 1. The discharge is conveyed to a treatment facility in the permit area in accordance with 405 KAR 18:070, Section 1(1);

2. All water from the underground mine discharged from the treatment facility meets the effluent limitations of 405 KAR 18:070 and all other applicable state and federal statutes and regulations; and

3. Consistent maintenance of the treatment facility will occur throughout the anticipated period of gravity discharge.

(3) Notwithstanding anything to the contrary in subsections (1) and (2) of this section, for a drift mine first used after the date of applicability of this regulation and located in acid-producing or iron-producing coal seams, surface entries and accesses shall be located in such a manner as to prevent any gravity discharge from the mine.

Section 6. Transfer of Wells. (1) An exploratory or monitoring well may only be transferred by the permittee for further use as a water well with the prior approval of the cabinet. That person and the surface owner of the lands where the well is located shall jointly submit a written request to the cabinet for that approval.

(2) Upon an approved transfer of a well, the transferee shall:

(a) Assume primary liability for damages to persons or property from the well;

(b) Plug the well when necessary, but in no case later than abandonment of the well; and

(c) Assume primary responsibility for compliance with 405 KAR 18:040 with respect to the well.

(3) Upon an approved transfer of a well, the transferor shall be secondarily liable for the transferee's obligations under subsection (2) of this section, until release of the bond or other equivalent guarantee required by Title 405, Chapter 10 for the area in which the well is located.

Section 7. Discharge of Water Into an Underground Mine. Water from the surface or from an underground mine shall not be diverted or discharged into other underground mine workings, unless the permittee demonstrates to the cabinet that the discharge:

(1) Will abate water pollution or otherwise eliminate public hazards resulting from underground mining activities;

(2) Will be discharged as a controlled flow;

(3) Meets the effluent limitations of 405 KAR 18:070 for pH and total suspended solids *or settleable solids*, except that the pH and total suspended solids *or settleable solids* limitations may be exceeded, if approved by the cabinet and is limited to:

(a) Coal processing waste;

(b) Underground mine development waste;

(c) Fly ash from a coal-fired facility;

(d) Sludge from an acid mine drainage treatment facility;

(e) Flue gas desulfurization sludge; or

(f) Inert materials used for stabilizing underground mines.

(4) Will not cause or contribute to a violation of applicable water quality standards or effluent limitations due to the resulting discharge from the underground mines to surface waters (The most likely points of discharge to surface waters, if any, shall be located on a map as a part of the permit application.);

(5) Minimizes disturbances to the hydrologic balance; and

(6) Meets with the approval of the MSHA.

Section 8. Postmining Rehabilitation of Sedimentation Ponds, Diversions, Impoundments, and Treatment Facilities. Before abandoning the permit area, the permittee shall renovate all permanent sedimentation ponds, diversions, impoundments and treatment facilities as necessary to meet criteria specified in the detailed design plan for the permanent structures and impoundments.

Section 9. Stream Buffer Zones. (1) No surface area within 100 feet of *an intermittent or* [a] perennial stream [or a stream with a biological community determined according to subsection (3) of this section] shall be disturbed by surface operations and facilities, unless the cabinet specifically authorizes underground mining activities closer to or through such a stream under the following conditions:

(a) Any temporary or permanent diversions shall comply with 405 KAR 18:080 and shall be constructed prior to any disturbance of the buffer zone;

(b) That the original stream channel will be restored or relocated in a manner satisfactory to the cabinet; and

(c) During and after the mining, the water quantity and quality of the stream shall not be adversely affected by the underground mining activities as determined by federal and state water quality standards.

(2) The area not to be disturbed shall be designated a buffer zone and marked as specified in 405 KAR 18:030.

[(3) A stream with a biological community shall be determined by the existence in the stream at any time of an assemblage of two (2) or more species of arthropods or mulluscan animals which are:]

[(a) Adapted to flowing water for all or part of their life cycle;]

[(b) Dependent upon a flowing water habitat;]

[(c) Reproducing or can reasonably be expected to reproduce in the water body where they are found; and]

[(d) Longer than two (2) millimeters at some stage or part of their life cycle spent in the flowing water habitat.]

JACKIE A. SWIGART, Secretary
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APPROVED: ELMORE C. GRIM, Commissioner
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CABINET FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Department of Surface Mining Reclamation and Enforcement
Amended After Hearing

405 KAR 18:090. Sedimentation ponds.

RELATES TO: KRS 350.020, 350.100, 350.151, 350.420, 350.465

PURSUANT TO: KRS 13.082, 350.028, 350.100, 350.151, 350.420, 350.465

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural

resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This regulation sets forth specific requirements for the location, design, construction, and removal or retention of sedimentation ponds used for treatment of discharges from areas affected by surface operations and discharges from underground workings.

Section 1. General Requirements. Sedimentation ponds shall be used individually or in series and shall:

(1) Be constructed and certified under Section 5(14) before any disturbance of the area to be drained into the pond and prior to any discharge of water to surface waters from underground mine workings;

(2) Be located as near as possible to the disturbed area, and out of perennial streams unless approved by the cabinet;

(3) Meet all the criteria of this regulation;

(4) Be removed pursuant to Section 5(18) unless approved for retention under Section 5(19).

Section 2. Sediment Storage Volume. Sedimentation ponds shall provide a [minimum] sediment storage volume *as approved on a case-by-case basis by the cabinet based upon the anticipated volume of sediment to be collected and a feasible time schedule for clean-out operations. The sediment storage volume shall be the anticipated volume of sediment that will be collected by the pond between scheduled clean-out operations. The proposed clean-out schedule shall be included in the design and will be approved if the cabinet determines that the proposed schedule is feasible.* [, as measured at the crest of the principal spillway, of 0.125 acre-feet for each acre of disturbed area within the upstream drainage area, or such larger volume as necessary to achieve compliance with the requirements of 405 KAR 16:070, Section 1(1)(g).]

Section 3. Detention Time. Sedimentation ponds shall provide detention time such that discharges from the pond shall meet the requirements of 405 KAR 18:070, Section 1(1)(g).

Section 4. Dewatering. The water storage resulting from inflow shall be removed by a nonclogging dewatering device or a conduit spillway approved by the cabinet. The dewatering device shall not be located at a lower elevation than the maximum elevation of the design sediment storage volume.

Section 5. Other Requirements. (1) Each permittee shall design, construct, and maintain sedimentation ponds to prevent short-circuiting to the extent possible.

(2) The design, construction, and maintenance of a sedimentation pond or other sediment control measures in accordance with this regulation shall not relieve the permittee from compliance with 405 KAR 18:070, Section 1(1)(g).

(3) There shall be no outflow through an emergency spillway during the passage through the sedimentation pond of the runoff resulting from the ten (10) year, twenty-four (24) hour precipitation events and lesser events. The design shall take into account the volume of water and sediment contributed by the underground mine discharge.

(4) Sediment shall be removed from sedimentation ponds when the designed sediment storage volume has filled with sediment.

(5) An appropriate combination of principal and emergency spillways shall be provided to discharge safely the runoff from a twenty-five (25) year, twenty-four (24) hour precipitation event, or larger event specified by the cabinet plus any inflow from the underground mine. The elevation of the crest of the emergency spillway shall be a minimum of 1.5 feet above the crest of the principal spillway. Emergency spillway grades and allowable velocities shall be approved by the cabinet. The cabinet may establish size and other criteria under which a pond design may be approved which provides for a *single* [principal spillway but no emergency] spillway.

(6) The minimum elevation of the top of the settled embankment shall be 1.0 foot above the water surface in the reservoir with the emergency spillway flowing at design depth. For embankments subject to settlement, this 1.0 foot minimum elevation requirement shall apply at all times, including the period after settlement.

(7) The constructed height of the dam shall be increased a minimum of five (5) percent over the design height to allow for settlement, unless it has been demonstrated to the cabinet that the material used and the design will ensure against all settlement.

(8) The minimum top width of the embankment shall not be less than the quotient of $(H+35)/5$, where H, in feet, is the height of the embankment as measured from the upstream toe of the embankment.

(9) The combined upstream and downstream side slopes of the settled embankment shall not be less than 1v:5h, with neither slope steeper than 1v:2h. Slopes shall be designed to be stable in all cases, even if flatter side slopes are required.

(10) The embankment foundation area shall be cleared of all organic matter, all surfaces sloped to no steeper than 1v:1h, and the entire foundation surface scarified.

(11) The fill material shall be free of sod, large roots, other large vegetative matter, and frozen soil, and in no case shall coal-processing waste be used.

(12) The placing and spreading of fill material shall be started at the lowest point of the foundation. The fill shall be brought up in horizontal layers of such thickness as is required to facilitate compaction and meet the design requirements of this regulation. Compaction shall be conducted as specified in the design approved by the cabinet.

(13) If a sedimentation pond has an embankment that is more than twenty (20) feet in height, as measured from the upstream toe of the embankment to the crest of the emergency spillway, or has a storage volume of twenty (20) acre-feet or more, the following additional requirements shall be met:

(a) An appropriate combination of principal and emergency spillways shall be provided to safely discharge the runoff resulting from a 100-year, twenty-four (24) hour precipitation event, or a larger event specified by the cabinet, plus any inflow from the underground mine.

(b) The embankment shall be designed and constructed with a static safety factor of at least 1.5, or a higher safety factor as designated by the cabinet to ensure stability.

(c) Appropriate barriers shall be provided to control seepage along conduits that extend through the embankment.

(d) The criteria of the MSHA as published in 30 CFR 77.216 shall be met.

(14) Each pond shall be designed and certified by a registered professional engineer; shall be inspected during construction by or under the direct supervision of the responsible registered professional engineer; and after construction shall be certified by the responsible registered professional engineer as having been constructed in accordance with the approved design plans.

(15) The entire embankment including the surrounding areas disturbed by construction shall be stabilized with respect to erosion by a vegetative cover or other means immediately after the embankment is completed. The active upstream face of the embankment where water is being impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated, in accordance with 405 KAR 18:190, Section 4.

(16) All ponds meeting or exceeding the size or other criteria of 30 CFR 77.216(a) shall be examined for structural weakness, erosion, and other hazardous conditions and reports shall be made to the cabinet, in accordance with 30 CFR 77.216-3. Such inspections shall be made by a qualified registered professional engineer, by someone under the supervision of a qualified registered professional engineer, or by a person approved by MSHA for such inspections. Ponds not meeting these criteria (30 CFR 77.216(a)) shall be examined four (4) times per year for structural weakness, erosion, and other hazardous conditions and reports of the inspection shall be submitted to the cabinet.

(17) Sedimentation ponds shall be properly maintained and shall not be removed until the requirements of 405 KAR 18:070, Section 1(1)(b) have been met.

(18) Sedimentation ponds shall be removed prior to final release of bond liability for the permit area unless retention of the pond is approved by the cabinet under subsection (19) of this section. When a sedimentation pond is removed, the affected land shall be regraded and revegetated in accordance with 405 KAR 18:190 and 405 KAR 18:200.

(19) If the cabinet approves retention of a sedimentation pond as a permanent impoundment, the sedimentation pond shall meet all the requirements for permanent impoundments under 405 KAR 18:060, Section 8 and 405 KAR 18:100.

(20) Notwithstanding other provisions of this regulation, all dams as defined by KRS 151.100(13) and other impoundments classified as Class B—moderate hazard or Class C—high hazard, shall comply with 405 KAR 7:040, Section 5 and with 401 KAR 4:030.

JACKIE A. SWIGART, Secretary
ADOPTED: October 26, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: October 27, 1982 at 4 p.m.

CABINET FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Department of Surface Mining Reclamation and Enforcement
Amended After Hearing

405 KAR 18:110. Surface and groundwater monitoring.

RELATES TO: KRS 350.100, 350.151, 350.405, 350.420, 350.465,

PURSUANT TO: KRS 13.082, 350.028, 350.151, 350.420, 350.465

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This regulation sets forth requirements for the monitoring and reporting of surface water quality and quantity, and groundwater levels and quality and aquifer conditions, and the required duration of such monitoring.

Section 1. Groundwater. (1) 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 cabinet, to determine the effects of underground mining activities on the quantity and quality of water in ground water systems in the permit area and adjacent areas.

(2) When underground mining activities may affect ground water systems which serve as aquifers which significantly ensure the hydrologic balance or water use either on or off the permit area, ground water levels and ground water quality shall be periodically monitored. Monitoring shall include measurements from a sufficient number of wells, or springs where appropriate, that are adequate to reflect changes in ground water quantity and quality resulting from those activities. Monitoring shall be adequate to plan for modification of the underground mining activities if necessary to minimize disturbance to the prevailing hydrologic balance.

(3) As specified and approved by the cabinet, the permittee shall conduct additional hydrologic tests, including drilling, infiltration tests and aquifer tests, and the results shall be submitted to the cabinet to demonstrate compliance with this section.

Section 2. Surface Water. (1) Surface water monitoring and reporting shall be conducted in accordance with the monitoring program submitted under 405 KAR 8:040, Section 32(2)(c) and approved by the cabinet. The cabinet shall determine the nature of data, frequency of collection, and reporting requirements. Monitoring shall:

(a) Be adequate to measure accurately and record water quantity and quality of discharges from the permit area;

(b) Include, but not be limited to, monitoring and reporting of all water quality parameters for which effluent limitations must be met under 405 KAR 18:070, Section 1(1)(g);

(c) All cases in which analytical results of the sample collections indicate noncompliance with a permit condition or applicable standard has occurred shall result in the permittee notifying the cabinet within five (5) days. Where a National Pollutant Discharge Elimination System (NPDES) permit effluent limitation noncompliance has occurred, the permittee shall forward the analytic results concurrently with the written notification to the cabinet; and

(d) Result in quarterly reports to the cabinet, to include analytical results from each sample taken during the quarter. In those cases where the discharge for which water monitoring reports are required is also subject to regulation by a NPDES permit issued under the Clean Water Act of 1977 (30 USC Sec. 1251-1378) and where such permit includes provisions for equivalent reporting requirements and requires filing of the water monitoring reports within ninety (90) days or less of sample collection, the permittee may submit to the cabinet on the same time schedule as required by the NPDES permit, or within ninety (90) days following sample collection, whichever is earlier, a copy of the completed reporting form filed to meet NPDES permit requirements.

(2) Surface water flow and quality shall continue to be monitored as long as the *water quality standards and* ef-

fluent limitations of 405 KAR 18:070, Section 1(1)(g) are applicable [, or such additional period as necessary to demonstrate compliance with applicable water quality standards and achievement of the postmining land use capability].

(3) Equipment, structures, and other devices necessary to measure and sample accurately the quality and quantity of surface water discharges from the surface disturbed area and from underground mine workings shall be properly installed, maintained, and operated and shall be removed when no longer required.

JACKIE A. SWIGART, Secretary
ADOPTED: October 26, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: October 27, 1982 at 4 p.m.

CABINET FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Department of Surface Mining Reclamation and Enforcement
Amended After Hearing

405 KAR 18:130. Disposal of underground development waste and excess spoil.

RELATES TO: KRS 350.090, 350.151, 350.410, 350.440, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.151, 350.465
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This regulation sets forth specific requirements for the location of areas used for the disposal of underground development waste and excess spoil materials and the design, construction, and inspection of fill structures composed of such materials.

Section 1. General Requirements. (1) Underground development waste and spoil not required for compliance with 405 KAR 18:190 shall be transported to and placed in designated disposal areas within a permit area in a manner approved by the cabinet. The material shall be placed in a controlled manner to ensure:

(a) That leachate and surface runoff from the fill will not degrade surface or ground waters or exceed the requirements of 405 KAR 18:070; and

(b) Stability of the fill.

(2) The fill shall be designed and certified by a registered professional engineer and approved by the cabinet.

(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 in accordance with 405 KAR 18:050. If approved by the cabinet, organic material may be used as mulch or may be included in the topsoil to control erosion, promote growth of vegetation, or increase the moisture retention of the soil.

(4) Slope protection shall be provided to minimize surface erosion at the site. Diversion design shall conform with the requirements of 405 KAR 18:080, Section 1. 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 cabinet. 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 fill materials shall be transported and placed in horizontal lifts in a controlled manner, concurrently compacted as necessary to ensure mass stability and prevent mass movement, covered, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings and ensure a long term static safety factor of 1.5.

(7) The final configuration of the fill must be suitable for reclamation and revegetation compatible with the natural surroundings and suitable for the proposed postmining land uses approved in accordance with 405 KAR 18:220; 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 cabinet to have no potential adverse effect on the stability of the fill and to have no potential for interference with the approved postmining land use.

(8) Terraces may be utilized to control erosion and enhance stability if approved by the cabinet consistent with 405 KAR 16:190, Section 2(3) except that the safety factor shall be 1.5 and the twenty (20) feet maximum terrace width shall not apply.

(9) Where the toe of the spoil rests on a downslope or other area, where the natural land slope exceeds 1v:2.8h (thirty-six (36) percent) or such lesser slope as may be designated by the cabinet based on local conditions, keyway cuts (excavations to stable bedrock) or rock toe buttresses shall be constructed to stabilize the fill. Stability analyses shall be performed in accordance with 405 KAR 8:040, Section 28 to determine the size of the rock toe buttresses or keyway cuts.

(10) The fill shall be inspected for stability by a qualified registered professional 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 quarterly throughout construction, and during the following critical construction periods: removal of 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 certify to the cabinet within two (2) weeks after each inspection that the fill has been constructed as specified in the design approved by the cabinet. A copy of the report shall be retained at the minesite.

(11) If approved by the cabinet, excess spoil and underground development waste may be disposed of in coal processing waste banks in accordance with 405 KAR 16:140 or 405 KAR 18:140. However, coal processing waste shall not be disposed of in valley or head-of-hollow fills designed and approved for excess spoil or underground development waste, and may only be disposed of in other fills designed and approved for underground development waste or excess spoil if such coal processing waste is:

(a) Placed in accordance with 405 KAR 18:140, Section 4;

(b) Demonstrated to be non-toxic and non-acid forming; and

(c) Demonstrated to have no adverse effect upon the stability of the fill.

(12) If the disposal area contains springs, natural or manmade watercourses, or wet weather seeps, an underdrain system consisting of durable rock shall be constructed from the wet areas in a manner that prevents infiltration of the water into the spoil material. The underdrain system shall be protected by an adequate filter and shall be designed and constructed using standard geotechnical engineering methods.

(13) The foundation and abutments of the fill shall be stable under all conditions of construction and operation. Sufficient foundation investigation, including any necessary laboratory testing of foundation materials, shall be performed in order to determine the stability of the foundation. Analyses of foundation conditions shall include the effect of underground mine workings, if any, upon the stability of the structure.

(14) Underground development waste and excess spoil may be returned to underground workings only in accordance with the disposal plans submited under 405 KAR 8:040, Section 27 and approved by the cabinet and MSHA.

Section 2. Valley Fills and Head-of-hollow Fills. Valley fills and head-of-hollow fills shall meet all of the requirements of Section 1 and the additional requirements of this section, except as provided in Sections 3 and 4.

(1) The fill shall be designed to attain a long term static factor of safety of 1.5, based upon data obtained from subsurface exploration, geotechnical testing, foundation design, and accepted engineering analyses.

(2) A sub-drainage system for the fill shall be constructed in accordance with the following:

(a) A system of underdrains constructed of durable rock shall meet the requirements of paragraph (d) of this subsection and:

1. Be installed along the natural drainage system;
2. Extend from the toe to the head of the fill; and
3. Contain lateral drains to each area of potential drainage or seepage.

(b) A filter system to ensure the proper functioning of the rock underdrain system shall be designed and constructed using standard geotechnical engineering methods.

(c) In constructing the underdrains, no more than ten (10) percent of the rock may be less than twelve (12) inches in size and no single rock may be larger than twenty-five (25) percent of the width of the drain. Rock used in underdrains shall meet the requirements of paragraph (d) of this subsection. The minimum size of the main underdrain shall be as specified in Appendix A of this regulation unless the applicant demonstrates through detailed engineering analysis to the satisfaction of the cabinet that a smaller drain will provide adequate long term capacity for drainage at the site.

(d) Underdrains shall consist of nondegradable, non-acid 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. However, alternative materials may be used if the applicant demonstrates through detailed engineering analysis to the satisfaction of the cabinet that the alternative materials will provide adequate long-term capacity for drainage at the site. *Such alternative materials shall be nondegradable, and non-acid or toxic-forming.*

(3) Underground development waste and excess spoil shall be transported and placed in a controlled manner and concurrently compacted as specified by the cabinet, in lifts no greater than four (4) feet.

(a) The cabinet may require lifts of less than four (4) feet in order to:

1. Achieve the densities designed to ensure mass stability;
2. Prevent mass movement;
3. Avoid contamination of the rock underdrain or rock core; and
4. Prevent formation of voids.

(b) The cabinet may approve lifts of greater than four (4) feet, or alternate methods of controlled placement, if the permittee demonstrates through appropriate engineering analysis in the permit application to the cabinet's satisfaction that the provisions of subparagraphs 1 through 4 of paragraph (a) of this subsection will be met.

(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 the 100-year, twenty-four (24) hour precipitation event. 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 18:080, Section 1(6).

(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 cabinet may require a flatter slope.

Section 3. Rock Core Chimney Drain. (1) A rock core chimney drain may be utilized as provided in this section instead of the subdrain and surface runoff diversion system required under Section 2(2) and (4), for:

(a) All head-of-hollow fills; and

(b) All valley fills placed near the elevation of the face-up area which do not exceed 250,000 cubic yards in volume.

(2) The rock core chimney drain shall be designed and constructed as follows:

(a) The fill shall have, along the vertical projection of the main buried stream channel or rill, a vertical core of durable rock at least sixteen (16) feet thick which shall extend from the toe of the fill to the head of the fill, and from the base of the fill to the surface of the fill. A system of lateral rock underdrains shall connect this rock core to each area of potential drainage or seepage in the disposal area. Rocks used in the rock core and underdrains shall meet the requirements of Section 2(2).

(b) A filter system to ensure the proper functioning of the rock core shall be designed and constructed using standard geotechnical engineering methods.

(c) The grading may drain runoff from the fill surface away from the outslope of the fill and toward the rock core. The maximum slope of the top of the fill shall be 1v:33h (three (3) percent). Notwithstanding the requirement of Section 1(7), prohibiting depressions and impoundments, a drainage pocket may be maintained at the head of the fill during and after construction, to intercept runoff from the fill surface and discharge the runoff through or over the rock drain, if stability of the fill is not impaired. The drainage pocket and rock core shall not be used to intercept and discharge runoff from the drainage area upstream from the fill. In no case shall this drainage

pocket have a potential for impounding more than 10,000 cubic feet of water. Terraces on the fill shall be graded with a three (3) to five (5) percent grade toward the fill and a one (1) percent slope toward the rock core.

(3) The drainage control system shall be capable of safely passing the runoff from a 100-year, twenty-four (24) hour precipitation event or larger event specified by the cabinet.

Section 4. Hard Rock Spoil. (1) In lieu of the requirements of Section 2 and of the requirement in Section 1(6) to place spoil in horizontal lifts in a controlled manner and for concurrent compaction, the cabinet may approve alternate methods for disposal of hard rock spoil, which may include fill placement by dumping in a single lift, on a site specific basis, provided the services of a registered professional engineer experienced in the design and construction of earth and rockfill embankments are utilized and provided the requirements of this section and all other requirements of Section 1, including the factor of safety, are met. For this section, hard rock spoil shall be defined as rockfill consisting of at least eighty (80) percent by volume of sandstone, limestone, or other rocks that do not slake in water. Resistance of the hard rock waste or spoil to slaking shall be determined by using the slake index and slake durability tests in accordance with guidelines and criteria established by the cabinet.

(2) Waste or spoil is to be transported and placed in a specified and controlled manner which will ensure stability of the fill.

(a) The method of waste spoil placement shall be designed to ensure mass stability and prevent mass movement in accordance with the additional requirements of this section.

(b) Loads of noncemented clay shale and/or clay spoil in the fill shall be mixed with hard rock spoil in a controlled manner to limit on a unit basis concentrations of noncemented clay shale and clay in the fill. Such materials will comprise no more than twenty (20) percent of the fill volume as determined by tests performed by a registered engineer and approved by the cabinet.

(3) Stability analyses shall be made by the registered professional engineer.

(a) Parameters used in the stability analyses shall be based on adequate field reconnaissance, subsurface investigations, including necessary borings, and laboratory tests.

(b) The embankment which constitutes the valley fill or head-of-hollow fill shall be designed with the factors of safety specified in Appendix B of this regulation.

(4) The design of a head-of-hollow fill shall include an internal drainage system which will ensure continued free drainage of anticipated seepage from precipitation and from springs or wet weather seeps.

(a) Anticipated discharge from springs and seeps and due to precipitation shall be based on appropriate records and/or field investigations to determine seasonal variation. The design of the internal drainage system shall be based on the maximum anticipated discharge.

(b) All granular material used for the drainage system shall be free of clay and consist of durable particles such as natural sands and gravels, sandstone, limestone or other durable rock which will not slake in water.

(c) When necessary to ensure proper long-term functioning of the internal drainage system, the internal drain shall be protected by a properly designed filter system.

(5) Surface water runoff from the areas adjacent to and above the fill shall not be allowed to flow onto the fill and shall be diverted into stabilized channels which are designed to safely pass the runoff from a 100-year, twenty-four (24) hour precipitation event. Diversion design shall comply with the requirements of 405 KAR 18:080, Section 1(6).

(6) The top surface of the completed fill shall be graded such that the final slope after settlement will be no steeper than 1v:20h (five (5) percent) toward properly designed drainage channels in natural ground along the periphery of the fill. Surface runoff from the top surface of the fill shall not be allowed to flow over the outslope of the fill.

(7) Surface runoff from the outslope of the fill shall be diverted off the fill to properly designed channels which will safely pass a 100-year, twenty-four (24) hour precipitation event. Diversion design shall comply with the requirements of 405 KAR 18:080, Section 1(6).

(8) Terraces shall be constructed on the outslope if required for control of erosion or for roads included in the approved post-mining land use plan. Terraces shall meet the following requirements:

(a) The slope of the outslope between terrace benches shall not exceed 1v:2h (fifty (50) percent).

(b) To control surface runoff, each terrace bench shall be graded to a slope of 1v:20h (five (5) percent) toward the embankment. Runoff shall be collected by a ditch along the intersection of each terrace bench and the outslope.

(c) Terrace ditches shall have a five (5) percent slope toward the channels specified in subsection (7) of this section, unless steeper slopes are necessary in conjunction with approved roads.

Section 5. Disposal on Existing Benches. (1) When approved by the cabinet, underground development waste and excess spoil may be disposed of on existing benches created by surface coal mining operations conducted prior to May 3, 1978.

(a) The applicant shall demonstrate to the satisfaction of the cabinet that the underground development waste and excess spoil to be placed on the existing benches is in excess of the underground development waste and spoil necessary to eliminate the highwall and return to approximate original contour on the active mining bench.

(b) All areas to be affected shall be included in the permit area.

(c) The underground development waste and excess spoil shall be placed only on solid portions of the existing bench, and shall be placed in a controlled manner to eliminate as much of the existing highwall as practicable.

(d) The underground development waste and excess spoil shall be placed in horizontal lifts, concurrently compacted as necessary to ensure mass stability and prevent mass movement with a long-term static safety factor of 1.3, and graded to allow surface and subsurface drainage compatible with the natural surroundings. The final graded slopes shall not exceed 1v:2H (fifty (50) percent), except that the cabinet may approve steeper slopes which provide a minimum safety factor of 1.3, provide adequate control over erosion, and closely resemble the surface configuration of the land prior to mining.

(2) Gravity transport of underground development waste and excess spoil.

(a) When approved by the cabinet, underground development waste and excess spoil may be moved by controlled gravity transport from an actively mined upper bench to an existing lower bench if the highwall of the lower bench intersects the upper bench with no natural slope between them other than the natural slope of the undisturbed natural barrier required by 405 KAR 16:010.

(b) The gravity transport points shall be determined by the applicant on a site specific basis and approved by the

cabinet to minimize hazards to health and safety and to ensure that damage will be minimized if the underground development waste and excess spoil should accidentally move off the existing bench to the downslope.

(c) All underground development waste and excess spoil placed on the lower bench by gravity transport, including the underground development waste and excess spoil immediately below the points of gravity transport, shall be rehandled and placed as required under subsection (1) of this section. Underground development waste and excess spoil remaining on the lower bench from prior operations need not be rehandled except when necessary to ensure stability of the fill.

(d) A safety berm shall be constructed on the solid portion of the lower bench prior to gravity transport of the underground development waste and excess spoil to the lower bench. The safety berm shall be of sufficient height, width, and length to prevent the gravity transported underground development waste and excess spoil from moving off the lower bench to the downslope. Where there is insufficient material from previous operations remaining on the lower bench to construct the safety berm, only that amount of underground development waste and excess spoil necessary for construction of the safety berm may be gravity transported to the lower bench prior to construction of the safety berm. The safety berm shall be removed during final grading operations.

Appendix A of 405 KAR 18:130

Minimum Drain Size

Total amount of fill material	Predominant type of fill material	Minimum size of drain, in feet	
		Width	Height
Less than 1,000,000 yd^3	Sandstone	10	4
Do.	Shale	16	8
More than 1,000,000 yd^3	Sandstone	16	8
Do.	Shale	16	16

Appendix B of 405 KAR 18:130

Safety Factors

Case	Design condition	Minimum factor of safety
I	End of construction	1.5
II	Earthquake	1.1

JACKIE A. SWIGART, Secretary
ADOPTED: October 26, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: October 27, 1982 at 4 p.m.

CABINET FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Department of Surface Mining Reclamation and Enforcement
Amended After Hearing

405 KAR 18:140. Disposal of coal processing waste.

RELATES TO: KRS 350.151, 350.410, 350.420, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.151, 350.465
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This regulation sets forth requirements for the disposal of coal processing waste, including design and construction requirements for coal processing waste banks, site inspection requirements, water control measures, provisions for extinguishing burning coal waste and utilization of burned coal waste, and the return of coal processing waste to underground mine workings.

Section 1. General Requirements. (1) All coal processing waste shall be transported and placed in a manner approved by the cabinet in disposal areas approved by the cabinet for this purpose. These areas shall be within a permit area. The disposal area shall be designed, constructed and maintained:

(a) In accordance with this regulation and the criteria set forth in 405 KAR 18:130, Sections 1 and 2; and

(b) To prevent combustion.

(2) Coal processing waste materials from activities located outside the permit area, such as those activities at other mines or abandoned mine waste banks, may be disposed of in the permit area only if approved by the cabinet. Approval shall be based on a showing by the permittee, using hydrologic, geologic, geotechnical, physical, and chemical analyses, that disposal of these materials does not:

(a) Adversely affect water quality, water flow, or vegetation;

(b) Create public health hazards; or

(c) Cause instability in the disposal areas.

Section 2. Site Inspection. (1) All coal processing waste banks shall be inspected on behlf of the permittee by a qualified registered professional engineer or other qualified person under the direct supervision of the responsible registered professional engineer.

(a) Inspections shall occur at least quarterly, beginning within seven (7) days after preparation of the disposal area begins. The cabinet may require more frequent inspections based upon an evaluation of the potential danger to the health or safety of the public and the potential harm to land, air and water resources. Inspections may terminate when the coal processing waste bank has been graded, covered in accordance with Section 4, topsoil has been distributed on the bank in accordance with 405 KAR 18:050, Section 4, or at such a later time as the cabinet may require.

(b) Inspections shall include such observations and tests as may be necessary to evaluate the potential hazard to human life and property, ensure that all organic material

and topsoil have been removed and that proper construction and maintenance are occurring in accordance with the plan submitted under 405 KAR 8:040, Section 34, and approved by the cabinet.

(c) The engineer shall consider steepness of slopes, seepage, and other visible factors which could indicate potential failure, and the results of failure with respect to the threat to human life and property.

(d) The responsible registered professional engineer shall certify to the cabinet within two (2) weeks after each inspection that the coal processing waste bank has been constructed as specified in the design approved by the cabinet. Copies of the inspection findings shall be maintained at the mine site.

(2) If any inspection discloses that a potential hazard exists, the cabinet shall be informed promptly of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the cabinet shall be notified immediately. The cabinet shall then notify the appropriate emergency agencies that other emergency procedures are required to protect the public from the coal processing waste area.

Section 3. Water Control Measures. (1) Except where the cabinet approves alternative practices which ensure structural integrity of the waste bank and protection of ground and surface water quality, a properly designed subdrainage system shall be provided, which shall:

(a) Intercept all ground water sources;

(b) Be protected by an adequate filter; and

(c) Be covered so as to protect against the entrance of surface water or leachate from the coal processing waste.

(2) *Upon final construction,* all surface drainage from the area above the coal processing waste bank and from the crest and face of the waste disposal area shall be diverted, in accordance with 405 KAR 18:130, Section 2(4). *During construction, such drainage shall be diverted as approved by the cabinet.*

(3) Slope protection shall be provided to minimize surface erosion at the site. All disturbed areas, including diversion ditches that are not riprapped, shall be vegetated upon completion of construction.

(4) Discharges of all water from a coal processing waste bank shall comply with 405 KAR 18:060, Sections 1, 2 and 7, 405 KAR 18:070, 405 KAR 18:090, and 405 KAR 18:110.

Section 4. Construction Requirements. (1) Coal processing waste banks shall be constructed in compliance with 405 KAR 18:130, Sections 1 and 2, except to the extent the requirements of those sections are specifically varied in this section.

(2) Coal processing waste banks shall have a minimum static factor of safety of 1.5.

(3) Compaction requirements during construction or modification of all coal processing waste banks shall meet the requirements of this subsection, instead of those specified in 405 KAR 18:130, Section 2(3). The coal processing waste shall be:

(a) Spread in horizontal layers no more than twenty-four (24) inches in thickness; and

(b) Compacted to attain ninety (90) percent of the maximum dry density in order to prevent spontaneous combustion and to provide the strength required for stability of the coal processing waste bank. Dry densities shall be determined in accordance with the American Association of State Highway and Transportation Officials (AASHTO) Specification T99-74 (Twelfth Edition) (July 1978) or an equivalent method.

(c) Variations may be allowed in these requirements for the disposal of dewatered fine coal waste (minus twenty-eight (28) sieve size) with approval of the cabinet.

(4) Following grading of the coal processing waste bank, the site shall be covered with a minimum of four (4) feet of the best available non-toxic and non-combustible material, in accordance with 405 KAR 18:050, Section 2(5), and in a manner that does not impede flow from subdrainage systems. The coal processing waste bank shall be revegetated in accordance with 405 KAR 18:200. The cabinet may allow less than four (4) feet of cover material based on physical and chemical analyses which show that the requirements of 405 KAR 18:200 will be met.

Section 5. Burning Coal Waste. Coal processing waste fires shall be extinguished by the permittee in accordance with a plan approved by the cabinet and the MSHA. The plan shall contain, as a minimum, provisions to ensure that only those persons authorized by the permittee and who have an understanding of the procedures to be used, shall be involved in the extinguishing operations.

Section 6. Burned Waste Utilization. Before any burned coal processing waste or other materials or refuse is removed from a disposal area, approval shall be obtained from the cabinet. A plan for the method of removal, with maps and appropriate drawings to illustrate the proposed sequence of the operation and methods of compliance with this chapter, shall be submitted to the cabinet. Consideration shall be given in the plan to potential hazards which may be created by removal to persons working or living in the vicinity of the disposal area. The plan shall be prepared by a qualified registered professional engineer.

Section 7. Return to Underground Workings. Coal processing waste may be returned to underground mine workings only in accordance with the waste disposal program approved by the cabinet and MSHA under 405 KAR 8:040, Sections 27 and 28.

JACKIE A. SWIGART, Secretary
ADOPTED: October 26, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: October 27, 1982 at 4 p.m.

CABINET FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Department of Surface Mining Reclamation and Enforcement
Amended After Hearing

405 KAR 18:230. Roads.

RELATES TO: KRS 350.020, 350.028, 350.085, 350.151, 350.465

PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.151, 350.465

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and

regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This regulation sets forth requirements for the location, design, construction, maintenance, and removal or permanent retention of roads and associated drainage structures.

Section 1. General. (1) Each permittee shall design, construct, utilize, and maintain roads and restore the area to meet the requirements of this regulation and to control or minimize erosion and siltation, air and water pollution, and damage to public or private property.

(2) To the extent possible using the best technology currently available, roads shall not cause damage to fish, wildlife and related environmental values and shall not cause additional contributions of suspended solids to streamflow or to runoff outside the permit area. Any such contributions shall not be in excess of limitations of state or federal law.

(3) The design and construction of roads shall be certified by a qualified registered professional engineer as being in accordance with Sections 2 through 5, except to the extent that alternative specifications are used. Alternative specifications may be used only after approval by the cabinet upon a demonstration by a qualified registered professional engineer that they will result in performance, with regard to safety, stability and environmental protection, equal to or better than that resulting from roads complying with the specifications of this regulation.

(4) All roads shall be removed and the affected land regraded and revegetated in accordance with the requirements of Section 7 unless:

(a) Retention of the road is approved as part of the approved postmining land use or as being necessary to control erosion adequately;

(b) The necessary maintenance is assured; and

(c) All drainage is controlled according to Section 4.

Section 2. Location. (1) Roads shall be located, insofar as possible, on ridges or on the most stable available slopes to minimize erosion.

(2) No part of any road shall be located in the channel of an intermittent or perennial stream unless specifically approved by the cabinet.

(3) Stream fords are prohibited unless they are specifically approved by the cabinet as temporary routes during periods of construction. The fords shall not adversely affect stream sedimentation or fish, wildlife, and related environmental values. All other stream crossings shall be made using bridges, culverts, or other structures designed, constructed, and maintained to meet the requirements of Section 4.

Section 3. Design and Construction. Roads shall be designed and constructed in compliance with the following standards in order to control subsequent erosion and disturbance of the hydrologic balance.

(1) The roadway width shall be appropriate for the anticipated volume of traffic and the size, weight, and speed of vehicles to be used.

(2) Vertical alinement. Except where lesser grades are necessary to control site-specific conditions, maximum road grades shall be as follows:

(a) The maximum grade shall not exceed lv:6.5h (fifteen (15) percent).

(b) There shall be not more than 300 feet of grade exceeding ten (10) percent within any consecutive 1,000 feet of road.

(3) Horizontal alinement. Roads shall have horizontal alinement as consistent with the existing topography as possible, and shall provide the alinement required to meet the performance standards of this regulation. The alinement shall be determined in accordance with the anticipated volume of traffic and weight and speed of vehicles to be used. Horizontal and vertical alinement shall be coordinated to ensure that one will not adversely affect the other and to ensure that the road will not cause environmental damage.

(4) Temporary erosion control measures shall be implemented during construction to minimize sedimentation and erosion until permanent control measures can be established.

(5) Excess or unsuitable material from excavations shall be disposed of in accordance with 405 KAR 18:060, Section 4; 405 KAR 18:140, Section 1; 405 KAR 18:190, Section 3.

(6) Vegetation shall not be cleared for more than the width necessary for road and associated ditch construction, to serve traffic needs and for utilities.

(7) Road cuts.

(a) Cut slopes shall not be steeper than specifically authorized by the cabinet, and shall not be steeper than lv:1.5h in unconsolidated materials or lv:0.25h in rock, except that steeper slopes may be specifically authorized by the cabinet if geotechnical analysis demonstrates that a minimum safety factor of 1.5 can be maintained.

(b) All cut slopes except solid rock cut slopes shall be revegetated as soon as possible to minimize erosion.

(8) Road embankments. Embankment sections shall be constructed in accordance with the following provisions:

(a) All vegetative material and topsoil shall be removed from the embankment foundation during construction to increase stability, and no vegetative material or topsoil shall be placed beneath or in any road embankment.

(b) Where an embankment is to be placed on side slopes exceeding lv:5h (twenty (20) percent), the existing ground shall be plowed, stepped, or, if in bedrock, keyed in a manner which increases the stability of the fill. The keyway shall be a minimum of ten (10) feet in width and shall extend a minimum of two (2) feet below the toe of the fill.

(c) Embankment shall be placed in horizontal layers and shall be compacted as necessary to ensure that the embankment is adequate to support the anticipated volume of traffic and weight and speed of vehicles to be used, In selecting the method to be used for placing embankment material, consideration shall be given in the design to such factors as the foundation, geological structure, soils, type of construction, and equipment to be used.

(d) Embankment slopes shall not be steeper than lv:2h, except that where the embankment material is a minimum of eighty-five (85) percent rock, slopes shall not be steeper than lv:1.35h if it has been demonstrated to the cabinet that embankment stability will result.

(e) The minimum safety factor for all embankments shall be 1.25, or such higher factor as the cabinet may specify.

(f) The road surface shall be sloped to prevent ponding of water on the surface.

(g) All material used in embankments shall be reasonably free of organic material, coal or coal blossom, frozen or excessively wet materials, peat material, natural soils containing organic matter, or any other material con-

sidered unsuitable by the cabinet for use in embankment construction.

(h) Acid-producing materials shall be permitted for constructing embankments for only those roads constructed on coal processing waste banks and only if it has been demonstrated to the cabinet that no additional acid will leave the confines of the coal processing waste bank. In no case shall acid-bearing refuse material be used outside the confines of the coal processing waste bank. Restoration of the road shall be in accordance with the requirements of 405 KAR 18:190, Sections 3 and 4; and 405 KAR 18:200.

(i) All embankment slopes shall be revegetated as soon as possible to minimize erosion.

Section 4. Drainage. (1) General. Each road shall be designed, constructed, and maintained to have adequate drainage, using structures such as, but not limited to, ditches, cross drains, and ditch relief drains. The water-control system shall be designed to safely pass, at a minimum, the peak runoff from a ten (10) year, twenty-four (24) hour precipitation event or a greater event if required by the cabinet.

(2) Natural drainage. Natural channel drainageways shall not be altered or relocated for road construction without the prior approval of the cabinet in accordance with 405 KAR 18:080. The cabinet may approve alterations and relocations only if the natural channel drainage is not blocked and there is no adverse impact on adjoining landowners.

(3) Stream crossings. Drainage structures are required for stream channel crossings. Drainage structures shall not adversely affect fish migration and aquatic habitat or related environmental values, and shall not adversely affect the normal flow or gradient of the stream or cause increased flow depths which would adversely affect upstream properties outside the permit area.

(4) Ditches.

(a) Drainage ditches shall be placed at the toe of all cut slopes. A ditch shall be provided on both sides of a throughcut and on the inside shoulder of a cut-and-fill section, with ditch relief cross drains spaced according to grade. Water shall be intercepted before reaching a switchback or large fill and drained safely away in accordance with this section. Water from a fill or switchback shall be released below the fill, through conduits or in riprapped channels, and shall not be discharged onto the fill.

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

(5) Culverts and bridges.

(a) 1. Culverts shall pass the ten (10) year, twenty-four (24) hour precipitation event without causing overtopping of the road and without causing adverse effects upon upstream properties outside the permit area. Bridges and approach fills shall pass *the 100 year flood event or where appropriate* the 100 year, twenty-four (24) hour precipitation event, or a larger event as specified by the cabinet, without causing increases in flow depths which would adversely affect upstream properties outside the permit area.

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

3. All culverts shall be covered by compacted fill to a minimum depth of one (1) foot.

4. Culverts shall be designed, constructed, and maintained to sustain the structural load from the fill and the weight of vehicles to be used.

(b) Culverts for road-surface drainage only shall be constructed in accordance with the following:

1. Unless otherwise authorized or required under subparagraphs 2 or 3 of this paragraph, culverts shall be spaced as follows: spacing shall not exceed 1,000 feet on grades of zero (0) to three (3) percent; spacing shall not exceed 800 feet on grades of three (3) to six (6) percent; spacing shall not exceed 500 feet on grades of six (6) to ten (10) percent; spacing shall not exceed 300 feet on grades of ten (10) percent or greater.

2. Culverts at closer intervals than the maximum in subpargraph 1 of this pargraph shall be installed if required by the cabinet as appropriate for the erosive properties of the soil or to accommodate flow from small intersecting drainages.

3. Culverts may be constructed at greater intervals than the maximum indicated in subparagraph 1 of this paragraph if authorized by the cabinet upon a finding that greater spacing will not increase erosion.

4. The inlet end shall be protected by a rock headwall or other protection approved by the cabinet as adequate protection against erosion at the inlet. The water shall be discharged below the toe of the fill through conduits or in riprapped channels and shall not be discharged onto the fill.

Section 5. Surfacing. (1) Roads shall be surfaced with rock, crushed gravel, asphalt, or other material approved by the cabinet as sufficiently durable for the anticipated volume of traffic and weight and speed of vehicles to be used.

(2) Acid- or toxic-forming substances shall not be used in road surfacing.

Section 6. Maintenance. (1) Roads shall be maintained in such a manner that the required or approved design standards are met throughout the life of the road.

(2) Road maintenance shall include repairs to the road surface such as grading, filling of potholes, and replacement of surfacing. It shall include revegetating of cut and fill slopes, watering for dust control, and minor reconstruction as necessary.

(3) Roads damaged by events such as floods or landslides, or by structural failures such as sliding or slumping of the embankment, shall be repaired as soon as practicable after the damage has occurred.

Section 7. Restoration. (1) As soon as practicable after a road is no longer needed for mining and reclamation operations or monitoring, unless the cabinet approves retention of a road as suitable for the approved postmining land use:

(a) The road shall be closed to vehicular traffic;

(b) The natural-drainage patterns shall be restored;

(c) All bridges and culverts shall be removed;

(d) Roadbeds shall be ripped, plowed, and scarified;

(e) Fill slopes shall be rounded or reduced and shaped to conform the site to adjacent terrain and to meet natural-drainage restoration standards;

(f) Cut slopes shall be shaped to blend with the natural contour;

(g) Cross drains, dikes, and water bars shall be constructed to minimize erosion;

(h) Terraces shall be constructed as necessary to prevent excessive erosion and to provide long-term stability in cut-and-fill slopes; and

(i) Road surfaces shall be topsoiled in accordance with 405 KAR 18:050, Section 4(2) and revegetated in ac-

cordance with 405 KAR 18:200, Sections 1 through 6.

(2) Unless otherwise authorized by the cabinet, all road surfacing materials shall be removed and disposed of under 405 KAR 18:150, Section 1.

JACKIE A. SWIGART, Secretary
ADOPTED: October 26, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: October 27, 1982 at 4 p.m.

CABINET FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Department of Surface Mining Reclamation and Enforcement
Amended After Hearing

405 KAR 24:030. Process and criteria for designating lands unsuitable for surface mining operations.

RELATES TO: KRS 350.465(2)(b), 350.610
PURSUANT TO: KRS 350.465(2), 350.610
NECESSITY AND FUNCTION: KRS 350.465(2) and 350.610 require the cabinet to prepare, develop, and promulgate a permanent regulatory program for the implementation of SMCRA containing procedures similar to that Act. This regulation sets forth procedures and criteria for reviewing petitions seeking designation of lands as unsuitable for all or certain types of coal mining operations and for the termination of 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 surface coal mining operations. These decisions shall be based on the best available, scientifically sound data and other relevant information.

Section 2. Lands Exempt From Designation. (1) Petitions for designating lands as unsuitable for all or certain surface coal mining operations will not be considered for:

(a) Lands on which surface coal mining operations were being conducted on August 3, 1977;

(b) Lands covered by a permit issued under KRS Chapter 350 or a permit application for which the public comment period has closed according to Section 3(6);

(c) Lands where substantial legal and financial commitments were in existence prior to January 4, 1977 in such surface coal mining operations.

(2) Determination of "substantial legal and financial commitments." The costs of acquiring the coal in place or the right to mine such coal will not alone constitute a substantial legal and financial commitment in the absence of an existing mine. Factors to be considered will include, but not be limited to, the following:

(a) The actual expenditure of substantial monies or the execution of a valid and binding contract for substantial monies on the improvement or modification of coal lands within, for access to, or in support to surface coal mining operations in the petitioned area.

(b) The actual expenditure of substantial monies or the execution of a valid and binding contract for substantial monies on capital equipment within, for access to, or in support of surface coal mining operations in the petitioned area.

(c) The actual expenditure of substantial monies or the execution of a valid and binding contract for substantive monies on exploration, mapping, surveying, and geological work, as well as engineering and legal fees, associated with the acquisition of the property or preparation of an application to conduct surface coal mining and reclamation operations.

Section 3. Initial Processing of Petitions. (1) Within thirty (30) days of the receipt of a petition to designate or terminate, the cabinet shall notify the petitioner by certified mail whether or not the petition is complete. *A petition shall be deemed incomplete if the cabinet finds that the petition does not contain all information required by 405 KAR 24:020, Sections 3 and 4.*

(2) If the cabinet determines that the petition is incomplete, it shall be returned to 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 cabinet shall determine whether any identified coal resources exist in the area described in the petition. Should the cabinet find that there are not identified coal resources in that area, the petition shall be returned to the petitioner with a statement of findings.

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

(5) When considering a petition for an area which was previously and unsuccessfully proposed for designation, the cabinet shall determine if the new petition presents substantial new allegations of facts and objective evidence. If the petition does not contain new and substantial allegations of facts, the cabinet shall return the petition with a statement of its findings and a reference to the record of the previous designation proceedings.

(6) Petitions received after the close of the public comment period on a permit application relating to the same area shall not prevent the cabinet from issuing a decision on that permit application. The cabinet may return such a petition to the petitioner with a statement of why the cabinet will not consider the petition. For the purposes of this regulation, the close of the public comment period shall mean at the close of the period for filing written comments and objections under 405 KAR 8:010, Sections 9 and 10.

Section 4. Notification and Request for Information. (1) The cabinet shall periodically notify the petitioner of applications for a permit received which propose to include any area covered by the petition. The cabinet 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 cabinet 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 cabinet to have an interest in the property.

(3) Within twenty-one (21) days after the determination that a petition is complete, the cabinet shall notify 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 record in the property covered by the petition who wish to be notified of any hearing identify themselves to the cabinet. The advertisement shall be placed once a week for two (2) consecutive weeks:

(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) Until three (3) days before the cabinet holds a public hearing on the petition pursuant to Section 7, any person may intervene in the preceeding, by filing:

(a) The intervenor's name, address, 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;

(d) Allegations of fact and objective evidence which would tend to establish or dispute the allegations found in the petition.

Section 5. Data Base and Inventory System. (1) The cabinet will develop and maintain a data base and inventory system which will permit evaluation of reclamation feasibility in areas covered by petition.

(2) The cabinet will include in the data base and inventory system, information relevant to the criteria in Section 8.

(3) The cabinet will include in the data base and inventory system sufficient information to prepare the statements required in Section 8(4), including information on:

(a) The coal resources of Kentucky;

(b) The demand for Kentucky coal;

(c) The supply of Kentucky coal;

(d) The economy of Kentucky and its coal mining regions; and

(e) The environment and natural resources of Kentucky.

(4) The cabinet will include in the data base and inventory system relevant information that comes available from petitions, publications, studies, experiments, permit applications, surface coal mining operations, and other sources. The cabinet will also include relevant information received from the U.S. Fish and Wildlife Service, the Kentucky Heritage Commission, and the cabinet's Division of Air Pollution Control.

Section 6. Public Information. (1) Beginning immediately after the cabinet 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 cabinet. This record shall be maintained at the central office of the department in Frankfort and the regional office within whose district the petition site is located.

(2) The cabinet shall make the record, data base and information system available for public inspection, pursuant to KRS 61.870 et seq.

(3) The cabinet shall provide information on the petition procedures necessary to designate (or terminate a designation of) an area as unsuitable for surface coal mining operations.

(4) The cabinet shall describe how the inventory and data base can be used.

Section 7. Hearing Requirements. (1) Within ten (10) months after receipt of a complete petition, the cabinet 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 cabinet and such application involves an area in a petition, the cabinet 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. The cabinet shall make a verbatim record of the hearing.

(2) The cabinet shall give notice of the date, time, and location of the hearing to:

(a) Local, areawide, state, and federal agencies which may have an interest in the decision on 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 cabinet as set forth in Section 4(3) or who is otherwise actually known to the cabinet.

(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 postmarked not less than thirty (30) days before the scheduled date of the hearing.

(4) The cabinet 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 424.110 to 424.120, 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.

(5) The cabinet may consolidate in a single hearing, the hearings required for each of several petitions which relate to areas in the same locale.

(6) In the event that all petitioners and intervenors stipulate agreement prior to the hearing, the petition may be withdrawn from consideration.

Section 8. Criteria and Decision. (1) The cabinet shall designate an area as unsuitable for all or certain types of surface coal mining operations if, upon petition, it determines that reclamation is not technologically and economically feasible under the performance standards of Title 405, Chapters 7 through 24 at the time of designation.

(2) The cabinet may designate an area as unsuitable for all or certain types of surface coal mining operations if, upon petition, it is determined that the surface coal mining 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 affect by such surface coal mining operations;

(b) Affect fragile or historic lands in which the surface coal mining and reclamation operations could result in significant damage to important historic, cultural, scientific, and aesthetic values and natural systems;

(c) Affect renewable resource lands in which the surface coal mining operations could result in substantial loss or reduction of the long-range availability of water supplies;

(d) Affect renewable resource lands in which the surface coal mining operations could result in substantial loss or reduction of the long-range productivity of food and fiber products; or

(e) Affect natural hazard lands in which the surface coal

mining operations could substantially endanger life and property.

(3) If the cabinet 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 surface coal mining operations on the feature that was the subject of the petition.

(4) Prior to designating any land areas as unsuitable for surface coal mining operations, the cabinet shall prepare a detailed statement, using existing and available information, on the potential coal resources of the area, the effect of the action on demand for, and supply of, Kentucky coal, and the environmental and economic impacts of designation.

(5) In reaching a decision, the secretary shall use:

(a) The relevant information contained in the data base and inventory system;

(b) Relevant information provided by other governmental agencies; and

(c) Any other relevant information or analysis submitted during the comment period and public hearing.

(6) 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 cabinet shall simultaneously send the decision by certified mail to the petitioner, all intervenors, and to the Regional Director of the Office of Surface Mining, U.S. Department of the Interior.

Section 9. Administrative and Judicial Review. (1) Following any order or determination of the cabinet 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 405 KAR 7:090. 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 350.610(6).

(2) Any person with an interest which is or may be adversely affected by a final decision of the secretary under Section 8(6) shall have the right to judicial review as provided in KRS 350.610(6).

Section 10. Map. The cabinet shall maintain a current map of areas designated as unsuitable for all or certain types of surface coal mining 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 to 61.884. Such maps will periodically be distributed to appropriate federal, state, areawide, and local government agencies.

JACKIE A. SWIGART, Secretary
ADOPTED: October 26, 1982
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: October 27, 1982 at 4 p.m.

CABINET FOR HUMAN RESOURCES
Department for Social Services
Amended After Hearing

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. Responsibilities 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. *Initial application fees shall not be refundable. Renewal fees shall be refunded if relicensure is denied but not if a license is revoked.*

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) Secure approval of the office of the State Fire Marshal or his designee.

(b) [(a)] Complete three (3) copies of the application, *which may be obtained from the Cabinet for Human Resources, Division for Licensing and Regulation, Frankfort, Kentucky 40621.* [provided by representative;]

(c) [(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;

(d) [(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 (within the last year) of negative TB test on all day care personnel and adults who reside on the premises.

(b) Approved sewage system in accordance with local, county, and state laws. [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.]

(c) [(e)] Been surveyed by a representative of the Cabinet for Human Resources to determine if the facility qualifies for licensing, based on the regulations.

(d) Adequate equipment, supplies, and staff to serve initial enrollment of children.

(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.

(c) Liability insurance shall be carried by the facility.

[(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.]

(d) [(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.

(e) [(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 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 records [certificates] for pre-school children shall be on file within thirty (30) days of admission. The facility will have ninety (90) days to obtain evidence that immunizations are current.* [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 (within the past year) 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 (within the past year) 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, if necessary, 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 unless the cabinet determines that fencing is not necessary for the protection of the children. The outdoor area shall be safe [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 except for breakfast, which shall be from the three (3) groups of bread and cereal, milk, fruit juices or vegetables. 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. Where school-age children are served, time spent in school shall be included in the sixteen (16) hour limit.

(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 providing care for more than twenty-five (25) children 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. Other facilities may use the three (3) compartment sink with proper sanitizing.

(2) Type I and Type II facilities shall conform to the following minimum food service 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 may be 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 ceil-

ings). 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 Cabinet 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 Cabinet 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 for facilities caring for more than twenty-five (25) children shall meet the specifications of the Cabinet for Natural Resources and Environmental Protection. Facilities caring for twenty-five (25) children or less may secure approval from the local health department. [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 in accordance with local, county and state laws.

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 Cabinet for Natural Resources and Environmental Protection. Consultation will be sought from the Cabinet 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 Cabinet 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: October 15, 1982
APPROVED: BUDDY H. ADAMS, Secretary
RECEIVED BY LRC: November 5, 1982 at 3:30 p.m.

Proposed Amendments

PUBLIC PROTECTION AND REGULATION CABINET
Board of Claims
(Proposed Amendment)

108 KAR 1:010. Board operation and claim procedure.

RELATES TO: KRS 44.070, 44.080, 44.086, 44.090
PURSUANT TO: KRS 13.082, 44.080
NECESSITY AND FUNCTION: KRS 44.080 requires the Board of Claims to establish rules for its government and for the regulation of the method of pleading and practice before it. The purpose of this regulation is to establish rules for procedures for claims and rules for operation of the board.

Section 1. Meetings. (1) Additional meetings of the board may be called by the chairman or a majority of the board at such times and places as the call directs.

(2) Three (3) members of the board shall constitute a quorum.

(3) The board shall be considered in continuous session to enter orders.

(4) The Executive Director of the Board of Claims shall serve as secretary to the board and shall have authority to order the submission of briefs, set hearings, and issue such other orders as the board may direct.

Section 2. Filing of Claims; Response to Claims. (1) Claims shall be legibly written, typed or printed and mailed or delivered to the Board of Claims office in Frankfort, Kentucky.

(2) Each claim shall contain the name and address of the claimant, the amount he is claiming and a statement of facts sufficiently clear to show that the claimant is entitled to relief under the provisions of KRS 44.070 and to enable the defendant to investigate the claim and prepare its defense.

(3) Claims may be filed by the claimant or by an attorney or legal representative acting in the claimant's behalf.

(4) The board's secretary shall promptly furnish a copy of each claim to the head of the affected agency and to the Attorney General. [At the request of the board, within thirty (30) days, the agency concerned shall investigate the matter and shall answer the charges in writing to the board and to the claimant.]

(5) All claims under $1,000 shall be investigated by the administrative staff of the board. Within forty-five (45) days from the date receipt of claim is acknowledged to the claimant, the board shall, if the claim is for less than $500, issue Findings of Fact, and an Opinion and Order either awarding or denying the claim; if the claim is for between $500 and $1,000, the staff, upon completion of its investigation, shall report to all parties its findings as to negligence. Any party who is aggrieved by these findings may request a hearing within thirty (30) days, and if requested, such hearing shall be set by the Secretary of the board. If no hearing is requested, the board, upon expiration of the thirty (30) day period, will enter its final order in the matter.

(6) All claims over $1,000 shall be investigated by the agency concerned and, within thirty (30) days, the agency shall answer the charges in writing to the board and to the claimant.

(7) [(5)] If the Attorney General wishes to enter the matter, he shall file such response as he desires with the board.

(8) [(6)] If the response filed by the affected agency admits liability, the secretary shall submit the matter to the board at an early meeting.

(9) [(7)] If the affected agency fails to respond to the board concerning its investigation within thirty (30) days, the secretary shall submit the matter to the board at an early meeting.

(10) [(8)] If the response filed by the affected agency denies *negligence in a claim whose value is $1,000 or greater* [liability], the secretary shall set a hearing before a hearing officer and shall notify the claimant and the head of the affected agency (or their attorneys) of the time and place of the hearing.

Section 3. Hearings. (1) Hearings shall be open to the public. The proceedings of hearings shall be taken by a stenographer. The hearing officer shall cause the hearing to be conducted with decorum.

(2) The proof required to support a claim shall be that required to support a claim in any court of competent jurisdiction *in this Commonwealth.*

(3) All testimony and proof shall be presented at the

hearing before the hearing officer *by all parties; however, the board, on oral motion at the hearing or on written motion thereafter, shall permit further proof during thirty (30) days following the hearing* [, or within thirty (30) days thereafter by deposition, with the exception of medical or expert testimony].

(4) *Any claimant desiring to submit medical or other expert testimony shall be granted thirty (30) days after the hearing to do so and the defendant shall be granted forty-five (45) days thereafter to complete its proof. For good cause, these times may be extended by the board.* [If either party desires to submit medical or expert testimony by deposition, that party shall be allowed thirty (30) days after the hearing for that purpose. The second party shall then be allowed thirty (30) days, after which the first party shall be allowed five (5) days for rebuttal, unless otherwise ordered by the hearing officer.]

(5) If the claimant fails to appear at a scheduled hearing of which he has notice and fails to show good cause within five (5) days for failure to appear, the board may order the claim dismissed. If the affected state agency fails to appear at the hearing, the hearing officer in his discretion may take the testimony of any witnesses present.

(6) After completion of proof and submission of the case for decision, the claimant shall have thirty (30) days to submit its brief; the defendant thirty (30) days thereafter and the claimant five (5) days for rebuttal. If the parties do not desire to submit briefs or should the board not desire that briefs be submitted, this fact should be made known at the hearing.

(7) [(6)] The hearing officer shall furnish a finding of fact to the board within thirty (30) days after the record is completed.

Section 4. Board Decision. (1) Each claim shall be submitted to the board at an early meeting following the hearing officer's report.

(2) The board, or a majority of its members, shall render a decision on each claim at a board meeting.

Section 5. Exchange of Facts by Parties to Contested Claims. All discovery procedures as outlined in the Kentucky Rules of Civil Procedure are applicable to proceedings before the board. [, except that a party shall not take a deposition for discovery without prior approval by the board. Further,] Any party may request admissions of fact. If a party fails to admit a requested fact which is later established, that party shall be responsible for all costs necessary to establishing the fact. *The parties are encouraged to stipulate the facts whenever possible.*

MELVIN H. WILSON, Chairman
ADOPTED: October 29, 1982
APPROVED: NEIL J. WELCH, Secretary
RECEIVED BY LRC: November 12, 1982 at 3 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: A. D. Stokley, Executive Director, Board of Claims, 113 East Third Street, Frankfort, Kentucky 40601.

FINANCE AND ADMINISTRATION CABINET
Kentucky State Board of Medical Licensure
(Proposed Amendment)

201 KAR 9:050. License renewal; annual registration.

RELATES TO: KRS 311.530 to 311.620, 311.990
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: KRS 311.565 empowers the board to exercise all the administrative functions of the state in the prevention of empiricism and in the regulation of the practice of medicine and osteopathy and authorizes the board to establish requirements and standards relating thereto. The purpose of this regulation is to regulate the annual renewal of all medical and osteopathic licenses in Kentucky.

Section 1. Need for Annual Registration of Medical and Osteopathic Licensees. The board hereby finds and declares that there is a need for the annual registration and renewal of its medical and osteopathic licensees in order to be apprised of the physician population within the state, the distribution of physicians within the state, and the proper address, type of practice and other pertinent data in order to evaluate the overall medical and osteopathic needs of the people of the Commonwealth.

Section 2. Annual Registration and Renewal Required. Every person engaged in the practice of medicine or osteopathy in Kentucky shall annually on or before March 1 of each year register for renewal with the board on forms provided by the board.

Section 3. Notice to Register and Renew Second Notice; Lapse. On or about January 1 of each year the secretary of the board shall send notices to all licensed medical and osteopathic physicians actively engaged in practice in Kentucky at their last known address advising them that annual registration for renewal of their licenses is required on or before March 1. All such licenses not registered for renewal by March 1 shall be sent a second notice. All such licenses not registered for renewal by April 1 shall automatically expire and lapse.

[Section 4. Renewal Fees. The annual renewal fee shall be twelve dollars ($12).]

FRANK M. GAINES, Secretary
ADOPTED: November 4, 1982
RECEIVED BY LRC: November 12, 1982 at 9 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: C. William Schmidt, Assistant Secretary, Kentucky State Board of Medical Licensure, 3532 Ephraim McDowell Drive, Louisville, Kentucky 40205.

FINANCE AND ADMINISTRATION CABINET
Board of Physical Therapy
(Proposed Amendment)

201 KAR 22:031. Therapist's licensing procedure.

RELATES TO: KRS 327.050, 327.060, 327.080
PURSUANT TO: KRS 327.040
NECESSITY AND FUNCTION: The purpose of this regulation is to clearly define the procedure for issuing

licenses. This regulation standardizes the administrative procedures involved in granting a physical therapy license through the various means of qualifying.

Section 1. The fee for application by examination shall be $110 by money order, cashier's or certified check payable to the Kentucky State Treasurer. Upon approval as a candidate by the board, the candidate for examination will be notified of the date, place and time of the examination by the board. Examination will be held at a time and location set by the board. The board will administer the Professional Examination Service of the American Public Health Association examination and/or other examinations as determined by the board to those qualified candidates permitted to sit for the examination.

Section 2. If an applicant becomes a candidate for licensure by examination after the fifth day of the month preceding the month that the next examination is to be held and credentials of the applicant are in order and fees submitted and the board is in receipt of a completed supervisory agreement statement, then a temporary license shall be issued to be in force until sixty (60) days after the examination held six (6) months later, or until the results of that examination are received and processed, whichever comes first. A temporary license requires that the physical therapist applicant shall work only under the supervision of a physical therapist fully licensed in Kentucky. Supervision means that the responsible therapist be available and accessible by telecommunication to the temporarily licensed therapist at all times during the working hours of the temporarily licensed therapist and be responsible for the direction of the actions of the person supervised when services are performed by the temporarily licensed physical therapist. The board shall issue a temporary license only to:

(1) Graduates who have applied for licensure by examination, have met all requirements and are sitting for the next examination.

(2) Applicants for licensure by endorsement who have met all requirements but must take one (1) or more parts of the examination again.

(3) Foreign-trained physical therapists who have met all requirements for licensure and paid all fees provided for in KRS 327.060(2), except that the applicant has not taken the PES examination and has not yet begun a one (1) year board approved, employment as a physical therapist.

Section 3. The applicant shall have three (3) attempts to pass the examination. The original application fee covers the first attempt. The cost of the examination to the board plus an administrative fee of fifteen dollars ($15) must be assumed by the applicant for the second and third attempts. The temporary license will be issued after request for re-examination on the second and third attempts and payment of required fee at the discretion of the board. If the applicant fails on the third attempt, the temporary license is revoked and the applicant may no longer be employed in Kentucky as a physical therapist. The applicant may reapply after one (1) year but must submit a new application fee and no temporary license will be issued.

Section 4. Candidates examined by boards of other states and territories shall have registered their PES scores with the Interstate Reporting Service of the Professional Examination Service. The applicants' scores, calculated by the PES to meet Kentucky board requirements, shall be submitted to this board for consideration of licensure.

Section 5. The candidate for licensure by endorsement shall *submit* [use] the regular license application form, *shall arrange to have submitted proper evidence that he has been examined by the PES and pay an application fee of* [and submit a fee to cover the cost of issuing the license, which shall be] sixty-five dollars ($65). [The board will process the mechanics of endorsement.] The Kentucky State Board of Physical Therapy will endorse a candidate who has been examined by the Professional Examination Service, meets the board's requirements of national average raw score minus 1.5 standard deviation set equal to a converted score of seventy-five (75) on each part of the examination, and whose physical therapy license has never been revoked or suspended, and is currently not on probation or under disciplinary review in another state.

Section 6. The candidate for licensure through reinstatement may receive renewal of his license without further examination upon requesting renewal, furnishing his complete current home and work addresses and telephone numbers, payment of the renewal fee of thirty dollars ($30) and reinstatement fee of fifteen dollars ($15) by money order, cashier's or certified check made payable to the Kentucky State Treasurer, and mailing these to the executive secretary of the board. Therapists who have not been licensed for three (3) years may, in addition, be required to appear before the board and/or show evidence of professional competency. Reinstatement of the candidate will be at the board's discretion after evaluation of said evidence.

Section 7. A license, which shall be in effect until the next January 31st shall be issued by the board as soon as it receives notice from the Professional Examination Service that the candidate by examination has received a passing grade which shall be set based on the national raw average score minus 1.5 standard deviation set equal to a converted score of seventy-five (75) on each part of the examination, and when candidates by endorsement and reinstatement have meet all requirements.

Section 8. The executive secretary of the board may function administratively to review, process, and interpret all applications received by the board and correspond with the applicants accordingly.

RICHARD V. McDOUGALL, CHAIRMAN
ADOPTED: October 15, 1982
RECEIVED BY LRC: November 15, 1982 at 1 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Nancy Brinly, Executive Secretary, Board of Physical Therapy, 1614 Dunbarton Wynde, Louisville, Kentucky 40205.

FINANCE AND ADMINISTRATION CABINET
State Board of Examiners of Social Work
(Proposed Amendment)

201 KAR 23:080. Code of ethical practice.

RELATES TO: KRS 335.010 to 335.150
PURSUANT TO: KRS 13.082, 335.070
NECESSITY AND FUNCTION: KRS 335.070(1) permits the Board of Examiners of Social Work to adopt a

code of ethical practice for social workers and certified social workers.

Section 1. The following code of ethics consists of general guidelines which embody certain standards of practice for the social worker in his professional relationship. The licensee is expected to conduct his practice within the parameters of this code of ethics. The duties and responsibilities of the professional social worker as set forth herein are for purposes of illumination and not limitation. The licensed social worker agrees to:

(1) Accept as his primary responsibility the welfare of his clients;

(2) Carry out his professional responsibilities without discrimination on the basis of age, sex, race, color, religion, national origin or socio-economic status;

(3) Practice the principles of confidentiality;

(4) Carry out his professional practice in a responsible manner and to hold himself responsible for the quality of the service he provides;

(5) Act with ingenuity with regard to his relationship with colleagues in social work and other professions;

(6) Work toward the establishment of conditions within agencies that allow social workers to conduct themselves in accordance with this code of ethics;

(7) Contribute his knowledge, skills and abilities to further programs of human service and welfare.

Section 2. Unprofessional conduct in the practice of social work shall include but not be limited to the following acts or omissions by a licensee:

(1) Violation of any of the provisions of KRS Chapter 335 or the regulations adopted thereunder;

(2) Giving or causing to be given in any manner or by any means a valuable consideration of gratuity of any kind to another person, persons or agency, in return for the referral of clients;

(3) Participating in any manner or by any means in the splitting of fees or any charge with any person or persons or participating in such fee-splitting;

(4) Practicing as a licensee while intoxicated or under the influence of alcohol or other mind-altering or mood-altering drugs not prescribed by a licensed physician;

(5) Engaging in any immoral conduct in the practice of social work;

(6) Violating the code of ethics adopted by the board. [;]

[(7) Engaging in advertising that does not conform to such professional standards as are indicated in the paragraphs below:]

[(a) Cards or announcements concerning social work practice shall be limited to a statement of the name, highest relevant degree, certification, licensure, address, telephone number, office hours, and field of specialization, but shall not claim or imply superior professional competence.]

[(b) Individual listings in telephone directories shall conform to the same standards as outlined in paragraph (a) of this subsection.]

[(c) Soliciting or advertising for personal patronage by any media shall be prohibited except as hereinafter provided.]

ROBERT WILDMAN, Acting Chairman

ADOPTED: October 25, 1982

RECEIVED BY LRC: October 25, 1982 at 4:30 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Betty Sapp, P.O. Box 456, Frankfort, Kentucky 40602.

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

702 KAR 5:120. Blind and deaf pupils, reimbursement for.

RELATES TO: KRS 157.280, *Acts c. 398*

PURSUANT TO: KRS *13.082,* 156.070 [156.130, 156.160]

NECESSITY AND FUNCTION: *KRS 157.280 requires each local school district to provide for transportation for its resident pupils at the Kentucky Schools for the Blind and Deaf to and from school on a regularly scheduled basis, at intervals of not less than once each month, such transportation to be provided in a manner approved by the State Board of Education; and Acts c. 398 (Budget Bill for 1982-84) provides a separate appropriation for reimbursement of school districts for such transportation. KRS 157.280 also mandates reimbursement of local districts, at the same rate per trip as for resident pupils, but from the Transportation Fund of the Foundation Program, for transportation, as approved by the State Board, which may be provided to and from such schools for day pupils. This regulation establishes the rate of reimbursement for* [Provides for the administration of a grant program for the purpose of] providing home-to-school transportation for *such* pupils enrolled at the Kentucky School for the Blind and the Kentucky School for the Deaf.

Section 1. The Superintendent of Public Instruction shall determine the number of pupils resident in each school district of the state who attend the Kentucky School for the Blind in Louisville, Kentucky, and who attend the Kentucky School for the Deaf in Danville, Kentucky, *as resident pupils,* and shall determine the number of miles the county seat of the district in which the pupil resides is from Louisville or Danville. He shall then determine the aggregate number of pupil miles which would result in each child enrolled in either the School for the Blind at Louisville or the School for the Deaf in Danville, making nine (9) trips home each year. The aggregate number of pupil miles so determined will be divided into the total appropriation made [by the General Assembly] for this program in order to establish a tentative value per pupil mile.

Section 2. On or before October 15 of each year, the Superintendent of Public Instruction shall provide each school district with a "tentative allotment report" which contains the number of *resident* children in each program in each school district and the tentative allotment to that school district *for the once monthly transportation of resident children.*

Section 3. *On or before May 31* [Each school district on June 30] of each year *each school district* shall certify to the Superintendent of Public Instruction the number of children and the number of trips each child *was provided* [made] home, not to exceed one (1) round trip for each month the child was enrolled in either of the schools and the number of pupil miles which was generated as a result of these trips. In no instance will distances used to generate pupil miles exceed the distance provided in the tentative allocation which is the distance from the cities of Louisville or Danville to the county seat of the district in which the pupil is a resident.

Section 4. On or before *May 31* [June 30] of each year, the superintendent of a local school district qualifying for reimbursement for transportation by reason of this regulation shall certify to the Superintendent of Public Instruction the aggregate pupil miles *for resident pupils* for which reimbursement is sought. The Superintendent of Public Instruction, based upon the certification of the local school district shall, on or before June 30 of each year, determine the final value of the pupil mile by dividing the aggregate pupil miles certified into the appropriation contained in the executive budget, and calculate a final allotment for each school district having children enrolled in the Kentucky School for the Blind and the Kentucky School for the Deaf *as resident pupils.*

Section 5. The Superintendent of Public Instruction shall determine the number of pupils enrolled in each school district as day school pupils that are provided daily transportation to the Kentucky School for the Blind in Louisville and the Kentucky School for the Deaf in Danville, and shall determine the number of miles by the most direct route from the child's residence to the school that they attend in either Danville or Louisville. He shall then determine the aggregate number of pupil miles from each pupil's home to school and back home again, making a maximum of 175 trips per year.

Section 6. On or before May 31 of each year, the superintendent of a local school district qualifying for reimbursement for transportation by reason of Section 5 of this regulation shall certify to the Superintendent of Public Instruction the aggregate pupil miles for which reimbursement is sought. The Superintendent of Public Instruction, based upon the certification of the local school district, shall calculate a final allotment for reimbursement purposes for each school district having children enrolled as day school pupils in the Kentucky School for the Blind and the Kentucky School for the Deaf. The reimbursement rate to be paid from the Transportation Fund of the Foundation Program shall be the same rate per pupil mile as calculated in Section 4 of this regulation for resident pupils.

RAYMOND BARBER
Superintendent of Public Instruction
ADOPTED: November 9, 1982
RECEIVED BY LRC: November 15, 1982 at 4:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: L. W. True, Secretary, Kentucky State Board of Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

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

704 KAR 20:005. Kentucky standards for preparation program approval.

RELATES TO: KRS 161.020, 161.025, 161.030
PURSUANT TO: KRS 13.082, [156.030,] 156.070, 161.030
NECESSITY AND FUNCTION: KRS 161.020 prohibits any person from holding the position of superintendent, principal, teacher, supervisor, director of pupil personnel, or other public school position for which certificates may be issued unless he holds a certificate of legal qualifications for the particular position; KRS 161.025 gives the Kentucky Council on Teacher Education and Certification the duty to develop and recommend policies and standards relating to teacher preparation and certification; and KRS 161.030 rests the certification of teachers and other school personnel and the approval of teacher-preparatory colleges and universities and their curricula with the State Board of Education. This regulation establishes the standards and procedures which are to be used for the approval of the various teacher preparation programs offered by the colleges and universities.

Section 1. Pursuant to the statutory authority placed upon the Superintendent of Public Instruction, the State Board of Education, and the Kentucky Council on Teacher Education and Certification under KRS Chapter 161, there is hereby devised, created, and incorporated by reference the Kentucky Standards for the Preparation-Certification of Professional School Personnel, which shall include the standards and procedures for the approval of college and university curricula for the preparation programs.

Section 2. The Kentucky Standards for the Preparation-Certification of Professional School Personnel is amended by the selective revision of certain standards, the deletion of certain standards, and by the addition of other new standards, and the amended document is hereby incorporated by reference and indentified as the Kentucky Standards for the Preparation-Certification of Professional School Personnel, revised *November, 1982* [July, 1981]. A copy of this document can be obtained from the Bureau of Instruction, Department of Education, Capital Plaza Tower, Frankfort, Kentucky.

RAYMOND BARBER
Superintendent of Public Instruction
ADOPTED: November 9, 1982
RECEIVED BY LRC: November 15, 1982 at 4:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: L. W. True, Secretary, Kentucky State Board of Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

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

704 KAR 20:135. Kindergarten teachers.

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

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

Section 1. An endorsement for teaching kindergarten shall be issued in accordance with the pertinent Kentucky statutes and State Board *of* [for Elementary and Secondary] Education regulations to an applicant who holds a certificate valid for classroom teaching at the elementary school level and who has completed the approved program of preparation for the kindergarten endorsement at a teacher education institution approved under the standards and procedures included in the Kentucky *Standards* [State Plan] for the [Approval of] Preparation- [Programs for the] Certification of Professional School Personnel, *as adopted by 704 KAR 20:005.*

[Section 2. (1) The provisional certificate for kindergarten teaching shall be issued in accordance with the pertinent Kentucky statutes and State Board for Elementary and Secondary Education regulations to an applicant who has completed the approved program of preparation which corresponds to the certificate at a teacher education institution approved under the standards and procedures included in the Kentucky State Plan for the Approval of Preparation Programs for the Certification of Professional School Personnel.]

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

[(3) The provisional certificate for kindergarten teaching shall be valid for teaching only at the kindergarten level.]

[(4) Teacher education institutions shall not admit new students to the program for preparation for the provisional certificate for kindergarten teaching during the 1976-77 academic year or thereafter. Teacher candidates currently enrolled in this program prior to the 1976-77 academic year shall have until September 1, 1980, to complete the requirements. All the provisions of Section 2. of this regulation shall expire on September 1, 1980.]

Section *2.* [3.] The certificates issued for a duration period beginning prior to September 1, 1971, and valid for classroom teaching at the elementary school level, shall continue to be valid for teaching kindergarten. Certificates issued for a duration period beginning after September 1, 1971, and valid for classroom teaching at the elementary school level, shall be valid for teaching kindergarten only upon completion of the endorsement program for kindergarten teaching.

RAYMOND BARBER
Superintendent of Public Instruction
ADOPTED: November 9, 1982
RECEIVED BY LRC: November 15, 1982 at 4:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: L. W. True, Secretary, Kentucky State Board of Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission
Division of Utility Engineering and Services
(Proposed Amendment)

807 KAR 5:006. General rules.

RELATES TO: KRS Chapter 278
PURSUANT TO: KRS 13.082, 278.280(2)
NECESSITY AND FUNCTION: KRS 278.280(2) provides that the commission shall prescribe rules for the performance of any service or the furnishing of any commodity by any utility. This regulation establishes general rules which apply to electric, gas, water, sewage and telephone utilities.

Section 1. General Provisions. (1) The adoption of regulations by the commission shall not preclude the commission from altering or amending the same in whole or in part, or from requiring any other or additional service, equipment, facility, or standards, either upon request, or upon its own motion, or upon the application of the utility. No regulation of the commission shall in any way relieve a utility from any of its duties under the laws of this state.

(2) Whenever standards or codes are referred to in the commission's regulations it is understood that utilities employing competent corps of engineers are not to be prohibited thereby from continuing or initiating experimental work and installations which tend to improve, decrease the cost of, or increase the safety of their service.

Section 2. Definitions. In addition to the definitions as set out in KRS 278.010, the following definitions shall be used in interpreting the commission's regulations:

(1) "Commission" means the Public Service Commission.

(2) "Utility" means *a* [an energy] utility as defined in KRS 278.010*(3)* [(4) or a combined energy-non-energy utility as provided in KRS 278.040(2)].

[(3) "Combined energy-non-energy utility" means a utility which is an energy utility that also renders service as a non-energy utility as provided in KRS 278.040(2).]

(3) [(4)] "Customer" means any person, firm, corporation or body politic supplied service by any [electric, gas or combined energy-non-energy] utility.

Section 3. Reports. (1) Financial and statistical reports. Every utility shall file annually a financial and statistical report upon forms to be furnished by the commission. Said report shall be based upon the accounts set up in conformity with the commission's order adopting uniform classification of accounts for utilities. This report shall be filed on or before March 31, each year. For good cause

shown, the commission may, upon application in writing, allow a reasonable extension of time for such filing.

(2) Report of meters, customers and refunds. Every utility shall make periodical reports on such forms as may be prescribed, of meter tests, number of customers and amount of refunds.

(3) Other reports. Every utility shall make such other reports as the commission may at its discretion from time to time require.

(4) All records and reports shall be retained in accordance with the uniform system of accounts unless otherwise specified herein.

Section 4. Service Information. (1) The utility shall, on request, give its customers or prospective customers such information as is reasonably possible in order that they may secure safe, efficient and continuous service. The utility shall inform its customers of any change made or proposed in the character of its service which might affect the efficiency, safety, or continuity of operation.

(2) Prior to making any substantial change in the character of the service furnished, which would affect the efficiency, adjustment, speed or operation of the equipment or appliances of any customer, the utility shall obtain the approval of the commission. The application shall show the nature of the change to be made, the number of customers affected, and the manner in which they will be affected.

(3) The utility shall inform each applicant for service of the type, class and character of service that is available to him *or her* at his *or her* location.

Section 5. Special Rules or Requirements. (1) No utility shall establish any special rule or requirement without first obtaining the approval of the commission on proper application.

(2) A customer who has complied with the regulations of the commission shall not be denied service for failure to comply with the rules of the utility which have not been made effective in the manner prescribed by the commission.

Section 6. Meter Readings and Information. (1) Information on bills. Each bill rendered periodically by utilities shall show the class of service, the present and last preceding meter readings, the date of the present reading, the number of units consumed, the meter constant, if any, the net amount for service rendered, all taxes, the adjustments, if any, and the gross amount of the bill. The date after which a penalty may apply to the gross amount must be indicated. Estimated or calculated bills shall be distinctly marked as such. The rate schedule under which the bill is computed shall be furnished under one (1) of the following methods:

(a) By printing rate schedule on the bill.

(b) By publishing in a newspaper of general circulation once each year or when rate is changed.

(c) By mailing to each customer once each year or when rate is changed.

(d) By providing a place on each bill where a customer may indicate his desire for a copy of the applicable rates and furnishing same by return first class mail.

(2) Meter readings. The registration of each meter shall read in the same units as used for billing unless a conversion factor be shown on the billing forms and if the meter does not read direct, the constant shall be plainly marked on the face of the meter dial.

(3) Flat rates. Flat rates for unmetered service shall approximate as close as possible the utility's rates for metered service and the rate schedule shall clearly set out the basis upon which consumption is estimated.

(4) Utilities now using or desiring to adopt mechanical billing or other billing systems of such a nature as to render compliance with all of the terms of subsection (1) of this section impracticable may make application to the commission for relief from part of these terms. For good cause shown, the commission may allow the omission of part of these requirements. Each utility shall submit the form of bill to be used by it to the commission for its approval.

Section 7. Deposits. (1) A utility may require from any customer or applicant for service a minimum cash deposit or other guaranty to secure payment of bills of an amount not to exceed two-twelfths (2/12) of the estimated annual bill of such customer or applicant, where bills are rendered monthly or an amount not to exceed three-twelfths (3/12) of the estimated annual bill of such customer or applicant, where bills are rendered bimonthly or an amount not to exceed four-twelfths (4/12) of the estimated bill of such customer or applicant where bills are rendered quarterly. *The utility may segregate its service by class and require an equal deposit from all applicants for the same class of service. If the utility retains a deposit for more than one (1) year, it shall determine the actual annual bill of the customer. If the deposit differs from the deposit which would be required based on the calculations above using the actual annual bill, the utility shall refund any excess and may collect any underpayment. No additional adjustment to the deposit may be made unless the customer's class of service changes.*

(2) The utility shall issue to every customer from whom a deposit is received a certificate of deposit, showing the name of the customer, location of initial premises occupied, date and amount of the deposit.

Section 8. Complaints. Upon complaint to the utility by a customer either at its office or in writing, the utility shall make a prompt and complete investigation and advise the complainant thereof. It shall keep a record of all such complaints concerning its utility service which shall show the name and address of the complainant, the date and nature of the complaint, and the adjustment or disposition thereof. *Such records shall be maintained for five (5) years from the date of the resolution of the complaint.*

Section 9. Bill Adjustment. (1) Whenever a meter in service is found upon periodic request or complaint test to be more than two percent (2%) fast, additional tests shall be made at once to determine the average error of the meter. Said tests shall be made in accordance with the commission's regulation applicable to the type of meter involved.

(2) If the result of tests on a customer's meter shows an average error greater than two percent (2%) fast, then the customer's bills, for the period during which the meter error is known to have existed, shall be recomputed and the account adjusted on the basis of the test. In the event the period during which the meter error existed is unknown, then the customer's bill shall be recomputed for one-half (½) of the elapsed time since the last previous test but in no case to exceed twelve (12) months. (See exception in subsection (5) of this section.)

(3) If the result of tests on a customer's meter shows an average error greater than two percent (2%) slow, then the customer's bill, for the period during which the meter error

is known to have existed, may be recomputed and the account adjusted on the basis of the test. In the event the period during which the meter error existed is unknown, then the customer's bill may be recomputed for one-half (½) of the elapsed time since the last previous test but in no case to exceed twelve (12) months.

(4) It shall be understood that when a meter is found to have an error in excess of two percent (2%) fast or slow the figure for calculating the amount of refund or the amount to be collected by the utility shall be that percentage of error as determined by the test; i.e., it is the duty of the utility to maintain the accuracy of its measuring devices as nearly 100 percent as is commercially practicable. Therefore, percent error shall be that amount of error as is indicated by the test.

(5) The burden of maintaining measuring equipment so that it will register accurately is upon the utility; therefore, if meters are found upon test to register fast and if time for periodic test has *passed, the refund shall be for the twelve (12) months specified in subsection (2) of this section plus the time* [overrun to the extent that one-half (½) of the time elapsed since the last previous test exceeds twelve (12) months, the refund shall be for the twelve (12) months as specified in subsection (2) of this section and in addition thereto, a like refund for those months] exceeding the periodic test period; provided, however, that the commission may relieve the utility from this requirement in any particular case in which it is shown that the failure to make the periodic test was due to causes beyond the utility's control.

(6) Each utility shall make a reasonable attempt to determine *whether there is an unusual deviation in a customer's consumption* [if the amount of consumption for the current billing period for each customer is unduly excessive]. If *such a deviation is found and the cause of the deviation cannot be determined* [a comparison of consumption indicates a necessity therefor], a test of the customer's meter shall be made, and if the meter *registers more than two percent (2%) incorrectly* [is found to register incorrectly to the customer's prejudice more than two percent (2%)], the utility shall recalculate the customer's bills in accordance with *subsections (2), (3) or (5) of this section* [the foregoing provisions]. *Should the utility determine that a customer's usage is unduly high, as defined in a tariff approved by the commission, the utility shall make a reasonable attempt to promptly notify the customer in writing. In those instances in which the seriousness of the situation requires more immediate notice, the utility shall notify the customer by the most expedient means available. If a premises visit is required, the customer must be notified of the visit and the reason for it.*

(7) When a meter is tested and it is found necessary to make a refund or back bill a customer, the customer shall be notified in substantially the following form:

On_____, 19____, the meter bearing identification No._____installed in your building located at_____
(Street and Number)
in_____was tested
(City)
at_____and found to
(On premises or elsewhere)
register_____.
(Percent fast or slow)

The meter was tested on_____
(Periodic, Request, Complaint)
test.

Based upon this we herewith_____
(Charge or Credit)
you with the sum of $_____, which amount has been noted on your regular bill.

Section 10. Customer's Discontinuance of Service. (1) Any customer desiring service discontinued or changed from one address to another shall give the utility three (3) *working* days' notice in person or in writing, provided such notice does not violate contractual obligations.

(2) Upon request that service be reconnected at any premises subsequent to the initial installation or connection to its service lines, the utility may, subject to subsection (3) of this section, charge the applicant an amount not to exceed the actual average cost as approved by this commission of making such reconnection.

(3) Any utility desiring to establish a reconnection charge under the provisions of subsection (2) above, shall submit for commission approval a formal application setting out:

(a) The actual average cost of making such reconnections; and

(b) The effect of such charges on the utility's revenues.

Section 11. Discontinuance of Service. (1) The utility may refuse or discontinue to serve an applicant or customer under the following conditions:

(a) For noncompliance with *the utility's or commission's* [its] rules and regulations. However, no utility shall discontinue or refuse service to any customer or applicant for violation of its rules or regulations without first having made a reasonable effort to induce the customer or applicant to comply with its rules and regulations as filed with the commission. After such effort on the part of the utility, service may be discontinued or refused only after the customer shall have been given at least ten (10) days written notice of such intention, mailed *or delivered* to his *or her* last known address.

(b) When a dangerous condition is found to exist on the customer's or applicant's premises, the service shall be cut off without notice or refused, provided that the utility notify the customer or applicant immediately of the reasons for the discontinuance or refusal and the corrective action to be taken by the applicant or customer before service can be restored.

(c) When a customer or applicant refuses or neglects to provide reasonable access to the premises for the purpose of installation, operation, meter reading, maintenance or removal of utility property the utility may discontinue or refuse service only after the customer or applicant shall have been given at least fifteen (15) days' written notice of such intention.

(d) Except as provided in subsection (2) of this section, a utility shall not be required to furnish service to any applicant when such applicant is indebted to the utility for service furnished until such applicant shall have paid such indebtedness.

(e) A utility may refuse or discontinue service to a customer or applicant if the customer or applicant does not comply with state, municipal or other codes, rules and regulations applying to such service.

(2) A gas or electric utility may discontinue service under the following conditions:

(a) For nonpayment of bills—ten (10) day notice. However, no utility shall discontinue service to any customer for nonpayment of bills (including delayed charges) without first having made a reasonable effort to induce the customer to pay same. The customer shall be given at least ten (10) days' written notice, but the cut-off shall not be effected before twenty-seven (27) days after the mailing date of the original bill. Such termination notice shall be exclusive of and separate from the original bill. If prior to discontinuance of service, there is delivered to the utility office, payment of the amount in arrears, then discontinuance of service shall not be made, or where a written certificate is filed signed by a physician, a registered nurse or a public health officer stating that, in the opinion of the person making the certification discontinuance of service will aggravate an existing illness or infirmity on the affected premises, service shall not be discontinued until the affected resident can make other living arrangements or until thirty (30) days elapse from the time of the utility's notification to the customer in writing of the existence of local, state and federal programs, providing for the payment of utility bills under certain conditions and of the offices to contact for such possible assistance. Service shall not be discontinued when the customer and the utility have reached agreement on a partial payment plan pursuant to *subparagraph 1 of this paragraph* [paragraph (b)] herein and the customer is meeting the requirements of the plan. The written notice for any discontinuance of service shall advise the customer of his or her rights under *this paragraph and subparagraph 1 of this subsection* [paragraphs (a) and (b)] herein and of his or her right to dispute the reasons for such discontinuance.

1. [(b)] Employee available to answer consumer questions and negotiate partial payment plan. Every gas and electric utility subject to the jurisdiction of the commission shall have an employee available *at the utility's office during the utility's established working hours, but not less than seven (7) hours per day, five (5) days per week excluding holidays. Said employee shall be available* [during regular working hours] to answer questions regarding a customer's bill and to resolve disputes over the amount of such bill. Such employee shall be authorized to negotiate partial payment plans of an outstanding bill and accept payments where the customer has shown good faith in attempting to meet his or her financial obligations to the utility. Said employee shall be authorized by the utility to consider and shall consider proposals by the customer for a partial payment plan and retention of service. *Each utility shall maintain a published local or toll-free telephone number so that all customers may contact said employee without charge.*

2. [(c)] Certificate of need from Department for Social Insurance. Federal and statewide energy assistance programs are administered by the Kentucky Cabinet for Human Resources, Department for Social Insurance. Upon written certification from one (1) of its offices a customer who is eligible for energy assistance under the Department's guidelines or is certified as being in genuine financial need, defined as any household with gross income at or below 130 percent of the poverty level, and who has been given a ten (10) day notice for nonpayment of a gas or electric bill *for service billed or received* [rendered] between December 1 and March 1, and who presents such notice to the Department for Social Insurance, shall be allowed thirty (30) days in addition to such ten (10) day period in which to negotiate a partial payment plan with the utility provided such certification is delivered to the utility during the initial ten (10) day notice period by the applicant in person, by his or her agent, by mail, or by a telephone call from an employee of the Department for Social Insurance. The thirty (30) day period shall begin to run at the end of the tenth day of the ten (10) day period. When the customer exhibits good faith by offering to make a present payment commensurate with his or her ability to do so and by agreeing to a repayment schedule which would permit the customer to become current in the payment of his or her gas or electric bill as soon as possible but no later than August 1, the utility shall accept such partial payment plan. In addition to advising the customer of his or her rights under *paragraph (a) and subparagraph 1* [paragraphs (a) and (b)] of this subsection, as required by paragraph (a) above, the ten (10) day notice or a bill insert sent with the ten (10) day notice shall inform the customer of the telephone number and address of the nearest office of the Kentucky Cabinet for Human Resources, Department for Social Insurance. Information as to such limits may be obtained from the Department for Social Insurance. Referral of such customer to such office of the department may be made by a church, by a charitable or social organization, by a unit of state or local government, or by any other person.

3. [(d)] Budget payment plan. Each jurisdictional gas and electric utility shall develop a budget payment plan whereby a customer may elect to pay a fixed amount each month on a yearly basis in lieu of monthly billings based on actual usage. The provisions of this section relating to partial payments and budget plans shall apply only to a utility's residential customers. It shall be the responsibility of the utility to disseminate information to its customers regarding the availability of such budget payment plan. If the commission finds, upon application, a budget plan for residential customers would materially impair or damage the utility's credit or operations, then it may grant the utility an exemption from the requirements of the budget plan. No exemption may extend beyond one (1) year without another application by the utility and a finding by the commission that said exemption should be allowed.

(b) [(e)] For fraudulent or illegal use of service. When the utility has discovered evidence that by fraudulent or illegal means a customer has obtained unauthorized service or has diverted the service for unauthorized use or has obtained service without same being properly measured, the service to the customer may be discontinued without notice. The utility shall not be required to restore service until the customer has complied with all rules of the utility and regulations of the commission and the utility has been reimbursed for the estimated amount of the service rendered and the cost to the utility incurred by reason of the fraudulent use.

(3) A water, sewage or telephone utility may discontinue service under the following conditions:

(a) For nonpayment of bills. However, no utility shall discontinue service to any customer for nonpayment of bills (including delayed charges) without first having made a reasonable effort to induce the customer to pay same. The customer shall be given at least forty-eight (48) hours written notice, but the cut-off shall not be effected before twenty (20) days after the mailing date of the original bill. Such termination notice shall be exclusive of and separate from the original bill. If prior to discontinuance of service, there is delivered to the utility office payment of the amount in arrears, then discontinuance of service shall not be made, or where a written certificate is filed signed by a

physician, a registered nurse or a public health officer stating that, in the opinion of the person making the certification discontinuance of service will aggravate an existing illness or infirmity on the affected premises, service shall not be discontinued until the affected resident can make other living arrangements or until ten (10) days elapse from the time of the utility's notification.

(b) For fraudulent or illegal use of service. When the utility has discovered evidence that by fraudulent or illegal means a customer has obtained unauthorized service or has diverted the service for unauthorized use or has obtained service without same being properly measured, the service to the customer may be discontinued without notice. The utility shall not be required to restore service until the customer has complied with all rules of the utility and regulations of the commission and the utility has been reimbursed for the estimated amount of the service rendered and the cost to the utility incurred by reason of the fraudulent use.

(4) It shall be the duty of the utility before making service connections to a new customer to ascertain the condition of the meter and service facilities for such customer in order that prior fraudulent use of the facilities, if any, will not be attributed to the new customer, and the new customer shall be afforded the opportunity to be present at such inspections. The utility shall not be required to render service to such customer until all defects in the customer-owned portion of the service, if any, shall have been corrected.

(5) Reconnection. For all cases of refusal or discontinuance of service as herein defined, where the cause for refusal or discontinuance has been corrected and all rules and regulations of the utility and the commission have been complied with, the utility shall promptly render service to the customer or applicant.

(6) When advance notice is required, such notice may be given by the utility by mailing by United States mail, postage prepaid, to the last known address of the applicant or customer.

Section 12. Special Charges. (1) A utility may make a reasonable charge for each of the following trips:

(a) To read a meter when the customer has failed to read the meter for three (3) consecutive billing periods. This pertains only to those utilities whose customers ordinarily read their own meters.

(b) To collect a delinquent bill. This trip may be made only after written notice has been sent to the customer stating that if the bill is not paid by a certain date, the service will be disconnected.

(c) To reconnect a service that has been disconnected for nonpayment of bills or for violation of the utility's *or commission's* rules and regulations. This charge may include the cost of disconnecting the service.

(2) The charges, however, shall be applied uniformly within reasonable classifications throughout the entire area served by the utility, shall be incorporated in the utility's rules and regulations, shall be subject to the approval of the commission, and shall yield only enough revenue to pay the expenses incurred in rendering these services.

Section 13. Meter Testing. (1) All electric, gas and water utilities furnishing metered service shall provide meter standards and test facilities, as more specifically set out under 807 KAR 5:021, 807 KAR 5:041 and 807 KAR 5:066.

(2) A utility may have all or part of its testing of meters performed by another utility or agency approved by the commission for such purpose. Each utility having tests made by another agency or utility shall notify the commission of said arrangements in detail to include make, type and serial number of standards used to make said checks or tests.

(3) No utility shall place in service any basic measurement standard required by these rules unless it has been calibrated by the commission's Meter Standards Laboratory. All utilities or agencies making tests or checks for utility purposes shall notify the commission promptly of the adoption or deletion of any basic standards requiring calibration by the commission.

(4) Each electric, gas and water utility or agency doing meter testing for a utility shall have in its employ *meter testers* [metermen] certified by this commission. These certified *meter testers* [metermen] shall perform such tests as may be necessary to determine the accuracy of the utility's meters and to adjust the utility's meters to the degree of accuracy required by the regulations of the commission.

(5) A utility or agency desiring to have its employees certified as *meter testers* [metermen] shall submit the names *of applicants* on the commission's form entitled "Application for Appointment of *Meter Testers* [Metermen]" and after compliance with the requirements [as] noted in this form, the applicant may be certified as a *meter tester* [meterman] and furnished with a card authorizing him *or her* to perform meter tests.

(6) A utility or agency may employ apprentices in training for certification as meter testers. The apprentice period shall be a minimum of six (6) months. All tests performed during this period by an apprentice shall be witnessed by a certified meter tester.

Section 14. Access to Property. The utility shall at all reasonable hours have access to meters, service connections and other property owned by it and located on customer's premises for purposes of installation, maintenance, meter reading, operation or removal of its property at the time service is to be terminated. Any employee of the utility whose duties require him or her to enter the customer's premises shall wear a distinguishing uniform or other insignia, identifying him or her as an employee of the utility, or carry a badge or other identification which will identify him or her as an employee of the utility, the same to be shown by him or her upon request.

Section 15. Meter Test Records. (1)(a) Test cards. A complete record of all meter tests and adjustments and data sufficient to allow checking of test calculations shall be recorded by the *meter tester* [meterman]. Such record shall include: Information to identify the unit and its location; the date of tests; the reason for such tests; readings before and after the test; a statement of "as found" and "as left" accuracies sufficiently complete to permit checking of the calculations employed; indications showing that all required checks have been made; a statement of repairs made, if any; the identifying number of the meter; the type and capacity of the meter; and the constant of the meter.

(b) *The record of the prior periodical test of each meter shall be maintained for at least ninety (90) days after the current test has been made or until a refund or billing has been made or it is determined that a refund or billing is not to be made in accordance with Section 9 of this regulation.* [The complete record of tests of each meter shall be continuous at least two (2) periodic tests and in no case less than two (2) years.]

(2) [(a)] History [cards]. Each utility shall keep numerically arranged and properly classified [card] records

giving for each meter owned and used by the utility for any purpose the identification number, date of purchase, name of manufacturer, serial number, type, rating, and the name and address of each customer on whose premises the meter has been in service with date of installation and removal. These [card] records shall also give condensed information concerning all tests and adjustments including dates and general results of such adjustments. The [card] records shall be of such character that a system can be used that will record the date of the last test and indicate the proper date for the next periodic test required by the applicable regulation of the commission.

[(b) When the records required above are kept in a readily available form posting to the history card is not necessary.]

(3) Sealing of meters. Upon completion of adjustment and test of any meter under the provisions of the regulations of the commission, the utility shall affix thereto a suitable seal in such a manner that adjustments or registration of the meter cannot be tampered with without breaking the seal. The seal shall be of a type acceptable to the commission.

Section 16. Pole Identification. (1) Each utility owning poles or other structures supporting the company's wires, shall mark every pole or structure located within a built-up community with the initials or other distinguishing mark by which the owner of every such structure may be readily determined. For the purpose of this rule the term "built-up community" shall mean urban areas and those areas immediately adjacent thereto.

(2) Identification marks may be of any type but must be of a permanent material and shall be of such size and so spaced and hereafter maintained so as to be easily read from the surface of the ground at a distance of six (6) feet from the structure.

(3) When utilities' structures are located outside of a built-up community only every tenth structure need be so marked.

(4) All junction structures shall bear the identification mark and structure number of the owner.

(5) Poles need not be marked if they are clearly and unmistakably identifiable as the property of the utility.

(6) Each utility shall either number their structures and maintain a numbering system or use some other method of identification so that each structure in the system may be easily identified.

(7) The requirements herein shall apply to all existing structures and those hereafter erected and to all changes in ownership.

Section 17. System Maps and Records. (1) Each utility shall have on file at its principal office located within the state and shall file upon request with the commission a map or maps of suitable scale of the general territory it serves or holds itself ready to serve showing the following:

(a) Operating districts.

(b) Rate districts.

(c) Communities served.

(d) Location and size of transmission lines, distribution lines and service connections.

(e) Location and layout of all principal items of plant.

(f) The date of construction of all items of plant by year and month.

(2) In each division or district office there shall be available such information relative to the utility's system as will enable the local representative to furnish necessary information regarding the rendering of service to existing and prospective customers.

(3) In lieu of showing the above information on maps a card record or suitable means may be used. For all construction the records shall also show the date of construction by month and year.

Section 18. Location of Records. All records required by the regulations of the commission shall be kept in the principal office of the utility or other acceptable safe storage place, and shall be made available to representatives, agents or employees of the commission upon reasonable notice [and] at all reasonable hours.

Section 19. Request Tests. Each utility shall make a test of any meter upon written request of any customer provided such request is not made more frequently than once each twelve (12) months. The customer shall be given the opportunity of being present at such request tests. If such tests show that the meter was not more than two percent (2%) fast, the utility may make a reasonable charge for the test, the amount of such charge to be set out in the utility's rules and regulations filed with the commission, and subject to the approval of the commission.

Section 20. Complaint Tests. (1) Any customer of the utility may request a meter test by written application to the commission accompanied by payment of such fee for the test as prescribed below. Such request may not be made more frequently than once each twelve (12) months. Upon receipt of such request, the commission will notify the utility to leave the customer's meter in place until completion of such test.

(2) If a meter tested upon complaint of a customer is found to register not more than two percent (2%) fast, the cost of such test shall be borne by the customer. However, if the meter shall be found to register more than two percent (2%) fast, the cost of such test shall be borne by the utility and the amount of the deposit made by the customer shall be refunded.

(3) The charges fixed by the commission for making such tests are as follows:

(a) Electric. Direct current and single phase alternating current watt hour meters operating on circuits of not more than 250 volts:

Amperes Rated Capacity	Fee
30 and under	$ *6* [2]
Over 30 to 100	*12* [4]
Each additional 50 amperes or factor thereof	*3* [1]

Polyphase a.c. watt hour meters and single phase or direct current watt hour meters operating on circuits of over 250 volts with or without instrument transformers:

Kilowatts Rated Capacity	Fee
5 KW and under	$ *6* [2]
Over 5 to 25	*12* [4]
Over 25 to 100	*24* [8]
Over 100 to 500	*48* [16]

Plus one-half (½) of the cost of transportation of the commission representative between the office of the commission and the point of test.

(b) Gas. Displacement type meters operating on distribution system pressures:

Capacity in Cu. Ft. Per Hour	Fee
1,000 cu. ft. per hour and under	$ *12* [4]
Over 1,000 to 10,000	*24* [8]
Over 10,000 to 100,000	*36* [12]

Plus one-half (½) of the cost of transportation of the commission representative between the office of the commission and the point of test.

(c) Water:

Size	Fee
Outlet 1 inch or less	$ *12* [4]
Outlet over 1 inch to 2 inches	*18* [6]
Outlet over 2 inch to 3 inches	*24* [8]
Outlet over 3 inch to 4 inches	*30* [10]

Plus one-half (½) of the cost of transportation of the commission representative between the office of the commission and the point of test.

(d) For meters of a size or capacity not shown herein, the commission will fix a suitable fee upon application.

Section 21. Safety Program. Each utility shall adopt and execute a safety program, fitted to the size and type of its operations. As a minimum, the safety program shall:

(1) Require employees to use suitable tools and equipment in order that they may perform their work in a safe manner.

(2) Instruct employees in safe methods of performing their work.

(3) Instruct employees who, in the course of their work are subject to the hazard of electrical shock, asphyxiation or drowning, in accepted methods of artificial respiration.

Section 22. Inspection of Systems. (1) Each utility shall adopt procedures for inspection to assure safe and adequate operation of its facilities and compliance with commission rules. These procedures shall be filed with the commission.

(2) Each electric utility shall make systematic inspections of its system in the manner set out below for the purpose of insuring that the commission's safety requirements are being met. Such inspections shall be made as often as necessary but in no event less frequently than is set forth below for various classes of facilities and types of inspection.

(a) At intervals not to exceed six (6) months:

1. Production facilities regularly operated and manned; continuous surveillance, monitoring and inspection as a part of operating procedure.

2. Unmanned production facilities including peaking units not on standby status; units shall be operated and inspected and all monitoring devices shall be checked to determine that there is no evidence of abnormality.

3. Substations where the primary voltage is sixty-nine (69) KV or greater; examination for the purpose of discovering damage to or deterioration of components including structures and fences; checking of all gauges and monitoring devices.

4. Underground network transformers and network protectors in vaults located in buildings or under sidewalks, examination for leaks, condition of case, connections, temperature and overloading.

5. Electric lines operating at sixty-nine (69) KV or greater (including insulators, conductors, and supporting facilities).

(b) At intervals not to exceed one (1) year:

1. Production facilities maintained on a standby status; also inspection and examination prior to any start up, except remotely controlled facilities.

2. Substations where the primary voltage is less than sixty-nine (69) KV but is fifteen (15) KV or greater.

(c) At intervals not to exceed two (2) years: Electric lines operating at voltages of less than sixty-nine (69) KV (including insulators, conductors and supporting facilities).

(d) Other facilities:

1. Utility buildings inspected for compliance with safety codes at intervals not greater than one (1) year.

2. Construction equipment inspected for defects, wear and operational hazards at intervals not greater than quarterly.

(e) On the receipt of a report of a potentially hazardous condition made by a qualified employee or public official or by a customer, [:]

[1.] all portions of the system (including those listed above) which are the subject of the report.

(f) [2.] Appropriate records shall be kept by each utility to identify the inspections made, deficiencies found and action taken to correct such deficiencies.

(3) Each gas utility shall make systematic inspections of its system for the purpose of insuring that the commission's safety requirements are being met. Such inspections shall be made as often as necessary but in no event less frequently than is prescribed or recommended by the Department of Transportation, Part 192 Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards, for the various classes of facilities as defined in said standards, in accordance with the inspection procedures described therein.

(4) The following maximum time intervals are prescribed for [:] certain inspections provided for in [Department of Transportation,] *49 CFR* Part 192 Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards, with respect to which intervals are not specified; and *for* certain additional inspections not provided for in such code.

(a) At intervals not to exceed one (1) year:

1. Production wells, storage wells and well equipment; visual inspection and examination of all exterior components.

2. Pressure limiting stations, relief devices and pressure regulating stations, including vaults.

3. The curb box on service *line* shall be inspected for accessibility.

(b) Other facilities:

1. Utility buildings inspected for compliance with safety codes at least annually.

2. Construction equipment *under the control of the utility* inspected for defects, wear and operational hazards at least quarterly.

(c) At intervals not to exceed the periodic meter test intervals: individual residential customer service regulators, vents and relief valve vents shall be checked for satisfactory operation.

(d) At intervals *not to exceed the periodic meter test intervals* [of meter change]: the curb box *and valve* on *the* service *line* shall be inspected for operable condition.

(e) On the receipt of a report of a potentially hazardous condition made by a qualified employee or public official or by a customer, [:]

[1.] all portions of the system (including those listed above) which are the subject of the report.

(f) [2.] Appropriate records shall be kept by each utility to identify the inspections made, deficiencies found and action taken to correct such deficiencies.

(5) (a) Each water utility shall make systematic inspections of its system in the manner set out below for the purpose of insuring that the commission's safety requirements are being met. Such inspections shall be made as often as necessary but in no event less frequently than is set forth below for various classes of facilities and types of inspection.

1. Source of supply:
a. Dams, physical and structural, annually.
b. Intake structures, physical and structural, annually.
c. Traveling screens, physical and structural and safety of operation, annually.
2. Purification:
a. Sedimentation basins filters and clear wells, physical and structural and safety of operation, annually.
b. Chemical feed equipment, for proper and safe operation, annually.
c. Pumping equipment including electric power wiring and controls, for proper and safe operation, annually.
d. Hydrants, for proper and safe operation, annually.
e. Utility buildings, inspection for compliance with safety codes, annually.
f. Construction equipment, inspection for defects, wear and operational hazards, quarterly.
g. Mains and valves, leaks, annually.

(b) On the receipt of a report of a potentially hazardous condition made by a qualified employee or public official or by a customer, [:]

[1.] all portions of the system (including those listed above) which are the subject of the report.

(c) [2.] Appropriate records shall be kept by each utility to identify the inspections made, deficiencies found and action taken to correct such deficiencies.

(6) (a) Each telephone utility shall make systematic inspections of its system in the manner set out below for the purpose of insuring that the commission's safety requirements are being met. Such inspections shall be made as often as necessary but in no event less frequently than is set forth below for various classes of facilities and types of inspection.

1. Aerial plant: Inspection for electrical hazards, proper clearance for electric facilities and climbing safety—Every two (2) years.
2. Underground plant: Inspection for presence of gas, proper clearance from electric facilities and safe working conditions—At least annually.
3. Station equipment and connections: Inspection for external electrical hazards, damaged instruments or wiring, appropriate protection from lightning and safe location of equipment and wiring—When on customer's premises.
4. Utility buildings: Inspection for compliance with safety codes—At least annually.
5. Construction equipment: Inspection for defects, wear and operational hazards—At least quarterly.

(b) On the receipt of a report of a potentially hazardous condition made by a qualified employee or public official or by a customer, [:]

[1.]all portions of the system (including those listed above) which are the subject of the report.

(c) [2.] Appropriate records shall be kept by each utility to identify the inspections made, deficiencies found and action taken to correct such deficiencies.

Section 23. Reporting of Accidents. Each utility shall notify the commission of any *utility related* accident which results in death or serious injury to any person or substantial property damage. Prompt notice of fatal accidents shall be given to the commission by telephone or telegraph. *Natural gas utilities shall report accidents in accordance with the provisions of 807 KAR 5:027.*

Section 24. Deviations from Rules. In special cases, for good cause shown, the commission may permit deviations from these rules.

DENNIS P. CARRIGAN, Commissioner
ADOPTED: November 12, 1982
APPROVED: NEIL J. WELCH, Secretary
RECEIVED BY LRC: November 12, 1982 at 2:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Richard D. Heman, Jr., Secretary, Public Service Commission, P.O. Box 615, Frankfort, Kentucky 40602.

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission
Division of Utility Engineering and Services
(Proposed Amendment)

807 KAR 5:026. Gas service; *gathering systems* [service lines].

RELATES TO: KRS Chapter 278
PURSUANT TO: KRS 13.082, 278.485(3)
NECESSITY AND FUNCTION: KRS 278.485(1) provides that gas service shall be furnished at rates and charges as determined by the commission. KRS 278.485(3) requires that the installation and standards of safety for the installation of service lines may be prescribed by the commission. This regulation establishes the rules which apply to service from natural gas gathering pipeline systems.

Section *1.* [2.] Definitions. *For purposes of this regulation:*

(1) "Commission" means the Public Service Commission.

(2) [(1)] "Gathering line" means any pipeline gathering gas from a producing gas well; excluding pipelines on the discharge side of compressor stations.

(3) "Customer piping" means the section(s) of the natural gas piping owned by the customer as established by Section 3 of this regulation.

(4) [(2)] "Service line" means *a line that transports gas from a gathering line to:* [any pipeline beginning at the point of connection to the gathering line and ending at the point or points of consumption.]

(a) A customer meter or the connection to a customer's piping, whichever is farther downstream; or

(b) The connection to a customer's piping if there is no customer meter.

(5) "Yard line" means a line that transports gas from:

(a) A customer meter or the connection to a customer's piping, whichever is farther downstream; or

(b) The connection to a customer's piping if there is no customer meter to the point of entry into the building.

(6) "Interior fuel gas piping" means the line from the point of entry into the building to the point or points of utilization.

(7) "Customer meter" means the meter that measures the transfer of gas from a gas company to a consumer.

(8) [(3)] "Gas company" means the owner of any producing gas well and/or gathering line.

Section *2.* [1.] Construction Standards. Instances not covered by this regulation must meet, where applicable, the requirements of the "American National Standard Code for Pressure Piping, Gas Transmission and Distribution Piping Systems (ANSI B31.8)" 1975 edition as published by the American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, N. Y. 10017; herein *incorporated* [filed] by reference.

Section 3. Requirements for Service. (1) Persons desiring gas service under KRS 278.485 shall file applications at the local gas company office, which shall contain the following information:

(a) Name and address of the applicant.

(b) Purpose for which gas is requested.

(c) Name and address of contractor installing service *or yard* line and other facilities required to be furnished by applicant.

(d) Name and address of gas company from which service is requested.

(2) Gas company shall furnish applicant with construction drawing showing installation and material meeting the company's specifications as approved by the commission for service installation.

(3) After receipt of the application, the gas company shall furnish the commission in Frankfort the name and address of the applicant and forward a copy of the application to the commission's representative in that area.

(4) Applicant's gas service *or yard* line shall be inspected and approved by the commission representative before service is commenced. No service *or yard* line will be inspected for which an application has not been received.

(5) The commission will notify the applicant by mail if the service *or yard* line does not meet the requirements of its rules and regulations. If the defects are not corrected within the time permitted, the commission will notify the gas company and the application shall be discontinued by the company until such defects are corrected.

(6) The gas company shall furnish, install and maintain the meter which shall remain its property.

(7) The service tap including saddle and first service shutoff valve shall be installed by the gas company and shall remain its property *unless other provisions are made by tariff approved by the commission.*

(8) All other *approved* equipment and material required for such service shall be furnished, installed and maintained by applicant at his expense and shall remain applicant's property.

(9) If leaks or other hazardous conditions are detected in the service *or yard* line, the gas company shall discontinue service until such leaks or other hazardous conditions are repaired or remedied by *customer* [consumer].

Section 4. Connections to High Pressure Gathering Lines. (1) Connections shall be two (2) inches or less in diameter but smaller than the diameter of the gathering line.

(2) Connections shall be on the upper one-half (½) of the pipe surface, preferably at an angle of forty-five (45) degrees.

(3) Connections shall be at right angles to the center line of the gathering line.

(4) A service shutoff shall immediately follow the connection to the gathering line.

(5) A drip tank shall be installed preceding the regulating equipment, but may be omitted upon approval of the commission's representative.

Section 5. Control and Limiting of Gas Pressure. (1) When maximum pressures may exceed sixty (60) p.s.i. a service regulator and a secondary regulator located upstream from the service regulator shall be installed. The regulators shall be spring type, and the secondary regulator shall in no case be set to maintain a pressure higher than sixty (60) p.s.i. A spring type relief valve shall be installed between the secondary regulator and the service regulator to limit the pressure on the inlet of the service regulator to sixty (60) p.s.i. or less in case the secondary regulator fails to function properly.

(2) Every service line shall be equipped with an adequate spring type relief valve [on the outlet side of the meter installation]. *The valve may be part of the final stage regulator.*

(3) Regulators shall not be by-passed.

(4) Each relief valve shall be vented into the outside air.

(5) Vents shall be covered to prevent water and insects from entering.

(6) All metering and regulating equipment shall be as near to the gathering line as practicable, in accordance with safe and accepted operating practices.

[(7) Each service shall have an insulating joint which shall follow the regulating units.]

(7) [(8)] Regulating equipment shall be properly protected by the applicant.

Section 6. Service *or Yard* Lines and Metering Facilities. (1) The customer shall furnish and install the service *or yard* line from tap to point of *utilization* [consumption]. The customer shall also secure all rights-of-way, railroad, highway and other crossing permits. The customer's service line shall be laid on *undisturbed* [undistributed] or well compacted soil in a separate trench avoiding all structures and hazardous locations. [Where service line passes through cultivated land, the trench shall be of sufficient depth to permit a backfill cover of twenty-four (24) inches above the service line. In other locations, the trench depth shall be eighteen (18) inches where practicable.] No structure shall be erected over the service *or yard* line.

(2) No branch tee or other connection shall be permitted on the line to serve any user other than the applicant except with the prior written consent of the gas company and the applicant, in which event the service to each user shall have an automatic shutoff valve with manual reset located on the riser in a horizontal position. Such shutoff valve shall have an operating pressure of eight (8) ounces with a shutoff pressure setting of not less than two (2) ounces.

(3) Service *or yard* lines shall be constructed so as to avoid subsurface structures but in no case shall service lines be constructed within a distance of less than thirty-six (36) inches from any subsurface structure or parallel thereto closer than thirty-six (36) inches.

(4) Service or yard lines shall be leak checked prior to being placed into service. If feasible the service line connection to main must be included in the test; if not feasible, it must be given a leakage test at the operating pressure when placed into service. Service or yard lines must be given a leak test at a pressure of at least 150 percent of the maximum operating pressure or fifty (50) p.s.i. whichever is

greater using natural gas, inert gas, or air as the test medium. The test pressure shall be maintained for thirty (30) minutes after stabilizing.

(5) [(4)] Service *or yard* lines shall be purged [for at least fifteen (15) minutes] after testing to remove any air accumulations.

(6) [(5)] Metering pressure shall not exceed eight (8) ounces.

(7)][(6)] *Steel* service *or yard* lines shall be constructed of new *plant coated* black steel pipe *with all joints and fittings coated and/or taped in accordance with approved procedures* from the gas meter to the outlet side of the stopcock located on the riser entering into the building and shall be of a size not less than one and one-fourth (1¼) inches.

(a) When the service line passes through cultivated land the trench shall be of sufficient depth to permit a backfill cover of twenty-four (24) inches above the service line.

(b) Where a twenty-four (24) inch cover is not practical, the trench depth shall be sufficient to permit a minimum cover of eighteen (18) inches.

(8) Each steel service or yard line shall have two (2) insulating joints, one (1) of which shall follow the regulating units, the other shall separate the yard line from the interior fuel gas piping.

(9) Plastic service or yard lines shall be constructed of plastic pipe qualified for gas use in accordance with American Society for Testing and Material standards. Plastic service lines shall only be installed below ground in a trench of sufficient depth to permit a backfill cover of thirty-six (36) inches above the service line. Plastic service or yard lines shall have an electrically conductive wire or other means of locating the pipe while it is underground. All joints in plastic service lines shall be made by persons qualified in accordance with the provisions of 49 CFR Part 192.285. No exposed plastic shall be installed above ground.

(10) [(7)] *Yard* [Service] lines shall enter *the building* [buildings] above the ground level with a shutoff valve located on the riser.

(11) [(8)] *Service to each customer* [Each service] shall have an automatic cut-off valve with manual reset to shut off gas if gas pressure fails. The valve may be part of the final stage regulator [when only one (1) customer is served from the service line]. *Such a valve shall have an operating pressure of eight (8) ounces with a shutoff pressure setting of not less than two (2) ounces.*

Section 7. Payment of Bills or Other Default. (1) The customer shall pay the installation charge and thereafter pay the gas company for all gas delivered at rates determined therefor by the commission. The gas company shall render statements to the customer at regular monthly or bimonthly intervals for gas delivered, which said statements shall be rendered not later than ten (10) days following each billing period. No gas company shall discontinue service to any customer for nonpayment of bills (including delayed payment charges) without first having made a reasonable effort to induce the customer to pay same. The customer shall be given at least forty-eight (48) hours written notice, but the cutoff shall not be effected before fifteen (15) days after the mailing date of the original bill. Service shall not be re-establsihed until the customer has paid the gas company all amounts due for gas delivered plus a turn-on charge of *twenty-five dollars ($25)* [five dollars ($5)], and placed himself in full compliance with the regulations of the commission pertaining to such service. In the event the customer fails or refuses to pay such unpaid bill(s) and turn-on charge and/or places himself in compliance with the regulations of the commission within thirty (30) days from the date the gas is turned off, the gas company may disconnect customer's service line from its gathering line and service shall not be re-established until the customer has complied with the regulations of the commission pertaining to initial service.

(2) The gas company shall have the right, if it so elects, to require a cash deposit or other guaranty from the customer to secure payments of bills.

Section 8. General Provisions. The gas company shall at all times have access to the premises where the connection is made and the meter is located with the right to shut off the gas and remove its property from said premises upon reasonable notice for any of the following reasons: for repairs or because of leakage; for non-payment of any bills; for failure to make a cash deposit, if such be required; for any violation of this regulation; moving of the customer from the presmises; for fraudulent tampering with the meter, regulators or connections; for shortage of gas or reasons of safety; for larceny of gas; for any action by a customer to secure through his meter gas for purposes other than those requested, or for any other party without the written consent of the gas company; for false representation with respect to the ownership of property to which service is furnished.

Section 9. Rates and Charges. (1) Each gas company may make and collect an initial charge of *$150* [fifty dollars ($50)] for each service tap, including saddle and first shutoff valve which, under this regulation, are required to be furnished and installed by the gas company. No part of this charge shall be refunded by the gas company.

(2) Each gas company may charge, for gas used, tariff rates which have been filed and approved by the Commission, or if none, the current Federal Energy Regulatory Commission approved rate.

[(2) The monthly charges for gas service, except as hereinafter expressly provided, shall be as follows:]

[For the First	2 MCF	$ .80 per MCF
For the Next	28 MCF	.60 per MCF
For the Next	570 MCF	.50 per MCF
All Over	600 MCF	.40 per MCF

The minimum bill shall be $1.60 per month]

[(3) The only exception to the charges outlined above shall be that when any gas producing area is served by one (1) company, such company may elect to apply its own tariffs which have been filed and approved by the commission, plus the fifty-dollar ($50) charge for the service tap, including saddle and first service shutoff valve.]

(3) [(4)] The provisions contained herein shall apply only to connections and services made pursuant to the provisions of KRS 278.485 and subsequent to the effective date of this regulation.

Section 10. Deviation from Rules. In special cases for

good cause shown upon application to and approval by, the commission may permit deviations from these rules.

DENNIS P. CARRIGAN, Commissioner
ADOPTED: November 12, 1982
APPROVED: NEIL J. WELCH, Secretary
RECEIVED BY LRC: November 12, 1982 at 2:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Richard D. Heman, Jr., Secretary, Public Service Commission, P.O. Box 615, Frankfort, Kentucky 40602.

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 *procedures* 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. Definitions. "Volunteer service" means an ambulance service in which none of the drivers or attendants receive any compensation for their work.

Section *2.* [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 *or relicensure*, be in compliance with the applicable regulations relating to the particular health facility [or health service]. *Compliance with the board's regulations shall be ascertained through on-site inspections of the health facility by members of the board or their authorized representatives. Any regulatory violation identified during such inspections will be transmitted in writing to the health facility by the inspecting agency. The health facility shall submit a written plan for the elimination or correction of the regulatory violations to the inspecting agency within ten (10) days. Such plan shall specify the date(s) by which each of the violations will be corrected. Following a review of the plan, the inspecting agency shall notify the health facility in writing of the acceptability of the plan. In instances where a portion or all of the plan is unacceptable, the inspecting agency shall specify the reasons for the unacceptability. In such cases, the health facility shall modify or amend the plan and resubmit it to the inspecting agency within ten (10) days.*

(5) Unannounced inspections shall be conducted on complaint allegations. Such inspections shall be conducted utilizing the procedures outlined under subsection (4) of this section.

(6) [(5)] All licenses shall expire on December 31 following the date of issuance unless otherwise expressly provided in the license certificate.

(7) [(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.

(8) [(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. *A* change of ownership for licenses shall be *deemed to occur when more than fifty percent (50%) of an existing facility or capital stock or voting rights of a corporation is purchased, leased or acquired by comparable arrangement by one (1) person from another.* [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.]

(9) [(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.

(10) [(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 *3.* [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	*$.025* per sq. ft.
Plans and specifications review (initial through final)	[x $.001] $1,500 maximum
(b) All other health facilities	.025 per sq. ft.
plans and specifications review (initial through final)	[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) Ambulatory surgicial center	$100
(c) Community mental health and mental retardation center	$500 per catchment area
(d) Day health care	$50
(e) [Emergency care] Ambulance service (per *non-volunteer* service)	$50
(Per volunteer service)	*$10*
(f) Family care homes	$25
(g) Group homes mentally retarded/developmentally disabled	$50
(h) Health maintenance organizations	$3 per [each] 100 patients
(i) Home health agencies	$50
(j) Homemaker	$50
(k) Hospice	$10
(l) Hospitals	
1. Accredited hospital	$3 per bed $100 minimum $1,000 maximum
2. Non-accredited hospital	$5 per bed $100 minimum $1,000 maximum
(m) Intermediate care facilities	$5 per bed $100 minimum $1,000 maximum
(n) Medical alcohol emergency detoxification services	$5 per bed
(o) Non-emergency health transportation service (per service)	*$50*
(p) [(o)] Nursing home	$5 per bed $100 minimum $1,000 maximum
(q) [(p)] Outpatient clinics and ambulatory care facilities	$100
(r) [(q)] Personal care home	$2 per bed $50 minimum $500 maximum
(s) [(r)] Primary care center	$100 $15 per satellite
(t) [(s)] Rehabilitation (outpatient)	$50
(u) [(t)] Renal dialysis	$10 per station
(v) [(u)] Rural health clinics	$50
(w) [(v)] Skilled nursing facilities	$5 per bed $100 minimum $1,000 maximum

FRANK W. BURKE, SR., Chairman
ADOPTED: November 15, 1981
APPROVED: BUDDY H. ADAMS, Secretary
RECEIVED BY LRC: November 15, 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.

Proposed Regulations

FINANCE AND ADMINISTRATION CABINET
Division of Occupations and Professions
Real Estate Commission

201 KAR 11:006. Repeal of 201 KAR 11:005.

RELATES TO: KRS Chapter 324
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: The Commission has determined that the following regulation should be repealed as it has been repealed by implication in amendments to the real estate licensing law.

Section 1. 201 KAR 11:005, Application for license, is hereby repealed.

ROBERT D. MASSEY, Chairman
ADOPTED: November 3, 1982
RECEIVED BY LRC: November 10, 1982 at 2:45 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: John Stephen Kirby, Counsel to the Kentucky Real Estate Commission, 100 East Liberty Street, Suite 204, Louisville, Kentucky 40202.

FINANCE AND ADMINISTRATION CABINET
Board of Physical Therapy

201 KAR 22:130. Per diem of board members.

RELATES TO: KRS 327.080
PURSUANT TO: KRS 327.040
NECESSITY AND FUNCTION: Board members are required to function by a variety of tasks in fulfilling their duties. This regulation outlines the per diem members will receive when required to represent the board or attend its meetings.

Section 1. Each member of the board shall be entitled to receive a per diem of sixty dollars ($60) for attending each meeting of the board, proctoring licensure examinations or otherwise representing the board.

RICHARD V. McDOUGALL, CHAIRMAN
ADOPTED: October 15, 1982
RECEIVED BY LRC: November 15, 1982 at 1 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Nancy Brinly, Executive Secretary, Board of Physical Therapy, 1614 Dunbarton Wynde, Louisville, Kentucky 40205.

FINANCE AND ADMINISTRATION CABINET
State Board of Examiners of Social Work

201 KAR 23:110. Advertising.

RELATES TO: KRS 335.010 to 335.150
PURSUANT TO: KRS 13.082, 335.070
NECESSITY AND FUNCTION: This regulation delineates limits of permissible professional advertising with the aim of adequately informing the public while at the same time establishing safeguards to protect the public from false, fraudulent, misleading, deceptive, self-laudatory or unfair statement or claim.

Section 1. The right to advertise shall be limited to those social work licensees who have been certified for independent practice pursuant to KRS 335.100. Such persons may advertise their services only as authorized by this regulation.

Section 2. Advertising may be by radio, television or in writing but in all cases must adhere to the limits established by this regulation. In no circumstances shall the advertisement be in any way false, fraudulent, misleading, deceptive, self-laudatory or unfair. The advertisement must be presented in an honorable, dignified and appropriate manner, in no instance bringing the social work profession into disrepute.

Section 3. A certified social worker for independent practice may advertise the following information:
(1) Name, including name of partnership or association to which they are connected in business.
(2) Degrees, licenses held and professional membership affiliations.
(3) Address, phone number and office hours.
(4) Type of services rendered and any limitations of practice.
(5) Schedule of fees and other charges and what modes of payments are accepted.
(6) Experience, but only as is relevant to services advertised.
(7) Notice of workshops, clinics, and other group therapy meetings, but only if the licensee is an active participant and the proceeding is directly connected to his/her ongoing practice and is sponsored by the licensee. If the proceeding is to be sponsored or conducted in conjunction with another licensee or with an organization the advertisement must indicate this relationship.

Section 4. If the advertisement is by means of radio or television, a written transcript of the advertisement shall be forwarded to the board for its approval prior to its dissemination. If by writing, the advertisment shall be disseminated to the public generally and in no circumstance mailed to a particular named addressee with the purpose of attracting the addressee as a client.

Section 5. In no circumstances shall the advertisement either implicitly or explicitly suggest that the certified social worker for independent practice is offering his services in areas of expertise apart from the level of social work for which he/she holds a license or apart from the profession of social work generally.

Section 6. Violation of any of the above sections shall be grounds for disciplinary action by the board pursuant to its powers under KRS Chapter 335.

ROBERT WILDMAN, Acting Chairman
ADOPTED: October 25, 1982
RECEIVED BY LRC: October 25, 1982 at 4:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Betty Sapp, P.O. Box 456, Frankfort, Kentucky 40602.

COMMERCE CABINET
Department of Agriculture
Division of Livestock Sanitation

302 KAR 20:130. Treatment of contagious equine metritis.

RELATES TO: KRS 257.020
PURSUANT TO: KRS 13.082, 257.030
NECESSITY AND FUNCTION: Establishes the required treatment standards for equines quarantined for the purpose of controlling contagious equine metritis (CEM) within the Commonwealth.

Section 1. Definitions. (1) "High risk mare" is a mare that is culture positive and/or CF positive after being bred to an infected stallion before stallion was removed from service and treated.
(2) "Medium risk mare" is a mare that is CF negative and culture negative but bred to an infected stallion prior to treatment.
(3) "Infected stallion" is a breeding stallion proven or believed to be a carrier of the CEM organism.

Section 2. Sale and Movement of CEM Infected or Exposed Equines. No CEM high risk, medium risk or imported mares or stallions shall be sold or transported unless authorization from the state veterinarian is obtained prior to such sale or movement.

Section 3. High risk mares quarantined under the provisions of KRS 257.030 shall not be released from quarantine until the state veterinarian shall certify that the treatment and conditions prescribed in this regulation have been fully met and all requirements fulfilled.
(1) Surgical removal of clitoral sinuses.
(a) Prior to surgery a culture will be taken from the clitoral fossa.
(b) The excised sinuses will be refrigerated and immediately submitted to the Livestock Disease Diagnostic Center, Newtown Pike, Lexington, Kentucky.
(2) Post-surgical treatment (to be started no sooner than seven (7) days after surgery).
(a) Mechanically clean the external genitalia with clean, warm water.
(b) Apply a chlorhexidine-containing surgical scrub liberally and using sufficient water to obtain sudsing, cleanse thoroughly paying particular attention to the clitoral fossa.
(c) Wash with clean, warm water and dry.
(d) Apply Furacin ointment liberally insuring filling the clitoral fossa.

(e) Repeat the treatment daily for five (5) days (series of five (5) treatments).

(3) Post-treatment culture requirements (to be started no sooner than seven (7) days after treatment). Three (3) consecutive sets of negative cultures will be taken from the endometrium and clitoral fossa. These cultures taken at not less than seven (7) day intervals. One (1) endometrial culture shall be taken at estrus.

(4) Prebreeding cultures (to be taken in following year). One (1) set of cultures will be taken from the endometrium. Three (3) sets of the clitoral fossa taken no less than seven (7) day intervals.

(5) High risk mares will require a breeding permit and must be bred last in line and the stallion scrubbed and treated after breeding.

(6) High risk mares that do not conceive on the first heat period shall have an additional set of cultures taken in early estrus and submitted to the laboratory prior to cover for the subsequent heat period. Laboratory results need not be completed.

(7) High risk mares will not be released until they have had one (1) set of negative cultures taken after January 1st of the following year. The endometrial culture for foaling mares must be taken at not less than seven (7) days after foaling.

Section 4. Medium risk mares quarantined under the provisions of KRS 257.030 shall not be released from quarantine until the state veterinarian shall certify the treatment and conditions prescribed in this regulation have been fully met and all requirements fulfilled.

(1) Surgical removal of clitoral sinuses.

(a) Prior to surgery a culture will be taken from the clitoral fossa.

(b) The excised sinuses will be refrigerated and immediately submitted for culture to the Livestock Disease Diagnostic Center, Newtown Pike, Lexington, Kentucky.

(2) Pretreatment culture requirements. Following surgery three (3) negative cultures from the clitoral fossa will be required. The first not less than seven (7) days following surgery and each culture taken not less than intervals of seven (7) days (the third culture would therefore be taken no sooner than day twenty-one (21) following surgery).

(3) Treatment.

(a) Mechanically clean the external genitalia with clean, warm water.

(b) Apply a chlorhexidine-containing surgical scrub liberally and using sufficient water to obtain sudsing, cleanse thoroughly paying particular attention to the clitoral fossa.

(c) Wash with clean, warm water and dry.

(d) Apply Furacin ointment liberally insuring filling of the clitoral fossa.

(e) Repeat the treatment daily for five (5) days (series of five (5) treatments).

(4) Post-treatment culture requirements—cultures to be taken no sooner than seven (7) days after treatment and after January 1st of following year.

(a) Foaling mares. Three (3) cultures from the clitoral fossa at not less than seven (7) day intervals will be required. One (1) endometrial culture shall be taken no less than seven (7) days after foaling. The foal will have one (1) culture; if female, from the vaginal vestibule; if male, from the prepuce.

(b) Barren mares which qualified for breeding during current season will also have one (1) endometrial culture taken during early estrus and three (3) clitoral fossa cultures at not less than seven (7) day intervals.

(5) Medium risk mares that do not meet the above requirements for quarantine release will be treated as high risk.

Section 5. Stallions quarantined under the provisions of KRS 257.030 shall not be released from quarantine until the state veterinarian shall certify the treatment and conditions prescribed in this regulation have been fully met and all requirements fulfilled.

(1) The following treatment must be carried out with the stallion in full erection and with the operator wearing disposable gloves and using disposable equipment:

(a) Mechanically clean the external genitalia with clean, warm water.

(b) Apply a chlorhexidine-containing surgical scrub liberally and using sufficient water to obtain sudsing, cleanse thoroughly paying particular attention to the urethral fossa/sinus and the folds of the sheath.

(c) Wash with clean, warm water and dry.

(d) Apply Furacin ointment liberally, insuring filling of the urethral fossa/sinus and penetration of the folds of the sheath.

(e) Repeat the treatment daily for five (5) days (series of five (5) treatments).

(2) The stallion may be returned to service twenty-four (24) hours after the final treatment. The first two (2) mares bred by the stallion must be cultured from the cervix, clitoral fossa and clitoral sinus on days two (2) and four (4) after being covered and each of the first two (2) mares must have a CF test for CEM performed on days fifteen (15) and twenty-five (25) after being covered.

ALBEN W. BARKLEY II, Chairman

ADOPTED: October 22, 1982

RECEIVED BY LRC: October 22, 1982 at 2:30 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: State Board of Agriculture, Alben W. Barkley II, Chairman, 7th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

COMMERCE CABINET
Department of Economic Development

306 KAR 1:010. Definitions.

RELATES TO: KRS 154.655

PURSUANT TO: KRS 13.082, 278.280(2)

NECESSITY AND FUNCTION: KRS 154.650 et seq. establishes and directs the Enterprise Zone Authority of Kentucky (hereinafter referred to as the authority) to organize and regulate the implementation of the Enterprise Zone Act. This regulation sets forth definitions for words and/or phrases used by the authority in determining the eligibility of applicants for designation as an Enterprise Zone Area.

Section 1. Definitions of terms or phrases used in regulations and relating to the Enterprise Zone Act are as follows:

(1) "Qualified business" is any person, corporation or other entity physically located within the designated zone area (hereinafter referred to as zone or zone area) who during the time of designation is already engaged in or who becomes so engaged in the active conduct of trade or business during the life of the zone and who meets the following criteria:

(a) Fifty percent (50%) of the employees must perform substantially all of their services within the zone.

1. Employees shall include all full-time employees and all part-time employees who are employed on a regular basis by the business physically located within the zone area.

2. Substantial performance in the zone includes any business performed outside of the zone area only if the business originates in the office of the business physically located within the zone, if the employees are dispatched from that office and if the employees are required to report to that office.

3. It is not permitted that an employer terminate an individual's employment, lay off an employee or otherwise remove an employee from a payroll in order that a new employee who qualifies under these regulations may take the removed employee's place unless said removal was for good cause.

(b) Twenty-five percent (25%) of the business's employees must come from one (1) or more of the following three (3) categories:

1. Residents of the zone area.

2. Individuals who have been unemployed for at least the entire year prior to obtaining employment with the business. Acceptable data will be proof that the individuals have been unemployment insurance recipients or actively seeking employment the entire year prior to obtaining employment with the business, said data to be obtained at the Department of Social Insurance, Division of Unemployment Insurance or the Bureau for Manpower Services, Cabinet for Human Resources.

3. Individuals who have been receiving public assistance benefits based on need and intended to alleviate poverty, i.e., food stamps or Aid to Families with Dependent Children, for at least the entire year prior to obtaining employment with the business. This data is to be obtained from the Cabinet for Human Resources, Department of Social Insurance.

(2) "Qualified property" shall mean:

(a) Any tangible personal property located in the zone area used predominately by the operator of a business located within the zone area; and

(b) Any real property located in the zone which:

1. Was used predominately by the owner of said property in the active conduct of a trade or business; or

2. Was the principal residence of the owner of the property on the date of sale or exchange.

W. DALE SMITH, Commissioner
ADOPTED: November 4, 1982
APPROVED: W. BRUCE LUNSFORD, Secretary
RECEIVED BY LRC: November 12, 1982 at 3:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Sara Bell, Community Development Specialist, Commerce Cabinet, 22nd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

COMMERCE CABINET
Department of Economic Development

306 KAR 1:020. Application process.

RELATES TO: KRS 154.660
PURSUANT TO: KRS 13.082, 278.280(2)
NECESSITY AND FUNCTION: KRS 154.650 et seq. establishes and directs the Enterprise Zone Authority of Kentucky to organize and regulate the implementation of the Enterprise Zone Act. This regulation sets forth the procedures by which an application is made and the application process used by the authority in the administration of this program.

Section 1. Application Process. (1) Prior to application, the city, county or urban-county government must, by official act of the appropriate local legislative body, designate an area within its jurisdiction as an economically depressed area. In the event an area is designated which crosses the jurisdictional boundary of a city or county, there must be submitted to the authority an intergovernmental agreement which sets forth the commitment by the jurisdictions to work jointly to achieve the results set forth in the jointly executed plan. The local government may designate more than one (1) such area.

(2) The authority shall devise application forms and shall make them available to anyone desiring same. All first year applications must be received by the authority on or before May 1, 1983 at which time the period in which the authority must make a decision begins to run. Applications for subsequent years shall be received by the authority on or before September 1 of the year submitted. The authority is to act promptly on the applications and may request additional information from the individual applicants. Applications shall be mailed to and information is available from the Enterprise Zone Authority, 2200 Capital Plaza Tower, Frankfort, Kentucky 40601.

(3) The staff of the authority shall review each application as submitted by the different applicants and request such additional information as they deem necessary. After said screening the staff shall submit the applications to the authority at which time the members of the authority shall review same. Subsequent to said review the authority may require oral presentations to be made by some or all of the applicants as they deem proper.

(4) Failure of an applicant to receive a designation does not preclude application in the following years.

W. DALE SMITH, Commissioner
ADOPTED: November 4, 1982
APPROVED: W. BRUCE LUNSFORD, Secretary
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Sara Bell, Community Development Specialist, Commerce Cabinet, 22nd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

COMMERCE CABINET
Department of Economic Development

306 KAR 1:030. Eligibility requirements.

RELATES TO: KRS 154.655
PURSUANT TO: KRS 13.082, 278.280(2)
NECESSITY AND FUNCTION: KRS 154.650 et seq. establishes and directs the Enterprise Zone Authority of Kentucky to organize and regulate the implementation of the Enterprise Zone Act. This regulation sets forth the eligibility requirements used by the authority in determining the ability of the applicant to meet the requirements and the criteria which will be acceptable to the authority as supportive of the applicant's eligibility.

Section 1. Eligibility Requirements. An area meets the requirements of pervasive poverty, unemployment and economic distress if:

(1) The average rate of unemployment in such area for the most recent eighteen (18) month period, for which 1980 decennial United States Census is available or other statistical data computed using approved Bureau of Labor Statistics methodology, was at least one and one-half (1½) times the average national rate of unemployment for such eighteen (18) month period.

(2) In addition to the unemployment statistics, an area must meet one (1) of the following additional requirements to be eligible:

(a) At least seventy percent (70%) of the residents (households) living in the area have income below eighty percent (80%) of the median income of the residents (families) of the city, county or urban county government requesting designation as based on 1980 decennial United States Census or which is the product of a study or survey done by a source which is acceptable to the authority; or

(b) The population of all census tracts or equivalent census statistical area, i.e., block numbering areas or enumeration districts, in the area decreased by ten percent (10%) or more between 1970 and 1980 as determined by the 1970 and 1980 censuses respectively, and the city, county or urban county government requesting designation can establish to the satisfaction of the authority that either: chronic abandonment or demolition of commercial or residential structures exist in the area, or substantial tax arrearages of commercial or residential structures exist in the area. Acceptable data for "chronic abandonment" could include tax arrearages information from the offices of the county sheriff or property valuation administrator, or demolition permits if available. A measure of chronic abandonment, demolition of or substantial tax arrearages of commercial or residential structures could be established if the area has a higher rate of tax arrearages by dollar value or parcels, than the city or county as a whole.

(3) An applicant which chooses to generate statistics or use those of others to support eligibility requirements shall provide the authority with the detailed statistics, source methodology and certification by the person or persons responsible for preparation approving the explanation and interpretation of the findings.

W. DALE SMITH, Commissioner
ADOPTED: November 4, 1982
APPROVED: W. BRUCE LUNSFORD, Secretary
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SUBMIT COMMENT OR REQUEST FOR HEARING TO: Sara Bell, Community Development Specialist, Commerce Cabinet, 22nd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

COMMERCE CABINET
Department of Economic Development

306 KAR 1:040. Qualification.

RELATES TO: KRS 154.680
PURSUANT TO: KRS 13.082, 278.280(2)
NECESSITY AND FUNCTION: KRS 154.650 et seq. establishes and directs the Enterprise Zone Authority of Kentucky to organize and regulate the implementation of the Enterprise Zone Act. This regulation sets forth the requirements imposed upon a qualified business prior to their obtaining the benefits under KRS Chapters 132, 138, 139 and 141.

Section 1. Qualification. A report is to be prepared by any business seeking qualification, said report to be submitted to the authority wherein the business certifies compliance with the requirements of the act and these regulations. The report shall include the requirements listed in KRS 154.655 as well as the regulations governing same.

Section 2. Annual Review. (1) An annual report is to be prepared by the qualified business and submitted to the authority by February 15 each year wherein the qualified business certifies continued compliance with the requirments of the act and makes note of any and all changes in the make-up and structure of the qualified business as noted in the preliminary qualification report required by Section 1 of this regulation.

(2) A business which has become qualified under the act will remain qualified as long as the employees which cause said business to become qualified remain with the employer. In the event one (1) of these qualifying employees no longer is employed by said business that business must replace said employee with an individual with the same or similar employment background if necessary to retain qualifying status. The authority reserves the right to perform periodic audits, spot checks or other policing functions in order to assure compliance with the requirements under the act.

Section 3. Removal of Qualification. In its annual review of the qualified businesses designated, should the authority determine that a qualified business no longer meets the criteria for designation as set out in this act or by any regulation adopted by the authority, the authority shall give written notice to the qualified business in question by certified mail. Within sixty (60) days of receipt of said notice the qualified business shall be given the opportunity to respond to and/or refute the authority's conclusion. Upon receipt of said response and/or refutation by the authority, the authority may require the qualified business or representative thereof to appear before it and present their arguments for the continuance of said designation. After said presentation, the authority shall render its decision, from which there shall be no further appeal provided by this act.

Section 4. All time periods and requirements required

by the act and regulations shall be from the date of zone designation.

W. DALE SMITH, Commissioner
ADOPTED: November 4, 1982
APPROVED: W. BRUCE LUNSFORD, Secretary
RECEIVED BY LRC: November 12, 1982 at 3:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Sara Bell, Community Development Specialist, Commerce Cabinet, 22nd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

COMMERCE CABINET
Department of Economic Development

306 KAR 1:050. Removal of designation.

RELATES TO: KRS 154.680
PURSUANT TO: KRS 13.082, 278.280(2)
NECESSITY AND FUNCTION: KRS 154.650 et seq. establishes and directs the Enterprise Zone Authority of Kentucky to organize and regulate the implementation of the Enterprise Zone Act. The authority is vested with the power to remove the designation of any area if it no longer meets the criteria set out in this act or by regulations. This regulation sets forth the quidelines used by the authority and manner in which the designation may be removed.

Section 1. Removal of Designation. If, at any time, after ten (10) years of designation the authority determines that a zone no longer meets the criteria for designation as set out in this act or by any regulation adopted by the authority, the authority shall give written notice to the designee (original zone applicant) in question by certified mail. Within sixty (60) days of receipt of said notice the designee shall be given the opportunity to respond to and/or refute the authority's conclusion. Upon receipt of said response and/or refutation by the authority, the authority may require the designee or representative thereof to appear before them and present their arguments for the continuance of said designation. After said presentation, the authority shall render its decision, from which there shall be no further appeal provided by this act.

Section 2. (1) If at any time during the lifetime of a zone the applicant or governing body of the zone area withdraws any or all of the incentives provided in its original application without good cause, said conduct shall constitute cause for withdrawal or termination of the designation by the Enterprise Zone Authority.
(2) An increase or decrease in the average national rate of unemployment or the median income of the zone residents shall not affect the zone's designation.
(3) In the event a designation is removed, the authority may, in its discretion, work out a phase-out program if appropriate to the situation.

W. DALE SMITH, Commissioner
ADOPTED: November 4, 1982
APPROVED: W. BRUCE LUNSFORD, Secretary
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COMMERCE CABINET
Department of Economic Development

306 KAR 1:060. Conflict of interest.

RELATES TO: KRS 154.680
PURSUANT TO: KRS 13.082, 278.280(2)
NECESSITY AND FUNCTION: KRS 154.650 et seq. establishes and directs the Enterprise Zone Authority of Kentucky to organize and regulate the implementation of the Enterprise Zone Act. This regulation sets forth the manner in which the members shall conduct themselves.

Section 1. Conflict of Interest. (1) Should any member of the authority find, during his or her tenure, that he or she has or may have a monetary interest which may be or is located in a potential zone, said member shall disclose the nature of that interest and shall refrain from any vote which may affect that interest.
(2) The conflict of interest provisions contained in KRS Chapter 45A shall be applicable to all proceedings undertaken by this authority.

W. DALE SMITH, Commissioner
ADOPTED: November 4, 1982
APPROVED: W. BRUCE LUNSFORD, Secretary
RECEIVED BY LRC: November 12, 1982 at 3:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Sara Bell, Community Development Specialist, Commerce Cabinet, 22nd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

COMMERCE CABINET
Department of Economic Development

306 KAR 1:070. Duties of the authority.

RELATES TO: KRS 154.690
PURSUANT TO: KRS 13.082, 278.280(2)
NECESSITY AND FUNCTION: KRS 154.650 et seq. establishes and directs the Enterprise Zone Authority of Kentucky to organize and regulate the implementation of the Enterprise Zone Act. The Enterprise Zone Authority is empowered to administer the act and by regulation to establish criteria to guide the applicant, monitor the implementation of this act, assist units of local government, etc. This regulation is to set forth the means by which the authority shall perform these functions but is not exclusive of any other means which they may devise.

Section 1. Duties of the Authority. (1) The authority shall formulate and make available to all applicants an application form which shall be used in all applications.
(2) By a vote of the majority of the authority or of those eligible to vote the zone shall be designated and thereby eligible for the benefits available under this act.
(3) The authority shall keep all applications on file as a repository of information to be made available to other applicants as well as to assist the authority in assisting a designated area seeking federal Enterprise Zone status.
(4) The authority shall prepare guidelines and such other information as may be necessary from time to time to assist

local governments and employers in obtaining the benefits of any incentive or inducement program provided by law and to further certify that qualified employers are made eligible for the benefits of this act.

Section 2. Conditions. The application submitted by the applicant and the subsequent approval of said application by the authority and designation of an area as enterprise zone as submitted by applicant shall constitute a contract between the applicant and the authority which shall be binding as to both terms and conditions.

Section 3. Annual Review. An annual report is to be prepared by the designee and submitted to the authority by February 15 each year wherein the designee certifies continued compliance with the requirements of the act and makes note of all changes in the zone's make-up and structure. This review shall be for informational and monitoring purposes.

W. DALE SMITH, Commissioner
ADOPTED: November 4, 1982
APPROVED: W. BRUCE LUNSFORD, Secretary
RECEIVED BY LRC: November 12, 1982 at 3:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Sara Bell, Community Development Specialist, Commerce Cabinet, 22nd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

COMMERCE CABINET
Department of Economic Development

306 KAR 1:080. Regulations review.

RELATES TO: KRS 154.695
PURSUANT TO: KRS 13.082, 278.280(2)
NECESSITY AND FUNCTION: KRS 154.650 et seq. establishes and directs the Enterprise Zone Authority of Kentucky to organize and regulate the implementation of the Enterprise Zone Act. This regulation sets forth the guidelines by which the authority shall review the regulations and laws pertinent to the act.

Section 1. Regulations Review. (1) The authority shall conduct a review of all regulations of those laws pertinent to this legislation. This review shall be conducted on the initiative of the authority or in response to any request by an applicant, business or interested party.

(2) After said review the authority may recommend, when appropriate, to the appropriate administrative bodies that said regulations should be waived or changed in a manner to benefit a zone.

(3) Any change in the regulations shall apply to each zone in existence and shall apply to zones to be designated.

(4) These changes may be requested at any time throughout the life of the zone.

W. DALE SMITH, Commissioner
ADOPTED: November 4, 1982
APPROVED: W. BRUCE LUNSFORD, Secretary
RECEIVED BY LRC: November 12, 1982 at 3:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Sara Bell, Community Development Specialist, Commerce Cabinet, 22nd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

COMMERCE CABINET
Department of Economic Development

306 KAR 1:090. Geographic neighborhood area.

RELATES TO: KRS 154.700
PURSUANT TO: KRS 13.082, 278.280(2)
NECESSITY AND FUNCTION: KRS 154.650 et seq. establishes and directs the Enterprise Zone Authority of Kentucky to organize and regulate the implementation of the Enterprise Zone Act. This regulation sets forth the standards and policies to which the Neighborhood Enterprise Association Corporation (hereinafter referred to as the corporation) must conform.

Section 1. Geographic Neighborhood Area. (1) The area in which each corporation is formed shall be defined by the incorporating residents and shall be confined to the zone area or an area within the zone.

(2) The incorporating residents shall be those persons residing in the neighborhood area that undertake to form and organize the corporation. There may be more than one (1) geographic neighborhood area within the Enterprise Zone.

Section 2. Incorporation of the Corporation. (1) When incorporating the corporation, the residents must comply with the provisions of KRS Chapters 271A and/or 273.

(2) Stock interests shall be without charge to each resident and the rules pertinent to residence requirements, etc., shall be contained in the bylaws of the corporation.

Section 3. Certification of the Corporation. (1) To obtain certification the corporation must make application to the local legislative body of appropriate jurisdiction. The local legislative body shall prescribe the guidelines for such procedure. Upon certification by the local legislative body that body must apply to the authority for certification of the corporation. The authority shall grant certification if the corporation has complied with the requirements of the act and other regulations adopted by the authority.

(2) Upon granting certifications to the corporation the authority shall place the corporation's charter and by-laws in a file which shall be available to the public for general inspection. This file shall be in addition to that file maintained by the Secretary of State in which the corporation is required by law to subscribe for incorporation.

(3) To obtain certification the corporation must be a non-profit corporation and registered as such with the Secretary of State's Office.

Section 4. Relationship Between the Corporation and State and Local Governments. (1) The property in the neighborhood area of a certified corporation which is owned by the state or local government shall be leased to the corporation unless it is in current use or subject to plans or development by said government.

(2) The corporation and the local governing authority shall maintain a relationship in which one is accountable to the other for enforcement of any and all standards or services exchanged or provided.

W. DALE SMITH, Commissioner
ADOPTED: November 4, 1982
APPROVED: W. BRUCE LUNSFORD, Secretary
RECEIVED BY LRC: November 12, 1982 at 3:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Sara Bell, Community Development Specialist, Commerce Cabinet, 22nd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

EDUCATION AND HUMANITIES CABINET
Department of Education
Bureau of Instruction

704 KAR 20:206. Repeal of 704 KAR 20:205.

RELATES TO: KRS 161.020, 161.025, 161.030
PURSUANT TO: KRS 13.082, 156.070, 161.030
NECESSITY AND FUNCTION: KRS 161.020, 161.025 and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Kentucky Council on Teacher Education and Certification and approved by the State Board of Education. This regulation has expired and is no longer necessary.

Section 1. 704 KAR 20:205, Special education teachers, is hereby repealed.

RAYMOND BARBER
Superintendent of Public Instruction
ADOPTED: November 9, 1982
RECEIVED BY LRC: November 15, 1982 at 4:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Mr. Laurel True, Secretary, Kentucky State Board of Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

EDUCATION AND HUMANITIES CABINET
Department of Education
Bureau of Instruction

704 KAR 20:275. Teaching English as a second language.

RELATES TO: KRS 161.020, 161.025, 161.030
PURSUANT TO: KRS 13.082, 156.070, 161.030
NECESSITY AND FUNCTION: KRS 161.020, 161.025, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Kentucky Council on Teacher Education and Certification and approved by the State Board of Education. This regulation establishes an appropriate certificate endorsement for teaching English as a second language and relates to the corresponding curriculm standards in the Kentucky Standards for the Preparation-Certification of Professional School Personnel.

Section 1. (1) The endorsement for teaching English as a second language shall be issued in accordance with the pertinent Kentucky statutes and the State Board of Education regulations to an applicant who holds a teaching certificate based upon the completion of a four (4) year program of preparation for classroom teaching and who has completed the approved program of preparation for the endorsement at a teacher education institution approved under the standards and procedures included in the Kentucky Standards for the Preparation-Certification of Professional School Personnel, as adopted by 704 KAR 20:005.

(2) The endorsement for teaching English as a second language shall be valid for the same teaching level as the teaching certificate used as a base for the endorsement and shall have the same duration period as the base certificate.

(3) The endorsement for teaching English as a second language shall be required whenever the instruction is offered for any portion of a basic unit at any grade level under the Foundation Law or whenever the credit for the instruction is counted at the secondary level for any portion of a Carnegie unit applied toward graduation requirements.

RAYMOND BARBER
Superintendent of Public Instruction
ADOPTED: November 9, 1982
RECEIVED BY LRC: November 15, 1982 at 4:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: L. W. True, Secretary, Kentucky State Board of Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

806 KAR 10:015. Repeal of 806 KAR 10:010.

RELATES TO: KRS 304.10-210
PURSUANT TO: KRS 13.082, 304.10-210
NECESSITY AND FUNCTION: KRS 304.10-210 provides the Commissioner of Insurance may make reasonable rules and regulations necessary for or as an aid to the effectuation of the Surplus Lines Law, KRS Chapter 304.10. 806 KAR 10:010 establishes procedures relating to the list of eligible surplus lines insurers. Section 8 of House Bill 385 (1982 Ky. Acts c. 123) deleted the provisions of KRS 304.10-070 requiring the Department of Insurance to maintain a list of eligible surplus lines insurers. Therefore, 806 KAR 10:010 is no longer necessary.

Section 1. 806 KAR 10:010, Eligible surplus lines insurers, is hereby repealed.

Section 2. This regulation shall become effective upon its approval pursuant to KRS Chapter 13.

DANIEL D. BRISCOE, Commissioner
ADOPTED: November 10, 1982
APPROVED: NEIL J. WELCH, Secretary
RECEIVED BY LRC: November 12, 1982 at 10 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Daniel D. Briscoe, Commissioner of Insurance, P.O. Box 517, Frankfort, Kentucky 40602.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

806 KAR 38:070. Health maintenance organization subscriber fee filings.

RELATES TO: KRS 304.38-050, 304.38-070
PURSUANT TO: KRS 13.082, 304.38-150
NECESSITY AND FUNCTION: KRS 304.38-150 provides that the Commissioner of Insurance may promulgate regulations necessary for the proper administration of KRS Chapter 304, Subtitle 38. KRS 304.050 requires, in part that any schedule of fees or other periodic charges to be paid by enrollees and submitted to the commissioner is to be accompanied by adequate supporting information to show that such charges or fees are not excessive, inadequate, or unfairly discriminatory. This regulation establishes the minimum amount of supporting information which may be considered adequate.

Section 1. Definitions. (1) Terms defined in KRS 304.38-030 shall have the meanings stated therein.

(2) "Uncovered expenditures" are health care service costs that are covered by a health maintenance organization and are rendered by providers not under contract with the HMO. These are expenditures for health care services for which the HMO is at risk.

(3) "Actuary" means a member of the American Academy of Actuaries, a qualified Health Service Corporation Actuary or a person who has demonstrated to the commissioner that his qualifications are substantially equivalent to those required for such qualification.

(4) "Community rating system" means a system of fixing rates of payments for health services. Under such system, rates of payments may be determined on a per-person or per-family basis and may vary with the number of persons in a family, but except as otherwise authorized, such rates must be equivalent for all individuals and for all families of similar composition.

(5) "Capitation rates" are the per-person rates which form the basis of a community rating system.

(6) "Contingency reserve" means the unassigned funds held over and above any known or estimated liabilities of the organization for the protection of its enrollees against insolvency of the HMO.

Section 2. General Principles. (1) Rates will be considered excessive if it appears that their use will result in an unjustified accumulation of a contingency reserve in excess of that prescribed in KRS 304.38-070.

(2) Rates will be considered inadequate if it appears that their use will result in a contingency reserve less than that prescribed in KRS 304.38-070.

(3) If the HMO's contingency reserves fall outside of the range defined herein, the commissioner may require the HMO to submit new budget projections, a revised estimate, certified by an actuary, of the appropriate contingency reserve level and/or rate filings to correct the deficiencies.

(4) An unfairly discriminatory rate is a rate for a person or class of persons which gives that person or class an advantage or a disadvantage in comparison with others involving essentially the same hazards, services, deductibles, co-payments or expense factors. Charges applicable to an enrollee shall not be individually determined based on the status of his health.

(5) Community rating is not mandated by these rules, but an HMO which proposes to use another rating system should be prepared to demonstrate that its rating system does not violate the principles of these rules.

(6) Any rate filing, any demonstration of the need for additional contingency reserves, or qualification of the HMO for waiver of the deposit requirements of KRS 304.38-070 shall take the following factors into account:

(a) Benefit type, including the proportion of uncovered expenditures and the potential for loss from uncollected co-payments.

(b) Underwriting classifications, such as individual enrollees, small groups, Medicare complementary enrollees, etc., which may differ significantly in utilization patterns.

(c) Risk classification, including any characteristics which would cause delay in implementation of rate increases and any limited risk arrangements.

(d) Concentration of risk, such as the result of environmental hazards in a limited geographic area or the existence of a single large group.

(e) Trends, which should differ between uncovered expenditures and directly provided services and between services and administrative charges.

(f) Competition, which affects the degree to which fluctuation of actual-to-expected results may be covered in rates charged and inversely the degree to which contingency reserves must be relied upon to lessen the impact of such fluctuations.

(g) Catastrophes and epidemics, to the extent not considered elsewhere, and to the extent not covered by insurance or reinsurance.

(h) Mandated benefits for which rating information may not exist.

(i) Provider contracts, as they affect the level of uncovered expenditures.

(j) Health care development. This should be explained as a budgetary item, and any reserve for such development should be separate from the organization's contingency reserve.

(k) Fluctuation in asset values and investment income.

Section 3. Contents of Rate Filing. Each rate filing shall include:

(1) A cover letter outlining the scope and reason for the filing.

(2) A certification by an actuary as to the appropriateness of the proposed charges.

(3) The capitation rates for the plan affected and the formula to be used in deriving rates to be charged from the capitation rates, if the filing is for community rates.

(4) The organization's budget for the period for which rates are to be effective, which should be in such form as to relate easily to the elements (capitations, benefit variations, etc.) of the proposed rates.

(5) Sufficient recent financial data to support the proposed budget and any trends.

(6) Any other supporting information which the organization may wish to include or which the commissioner deems necessary to determine whether the proposed rates should be approved or disapproved.

DANIEL D. BRISCOE, Commissioner
ADOPTED: November 12, 1982
APPROVED: NEIL J. WELCH, Secretary
RECEIVED BY LRC: November 15, 1982 at 10 a.m.
SUBMIT COMMENTS TO: Daniel D. Briscoe, Commissioner of Insurance, P.O. Box 517, Frankfort, Kentucky 40602.

See public hearings scheduled on page 671.

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission
Division of Utility Engineering and Services

807 KAR 5:027. Gas pipeline safety; reports of leaks.

RELATES TO: KRS Chapter 278
PURSUANT TO: KRS 13.082, 278.040(3), 278.230(3)
NECESSITY AND FUNCTION: KRS 278.040(3) provides that the Commission may adopt reasonable regulations to implement the provisions of KRS Chapter 278 and to investigate the methods and practices of the utilities subject to the Commission's jurisdiction. KRS 278.230(3) provides that the utilities shall file any reports reasonably required by the Commission. This regulation establishes the rules which apply to reports of leaks by natural gas utilities.

Section 1. Definitions. (1) "Commission" for purposes of this regulation means the Public Service Commission.
(2) "Gas" means natural gas, flammable gas, or gas which is toxic or corrosive.
(3) "Municipality" means a city, county, or any other political subdivision of a state.
(4) "Person" means any individual, firm, joint venture, partnership, corporation, association, state, municipality, cooperative association, or joint stock association, and includes any trustee, receiver, assignee, or personal representative thereof.
(5) "Pipeline facilities" includes, without limitation, new and existing pipe, right-of-way, and any equipment, facility, or building used in the transportation of gas or the treatment of gas during the course of transportation.
(6) "System" means all pipeline facilities used by a particular operator in the transportation of gas, including but not limited to, line pipe, valves and other appurtenances connected to line pipe, compressor units, fabricated assemblies associated with compressor units, metering (including customers' meters) and delivery stations, and fabricated assemblies in metering and delivery stations.
(7) "Test failure" means a break or rupture that occurs during strength-proof testing of transmission or gathering lines that is of such magnitude as to require repair before continuation of the test.
(8) "Transportation of gas" means the gathering, transmission, or distribution of gas by pipeline, or the storage of gas in or effecting interstate, intrastate or foreign commerce.

Section 2. (1) This section prescribes requirements for the reporting of gas leaks that are not intended by the utility and that require immediate or scheduled repair and of test failures by persons engaged in the transportation of gas.
(2) These regulations apply to leaks and test failures that occur in the gathering of gas located in the following areas:
(a) An area within the limits of any incorporated or unincorporated city, town, or village; or
(b) Any designated residential or commercial area such as a subdivision, business or shopping center, or community development.
(c) The right-of-way of a state highway, county road or railroad on the property of a school, church, hospital, park or similar public place.
(3) The reporting requirements in this section are intended to require a report to the commission in case of an accident involving a gas leak on a facility covered by these regulations.

Section 3. Telephonic Notice of Certain Leaks. (1) At the earliest practicable moment following discovery, each utility shall give notice in accordance with subsection (3) of this section of any leak that:
(a) Caused a death or a personal injury requiring hospitalization.
(b) Required the taking of any segment of transmission pipeline out of service.
(c) Resulted in gas igniting.
(d) Caused estimated damage to the property of the utility, or others, or both, of a total of $5,000 or more.
(e) In the judgment of the utility, was significant even though it did not meet the criteria of paragraphs (a), (b), (c) or (d) of this subsection.
(2) A utility need not give notice of a leak that met only the criteria of subsection (1)(b) or (c) of this section, if it occurred solely as a result of, or in connection with, planned or routine maintenance or construction.
(3) Each notice required by subsection (1) of this section shall be made by toll-free telephone to Area Code (800) 424-8802 and shall include the following information:
(a) The location of the leak.
(b) The time of the leak.
(c) The fatalities and personal injuries, if any.
(d) All other significant facts that are known by the operator that are relevant to the cause of the leak or extent of the damages.

Section 4. (1) At the earliest practicable moment following discovery, a report shall be made by telephone to the chief engineer, gas section of the commission staff of any accident to, or relating to, a facility or operation covered by these regulations which:
(a) Is reported to DOT in accordance with Section 3 of this regulation.
(b) Causes property damage of $5,000 or more.
(c) Results in the loss of service to forty (40) or more customers for four (4) or more hours.
(d) Causes the loss of a sizable amount of gas.
(e) Received extensive news coverage even though it did not meet the criteria of paragraphs (a), (b), (c) or (d) of this subsection.
(2) If the chief engineer, gas section of the commission, or his delegate cannot be contacted the required information shall be reported by telephone to the nearest post of the Kentucky State Police, followed by a confirming telegram addressed to the commission office.
(3) Accident reports made in accordance with this section shall be supplemented, within a reasonable time, by a final written report giving full details such as cause, extent of injuries or damage and steps, if any, taken to prevent reoccurrence.
(a) Exceptions to this subsection will be allowed only if the chief engineer, gas section of the commission, advises the utility that such a written report is not necessary.
(b) If additional information is received by the utility subsequent to the initial report indicating a different cause, more serious injury or more serious property damage than was initially reported, a supplemental telephone report shall be made to the commission staff as soon as practicable.

Section 5. Addressee for Written Reports. Each written report required by this regulation shall be made in duplicate. One (1) copy shall be transmitted to the Chief Engineer, Gas Section, Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602, and one (1) copy shall be transmitted to the Information Systems

Manager, Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590.

Section 6. Distribution System: Leak Report. (1) As soon as practicable but not more than twenty (20) days after detection, a utility shall report, to the commission, the following on Department of Transportation Form DOT-F-7100.1:

(a) A leak that required notice by telephone pursuant to Sections 3 or 4 of this regulation.

(b) A leak that, because of its location, required immediate repair and other emergency action to protect the public such as evacuation of a building, blocking off an area, or rerouting of traffic.

(2) When additional related information is obtained after a report is submitted under subsection (1) of this section, the utility shall make a supplementary report as soon as practicable with a clear reference by date and subject to the original report.

(3) Each utility serving more than 100,000 customers shall also report to the Office of Pipeline Safety any leak which meets the requirements of subsection (1) of this section.

Section 7. Distribution System: Annual Report. (1) A utility shall submit an annual report on Department of Transportation Form DOT F-7100.1-1. This report must be submitted not later than February 15 for the preceding calendar year.

(2) The annual report required by subsection (1) of this section need not be submitted with respect to petroleum gas systems which serve less than 100 customers from a single source.

Section 8. Distribution Systems: Certain Facilities Reported as a Transmission System. A utility shall, for pipeline facilities that operate at twenty (20) percent or more of specified minimum yield strength, or that used to convey gas into or out of storage, submit reports for those facilities under Section 9 and Section 10 of this regulation.

Section 9. Transmission and Gathering Systems: Leak Report. (1) A utility shall, as soon as practicable but not more than twenty (20) days after detection, report the following on Department of Transportation Form DOT-F-7100.2:

(a) A leak that required notice by telephone under Sections 3 or 4 of this regulation.

(b) Leak in a transmission line that required immediate repair.

(c) A test failure that occurred while testing either with gas or another test medium.

(2) When additional related information is obtained after a report is submitted under subsection (1) of this section, the operator shall make a supplemental report as soon as practicable with a clear reference by date and subject to the original report.

Section 10. Transmission and Gathering Systems: Annual Report. A utility shall submit an annual report on Department of Transportation Form DOT-F-7100.2-1. This report must be submitted for the preceding calendar year not later than February 15.

Section 11. Report Forms. Copies of the prescribed report forms are available without charge upon request from the Office of Pipeline Safety or from the commission. Additional copies in this prescribed format may be reproduced and used if in the same size and kind of paper.

DENNIS P. CARRIGAN, Commissioner
ADOPTED; November 12, 1982
APPROVED: NEIL J. WELCH, Secretary
RECEIVED BY LRC: November 12, 1982 at 2:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Richard D. Heman, Jr., Secretary, Public Service Commission, P.O. Box 615, Frankfort, Kentucky 40602.

CABINET FOR HUMAN RESOURCES

900 KAR 2:040. Citations and violations; criteria and specific acts.

RELATES TO: KRS 216.550, 216.555, 216.557, 216.560, 216.563, 216.565, 216.577
PURSUANT TO: KRS 13.082, 194.050, 216.555, 216.557, 216.563, 216.577
NECESSITY AND FUNCTION: The Cabinet for Human Resources is required to publish, after consultation with industry, professional and consumer groups, regulations setting forth the criteria and, where feasible, the specific acts which constitute Type A and B violations. This regulation is designed to set forth the criteria and, where feasible, the specific acts.

Section 1. Definitions. (1) "Active treatment" means daily participation in accordance with an individual plan of care and services, in activities, experiences, or therapy which are part of a professionally developed and supervised program of health, social and/or habilitative services offered by or procured by contract or other written agreement by the institution for its residents.

(2) "Activities of daily living" means activities of self-help (example: being able to feed, bathe and/or dress oneself), communication (example: being able to place phone calls, write letters and understanding instructions) and socialization (example: being able to shop, being considerate of others, working with others and participating in activities).

(3) "Administrator" means the administrator of a long term care facility.

(4) "Cabinet" means Cabinet for Human Resources.

(5) "Citation" means a written notification of violation of regulations, standards and requirements as set forth by the cabinet pursuant to KRS 216.550 or the provisions of KRS 216.510 to 216.525, or applicable federal law and regulations governing the certification of a long term care facility under Title 18 or 19 of the Social Security Act which violation has been classified a "Type A" or "Type B" violation pursuant to this regulation.

(6) "Developmental nursing services" means treatment of a person's developmental needs by designing interventions to modify the rate and/or direction of the individual's development especially in the areas of self-help skills, personal hygiene and sex education while also meeting his physical and medical needs.

(7) "Licensee" in the case of a licensee who is an individual means the individual and in the case of a licensee who is a corporation, partnership, or association means the corporation, partnership or association.

(8) "Long term care facility" means those health care facilities in the Commonwealth which are defined by the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board to be family care homes, personal care homes, intermediate care facilities, skilled nursing facilities, nursing homes, and intermediate care facilities for the mentally retarded and developmentally disabled.

(9) "Nonambulatory" means unable to walk without assistance.

(10) "Nonmobile" means unable to move from place to place.

(11) "Protective device" means devices that are designed to protect a person from falling, to include side rails, safety net or safety belt.

(12) "Restraint" means any pharmaceutical agent or physical or mechanical device used to restrict the movement of a patient or the movement of a portion of a patient's body, and when used in the context of an intermediate care facility for the mentally retarded or developmentally disabled, means any pharmaceutical agent or any physical or mechanical device used to restrict the movement of an individual or the movement or normal function of a portion of the individual's body, excluding only those devices used to provide support for the achievement of functional body position or proper balance (such as positioning chairs) and devices used for specific medical and surgical (as distinguished from behavorial) treatment.

(13) "Secretary" means Secretary for Human Resources.

(14) "Type A violation" means a violation by a long term care facility of the regulations, standards and requirements as set forth by the cabinet pursuant to KRS 216.550 or the provisions of KRS 216.510 to 216.525, or applicable federal laws and regulations governing the certification of a long term care facility under Title 18 or 19 of the Social Security Act which has been classified a "Type A" violation pursuant to this regulation. Said violation presents an imminent danger to any resident of a long term care facility and creates substantial risk that death or serious mental or physical harm will occur.

(15) "Type B violation" means a violation by a long term care facility of the regulations, standards and requirements as set forth by the cabinet pursuant to KRS 216.550 or the provisions of KRS 216.510 to 216.525, or applicable federal law and regulations governing the certification of a long term care facility under Title 18 or 19 of the Social Security Act which has been classified a "Type B" violation pursuant to this regulation. Such violation presents a direct or immediate relationship to the health, safety or security of any resident, but which does not create an imminent danger and which is categorized a "Type B" violation in this regulation.

Section 2. If, upon inspection of a long term care facility for quality of care rating or investigation of such facility, the cabinet finds that there exists a "Type A" or "Type B" violation at the facility, a citation shall be issued to the licensee. Said citation shall specify, in writing, the nature of the violation and specify statutory provisions or regulations alleged to have been violated.

Section 3. Type A Violations. (1) Upon the finding of a Type A violation, the cabinet shall advise the licensee, administrator or his designated representative, in writing, delivered as soon as practicable but no later than three (3) days, of the existence of said violation. Written notification may be delivered either by certified mail, return receipt requested, or by personal service of said notification upon the licensee, administrator or his designated representative. The time for correction of said violation shall begin upon the date written notification is received, or in the event the delivery is refused, upon the date of refusal.

(2) A "Type A" violation shall be abated or eliminated immediately upon written notification, unless a fixed period of time not to exceed ten (10) days, as determined by and within the discretion of the cabinet, is required for correction.

(3) A "Type A" violation is subject to a civil penalty in an amount not less than $1,000 nor more than $5,000 for each and every violation.

(4) Where a licenseee has failed to correct a "Type A" violation within the time specified for correction, the cabinet shall assess the licensee a civil penalty in the amount of $500 for each day such deficiency occurs beyond the date specified for correction.

(5) Application for an extension of time may be granted by the cabinet upon a showing by the licensee that adequate arrangements have been made to protect the health and safety of the residents. No extension of time so granted shall exceed ten (10) days.

Section 4. (1) The following specific acts in violation of the rating system developed pursuant to KRS 216.550, the provisions of KRS 216.510 to KRS 216.525, or the applicable federal laws and regulations governing certification of long term care facilities under Title 18 or 19 of the Social Security Act and which presents an imminent danger and substantial risk of serious physical or mental harm to a resident or patient of the long term care facility shall constitute "Type A" violations.

(a) In all long term care facilities.

1. Persons whose care needs exceed the capability of the facility to provide are knowingly admitted as residents or patients of the facility.

2. A physician is not available and not consulted in the case of serious accident or illness and such consultation and the response of the facility is not reflected within the resident's or patient's file.

3. Physical and pharmaceutical restraints are not used in accordance with the written instructions of the attending physician (and in cases of emergency, oral orders of the physician or nursing assessments made pursuant to KRS 314.011(5)(e) and 314.011(9)(e) are not subsequently reduced to writing), dated and placed within the resident's or patient's file.

4. Protective devices are not used in accordance with the written instructions of the attending physician, dated and within the patient's file.

5. Except in family care homes, the licensee has no evidence of a current inspection by the state fire marshal indicating the facility complies with the applicable provisions of the life safety code.

6. The licensee does not maintain a system of heating and cooling capable of attaining a minimum temperature of seventy-two (72) degrees which shall be provided in occupied areas in winter conditions and a maximum temperature of eighty-five (85) degrees which shall be provided in summer conditions, and in cases of emergency, the licensee does not take necessary precautions to protect the health of residents or patients.

7. In the event of an error in medication, the attending physician is not advised and the error is not recorded

within the patient's or resident's file, and correction is not made within one (1) day of the date of discovery.

8. Prescription medication is not kept under lock.

9. The resident's or patient's daily diet provided by the facility does not comply with his medically prescribed special diet or dietary restriction (except for special days or celebrations medically approved), said special diet or dietary restriction is to appear in writing within the resident's or patient's file.

10. There is not at least one (1) day's supply of food in the facility at all times.

(b) Family care homes.

1. The licensee does not provide twenty-four (24) hour supervision and assistance to the residents.

2. The licensee is not that person directly responsible for the daily operation of the home and, when temporarily absent, the name of the individual to whom responsibility is delegated is not in writing and available to the cabinet.

3. The care required by admitted residents retained within the facility shall not exceed the skill of the licensee to provide unless there appears within the resident's file:

a. A written statement from the resident's physician that to move the resident would be detrimental to his health; and

b. Written acknowledgment from responsible family members, the resident's legal guardian or committee that they are aware of the level of care needed but that they wish the resident to remain in the facility.

4. When prescription medication is required to be administered by licensed personnel, arrangements are not made in writing to assure the use of said personnel.

5. Basements in which residents are housed are not constructed for sleeping quarters and have no outside door.

6. Residents are housed in rooms or detached buildings or enclosures which have not been inspected and approved by the cabinet.

7. The facility has admitted more than three (3) persons as residents.

(c) Personal care homes.

1. Residents of the facility are under the age of sixteen (16) years or are nonambulatory or nonmobile.

2. The care required by admitted residents retained within the facility shall not exceed the skill of the licensee to provide unless there appears within the resident's file:

a. A written statement from his physician that to move the resident would be detrimental to his health; and

b. Written acknowledgment by responsible family members, or legal guardian or committee that they are aware of the higher degree of care required by the resident but that it is their wish that the resident remain in the facility.

3. The number and classifications of personnel required at the facility are not based upon the number of patients and the amount and kind of personal care, nursing care, supervision and program needed to meet the needs of the patients as determined by medical orders and by services required by 902 KAR 20:036 as determined in accordance with 902 KAR 20:036, Section 3(7)(f)2.

4. One (1) attendant is not awake and on duty on each floor of the facility at all times.

(d) Intermediate care facilities.

1. Physician services for medical emergencies are not available on a twenty-four (24) hour, seven (7) day a week basis.

2. A responsible staff member is not on duty and awake at all times to assure prompt, appropriate action in cases of injury, illness, fire and other emergencies.

3. The facility does not have personnel to meet the needs of the patients on a twenty-four (24) hour basis, the number and classification of personnel are not based upon the number of patients and the amount and kind of personal care, nursing care, supervision and program needed to meet the needs of the patients as determined by medical orders and by services required by 902 KAR 20:051, in accordance with 902 KAR 20:051, Section 3(9)(c)2.

4. In the event the patient's condition exceeds the scope of services offered by the facility, the patient, upon written orders of a physician (except in cases of emergency) is not transferred promptly to a hospital or skilled nursing facility or services are not contracted for from other community services.

(e) Skilled nursing facilities.

1. The licensee does not provide the facility with a director of nursing servcies who is a registered nurse and who works full time.

2. There is not at least one (1) registered nurse or licensed practical nurse on duty at all times who is responsible for the nursing care of residents during her tour of duty; when a licensed practical nurse is on duty, no registered nurse is on call.

3. The licensee does not provide the personnel required to meet the needs of the patients on a twenty-four (24) hour a day basis, the number and classification of personnel so required are not based upon the number of patients, the amount and kind of personal care, nursing care, supervision and program needed to meet the needs of the patients as determined by medical orders and by services required by 902 KAR 20:026, in accordance with 902 KAR 20:026, Section 3(7)(d)2.

4. In the event the patient's condition exceeds the scope of services offered by the facility, the patient, upon written orders of a physician (except in cases of emergency) is not transferred promptly to a hospital or services are not contracted for from other community resources.

(f) Nursing homes.

1. In the event the patient's condition exceeds the scope of services offered by the facility, the patient, upon written orders of a physician (except in cases of emergency) is not transferred promptly to a hospital or skilled nursing facility or services are not contracted for from other community resources.

2. A responsible staff member is not on duty and awake at all times to assure prompt, appropriate action in cases of injury, illness, fire or other emergency.

3. The health care of each patient is not under the supervision of a physician and the patient's records do not reflect the frequency of the physician's contacts with the patient.

4. The licensee does not provide the personnel required to meet the needs of the patients on a twenty-four (24) hour a day basis, the number and classification of personnel so required are not based upon the number of patients, the amount and kind of personal care, nursing care, supervision and program needed to meet the needs of the patients as determined by medical orders and by services required by 902 KAR 20:048, in accordance with 902 KAR 20:048, Section 3(9)(c)2.

(g) Intermediate care facilities for the mentally retarded and developmentally disabled.

1. The facility does not maintain and does not follow a written procedure to specify in a step-by-step manner the actions which shall be taken by staff when a resident is determined to be lost, unaccounted for, or other unauthorized absence.

2. The facility admits as patients those persons who do not have a physicial or mental condition which requires developmental nursing services and an active treatment plan.

3. The licensee does not provide the personnel required to meet the needs of the patients on a twenty-four (24) hours a day basis. The number and classification required is not determined in a manner consistent with the requirements of 902 KAR 20:086, Section 3(11)(c) and in accordance with 902 KAR 20:086, Section 3(11)(f).

4. Physician services for medical emergencies are not available on a twenty-four (24) hour, seven (7) day a week basis.

5. A responsible staff member is not on duty and awake at all times to assure prompt, appropriate action in cases of injury, illness, fire and other emergencies.

6. In the event the patient's condition exceeds the scope of services offered by the facility, the patient, upon written orders of a physician (except in cases of emergency) is not transferred promptly to a hospital or skilled nursing facility or services are not contracted for from other community services.

(2) Pursuant to KRS 216.577, upon a finding that conditions within the facility which constitute the "Type A" violation have not been corrected within the time allowed by the cabinet for correction, the secretary shall take at least one (1) of the following actions with respect to the facility in addition to the issuance of a citation or the assessment of a civil penalty therefor.

(a) Institute proceedings to compel the facility's compliance with the requirement alleged to have been violated.

(b) Institute injunctive proceedings in circuit court to terminate the operation of the facility.

(c) Selectively transfer residents whose care needs are not being adequately met by the long term care facility.

Section 5. Type B Violations. (1) A "Type B" violation shall be corrected within a time determined and approved by the Cabinet.

(2) A "Type B" violation is subject to a civil penalty in an amount not less than $100 nor more than $500, provided, however, that if such violation is corrected within the time specified by the Cabinet, no civil penalty shall be imposed.

(3) Where a licensee has failed to correct a "Type B" violation within the time specified for correction by the cabinet, the cabinet shall assess the licensee a civil penalty in the amount of $200 for each day the deficiency continues beyond the date specified for correction.

Section 6. (1) Upon the finding of a "Type B" violation, the cabinet shall advise the licensee, administrator, or his designated representative in writing, delivered as soon as practicable, but no later than five (5) days, of the existence of said violation. Delivery shall be by certified mail, return receipt requested or by personal service to the licensee, administrator or his designated representative. The time within which the citation shall be corrected shall run from the date of receipt of written notification, or in the event said written notification is refused, from the date of refusal.

(2) The following specific acts in violation of the rating system developed pursuant to KRS 216.550, the provisions of KRS 216.510 to 216.525, or the applicable federal laws and regulations governing certification of long term care facilities under Title 18 or 19 of the Social Security Act and which present a direct or immediate relationship to the health, safety or security or any resident but which do not create an imminent danger shall constitute "Type B" violations:

(a) In all long term care facilities.

1. The facility does not have a written fire control and evacuation plan with which those present and responsible for supervision are familiar.

2. The facility does not maintain an active program of pest control for all areas of its physical plant.

3. The facility does not serve at least three (3) meals per day with not more than fifteen (15) hours between the evening meal and breakfast unless otherwise medically contraindicated. Between meal and bedtime snacks are not available, except where medically contraindicated.

4. The licensee knowingly violates the provision of KRS 216.515 and 216.250.

5. A complete medical record is not kept on each patient with all entries current, dated and signed.

6. Patients or residents requiring help in eating are not assisted.

7. Except for those facilities with an integrated heating, ventilation and air conditioning system (HVAC system) the licensee does not maintain the facility with screens on windows.

8. Except for family care homes, all food is not procured, stored, prepared, distributed, and served under sanitary conditions consistent with the Kentucky Food Service Code (902 KAR 45:005).

9. If a patient or resident refuses food served, nutritional substitutions are not offered; the consistency of the food is not prepared with reference to the ability of the individual patient to ingest.

10. The facility does not implement a regular program to prevent decubiti with emphasis on the following:

a. Procedures to maintain clean linen of the patient or resident. Clothes and linens are cleaned each time the bed or clothing is soiled. Rubber, plastic or other type of linen protectors are cleaned and completely covered to prevent direct contact with the patient.

b. Effort is made to assist the patient or resident in being up and out of bed as much as his condition permits, unless medically contraindicated. If the patient or resident cannot move himself, he has his position changed as often as necessary but not less than every two (2) hours.

11. The facility does not keep resident records and patient files confidential in a manner consistent with the requirements of the Kentucky Revised Statutes and administrative regulations.

12. Except in family care homes, cold water and hot water with a maximum temperature of 110 degrees Fahrenheit are not available for resident or patient use.

13. Meals do not correspond to the posted menus.

(b) Family care homes.

1. The facility does not have a written procedure for providing or obtaining emergency services.

2. Telephone service, if available in the area, is not accessible to the residents.

3. The facility does not have at least one (1) ABC rated fire extinguisher.

4. The facility does not have one (1) toilet for each six (6) persons in the home, which includes residents receiving care, the licensee and family.

5. Residents are are provided beds at least thirty-three (33) inches wide and six (6) feet long.

(c) Personal care homes.

1. The facility does not provide each resident with a bed equipped with springs, a clean mattress, a mattress cover,

two (2) sheets and a pillow, together with bed covering as required for the patient's comfort.

2. The facility uses special purpose areas for the protection or confinement of a resident which are not approved by the cabinet with specification for the use of the area.

3. The facility does not maintain and implement a schedule of activities for groups and individuals, both within and without the facility.

4. The facility does not maintain a program of orientation and in-service training which shall include at least the following component parts:

a. Policies of the facility with regard to the performance of staff duties;

b. Services provided by the facility;

c. Recordkeeping procedures;

d. Procedures for reporting adult and child abuse, neglect and exploitation to the cabinet pursuant to KRS Chapter 209 and KRS 199.335;

e. Patient rights;

f. Procedures for proper application of physical restraints;

g. The aging process;

h. The emotional problems of illness;

i. The use of medication;

j. Therapeutic diets;

k. Activities of daily living; and

l. Procedures for maintaining a clean healthful and pleasant environment. A record shall be maintained of each training session indicating topics discussed and staff attendance, by name.

5. The facility does not provide encouragement and assistance, as necessary, to residents in achieving and maintaining good personal hygiene, including such assistance with:

a. Washing and bathing the body;

b. Shaving;

c. Washing, grooming and cutting hair;

d. Cleaning the mouth and teeth; and

e. Cleaning of finger and toe nails.

6. If any food service personnel are assigned duties outside the dietary department, the duties interfere with the sanitation, safety or time required for regular dietary assignments.

(c) Intermediate care facilities.

1. Each facility does not maintain a program of rehabilitative nursing care on a twenty-four (24) hour a day, seven (7) day a week basis, which program to include at least the following measures:

a. Positioning and turning;

b. Exercises;

c. Bowel and bladder training, when appropriate; and

d. Ambulation.

2. The facility does not provide each patient with a standard size bed equipped with springs, a clean mattress, mattress cover, two (2) sheets and a pillow and such bed covering as required to keep the patient comfortable.

3. The facility does not maintain a program to provide encouragement and assistance to patients to achieve and maintain good personal hygiene, including, as necessary, the following:

a. Washing and bathing the body;

b. Shaving;

c. Cleaning of finger and toe nails;

d. Cleaning of mouth and teeth; and

e. Washing, grooming and cutting of hair.

4. If any food service personnel are assigned duties outside the dietary department, the duties interfere with the sanitation, safety or time required for regular dietary assignments.

5. All employees do not receive orientation and in-service training to correspond to their respective jobs; nursing personnel do not participate in in-service training or continuing education at least quarterly.

6. If any food service personnel are assigned duties outside the dietary department, the duties interfere with the sanitation, safety or time required for regular dietary assignments.

7. The facility does not maintain and implement a schedule of activities for groups and individuals, both within and without the facility.

(d) Nursing homes.

1. The facility does not include a program of rehabilitative nursing care on a twenty-four (24) hour a day, seven (7) day a week basis, which program to include at least the following measures:

a. Positioning and turning;

b. Exercises;

c. Bowel and bladder training, when appropriate; and

d. Ambulation.

2. Each patient shall be provided a standard size bed equipped with springs, a clean mattress, mattress cover, two (2) sheets and a pillow and such bed covering as required to keep the patient comfortable.

3. Each facility does not maintain a program to provide assistance to patients to achieve and maintain good personal hygiene, including, as necessary, the following:

a. Washing and bathing the body;

b. Shaving;

c. Cleaning of finger and toe nails;

d. Cleaning of mouth and teeth; and

e. Washing, grooming and cutting of hair.

4. If any food service personnel are assigned duties outside the dietary department, the duties interfere with the sanitation, safety or time required for regular dietary assignments.

5. The facility does not maintain and implement a schedule of activities for groups and individuals, both within and without the facility.

6. All employees do not receive orientation and in-service training to correspond to their respective jobs; nursing personnel do not participate in in-service training or continuing education at least quarterly.

(e) Skilled nursing facilities.

1. The facility does not maintain a program of rehabilitative nursing care on a twenty-four (24) hour a day, seven (7) day a week basis, which program to include at least the following measures:

a. Positioning and turning;

b. Exercises;

c. Bowel and bladder training, when appropriate; and

d. Ambulation.

2. The facility does not provide each patient with a standard size bed equipped with springs, a clean mattress, mattress cover, two (2) sheets and a pillow and such bed covering as required to keep the patient comfortable.

3. The facility does not maintain a program to provide assistance to patients to achieve and maintain good personal hygiene, including, as necessary, the following:

a. Washing and bathing the body;

b. Shaving;

c. Cleaning of finger and toe nails;

d. Cleaning of mouth and teeth; and

e. Washing, grooming and cutting of hair.

4. If any food service personnel are assigned duties out-

side the dietary department, the duties interfere with the sanitation, safety or time required for regular dietary assignments.

5. The facility does not maintain and implement a schedule of activities for groups and individuals, consistent with the requirements of 902 KAR 20:026, Section 4(9).

6. The licensee does not provide in-service training to its personnel in accordance with the requirements of 902 KAR 20:026, Section 3(8)(e).

(f) Intermediate care facilities for the mentally retarded and developmentally disabled.

1. Within one (1) month after the admission of each resident, the facility does not enter the following in the resident's record:

a. A report of the review and updating of the preadmission updating.

b. A prognosis that can be used in programming and placement;

c. A comprehensive evaluation and individual program plan designed by an interdisciplinary team.

2. The facility does not assure that:

a. Each resident who does not eliminate appropriately and independently must be in a regular systematic toilet training program and a record must be kept of his progress in the program; and

b. Any resident who is incontinent is bathed or cleaned immediately upon voiding or soiling unless specifically contraindicated by the training program, and all soiled items are changed.

3. The facility does not maintain and implement a schedule of activities for groups and individuals, consistent with requirements of 902 KAR 20:086, Section 4(9), (10).

4. The facility does not maintain an orientation and in-service training program which is consistent with the requirements of 902 KAR 20:086, Section 3(11)(n).

5. The facility does not provide each patient with a standard size bed equipped with springs, a clean mattress, mattress cover, two (2) sheets and a pillow and such bed covering as required to keep the patient comfortable. Rubber or other impervious sheets shall be placed over the mattress cover when necessary.

Section 7. (1) In determining the amount of any penalty imposed for "Type A" and "Type B" violations, the cabinet shall consider at least the following factors:

(a) The gravity of the violation, including the probability that death or serious physical or mental harm to a resident will result or has resulted; the severity of the actual or potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;

(b) The reasonable diligence exercised by the licensee and efforts to correct violations;

(c) The number and type of previous violations committed by the licensee; and

(d) The amount of assessment necessary to insure immediate and continued compliance

(2) All fines collected by the cabinet shall be paid and administered in accordance with the requirements of KRS 216.560.

BUDDY H. ADAMS, Secretary
ADOPTED: November 15, 1982
RECEIVED BY LRC: November 15, 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 3:040. Allocation formula.

RELATES TO: KRS 273.446
PURSUANT TO: KRS 13.082, 194.050, 273.446(2)
NECESSITY AND FUNCTION: Pursuant to KRS 273.446(2), the Cabinet for Human Resources is to devise a formula for the allocation of community service block grant funds to applicant agencies to be set forth in the form of an administrative regulation. This regulation is designed to set forth the formula.

Section 1. Definitions. (1) "Cabinet" means the Cabinet for Human Resources.

(2) "Service area" as used in this regulation means the land lying within the geographic boundary of the community action agency submitting an application.

Section 2. The formula for allocation of community service block grant funds for fiscal year 1983 shall be based upon the following:

(1) Fifty percent (50%) of funds shall be based upon the 1981 federal fiscal year federal community service grantee based allocation received by the applicant.

(2) The remaining fifty percent (50%) of funds to be distributed based upon the incidence and severity of poverty, as determined by the cabinet to exist within the service area of the applicant agency.

SUZANNE TURNER, Commissioner
ADOPTED: November 15, 1982
APPROVED: BUDDY H. ADAMS, Secretary
RECEIVED BY LRC: November 15, 1982 at 4:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Suzanne Turner, Commissioner, Department for Social Services, 275 East Main Street, Frankfort, Kentucky 40621.

CABINET FOR HUMAN RESOURCES
Department for Social Services

905 KAR 5:020. Allocation for trust and agency funds for spouse abuse shelters.

RELATES TO: KRS 209.160
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: KRS 209.160 creates a trust and agency account to be known as the Spouse Abuse Fund to receive funds from the issuance of marriage licenses and charges the cabinet with responsibility of using these funds for the purpose of providing protective shelter services for spouse abuse victims. This regulation sets forth the criteria for distribution of these funds.

Section 1. General. Of the trust and agency spouse abuse shelter funds coming to the cabinet, ninety percent (90%) shall be allocated annually for the operation of protective spouse abuse shelters throughout the state and ten percent (10%) shall be retained by the cabinet to be used by existing shelters during the year on an as-needed basis and to start new centers.

Section 2. Allocation of Funds. Ninety percent (90%) of the funds shall be allocated by contract to districts with existing shelters in operation at the beginning of the fiscal year. The funds shall be distributed equally.

Section 3. Establishment of New Centers. The cabinet shall not provide funds from the trust and agency account for more than one (1) shelter per district unless:

(1) The first shelter in the district is operating at capacity and does not choose to expand its program.

(2) The first shelter is operating at capacity, would be willing to expand, but services would not be geographically accessible to clients.

(3) The first shelter is not operating at capacity because of inaccessibility.

In the first year of funding a second center as well as in succeeding years, the first shelter in a district shall continue to have first priority in funding appropriate needs.

Section 4. Continuation of Funding. Continuation of funding from the trust and agency account for spouse abuse shelters is contingent upon the shelters' continued compliance with the cabinet's rules and regulations and the utilization of the services by residents of the district.

Section 5. Unused Funds. At the beginning of the fourth quarter, all unobligated emergency funds and funds which will not be obligated by the program under the existing contract(s) will be available to all existing shelters uncluding ones that have started during the year as needed. Any funds remaining in the trust and agency account at the close of a fiscal year shall be carried forward to the next fiscal year and used to expand existing shelters or establish new shelters.

SUZANNE TURNER, Commissioner
ADOPTED: November 15, 1982
APPROVED: BUDDY H. ADAMS, Secretary
RECEIVED BY LRC: November 15, 1982 at 4:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Suzanne Turner, Commissioner, Department for Social Services, 275 East Main Street, Frankfort, Kentucky 40621.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the October 27, 1982 Meeting

(Subject to subcommittee approval at the November 22 meeting.)

The Administrative Regulation Review Subcommittee held its monthly meeting on Wednesday, October 27, at 10 a.m., in Room 103 of the Capitol Annex. Present were:

Members: Representative William T. Brinkley, Chairman; Senators James Bunning and Helen Garrett; Representatives Albert Robinson, Greg Stumbo and James Bruce.

Guests: Senator Pat McCuiston; L. Wayne Tune and William Cowden, Jr., Board of Examiners and Registration of Architects; Donna Smith, Susan Turner, Mary Linder, Roy Butler, James Gooding, Irving Bell, Dr. Donald Ralph, Ked Fitzpatrick and Sharon Rodriguez, Cabinet for Human Resources; Gary Bale, Billy Howard, Fred Schultz and Steve Marcum, Department of Education; Etta Kepp, Environmental Quality Commission; Don McCormick, Department of Fish and Wildlife Resources; Robert Elam, John Warren and Robert Cocahougher, Fayette County Public School System; Bill Nallia, Kentucky Association of School Administrators; Sarah Nicholson, Kentucky Hospital Association; John Hinkle, Kentucky Retail Federation; David Keller and Larry Powers, Kentucky School Boards Association; John Lacy, Kentucky Vocational Agriculture Teachers Association; James Claycomb and John Baughman, Milk Marketing Commission; Arthur Hatterick, Jr., Personnel Board; Dana Dawkins, Frank Sullivan and Pat Harris, Transportation Cabinet; Thomas Lyons, University of Louisville; Katie Nienaber.

Press: Glenn Osborne, United Press International; Sy Ramsey, Associated Press.

Staff: Susan Harding, Joe Hood, Dan Risch, June Mabry, Shirley Hart, Carla Arnold, Carolyn Sparks, Paula Payne, Sandy Deaton and Pat Ingram.

Chairman Brinkley announced that a quorum was present and called the meeting to order. On motion of Senator Bunning, the minutes of the September 22 meeting were approved.

The following regulation was approved by the subcommittee and ordered filed:

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Medical Assistance
904 KAR 1:013. Payments for hospital inpatient services.

The following regulations were deferred by the subcommittee until the November 22-23 meeting:

CABINET FOR HUMAN RESOURCES
Department for Health Services
Food and Cosmetics
902 KAR 45:120. Inspection fees; food service establishments, hotels. (Roll call vote—3 yeas, 1 nay.)

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Kentucky Building Code
815 KAR 7:012. Departmental plan review fees.

EDUCATION AND HUMANITIES CABINET
Department of Education
Bureau of Administration and Finance
School District Finance
702 KAR 3:030. Insurance requirements.

DEPARTMENT OF PERSONNEL
Personnel Rules
101 KAR 1:030. Personnel Board procedure.
101 KAR 1:150. Incentive programs.

The subcommittee recommended that no action be taken on the following emergency regulations:

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Public Assistance
904 KAR 2:050E. Time and manner of payments.

COMMERCE CABINET
Department of Fish and Wildlife Resources
Game
301 KAR 2:087E. Migratory birds; limits and seasons for taking.

DEPARTMENT OF PERSONNEL
Personnel Rules
101 KAR 1:130E. Appeals.

Upon discussion and failing to reach an agreement, the subcommittee made no recommendation on the following regulation:

COMMERCE CABINET
Department of Agriculture
Milk Marketing
302 KAR 25:045. Stamps, coupons and redemption certificates.

The subcommittee recommended that the following regulations be approved for filing:

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Medical Assistance
904 KAR 1:026. Dental services.
Public Assistance
904 KAR 2:006. Technical requirements; AFDC.
904 KAR 2:050. Time and manner of payments.
Food Stamp Program
904 KAR 3:050. Additional provisions.
904 KAR 3:060. Administrative fraud hearings.
Department for Health Services
Medical Laboratories
902 KAR 11:010. Application for licensure; fee.
Hospitalization of Mentally Ill and Mentally Retarded
902 KAR 12:020. Patients' rights. (As amended.)
902 KAR 12:030. Care and treatment of inmates of penal institutions. (Roll call vote—4 yeas, 1 nay, 1 pass.)
902 KAR 12:040. Convalescent patient status. (As amended.)
902 KAR 12:050. Transfer of patients to other facilities. (As amended.)

UNIVERSITY OF LOUISVILLE
Board of Trustees
740 KAR 1:010. Acquisition and disbursement of funds.
740 KAR 1:020. Annual audit.
740 KAR 1:030. Purchasing; inventories; sales of surplus property; bidding procedures.
740 KAR 1:040. Disposal of property proceeds; title.
740 KAR 1:050. Management of capital construction projects.
740 KAR 1:060. Contracting for capital construction projects.
740 KAR 1:070. Contracting for architectural and engineering services.
740 KAR 1:080. Carrying out of capital construction projects.
740 KAR 1:090. Procedures and limitations of KRS 45.750 through 45.800 apply; projects limited to scope authorized by General Assembly.
740 KAR 1:100. Issuance of bonds.
740 KAR 1:110. Delegation of financial management responsibility.

EDUCATION AND HUMANITIES CABINET
Department of Education
Bureau of Administration and Finance
General Administration
702 KAR 1:025. Extended employment. (As amended subject to state board approval; roll call vote—4 yeas, 1 nay.)

TRANSPORTATION CABINET
Department of Financial and Legal Affairs
Right-of-Way
603 KAR 4:035. Advertising devices, placement along limited access roadways of four (4) or more lanes.

COMMERCE CABINET
Department of Fish and Wildlife Resources
Fish
301 KAR 1:015. Boats and outboard motors; size limits.
301 KAR 1:055. Angling; limits and seasons.
Game
301 KAR 2:087. Migratory birds; limits and seasons for taking.

FINANCE AND ADMINISTRATION CABINET
Division of Occupations and Professions
Board of Examiners and Registration of Architects
201 KAR 19:025. Application for examination. (As amended.)
201 KAR 19:030. Examination; general provisions. (As amended.)
201 KAR 19:035. Qualifications for examination. (As amended.)
201 KAR 19:040. Types of examinations required. (As amended.)
201 KAR 19:050. Re-examination; reconsideration. (As amended.)
201 KAR 19:085. Fees. (As amended.)

Upon motion of Chairman Brinkley, the meeting was adjourned at 2:15 p.m. until November 22, 1982.

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