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IN THIS ISSUE

NOTE: The February meeting of the Administrative Regulation Review Subcommittee will be a ONE-DAY meeting—Wednesday, February 23, 1983, 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.

The *Administrative Register of Kentucky* is the monthly advance sheets service for the 1983 Edition of KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE.

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

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

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

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Public Hearings Scheduled

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET

A public hearing has been scheduled on February 4, 1983, at 10 a.m. in the Main Auditorium, Capital Plaza Tower, Frankfort, Kentucky, on the following regulations:

401 KAR 5:050. Definitions and general provisions. [9 Ky.R. 852]
401 KAR 5:055. Scope and applicability. [9 Ky.R. 854]
401 KAR 5:060. KPDES application requirements. [9 Ky.R. 858]
401 KAR 5:065. KPDES permit conditions. [9 Ky.R. 866]
401 KAR 5:070. Provisions of the KPDES permit. [9 Ky.R. 872]
401 KAR 5:075. Cabinet review procedures. [9 Ky.R. 874]
401 KAR 5:080. Criteria and standards for KPDES system. [9 Ky.R. 879]
401 KAR 5:085. Discharge permit and variance fees. [9 Ky.R. 885]

A public hearing has been scheduled on March 3, 1983, at 10 a.m. in Room G-2, Capital Plaza Tower, Frankfort, Kentucky, on the following regulations:

401 KAR 50:025. Classification of counties. [9 Ky.R. 935]
401 KAR 61:015. Existing indirect heat exchangers. [9 Ky.R. 935]

Emergency Regulations Now In Effect

(NOTE: Emergency regulations expire upon being repealed or replaced.)

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 83-3
January 3, 1983

EMERGENCY REGULATIONS
Corrections Cabinet

WHEREAS, the Secretary of the Corrections Cabinet is responsible under KRS 441.011 through KRS 441.015 for promulgating by regulation minimum standards for jails by January 1, 1983; and

WHEREAS, the Secretary of the Corrections Cabinet has the responsibility to employ jail inspectors necessary to administer and enforce the regulations pursuant to KRS 441.011 through KRS 441.013; and

WHEREAS, pursuant to KRS 441.011 through KRS 441.013, the Corrections Cabinet assumes responsibility for approving jail construction and renovation plans on January 1, 1983; and

WHEREAS, the Corrections Cabinet filed the proposed regulations with the Legislative Research Commission on October 14, 1982, but due to amendments having been filed as a result of a public hearing, the proposed regulations have not been acted upon by the Legislative Research Commission; and

WHEREAS, final review of the regulations by the Legislative Research Commission will not occur until February, 1983; and

WHEREAS, the Secretary has determined in a letter dated December 22, 1982, that an emergency exists with respect to said regulations and that therefore said regulations, pursuant to the provisions of KRS 13.088(1), should become effective immediately upon filing with the Legislative Research Commission:

NOW, THEREFORE, I, John Y. Brown, Jr., Governor of the Commonwealth of Kentucky, by virtue of the authority vested in me by KRS 13.088(1), do hereby acknowledge the finding of an emergency by the Secretary of the Corrections Cabinet with respect to the filing of said regulations on jail inspections and hereby direct that said regulations shall become effective 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

CORRECTIONS CABINET
Office of Community Services

501 KAR 3:010E. Definitions.

RELATES TO: KRS 441.011(6)
PURSUANT TO: KRS 13.082, 441.011(6)
EFFECTIVE: January 3, 1983
NECESSITY AND FUNCTION: KRS 441.011 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for jails. This regulation sets forth definitions.

Section 1. Definitions. (1) "Jail" means county jails and correctional or detention facilities, including correctional facilities defined in KRS 67B.020 and juvenile detention facilities, operated by and under the supervision of any county, city or urban county government.

(2) "Jailer" means the duly elected or appointed official charged with the responsibility of administering the jail.

(3) "Jail staff" means deputy jailers, matrons, cooks, and other food service personnel involved in the supervision, custody, care or treatment of prisoners in the jail.
(4) "Inmate" means any person confined in the jail pursuant to any code, ordinance, law or statute of any unit of government and who is:
(a) Charged with or convicted of an offense;
(b) Held for extradition or as a material witness; or
(c) Confined for any reason.
(5) "Cabinet" means the Corrections Cabinet.
(6) "Medical authority" means the person or persons licensed and certified to provide medical care to inmates in the jail.
(7) "Security area" means a defined space whose physical boundaries have controlled ingress and egress.
(8) "Inmate living area" means a group of rooms or cells which provide housing for the inmate population.
(9) "Holding area" means an area used to hold one (1) or more persons temporarily while awaiting processing, booking, court appearance, discharge or until they can be moved to general housing areas.
(10) "Detoxification area" means an area used to temporarily hold one (1) or more chemically impaired persons during the detoxification process until they can care for themselves.
(11) "Dormitory" is an area equipped for housing more than one (1) person.
(12) "Dayroom" means a secure area with controlled access from the inmate living area, to which inmates may be admitted for daytime activities such as dining, bathing, and selected recreation or exercise.
(13) "Safety vestibule" is a defined space that promotes security by the use of two (2) or more doors and can be used to observe those who pass.
(14) "Sallyport" is a drive-through made secure by electrically or manually operated doors for entrance and exit. It is generally located in close proximity to the jail intake area.

GEORGE W. WILSON, Secretary
ADOPTED: October 1, 1982
RECEIVED BY LRC: January 3, 1983 at 4:30 p.m.

CORRECTIONS CABINET
Office of Community Services

501 KAR 3:020E. Administration; management.

RELATES TO: KRS 441.011*(6)*
PURSUANT TO: KRS 13.082, 441.011*(6)*
EFFECTIVE: January 3, 1983
NECESSITY AND FUNCTION: KRS 441.011 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for jails. This regulation sets forth procedures to be followed for the administration and management of jails.

Section 1. Policy and Procedure—Organization. (1) The jailer shall develop and maintain an organizational chart and an operations manual of policy and procedure which has been adopted by the fiscal court and filed with the Corrections Cabinet.

(2) The written policy and procedures manual shall be made available to employees.
(3) The operations manual shall include but not be limited to the following aspects of the jail's operation:
(a) Administration.
(b) Fiscal management.
(c) Personnel.
(d) Security and control.
(e) Sanitation and management.
(f) Medical services.
(g) Food services.
(h) Emergency and safety procedures.
(i) Classification.
(j) Inmate programs.
(k) Inmate services.
(l) Admission and release.
(4) The operations manual shall be reviewed and updated at least annually.
(5) The provisions of this section shall be effective as of July 1, 1983.

Section 2. Legal Assistance. (1) The jailer shall be represented and advised by the county attorney as provided in KRS 69.210.
(2) The county attorney shall advise the fiscal court in writing when legal representation or legal advisement to the jailer by that office is inappropriate or creates a conflict of interest. The fiscal court shall provide funds for adequate legal representation for the jailer when the jailer has acted within his official capacity and is involved in civil or criminal litigation as a result. The fiscal court shall be encouraged to carry liability insurance for the jail staff and other county officials.
(3) The provisions of this section shall be effective as of January 1, 1983.

Section 3. Public Information. (1) The jailer shall develop and implement a plan for the dissemination of information about the jail to the public, to government agencies, and to the media. The public and inmates shall have access to:
(a) The plan; and
(b) Specific jail rules and procedures affecting inmates as developed in accordance with this plan.
(2) With the consent of the inmate, news media shall be permitted to interview any inmate as set forth in the jail's policy and procedure manual except when the safety and security of the jail is affected.
(3) Written policy and procedure shall set forth the time and length allowable for inmate interviews.
(4) All official statements to the news media, relating to jail administration policy, shall be made by the jailer only or his designee.
(5) Release of inmate information shall include the following:
(a) All requests for information shall be addressed to the jailer;
(b) Governmental agencies shall be provided with information pertinent only to their specific function and with the consent of the inmate; and
(c) Relatives and private citizens shall only be provided with information supplied to the media.
(6) No information shall be released that is detrimental to another inmate.
(7) The provisions of this section shall be effective as of July 1, 1983.

Section 4. Information Systems. (1) The jailer shall establish and maintain an information system which shall comply with the requirements of this section.

(a) Jail information and inmate records shall be retained in written form or within computer records.

(b) Jail information and inmate records shall be stored in a secure manner so that they are protected from theft, loss, tampering, and destruction. Written guidelines shall specify the length of time an inmate record shall be maintained after an inmate's release from custody and the conditions under which archives are maintained.

(c) A written report shall be made of all extraordinary or unusual occurrences within forty-eight (48) hours of the occurrence. This report shall be placed in the inmate's folder. Extraordinary or unusual occurrences shall include but not be limited to:

1. Death of an inmate.
2. Attempted suicide or suicide.
3. Serious injury, whether accidental or self-inflicted.
4. Attempted escape or escape from confinement.
5. Fire.
6. Riot.
7. Battery, whether by a staff member or inmate.
8. Sexual assaults.
9. Occurrence of contagious or infectious disease, or illness within the facility.
10. *Violent acts or behavior by either mental inquest detainees held under KRS Chapter 202A or inmates known to be or suspected to be mentally ill or mentally retarded.*

(d) All jails shall keep a log of daily activity within the jail.

(e) Each jail shall maintain records on the types and hours of training completed by each employee. A current and accurate personnel record shall be maintained on each employee. Each employee shall have access to his individual record.

(2) The provisions of this section shall be effective as of July 1, 1983.

Section 5. Inmate Records. (1) The information required by 501 KAR 3:120 and 3:130 for admission and release shall be retained for each inmate. Other information retained in each inmate's jail record shall include but not be limited to:

(a) Court orders.
(b) Personal property receipts.
(c) Infraction reports.
(d) Reports of disciplinary actions.
(e) Work record and program involvement.
(f) Unusual occurrences and in the case of death of an inmate, disposition of the inmate's property and remains.

(2) Medical records shall be maintained as required by 501 KAR 3:090.

(3) The jailer shall ensure that inmate records are safeguarded in accordance with relevant federal and state laws and regulations.

(4) The jailer shall require that inmates sign a "Release of Information Consent Form" prior to the release of information to individuals other than law enforcement or court officials. A copy of the signed consent form shall be maintained in the inmate's record. This form shall include but not be limited to:

(a) Name of person, agency or organization requesting information.
(b) Name of facility releasing information.
(c) Specific information to be disclosed.
(d) Purpose of the information.
(e) Date consent form is signed.
(f) Signature of inmate.
(g) Signature of employee witnessing the inmate's signature.

(5) Juvenile jail records shall be kept separate from adult jail records and shall be made available for examination only as provided in KRS 208.340. Upon an order of expungement pursuant to KRS 208.275, the jailer shall seal the records and the juvenile's detention shall be deemed never to have occurred.

(6) All jail records maintained on mental inquest detainees held under KRS Chapter 202A shall be kept separate from any other jail records. Mental inquest records are confidential and shall be made available for examination only as provided in KRS 202A.091. Upon an order of expungement pursuant to KRS 202A.091(2), the jailer shall seal the records and the mental inquest detainee's stay at the jail shall be deemed never to have occurred.

(7) The provisions of this section shall be effective as of July 1, 1983.

GEORGE W. WILSON, Secretary
ADOPTED: October 1, 1982
RECEIVED BY LRC: January 3, 1983 at 4:30 p.m.

CORRECTIONS CABINET
Office of Community Services

501 KAR 3:030E. Fiscal management.

RELATES TO: KRS 441.011(6)
PURSUANT TO: KRS 13.082, 441.011(6)
EFFECTIVE: January 3, 1983
NECESSITY AND FUNCTION: KRS 441.011 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for jails. This regulation sets forth physical management procedures to be followed in jails.

Section 1. Budgeting. (1) The jailer shall prepare and present a line item budget request to the fiscal court in accordance with KRS 441.008.

(2) The jailer shall use the format for budget development on forms prepared by the State and Local Finance Office.

(3) The State and Local Finance Office shall submit budget forms to the jailer by March 1 of each year.

(4) The provisions of this section shall be effective as of March 1, 1983.

Section 2. Accounting. (1) The county treasurer shall maintain fiscal records which clearly indicate the local cost for operating the jail in accordance with KRS 68.020 and 441.008.

(2) Fiscal records shall have an itemized breakdown of the total operating expenses including but not limited to wages, salaries, food and operating supplies.

(3) The provisions of this section shall be effective as of March 1, 1983.

Section 3. Canteen. (1) As provided in KRS 441.067, each jailer may establish a canteen to provide inmates with approved items not supplied by the jail.

(2) The provisions of this section shall be effective as of January 1, 1983.

Section 4. Audits. (1) The county jail budget shall be audited in accordance with KRS 43.070.
(2) The provisions of this section shall be effective as of January 1, 1983.

Section 5. Payroll. (1) Jail employees shall be paid on the same dates as county employees.
(2) The provisions of this section shall be effective as of July 1, 1983.

Section 6. Inventory. (1) Each jailer shall implement and utilize the established inventory procedure of the county.
(2) The provisions of this section shall be effective as of January 1, 1983.

GEORGE W. WILSON, Secretary
ADOPTED: October 1, 1982
RECEIVED BY LRC: January 3, 1983 at 4:30 p.m.

CORRECTIONS CABINET
Office of Community Services

501 KAR 3:040E. Personnel.

RELATES TO: KRS 441.011(6)
PURSUANT TO: KRS 13.082, 441.011(6)
EFFECTIVE: January 3, 1983
NECESSITY AND FUNCTION: KRS 441.011 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for jails. This regulation sets forth personnel procedures to be followed in jails.

Section 1. Staffing. (1) Each jail shall provide twenty-four (24) hour awake supervision for all inmates.
(2) When female inmates are lodged in the jail, female staff shall be made available as needed to perform sensitive procedures to include but not limited to:
(a) Admission.
(b) Searches.
(3) The provisions of this section shall be effective as of July 1, 1983.

Section 2. Background Checks; Qualifications. (1) Prior to employment, all employees of the jail shall be subject to thorough background investigation to include criminal, medical, and employment history.
(2) All security employees of the jail shall be at least twenty-one (21) years of age.
(3) The provisions of this section shall be effective July 1, 1983.

Section 3. Compensation. (1) All employees of the jail shall receive salaries at least equal to the State Minimum Wage Law except where Federal Minimum Wage Law has to be applied.
(2) The provisions of this section shall be effective July 1, 1983.

Section 4. Training; Curriculum. (1) In order to qualify for the training expense allowance under KRS 441.017, the jailer shall receive a minimum of forty (40) hours annual in-service training certified by the Corrections Cabinet.
(a) Local corrections training efforts shall be certified by the Corrections Cabinet.
(b) The Curriculum Advisory Committee shall advise the Corrections Cabinet on topics for training curriculum.
(c) Jailer training shall be delivered on a regional basis by the Corrections Cabinet.
(2) The jail staff shall receive a minimum of sixteen (16) hours annual in-service training delivered by the Corrections Cabinet on a regional or local basis.
(3) The provisions of this section shall be effective as of January 1, 1983.

Section 5. Policy and Procedures. (1) Written policy shall specify that equal employment opportunities exist for all positions.
(2) The provisions of this section shall be effective as of July 1, 1983.

Section 6. Physical Fitness. (1) The jailer shall ensure that all employees maintain a level of physical fitness that will allow the employees to satisfactorily perform their duties.
(2) The provisions of this section shall be effective as of January 1, 1983.

Section 7. Code of Ethics. (1) The jailer shall make available to all employees a written code of ethics.
(2) The written code of ethics shall be incorporated in the jail's policy and procedures manual and shall include but not be limited to the following:
(a) Employees shall not:
1. Exchange personal gifts or favors with inmates, their family, or friends;
2. Accept any form of bribe or unlawful inducement;
3. Perform duties under the influence of intoxicants or consume intoxicants while on duty;
4. Violate or disobey established rules, regulations, or lawful orders from a superior;
5. Discriminate against any inmates on the basis of race, religion, creed, gender, national origin, or other individual characteristics;
6. Employ corporal punishment or unnecessary physical force;
7. Subject inmates to any form of unwarranted physical or mental abuse;
8. Intentionally demean or humiliate inmates;
9. Bring any type of weapon or item declared as contraband into the jail without proper authorization;
10. Engage in critical discussion of staff members or inmates in the presence of inmates;
11. Divulge confidential information without proper authorization;
12. Withhold information which, in so doing, threatens the security of the jail, its staff, visitors, or the community;
13. Through negligence, endanger the well-being of self or others;
14. Engage in any form of business or profitable enterprise with inmates; and
15. Inquire about, disclose, or discuss details of an inmate's crime other than as may be absolutely necessary in performing official duties.
(b) Employees shall:
1. Comply with all established rules, regulations, and lawful orders from superiors;

2. Treat all inmates in a fair, impartial manner; and
3. Report all violations of the code of ethics to the jailer.
(3) Any employee violation of this code of ethics shall be made a part of that employee's personnel file.
(4) The provisions of this section shall be effective as of January 1, 1984.

Section 8. Grievance Procedure. (1) Jail employees shall have access to the established grievance procedure of their respective county.
(2) The provisions of this section shall be effective as of January 1, 1984.

Section 9. Hiring Procedures. (1) The jailer shall have a written personnel plan governing the selection, training, promotion, and retention of jail personnel.
(2) Personnel assignments shall be based on merit.
(3) The provisions of this section shall be effective as of January 1, 1984.

Section 10. Performance Evaluation. (1) A written standardized performance evaluation shall be conducted at least annually by the jailer.
(2) The provisions of this section shall be effective as of January 1, 1984.

GEORGE W. WILSON, Secretary
ADOPTED: October 1, 1982
RECEIVED BY LRC: January 3, 1983 at 4:30 p.m.

CORRECTIONS CABINET
Office of Community Services

501 KAR 3:050E. Physical plant.

RELATES TO: KRS 441.011(6)
PURSUANT TO: KRS 13.082, 441.011(6)
EFFECTIVE: January 3, 1983
NECESSITY AND FUNCTION: KRS 441.011 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for jails. This regulation sets forth standards and procedures to be followed in the design and construction of jails.

Section 1. Purpose. The purpose of this regulation is to provide minimum standards for the renovation or construction of jail facilities and for measuring compliance of existing jails in accordance with KRS 441.011, 441.012, and 441.013.

Section 2. Consultation. The Corrections Cabinet shall provide for any county government which wishes to remodel an existing jail or construct a new jail, a consultant knowledgeable in the design, utilization, and operation of jails. The consultant shall meet with the appropriate officials of that county and advise them in matters including but not limited to:
(1) Site selection.
(2) Probable need as it relates to capacity and types of inmates to be housed.
(3) Sources of financing for constructing.
(4) Laws and regulations relating to treatment of inmates.
(5) Laws and regulations relating to facilities for inmates.
(6) Sources of revenue for operations of the jail.
(7) Probable cost for operation of the jail.
(8) Potential for shared facilities with adjoining counties.

Section 3. Site Acceptance. No jail shall be built without site acceptance by the Corrections Cabinet. The following criteria shall be considered in site selection including but not limited to:
(1) Size.
(2) Proximity to courts.
(3) Proximity to community resources.
(4) Availability of public transportation.
(5) Environmental health.
(6) Adequate parking.
(7) Provisions for future expansion.

Section 4. Construction Documents. Prior to the renovation or construction of any jail, plans and specifications shall be submitted to the Corrections Cabinet for review and acceptance as follows:
(1) Schematic outline. This submission shall show:
(a) Control of the site.
(b) Acceptance of the site for a jail by the planning and zoning commission, if any, and all other interested government agencies.
(c) A list of all proposed rooms and areas and their dimensions.
(d) A circulation diagram.
(e) An estimate of cost of land, services, construction, and financing.
(f) Sources of development funds.
(g) Post assignment and staffing needs.
(2) Preliminary drawings. This submission shall include:
(a) Scale drawings one-eighth (1/8) inch to the foot or larger of each floor plan.
(b) Scale drawings (one (1) inch equals fifty (50) feet or larger) of the site, locating the buildings, parking, and other facilities.
(c) Sections through the proposed structure indicating ceiling heights of all rooms, mechanical spaces, roof slopes, and other related information.
(d) Elevation drawings (one-eighth (1/8) inch to the foot or larger) of all exterior walls.
(e) A current estimate of the costs.
(f) A statement regarding the sources of the development funds.
(g) A map of the community locating the proposed jail, the courts, community facilities, population centers, business districts, highways, roads, and police department.
(3) Final construction drawings shall be submitted to the Corrections Cabinet, the Department for Housing, Buildings and Construction, and any other applicable state agency for review and acceptance and shall include:
(a) All necessary construction drawings including construction details.
(b) Specifications for all materials and workmanship.
(c) A proposed contract with general conditions and special conditions.
(d) Engineering calculations for the foundations, structures, heating, ventilating, air conditioning, lighting, and plumbing, signed by licensed architects and engineers.
(e) Detailed estimates of the costs of land, land improvements, construction, financing, professional services, and building permits.
(f) An updated statement in detail regarding the sources of development funds.

(4) Construction documents. This submission shall include:

(a) Construction drawings and specifications signed by an architect registered in the Commonwealth of Kentucky and revised if necessary to include all changes required by the Corrections Cabinet.

(b) Signed copies of all contracts for construction, financing, and bonding revised as necessary to include all changes required by the Corrections Cabinet.

(c) Signed copies of all construction permits.

(d) Documents will bear signed approvals from all other applicable state agencies.

(5) The Corrections Cabinet will review all submissions within thirty (30) days of receipt and issue a letter of acceptance, acceptance with required changes, or rejection with reasons. No construction shall be started until the construction documents as required in subsection (4) of this section have been accepted with required changes by the Corrections Cabinet.

Section 5. Waiver of Compliance. (1) The Corrections Cabinet may grant a waiver of the implementation of the physical plant standards for an existing jail if the cabinet determines:

(a) That strict compliance will cause unreasonable difficulties;

(b) That a waiver will not seriously affect the security, supervision of prisoners, programs, or the safe, healthful, or efficient operation of the jail; and

(c) That compliance is to be achieved in a manner other than that which is specified, but in a manner which is sufficient to meet the intent of these standards.

(2) When a waiver from a standard is desired, the responsible local authority shall submit a written request to the Corrections Cabinet. The written request shall include the following information:

(a) Citation of the specific standard involved;

(b) Specification of the efforts made to bring the jail into strict compliance;

(c) Identification and description of the specific difficulties involved in meeting strict compliance;

(d) Description of the alternative proposed; and

(e) Provision of sufficient documentation which will demonstrate that the waiver, if granted, will not jeopardize the security, supervision of inmates, programs, or the safe, healthful, or efficient operation of the jail.

(3) A waiver, if granted by the Corrections Cabinet, shall apply only to the petitioner for the specific situation cited and for the period of time specified and shall include any requirements imposed by the Cabinet as conditions upon the waiver. No waiver shall be granted for longer than twelve (12) months. Any waiver granted for a twelve (12) month period shall be reviewed at the end of the period for reapproval.

Section 6. Facility Design. (1) Depending upon its size and intended use, every jail shall include within its walls the following facilities and equipment:

(a) Entrances. Every jail shall have three (3) separate and distinct entrances: a public entrance, an adult inmate entrance, and a service entrance. The Corrections Cabinet may permit these entrances to be combined.

1. Public entrance: The purpose of this entrance is to divert the general public from the security area of the jail and from contact with incoming inmates. This area will be the location for the general public to conduct their business at the jail. The following design features shall be incorporated:

a. Provide a clear view of this from the control room.

b. Meet the requirements for handicapped persons.

2. Service entrance: The purpose of this entrance is to provide access to service vehicles and delivery trucks with minimum security risks. It may contain a loading dock and shall be located in close proximity to storage rooms and the kitchen area.

3. Adult inmate entrance: The purpose of this entrance is to provide secure and private access to the jail for incoming inmates. This entrance may be serviced by a drive-in sallyport and shall incorporate the following design features:

a. Be located adjacent to the booking area.

b. Be monitored from the control room.

c. Be free of steps or other obstacles.

d. Be protected from inclement weather.

e. Have metal lockers to secure weapons separate from inmate ingress.

f. All hardware and equipment shall be of approved penal type.

(b) Exits. No exits other than those entrances specified above shall be permitted except for fire exits. Such fire exits, when possible, shall open into controlled, secured courts and exercise areas only.

(c) Administrative areas. This area will provide space outside the secured area of the jail to house the administrative offices and to accommodate the public. This shall contain the following:

1. Waiting area: To provide space for the general public which is protected from inclement weather. This area may have toilet facilities and drinking fountains.

2. Visiting area, public side: This area shall provide for private communication with inmates and be located in close proximity to the waiting area. All furnishings of this area shall be of approved penal type and permanently attached.

3. Office area: This area shall be of sufficient space to house the administrative function of the jail.

4. Entrance to security area: The purpose is to provide secure access to the security area of the penal type and access shall be controlled from the security area.

(d) Security areas. The area shall enclose all facilities and services required for or used by the inmates. It shall contain the following function areas:

1. Booking area: The purpose is to provide a private and separate area, properly equipped to carry out admission and release procedures. All equipment shall be of approved penal type. This area shall be designed for different classes of inmates. Design features for this area shall include:

a. Close proximity to a secure area for storage of inmate personal property.

b. Close proximity to an area for photography and fingerprinting.

c. Close proximity to an area for showering, delousing, and strip searching inmates which assures privacy for the inmate.

d. Close proximity to storage areas for jail clothing, beddng, etc.

e. Close proximity to temporary holding and detoxification cells.

f. Located in a manner to be monitored by the control room.

(e) Detoxification area. The purpose is to provide an area to separate intoxicated inmates from the general inmate population. Design features shall include:

1. A minimum of fifty (50) square feet per inmate.

2. A minimum of eight (8) feet ceiling height.
3. One (1) slab or bench of approved material thirty (30) inches wide by seventy-two (72) inches long by four (4) inches high for each inmate.
4. An approved penal commode and a flush floor drain controlled from outside the cell.
5. A bubble-type drinking fountain.
6. All fixtures and equipment shall be approved penal type.
7. All surfaces inside the area shall be smooth, flush, and free of sharp edges and protrusions.
8. All horizontal surfaces (the bench and the floor) shall be sloped (one-fourth (¼) of an inch to the foot) to a floor drain.
9. All corners (except at ceiling) shall be coved.
10. Ceiling, walls, surfaces of the wall base and floors shall be of approved masonry or steel construction.

(f) Holding area. The purpose of this area is for temporary detention. Design features shall include:
1. A minimum of fifty (50) square feet area.
2. Eight (8) feet ceiling height.
3. One (1) penal type table and bench per rated capacity.
4. All equipment shall be of approved penal type.
5. One (1) approved penal type lavatory/commode.
6. One (1) penal type light fixture capable of providing fifty (50) footcandles of light.
7. Ceilings, walls, surfaces of wall bases and floors shall be of approved masonry or steel construction.

(g) Medical exam room. The purpose of this room is to provide a separate and secure area for medical examinations and rendering medical treatment. Design features shall include:
1. Minimum dimension shall be eight (8) feet.
2. Minimum ceiling height shall be eight (8) feet.
3. One (1) lavatory or counter sink.
4. One (1) work counter.
5. Secured lockers for medical equipment, medical instruments, medications, bandages, etc., secured to the floor or walls.
6. One (1) or more medical examination tables secured to the floor.
7. Electrical power outlets shall be provided in this room.
8. All ceilings, walls, and floors shall be approved masonry construction.

(h) Visiting area, inmate side. The purpose is to provide secure and private visitation for the inmates. All equipment and furnishings shall be of approved penal type and permanently attached.

(i) Conference room. The purpose of this room is to provide space for confidential conferences between inmates and lawyers, probation officers, clergy, etc. Design features shall include:
1. Doors, windows, and light fixtures shall be approved penal type.
2. Walls, floors, and ceilings shall be of approved masonry construction.
3. Furnishings shall be of approved penal type and permanently attached.

(j) Multi-purpose room. The purpose of this area is to provide space for assembly of inmates for specific program activities. Design features shall include:
1. Doors, windows, and light fixtures shall be approved penal type.
2. Walls, floor, and ceiling shall be of approved masonry construction.

(k) Outdoor recreation. The purpose of this area is to provide secure outdoor space for recreational activities. This area shall be at least thirty-five (35) square feet per inmate in an area.

(l) Kitchen. The purpose of this area is to provide sufficient space and equipment for preparing meals for the maximum rated capacity of the jail. Design features shall include:
1. Compliance with standards of the State Food Service Code, 902 KAR 45:005.
2. Commercial type stoves and refrigeration units.
3. Doors and windows will be of approved penal type.
4. Walls, floors, and ceilings will be approved fire rated masonry construction.

(m) Control room. The purpose of this area is to control all movement of inmates within the jail and traffic in and out of the security area. Also, this area will be the hub for operations within the jail. Design features shall include:
1. Doors and windows shall be of approved penal type.
2. Walls, floors, and ceiling shall be approved masonry or steel construction.
3. Audio and video monitors shall be located in this area.
4. Gauges, indicators, and alarms shall be located in this area.
5. Central control panels shall be located in this area.
6. This area shall permit visual observation of all corridors, entrances, and exits under its supervision.

(n) When jail staff are not within normal hearing distance of inmates, an audio communication system shall be installed to allow staff to communicate with inmates.

(o) A panic button may be installed in corridors and staff observation areas, which shall sound an alarm in the control center in the event of an emergency situation.

(p) Confinement areas. The purpose of these areas is to provide suitable living conditions for all types of inmates lodged in the jail. Design features for all living areas shall include:
1. Providing sufficient natural or artificial light to provide fifty (50) footcandles of light for reading purposes and twenty (20) footcandles for all other purposes.
2. Providing ventilation to meet air exchange as required in the Kentucky Building Code, as adopted in 815 KAR 7:020.
3. Providing temperature ranges within comfort zones (sixty-five (65) degrees Fahrenheit—eighty-five (85) degrees Fahrenheit).
4. Shall be of approved masonry or steel construction.
5. All furnishings and equipment shall be approved penal type and permanently attached.
6. Each confinement area shall have approved floor drains outside the immediate living area.
7. Be equipped with an approved securable food pass.
8. Electrical outlets when provided shall have ground-fault circuit breakers.

(q) All cells and housing areas design features shall include:
1. Prisoner living areas shall be equipped with the security hardware to meet the security requirements of the inmate(s) housed in the area. Depending on the size of the jail at least one (1) living area shall be designed at high security and be equipped with a safety vestibule to enter the living area.
2. Depending on the size of jail one (1) or more isolation single-man cells shall be provided.
3. All cells shall open into a dayroom and no cell shall be less than seventy (70) square feet. No cell shall have more than two (2) penal type bunks. When two (2) persons are housed in a cell, they shall not be detained in the cells

for longer periods than twelve (12) hours.

4. Each cell shall contain:

a. An approved penal type commode, lavatory and drinking fountain, penal type bunks secured to floor and/or wall, penal type table with two (2) seats, and penal type storage shelf with breakaway hangers.

b. A light fixture of approved penal type with controls non-accessible to inmates.

5. The jail shall provide living space for low security inmates including work release and community service workers. This area shall be either cells opening into a dayroom or a combination of this and multiple-occupancy dorms. If dorms are used, they must include:

a. Fifty (50) feet per inmate.

b. One (1) commode/lavatory/drinking fountain per eight (8) inmates.

c. One (1) shower per fifteen (15) inmates.

d. Sufficient tables and benches to handle the number of inmates housed in the dorm.

e. One (1) penal type shelf with breakaway hangers per inmate.

f. One (1) penal type bunk secured to the floor or wall per inmate.

6. Each dayroom area shall contain:

a. Thirty-five (35) square feet per inmate.

b. One (1) commode per eight (8) inmates.

c. One (1) lavatory per eight (8) inmates.

d. One (1) drinking fountain per fifteen (15) inmates.

e. One (1) shower per fifteen (15) inmates.

f. Tables and benches with space twenty-four (24) inches wide and eighteen (18) inches deep per inmate.

(2) The provisions of this section shall be effective as of January 1, 1983.

GEORGE W. WILSON, Secretary
ADOPTED: October 1, 1982
RECEIVED BY LRC: January 3, 1983 at 4:30 p.m.

CORRECTIONS CABINET
Office of Community Services

501 KAR 3:060E. Security; control.

RELATES TO: KRS 441.011*(6)*
PURSUANT TO: KRS 13.082, 441.011*(6)*
EFFECTIVE: January 3, 1983
NECESSITY AND FUNCTION: KRS 441.011 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for jails. This regulation sets forth security procedures to be followed in local jails.

Section 1. Policy and Procedure. (1) Each jailer shall develop a written policy and procedure governing all security aspects of the jails operations.

(2) The Corrections Cabinet shall provide technical assistance to the jailer in his efforts to formulate such written policy and procedure.

(3) These policies and procedures shall include but not be limited to:

(a) Inmate rules and regulations;
(b) Staffing;
(c) Searches of inmate and of secure areas;
(d) Visitation;
(e) Key and weapon control;
(f) Inmate head counts;
(g) Emergency situations; and
(h) Jail schedule.

(4) The provisions of this section shall be effective as of July 1, 1983.

Section 2. Inmate Supervision. (1) Jail personnel shall conduct direct, in-person surveillance of each inmate on an irregular schedule, no less than every sixty (60) minutes.

(2) Jail personnel shall conduct direct, in-person surveillance every twenty (20) minutes on the following classes of inmates:

(a) Suicidal;
(b) Assultive;
(c) Escape risk;
(d) Mentally or emotionally disturbed;
(e) Inmates in segregation;
(f) Inmates in detox cell; [and]
(g) Juveniles, if housed in the jail*; and* [.]
(h) Mental inquest detainees.

(3) When available, closed-circuit television shall be used primarily to monitor hallways, stairwells, sallyports, perimeter security, points of egress, and common areas.

(4) There shall be at least three (3) documented inmate counts every twenty-four (24) hours during which each inmate's physical presence, movement, or speech shall be observed. At least one (1) count shall be conducted per shift.

(5) The provisions of this section shall be effective as of July 1, 1983.

Section 3. Security Procedures. (1) Each jailer shall establish a procedure for inspecting all facility areas accessible to inmates for contraband and physical security at least weekly.

(a) Isolated security spot checks shall be conducted daily.

(b) Items considered as contraband or items permitted in the jail shall be clearly defined in the jail rules.

(c) There shall be a written procedure for reporting security irregularities.

(2) No weapon, ammunition, chemical agent, related security equipment, or any object which represents the potential of being used as a weapon shall be permitted in the security area unless authorized by the jailer.

(3) All firearms, weapons, and chemical agents assigned to the jail shall be stored in an arsenal, vault, or other secure room under lock.

(a) This area shall be inaccessible to all unauthorized persons.

(b) There shall be a written procedure for issuing and accounting for all weapons.

(4) All security devices and safety equipment shall be inspected monthly to ensure they are maintained in proper working order.

(5) All tools, toxic, corrosive, and flammable substances, and other potentially dangerous supplies and equipment shall be stored in a locked area which is secure and located outside the security perimeter of the confinement area.

(6) Tools, supplies, and equipment which are hazardous shall be used by inmates only under the direct supervision of jail personnel.

(7) At no time shall any inmate be assigned to a position of authority over any other inmate or given the responsibility of providing inmate services such as commissary, telephone calls, or delivery of meals.

(8) Inmates shall never be permitted to perform or assist in any security duties.

(9) Jails with work release or community service programs shall establish special control procedures to minimize contact between inmates with work release privileges and other inmates.
(10) Inmates shall be thoroughly searched whenever entering or leaving the security perimeter.
(11) Written procedures shall be developed for transporting outside the jail.
(12) Each jailer shall develop written policies and procedures governing the use of physical restraints.
(13) No inmate placed in physical restraints shall be left unattended.
(14) All jails shall have key-control procedures which shall include but not be limited to:
(a) A key control center which is secure and inaccessible to unauthorized persons at all times.
(b) An accounting procedure for issuing and returning keys.
(c) A procedure for immediate reporting and repairing of any broken or malfunctioning key or lock.
(d) A set of duplicate keys to be maintained in a separate, secure place.
(e) No inmate shall be permitted to handle keys used to operate jail security locks.
(f) Keys operating locks to outside doors or gates shall not be permitted in the confinement area.
(g) Emergency keys and keys to critical security areas shall only be issued in accordance with written procedures established by the jailer.
(h) Precautions similar to those outlined above shall be taken to insure the security of all non-key operated locking devices such as electrical switches or levers.
(i) Locks to outside exits shall be keyed differently from interior locks.
(15) Trusties.
(a) At no time shall a trusty have access to or control of weapons.
(b) At no time shall an unsupervised trusty be permitted in either a program, support, or housing area with inmates of the opposite sex.
(c) At no time shall an inmate trusty be permitted in either a program, support, or housing area with juvenile inmates.
(16) The provisions of this section shall be effective as of July 1, 1983.

Section 4. Daily Jail Log; Special Reports. (1) A detailed written record shall be made of all significant activities occurring within the jail including but not limited to:
(a) Security and safety inspections.
(b) Inmate counts.
(c) Use of force.
(d) Disciplinary actions.
(e) Movement inside and outside the jail.
(f) Medical *or mental health* treatment.
(g) Feeding schedule and menus.
(h) Extraordinary occurrences.
1. Fires.
2. Assaults.
3. Suicide or attempted suicide.
4. Escape or attempted suicide.
(i) Inmate vandalism.
1. Destruction of jail property.
2. Flooding of plumbing fixtures.
(j) Staff roster for each shift.
(k) Telephone log.
(l) Visitors log.
(m) Fire drills.

(2) The provisions of this section shall be effective as of July 1, 1983.

GEORGE W. WILSON, Secretary
ADOPTED: October 1, 1982
RECEIVED BY LRC: January 3, 1983 at 4:30 p.m.

CORRECTIONS CABINET
Office of Community Services

501 KAR 3:070E. Safety; emergency procedures.

RELATES TO: KRS 441.011(6)
PURSUANT TO: KRS 13.082, 441.011(6)
EFFECTIVE: January 3, 1983
NECESSITY AND FUNCTION: KRS 441.011 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for jails. This regulation sets forth safety and emergency procedures to be followed in jails.

Section 1. Policy and Procedure. (1) Each jail shall have a written policy and procedure which specify fire prevention regulations and practices to ensure the safety of inmates, visitors, and staff. These shall include but not be limited to:
(a) Provision for fire emergency drills for staff and inmates at least quarterly.
(b) Written documentation of fire drills.
(c) A fire safety inspection by the Corrections Cabinet at least semi-annually.
(d) Inspection and testing of fire protection equipment by qualified persons at least annually with visual inspections by staff monthly.
(e) Smoking restrictions and regulations.
(f) Written evacuation plan coordinated with local fire officials.
(2) Each jail shall have written policies and procedures for emergency situations including but not limited to:
(a) Escapes.
(b) Taking of hostages.
(c) Riots.
(d) Food poisoning.
(e) Civil disturbances in the community.
(f) Natural disasters.
(g) Suicides.
(h) Other deaths and disorder.

Section 2. Physical Plant. (1) Each jail shall have exits which are distinctly and permanently marked, visable at all times, kept clear, and maintained in usable condition.
(2) Each jail shall have equipment necessary to maintain essential lights, power, and communications in an emergency situation.
(3) In all areas where an inmate may be confined, each jail shall be provided with an emergency smoke evacuation system activated by smoke detectors and operated by emergency power, if necessary.
(4) Each jail shall have an approved fire alarm and smoke detection system which meets the National Fire Safety Code (1981 edition, Chapters 14 and 15).

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

GEORGE W. WILSON, Secretary
ADOPTED: October 1, 1982
RECEIVED BY LRC: January 3, 1983 at 4:30 p.m.

CORRECTIONS CABINET
Office of Community Services

501 KAR 3:080E. Sanitation; hygiene.

RELATES TO: KRS 441.011(6)
PURSUANT TO: KRS 13.082, 441.011(6)
EFFECTIVE: January 3, 1983
NECESSITY AND FUNCTION: KRS 441.011 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for jails. This regulation sets forth procedures to provide proper sanitation and hygiene in jails.

Section 1. Procedures. (1) The jailer shall provide for the control of vermin and pests.

(2) The jail shall provide for both solid and liquid waste disposal.

(3) The jailer shall have a written preventative maintenance plan which includes but is not limited to:

(a) A cleaning schedule for various locations and items in the jail.

(b) A schedule for inspections by the jailer.

(c) A schedule for trash and garbage removal.

(d) A schedule for periodic inspection and maintenance of specific mechanical equipment.

(4) The jail shall have fresh and purified air circulating within inmate living and activity areas at least equivalent to ten (10) cubic feet per inmate per minute.

(5) Except in detox cells, the jail shall furnish clean sanitized bedding to each inmate including but not limited to:

(a) One (1) mattress.
(b) One (1) mattress cover.
(c) One (1) blanket and sheet.
(d) One (1) pillow.
(e) One (1) pillowcase.

(6) Inmate bedding shall be cleaned on a regular basis according to the following schedule:

(a) Sheets, pillowcases, and mattress cover shall be cleaned at least once per week.

(b) Blankets shall be cleaned upon reissue or quarterly, whichever is sooner.

(c) Mattresses and pillows shall be cleaned quarterly.

(7) Each inmate shall be issued a clean towel upon admission to an inmate living areas. Towels shall be laundered every fourth day.

(8) All floors, toilets, bath tubs, and sinks in the jail shall be washed daily or more often as necessary.

(9) All showers shall be cleaned on at least a weekly basis.

(10) All inmates assigned to inmate living areas shall be issued or permitted to obtain the following hygienic items:

(a) Soap.
(b) Toothbrush.
(c) Toothpaste.
(d) Toilet paper.
(e) Female sanitary supplies (where applicable).

Indigent inmates shall be furnished these items by the jail.

(11) All inmates shall be permitted to shave daily. If a communal razor is used, it shall be sanitized before each use. No inmate shall be forced to shave except for medical purposes and under the specific orders of the medical authority.

(12) Hair cutting services or sanitized hair cutting equipment shall be available to all inmates. Inmates shall not be forced to cut their hair except for medical purposes and under the specific orders of the medical authority.

(13) All inmates shall be provided shower and bathing facilities within twenty-four (24) hours of admission. Inmates shall be permitted to bathe or shower daily.

(14) All inmates in the jail shall be provided with hot and cold running water for bathing.

(15) As required in KRS 441.012, the jail shall be inspected by the Corrections Cabinet bi-annually.

Section 2. The provisions of this regulation shall be effective as of January 1, 1983.

GEORGE W. WILSON, Secretary
ADOPTED: October 1, 1982
RECEIVED BY LRC: January 3, 1983 at 4:30 p.m.

CORRECTIONS CABINET
Office of Community Services

501 KAR 3:090E. Medical services.

RELATES TO: KRS 441.011*(6)*
PURSUANT TO: KRS 13.082, 441.011*(6)*
EFFECTIVE: January 3, 1983
NECESSITY AND FUNCTION: KRS 441.011 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for jails. This regulation sets forth procedures for the proper delivery of medical services in jails.

Section 1. Procedure Services. (1) The jail's medical services shall be provided by contracting with a Kentucky licensed physician or the county public health organization.

(2) The medical staff *and mental health professionals* shall not be restricted by the jailer in the performance of their duties except to adhere to the jail's security requirements.

(3) The jailer shall prepare a quarterly report and an annual summary report addressing the jail's medical *and mental health* services.

(4) All health care staff working in the jail shall comply with state licensure and certificate requirements commensurate with health care personnel working elsewhere in the community. Copies of such licenses and certificates shall be maintained on file within the jail.

(5) A daily medical log shall be maintained documenting specific medical treatment rendered in the jail. This log shall be kept current to the preceding hour.

(6) Inmates shall not perform any medical functions within the jail.

(7) Inmates shall be informed verbally and in writing at the time of admission the methods of gaining access to medical care within the jail.

(8) All medical procedures shall be performed according to written and standing orders issued by the responsible medical authority.

(9) Medical screening shall be performed by the receiving officer on all inmates upon their admission to the jail and before their placement in inmate living areas. The findings of this medical screening shall be recorded on a printed screening form approved by the medical authority. The medical screening inquiry shall include but not be limited to:

(a) Current illnesses and health problems.

(b) Medications taken and special health requirements.

(c) Screening of other health problems designated by the medical authority.

(d) Behaviorial observation, state of consciousness and mental status.

(e) Notation of body deformaties, markings, bruises, lesions, jaundice, ease of movement, and other distinguishing characteristics.

(f) Condition of skin and body orifices, including rashes and infestations.

(g) Disposition and referral of inmates to qualified medical personnel on an emergency basis.

(10) Sick call conducted by the medical authority shall be available to each inmate as follows:

(a) Once per week, in jails with an average daily population for the preceding month of less than fifty (50) inmates.

(b) Three (3) times per week, in jails with an average daily population for the preceding month from fifty-one (51) to 200 inmates.

(c) Five (5) times per week, in jails with an average daily population for the preceding month of more than 200 inmates.

(11) All jail security personnel shall have current training in basic first-aid equivalent to that defined by the American Red Cross.

(12) The jailer shall be trained and certified in CPR (Cardiopulmonary Resuscitation). (January 1, 1984)

(13) Emergency medical, dental, and psychiatric care shall be available to all inmates commensurate with the level of such care available to the community.

(14) Medical research shall not be permitted on any inmate in the jail.

(15) Access to the inmate's medical file shall be controlled by the medical authority and the jailer. The physician-patient privilege shall apply to the medical record. The medical record is separate from custody and other administrative records of the jail.

(16) All examinations, treatments, and procedures affected by informed consent standards in the community shall be observed for inmate care. In the case of minors, the informed consent of the parent, guardian, or legal custodian shall apply when required by law.

(17) In accordance with KRS 72.025, a post-mortem examination shall be conducted on all inmates who die while in the custody of the jailer.

(18) The jailer shall have written delousing procedures.

(19) All jail staff who administer medications to inmates shall be trained by the medical authority.

(20) The jail shall have first-aid kits available at all times.

(21) An inmate who has been prescribed treatment by a recognized medical authority and cannot receive that treatment in the jail shall be moved to another confinement facility which can provide the treatment or may be moved to a hospital.

Section 2. The provisions of this regulation shall be effective as of January 1, 1983.

GEORGE W. WILSON, Secretary
APPROVED: October 1, 1982
RECEIVED BY LRC: January 3, 1983 at 4:30 p.m.

CORRECTIONS CABINET
Office of Community Services

501 KAR 3:100E. Food services.

RELATES TO: KRS 441.011(6)
PURSUANT TO: KRS 13.082, 441.011(6)
EFFECTIVE: January 3, 1983
NECESSITY AND FUNCTION: KRS 441.011 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for jails. This regulation sets forth procedures for proper food services in local jails.

Section 1. Procedures. (1) The jail shall comply with the Kentucky Food Service Establishment Act and State Food Service Code (KRS 219.011 through 219.081) and the Kentucky Occupational Safety and Health Standards for General Industrsy (803 KAR 2:020 and 29 CFR Part 1910).

(2) The jailer shall provide adult inmates with a nutritionally adequate diet containing at least 2,400 calories per day. Juvenile inmates shall be provided a nutritionally adequate diet containing at least 3,800 calories per day.

(3) Inmates shall receive three (3) meals per day, two (2) of which shall be hot. Not more than fourteen (14) hours shall elapse between any two (2) meals.

(4) The jailer shall provide for religious diets.

(5) The jailer shall provide for medical diets where prescribed by a medical authority.

(6) The jailer shall maintain accurate records of all meals served.

(7) Food shall not be used for disciplinary or reward purposes.

(8) The jailer shall seek the assistance of a local diet specialist in preparing menus or utilize sample menus prepared by the Corrections Cabinet.

(9) A staff member shall directly supervise all food prepared within the jail.

(10) All food shall be served under the direct supervision of a staff member.

(11) All employees and inmates assigned to food service shall receive a V.D.R.L. and TB skin test prior to assignment.

(12) The jail shall have sufficient cold and dry food storage facilities.

(13) The jailer or his designee shall inspect the food service area daily.

(14) Food shall not be prepared or stored in inmate living areas.

Section 2. The provisions of this regulation shall be effective as of January 1, 1983.

GEORGE W. WILSON, Secretary
ADOPTED: October 1, 1982
RECEIVED BY LRC: January 3, 1983 at 4:30 p.m.

CORRECTIONS CABINET
Office of Community Services
Amended After Hearing

501 KAR 3:110E. Classification.

RELATES TO: KRS 441.011*(6)*
PURSUANT TO: KRS 13.082, 441.011*(6)*
EFFECTIVE: January 3, 1983
NECESSITY AND FUNCTION: KRS 441.011 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for jails. This regulation sets forth procedures for the classification of inmates.

Section 1. Procedure. (1) Each jail shall develop an appropriate inmate classification system, which shall be included in the facility's written policy and procedure manual. The provisions of this subsection shall be effective as of July 1, 1983.

(2) The inmate classification system shall provide for the separation of the following categories of inmates:

(a) Male and female inmates;

(b) Juvenile and adult inmates. If a juvenile is housed in the jail, he shall be housed as a juvenile regardless of his criminal status. Such offenders, as those confined for traffic offenses and those whose rights as a juvenile have been waived, will be housed as juveniles; [.]

(c) Mental inquest detainees and other inmates;

(d) Mentally ill or mentally retarded inmates and other inmates.

(e) [(c)] The provisions of this subsection shall be effective as of January 1, 1983.

(3) The criteria to be used in the classification of other inmate categories shall be as follows:

(a) Inmates with a tendency to harm others, be harmed by others, or requiring administrative segregation such as:

1. Those requiring protective custody;
2. Those with a history of disciplinary problems; and
3. Those charged with or convicted of a violent offense.

(b) Inmates with special problems or needs including but not limited to public intoxicants, physically handicapped, emotionally disturbed, mentally disordered, inmates with communicable diseases, suicide prone inmates, and known homosexuals.

(c) Sentenced or unsentenced status.

(d) Felons and misdemeanants.

(e) Non-criminal and criminal status such as traffic violators, non-support cases or civil contempt.

(f) Community custody inmates such as work-release, education-release, weekenders.

(g) Trusties. All inmates receiving trusty status shall be selected by the jailer or his designee based upon criteria including but not limited to:

1. The nature of the inmate's offense and sentence;
2. Previous escape attempts; and
3. The inmate's "day-to-day" behavior.

The provisions of this subsection shall be effective as of January 1, 1983.

(4) An inmate's classification system shall be changed to reflect changes in the inmate's status including but not limtied to the following:

1. Court appearance by the inmate;
2. Disciplinary hearing and action; and
3. Re-evaluation of the inmate's physical or emotional condition *or mental condition.*

The provisions of this subsection shall be effective as of January 1, 1983.

(5) The inmate classification system shall prohibit discrimination or segregation based upon race, color, creed, or national origin. The provisions of this subsection shall be effective as of January 1, 1983.

GEORGE W. WILSON, Secretary
ADOPTED: October 1, 1982
RECEIVED BY LRC: January 3, 1983 at 4:30 p.m.

CORRECTIONS CABINET
Office of Community Services

501 KAR 3:120E. Admission; release.

RELATES TO: KRS 441.011*(6)*
PURSUANT TO: KRS 13.082, 441.011*(6)*
EFFECTIVE: January 3, 1983
NECESSITY AND FUNCTION: KRS 441.011 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for jails. This regulation sets forth admission and release procedures.

Section 1. Policy and Procedure. (1) Each jail shall develop written admission, orientation, and release procedures to be included in the jail's policy and procedure manual.

(2) The provisions of this section shall be effective as of July 1, 1983.

Section 2. Admission. (1) Any seriously injured, seriously ill, or unconscious persons (as determined by the jailer or his designee) shall not be admitted to the jail until a medical examination has been conducted by a licensed physician. A denial of admission form shall form shall be completed which lists the reasons for the denial and shall be signed by the arresting officer and the jail staff member on duty. The provisions of this subsection shall be effective as of January 1, 1983.

(2) The jail staff shall assure that each inmate is committed under proper legal authority by a duly authorized officer. The provisions of this subsection shall be effective as of January 1, 1983.

(3) An intake form shall be completed on every new inmate admission and shall include but not be limited to the following:

(a) Time and date of commitment;

(b) Name, alias, nickname;

(c) Official charge—cite eight (8) digit KRS number;

(d) Authority ordering commitment;

(e) Unit of government to be billed;

(f) Signature and title of arresting or committing officer;

(g) Date of birth;
(h) Race;
(i) Sex;
(j) Height and weight;
(k) Current or last known address;
(l) Telephone number;
(m) Marital status;
(n) Spouse or next of kin;
(o) Emergency contact (name, relation, address, telephone number);
(p) Employer, place of employment, telephone number;
(q) Social Security number;
(r) Health status (including current medications, known allergies, diet or other special medical needs);
(s) Blood type, if known; [and]
(t) The name of any known person in the jail who might be a threat to the arrestee*; and* [.]
(u) Mental health history (including past hospitalizations, comprehensive care treatment, current treatment, and medication).
The provisions of this subsection shall be effective as of July 1, 1983.

(4) The jail staff shall conduct a search of inmates and their possessions.

(a) Each inmate shall be searched for contraband in such a manner as responsible staff reasonably determine is necessary to protect the safety of fellow inmates, staff, and institutional security. Such search shall be conducted in a private area and in a manner which protects the inmate's dignity to such extent as possible in that particular jail.

(b) When a strip search is conducted, it shall be performed by a staff person of the same sex as the inmate.

(c) When a strip search of an inmate is conducted, it shall include a thorough visual check for birthmarks, wounds, sores, cuts, bruises, scars, and injuries, "health tags," and body vermin. A less complete search shall include the same checks to the extent determined reasonably necessary.

(d) The probing of body cavities shall not be done except where there is reasonable suspicion to believe that the inmate is carrying contraband there and such search shall only be conducted by medically trained persons (physician, emergency medical technician, registered nurse, licensed practical nurse) in a private location and under sanitary conditions.

(e) The provisions of this subsection shall be effective as of January 1, 1983.

(5) Each jail shall develop written policies and procedures, specifying the personal property that inmates may retain in their possession.

(a) Any cash or personal property shall be taken from the inmate upon admission, listed by complete description on a receipt form in duplicate, and securely stored pending the inmate's release. The receipt shall be signed by the receiving officer and the inmate, the duplicate shall be stored with the inmate's personal property and the original kept for the jail record.

(b) If the inmate is *in an* inebriated *state, is a mental inquest detainee, or is mentally ill or mentally retarded,* [or otherwise unable to account for his actions,] there shall be at least one (1) witness to verify this transaction. As soon as the inmate is able to understand and account for his actions, he shall sign the receipt and his copy stored with his personal property.

(c) Personal property released to a third party must have the inmate's signature of approval and the signature receipt of the third party.

(d) The provisions of this subsection shall be effective as of July 1, 1983.

Section 3. Orientation. (1) As soon after assignment as possible, each inmate shall receive an oral and written orientation.

(2) The orientation shall provide the inmate with information regarding his confinement including but not limited to the following:

(a) Information pertaining to rising and retiring, meals, mail procedures, work assignments, telephone privileges, visitation, correspondence, commissary, medical care, and other matters related to the conditions of the inmate's confinement;

(b) Rules of inmate conduct;

(c) Disciplinary procedures;

(d) Information regarding programs (work, educational and vocational training, counseling, and other social services); and

(e) Procedures for making requests or registering complaints with the jail staff, judiciary, or Corrections Cabinet personnel.

(3) Special assistance shall be given to illiterate and non-English speaking inmates.

(4) The provisions of this section shall be effective as of July 1, 1983.

Section 4. Release. (1) Written legal authorization shall be required prior to the release or removal of any inmate from confinement.

(2) When an inmate is released or removed for any legal purpose to the custody of another, the identity of receiving authority shall be verified.

(3) A written record shall be kept of the time, purpose, date, and authority for release or removal from confinement, and into whose custody the inmate is released or removed.

(4) Prior to the release or removal of an inmate, the receiving authority shall sign an authorized release form.

(5) Before the jailer releases an inmate to an out-of-state jurisdiction, he shall consult with the appropriate prosecutorial office in the county.

(6) Any property, not legally confiscated or retained, receipted from the inmate upon admission shall be returned to the inmate at the time of release.

(7) Each inmate shall sign a receipt for property returned at the time of release.

(8) Any complaint regarding property returned must be submitted in writing with specific details within twenty-four (24) hours.

(9) The provisions of this section shall be effective as of January 1, 1983.

GEORGE W. WILSON, Secretary
ADOPTED: October 1, 1982
RECEIVED BY LRC: January 3, 1983 at 4:30 p.m.

CORRECTIONS CABINET
Office of Community Services

501 KAR 3:130E. Inmate programs; services.

RELATES TO: KRS 441.011(6)
PURSUANT TO: KRS 13.082, 441.011(6)
EFFECTIVE: January 3, 1983
NECESSITY AND FUNCTION: KRS 441.011 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for jails. This regulation sets forth procedures for inmate programs and services.

Section 1. Work Programs. (1) Written policy and procedure shall provide that inmate programs and services are available and include but are not limited to social services, religious services, recreation and leisure time activities and library services.

(2) Sentenced inmates who perform work as authorized by KRS 441.068 may receive rewards in the form of sentence reductions or other privileges, if granted by proper authority.

(3) Written policy and procedure shall provide that unsentenced inmates are not required to work except to do personal housekeeping.

(4) The provisions of this section shall be effective as of July 1, 1983.

Section 2. Education Programs. (1) The jailer shall encourage the implementation of education programs in the jail. The utilization of community resources in these efforts shall also be encouraged to offset the costs of such programs.

(2) Education programs may be made available in accordance with KRS 439.179.

(3) The provisions of this section shall be effective as of January 1, 1983.

Section 3. Library Services. (1) Where resources are available in the community, library services may be made available to all inmates.

(2) Inmates shall be encouraged to use reading materials.

(3) The provisions of this section shall be effective as of January 1, 1983.

Section 4. Religious Programs. (1) Written policy and procedure shall ensure that the constitutional rights of inmates to voluntarily practice their own religious activities, subject only to those limitations necessary to maintain the order and security of the jail.

(2) The provisions of this section shall be effective as of January 1, 1983.

Section 5. Recreation Programs. (1) Written policy and procedure shall provide all inmates with the opportunity to participate in an average of one (1) hour of physical exercise per day with at least three (3) exercise periods per week outside the cell. Where the security and safety of the jail and the weather permits, there shall be outdoor exercise.

(2) Leisure time and recreation programs shall be scheduled to permit inmates to participate in but not be limited to such activities as board games, arts and crafts, radio and television to relieve idleness and boredom.

(3) The provisions of this section shall be effective as of July 1, 1983.

GEORGE W. WILSON, Secretary
ADOPTED: October 1, 1982
RECEIVED BY LRC: January 3, 1983 at 4:30 p.m.

CORRECTIONS CABINET
Office of Community Services

501 KAR 3:140E. Inmate rights.

RELATES TO: KRS 441.011*(6)*
PURSUANT TO: KRS 13.082, 441.011*(6)*
EFFECTIVE: January 3, 1983
NECESSITY AND FUNCTION: KRS 441.011 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for jails. This regulation sets forth procedures to ensure the protection of inmate rights.

Section 1. Policy and Procedure. (1) Each jail shall a written statement of inmate rights which shall include but not be limited to:

(a) Access to courts.
(b) Access to attorney.
(c) Mail.
(d) Telephone.
(e) Grievances.
(f) Search and seizure.
(g) Disciplinary procedure.
(h) Racial segregation.
(i) Medical care.
(j) Mental health care (if possible).
(k) [(j)] Religion.

The statement of inmate rights shall be posted in a conspicious place in the booking areas of the jail and a copy shall be handed to the inmate upon admission.

(2) The jailer shall not prohibit an inmate's right of access to the judicial process. The provisions of this subsection shall be effective as of July 1, 1983.

(3) The jailer shall ensure the right of inmates to have confidential access to their attorney and their authorized representative. The provisions of this subsection shall be effective as of January 1, 1983.

(4) The jailer shall have a written policy which defines the jail's visitation rules and regulations, which shall include but not be limited to:

(a) A schedule identifying no fewer than two (2) visiting days each week, one (1) of which must be during the weekend.

(b) At least one (1) visit per week per inmate shall be allowed except when an inmate has been assessed a disciplinary penalty for an infraction of rules governing visitation.

(c) Visits shall not be less than fifteen (15) minutes.

(d) Two (2) or more persons permitted to visit at the same time shall count as a single visit.

(e) Children, when accompanied by an adult, shall be permitted to visit inmates.

The provisions of this subsection shall be effective as of July 1, 1983.

(5) Attorneys, clergy, and medical personnel shall be permitted to visit inmates at reasonable hours other than during regularly scheduled visiting hours and shall not count as an allotted visit. The provisions of this subsection shall be effective as of January 1, 1983.

(6) Visitors shall register before admission and may be denied admission for refusal to register, for refusal to consent to search or for any violation. The provisions of this subsection shall be effective as of January 1, 1983.

(7) Inmates shall not be restriced in regard to whom they may have as a visitor unless the jailer determines that a visitor should be excluded due to the existence of one (1) or more of the following conditions:

(a) The visitor represents a clear and present danger to security.
(b) The visitor has a past history of disruptive conduct at the jail.
(c) The visitor is under the influence of alcohol or drugs.
(d) The visitor refuses to submit to search or show proper identification.
(e) The inmate refuses the visit.
The provisions of this subsection shall be effective as of January 1, 1983.

(8) The jailer shall not listen to visitors' conversations but may observe the visitation for security reasons. The provisions of this subsection shall be effective as of January 1, 1983.

Section 2. Mail. (1) The jailer shall have written policy and procedure for receiving and sending mail that protects the inmate's personal rights and provides for reasonable security practices consistent with the operation of the jail. The provisions of this subsection shall be effective as of July 1, 1983.
(2) Inmates shall be allowed to correspond with anyone so long as such correspondence does not violate any state or federal law except that caution shall be taken to protect the inmate's rights in accordance with court decisions regarding correspondence. The provisions of this subsection shall be effective as of January 1, 1983.
(3) Incoming mail may be inspected for contraband items, prior to delivery, unless such mail is received from the courts, attorney of record or public officials; then it may be opened and inspected in the presence of the inmate. The provisions of this subsection shall be effective as of January 1, 1983.

Section 3. Telephone. (1) Newly admitted inmates shall be permitted a reasonable number of local or collect long distance telephone calls to an attorney of their choice, or to a family member, as soon as practical, generally within one (1) hour after arrival, until one (1) call has been completed. The provisions of this subsection shall be effective as of January 1, 1983.
(2) The jailer or his designee shall maintain a log of all telephone calls made by an inmate during the admission procedure. The log shall document the date, time and party contacted. The provisions of this subsection shall be effective as of July 1, 1983.
(3) Written policy and procedure shall permit each inmate to complete at least one (1) telephone call each week. Any expense incurred for calls shall be borne by the inmate or the party called. The provisions of this subsection shall be effective as of July 1, 1983.
(4) A minimum of five (5) minutes shall be allotted for each phone call. The provisions of this subsection shall be effective as of January 1, 1983.
(5) Telephone calls shall not be routinely monitored. If calls are monitored, the inmate shall be *notified* [monitored].
(6) Telephone privileges may be suspended for a designated period of time if telephone rules are violated.
(7) The provisions of subsections (5) and (6) of this section shall be effective as of January 1, 1983.

Section 4. Religion. (1) Inmates shall be granted the right to practice their religion within limites necessary to maintain institution order and security.
(2) Inmates shall be afforded an opportunity to participate in religious services and receiving religious counseling within the jail.
(3) Inmates shall not be required to attend or participate in religious services or discussions.
(4) The provisions of this section shall be effective as of January 1, 1983.

Section 5. Access to Programs. (1) The jailer shall ensure equal access to programs and services for all inmates provided the security and order of the jail is not jeopardized.
(2) The provisions of this section shall be effective as of January 1, 1983.

Section 6. Grievance Procedure. (1) The jailer shall have a written inmate grievance procedure which shall be available to all inmates. These procedures shall include provisions for:
(a) Responses, within a reasonable time limit, to all grievance complaints.
(b) Equal access to all inmates.
(c) Guarantees against reprisal.
(d) Resolving legitimate complaints.
(2) The provisions of this section shall be effective as of July 1, 1983.

Section 7. Searches. (1) Each search of an inmate for contraband shall be done in such a manner as the jailer determines is necessary to protect the safety of inmates, staff, and jail security.
(2) Each search shall be conducted in a private area and in a professional manner which protects the inmate's dignity to the extent possible.
(3) All strip searches shall be performed by a staff person of the same sex as the inmate.
(4) The provisions of this section shall be effective as of January 1, 1983.

Section 8. Disciplinary Rights. (1) Each jail shall have a written policy and procedure for maintaining discipline which is consistent with constitutional requirements for due process.
(2) The provisions of this section shall be effective as of July 1, 1983.

Section 9. Medical. (1) Each inmate shall be afforded access to necessary medical care.
(2) The provisions of this section shall be effective as of January 1, 1983.

GEORGE W. WILSON, Secretary
ADOPTED: October 1, 1982
RECEIVED BY LRC: January 3, 1983 at 4:30 p.m.

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 83-4
January 3, 1983

EMERGENCY REGULATION
Cabinet for Human Resources
Department for Social Insurance

WHEREAS, the Secretary of the Cabinet for Human Resources is responsible, under the provisions of KRS 194.050(1) and KRS 205.520, for setting forth by regulation the policies of the Cabinet with regard to the provision of Medical Assistance; and

WHEREAS, the Secretary has determined the payment system for hospital inpatient services should be revised to assure adequate reimbursement to participating facilities; and

WHEREAS, revisions to the payment system should be effective with the beginning of the hospital inpatient services uniform rate year (January 1, 1983); and

WHEREAS, the Secretary has promulgated a regulation on Payments for Hospital Inpatient Services; and

WHEREAS, the Secretary has determined in writing that an emergency exists with respect to said regulation and that, therefore, said regulation should, pursuant to the provisions of KRS 13.088(1), become effective immediately upon filing with the Legislative Research Commission:

NOW, THEREFORE, I, John Y. Brown, Jr., Governor of the Commonwealth of Kentucky, by virtue of the authority vested in me by KRS 13.088(1), do hereby acknowledge the finding of an emergency by the Secretary of the Cabinet for Human Resources with respect to the filing of said regulation on Payments for Hospital Inpatient Services, and hereby direct that said regulation shall become effective 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

CABINET FOR HUMAN RESOURCES
Department for Social Insurance

904 KAR 1:013E. Payments for hospital inpatient services.

RELATES TO: KRS 205.520
PURSUANT TO: KRS 13.082, 194.050
EFFECTIVE: January 3, 1983

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the method for determining amounts payable by the cabinet for hospital inpatient services.

Section 1. Hospital Inpatient Services. The state agency will pay for inpatient hospital services provided to eligible recipients of Medical Assistance through the use of rates that are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated hospitals to provide services in conformity with applicable state and federal laws, regulations, and quality and safety standards.

Section 2. Establishment of Payment Rates. The policies, methods, and standards to be used by the cabinet in setting payment rates are specified in the cabinet's "Inpatient Hospital Reimbursement Manual" *revised January 1, 1983,* which is incorporated herein by reference. For any reimbursement issue or area not specified in the manual, the cabinet will apply the Medicare standards and principles described in 42 CFR Sections 405.402 through 405.488 (excluding the Medicare inpatient routine nursing salary differential).

Section 3. Compliance with Federal Medicaid Requirements. The cabinet will comply with the requirements shown in 42 CFR 447.250 through 447.272.

Section 4. General Description of the Payment System. (1) Use of prospective rates. Each hospital will be paid using a prospective payment rate based on allowable Medicaid costs and Medicaid inpatient days. The prospective rate will be all inclusive in that both routine and ancillary cost will be reimbursed through the rate. The prospective rate will not be subject to retroactive adjustment except to the extent that an audited cost report alters the basis for the prospective rate and/or the projected inflation index utilized in setting the individual rate is different from actual inflation as determined by the index being used. However, total prospective payments shall not exceed the total customary charges in the prospective year. Overpayments will be recouped by payment from the provider to the cabinet of the amount of the overpayment, or alternatively, by the withholding of the overpayment amount by the cabinet from future payments otherwise due the provider.

(2) Use of a uniform rate year. A uniform rate year will be set for all facilities, with the rate year established as January 1 through December 31 of each year. Hospitals are not required to change their fiscal years.

(3) Trending of cost reports. Allowable Medicaid cost as shown in cost reports on file in the cabinet, both audited and unaudited, will be trended to the beginning of the rate year so as to update Medicaid costs. When trending, capital costs and return on equity capital are excluded. The trending factor to be used will be *the Data Resources, Inc. rate of inflation for the period being trended* [derived from the percentage of change in the aggregate per diem cost of all participating hospitals between the last two (2) state fiscal years preceding the rate year. In determining this trending factor, only cost reports relative to the two (2) fiscal years being compared will be utilized].

(4) Indexing for inflation. After allowable costs have been trended to the beginning of the rate year, an indexing factor is applied so as to project inflationary cost in the uniform rate year. The forecasting index currently in use is prepared by Data Resources, Inc.

(5) Peer grouping. Hospitals will be peer grouped according to bed size. The peer groupings for the payment system will be: 0-50 beds, 51-100 beds, 101-200 beds, *201-400 beds, and 401 beds and up* [and 201 beds and up]. *No facility in the 201-400 peer group shall have its operational per diem reduced below that amount in effect in the 1982 rate year as a result of the establishment of a peer grouping of 401 beds and up.*

(6) Use of a minimum occupancy factor. A minimum occupancy factor will be applied to capital costs attributable to the Medicaid program. A sixty (60) percent occupany factor will apply to hospitals with 100 or fewer beds. A seventy-five (75) percent occupancy factor will apply to facilities with 101 or more beds. Capital costs are interest and depreciation related to plant and equipment.

(7) Use of upper limits. An upper limit will be established on all costs (except Medicaid capital cost) at 110 percent of the weighted median per diem cost for hospitals in each peer group, using the latest available cost data; upon being set, the arrays and upper limits will not be altered due to revisions or corrections of data. Exceptions have been made for the University of Kentucky and University of Louisville hospitals in recognition of special costs relating to the educational functions. For these two (2) hospitals, the upper limit is established at 150 percent of the *basic upper limit* [weighted median cost]. In addition, the upper limit is established at 120 percent for those hospitals serving a disproportionate number of poor patients (defined as twenty (20) percent or more Medicaid clients as compared to the total number of clients served).

(8) Operating costs shall not include professional (physician) costs for purposes of establishing the median based upper limits. Professional costs shall be trended and indexed separately.

(9) Hospitals whose general characteristics are not those of an acute care hospital (i.e., because they are primarily rehabilitative in nature) are not subject to the operating cost upper limits.

(10) [(9)] Rate appeals. As specified in the Inpatient Hospital Reimbursement Manual, hospitals may request an adjustment to the prospective rate with the submittal of supporting documentation. The established appeal procedure allows a representative of the hospital group to participate as a member of the rate review panel.

Section 5. Implementation Date. *Payments in accordance with Sections 1 through 4 shall be made beginning January 1, 1983.* [This payment system shall be implemented March 1, 1982.]

JOHN CUBINE, Commissioner
ADOPTED: December 22, 1982
APPROVED: BUDDY H. ADAMS, Secretary
RECEIVED BY LRC: January 3, 1983 at 4:30 a.m.

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 83-2
January 3, 1983

EMERGENCY REGULATION
Cabinet for Human Resources
Department for Social Insurance

WHEREAS, the Secretary of the Cabinet for Human Resources is responsible, under the provisions of KRS 194.050(1) and KRS 205.520, for setting forth, by regulation, the policies of the Cabinet with regard to the provision of Medical Assistance; and

WHEREAS, the Secretary is required by Chapter 398 of the 1982 Kentucky Acts to contain costs; and

WHEREAS, the Secretary has found that in order to reduce the rate of spending, it is necessary to implement a new regulation governing amounts payable to skilled nursing and intermediate care facility services; and

WHEREAS, the Secretary has promulgated a regulation on Amounts Payable for Skilled Nursing and Intermediate Care Facility Services; and

WHEREAS, the Secretary has determined in writing that an emergency exists with respect to said regulation and that, therefore, said regulation should, pursuant to the provisions of KRS 13.088(1), become effective immediately upon filing with the Legislative Research Commission:

NOW, THEREFORE, I, John Y. Brown, Jr., Governor of the Commonwealth of Kentucky, by virtue of the authority vested in me by KRS 13.088(1), do hereby acknowledge the finding of an emergency by the Secretary of the Cabinet for Human Resources with respect to the filing of said regulation on Amounts Payable for Skilled Nursing and Intermediate Care Facility Services, and hereby direct that said regulation shall become effective 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

CABINET FOR HUMAN RESOURCES
Department for Social Insurance

904 KAR 1:036E. Amounts payable for skilled nursing and intermediate care facility services.

RELATES TO: KRS 205.520
PURSUANT TO: KRS 13.082, 194.050
EFFECTIVE: January 3, 1983
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet by regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the method for determining amounts payable by the cabinet for skilled nursing care facility services and intermediate care facility services.

Section 1. Reimbursement for Skilled Nursing and Intermediate Care Facilities. All skilled nursing or intermediate care facilities participating in the Title XIX program shall be reimbursed in accordance with this regulation. Payments made shall be in accordance with the requirements set forth in 42 CFR 447.250 through 42 CFR 447.272. A skilled nursing facility desiring to participate in Title XIX shall be required to participate in Title XVIII-A.

Section 2. Basic Principles of Reimbursement. (1) Payment shall be on the basis of rates which are reasonable and adequate to meet the costs which must be incurred by

efficiently and economically operated facilities in order to provide care and services in conformity with applicable state and federal laws, regulations, and quality and safety standards.

(2) Payment amounts shall be arrived at by application or the reimbursement principles developed by the cabinet (Kentucky Medical Assistance Program Intermediate Care/Skilled Nursing Facility Payment System, revised *January 1, 1983* [July 1, 1982], which is hereby incorporated by reference) and supplemented by the use of the Title XVIII-A reimbursement principles.

Section 3. Implementation of the Payment System. The cabinet's reimbursement system is supported by the Title XVIII-A Principles of Reimbursement, with the system utilizing such principles as guidelines in unaddressed policy areas. The cabinet's reimbursement system includes the following specific policies, components or principles:

(1) Prospective payment rates for routine services shall be set by the cabinet on a facility by facility basis, and shall not be subject to retroactive adjustment. Prospective rates shall be set annually, and may be revised on an interim basis in accordance with procedures set by the cabinet. An adjustment to the prospective rate (subject to the maximum payment for that type of facility) will be considered only if a facility's increased costs are attributable to one (1) of the following reasons: governmentally imposed minimum wage increases; the direct effect of new licensure requirements or new interpretations of existing requirements by the appropriate governmental agency as issued in regulation or written policy which affects all facilities within the class; or other governmental actions that result in an unforeseen cost increase. The amount of any prospective rate adjustment may not exceed that amount by which the cost increase resulting directly from the governmental action exceeds on an annualized basis the inflation allowance amount included in the prospective rate for the general cost area in which the increase occurs. For purposes of this determination, costs will be classified into two (2) general areas, salaries and other. The effective date of interim rate adjustment shall be the first day of the month in which the adjustment is requested or in which the cost increase occurred, whichever is later.

(2) The prospective rate shall not exceed, on a facility by facility basis, an administratively established maximum payment for that type of facility. The state will set a uniform rate year for SNFs and ICFs (July 1-June 30) by taking the latest audited cost data available as of April 30 of each year and trending the facility costs to July 1 of the rate year. (Unaudited and/or budgeted cost data may be used if a full year's audited data is unavailable.) Allowable costs will then be indexed for inflation for the rate year, and the maximum set at 110 percent of the median for the class (SNF or ICF). In recognition of the higher costs of hospital based SNFs, their upper limit shall be set at 165 percent of 110 percent of the median of allowable trended and indexed costs of all other SNFs. The maximum payment amounts will be adjusted each July 1, beginning with July 1, 1982, so that the maximum payment amount for the prospective uniform rate year will be at 110 percent of the median per diem allowable costs for the class (SNF or ICF) on July 1 of that year. For purposes of administrative ease in computations normal rounding may be used in establishing the maximum payment amount, with the maximum payment amount rounded to the nearest five (5) cents. Upon being set, the arrays and upper limits will not be altered due to revisions or corrections of data. For ICF-MRs, a prospective rate will be set in the same manner as for SNFs and basic ICFs, except that no maximum (upper limit) shall be imposed.

(3) The reasonable direct cost of ancillary services provided by the facility as a part of total care shall be compensated on a reimbursement cost basis as an addition to the prospective rate. Ancillary services reimbursement shall be subject to a year-end audit, retroactive adjustment and final settlement. Ancillary costs may be subject to maximum allowable cost limits under federal regulations. Any percentage reduction made in payment of current billed charges shall not exceed twenty-five (25) percent, except in the instance of individual facilities where the actual retroactive adjustment for a facility for the previous year reveals an overpayment by the cabinet exceeding twenty-five (25) percent of billed charges, or where an evaluation by the cabinet of an individual facility's current billed charges shows the charges to be in excess of average billed charges for other comparable facilities serving the same area by more than twenty-five (25) percent.

(4) Interest expense used in setting the prospective rate is an allowable cost if permitted under Title XVIII-A principles and if it meets these additional criteria:

(a) It represents interest on long-term debt existing at the time the vendor enters the program or represents interest on any new long-term debt, the proceeds of which are used to purchase fixed assets relating to the provision of the appropriate level of care. If the debt is subject to variable interest rates found in balloon-type financing, renegotiated interest rates will be allowable. The form of indebtedness may include mortgages, bonds, notes and debentures when the principal is to be repaid over a period in excess of one (1) year; or

(b) It is other interest for working capital and operating needs that directly relates to providing patient care. The form of such indebtedness may include, but is not limited to, notes, advances and various types of receivable financing; however, short-term interest expense on a principal amount in excess of program payments made under the prospective rate equivalent to two (2) months experience based on ninety (90) percent occupancy or actual program receivables will be disallowed in determining cost;

(c) For both paragraphs (a) and (b) of this subsection, interest on a principal amount used to purchase goodwill or other intangible assets will not be considered an allowable cost.

(5) Compensation to owner/administrators will be considered an allowable cost provided that it is reasonable, and that the services actually performed are a necessary function. Compensation includes the total benefit received by the owner for the services he renders to the institution, excluding fringe benefits routinely provided to all employees and the owner/administrator. Payment for services requiring a licensed or certified professional performed on an intermittent basis will not be considered a part of compensation. "Necessary function" means that had the owner not rendered services pertinent to the operation of the institution, the institution would have had to employ another person to perform the service. Reasonableness of compensation will be based on total licensed beds (all levels).

(6) The allowable cost for services or goods purchased by the facility from related organizations shall be the cost to the related organization, except when it can be demonstrated that the related organization is in fact equivalent to any other second party supplier, i.e., a relationship for purposes of this payment system is not con-

sidered to exist. A relationship will be considered to exist when an individual or individuals possess five (5) percent or more of ownership or equity in the facility and the supplying business; however, an exception to the relationship will be determined to exist when fifty-one (51) percent or more of the supplier's business activity of the type carried on with the facility is transacted with persons and organizations other than the facility and its related organizations.

(7) The amount allowable for leasing costs shall not exceed the amount which would be allowable based on the computation of historical costs, except that for general intermediate care facilities entering into lease/rent arrangements prior to April 22, 1976, intermediate care facilities for the mentally retarded entering into lease/rent arrangements prior to February 23, 1977, and skilled nursing facilities entering into lease/rent arrangements prior to December 1, 1979, the cabinet will determine the allowable costs of such arrangements based on the general reasonableness of such costs.

(8) The following provisions are applicable with regard to median per diem cost center upper limits:

(a) For facilities (except ICF-MRs) beginning participation in the Medicaid program on or after April 1, 1981, (newly participating facilities), the following upper limits (within the class) shall be applicable with regard to otherwise allowable per diem costs, by cost center: for nursing services, 125 percent of the median; for dietary services, 125 percent of the median; for property costs, 105 percent of the median; and for all other costs, 105 percent of the median.

(b) Facilities participating in the Medicaid program prior to April 1, 1981, shall be classified as newly participating facilities when either of the following occurs on or after April 1, 1981: first, when the facility expands its bed capacity by expansion of its currently existing plant or, second, when a multi-level facility (one providing more than one (1) type of care, converts existing personal care beds in the facility to either skilled nursing or intermediate care beds, and the number of additional or converted personal care beds equals or exceeds (in the cumulative) twenty-five (25) percent of the Medicaid certified beds in the facility as of March 31, 1981.Facilities participating in the Medicaid program prior to April 1, 1981 shall not be classified as newly participating facilities solely because of changes of ownership.

(c) For purposes of application of this subsection the facility classes are basic intermediate care and skilled nursing care. The "median per diem cost" is the midpoint of the range of all facilities' costs (for the clsss) which are attributable to the specific cost center, which are otherwise allowable costs for the facilities' prior fiscal year, and which are adjusted by trending, indexing and the occupancy factor. The median for each cost center for each class shall be determined annually using the same cost data for the class which was used in setting the maximum payment amount. The Division for Medical Assistance shall notify all participating facilities of the median per diem cost center upper limits currently in effect.

(d) Intermediate care facilities for the mentally retarded (ICF-MRs) are not subject to the median per diem cost center upper limits shown in this subsection.

(9) Certain costs not directly associated with patient care will not be considered allowable costs. Costs which are not allowable include political contributions, travel and related costs for trips outside the state (for purposes of training, conventions, meetings, assemblies, conferences, seminars, or any related activities), and legal fees for unsuccessful lawsuits against the cabinet.

(10) To determine the gain or loss on the sale of a facility for purposes of determining a purchaser's cost basis in relation to depreciation and interest costs, the following methods will be used:

(a) Determine the actual gain on the sale of the facility.

(b) Add to the seller's depreciated basis two-thirds (⅔) of one (1) percent of the gain for each month of ownership since the date of acquisition of the facility by the seller to arrive at the purchaser's cost basis.

(c) Gain is defined as any amount in excess of the seller's depreciated basis as computed under program policies at the time of the sale, excluding the value of goodwill included in the purchase price.

(d) A sale is any bona fide transfer of legal ownership from an owner(s) to a new owner(s) for reasonable compensation, which is usually fair market value. Stock transfers, except stock transfers followed by liquidation of all company assets and which may be revalued in accordance with Internal Revenue Service rules, are not considered changes of facility ownership. Lease-purchase agreements and/or other similar arrangements which do not result in transfer of legal ownership from the original owner to the new owner are not considered sales until such time as legal ownership of the property is transferred.

(11) Each facility shall maintain and make available such records (in a form acceptable to the cabinet) as the cabinet may require to justify and document all costs to and services performed by the facility. The cabinet shall have access to all fiscal and service records and data maintained by the provider, including unlimited onsite access for accounting, auditing, medical review, utilization control and program planning purposes.

(12) The following shall apply with regard to the annual cost report required of the facility:

(a) The year-end cost report shall contain information relating to prior year cost, and will be used in establishing prospective rates and setting ancillary reimbursement amounts.

(b) New items or expansions representing a departure from current service levels for which the facility requests prior approval by the program are to be so indicated with a description and rationale as a supplement to the cost report.

(c) Cabinet approval or rejection of projections and/or expansions will be made on a prospective basis in the context that if such expansions and related costs are approved they will be considered when actually incurred as an allowable cost. Rejection of items or costs will represent notice that such costs will not be considered as part of the cost basis for reimbursement. Unless otherwise specified, approval will relate to the substance and intent rather than the cost projection.

(d) When a request for prior approval of projections and/or expansions is made, absence of a response by the cabinet shall not be construed as approval of the item or expansion.

(13) The cabinet shall audit each year-end cost report in the following manner: an initial desk review shall be performed of the report and the cabinet will determine the necessity for and scope of a field audit in relation to routine service cost. A field audit may be conducted for purposes of verifying prior year cost to be used in setting the new prospective rate; field audits may be conducted annually or at less frequent intervals. A field audit of ancillary cost will be conducted as needed.

(14) Year-end adjustments of the prospective rate and a retroactive cost settlement will be made when:

(a) Incorrect payments have been made due to computational errors (other than the omission of cost data) discovered in the cost basis or establishment of the prospective rate.

(b) Incorrect payments have been made due to misrepresentation on the part of the facility (whether intentional or unintentional).

(15) Reimbursement paid may not exceed the facility's customary charges to the general public for such services, except in the case of public facilities rendering inpatient services at a nominal charge (which may be reimbursed at the prospective rate established by the cabinet).

(16) The cabinet may develop and/or utilize methodology to assure an adequate level of care. Facilities determined by the cabinet to be providing less than adequate care may have penalties imposed against them in the form of reduced payment rates.

(17) Each facility shall submit the required data for determination of the prospective rate no later than sixty (60) days following the close of the facility's fiscal year. This time limit may be extended at the specific request of the facility (with the cabinet's concurrence). The cabinet may also require, as necessary, that facilities whose cost report does not cover a full facility fiscal year shall submit an interim and/or budgeted cost report by April 30 to be used in setting the prospective rate for the facility for the next unform rate year.

Section 4. Prospective Rate Computation. The prospective rate for each facility will be set in accordance with the following:

(1) Determine allowable prior year cost for routine services.

(2) The allowable prior year cost, not including fixed or capital costs, will then be trended to the beginning of the uniform rate year and increased by a percentage so as to reasonably take into account economic conditions and trends. Such percentage increase shall be known as an inflation factor.

(3) The unadjusted basic per diem cost (defined as the unadjusted allowable cost per patient per day for routine services) will then be determined by comparison of costs with the facility's occupancy rate (i.e., the occupancy factor) as determined in accordance with procedures set by the cabinet. The occupancy rate shall not be less than actual bed occupancy, except that it shall not exceed ninety-eight (98) percent of certified bed days (or ninety-eight (98) percent of actual bed usage days, if more, based on prior year utilization rates). The minimum occupancy rate shall be ninety (90) percent of certified bed days for facilities with less than ninety (90) percent certified bed occupancy. The cabinet may impose a lower occupancy rate for newly constructed or newly participatingfacilities, or for existing facilities suffering a patient census decline as a result of a competing facility newly constructed or opened serving the same area. The cabinet may impose a lower occupancy rate during the first two (2) full facility fiscal years an existing skilled nursing facility participates in the program under this payment system.

(4) Cost center median related per diem upper limits will then be applied as appropriate to the unadjusted basic per diem cost. The resultant adjusted amounts (and unadjusted amounts, as applicable) will be combined (or recombined) to arrive at the basic per diem cost (defined as the adjusted allowable cost per patient per day for routine services).

(5) To the basic per diem cost shall be added a specified dollar amount for investment risk and an incentive for cost containment in lieu of a return on equity capital, except that no return for investment risk shall be made to nonprofit facilities, and publicly owned and operated facilities shall not receive the investment or incentive return.

(a) Cost incentive and investment schedule for general intermediate care facilities:

(Effective *1-1-83* [7-1-82])

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$25.99 & below*	—	—
26.00 - 26.99	$1.38	$ .87
27.00 - 27.99	1.29	.75
28.00 - 28.99	1.18	.62
29.00 - 29.99	1.06	.47
30.00 - 30.99	.92	.31
31.00 - 31.99	.76	.13
32.00 - *34.29* [34.19]	.53	—

Maximum Payment $*34.29* [34.19]

* For a basic per diem of $25.99 and below, the investment amount will be equal to 7.5 percent, but not to exceed $1.38, and the incentive amount will be equal to 5.0 percent, but not to exceed $.87.

(b) Cost incentive and investment schedule for intermediate care facilities for the mentally retarded:

(Effective 7-1-82)

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$31.99 & below*	—	—
32.00 - 33.99	$1.38	$ .87
34.00 - 35.99	1.29	.75
36.00 - 37.99	1.18	.62
38.00 - 39.99	1.06	.47
40.00 - 41.99	.92	.31
42.00 - 43.99	.76	.13
44.00 - 45.99	.53	—

* For a basic per diem of $31.99 and below, the investment amount will be equal to 7.5 percent, but not to exceed $1.38 and the incentive amount will be equal to 5.0 percent, but not to exceed $.87.

(c) Cost incentive and investment schedule for skilled nursing facilities:

(Effective *1-1-83* [7-1-82])

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$34.00 & below*	—	—
35.00 - 36.99	$1.38	$ .87
37.00 - 38.99	1.29	.75
39.00 - 40.99	1.18	.62
41.00 - 42.99	1.06	.47
43.00 - 44.99	.92	.31
45.00 - 46.99	.76	.13
47.00 - 49.99	.53	—

Maximum Payment $*52.51* [52.69]**

* For a basic per diem of $34.99 and below, the investment amount will be equal to 7.5 percent, but not to exceed $1.38, and the incentive amount will be equal to 5.0 percent, but not to exceed $.87.

** The maximum payment for hospital based skilled nursing facilities is set at $*81.02* [83.09].

(6) The prospective rate is then compared, as appropriate, with the maximum payment. If in excess of the program maximum, the prospective rate shall be reduced to the appropriate maximum payment amount. The maximum payment amounts have been set to be at or about 110 percent of the median of adjusted basic per diem costs for the class, recognizing that hospital based skilled nursing facilities have special requirements that must be considered. The cabinet has determined that the maximum payment rates shall be reviewed annually against the criteria of 110 percent of the median for the class and that adjustments to the payment maximums will be made effective July 1, 1982 and each July 1 thereafter. This policy shall allow, but does not require lowering of the maximum payments below the current levels if application of the criteria against available cost data should show that 110 percent of the median is a lower dollar amount than has been currently set.

Section 5. Rate Review and Appeal. Participating facilities may appeal cabinet decisions as to application of the general policies and procedures in accordance with the following:

(1) First recourse shall be for the facility to request in writing to the Director, Division for Medical Assistance, a re-evaluation of the point at issue. This request must be received within twenty (20) days following notification of the prospective rate by the program. The director shall review the matter and notify the facility of any action to be taken by the cabinet (including the retention of the original application of policy) within twenty (20) days of receipt of the request for review.

(2) Second recourse shall be for the facility to request in writing to the Commissioner, Department for Social Insurance, a review by a standing review panel to be established by the commissioner. This request must be postmarked within fifteen (15) days following notification of the decision of the Director, Division for Medical Assistance. Such panel shall consist of three (3) members: one (1) member from the Division for Medical Assistance, one (1) member from the Kentucky Association of Health Care Facilities, and one (1) member from the Division for Management and Development, Department for Social Insurance. A date for the rate review panel to convene will be established within fifteen (15) days after receipt of the written request. The panel shall issue a binding decision on the issue within ten (10) days of the hearing of the issue. The attendance of the representative of the Kentucky Association of Health Care Facilities at review panel meetings shall be at the cabinet's expense.

Section 6. Definitions. For purposes of Sections 1 through 6, the following definitions shall prevail unless the specific context dictates otherwise.

(1) "Allowable cost" means that portion of the facility's cost which may be allowed by the cabinet in establishing the reimbursement rate. Generally, cost is considered allowable if the item of supply or service is necessary for the provision of the appropriate level of patient care and the cost incurred by the facility is within cost limits established by the cabinet, i.e., the allowable cost is "reasonable."

(2) "Ancillary services" means those direct services for which a separate charge is customarily made, and which are retrospectively settled on the basis of reasonable allowable cost at the end of the facilities' fiscal year. Ancillary services are limited to the following:

(a) Legend and non-legend drugs, including urethral catheters, and irrigation supplies and solutions utilized with those catheters regardless of how those supplies and solutions are utilized. Coverage and allowable cost payment limitations are specified in the cabinet's regulation on payment for drugs.

(b) Physical, occupational and speech therapy.

(c) Laboratory procedures.

(d) X-ray.

(e) Oxygen and other related oxygen supplies.

(f) Psychological and psychiatric therapy (for ICF/MR only).

(3) "Hospital based skilled nursing facilities" means those skilled nursing facilities so classified by Title XVIII-A.

(4) The "basic per diem cost" is the computed rate arrived at when otherwise allowable costs are trended and adjusted in accordance with the inflation factor, the occupancy factor, and the median cost center per diem upper limits.

(5) "Inflation factor" means the comparison of allowable routine service costs, not including fixed or capital costs, with an inflation rate to arrive at projected current year cost increases, which when added to allowable costs, including fixed or capital costs, yields projected current year allowable costs.

(6) "Incentive factor" means the comparison of the basic per diem cost with the incentive return schedule to arrive at the actual dollar amount of cost containment incentive return to be added to the basic per diem cost.

(7) "Investment factor" means the comparison of the basic per diem cost with the investment return schedule to arrive at the actual dollar amount of investment return to be added to the basic per diem cost.

(8) "Maximum allowable cost" means the maximum amount which may be allowed to a facility as reasonable cost for provision of an item of supply or service while complying with limitations expressed in related federal or state regulations.

(9) "Maximum payment" means the maximum amount

the cabinet will reimburse, on a facility by facility basis, for routine services.

(10) "Occupancy factor" means the imposition of an assumed level of occupancy used in computing unadjusted basic per diem rates.

(11) "Prospective rate" means a payment rate of return for routine services based on allowable costs and other factors, and includes the understanding that except as specified such prospective rate shall not be retroactively adjusted, either in favor of the facility or the cabinet.

(12) "Routine services" means the regular room, dietary, medical social services, nursing services, minor medical and surgical supplies, and the use of equipment and facilities. Routine services include but are not limited to the following:

(a) All general nursing services, including administration of oxygen and related medications, handfeeding, incontinency care and tray services.

(b) Items which are furnished routinely and relatively uniformly to all patients, such as patient gowns, water pitchers, basins, and bed pans. Personal items such as paper tissues, deodorants, and mouthwashes are allowable as routine services if generally furnished to all patients.

(c) Items stocked at nursing stations or on the floor in gross supply and distributed or utilized individually in small quantities, such as alcohol, applicators, cotton balls, bandaids and tongue depressors.

(d) Items which are utilized by individual patients but which are reusable and expected to be available in an institution providing a skilled nursing or intermediate care facility level of care, such as ice bags, bed rails, canes, crutches, walkers, wheelchairs, traction equipment, and other durable medical equipment.

(e) Laundry services, including personal clothing to the extent it is the normal attire for everyday facility use, but excluding dry cleaning costs.

(f) Other items or services generally available or needed within a facility unless specifically identified as ancillary services. (Items excluded from reimbursement include private duty nursing services and ambulance services costs.)

JOHN CUBINE, Commissioner
ADOPTED: December 1, 1982
APPROVED: BUDDY H. ADAMS, Secretary
RECEIVED BY LRC: January 3, 1983 at 4:30 p.m.

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 83-1
January 3, 1983

EMERGENCY REGULATION
Cabinet for Human Resources
Department for Social Insurance

WHEREAS, the Secretary of the Cabinet for Human Resources is responsible for setting forth, by regulation, the policies of the Cabinet under the provisions of KRS 194.050(1) with respect to the provision of the Home Energy Assistance Program; and

WHEREAS, the Secretary has promulgated a regulation for the Home Energy Assistance Program which provides for assistance for low income households to help meet the costs of home energy; and

WHEREAS, the time delays inherent in complying with procedural requirements KRS Chapter 13 would preclude the effectiveness of the regulation during the winter months; and

WHEREAS, the Secretary has found that an emergency exists with respect to said regulation, and that, therefore, said regulation should, in accordance with the provisions of KRS 13.088(1), be effective immediately upon filing with the Legislative Research Commission:

NOW, THEREFORE, I, John Y. Brown, Jr., Governor of the Commonwealth of Kentucky, by virtue of the authority vested in me by KRS 13.088(1), do hereby acknowledge the finding of an emergency by the Secretary of the Cabinet for Human Resources with respect to the filing of said regulation of the Cabinet for Human Resources providing for the Home Energy Assistance Program, and direct that said regulation shall become effective upon filing with the Legislative Research Commission, as provided in Chapter 13 of the Kentucky Revised Statutes.

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

CABINET FOR HUMAN RESOURCES
Department for Social Insurance

904 KAR 2:115E. Eligibility, criteria for home energy assistance program.

RELATES TO: KRS 194.050
PURSUANT TO: KRS 13.082, 194.050
EFFECTIVE: January 3, 1983
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility as prescribed by P.L. 97-35 (Title XXVI of the Omnibus Budget Reconciliation Act of 1981) to administer a program to provide assistance for eligible low income households within the Commonwealth of Kentucky to help meet the costs of home energy. KRS 194.050 provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This regulation sets forth the eligibility and benefits criteria for each of three (3) components of energy assistance, regular, crisis, and Project Warmup, under the Home Energy Assistance Program (HEAP).

Section 1. Application. Each household requesting assistance shall be required to complete an application and provide such information as may be deemed necessary to determine eligibility and benefit amount in accordance with the procedural requirements prescribed by the cabinet.

Section 2. Definitions. Terms used in HEAP are defined as follows:

(1) "Principal residence" is that place where a person is living voluntarily and not on a temporary basis; the place he/she considers home; the place to which, when absent, he/she intends to return; and such place is identifiable

from other residences, commercial establishments, or institutions.

(2) "Energy" is defined to include electricity, gas, and any other fuel such as coal, wood, oil, bottled gas, that is used to sustain reasonable living conditions.

(3) "Household" means any individual or group of individuals who are living together as one (1) economic unit for whom residential energy is customarily purchased in common or who make undesignated payments for energy in the form of rent.

(4) "Economic unit" is one (1) or more persons sharing common living arrangements.

(5) A "fully vulnerable household" is any household living in non-subsidized housing which pays all energy costs directly to the energy provider or any household which rents non-subsidized housing whose energy costs are included in the rent payment.

(6) "Regular component" is that portion of benefits reserved as energy assistance for heating for households containing at least one (1) member who is elderly (age sixty (60) or older) or receiving benefits on the basis of 100 percent disability.

(7) "Crisis component" is that portion of benefits reserved for use as emergency energy assistance after the regular component is terminated for eligible households in emergency or crisis situations.

(8) "Project Warmup" is that component of HEAP administered by local governments and other local organizations under contract with the cabinet to provide benefits to eligible households who are without adequate heat.

Section 3. Eligibility Criteria. (1) A household must meet the following conditions of eligibility for receipt of a HEAP payment under the regular and crisis components:

(a) The household must be fully vulnerable for energy cost.

(b) For purposes of determining eligibility, the amount of continuing and non-continuing earned and unearned gross income including lump sum payments received by the household during the calendar month preceding the month of application will be considered. Income received on an irregular basis will be prorated.

(c) Gross income for the calendar month preceding the month of application must be at or below the applicable amount shown on the income scale for the appropriate size household. Excluded from consideration as income are payments received by a household from a federal, state, or local agency designated for a special purpose and which the applicant must spend for that purpose, payments made to others on the household's behalf, loans, reimbursements for expenses, incentive payments (WIN and CETA) normally disregarded in AFDC, federal payments or benefits which must be excluded according to federal law, and Supplemental Medical Insurance premiums.

Income Scale

Family Size	Monthly	Yearly
1	$500	$6,000
2	600	7,200
3	700	8,400
4 or more	800	9,600

(d) The household must have total liquid assets at the time of application of not more than $5,000. Excluded assets are cars, household or personal belongings, principal residence, cash surrender value of insurance policies, and prepaid burial policies.

(e) Applicants for the crisis component must attest that an immediate need for energy exists because the household is financially incapable of meeting their energy costs at the time of application or within fifteen (15) days. The thirty (30) day extension of service prior to energy cut-off granted by Public Service Commission regulations does not affect eligibility for the crisis component.

(2) A household must meet the following conditions of eligibility for receipt of a Project Warmup component benefit:

(a) The household must be without adequate heat.

(b) The household must meet the income and assets criteria contained in subsection (1)(b) through (d) of this section.

(c) The applicant for shelter cannot be, in the opinion of the contracting agency, a threat to the health and/or welfare of other Project Warmup recipients.

(3) Households are eligibile to receive benefits under either the regular or crisis component and Project Warmup.

Section 4. Benefit Levels. (1) Payment amounts for the regular and crisis components are set at a level to serve a maximum number of households while providing a reasonably adequate payment relative to energy costs. The highest level of assistance will be provided to households with lowest incomes and highest energy costs in relation to income, taking into account family size.

(a) Payments to eligible households will be made for the full benefit amount based on type of energy for heating, monthly household income, and household size as specified in the following benefit scales.

Benefit Scales

Scale A.
Energy Sources: LP Gas (Propane), Fuel Oil, Electricity, Wood, Kerosene

Monthly Household Income	Payment Amount Household Size 1 and 2	Payment Amount Household Size 3 or more
$ 0-300	$275	$300
301-600	238	263
over 600	—	225

Scale B.
Energy Source: Natural Gas, Coal

Monthly Household Income	Payment Amount Household Size 1 and 2	Payment Amount Household Size 3 or more
$ 0-300	$225	$250
301-600	188	213
over 600	—	175

(b) If the cabinet receives only a percentage of the federal funds authorized by Congress, benefits to eligible households under the regular or crisis components may be reduced proportionately.

(2) Benefits to eligible households under the Project Warmup component shall be in the form of temporary shelter, blankets, space heater(s), short term fuel supplies, or the payment of utility reconnection fees and deposits if such payment will enable the household to obtain heat. Other benefits may be provided which directly or indirectly assist households in obtaining energy. Benefits will be

available only in counties which contract with the cabinet for the provision of these services.

Section 5. Benefit Delivery Methods. Benefits shall be provided to eligible households as follows:

(1) Payment authorization under the regular and crisis components is of two (2) types.

(a) If the recipient utilizes an energy provider who has a continuous billing cycle, payment is authorized by a two (2) party check made payable to the provider and the recipient.

(b) When there is no continuous billing cycle or heating is included as an undesignated portion of rent, payment shall be made by a check payable to the recipient and the provider/landlord whenever feasible.

(c) When a two (2) party check is not feasible, the recipient shall sign an affidavit prior to receipt of funds stating that benefits received under HEAP shall be utilized solely for home energy.

(2) Under the regular or crisis components, at the recipient's discretion, the total benefit may be made in separate authorizations to facilitate payment to more than one (1) provider (e.g., when the recipient heats with both a wood stove and electric space heaters). However, the total amount of the payments may not exceed the maximum for the primary source of energy. The household will decide how to divide payment if more than one (1) provider is used.

(3) For Project Warmup, no direct cash payments shall be made to the recipient. Benefits shall be provided to eligible households by the contracting agency as necessary.

Section 6. Right to a Fair Hearing. Any individual has a right to request and receive a fair hearing in accordance with 904 KAR 2:055.

Section 7. Time Standards. The cabinet shall make an eligibility determination promptly after receipt of a completed and signed application but not to exceed thirty (30) days.

Section 8. Effective Dates. The following shall be the implementation and termination dates for HEAP:

(1) Applications for the regular component shall be accepted beginning January 3, 1983, and ending no later than January 14, 1983, at the close of business.

(2) Applications for the crisis component shall be accepted beginning January 17, 1983.

(3) Applications shall be processed in the order taken until funds are expended. HEAP regular and crisis components shall be terminated by the secretary when actual and projected program expenditures have resulted in utilization of available funds.

(4) HEAP may be reactivated after termination under the same terms and conditions as shown in this regulation should additional federal funds be made available for that purpose.

(5) Project Warmup may be implemented by contracting agencies on December 15, 1982 and must be implemented no later than January 1, 1983. Benefits shall be provided until funds are exhausted or March 31, 1983, whichever comes first.

Section 9. Allocation of Funds. (1) Up to fifteen (15) percent of the total HEAP allocation shall be reserved for weatherization assistance.

(2) Up to $1.6 million shall be reserved for Project Warmup.

(3) Benefit funds available for the regular and crisis components shall be equally divided between the two (2) components. Regular component funds unobligated by the close of business January 14, 1983, shall be available for use in the crisis component.

Section 10. Energy Provider Responsibilities. Any provider accepting payment from HEAP for energy provided to eligible recipients is required to comply with the following:

(1) Reconnection of utilities and/or delivery of fuel must be accomplished upon certification for payment;

(2) The household must be charged in the normal billing process the difference between the actual cost of the home energy and the amount of payment made through this program. For balances remaining after acceptance of the HEAP payment, the customer must be offered the opportunity for a deferred payment arrangement or a level payment plan;

(3) HEAP recipients shall not be treated differently than households not receiving benefits; and

(4) The household on whose behalf benefits are paid shall not be discriminated against, either in the costs of goods supplied or the services provided.

(5) A landlord shall not increase the rent of recipient households on the basis of receipt of this payment.

JOHN CUBINE, Commissioner
ADOPTED: December 14, 1982
APPROVED: BUDDY H. ADAMS, Secretary
RECEIVED BY LRC: January 3, 1983 at 4:30 p.m.

Amended Regulations Now In Effect

ENERGY AND AGRICULTURE CABINET
Department of Agriculture
Office of Marketing Services
As Amended

302 KAR 45:010. Ginseng, general provisions.

RELATES TO: KRS 246.650, 246.660
PURSUANT TO: KRS 13.082, 246.660
EFFECTIVE: January 6, 1983
NECESSITY AND FUNCTION: KRS 246.660 authorized the Department of Agriculture to adopt rules and regulations relating to the administration of a program for Wild American Ginsen. This regulation sets forth general provisions which apply in this chapter with regard to definitions, harvest season, and cooperative agreements.

Section 1. (1) "Ginseng Dealer" means any person engaged in the business of buying ginseng roots from ginseng collectors, ginseng cultivators, and other ginseng dealers for resale to ginseng exporters or to other ginseng dealers or any person who sells ginseng in any form in interstate commerce.
(2) "Commissioner" means the Commissioner of Agriculture.
(3) "Department" unless otherwise specified means the Kentucky Department of Agriculture.
(4) "State" means the Commonwealth of Kentucky.

Section 2. *Registration* [License]. (1) No person shall be a ginseng dealer without first obtaining a *certificate of registration* [license] issued by the department.
(2) *Certificates of registration* [Licenses] will be issued for a period of one (1) year, and will expire on the 30th day of June each year.
(3) Completed applications *for certification of registration*, issued by the department, must be returned prior to June 30th of each year [along with the ten dollars ($10) license fee].

Section 3. Record Keeping. (1) All ginseng dealers shall keep records, on forms furnished by the department, of all purchases and sales of ginseng. These records will include month purchased, month dug, county where dug, weight of purchase, and signature of digger or seller.
(2) Retention. All persons required to maintain records under this section shall retain the records for a period of three (3) years.
(3) Availability. Records required under this section shall be made available to the department upon request.

Section 4. Annual Report. All ginseng dealers will file an annual report with the department by June 30th. The annual report shall include the listing of each purchase and sale of ginseng made by the dealer since July 1 the previous year.

Section 5. Harvest Season. Wild ginseng will only be dug between August 15th and December 1st of each year. Any seeds adhering to a plant taken during the season shall be planted within fifty (50) feet of the location of the plant with no tool used other than the finger.

Section 6. All sales of ginseng by dealers shall be certified for sale during the ginseng selling season beginning August 15th of each year and extending until March 31st of the following year.

Section 7. All ginseng dealers *holding a certificate of registration* [licensed] hereunder must obtain a certificate of legal taking issued by the department *after inspection by an official of the department* identifying the origin, year of taking, and weight of any shipment of ginseng to a destination outside the Commonwealth of Kentucky. The certificate shall also state whether the ginseng is Wild American Ginseng or whether the ginseng has been cultivated or propagated by a grower. Such certification shall be issued to the dealer on triplicate forms issued by the department. A copy of such certification must be enclosed with the shipment subject of the certification. A copy of such certificate shall be retained for a minimum of three (3) years by the licensed ginseng dealer and a copy of the certificate shall be retained by the certifying agent of the department and submitted in accordance with internal procedures of the department.

Section 8. (1) Any ginseng which is obtained in contravention of laws for the protection of the species or in violation of any other law shall not be purchased, sold, shipped, or transported within the Commonwealth of Kentucky.
(2) The Kentucky Department of Agriculture may enforce the provisions of Section 8 herein as provided in KRS 260.030.

ALBEN W. BARKLEY II, Commissioner
ADOPTED: September 29, 1982
RECEIVED BY LRC: September 30, 1982 at 9:30 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission
Division of Utility Engineering and Services
As Amended

807 KAR 5:026. Gas service; *gathering systems* [service lines].

RELATES TO: KRS Chapter 278
PURSUANT TO: KRS 13.082, 278.485(3)
EFFECTIVE: January 6, 1983
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.

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission
Division of Utility Engineering and Services
As Amended

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)
EFFECTIVE: January 6, 1983
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 *regulation* [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) *This* [These] regulation[s] appl*ies* [y] 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 *regulation* [section] are intended to require a report to the commission in case of an accident involving a gas leak on a facility covered by *this* [these]regulation[s].

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.

Amended After Hearing

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

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution
Amended After Hearing

401 KAR 61:080. Steel plants using existing basic oxygen process furnaces.

RELATES TO: KRS Chapter 224
PURSUANT TO: KRS 13.082, 224.033
NECESSITY AND FUNCTION: KRS 224.033 requires the [Department for] Natural Resources and Environmental Protection *Cabinet* to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for control of emissions from steel plants using existing basic oxygen process furnaces.

Section 1. Applicability. Provisions of this regulation are applicable to the following affected facilities commenced before the classification date defined below: basic oxygen process furnaces, associated metallurgical equipment, and dust-handling equipment.

Section 2. Definitions. As used in this regulation, all terms not defined herein shall have the meaning given them in 401 KAR 50:010.

(1) "Basic oxygen process furnaces (BOPF)" means any furnace producing steel by charging scrap steel, hot metal and flux materials into a vessel and introducing a high volume of an oxygen-rich gas.

(2) "Dust-handling equipment" means any equipment used to handle particulate matter collected by *a* [the] control device [and located at or near the control device] for a BOPF and/or associated equipment subject to this regulation.

(3) "Control device" means the air pollution control equipment used to remove from the effluent gas stream, particulate matter generated by a BOPF and/or associated equipment.

(4) "Steel production cycle" means the operations required to produce each batch of steel and includes the following major functions: scrap preheating, scrap charging, hot metal charging, oxygen blowing, *dumping slag* and tapping.

(5) "Charge" means the addition of steel scrap, *molten iron and* [or] other materials into a BOPF [followed by molten pig iron].

(6) "Tap" means the pouring of molten steel from a BOPF.

(7) "Shop" means the building or bay which houses one (1) or more BOPFs and associated *metallurgical* equipment.

[(8) "Shop opacity" means the arithmetic average of twenty-four (24) or more opacity observations of emissions from the shop taken in accordance with Reference Method 9 of Appendix A of 40 CFR 60, filed by reference in 401 KAR 50:015, for the applicable time periods.]

(8) [(9)] "Classification date" means June 11, 1973.

(9) "Associated metallurgical equipment" means process equipment located in the shop used in conjunction with external desulfurization of molten iron, hot metal transfer, and transfer of slag and kish.

Section 3. Standard for Particulate Matter. (1) On and after the date on which the performance test required to be conducted by 401 KAR 61:005 is completed, no owner or operator subject to the provisions of this regulation shall cause to be discharged into the atmosphere from a basic oxygen process furnace and/or associated metallurgical equipment located in the same shop any gases which:

(a) *Exit from a control device and exhibit opacity of twenty (20) percent or more. The owner or operator may elect to substitute an alternative opacity standard, in lieu of the above opacity standard prescribed in this subsection, provided that the following mass emissions standards are not exceeded:* [Exit from a control device and contain particulate matter in excess of .048 gr/dscf;]

1. A maximum particulate concentration of 0.030 gr/dscf from the control aevice associated with the BOPF as measured only during the main oxygen blowing period; and

2. A maximum particulate concentration of 0.010 gr/dscf from a control device associated with any other BOPF shop metallurgical equipment as measured only during operation of such equipment; or

[(b) Exit from a control device and exhibit opacity of forty (40) percent or more;]

(b) [(c)] Exit from a shop, due to operations of a BOPF and/or associated metallurgical equipment, and exhibit opacity of *twenty (20)* [fifteen (15)] percent or more *for more than eleven (11) times as observed at fifteen (15) second intervals over a period of any sixty (60) consecutive minutes. Reference Method 9 of Appendix A to 40 CFR 60, filed by reference in 401 KAR 50:015, shall be used for determining opacity in this paragraph, except for averaging time and number of observations.*

(2) On and after the date on which the performance test required to be conducted by 401 KAR 61:005 is completed, no owner or operator subject to the provisions of this regulation shall cause to be discharged into the atmosphere from dust-handling equipment any gases which exhibit ten (10) percent opacity or greater.

Section 4. Monitoring of Operations. The owner or operator of an affected facility shall maintain a single time-measuring instrument which shall be used in recording daily the time and duration of each steel production cycle, and the time and duration of any diversion of exhaust gases from the main stack servicing the BOPF.

Section 5. Test Methods and Procedures. (1) Reference methods in Appendix A of 40 CFR 60, except as provided under 401 KAR 50:045, shall be used to determine compliance with the standards prescribed under Section 3 as follows:

(a) Reference Method 5 for the concentration of particulate matter and associated moisture content;

(b) Reference Method 1 for sample and velocity traverses;
(c) Reference Method 2 for velocity and volumetric flow rate;
(d) Reference Method 3 for gas analysis; and
(e) Reference Method 9 for opacity determination *for emissions discharged through a control device and from dust-handling equipment.* For the purpose of this regulation, opacity observation taken at fifteen (15) second intervals immediately before and after a diversion of exhaust gases from the stack may be considered to be consecutive for the purpose of computing an average opacity for a six (6) minute period. Observations taken during a diversion shall not be used in determining compliance with the opacity standard.
(2) For Reference Method 5, the sampling for each run shall continue for an integral number of cycles with total duration of at least sixty (60) minutes. The sampling rate shall be at least 0.9 dscm/hr (0.53 dscf/min) except that shorter sampling times when necessitated by process variables or other factors may be approved by the department. *For the purpose of testing the control device associated with the BOPF* a cycle shall start at the beginning of [either the scrap preheat or] the *primary* oxygen blow and shall terminate *at the end of the primary oxygen blow* [immediately prior to tapping].
(3) Sampling of flue gases during each steel production cycle shall be discontinued whenever all flue gases are diverted from the stack and shall be resumed after each diversion period.

Section 6. Compliance Timetable. The owner or operator of an affected facility shall demonstrate compliance with Section 3(1) on or before December 31, 1982. Compliance with all other provisions of this regulation shall have been demonstrated on or before June 6, 1979.

Section 7. Alternate Emission Limitations. The owner or operator of an affected facility subject to this regulation may propose an alternate plan pursuant to the requirements of 401 KAR 51:055 to meet the emissions limitations required by this regulation. [Variances. The department may grant a variance from the control requirements of this regulation. Requests for such a variance shall be supported by adequate technical and economic documentation, provided that any alternative strategy shall result in at least an equivalent overall reduction in particulate emissions from the source as would be required by this regulation.]

JACKIE SWIGART, Secretary
ADOPTED: January 14, 1983
RECEIVED BY LRC: January 14, 1983 at 4 p.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution
Amended After Hearing

401 KAR 61:170. Existing blast furnace casthouses.

RELATES TO: KRS Chapter 224
PURSUANT TO: KRS 13.082, 224.033
NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of emissions from existing blast furnace casthouses *which are located in, or impact upon, an area designated non-attainment for particulate matter under 401 KAR 51:010.*

Section 1. Applicability. The provisions of this regulation shall apply to blast furnace casthouses commenced before the classification date defined below.

Section 2. Definitions. As used in this regulation all terms not defined herein shall have the meaning given them in 401 KAR 50:010.
(1) "Blast furnace casthouses" means the building or buildings which houses the following operations:
(a) Pouring of hot metal from a blast furnace from an opening at the bottom of the furnace through a runner into a torpedo car; and
(b) Pouring of the slag from a blast furnace from an opening at the bottom of the furnace into runner(s).
(2) "Blast furnace" means a furnace producing pig iron by introducing iron-bearing materials, coke, and flux materials into a vessel and introducing heated combustion air to form a reducing gas which is passed counter current to the descending raw materials.
(3) "Classification date" means the effective date of this regulation.
(4) "Control device" means the air pollution control equipment used to remove particulate matter generated in the blast furnace casthouses from the effluent gas stream.

Section 3. Standard for Particulate Matter. No owner or operator of a blast furnace casthouse subject to the provisions of this regulation shall cause to be discharged into the atmosphere from the blast furnace casthouse any gases which:
(1) Contain particulate matter in excess of 0.010 gr/dscf as tested during pouring of hot metal and slag, if such gases exit from a control device; or
(2) Exhibit an average opacity in excess of twenty (20) percent.

Section 4. Test Methods and Procedures. Reference methods in Appendix A of 40 CFR 60, except as provided in subsection (5) of this section or in 401 KAR 50:045, shall be used to determine compliance with the standards prescribed under Section 3 as follows:
(1) Reference Method 5 for the concentration of particulate matter and associated moisture content;
(2) Reference Method 1 for sample and velocity traverses;
(3) Reference Method 2 for velocity and volumetric flow rate;
(4) Reference Method 3 for gas analysis; and

(5) Reference Method 9 for the determination of opacity, except for averaging time and number of observations. For the purpose of determining compliance with Section 3(2), a series of consecutive observations taken at fifteen (15) second intervals shall be made during the entire period of time that hot metal is being poured. Determination of compliance shall be based on a comparison of the standards in Section 3(2) with the highest average opacity occurring over any six (6) consecutive minutes during the period of observation.

Section 5. Compliance Timetable. The owner or operator of a blast furnace casthouse subject to the provisions of this regulation shall demonstrate compliance with Section 3 on or before December 31, 1982.

Section 6. *Alternate Emission Limitations. The owner or operator of an affected facility subject to this regulation may propose an alternate plan pursuant to the requirements of 401 KAR 51:055 to meet the emissions limitations required by this regulation.* [Variances. The department may grant a variance from the control requirements of this regulation. Requests for such a variance shall be supported by adequate technical and economic documentation, provided that any alternative strategy shall result in at least an equivalent overall reduction in particulate emissions from the source as would be required by this regulation.]

JACKIE SWIGART, Secretary
ADOPTED: January 14, 1983
RECEIVED BY LRC: January 14, 1983 at 4 p.m.

CORRECTIONS CABINET
Office of Community Services
Amended After Hearing

501 KAR 3:020. Administration; management.

RELATES TO: KRS 441.011*(6)*
PURSUANT TO: KRS 13.082, 441.011*(6)*
NECESSITY AND FUNCTION: KRS 441.011 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for jails. This regulation sets forth procedures to be followed for the administration and management of jails.

Section 1. Policy and Procedure—Organization. (1) The jailer shall develop and maintain an organizational chart and an operations manual of policy and procedure which has been adopted by the fiscal court and filed with the Corrections Cabinet.

(2) The written policy and procedures manual shall be made available to employees.

(3) The operations manual shall include but not be limited to the following aspects of the jail's operation:

(a) Administration.
(b) Fiscal management.
(c) Personnel.
(d) Security and control.
(e) Sanitation and management.
(f) Medical services.
(g) Food services.
(h) Emergency and safety procedures.
(i) Classification.
(j) Inmate programs.
(k) Inmate services.
(l) Admission and release.

(4) The operations manual shall be reviewed and updated at least annually.

(5) The provisions of this section shall be effective as of July 1, 1983.

Section 2. Legal Assistance. (1) The jailer shall be represented and advised by the county attorney as provided in KRS 69.210.

(2) The county attorney shall advise the fiscal court in writing when legal representation or legal advisement to the jailer by that office is inappropriate or creates a conflict of interest. The fiscal court shall provide funds for adequate legal representation for the jailer when the jailer has acted within his official capacity and is involved in civil or criminal litigation as a result. The fiscal court shall be encouraged to carry liability insurance for the jail staff and other county officials.

(3) The provisions of this section shall be effective as of January 1, 1983.

Section 3. Public Information. (1) The jailer shall develop and implement a plan for the dissemination of information about the jail to the public, to government agencies, and to the media. The public and inmates shall have access to:

(a) The plan; and

(b) Specific jail rules and procedures affecting inmates as developed in accordance with this plan.

(2) With the consent of the inmate, news media shall be permitted to interview any inmate as set forth in the jail's policy and procedure manual except when the safety and security of the jail is affected.

(3) Written policy and procedure shall set forth the time and length allowable for inmate interviews.

(4) All official statements to the news media, relating to jail administration policy, shall be made by the jailer only or his designee.

(5) Release of inmate information shall include the following:

(a) All requests for information shall be addressed to the jailer;

(b) Governmental agencies shall be provided with information pertinent only to their specific function and with the consent of the inmate; and

(c) Relatives and private citizens shall only be provided with information supplied to the media.

(6) No information shall be released that is detrimental to another inmate.

(7) The provisions of this section shall be effective as of July 1, 1983.

Section 4. Information Systems. (1) The jailer shall establish and maintain an information system which shall comply with the requirements of this section.

(a) Jail information and inmate records shall be retained in written form or within computer records.

(b) Jail information and inmate records shall be stored in a secure manner so that they are protected from theft, loss, tampering, and destruction. Written guidelines shall specify the length of time an inmate record shall be main-

tained after an inmate's release from custody and the conditions under which archives are maintained.

(c) A written report shall be made of all extraordinary or unusual occurrences within forty-eight (48) hours of the occurrence. This report shall be placed in the inmate's folder. Extraordinary or unusual occurrences shall include but not be limited to:

1. Death of an inmate.
2. Attempted suicide or suicide.
3. Serious injury, whether accidental or self-inflicted.
4. Attempted escape or escape from confinement.
5. Fire.
6. Riot.
7. Battery, whether by a staff member or inmate.
8. Sexual assaults.
9. Occurrence of contagious or infectious disease, or illness within the facility.
10. Violent acts or behavior by either mental inquest detainees held under KRS Chapter 202A or inmates known to be or suspected to be mentally ill or mentally retarded.

(d) All jails shall keep a log of daily activity within the jail.

(e) Each jail shall maintain records on the types and hours of training completed by each employee. A current and accurate personnel record shall be maintained on each employee. Each employee shall have access to his individual record.

(2) The provisions of this section shall be effective as of July 1, 1983.

Section 5. Inmate Records. (1) The information required by 501 KAR 3:120 and 3:130 for admission and release shall be retained for each inmate. Other information retained in each inmate's jail record shall include but not be limited to:

(a) Court orders.
(b) Personal property receipts.
(c) Infraction reports.
(d) Reports of disciplinary actions.
(e) Work record and program involvement.
(f) Unusual occurrences and in the case of death of an inmate, disposition of the inmate's property and remains.

(2) Medical records shall be maintained as required by 501 KAR 3:090.

(3) The jailer shall ensure that inmate records are safeguarded in accordance with relevant federal and state laws and regulations.

(4) The jailer shall require that inmates sign a "Release of Information Consent Form" prior to the release of information to individuals other than law enforcement or court officials. A copy of the signed consent form shall be maintained in the inmate's record. This form shall include but not be limited to:

(a) Name of person, agency or organization requesting information.
(b) Name of facility releasing information.
(c) Specific information to be disclosed.
(d) Purpose of the information.
(e) Date consent form is signed.
(f) Signature of inmate.
(g) Signature of employee witnessing the inmate's signature.

(5) Juvenile jail records shall be kept separate from adult jail records and shall be made available for examination only as provided in KRS 208.340. Upon an order of expungement pursuant to KRS 208.275, the jailer shall seal the records and the juvenile's detention shall be deemed never to have occurred.

(6) All jail records maintained on mental inquest detainees held under KRS Chapter 202A shall be kept separate from any other jail records. Mental inquest records are confidential and shall be made available for examination only as provided in KRS 202A.091. Upon an order of expungement pursuant to KRS 202A.091(2), the jailer shall seal the records and the mental inquest detainee's stay at the jail shall be deemed never to have occurred.

(7) The provisions of this section shall be effective as of July 1, 1983.

GEORGE W. WILSON, Secretary
ADOPTED: October 1, 1982
RECEIVED BY LRC: December 21, 1982 at 3 p.m.

CORRECTIONS CABINET
Office of Community Services
Amended After Hearing

501 KAR 3:060. Security; control.

RELATES TO: KRS 441.011*(6)*
PURSUANT TO: KRS 13.082, 441.011*(6)*
NECESSITY AND FUNCTION: KRS 441.011 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for jails. This regulation sets forth security procedures to be followed in local jails.

Section 1. Policy and Procedure. (1) Each jailer shall develop a written policy and procedure governing all security aspects of the jails operations.

(2) The Corrections Cabinet shall provide technical assistance to the jailer in his efforts to formulate such written policy and procedure.

(3) These policies and procedures shall include but not be limited to:

(a) Inmate rules and regulations;
(b) Staffing;
(c) Searches of inmate and of secure areas;
(d) Visitation;
(e) Key and weapon control;
(f) Inmate head counts;
(g) Emergency situations; and
(h) Jail schedule.

(4) The provisions of this section shall be effective as of July 1, 1983.

Section 2. Inmate Supervision. (1) Jail personnel shall conduct direct, in-person surveillance of each inmate on an irregular schedule, no less than every sixty (60) minutes.

(2) Jail personnel shall conduct direct, in-person surveillance every twenty (20) minutes on the following classes of inmates:

(a) Suicidal;
(b) Assultive;
(c) Escape risk;
(d) Mentally or emotionally disturbed;
(e) Inmates in segregation;
(f) Inmates in detox cell; [and]
(g) Juveniles, if housed in the jail*; and* [.]
(h) Mental inquest detainees.

(3) When available, closed-circuit television shall be used primarily to monitor hallways, stairwells, sallyports, perimeter security, points of egress, and common areas.

(4) There shall be at least three (3) documented inmate counts every twenty-four (24) hours during which each inmate's physical presence, movement, or speech shall be observed. At least one (1) count shall be conducted per shift.

(5) The provisions of this section shall be effective as of July 1, 1983.

Section 3. Security Procedures. (1) Each jailer shall establish a procedure for inspecting all facility areas accessible to inmates for contraband and physical security at least weekly.

(a) Isolated security spot checks shall be conducted daily.

(b) Items considered as contraband or items permitted in the jail shall be clearly defined in the jail rules.

(c) There shall be a written procedure for reporting security irregularities.

(2) No weapon, ammunition, chemical agent, related security equipment, or any object which represents the potential of being used as a weapon shall be permitted in the security area unless authorized by the jailer.

(3) All firearms, weapons, and chemical agents assigned to the jail shall be stored in an arsenal, vault, or other secure room under lock.

(a) This area shall be inaccessible to all unauthorized persons.

(b) There shall be a written procedure for issuing and accounting for all weapons.

(4) All security devices and safety equipment shall be inspected monthly to ensure they are maintained in proper working order.

(5) All tools, toxic, corrosive, and flammable substances, and other potentially dangerous supplies and equipment shall be stored in a locked area which is secure and located outside the security perimeter of the confinement area.

(6) Tools, supplies, and equipment which are hazardous shall be used by inmates only under the direct supervision of jail personnel.

(7) At no time shall any inmate be assigned to a position of authority over any other inmate or given the responsibility of providing inmate services such as commissary, telephone calls, or delivery of meals.

(8) Inmates shall never be permitted to perform or assist in any security duties.

(9) Jails with work release or community service programs shall establish special control procedures to minimize contact between inmates with work release privileges and other inmates.

(10) Inmates shall be thoroughly searched whenever entering or leaving the security perimeter.

(11) Written procedures shall be developed for transporting outside the jail.

(12) Each jailer shall develop written policies and procedures governing the use of physical restraints.

(13) No inmate placed in physical restraints shall be left unattended.

(14) All jails shall have key-control procedures which shall include but not be limited to:

(a) A key control center which is secure and inaccessible to unauthorized persons at all times.

(b) An accounting procedure for issuing and returning keys.

(c) A procedure for immediate reporting and repairing of any broken or malfunctioning key or lock.

(d) A set of duplicate keys to be maintained in a separate, secure place.

(e) No inmate shall be permitted to handle keys used to operate jail security locks.

(f) Keys operating locks to outside doors or gates shall not be permitted in the confinement area.

(g) Emergency keys and keys to critical security areas shall only be issued in accordance with written procedures established by the jailer.

(h) Precautions similar to those outlined above shall be taken to insure the security of all non-key operated locking devices such as electrical switches or levers.

(i) Locks to outside exits shall be keyed differently from interior locks.

(15) Trusties.

(a) At no time shall a trusty have access to or control of weapons.

(b) At no time shall an unsupervised trusty be permitted in either a program, support, or housing area with inmates of the opposite sex.

(c) At no time shall an inmate trusty be permitted in either a program, support, or housing area with juvenile inmates.

(16) The provisions of this section shall be effective as of July 1, 1983.

Section 4. Daily Jail Log; Special Reports. (1) A detailed written record shall be made of all significant activities occurring within the jail including but not limited to:

(a) Security and safety inspections.
(b) Inmate counts.
(c) Use of force.
(d) Disciplinary actions.
(e) Movement inside and outside the jail.
(f) Medical *or mental health* treatment.
(g) Feeding schedule and menus.
(h) Extraordinary occurrences.
1. Fires.
2. Assaults.
3. Suicide or attempted suicide.
4. Escape or attempted suicide.
(i) Inmate vandalism.
1. Destruction of jail property.
2. Flooding of plumbing fixtures.
(j) Staff roster for each shift.
(k) Telephone log.
(l) Visitors log.
(m) Fire drills.

(2) The provisions of this section shall be effective as of July 1, 1983.

GEORGE W. WILSON, Secretary
ADOPTED: October 1, 1982
RECEIVED BY LRC: December 21, 1982 at 3 p.m.

CORRECTIONS CABINET
Office of Community Services
Amended After Hearing

501 KAR 3:090. Medical services.

RELATES TO: KRS 441.011*(6)*
PURSUANT TO: KRS 13.082, 441.011*(6)*
NECESSITY AND FUNCTION: KRS 441.011 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for jails. This regulation sets forth procedures for the proper delivery of medical services in jails.

Section 1. Procedure Services. (1) The jail's medical services shall be provided by contracting with a Kentucky licensed physician or the county public health organization.

(2) The medical staff *and mental health professionals* shall not be restricted by the jailer in the performance of their duties except to adhere to the jail's security requirements.

(3) The jailer shall prepare a quarterly report and an annual summary report addressing the jail's medical *and mental health* services.

(4) All health care staff working in the jail shall comply with state licensure and certificate requirements commensurate with health care personnel working elsewhere in the community. Copies of such licenses and certificates shall be maintained on file within the jail.

(5) A daily medical log shall be maintained documenting specific medical treatment rendered in the jail. This log shall be kept current to the preceding hour.

(6) Inmates shall not perform any medical functions within the jail.

(7) Inmates shall be informed verbally and in writing at the time of admission the methods of gaining access to medical care within the jail.

(8) All medical procedures shall be performed according to written and standing orders issued by the responsible medical authority.

(9) Medical screening shall be performed by the receiving officer on all inmates upon their admission to the jail and before their placement in inmate living areas. The findings of this medical screening shall be recorded on a printed screening form approved by the medical authority. The medical screening inquiry shall include but not be limited to:

(a) Current illnesses and health problems.

(b) Medications taken and special health requirements.

(c) Screening of other health problems designated by the medical authority.

(d) Behaviorial observation, state of consciousness and mental status.

(e) Notation of body deformaties, markings, bruises, lesions, jaundice, ease of movement, and other distinguishing characteristics.

(f) Condition of skin and body orifices, including rashes and infestations.

(g) Disposition and referral of inmates to qualified medical personnel on an emergency basis.

(10) Sick call conducted by the medical authority shall be available to each inmate as follows:

(a) Once per week, in jails with an average daily population for the preceding month of less than fifty (50) inmates.

(b) Three (3) times per week, in jails with an average daily population for the preceding month from fifty-one (51) to 200 inmates.

(c) Five (5) times per week, in jails with an average daily population for the preceding month of more than 200 inmates.

(11) All jail security personnel shall have current training in basic first-aid equivalent to that defined by the American Red Cross.

(12) The jailer shall be trained and certified in CPR (Cardiopulmonary Resuscitation). (January 1, 1984)

(13) Emergency medical, dental, and psychiatric care shall be available to all inmates commensurate with the level of such care available to the community.

(14) Medical research shall not be permitted on any inmate in the jail.

(15) Access to the inmate's medical file shall be controlled by the medical authority and the jailer. The physician-patient privilege shall apply to the medical record. The medical record is separate from custody and other administrative records of the jail.

(16) All examinations, treatments, and procedures affected by informed consent standards in the community shall be observed for inmate care. In the case of minors, the informed consent of the parent, guardian, or legal custodian shall apply when required by law.

(17) In accordance with KRS 72.025, a post-mortem examination shall be conducted on all inmates who die while in the custody of the jailer.

(18) The jailer shall have written delousing procedures.

(19) All jail staff who administer medications to inmates shall be trained by the medical authority.

(20) The jail shall have first-aid kits available at all times.

(21) An inmate who has been prescribed treatment by a recognized medical authority and cannot receive that treatment in the jail shall be moved to another confinement facility which can provide the treatment or may be moved to a hospital.

Section 2. The provisions of this regulation shall be effective as of January 1, 1983.

GEORGE W. WILSON, Secretary
APPROVED: October 1, 1982
RECEIVED BY LRC: December 21, 1982 at 3 p.m.

CORRECTIONS CABINET
Office of Community Services
Amended After Hearing

501 KAR 3:110. Classification.

RELATES TO: KRS 441.011*(6)*
PURSUANT TO: KRS 13.082, 441.011*(6)*
NECESSITY AND FUNCTION: KRS 441.011 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for jails. This regulation sets forth procedures for the classification of inmates.

Section 1. Procedure. (1) Each jail shall develop an appropriate inmate classification system, which shall be included in the facility's written policy and procedure manual. The provisions of this subsection shall be effective as of July 1, 1983.

(2) The inmate classification system shall provide for the separation of the following categories of inmates:

(a) Male and female inmates;

(b) Juvenile and adult inmates. If a juvenile is housed in the jail, he shall be housed as a juvenile regardless of his criminal status. Such offenders, as those confined for traffic offenses and those whose rights as a juvenile have been waived, will be housed as juveniles; [.]

(c) Mental inquest detainees and other inmates;

(d) Mentally ill or mentally retarded inmates and other inmates.

(e) [(c)] The provisions of this subsection shall be effective as of January 1, 1983.

(3) The criteria to be used in the classification of other inmate categories shall be as follows:

(a) Inmates with a tendency to harm others, be harmed by others, or requiring administrative segregation such as:

1. Those requiring protective custody;
2. Those with a history of disciplinary problems; and
3. Those charged with or convicted of a violent offense.

(b) Inmates with special problems or needs including but not limited to public intoxicants, physically handicapped, emotionally disturbed, mentally disordered, inmates with communicable diseases, suicide prone inmates, and known homosexuals.

(c) Sentenced or unsentenced status.

(d) Felons and misdemeanants.

(e) Non-criminal and criminal status such as traffic violators, non-support cases or civil contempt.

(f) Community custody inmates such as work-release, education-release, weekenders.

(g) Trusties. All inmates receiving trusty status shall be selected by the jailer or his designee based upon criteria including but not limited to:

1. The nature of the inmate's offense and sentence;
2. Previous escape attempts; and
3. The inmate's "day-to-day" behavior.

The provisions of this subsection shall be effective as of January 1, 1983.

(4) An inmate's classification system shall be changed to reflect changes in the inmate's status including but not limtied to the following:

1. Court appearance by the inmate;
2. Disciplinary hearing and action; and
3. Re-evaluation of the inmate's physical or emotional condition *or mental condition.*

The provisions of this subsection shall be effective as of January 1, 1983.

(5) The inmate classification system shall prohibit discrimination or segregation based upon race, color, creed, or national origin. The provisions of this subsection shall be effective as of January 1, 1983.

GEORGE W. WILSON, Secretary
ADOPTED: October 1, 1982
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CORRECTIONS CABINET
Office of Community Services
Amended After Hearing

501 KAR 3:120. Admission; release.

RELATES TO: KRS 441.011*(6)*
PURSUANT TO: KRS 13.082, 441.011*(6)*
NECESSITY AND FUNCTION: KRS 441.011 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for jails. This regulation sets forth admission and release procedures.

Section 1. Policy and Procedure. (1) Each jail shall develop written admission, orientation, and release procedures to be included in the jail's policy and procedure manual.

(2) The provisions of this section shall be effective as of July 1, 1983.

Section 2. Admission. (1) Any seriously injured, seriously ill, or unconscious persons (as determined by the jailer or his designee) shall not be admitted to the jail until a medical examination has been conducted by a licensed physician. A denial of admission form shall form shall be completed which lists the reasons for the denial and shall be signed by the arresting officer and the jail staff member on duty. The provisions of this subsection shall be effective as of January 1, 1983.

(2) The jail staff shall assure that each inmate is committed under proper legal authority by a duly authorized officer. The provisions of this subsection shall be effective as of January 1, 1983.

(3) An intake form shall be completed on every new inmate admission and shall include but not be limited to the following:

(a) Time and date of commitment;
(b) Name, alias, nickname;
(c) Official charge—cite eight (8) digit KRS number;
(d) Authority ordering commitment;
(e) Unit of government to be billed;
(f) Signature and title of arresting or committing officer;
(g) Date of birth;
(h) Race;
(i) Sex;
(j) Height and weight;
(k) Current or last known address;
(l) Telephone number;
(m) Marital status;
(n) Spouse or next of kin;
(o) Emergency contact (name, relation, address, telephone number);
(p) Employer, place of employment, telephone number;
(q) Social Security number;
(r) Health status (including current medications, known allergies, diet or other special medical needs);
(s) Blood type, if known; [and]
(t) The name of any known person in the jail who might be a threat to the arrestee*; and* [.]
(u) Mental health history (including past hospitalizations, comprehensive care treatment, current treatment, and medication).

The provisions of this subsection shall be effective as of July 1, 1983.

(4) The jail staff shall conduct a search of inmates and their possessions.

(a) Each inmate shall be searched for contraband in such a manner as responsible staff reasonably determine is necessary to protect the safety of fellow inmates, staff, and institutional security. Such search shall be conducted in a private area and in a manner which protects the inmate's dignity to such extent as possible in that particular jail.

(b) When a strip search is conducted, it shall be performed by a staff person of the same sex as the inmate.

(c) When a strip search of an inmate is conducted, it shall include a thorough visual check for birthmarks, wounds, sores, cuts, bruises, scars, and injuries, "health tags," and body vermin. A less complete search shall include the same checks to the extent determined reasonably necessary.

(d) The probing of body cavities shall not be done except where there is reasonable suspicion to believe that the inmate is carrying contraband there and such search shall only be conducted by medically trained persons (physician, emergency medical technician, registered nurse, licensed practical nurse) in a private location and under sanitary conditions.

(e) The provisions of this subsection shall be effective as of January 1, 1983.

(5) Each jail shall develop written policies and procedures, specifying the personal property that inmates may retain in their possession.

(a) Any cash or personal property shall be taken from the inmate upon admission, listed by complete description on a receipt form in duplicate, and securely stored pending the inmate's release. The receipt shall be signed by the receiving officer and the inmate, the duplicate shall be stored with the inmate's personal property and the original kept for the jail record.

(b) If the inmate is *in an* inebriated *state, is a mental inquest detainee, or is mentally ill or mentally retarded,* [or otherwise unable to account for his actions,] there shall be at least one (1) witness to verify this transaction. As soon as the inmate is able to understand and account for his actions, he shall sign the receipt and his copy stored with his personal property.

(c) Personal property released to a third party must have the inmate's signature of approval and the signature receipt of the third party.

(d) The provisions of this subsection shall be effective as of July 1, 1983.

Section 3. Orientation. (1) As soon after assignment as possible, each inmate shall receive an oral and written orientation.

(2) The orientation shall provide the inmate with information regarding his confinement including but not limited to the following:

(a) Information pertaining to rising and retiring, meals, mail procedures, work assignments, telephone privileges, visitation, correspondence, commissary, medical care, and other matters related to the conditions of the inmate's confinement;

(b) Rules of inmate conduct;

(c) Disciplinary procedures;

(d) Information regarding programs (work, educational and vocational training, counseling, and other social services); and

(e) Procedures for making requests or registering complaints with the jail staff, judiciary, or Corrections Cabinet personnel.

(3) Special assistance shall be given to illiterate and non-English speaking inmates.

(4) The provisions of this section shall be effective as of July 1, 1983.

Section 4. Release. (1) Written legal authorization shall be required prior to the release or removal of any inmate from confinement.

(2) When an inmate is released or removed for any legal purpose to the custody of another, the identity of receiving authority shall be verified.

(3) A written record shall be kept of the time, purpose, date, and authority for release or removal from confinement, and into whose custody the inmate is released or removed.

(4) Prior to the release or removal of an inmate, the receiving authority shall sign an authorized release form.

(5) Before the jailer releases an inmate to an out-of-state jurisdiction, he shall consult with the appropriate prosecutorial office in the county.

(6) Any property, not legally confiscated or retained, receipted from the inmate upon admission shall be returned to the inmate at the time of release.

(7) Each inmate shall sign a receipt for property returned at the time of release.

(8) Any complaint regarding property returned must be submitted in writing with specific details within twenty-four (24) hours.

(9) The provisions of this section shall be effective as of January 1, 1983.

GEORGE W. WILSON, Secretary
ADOPTED: October 1, 1982
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CORRECTIONS CABINET
Office of Community Services
Amended After Hearing

501 KAR 3:140. Inmate rights.

RELATES TO: KRS 441.011*(6)*
PURSUANT TO: KRS 13.082, 441.011*(6)*
NECESSITY AND FUNCTION: KRS 441.011 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for jails. This regulation sets forth procedures to ensure the protection of inmate rights.

Section 1. Policy and Procedure. (1) Each jail shall a written statement of inmate rights which shall include but not be limited to:

(a) Access to courts.
(b) Access to attorney.
(c) Mail.
(d) Telephone.
(e) Grievances.
(f) Search and seizure.
(g) Disciplinary procedure.
(h) Racial segregation.
(i) Medical care.
(j) Mental health care (if possible).
(k) [(j)] Religion.

The statement of inmate rights shall be posted in a conspicious place in the booking areas of the jail and a copy shall be handed to the inmate upon admission.

(2) The jailer shall not prohibit an inmate's right of access to the judicial process. The provisions of this subsec-

tion shall be effective as of July 1, 1983.

(3) The jailer shall ensure the right of inmates to have confidential access to their attorney and their authorized representative. The provisions of this subsection shall be effective as of January 1, 1983.

(4) The jailer shall have a written policy which defines the jail's visitation rules and regulations, which shall include but not be limited to:

(a) A schedule identifying no fewer than two (2) visiting days each week, one (1) of which must be during the weekend.

(b) At least one (1) visit per week per inmate shall be allowed except when an inmate has been assessed a disciplinary penalty for an infraction of rules governing visitation.

(c) Visits shall not be less than fifteen (15) minutes.

(d) Two (2) or more persons permitted to visit at the same time shall count as a single visit.

(e) Children, when accompanied by an adult, shall be permitted to visit inmates.

The provisions of this subsection shall be effective as of July 1, 1983.

(5) Attorneys, clergy, and medical personnel shall be permitted to visit inmates at reasonable hours other than during regularly scheduled visiting hours and shall not count as an allotted visit. The provisions of this subsection shall be effective as of January 1, 1983.

(6) Visitors shall register before admission and may be denied admission for refusal to register, for refusal to consent to search or for any violation. The provisions of this subsection shall be effective as of January 1, 1983.

(7) Inmates shall not be restriced in regard to whom they may have as a visitor unless the jailer determines that a visitor should be excluded due to the existence of one (1) or more of the following conditions:

(a) The visitor represents a clear and present danger to security.

(b) The visitor has a past history of disruptive conduct at the jail.

(c) The visitor is under the influence of alcohol or drugs.

(d) The visitor refuses to submit to search or show proper identification.

(e) The inmate refuses the visit.

The provisions of this subsection shall be effective as of January 1, 1983.

(8) The jailer shall not listen to visitors' conversations but may observe the visitation for security reasons. The provisions of this subsection shall be effective as of January 1, 1983.

Section 2. Mail. (1) The jailer shall have written policy and procedure for receiving and sending mail that protects the inmate's personal rights and provides for reasonable security practices consistent with the operation of the jail. The provisions of this subsection shall be effective as of July 1, 1983.

(2) Inmates shall be allowed to correspond with anyone so long as such correspondence does not violate any state or federal law except that caution shall be taken to protect the inmate's rights in accordance with court decisions regarding correspondence. The provisions of this subsection shall be effective as of January 1, 1983.

(3) Incoming mail may be inspected for contraband items, prior to delivery, unless such mail is received from the courts, attorney of record or public officials; then it may be opened and inspected in the presence of the inmate. The provisions of this subsection shall be effective as of January 1, 1983.

Section 3. Telephone. (1) Newly admitted inmates shall be permitted a reasonable number of local or collect long distance telephone calls to an attorney of their choice, or to a family member, as soon as practical, generally within one (1) hour after arrival, until one (1) call has been completed. The provisions of this subsection shall be effective as of January 1, 1983.

(2) The jailer or his designee shall maintain a log of all telephone calls made by an inmate during the admission procedure. The log shall document the date, time and party contacted. The provisions of this subsection shall be effective as of July 1, 1983.

(3) Written policy and procedure shall permit each inmate to complete at least one (1) telephone call each week. Any expense incurred for calls shall be borne by the inmate or the party called. The provisions of this subsection shall be effective as of July 1, 1983.

(4) A minimum of five (5) minutes shall be allotted for each phone call. The provisions of this subsection shall be effective as of January 1, 1983.

(5) Telephone calls shall not be routinely monitored. If calls are monitored, the inmate shall be *notified* [monitored].

(6) Telephone privileges may be suspended for a designated period of time if telephone rules are violated.

(7) The provisions of subsections (5) and (6) of this section shall be effective as of January 1, 1983.

Section 4. Religion. (1) Inmates shall be granted the right to practice their religion within limites necessary to maintain institution order and security.

(2) Inmates shall be afforded an opportunity to participate in religious services and receiving religious counseling within the jail.

(3) Inmates shall not be required to attend or participate in religious services or discussions.

(4) The provisions of this section shall be effective as of January 1, 1983.

Section 5. Access to Programs. (1) The jailer shall ensure equal access to programs and services for all inmates provided the security and order of the jail is not jeopardized.

(2) The provisions of this section shall be effective as of January 1, 1983.

Section 6. Grievance Procedure. (1) The jailer shall have a written inmate grievance procedure which shall be available to all inmates. These procedures shall include provisions for:

(a) Responses, within a reasonable time limit, to all grievance complaints.

(b) Equal access to all inmates.

(c) Guarantees against reprisal.

(d) Resolving legitimate complaints.

(2) The provisions of this section shall be effective as of July 1, 1983.

Section 7. Searches. (1) Each search of an inmate for contraband shall be done in such a manner as the jailer determines is necessary to protect the safety of inmates, staff, and jail security.

(2) Each search shall be conducted in a private area and in a professional manner which protects the inmate's dignity to the extent possible.

(3) All strip searches shall be performed by a staff person of the same sex as the inmate.

(4) The provisions of this section shall be effective as of January 1, 1983.

Section 8. Disciplinary Rights. (1) Each jail shall have a written policy and procedure for maintaining discipline which is consistent with constitutional requirements for due process.

(2) The provisions of this section shall be effective as of July 1, 1983.

Section 9. Medical. (1) Each inmate shall be afforded access to necessary medical care.

(2) The provisions of this section shall be effective as of January 1, 1983.

GEORGE W. WILSON, Secretary
ADOPTED: October 1, 1982
RECEIVED BY LRC: December 21, 1982 at 3 p.m.

CABINET FOR HUMAN RESOURCES
Amended After Hearing

900 KAR 2:020. Appeals.

RELATES TO: KRS 216.567
PURSUANT TO: KRS 194.050, 216.567
NECESSITY AND FUNCTION: The Cabinet for Human Resources is authorized by KRS 216.567 to establish the manner in which appeals are to be presented on any decision on ratings, citations or penalties assessed pursuant to KRS [Chapter] 216.*535 et seq.* This regulation is designed to set forth the procedure by which appeals from assignment of ratings, imposition of citations and assessment of penalties shall be pursued within the Cabinet for Human Resources.

Section 1. Definitions. (1) "Cabinet" means Cabinet for Human Resources.

(2) "Citation" means a written notice of violation issued pursuant to KRS 216.555.

(3) [(2)] "Licensee" in the case of a licensee who is an individual means the individual; in the case of a licensee who is a corporation, association or partnership means the corporation, association or partnership.

(4) [(3)] "Long-term care facilities" 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.

(5) [(4)] "Party" means the licensee operating a long-term care facility.

Section 2. (1) Upon the assignment of a rating for a long-term care facility pursuant to KRS 216.550, or whenever the cabinet has reason to believe there has been a violation of any requirement enforced by the cabinet pursuant to KRS 216.555, or whenever the cabinet assesses a penalty pursuant to KRS 216.557 or 216.560, it shall issue and serve by certified mail *or by personal service on* [to] the licensee of the facility, *the administrator, or designated representative as defined in 900 KAR 2:010,* or its agent for service of process a written notice of rating, citation or penalty. Said notice shall set forth the rating assigned, citation made, or penalty assessed, together with the specific findings of the cabinet alleged to result in the action taken and shall advise the licensee of the facility of his right to appeal the imposition of such rating, citation or penalty at a hearing before the cabinet.

(2) Within twenty (20) days of the receipt of the written notice of action by the cabinet, the licensee of the facility may file a written request for hearing with the Secretary of the Cabinet for Human Resources. Upon receipt of the written request for hearing, the Secretary shall appoint an impartial hearing officer to hear and decide upon appealed decisions.

(3) A hearing shall be scheduled *and commenced* within thirty (30) days of receipt of the request for hearing. Notice of the hearing shall be mailed by certified mail, return receipt requested, to the parties. The notice of the hearing shall include the legal authority for the hearing, together with reference to the statutes, regulations and administrative action by the cabinet involved.

(4) Prior to the formal hearing, and upon seven (7) days' written notice to all parties, delivered personally or by certified mail, return receipt requested, the hearing officer may hold a pre-hearing conference to consider simplification of the issues, admissions of facts and documents which will avoid unnecessary proof, limitations of the numbers of witnesses and such other matters as will aid in the disposition of the matter. Disposition of the matter may be made at the pre-hearing conference, by stipulation, agreed settlement, or consent order. *Prehearing conferences are to be open to the public. A written prehearing conference report shall be part of the record.*

(5) Any party to a hearing *and the administering agency* may be represented by counsel and may make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of such actions. *No depositions shall be permitted for the purpose of discovery, however, the hearing officer may authorize depositions of witnesses who, in his opinion, for good cause shown cannot be present at the hearing.* A hearing officer shall preside at the hearing, shall keep order, *administer oaths, may issue subpoenas and may admit relevant and probative evidence* and shall conduct the hearing in accordance with reasonable administrative practice.

(6) All testimony at the hearing shall be recorded but need not be transcribed unless the decision of the hearing officer is subject to appeal. *Any party to a proceeding may request a transcript of the proceeding and shall pay the entire cost of the preparation of the transcript.*

(7) The hearing officer may place reasonable time limits upon the presentation of testimony, evidence and argument and may terminate or exclude irrelevant or redundant evidence, testimony or argument.

(8) Within thirty (30) days of adjournment of the hearing, the hearing officer shall make written findings of fact, conclusions of law, and a final decision based upon the record of the proceeding. The record shall include:

(a) The notice of rating, citation, or penalty assessed which was forwarded to the licensee;

(b) Any staff reports, memoranda, or documents prepared by or for the cabinet regarding the matter under review which were introduced at the hearing;

(c) Any information provided by the parties which was introduced at the hearing;

(d) Any other evidence admitted during the hearing with respect to the matter under review;

(e) Upon its completion, *the prehearing conference report, if any, and* the report of the hearing officer con-

taining the findings of fact, conclusions of law and final decision.

(9)Any party aggrieved by the final decision may appeal that decision to the Franklin Circuit Court in accordance with KRS 216.570. *Any appeal of a Type A or Type B citation shall in no way be construed to limit the authority of the cabinet to act pursuant to KRS 216.573 or KRS 216.577 for failure to correct a Type A or Type B violation in a timely manner.*

(10) No hearing officer shall participate in any hearing involving a long term care facility with which he has had in the past twelve (12) months preceding the hearing, any ownership, in whole or in part, employment, staff, fiduciary, contractual, creditor or consultative relationship.

BUDDY H. ADAMS, Secretary
ADOPTED: January 14, 1983
RECEIVED BY LRC: January 14, 1983 at 4:15 p.m.

Proposed Amendments

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

201 KAR 12:083. Educational requirements.

RELATES TO: KRS 317A.050, 317A.060, 317A.140, *317A.990*
PURSUANT TO: KRS 13.082, *317A.060(h)*
NECESSITY AND FUNCTION: Students enrolling in a school of cosmetology must show proof of educational requirements. Applicants for cosmetologist's license and manicurist's license must show proof of *two (2)* [four (4)] years high school or its equivalent. *School owners are responsible for obtaining and forwarding student enrollment applications and proof of education to board; if board fails to receive said information from school within ten (10) working days after the student date of enrollment, school may be fined or its license suspended or revoked.*

Section 1. Any person enrolling in a school of cosmetology must complete an application for enrollment provided by the board. The applicant must furnish proof that he or she has completed two (2) years of high school or its equivalent. The required proof shall be any one (1) of the following:

(1) A transcript of subjects and grades showing the applicant has completed grades nine (9) and ten (10);

(2) G.E.D. test indicating a minimum grade of thirty-nine (39);

(3) A notarized statement from the high school principal, counselor, or superintendent, stating that in their opinion the applicant has an educational equivalency of completing tenth (10th) grade. Said statement must be on school stationery;

(4) If the student has graduated from high school or completed the G.E.D. test for four (4) years high school, his or her diploma may be presented.

Section 2. The student enrollment application accompanied by the applicant's proof of education, must be received by the board no later than ten (10) working days after the student date of enrollment. No student will receive credit hours beyond the ten (10) day period. *It is the responsibility of the school to forward to the board the enrollment application and proof of education so that the board receives said information no later than ten (10) working days after the student date of enrollment; failure of the school to timely forward said information to the board may result in suspension or revocation of said school's license and/or a fine of twenty-five dollars ($25) a day for every day the application is late.*

Section 3. No person shall be permitted to enroll in a school of cosmetology for a brush-up course unless the applicant holds an unexpired and unrevoked license issued by this board. Said applicant must complete an application for enrollment and provide the necessary educational requirements in effect at the time of original licensure.

Section 4. Any person previously licensed by this board having an expired license shall be permitted to enroll in a school of cosmetology for a brush-up or refresher course upon obtaining special permission of the board. Said applicant must complete an application and provide the necessary educational requirements in effect at the time of original licensure.

Section 5. All schools of cosmetology must advise individuals enrolling in a school of cosmetology of the educational requirements of a tenth (10th) grade education or its equivalent to obtain an apprentice cosmetologist's license and the requirement of *two (2)* [four (4)] years high school or its equivalent to obtain a cosmetologist's license or a manicurist's license.

[Section 6. The required proof of four (4) years high school shall be any of the following:]

[(1) A transcript of subjects and grades showing the applicant has completed twelfth (12th) grade;]

[(2) The passing results of a G.E.D. test or G.E.D. certificate;]

[(3) High school diploma.]

CARROLL ROBERTS, Administrator
ADOPTED: December 6, 1982
RECEIVED BY LRC: January 13, 1983 at 1:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Carroll Roberts, Administrator, Board of Hairdressers and Cosmetologists, 314 West Second Street, Frankfort, Kentucky 40601.

FINANCE AND ADMINISTRATION CABINET
State Board of Examiners of Social Work
(Proposed Amendment)

201 KAR 23:020. Examination; fee.

RELATES TO: KRS 335.010 to 335.160, 335.990
PURSUANT TO: KRS 13.082, 335.070
NECESSITY AND FUNCTION: KRS 335.080(1)(d), 335.090(1)(e), and 335.100(1)(d) require applicants to successfully complete an examination for licensure, the procedures for which are set forth by regulatory authority.

Section 1. Having satisfied all other requirements for licensure and having been approved to sit for an examination developed by the board, an applicant for *licensure* [license] as a certified social worker shall forward to the board an examination fee in the amount of *seventy-five dollars ($75)* [thirty-five dollars ($35)].

Section 2. Having made application to the board and satisfied all other requirements for licensure and having been approved to sit for an examination developed by the board, an applicant for licensure as social worker shall forward to the board upon request an examination fee in the amount of *seventy-five dollars ($75)* [thirty-five dollars ($35)].

Section 3. Having made application to the board and satisfied all other requirements for licensure and having been approved to sit for an examination developed by the board, an applicant for specialty certification in the areas of clinical social work, community social work, social work research or social work administration and management, shall forward to the board upon request an examination fee in the amount of *seventy-five dollars ($75)* [thirty-five dollars ($35)].

Section 4. The board shall administer all examinations at least twice a year.

Section 5. Any candidate for licensure as a social worker or certified social worker, or for certification for independent practice who fails to pass the required examination, may be re-examined six (6) months from the date of the previous examination. The fee for re-examination shall be the same as that established in Sections 1, 2 and 3 of this regulation.

GWYNNE GOLDBERG, Chairman
ADOPTED: DECEMBER 9, 1982
RECEIVED BY LRC: January 12, 1983 at 2:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Betty Sapp, P.O. Box 456, Frankfort, Kentucky 40602.

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

301 KAR 1:075. Gigging, hand grabbing or snagging, tickling and noodling.

RELATES TO: KRS 150.010, 150.025, 150.170, 150.175, 150.235, 150.360, 150.440, 150.445, 150.470
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: This regulation is necessary to permit and govern methods of harvest to the benefit of the fishery resource. [The Commissioner with the concurrence of the Commission finds it necessary to remove hand grabbing from one river, and to remove the prohibition of a natural perch or tree as a snagging site.] This amendment is necessary to *extend the use of multi-hook snagging to the tributaries of the Green and Rolling Fork Rivers* [allow the harvest of rough fishes from a specified section of stream].

Section 1. As used in this regulation, the word "snagging" means an act of taking fish by using a single hook or one treble hook (except in the [main stream of] Green River *and its tributaries* and [the main stream of] Rolling Fork River *and its tributaries* where five (5) hooks, either single or treble hooks, may be used) which is attached by line to a pole and is used in a jerking and pulling manner [, but does not include the term "snag line" as used in KRS Chapter 150 pertaining to designated commercial fishing streams].

Section 2. A person may gig or snag from the stream or lake banks, but cannot use these fishing methods from a boat or platform, except gigging is permitted from a boat in any lake with a surface acreage of 500 acres or larger during the daylight hours.

Section 3. The season during which gigging and snagging is permitted is March 1 through May 10, annually, except persons may gig rough fish through the ice in these same waters any time the surface is frozen thick enough to stand on, and gigger must gig while supported by the ice.

Section 4. Gigging and/or snagging for rough fish is permitted night and day in all lakes and streams, except where specifically prohibited as described in Sections 2 and 5.

Section 5. Gigging and/or snagging is specifically prohibited in the following streams and their tributaries. (Exceptions: See subsection (1)(b) and subsection (2)(b) below.)

(1) (a) The Cumberland River below Wolf Creek Dam downstream to the Tennessee line, and in the Cumberland River in the area below Barkley Dam downstream to US 62 bridge.

(b) Those tributaries to the Cumberland River below Wolf Creek Dam downstream to the Tennessee line, shall be open to gigging and snagging in season, except that portion of each tributary which is within one-half (½) mile of its junction with the Cumberland River.

(2) (a) Within 200 yards of any dam on any stream,

(b) Snagging only is permitted in the Tennessee River below Kentucky Dam subject to restrictions in 301 KAR 1:020.

(3) Little Kentucky River—Trimble,

(4) Goose Creek—Russell and Casey,

(5) Casey Creek—Trigg,
(6) Rough River, below Rough River Dam downstream to where Ky. 54 crosses the stream, and above the first riffle on Rough River Lake,
(7) Middle Fork of the Ky. River, from Buckhorn Dam downstream to Breathitt-Perry County line,
(8) Trammel Creek, upstream from the Butlersville Bridge where KY 1332 crosses the stream,
(9) Peters Creek—Barren and Monroe,
(10) Beaver Dam Creek—Edmonson,
(11) Canada Creek—Wayne,
(12) Shultz Creek—Greenup,
(13) Sulphur Spring Creek—Simpson,
(14) Lick Fork Creek—Simpson,
(15) Sinking Creek—Breckinridge,
(16) Beaver Creek—Barren,
(17) Big Brush Creek—Green,
(18) Rough Creek—Hardin,
(19) Claylick Creek—Crittenden,
(20) Lynn Camp Creek—Hart,
(21) Roundstone Creek—Hart,
(22) Ravens Creek—Harrison,
(23) Boone Creek—Fayette and Clark,
(24) Caney Creek—Elliott,
(25) Greasy Creek—Leslie,
(26) Laurel Fork Creek—Harlan,
(27) Beaver Creek—Wayne,
(28) Craney Creek—Rowan,
(29) Swift Camp Creek—Wolfe,
(30) Middle Fork—Powell and Wolfe,
(31) War Fork—Jackson,
(32) Indian Creek—Jackson,
(33) Clover Bottom Creek—Jackson,
(34) Cane Creek—Laurel,
(35) Hawk Creek—Laurel,
(36) Beaver Creek—McCreary,
(37) Little South Fork—McCreary and Wayne,
(38) Rock Creek—McCreary,
(39) Lick Creek—McCreary,
(40) Bark Camp Creek—Whitley,
(41) Dogslaughter Creek—Whitley,
(42) Laurel Creek—Elliott,
(43) Big Double Creek—Clay,
(44) Hood Creek—Johnson and Lawrence.

Section 6. All game fish caught by gigging or snagging, except those taken below Kentucky Dam in the Tennessee River, shall be returned to the water immediately, regardless of condition.

Section 7. The tickling and noodling (hand grabbing) season for rough fish only shall be June 10 to August 31 (all dates inclusive) during daylight hours only. Tickling and noodling shall be permitted in all waters except the South Fork of the Kentucky River and tributaries. The daily creel limit for tickling and noodling shall be fifteen (15) rough fish of which not more than five (5) may be catfish.

CARL E. KAYS, Commissioner
ADOPTED: December 19, 1982
APPROVED: W. BRUCE LUNSFORD, Secretary
RECEIVED BY LRC: January 6, 1983 at 2 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Commissioner, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, No. 1 Game Farm Road, Frankfort, Kentucky 40601.

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

301 KAR 1:150. Waters open to commercial fishing.

RELATES TO: KRS 150.010, 150.025, 150.120, 150.170, 150.175, 150.445, 150.450
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: It is necessary to regulate the places where commercial fishing is permitted to insure that the size of the water and fish population is large enough for this type of activity to better utilize and conserve those populations concerned. *The Commissioner, with the concurrence of the Commission, finds it consistent with accepted fish management practices to authorize commercial fishing in the lowermost section of Salt River and so amends this regulation.*

Section 1. Appropriately licensed commercial fishermen may fish with commercial fishing gear in the following designated waters subject to requirements as set forth in regulations designating commercial gear and manner of taking. Commercial gear may be used in no other waters of the Commonwealth except under specific permit.

Section 2. Commercial Fishing Waters. (1) Streams and rivers:
(a) Barren River from its junction with Green River upstream to Greencastle, Kentucky;
(b) Big Sandy River from its junction with Ohio River upstream to junction of Levisa and Tug Forks;
(c) Levisa Fork of Big Sandy River from its junction with Big Sandy upstream to 200 yards below mouth of Paint Creek in Johnson County;
(d) Cumberland River from its junction with Ohio River upstream to Highway 62 bridge;
(e) Eagle Creek from its junction with Kentucky River upstream to Highway 22 bridge in Grant County;
(f) Green River from its junction with Ohio River upstream to 200 yards below Lock and Dam 6;
(g) Highland Creek from its junction with Ohio River upstream to Rock Ford Bridge in Union County;
(h) Kentucky River from its junction with Ohio River upstream to junction of North and Middle Forks of Kentucky River;
(i) North Fork of Kentucky River from its junction with Kentucky River upstream to mouth of Walker's Creek;
(j) South Fork of Kentucky River from its junction with Kentucky River upstream to mouth of Cow Creek;
(k) Licking River from its junction with Ohio River upstream to a point directly adjacent to Highway 111 on the Bath and Fleming Counties line;
(l) Mississippi River from the mouth of Ohio River downstream to the Tennessee line;
(m) Mud River from its junction with Green River upstream to McGee Landing in Butler and Muhlenberg Counties;
(n) Ohio River from its junction with Mississippi River upstream to West Virginia line;
(o) Pond River from its junction with Green River upstream to Highway 62 bridge;
(p) Panther Creek from its junction with Green River upstream to Head of Creek;
(q) Rough River from its junction with Green River upstream to Highway 69 bridge at Dundee, Kentucky;
(r) Tennessee River from its junction with Ohio River upstream to River Mile 17.8;

(s) Tradewater River from its junction with Ohio River upstream to Highway 132 bridge; *and* [.]

(t) Salt River from its junction with the Ohio River upstream to the northwestern boundary of Ft. Knox.

(2) Lakes. The following lakes are open to commercial fishing, but not above the first shoal or riffle upstream from the impounded or standing pool of the lake in any main or tributary stream:

(a) Barkley;
(b) Cumberland;
(c) Herrington;
(d) Kentucky;
(e) Nolin;
(f) Rough River;
(g) Overflow lakes directly connected to the Mississippi and Ohio Rivers;
(h) Dewey Lake is open uplake to a point directly beneath the concrete structure known as Buffalo Bridge which crosses the lake;
(i) Barren Lake.

CARL E. KAYS, Commissioner
ADOPTED: December 19, 1982
APPROVED: W. BRUCE LUNSFORD, Secretary
RECEIVED BY LRC: January 6, 1983
SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Commissioner, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, No. 1 Game Farm Road, Frankfort, Kentucky 40601.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution
(Proposed Amendment)

401 KAR 50:025. Classification of counties.

RELATES TO: KRS Chapter 224
PURSUANT TO: KRS 13.082, 224.033
NECESSITY AND FUNCTION: KRS 224.033 requires the [Department for] Natural Resources and Environmental Protection *Cabinet* to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the classification of counties with respect to various pollutants.

Section 1. Counties in the Commonwealth of Kentucky shall be classified with respect to sulfur dioxide as follows:

(1) Class I: Jefferson County [, McCracken County];
(2) Class IA: McCracken County;
(3) [(2)] Class II: Bell County, Clark County, Woodford County;
(4) [(3)] Class III: Pulaski County;
(5) [(4)] Class IV: Webster County, Hancock County;
(6) [(5)] Class IVA: Muhlenberg County;
(7) [(6)] Class V: All other counties not specifically listed within this section;
(8) [(7)] Class VA: Boyd County.

JACKIE SWIGART, Secretary
ADOPTED: January 14, 1983
RECEIVED BY LRC: January 14, 1983 at 4 p.m.
SUBMIT COMMENT TO: Mr. Larry Wilson, Manager, Program Development Branch, Division of Air Pollution Control, 18 Reilly Road, Frankfort, Kentucky 40601.
See public hearings scheduled on page 893.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution
(Proposed Amendment)

401 KAR 61:015. Existing indirect heat exchangers.

RELATES TO: KRS Chapter 224
PURSUANT TO: KRS 13.082, 224.033
NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of emissions from existing indirect heat exchangers.

Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced before the applicable classification date defined below.

Section 2. Definitions. As used in this regulation, all terms not defined herein shall have the meaning given them in 401 KAR 50:010 and 401 KAR 50:025.

(1) "Affected facility" means an indirect heat exchanger having a heat input capacity of more than one (1) million BTU per hour.
(2) "Indirect heat exchanger" means any piece of equipment, apparatus, or contrivance used for the combustion of fuel in which the energy produced is transferred to its point of usage through a medium that does not come in contact with or add to the products of combustion.
(3) "Classification date" means:
(a) August 17, 1971, for affected facilities with a capacity of more than 250 million BTU per hour heat input;
(b) April 9, 1972, for affected facilities with a capacity of 250 million BTU per hour heat input or less.

Section 3. Method for Determining Allowable Emission Rates. (1) Except as provided in subsection (3) of this section, the total rated heat input capacity of all affected facilities, commenced before the applicable classification date within a source shall be used as specified in Sections 4 and 5 to determine the allowable emission in terms of pounds of effluent per million BTU heat input.
(2) At such time as any affected facility is assigned an allowable emission rate by the department, at no time thereafter shall that rate be changed due to inclusion or shutdown of any affected facility at the source.

(3) (a) A source may petition the department to establish an allowable emission rate which may be apportioned without regard to individual affected facility heat input provided that the conditions specified in paragraphs (b), (c), (d), and (e) of this subsection are met. Such allowable emission rate shall be determined according to the following equation:

$$F = (AB + DE)/C$$

Where:

A = the allowable emission rate (in pounds per milion BTU input), as determined according to 401 KAR 59:015, Section 3(1);

B = the total rated heat input (in millions of BTU per hour) of all affected facilities commenced on or after the applicable classification date within a source, including those for which an application to construct, modify, or reconstruct has been submitted to the department;

C = the total rated heat input (in millions of BTU per hour) of all affected facilities within a source, including those for which an application to construct, modify, or reconstruct has been submitted to the department;

D = the total emission rate (in pounds per million BTU input) as determined according to subsection (1) of this section;

E = the total rated heat input (in millions of BTU per hour) of all affected facilities commenced before the applicable classification date;

F = the alternate allowable emission rate (in pounds per actual million BTU input).

(b) At no time shall the owner or operator of the source allow the total emissions (in pounds per hour) from all affected facilities within the source divided by the total actual heat input (in millions of BTU per hour) of all affected facilities within the source to exceed the alternate allowable emission rate as determined by paragraph (a) of this subsection.

(c) At no time shall the owner or operator of any source subject to federal new source performance standards allow the emissions from any affected facility commenced on or after the applicable classification date to exceed the allowable emission rate determined by use of that affected facility's rated heat input (instead of the heat input as determined by subsection (1) of this section) as specified in 401 KAR 59:015, Sections 4 and 5.

(d) The owner or operator of the source must demonstrate compliance with this subsection by conducting a performance test according to 401 KAR 50:045 on each affected facility under such conditions as may be specified by the department.

(e) Upon petition, the department will establish an alternate emission rate in accordance with this subsection if the owner or operator demonstrates to the department's satisfaction that the source will maintain compliance with this subsection on a continual basis.

Section 4. Standard for Particulate Matter. Except as provided for in Section 3(3), no owner or operator of an affected facility subject to the provisions of this regulation shall cause to be discharged into the atmosphere from that affected facility:

(1) Particulate matter in excess of that specified in Appendix A of this regulation;

(2) Emissions which exhibit greater than twenty (20) percent opacity in regions classified as Priority I with respect to particulate matter, except:

(a) That, for cyclone or pulverized fired indirect heat exchangers, a maximum of forty (40) percent opacity shall be permissible for not more than two (2) consecutive minutes in any sixty (60) consecutive minutes;

(b) That, for stoker fired indirect heat exchangers, a maximum of forty (40) percent opacity shall be permissible for not more than six (6) consecutive minutes in any sixty (60) consecutive minutes during cleaning the fire box or blowing soot and, for indirect heat exchangers with stationary grates, a maximum of forty (40) percent opacity shall be permissible during cleaning of the grates for not more than three (3) consecutive minutes in any sixty (60) consecutive minutes for each section of grates that are cleaned;

(c) For emissions from an indirect heat exchanger during building a new fire for the period required to bring the boiler up to operating conditions provided the method used is that recommended by the manufacturer and the time does not exceed the manufacturer's recommendations.

(3) Emissions which exhibit greater than forty (40) percent opacity in regions classified as Priority II or III with respect to particulate matter except:

(a) That, for cyclone or pulverized fired indirect heat exchangers, a maximum of sixty (60) percent opacity shall be permissible for not more than two (2) consecutive minutes in any sixty (60) consecutive minutes;

(b) That, for stoker fired indirect heat exchangers, a maximum of sixty (60) percent opacity shall be permissible for not more than six (6) consecutive minutes in any sixty (60) consecutive minutes during cleaning the fire box or blowing soot and, for indirect heat exchangers with stationary grates, a maximum of sixty (60) percent opacity shall be permissible during cleaning of the grates for not more than three (3) consecutive minutes in any sixty (60) consecutive minutes for each section of grates that are cleaned;

(c) For emissions from an indirect heat exchanger during building a new fire for the period required to bring the boiler up to operating conditions provided the method used is that recommended by the manufacturer and the time does not exceed the manufacturer's recommendations.

(4) The emission limitations contained in other subsections of this section shall not apply to any affected facility (with more than 250 million BTU per hour heat input capacity which was in being or under construction before August 17, 1971, or any affected facility with 250 million BTU per hour capacity or less which was in being or under construction prior to April 9, 1972) if that affected facility was in compliance prior to April 9, 1972, with, or has a valid permit to operate within the provisions of the previous Kentucky Air Pollution Control Commission Regulation No. 7 entitled "Prevention and Control of Emissions of Particulate Matter from Combustion of Fuel in Indirect Heat Exchangers." These affected facilities shall comply with the emission limitations in that regulation except that replacement of the particulate emissions control device associated with the affected facility shall subject it to the standard contained in this section.

Section 5. Standard for Sulfur Dioxide. (1) Except as provided for in Section 3(3) *and subsection (5) of this section*, no owner or operator of an affected facility subject to the provisions of this regulation shall cause to be discharged into the atmosphere from that affected facility, any gases which contain sulfur dioxide in excess of that specified in Appendix B of this regulation.

(2) When different fuels are burned simultaneously in

any combination, the applicable standard shall be determined by proration using the following formula:

Allowable Sulfur Dioxide Emission,

$$\text{lb/MM BTU} = \frac{y\,(a) + z\,(b)}{y + z}$$

Where:

y is the percent of total heat input derived from liquid or gaseous fuel;

z is the percent of total heat input derived from solid fuel;

a is the allowable sulfur dioxide emission in pounds per million BTU heat input derived from liquid or gaseous fuel; and

b is the allowable sulfur dioxide emissions in pounds per million BTU heat input derived from solid fuel.

(3) Compliance shall be based on the total heat input from all fuels burned, including gaseous fuels.

(4) In counties classified as VA with respect to sulfur dioxide, for sources having a total heat input greater than fifteen hundred million BTU per hour (1500 MM BTU/hr.) as determined by Section 3(1), no owner or operator shall allow the annual average sulfur dioxide emission rate from all existing and new affected facilities combined at the source to exceed 0.60 pounds per million BTU.

(5) In counties classified as 1A with respect to sulfur dioxide, at sources having a total rated heat input greater than fifteen hundred million BTU per hour (1500 MM BTU/hr.) as determined by Section 3(1), the department shall allow one (1) affected facility, as specified on the operating permit, to emit sulfur dioxide at a rate not to exceed a twenty-four (24) hour average of 8.0 pounds per million BTU, during those periods of time when the affected facility is being operated for the purpose of generating high sulfur dioxide content flue gases for use in any experimental sulfur dioxide removal system.

Section 6. Monitoring of Operations. (1) The sulfur content of solid fuels, as burned, shall be determined in accordance with the methods specified by the department.

(2) The sulfur content of liquid fuels, as burned, shall be determined in accordance with the methods specified by the department.

(3) The rate of fuel burned for each fuel shall be measured daily or at shorter intervals and recorded. The heating value and ash content of fuels shall be ascertained at least once per week and recorded. Where the indirect heat exchanger is used to generate electricity, the average electrical output and the minimum and maximum hourly generation rate shall be measured and recorded daily.

(4) The owner or operator of any indirect heat exchanger of more than 250 million BTU per hour heat input subject to the provisions of this regulation shall maintain a file of all measurements required by this regulation and summarized monthly. The record of any such measurement(s) and summary shall be retained for at least two (2) years following the date of such measurements and summaries.

(5) The department may require for any indirect heat exchanger of less than 250 million BTU per hour heat input any or all the fuel monitoring required by this section.

(6) For an indirect heat exchanger that does not use a flue gas desulfurization device, a continuous monitoring system as specified in 401 KAR 61:005 for measuring sulfur dioxide emissions is not required if the owner or operator monitors such emissions by fuel sampling and analysis pursuant to Section 7(6) of 401 KAR 59:015.

Section 7. Test Methods and Procedures. (1) Except as provided in 401 KAR 50:045, performance tests used to demonstrate compliance with Sections 4 and 5 shall be conducted according to the following methods (filed by reference in 401 KAR 50:015):

(a) Reference Method 1 for the selection of sampling site and sample traverses;

(b) Reference Method 3 for gas analysis to be used when applying Reference Methods 5, 6 and 7;

(c) Reference Method 5 for the concentration of particulate matter and the associated moisture content;

(d) Reference Method 6 for the concentration of sulfur dioxide;

(e) Reference Method 7 for the concentration of nitrogen oxides.

(2) For Reference Method 5, Reference Method 1 shall be used to select the sampling site and the number of traverse sampling points. The sampling time for each run shall be at least sixty (60) minutes and the minimum sampling volume shall be 0.85 dscm (thirty (30) dscf) except that smaller sampling times or volumes, when necessitated by process variables or other factors, may be approved by the department. The probe and filter holder heating systems in the sampling train shall be set to provide a gas temperature no greater than 160°C (320°F).

(3) For Reference Methods 6 and 7, the sampling site shall be the same as that selected for Reference Method 5. The sampling point in the duct shall be at the centroid of the cross section or at a point no closer to the walls than one (1) m (3.28 ft.). For Reference Method 6, the sample shall be extracted at a rate proportional to the gas velocity at the sampling point.

(4) For Reference Method 6, the minimum sampling time shall be twenty (20) minutes and the minimum sampling volume shall be 0.02 dscm (0.71 dscf) for each sample. The arithmetic mean of two (2) samples shall constitute one (1) run. Samples shall be taken at approximately thirty (30) minute intervals.

(5) For Reference Method 7, each run shall consist of at least four (4) grab samples taken at approximately fifteen (15) minute intervals. The arithmetic mean of the samples shall constitute the run value.

(6) For each run using the methods specified by subsection (1)(c), (d), and (e) of this section, the emissions expressed in g/million cal (lb/million BTU) shall be determined by the following equation:

$$E = CF\,\frac{20.9}{20.9 - \%O_2}$$

Where:

E = pollutant emission, g/million cal (lb/million BTU).

C = pollutant concentration, g/dscm (lb/dscf) determined by Reference Method 5, 6 or 7.

F = a factor as determined in 401 KAR 59:015, Section 7.

$\%O_2$ = oxygen content by volume (expressed as percent), dry basis.

Percent oxygen shall be determined by using the integrated or grab sampling and analysis procedures for Reference Method 3 as applicable. The sample shall be obtained as follows:

(a) For determination of sulfur dioxide and nitrogen ox-

ides emissions, the oxygen sample shall be obtained simultaneously at the same point for Reference Method 6 and 7 determinations, respectively. For Reference Method 7, the oxygen sample shall be obtained using the grab sampling and analysis procedures for Reference Method 3.

(b) For determination of particulate emissions, the oxygen sample shall be obtained simultaneously by traversing the duct at the same sampling location used for each run of Reference Method 5 under subsection (2) of this section. Reference Method 1 shall be used for selection of the number of traverse points except that no more than twelve (12) sample points are required.

(7) When combinations of fossil fuels are fired, the heat input, expressed in cal/hr (BTU/hr), shall be determined during each testing period by multiplying the gross calorific value of each fuel fired by the rate of each fuel burned. Gross calorific value shall be determined in accordance with ASTM methods D2015-66(72) (solid fuels), D240-64(73) (liquid fuels), or D1826-64(70) (gaseous fuels), as applicable (ASTM designations filed by reference in 401 KAR 50:015). The rate of fuels burned during each testing period shall be determined by suitable methods and shall be confirmed by a material balance over the steam generation system.

Section 8. Compliance Timetable. (1) Affected facilities located in areas designated as attainment for sulfur dioxide and/or particulate matter shall be in compliance as of June 6, 1979.

(2) (a) In Class IA counties [designated as non-attainment for sulfur dioxide], the owner or operator of any affected facility in any source whose total rated capacity is sixteen thousand million BTU per hour (16,000 MM BTU/hr) or more shall be required to complete the following:

1. Submit a final control plan for achieving compliance with this regulation no later than May 1, 1978;
2. Award contracts for complying coal by January 1, 1979;
3. Initiate use of such complying coal on or before December 1, 1979;
4. Demonstrate compliance by performance tests on or before October 1, 1981.

(b) In Class IVA counties designated as non-attainment for sulfur dioxide, the owner or operator of any affected facility in any source with a total rated capacity of greater than fifteen hundred million BTU per hour (1,500 MM BTU/hr) but less than twenty-one thousand million BTU per hour (21,000 MM BTU/hr) shall be required to complete the following:

1. Submit a final control plan for achieving compliance with this regulation no later than May 1, 1979;
2. Award contracts for complying coal by August 1, 1979;
3. Initiate use of such complying coal on or before January 1, 1980;
4. Demonstrate compliance by performance tests on or before March 1, 1980.

(c) In Class IVA counties designated as non-attainment for sulfur dioxide, the owner or operator of any affected facility in any source with a total rated capacity of greater than twenty-one thousand million BTU per hour (21,000 MM BTU/hr) shall be required to complete the following:

1. Submit a control plan for flue gas desulfurization and initiate construction of a coal washing plant on or before June 1, 1978;
2. Issue invitations for bids for construction and installation of flue gas desulfurization equipment on or before October 1, 1978;
3. Award contract for construction and installation of flue gas desulfurization equipment on or before March 1, 1979;
4. Initiate construction of flue gas desulfurization equipment on or before December 1, 1979;
5. Complete construction of coal washing plant on or before December 1, 1980;
6. Complete construction of flue gas desulfurization equipment on or before June 1, 1982;
7. Demonstrate compliance by performance tests on or before September 1, 1982.

(See Appendix A & B on following pages.)

JACKIE SWIGART, Secretary
ADOPTED: January 14, 1983
RECEIVED BY LRC: January 14, 1983 at 4 p.m.
SUBMIT COMMENT TO: Mr. Larry Wilson, Manager, Program Development Branch, Division of Air Pollution Control, 18 Reilly Road, Frankfort, Kentucky 40601.
See public hearings scheduled on page 893.

APPENDIX A TO 401 KAR 61:015
ALLOWABLE PARTICULATE EMISSION RATES

For sources having a Total Heat Input Capacity (as determined by Section 3(1) [of this regulation)] of:	The standard (in pounds per million BTU actual heat input) is (based upon the Priority classification with respect to particulates of the Region in which the source is located):		
(MM BTU/Hr.)	Priority I	Priority II	Priority III
10 or less	0.56	0.75	0.80
50	0.38	0.52	0.57
100	0.33	0.44	0.49
250	0.26	0.35	0.40
500	0.22	0.30	0.34
1000	0.19	0.26	0.30
2500	0.15	0.21	0.24
5000	0.13	0.18	0.21
7500	0.12	0.16	0.19
10000 or more	0.11	0.15	0.18

Interpolation of allowable emissions for intermediate heat input values not specified above may be accomplished by use of the equations shown below for the appropriate heat input range specified. In all equations X = millions of BTU per hour heat input as determined by Section 3(1) [of this regulation], and Y = allowable particulate emissions in pounds per million BTU actual heat input.

Region Classification with respect to Particulate Matter	Range (MM BTU/Hr)	Allowable (Pounds/MM BTU)
Priority I	10 to 10,000	$Y = 0.9634\ X^{-0.2356}$
Priority II	10 to 10,000	$Y = 1.2825\ X^{-0.2330}$
Priority III	10 to 10,000	$Y = 1.3152\ X^{-0.2159}$

APPENDIX B
TO
401 KAR 61:015

All standards are twenty-four (24) hour averages

For sources having a total heat input (as determined by Section 3(1)) of: (MM BTU/Hr.)	The standard (in pounds per million BTU actual heat input) is (based upon the classification with respect to sulfur dioxide of the county in which the source is located):															
	CLASS I		CLASS IA		CLASS II		CLASS III		CLASS IV		CLASS IVA		CLASS V		CLASS VA	
	Liquid/ Gaseous Fuel	Solid Fuel	Liquid/ Gaseous Fuel	Solid Fuel	Liquid/ Gaseous Fuel	Solid Fuel	Liquid/ Gaseous Fuel	Solid Fuel	Liquid/ Gaseous Fuel	Solid Fuel	Liquid/ Gaseous Fuel	Solid Fuel	Liquid/ Gaseous Fuel	Solid Fuel	Liquid/ Gaseous Fuel	Solid Fuel
10 or less	3.0	5.0	3.0	5.0	4.0	6.0	4.6	7.0	5.4	8.0	5.4	8.0	6.0	9.0	6.0	9.0
50	1.5	2.4	1.5	3.9	2.4	3.7	3.2	4.8	4.3	6.4	4.3	6.4	4.9	7.3	4.9	7.3
100	1.2	1.8	1.2	3.6	2.0	3.0	2.7	4.1	4.0	5.9	4.0	5.9	4.5	6.7	4.5	6.7
150	1.0	1.5	1.0	3.3	1.8	2.7	2.5	3.7	3.7	5.6	3.7	5.6	4.3	6.4	4.3	6.4
200	0.9	1.3	0.9	3.2	1.6	2.5	2.3	3.5	3.6	5.4	3.6	5.4	4.1	6.2	4.1	6.2
250-1500	0.8	1.2	0.8	3.1	1.5	2.3	2.2	3.3	3.5	5.2	3.5	5.2	4.0	6.0	4.0	6.0
greater than 1,500 but less than 21,000	0.8	1.2	0.8	1.2	1.5	2.3	2.2	3.3	3.5	5.2	2.3	3.5	4.0	6.0	1.1	1.1
21,000 or more	0.8	1.2	0.8	1.2	1.5	2.3	2.2	3.3	3.5	5.2	2.1	3.1	4.0	6.0	1.1	1.1

Interpolation of allowable emissions for rated capacity values between 10 and 250 million BTU heat input may be accomplished by use of the equations shown below for the appropriate fuel specified. In all equations Y = allowable sulfur dioxide emission in pounds per million BTU actual heat input, X = millions of BTU per hour heat input capacity rating as determined by Section 3(1).

COUNTY CLASS	FUEL	ALLOWABLE (POUNDS/MM BTU)
I	Liquid/Gaseous	$Y = 7.7223 X^{-0.4106}$
	Solid	$Y = 13.8781 X^{-0.4434}$
IA	Liquid/Gaseous	$Y = 7.7223 X^{-0.4106}$
	Solid	$Y = 7.0382 X^{-0.1485}$
II	Liquid/Gaseous	$Y = 8.0681 X^{-0.3047}$
	Solid	$Y = 11.9134 X^{-0.2979}$
III	Liquid/Gaseous	$Y = 7.7966 X^{-0.2291}$
	Solid	$Y = 11.9872 X^{-0.2336}$
IV	Liquid/Gaseous	$Y = 7.3639 X^{-0.1347}$
	Solid	$Y = 10.8875 X^{-0.1338}$
IVA	Liquid/Gaseous	$Y = 7.3639 X^{-0.1347}$
	Solid	$Y = 10.8875 X^{-0.1338}$
V	Liquid/Gaseous	$Y = 8.0189 X^{-0.1260}$
	Solid	$Y = 12.0284 X^{-0.1260}$
VA	Liquid/Gaseous	$Y = 8.0189 X^{-0.1260}$
	Solid	$Y = 12.0284 X^{-0.1260}$

New material on this Appendix only is shown as underlined.

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

405 KAR 30:010. Definitions.

RELATES TO: KRS 350.600
PURSUANT TO: KRS 13.082, 151.125, 224.033, 350.028, 350.050, 350.600
NECESSITY AND FUNCTION: KRS 350.600 requires the [Department for] Natural Resources and Environmental Protection *Cabinet* to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation provides for the defining of certain essential terms used in Title 405, Chapter 30.

Section 1. Definitions. Unless otherwise specifically defined or otherwise clearly indicated by their context, terms in Title 405, Chapter 30 shall have the meanings given in this regulation.

(1) "Acid drainage" means water with a pH of less than 6.0 and in which total acidity exceeds total alkalinity, discharged from active, inactive or abandoned oil shale mines, waste disposal areas, and reclamation operations or from other affected areas.

(2) "Acid-forming materials" means earth materials that have a pH of less than 4.5 or that contain sulfide minerals or other materials which, if exposed to air, water, weathering, or microbiological processes, form acids that may create acid drainage.

(3) "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface or ground water, fish and wildlife, vegetation soils, or other resources protected by KRS Chapter 350 may be adversely impacted by an oil shale operation.

(4) "Affected area" means any land or water upon which surface oil shale operations are conducted or located, and the land or water which is located above or within underground mine workings.

(5) "Agricultural use" means the use of any tract of land for the production of animal or vegetable life. The uses include, but are not limited to, the pasturing, grazing, and watering of livestock, and the cropping, cultivation, and harvesting of plants.

(6) "Applicant" means any person seeking a permit from the *cabinet* [department] to conduct oil shale operations pursuant to KRS Chapter 350 and all applicable regulations.

(7) "Application" means the documents and other information filed with the *cabinet* [department] for a permit.

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

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

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

(11) "Best technology currently available" means equipment, devices, systems, methods, or techniques which will prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area, but in no event will result in contributions of suspended solids in excess of requirements set by applicable Kentucky or federal laws; and minimize, to the extent possible, disturbances and adverse impact on fish, wildlife, and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the *cabinet* [department], even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with applicable laws and regulations. The *cabinet* [department] shall have the discretion to determine the best technology currently available on a case-by-case basis, as authorized by KRS Chapter 350 and Chapter 224 and regulations promulgated pursuant thereto.

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

(13) "Cabinet" means the Natural Resources and Environmental Protection Cabinet.

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

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

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

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

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

(19) [(18)] "Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops. Land used for facilities in support of cropland farming operations which is adjacent to or an integral part of these operations is also included for purposes of land use categories.

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

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

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

(22) "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spent shale, and mining or processing waste is placed during oil shale operations. Those areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by Title 405, Chapter 30 is released.

(23) "Diversion" means a channel, embankment, or

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

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

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

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

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

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

(29) "Forest land" means land used or managed for the long-term production of wood, wood fiber, or wood derived products. Land used for facilities in support of forest harvest and management operations which is adjacent to or an integral part of these operations is also included.

(30) "Fragile lands" means geographic areas containing significant natural, ecologic, scientific or aesthetic resources that could be damaged or destroyed by oil shale operations. These lands may include, but are not limited to, uncommon geologic features, National Natural Landmark sites, valuable habitats for fish and wildlife, critical habitats for endangered or threatened species of animals and plants, wetlands, environmental corridors containing concentrations of ecologic and aesthetic features, state-designated nature preserves and wild rivers, areas of recreational value due to high environmental quality, buffer zones around areas where oil shale operations are prohibited, and important, unique or highly productive soils or mineral resources.

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

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

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

(34) "Grazing land" means grassland and forest lands where the indigenous vegetation is actively managed for grazing, browsing, or occasional hay production. Land used for facilities in support of grazing operations which are adjacent to or an integral part of these operations is also included.

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

(36) "Head-of-hollow fill" means a fill structure consisting of any material, other than organic material, placed in the uppermost reaches of a hollow near the approximate elevation of the ridgeline, where there is no significant natural drainage area above the fill, and where the side slopes of the existing hollow measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than ten (10) degrees.

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

(38) "Historic lands" means historic or cultural districts, places, structures or objects, including but not limited to sites listed on a State or National Register of Historic Places, National Historic Landmarks, archaeological and paleontological sites, cultural or religious districts, places, or objects.

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

(40) "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirements of KRS Chapter 350 and applicable regulations in an oil shale operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

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

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

(43) "Industrial/commercial lands" means lands used for:

(a) Extraction or transformation of materials for fabrication of products, wholesaling of products or for long-term storage of products; and heavy and light manufacturing facilities such as lumber and wood processing, chemical manufacturing, petroleum refining, and fabricated metal products manufacture. Land used for facilities in support of these operations which is adjacent to or an integral part of that operation is also included. Support facilities include, but are not limited to railroads, roads, and other transportation facilities.

(b) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments. Land used for facilities in support of commercial operations which is adjacent to or an integral part of these operations is also included. Support facilities include, but are not limited to, parking, storage or shipping facilities.

(44) "In situ processes" means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of oil shale. The term includes, but is

not limited to, in situ gasification, in situ leaching, solution mining, borehole mining, and fluid recovery mining.

(45) "Intermittent stream" means:

(a) A stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year, or;

(b) A stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and ground water discharge.

(46) "Land use" means specific uses or management-related activities rather than the vegetation or cover of the land, and may be identified in combination when joint or seasonal uses occur.

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

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

(49) "Logging" means the measurement of physical properties of the strata penetrated by a borehole; accomplished by lowering instruments down the hole and recording measurements at the surface.

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

(51) "Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing micro-climatic conditions suitable for germination and growth.

(52) "Natural hazard lands" means geographic areas in which natural conditions exist that pose or, as a result of oil shale operations, may pose a threat to the health, safety, or welfare of people, property or the environment, including but not limited to, areas subject to landslides, caveins, subsidence, substantial erosion, unstable geology, or frequent flooding.

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

(54) "Occupied dwelling" means any building that is being used on a regular or temporary basis for human habitation at the time of application for permit.

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

(56) "Oil shale exploration" means the field gathering of surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality, quantity, and composition of overburden and oil shale of an area.

(57) "Operations" means oil shale extraction experimentation, exploration, processing, waste disposal and reclamation activities, all of the premises, facilities, roads and equipment used in the mining and processing of oil shale from a designated area, or removing overburden for the purpose of determining the location, quality or quantity of a natural oil shale deposit or the activity to facilitate or accomplish the extraction or removal of oil shale.

(58) "Operator" means any person, partnership, or corporation engaged in oil shale extraction, exploration, processing, waste disposal, reclamation or related operations which includes but is not limited to those who remove or intend to remove oil shale or shale oil from the earth, or who remove overburden for the purpose of determining the location, quality or quantity of a natural oil shale deposit, or those who engage in oil shale processing. Government-financed construction activities in which oil shale is incidentally extracted are excluded from this definition.

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

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

(61) "Pastureland/hayland" means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed. Land used for facilities in support of pastureland or land occasionally cut for hay which is adjacent to or an integral part of these operations is also included.

(62) "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of ground-water discharge or surface runoff. The term does not include intermittent stream or ephemeral stream.

(63) "Permanent diversion" means a diversion remaining after oil shale mining, processing, waste disposal, reclamation or related operations are completed which has been approved for retention by the *cabinet* [department] and other appropriate Kentucky and federal agencies.

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

(65) "Permit area" means the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas which are or will be affected by any oil shale operations under a particular permit.

(66) "Permittee" means any person, partnership, or corporation engaged in oil shale extraction, exploration, processing, waste disposal, reclamation or related operations which includes, but is not limited to, those who remove or intend to remove oil shale or shale oil from the earth, or who remove overburden for the purpose of determining the location, quality or quantity of a natural oil shale deposit or those who engage in oil shale processing. In all cases a permittee shall be considered an operator.

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

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

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

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

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

(72) "Public office" means a facility under the direction and control of a governmental entity which is open to public access on a regular basis during reasonable business hours.

(73) "Public park" means an area dedicated or designated by any federal, state, or local agency for public recreational use, despite whether such use is limited to certain times or days. It includes any land leased, reserved or

held open to the public because of that use.

(74) "Public road" means any publicly owned thoroughfare for the passage of vehicles.

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

(76) "Reclamation" means the reconditioning and restoration of areas affected by any oil shale operation as required by KRS Chapter 350, Chapter 224 and all regulations promulgated pursuant thereto under a plan approved by the *cabinet* [department].

(77) "Recreation land" means land used for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, hunting, and other undeveloped recreational uses.

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

(79) "Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity and plant species diversity that are produced naturally or by crop production methods approved by the *cabinet* [department]. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.

(80) "Renewable resource lands" means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazing lands.

(81) "Residential land" means tracts used for single and multiple-family housing, mobile home parks, and other residential lodgings. Also included is land used for support facilities which is adjacent to or an integral part of these operations such as vehicle parking, open space, and other facilities which directly relate to the residential use of the land.

(82) "Safety factor" means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

(83) "Sedimentation pond" means a primary sediment control area designed, constructed and maintained in accordance with 405 KAR 30:330 and including but not limited to a barrier, dam, excavation or diversion which slows down water runoff to allow suspended solids to settle out. A sedimentation pond shall not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts and other measures that reduce runoff volume or trap sediment to the extent that such secondary sedimentation structures drain to a sedimentation pond.

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

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

(86) "Significant, imminent environmental harm" is an adverse impact on land, air, or water resources which include, but are not limited to, plant and animal life as further defined in this subsection.

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

1. Is causing such harm; or

2. May reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set by the *cabinet's* [department's] authorized agents pursuant to the provisions of KRS Chapter 350.

(b) An environmental harm is significant if that harm is appreciable and not immediately reparable.

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

(88) "Slope" means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g. 1v:5h). It may also be expressed as a percent or in degrees.

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

(a) "A horizon." The uppermost soil layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

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

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

(90) "Soil survey" means a field and other investigation resulting in a map showing the geographic distribution of different kinds of soil and an accompanying report that describes, classifies, and interprets such soils for use. Soil surveys must meet the standards of the National Cooperative Soil Survey.

(91) "Spent shale" means the solid waste material after oil shale has been subjected to a process (chemical, mechanical, or thermal) to recover the oil and gas contained in the raw material.

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

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

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

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

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

(97) "Temporary diversion" means a diversion of a stream or overland flow which is used during oil shale operations and not approved by the *cabinet* [department] to remain after reclamation as part of the approved postmining land use.

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

amendments, or equivalent regional or rainfall probability information developed therefrom.

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

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

(101) [(100)] "Toxic mine drainage" means water that is discharged from active or abandoned mines or other areas affected by oil shale operations, which contains a substance that through chemical or microbiological action, or physical effects is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

(102) [(101)] "Undeveloped land" means land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

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

(104) [(103)] "Waste" means:

(a) "Mining waste" means those wastes which are generated during and incident to the mining and extraction of oil shale and related overburden from the earth. Such wastes shall include, but not be limited to, woody vegetation, spoil, lean shale, grease, lubricants, paints, flammable liquids, garbage, abandoned machinery, and lumber resultant to the mining operation.

(b) "Processing wastes" means any solid, liquid, semisolid, slurry or sludge material (excluding spent shale) produced by any physical, chemical, mechanical, or thermal process which is considered of low economic value. Such wastes shall include but not be limited to raw shale fines, scrubber sludges, tank bottoms, filter cakes, and spent catalysts.

(c) "Spent shale" means the solid waste material left after oil shale has been subjected to processing (chemical, mechanical, or thermal) to remove the oil and gas contained in the raw material.

(105) [(104)] "Water table" means the upper surface of a zone of saturation, where the body of groundwater is not confined by an overlying impermeable zone.

JACKIE A. SWIGART, Secretary

ADOPTED: January 14, 1983

RECEIVED BY LRC: January 14, 1983 at 4:30 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Steven D. Taylor, Environmental Engineer Chief, Division of Reclamation Services, Department for Surface Mining Reclamation and Enforcement, Natural Resources and Environmental Protection Cabinet, 3rd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

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

405 KAR 30:020. General provisions.

RELATES TO: KRS 151.250, 350.600

PURSUANT TO: KRS 13.082, 151.125, 224.033, 350.028, 350.050, 350.600

NECESSITY AND FUNCTION: KRS 350.600 requires the [Department for] Natural Resources and Environmental Protection *Cabinet* to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation set forth general provisions which apply in this chapter with regard to applicability, conflicting provisions, severability, obligations of permittees, technology assessment, reporting requirements, and hearings.

Section 1. Applicability. The regulations in Chapter 30 of Title 405 shall apply to any oil shale operation conducted on or after the effective date of these regulations on land containing oil shale deposits and any other lands used, disturbed, or redisturbed in connection with or to facilitate such operations or to comply with the requirements of KRS Chapter 350 and the requirements of this chapter except:

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

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

(a) A description of the construction project;

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

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

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

Section 3. Severability. In the event that any provision or regulation in Chapter 30 of Title 405 is found to be invalid, the remaining provisions of this chapter shall not be affected nor diminished thereby.

Section 4. Obligations of Persons Engaged in Oil Shale Operations. (1) General obligations:

(a) No person shall engage in an oil shale operation or related activity without having obtained from the *cabinet* [department] a valid permit covering the area of land to be affected.

(b) A person engaged in any oil shale operation shall not throw, pile, dump or permit the throwing, piling, dumping or otherwise placing of any overburden, stones, rocks, shale, earth, soil, dirt, debris, trees, wood, logs, or any

other materials or substances of any kind or nature beyond or outside of the area of land which is under permit and for which bond has been posted pursuant to Chapter 30 of Title 405, or place such materials herein described in such a way that normal erosion or slides brought about by natural physical changes will permit such materials to go beyond or outside of the area of land which is under permit and for which bond has been posted pursuant to this chapter.

(c) A person engaged in an oil shale operation shall not engage in any activities which result in a condition or constitute a practice that creates an imminent danger to the health or safety of the public.

(d) A person engaged in an oil shale operation shall not engage in any operations which result in a condition or constitute a practice that causes or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(e) Upon development of any emergency conditions which threaten the life, health, or property of the public, a person engaged in an oil shale operation shall immediately notify the person or persons whose life, health, or property are so threatened, shall take any and all reasonable actions to eliminate the condition creating the emergency, and shall immediately provide notice of the emergency conditions to the *cabinet* [department], to local law enforcement officials, and to local government officials. Any emergency action taken by a person engaged in an oil shale operation pursuant to this paragraph shall not relieve that person of other obligations under this chapter or of obligations under other applicable local, state, or federal laws and regulations.

(f) Compliance with the requirements of this chapter does not relieve any person engaged in an oil shale operation from compliance with other applicable regulations of the *cabinet* [department].

(2) Sedimentation structures:

(a) The responsible design engineer shall determine the structure hazard classification of all sedimentation structures whether new or proposed reconstructed structures according to the classification descriptions in paragraph (b). For structures classified (B)—moderate hazard or (C)—high hazard, the person engaged in an oil shale operation shall obtain a permit from the *cabinet* [department], Division of Water, pursuant to KRS 151.250, and regulations adopted pursuant thereto, prior to construction or reconstruction.

(b) Structure hazard classifications are as follows:

1. The following broad classes of structures are established to permit the association of criteria with the damage that might result from a sudden major breach of the structure:

a. Class (A); low hazard: Structures located such that failure would cause loss of the structure itself but little or no additional damage to other property. Such structures will generally be located in rural or agricultural areas where failure may damage farm buildings other than residences, agricultural lands, or county roads.

b. Class (B); moderate hazard: Structures located such that failure may cause significant damage to property and project operation, but loss of human life is not envisioned. Such structures will generally be located in predominantly rural agricultural areas where failures may damage isolated homes, main highways or major railroads, or cause interruption of use or service of relatively important public utilities.

c. Class (C); high hazard: Structures located such that failure may cause loss of life, or serious damage to homes, industrial or commercial buildings, important public utilities, main highways or major railroads. This classification must be used if failure would cause probable loss of human life.

2. The responsible engineer shall determine the classification of the structure after considering the characteristics at the valley below the site and probable future development. Establishment of minimum criteria does not preclude provisions for greater safety when deemed necessary in the judgment of the engineer. Considerations other than those mentioned in the above classifications may require that the established minimum criteria may be exceeded as determined by the *cabinet* [department]. A statement of the classification established by the responsible engineer shall be clearly shown on the first sheet of the drawings.

3. When structures are spaced so that the failure of an upper structure could endanger the safety of a lower structure, the possibility of a multiple failure must be considered in assigning the structure classification of the upstream structure.

Section 5. Reports. A person engaged in an oil shale operation shall submit such data, reports, documentation, certifications, or other information as the *cabinet* [department] may require, or as may be required by KRS Chapter 350 and regulations adopted pursuant thereto. The *cabinet* [department] may impose any monitoring or data collection requirements upon the permittee as are deemed necessary for the *cabinet* [department] to adequately assess the possible adverse environmental impacts of such activities. Such information shall be submitted at intervals and in a format specified by the *cabinet* [department].

Section 6. Extraction and Processing Operations. (1) Any person engaged in an oil shale operation shall demonstrate to the cabinet utilizing necessary technical, scientific, and engineering data the impacts their operation will have on the environment. Such data used in the justification shall have been generated on eastern shales having comparable characteristics to the shales in the location of the proposed project area.

(2) In the event the applicant cannot demonstrate to the cabinet's satisfaction the extent and magnitude of possible adverse environmental impacts of the facility and reasonable control of these impacts, its size shall be limited to a total surface disturbance of 100 acres per year. Total surface disturbance shall include, but not be limited to, areas upon which mining activities occur or where such activities disturb the natural land surface, lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site and for haulage, lands accommodating conveyor systems, and excavations, workings, impoundments, dams, ventilation shafts, entry ways, spent shale banks, spent shale disposal sites, dumps, stockpiles, overburden piles, spoil piles, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities.

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

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

(2) Hearings shall be conducted pursuant to KRS

224.083 and appeals may be taken from any final order of the *cabinet* [department]as allowed by KRS 224.085.

JACKIE A. SWIGART, Secretary
ADOPTED: January 14, 1983
RECEIVED BY LRC: January 14, 1983 at 4:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Steven D. Taylor, Environmental Engineer Chief, Division of Reclamation Services, Department for Surface Mining Reclamation and Enforcement, Natural Resources and Environmental Protection Cabinet, 3rd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

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

405 KAR 30:025. Experimental practices.

RELATES TO: KRS 350.600
PURSUANT TO: KRS 13.082, 224.033, 350.028, 350.050, 350.600
NECESSITY AND FUNCTION: KRS 350.600 requires the [Department for] Natural Resources and Environmental Protection *Cabinet* to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation governs the permitting of experimental practices that [propose a hypothetical problem which can be proven true or false by the experimental practice; and] will yield useful information to the *cabinet* [department] about agricultural, environmental, technological and postmining land use problems relating to oil shale operations.

Section 1. General. (1) Applicability. This regulation shall apply to any person who conducts or intends to conduct oil shale operations under a permit authorizing the use of alternative mining practices on an experimental basis if the practices require a variance from the environmental protection performance standards of Title 405, Chapter 30, and such variance is not otherwise obtainable under Title 405, Chapter 30.

(2) This regulation sets forth requirements for the permitting of oil shale operations that encourage advances in mining and reclamation practices or allow postmining land use for industrial, commercial, residential, or public use (including recreational facilities) on an experimental basis.

(3) Experimental practices need not comply with specific environmental protection performance standards of Title 405, Chapter 30, if approved pursuant to this regulation.

Section 2. Approval Procedures. (1) Approval required. No person shall engage in or maintain any experimental practice, unless that practice is first approved in a permit by the *cabinet* [department].

(2) Application requirements. Each person who desires to conduct an experimental practice shall submit a permit application for the approval of the *cabinet* [department]. The permit application shall contain appropriate descriptions, maps, and plans which show:

(a) The nature of the experimental practice;

(b) How use of the experimental practice:

1. Encourages advances in mining and reclamation technology; or

2. Allows a postmining land use for industrial, commercial, residential, and public use (including recreational facilities), on an experimental basis, when the results are not otherwise attainable under the regulations of Title 405, Chapter 30.

(c) That the oil shale operations proposed for using an experimental practice are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practice;

(d) That the experimental practice:

1. Is potentially more or at least as environmentally protective, during and after the proposed oil shale operations, as those required under Title 405, Chapter 30; and

2. Will not reduce the protection afforded public health and safety below that provided by the requirements of Title 405, Chapter 30.

(e) That the applicant will conduct special monitoring with respect to the experimental practice during and after the operations involved. The monitoring program shall:

1. Insure the collection and analysis of sufficient and reliable data to enable the *cabinet* [department] to make adequate comparisons with other oil shale operations employing similar experimental practices; and

2. Include requirements designed to identify, as soon as possible, potential risks to the environmental and public health and safety from the use of the experimental practice.

(f) Each application shall set forth the environmental protection performance standards of Title 405, Chapter 30 which will be implemented in the event the objective of the experimental practice is a failure.

(3) Public notice. All experimental practices for which variances are sought shall be specifically identified through newspaper advertisements by the applicant and the written notifications by the *cabinet* [department] required under 405 KAR 30:130, Section 5.

(4) Criteria for approval. No permit authorizing an experimental practice shall be issued unless the *cabinet* [department] finds in writing upon the basis of both a complete application filed in accordance with the requirements of this regulation and Title 405, Chapter 30, that:

(a) The experimental practice meets all of the requirements of subsection (2)(b) through (e);

(b) The experimental practice is based on a clearly defined set of objectives which can reasonably be expected to be achieved; and

(c) The permit contains conditions which specifically:

1. Limit the experimental practice authorized to that granted by the *cabinet* [department];

2. Impose enforceable alternative environmental protection requirements; and

3. Require the person to conduct the periodic monitoring, recording and reporting program set forth in the application with such additional requirements as the *cabinet* [department] may require.

Section 3. Periodic Review. (1) Each permit which authorizes the use of an experimental practice shall be reviewed in its entirety at least every three (3) years by the *cabinet* [department] or at least once prior to the middle of the permit term. After review the *cabinet* [department] shall require by order, supported by written findings, any reasonable revision or modification of the permit provi-

sions necessary to ensure that the operations involved are conducted to protect fully the environment and public health and safety.

(2) Administrative review of modification order. Any person who is or may be adversely affected by an order pursuant to subsection (1) shall be provided with an opportunity for a hearing as established in 405 KAR 30:020.

JACKIE A. SWIGART, Secretary
ADOPTED: January 14, 1983
RECEIVED BY LRC: January 14, 1983 at 4:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Steven D. Taylor, Environmental Engineer Chief, Division of Reclamation Services, Department for Surface Mining Reclamation and Enforcement, Natural Resources and Environmental Protection Cabinet, 3rd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

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

405 KAR 30:070. Procedures, criteria and schedule for release of performance bond.

RELATES TO: KRS 350.600
PURSUANT TO: KRS 13.082, 151.125, 224.003, 350.028, 350.050, 350.600
NECESSITY AND FUNCTION: KRS 350.600 requires the [Department for] Natural Resources and Environmental Protection *Cabinet* to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation sets forth the procedures, criteria, and schedule for release of performance bonds.

Section 1. Procedures for Seeking Release of Performance Bond. (1) The permittee, or any person authorized in writing to act on his behalf, may file an application on a form provided by the *cabinet* [department] for a release of all or part of the performance bond liability applicable to a particular permit after all reclamation, restoration and abatement work in a particular reclamation phase, as defined by these oil shale regulation, has been completed on the entire permit area.

(a) Bond release applications will be considered at times or seasons that allow the *cabinet* [department] to evaluate properly the reclamation operations alleged to have been completed.

(b) The application for bond release shall include copies of notices sent to the surface owners and adjoining property owners, notifying them of the permittee's intention to seek release of performance bonds. These notices shall be sent to the persons listed above before the permittee files the application for release with the *cabinet* [department].

(c) Within thirty (30) days after filing the application for release the permittee shall submit proof of publication of the advertisement required by subsection (2) of this section. Such proof of publication shall be considered part of the bond release application.

(2) At the time of filing an application under this section for a bond release, the permittee shall advertise pursuant to KRS 424.110 through 424.130. The advertisement shall:

(a) List the name of the permittee, including the number and date of issuance and/or renewal of the permit;

(b) Describe the precise location and the number of acres of the lands subject to the application;

(c) List the total amount of bond in effect for the permit area, the type of release sought, and the amount for which release is sought;

(d) Be filed with the *cabinet* [department] and made a part of the complete permit application; and

(e) State that written comments, objections, and requests for a hearing pursuant to these oil shale regulations must be submitted within thirty (30) days of the last publication date, provide the appropriate address of the *cabinet* [department], and the closing date by which comments, objections, and requests must be received.

(3) Written objections to the proposed bond release and requests for a hearing may be filed with the *cabinet* [department] by any person having an interest which is or may be adversely affected by the proposed bond release. Such written objection must be filed within thirty (30) days of the date of the last advertisement of the filing for the bond release application.

(4) The *cabinet* [department] shall inspect and evaluate the reclamation work allegedly performed by the permittee. Such inspection shall be completed within thirty (30) days after receiving a proper application for bond release, or as soon thereafter as weather conditions permit; provided however, that the bond release application is filed during a time or season that allows the *cabinet* [department] to properly evaluate the reclamation operations.

(5) (a) If a hearing is held it shall be pursuant to KRS 224.083.

(b) The notice of the decision by the *cabinet* [department] shall state the reasons for the decision, recommend any corrective actions necessary to secure the release, and notify the permittee and all interested parties of their right to seek administrative or judicial review of the decision.

(6) Procedures for bond credit in cumulative bonding.

(a) Application. The permittee or any person authorized to act on his or her behalf may file an application with the *cabinet* [department] to receive bond credit for completion of all reclamation, restorations, and abatement work in a reclamation phase on a sectional area approved under 405 KAR *30:035* [30:030], Section 4, for cumulative bonding. Bond credit applications may only be filed at times or seasons that allow the *cabinet* [department] to evaluate properly the reclamation operations alleged to have been completed. The application shall be of such form and content as the *cabinet* [department] may require and shall include, but not be limited to:

1. The name of the permittee, the permit number, and the date of issuance or renewal of the permit;

2. The location, identification, and acreage of the section(s) for which credit is sought and the section(s) to which the credit is requested to be applied;

3. The total bond amount in effect for the entire permit area and the bond amounts originally calculated for the section(s) identified under subparagraph 2 of this paragraph, and any credits previously given for such section(s); and

4. A description of the reclamation, restoration, and abatement work completed on the section(s) for which credit is sought.

(b) Inspection and evaluation. The *cabinet* [department]

shall inspect and evaluate the reclamation work on the section(s) involved within thirty (30) days after receiving a completed application for bond credit, or as soon thereafter as weather conditions permit.

(c) Notice of decision. The *cabinet* [department] shall, within thirty (30) days after its inspection and evaluation, notify the permittee of its decision to grant or deny the requested bond credit. The notice of the decision shall state the reasons for the decision, recommend any corrective actions necessary to secure the bond credit, and notify the permittee of his or her right to request within thirty (30) days of notice a public hearing.

(d) Hearing. In the event that a public hearing has been requested pursuant to paragraph (c) of this subsection, the *cabinet* [department] shall inform the permittee of the time, date, and place of the hearing and publish notice of the hearing in the newspaper of largest bona fide circulation according to the definition in KRS 424.110 to 424.120 in the county in which the permit area is located once a week for two (2) consecutive weeks before the hearing. The hearing shall be held pursuant to 405 KAR 30:020, Section *8* [7], within sixty (60) days of the *cabinet's* [department's] decision, in the locality of the permit area, or the central office of the *cabinet* [department] in Frankfort, Kentucky, at the option of the permittee.

Section 2. Criteria and Schedule for Release of Performance Bond. (1) There shall be no release of performance bonds until the permittee has met the requirements of the applicable reclamation phases as defined in subsection (4) of this section. The *cabinet* [department] may release portions of the liability under performance bonds applicable to a permit or increment following completion of reclamation phases on the entire permit area or sections designated in the permit plan.

(2) There shall be three (3) phases of reclamation and release of performance bonds shall be calculated under the following percentages:

(a) Sixty percent (60%) of the bond shall be released if reclamation phase one (1) is completed on the acreage; and

(b) An additional twenty-five percent (25%) of the bond amount shall be released if reclamation phase two (2) is completed on the acreage; and

(c) The remaining fifteen percent (15%) of the bond amount shall be released if reclamation phase three (3) is completed on the acreage.

(3) The *cabinet* [department] shall not release any liability under performance bonds applicable to a permit if such release would reduce the total remaining liability under performance bonds to an amount less than that necessary for the *cabinet* [department] to complete the approved reclamation plan, achieve compliance with the requirements of all applicable statutes and regulations, and abate any significant environmental harm to air, water or land resources or danger to the public health and safety which might occur prior to the release of all performance bond liability for the permit area. Where the permit includes an alternative postmining land use plan approved by the *cabinet* [department], the *cabinet* [department] shall retain a sufficient amount of bond in order for the *cabinet* [department] to complete any additional work which would be required to achieve compliance with the general standards for revegetation set forth in these oil shale regulations in the event the permittee fails to implement the approved alternative postmining land use plan within the period of time required by these oil shale regulations.

(4) For the purposes of this section:

(a) Reclamation phase one (1) shall be deemed to have been completed when the permittee completes backfilling, regrading, topsoil replacement, drainage control including soil preparation, seeding, planting and mulching in accordance with the approved reclamation plan, and a planting report for the area has been submitted to the *cabinet* [department]; and

(b) Reclamation phase two (2) shall be deemed to have been completed when:

1. Revegetation has been established in accordance with the approved reclamation plan and the standards for the success of revegetation are met;

2. All water quality performance standards and parameters are met, drainage control is satisfactory to the *cabinet* [department], the affected area is not contributing suspended solids to stream flow, runoff outside the permit area is not in excess of the requirements of applicable laws and regulations, and excess suspended solids are not contributed to stream flow or runoff outside the permit area.

3. With respect to prime farmlands, soil productivity has been restored as required by these oil shale regulations and the plan approved pursuant to the permit; and

4. The provisions of a plan approved by the *cabinet* [department] for the sound future management of any permanent impoundment by the permittee or landowner have been implemented to the satisfaction of the *cabinet* [department].

(c) Reclamation phase three (3) will be deemed to have been completed when the permittee has successfully completed all oil shale operations in accordance with the approved reclamation plan, such that the land is capable of supporting the postmining land use approved by the *cabinet* [department], and the permittee has achieved compliance with the requirements of these oil shale regulations and the applicable liability period.

JACKIE A. SWIGART, Secretary
ADOPTED: January 14, 1983
RECEIVED BY LRC: January 14, 1983 at 4:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Steven D. Taylor, Environmental Engineer Chief, Division of Reclamation Services, Department for Surface Mining Reclamation and Enforcement, Natural Resources and Environmental Protection Cabinet, 3rd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

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

405 KAR 30.121. Oil shale exploration.

RELATES TO: KRS 61.870 through 61.884, 350.600
PURSUANT TO: KRS 13.082, 151.125, 224.033, 224.035, 350.028, 350.050, 350.600
NECESSITY AND FUNCTION: KRS 350.600 requires the [Department for] Natural Resources and Environmental Protection *Cabinet* to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation sets forth requirements for conducting oil shale exploration.

Section 1. Exploration of Less Than 250 Tons. (1) Any person who intends to conduct oil shale exploration during which less than 250 tons of oil shale will be removed in the area to be explored shall, at least twenty-one (21) days prior to conducting the exploration, file with the *cabinet* [department] a written notice of intention to explore.

(2) The notice shall include:

(a) The name, address, and telephone number of the person seeking to explore;

(b) The name, address, and telephone number of the representative who will be present at and responsible for conducting the exploration activities;

(c) A precise description of the exploration area;

(d) A statement of the period of intended exploration;

(e) The names and addresses of the owner of record of the surface land and of the subsurface mineral estate of the area to be explored; *and*

(f) A description of the practices proposed to be followed to protect the environment from adverse impacts as a result of the exploration activities. [; and]

[(g) A statement as to whether the proposed oil shale exploration will be conducted within an area which has been designated unsuitable for mining pursuant to 405 KAR 30:200.]

(3) The *cabinet* [department] shall, in accordance with Section 3, place such notices on public file and make them available for public inspection and copying at the appropriate regional office of the *department* [bureau].

(4) Any person who conducts oil shale exploration activities pursuant to this section which substantially disturb any natural land surface shall comply with 405 KAR 30:125.

[(5) If the department determines that the area of proposed oil shale exploration will be within an area designated unsuitable for mining pursuant to 405 KAR 30:200, the exploration shall be subject to approval by the department. The department shall, within fifteen (15) days of receipt of the applicant's written notice filed pursuant to subsection (1) of this section, provide written notice to the applicant that either:]

[(a) The exploration is approved; or]

[(b) The exploration threatens to interfere with the values for which the area has been designated unsuitable for mining, and therefore is not approved until the applicant has submitted to the department an acceptable plan to conduct the exploration so as not to interfere with such values; or]

[(c) The exploration is incompatible with the values for which the area was designated unsuitable for mining, and therefore is not approved.]

[(6) Any person whose interests are or may be adversely affected by any actions of the department pursuant to subsection (5) of this section shall have recourse to administrative and judicial review.]

Section 2. Exploration of More Than 250 Tons. (1) General. Any person who intends to conduct oil shale exploration in which more than 250 tons of oil shale are removed in the area to be explored, shall, prior to conducting the exploration, obtain the written approval of the *cabinet* [department] in accordance with this section.

(2) Contents of application for approval. Each application for approval in the number and form required by the *cabinet* [department], shall contain, at a minimum, the following information:

(a) The name, address, and telephone number of the applicant;

(b) The name, address, and telephone number of the representative of the applicant who will be present at and be responsible for conducting the exploration;

(c) An exploration and reclamation operations plan, including:

1. A narrative description of the proposed exploration area, cross-referenced to the map required under paragraph (e) of this subsection, including surface topography; geological, surface water, and other physical features; vegetative cover; the distribution and important habitats of fish, wildlife, and plants, including, but not limited to, any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.); districts, sites, buildings, structures or objects listed on or eligible for listing on the National Register of Historic Places; and known archeological resources located within the proposed exploration area;

2. A narrative description of the methods to be used to conduct oil shale exploration and reclamation, including, but not limited to, the types and uses of equipment, drilling, blasting, road or other access route construction, and excavated earth and other debris disposal activities;

3. An estimated timetable for conducting and completeing each phase of the exploration and reclamation;

4. The estimated amounts of oil shale to be removed and a description of the methods to be used to determine those amounts;

5. A description of the measures to be used to comply with the applicable requirements of 405 KAR 30:125;

[6. A statement as to whether the proposed oil shale exploration will be conducted within the area which has been designated unsuitable for mining pursuant to 405 KAR 30:200. If so, the application shall include a description of the measures to be taken so as not to interfere with the values for which the area was designated unsuitable.]

(d) The name and address of the owner of record of the surface land and of the subsurface mineral estate of the area to be explored;

(e) 1. A USGS 7½-minute topographic map marked showing the area of land to be affected and location of drill holes or excavations, and

2. A map at a scale of 1:6000 (one (1) inch equals 500 feet) or larger, showing the areas of land which may be affected by the proposed exploration and reclamation. The map shall also specifically show existing roads, occupied dwellings, and pipelines; proposed location of trenches, roads, and other access routes and structures to be constructed; the location of land excavations to be conducted; water or oil shale exploratory holes and wells to be drilled or altered; earth or debris disposal areas; existing bodies of surface water; historic, cultural, topographic, and drainage features; and habitats of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 USC sec. 1531 et seq.); and

(f) If the surface is owned by a person other than the applicant, a description of the basis upon which the applicant claims the right to enter that land for the purpose of conducting exploration and reclamation.

(3) Public notice and opportunity to comment. Public notice of the complete application and opportunity to comment shall be provided as follows:

(a) As contemporaneously as possible with receipt of written notification from the *cabinet* [department] under subsection (4)(a) of this section that the application is determined to be complete, public notice of the filing of the complete application with the *cabinet* [department] shall be published by the applicant in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county in which the ex-

ploration area is located.

(b) The public notice shall state the name and business address of the person seeking approval, the date of the filing of the complete application, the address of the *cabinet* [department] at which written comments on the application may be submitted, the closing date of the public comment period under paragraph (c) of this subsection, and a description of the general area of exploration.

(c) Any person with an interest which is or may be adversely affected shall have the right to file with the *cabinet* [department] written comments on the complete application within thirty (30) days of the publication of the public notice under paragraph (a) of this subsection.

(4) Processing of applications.

(a) Within twenty-one (21) days of receipt of an application for approval of oil shale exploration, the *cabinet* [department] shall provide written notification to the applicant as to the completeness of the application. The date of such written notification shall be deemed the date of filing of the complete application. A determination by the *cabinet* [department] that the application is complete shall not be construed to mean that the application is technically sufficient.

(b) The *cabinet* [department] shall act upon a complete application within sixty (60) days after the filing of the complete application.

(c) The *cabinet* [department] shall approve a complete application filed in accordance with this regulation if it finds in writing that the applicant has demonstrated that the exploration and reclamation described in the application:

1. Will be conducted in accordance with KRS 350.600, 405 KAR 30:125, and this regulation;

2. Will not jeopardize the continued existence of an endangered or threatened species listed pursuant to Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) or result in the destruction or adverse modification of critical habitat of those species;

3. Will not adversely affect any cultural resources or districts, sites, buildings, structures, or objects listed or eligible for listing on the National Register of Historic Places, unless the proposed exploration has been approved by both the *cabinet* [department] and the agency with management responsibility over such areas; and

[4. If located within an area designated unsuitable for mining, will not be incompatible with the values for which the area was designated unsuitable for mining.]

(5) Terms of approval and bond requirement.

(a) Each approval issued by the *cabinet* [department] may contain conditions necessary to ensure that the exploration and reclamation will be conducted in compliance with KRS 350.600, 405 KAR 30:125, and this regulation.

(b) Length of approval. An exploration approval shall be valid for two (2) years. A valid exploration approval shall carry with it the right of successive renewal upon expiration of the term of the approval.

(c) Bond requirement. If an application reveals that there will be a substantial disturbance to the natural land surface, a bond shall be posted in accordance with the requirements of 405 KAR 30:040, Section 1.

(6) Notice and hearing.

(a) The *cabinet* [department] shall notify the applicant and any other party who has requested such notification, in writing, of its decision to approve or disapprove the application. If the application is disapproved, the notice to the applicant shall include a statement of the reason for disapproval.

(b) Any person with interests which are or may be adversely affected by a decision of the *cabinet* [department] pursuant to paragraph (a) of this subsection shall have the opportunity for administrative and judicial review.

Section 3. Public Availability of Information. All information submitted to the *cabinet* [department] under this regulation shall be made available for public inspection and copying pursuant to Kentucky open record statutes KRS 61.870 to 61.884, and 405 KAR 30:150.

Section 4. Compliance. All oil shale exploration and reclamation operations which substantially disturb the natural land surface or which remove more than 250 tons of oil shale shall be conducted in accordance with this regulation and 405 KAR 30:125, and any conditions on approval for exploration and reclamation imposed by the *cabinet* [department].

JACKIE A. SWIGART, Secretary

ADOPTED: January 14, 1983

RECEIVED BY LRC: January 14, 1983 at 4:30 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Steven D. Taylor, Environmental Engineer Chief, Division of Reclamation Services, Department for Surface Mining Reclamation and Enforcement, Natural Resources and Environmental Protection Cabinet, 3rd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

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

405 KAR 30:130. Oil shale operation permits.

RELATES TO: KRS 350.600

PURSUANT TO: KRS 13.082, 146.270, 151.125, 224.033, 350.028, 350.050, 350.600

NECESSITY AND FUNCTION: KRS 350.600 requires the [Department for] Natural Resources and Environmental Protection *Cabinet* to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation sets forth the requirements for obtaining an oil shale mining permit.

Section 1. Applicability. The provisions of this regulation shall apply to permits for all oil shale operations except for oil shale exploration operations.

Section 2. Permit Required. No person shall engage in oil shale operations without first having obtained a permit from the *cabinet* [department].

Section 3. Term of Permits. (1) Each permit shall be issued for a fixed term not to exceed five (5) years. A longer fixed permit term may be granted at the discretion of the cabinet only if:

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

(b) The applicant shows that a specified longer term is

reasonably needed to allow the applicant to obtain necessary financing of the operation, and this need is confirmed, in writing, by the applicant's proposed source for the financing.

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

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

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

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

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

Section *4.* [3.] Preliminary Requirements. A person desiring a permit shall submit to the *cabinet* [department] the necessary preliminary application as prescribed by the *cabinet* [department]. The preliminary application shall contain pertinent information including, but not limited to, a U.S. Geological Survey seven and one-half (7½) minute topographic map and a 1:6000 map marked to show the boundaries of the area of land to be affected, and the location of the oil shale deposits to be mined, access roads, haul roads, spoil disposal areas, and sedimentation ponds. Areas so delineated on the map shall be physically marked at the site in a manner prescribed by the *cabinet* [department]. Personnel of the *cabinet* [department] shall conduct, within thirty (30) days after filing, an on-site examination of the area with the person or his representatives after which the person may submit a permit application.

Section *5.* [4.] Publication of Notice of Intention to Mine. (1) An applicant for a permit shall place an advertisement in the newspaper of largest bona fide circulation, according to the definition of KRS 424.110 to 424.120, in the county or counties wherein the proposed oil shale operation is to be located.

(2) The advertisement shall be published at least once each week for four (4) consecutive weeks, with the first advertisement being published not less than ten (10) nor more than thirty (30) days prior to the filing of the permit application with the *cabinet* [department].

(3) The public notice of the intention to file an application shall be entitled "Notice of Intention to Conduct Oil Shale Mining" and shall be in a manner and form prescribed by the *cabinet* [department] and shall include, but not be limited to, the following:

(a) The name and address of the applicant;

(b) The permit application number;

(c) A description which shall:

1. Clearly describe towns, rivers, streams, or other bodies of water, local landmarks, and any other information, including routes, streets, or roads and accurate distance measurements, necessary to allow local residents to readily identify the proposed permit area;

2. Clearly describe the exact location and boundaries of the proposed permit area; and

3. State the name(s) of the U.S. Geological Survey seven and one-half (7½) minute quadrangle map(s) which contains the area shown or described.

(d) A description of the kind of mining activity proposed, together with a statement of the amount of acreage affected by the proposed operation;

(e) The address of the *cabinet* [department] to which interested persons may submit written comments on the application; and

(f) The location where a copy of the application is available for public inspection.

(4) The applicant for a permit required under this regulation shall establish the date and place at which the "Notice of Intention to Conduct Oil Shale Mining" was published by attaching to his application an affidavit from the publishing newspaper certifying the time, place and content of the published notice.

(5) Public inspection of the application. The applicant shall make a full copy of the complete application for a permit available for the public to inspect and copy. This shall be done by filing a copy of the application submitted to the *cabinet* [department] at the courthouse of the county where the mining is proposed to occur.

(6) Any person with an interest which is or may be adversely affected shall have the right to file with the *cabinet* [department] written comments on the application within thirty (30) days of the final notice of the application in the newspaper.

Section *6.* [5.] Contents of the Permit Application. (1) A person desiring a permit shall submit the necessary application as prescribed by the *cabinet* [department]. The application shall be on forms provided by the *cabinet* [department], and originals and copies of the application shall be prepared, assembled and submitted in the number, form and manner prescribed by the *cabinet* [department] with such attachments, plans, maps, certifications, drawings, calculations or other such documentation or relevant information as the *cabinet* [department] may require.

(2) The application shall include the following information:

(a) Each application shall contain the names and addresses of:

1. The permit applicant, including his or her telephone number;

2. Every owner of the surface of the area of land to be affected by the permit;

3. The owners of record of all surface areas contiguous to any part of the proposed permit area;

4. Every owner of the oil shale to be mined;

5. The holders of any leasehold interest in the property to be mined;

6. The contractor or other person, if different from the applicant, who will conduct surface mining activities on behalf of the applicant, including his telephone number; and

7. The resident agent of the applicant who will accept service of process, including his telephone number.

(b) Each application shall contain the following information:

1. A detailed description of the location and area of land to be affected by the operation, specifying the permit boundaries;

2. A description of access to the site from the nearest public highway;

3. The source of the applicant's legal right to mine oil shale on the land affected by the permit;

4. A copy of the applicant's published notice of inten-

tion to mine and an affidavit from the publisher, pursuant to Section 5 of this regulation;

5. The name of the proposed mine and the Mine Safety and Health Administration identification number for the mine and all sections, if applicable;

6. Proof, such as a power of attorney or a resolution of the board of directors, that the individual signing the application has the authority to represent the applicant in the permit matter;

7. Whether or not the applicant, any subsidiary, or affiliate; or any officer, partner, or director, or any individual owning, of record or beneficially, ten (10) percent or more of any class of stock of the applicant, holds or has held any other federal or state oil shale or any surface coal mining permit issued by the *cabinet* [department] and the identification of such permits.

(c) Each application shall contain the following compliance information:

1. A statement of whether the applicant, any subsidiary, or affiliate; or any officer, partner, director, or any individual owning, of record or beneficially, ten (10) percent or more of any class of stock of the applicant, has:

a. Had an oil shale or surface coal mining permit of the United States or any state suspended or revoked; or,

b. Forfeited an oil shale or surface coal mining performance bond or similar security deposited in lieu of bond.

2. If any such suspension, revocation, or forfeiture has occurred, the application shall contain a statement of the facts involved, including:

a. Identification number and date of issuance of the permit, and date and amount of bond or similar security;

b. Identification of the authority that suspended or revoked the permit or forfeited the bond and the stated reasons for that action;

c. The current status of the permit, bond, or similar security involved;

d. The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

e. The current status and results of these proceedings.

3. Each application shall contain a list of each violation notice pertaining to federal oil shale mining laws and the regulations promulgated pursuant thereto, and oil shale mining laws and applicable regulations of any state, received by the applicant in connection with any oil shale mining operation during the three (3) year period before the application date. Each application shall also contain a list of each violation notice pertaining to air or water environmental protection received by the applicant in connection with any oil shale mining operation during the three (3) year period before the application date. The application shall contain a statement of the facts involved, including:

a. The date of issuance and identity of the issuing regulatory authority, *cabinet* [department], or agency;

b. A brief description of the particular violation alleged in the notice;

c. The date, location, and type of any administrative or judicial proceedings initiated concerning the violation; and

d. The current status and results of these proceedings.

(3) Maps. The application shall include one (1) copy of a United State Geological Survey seven and one-half (7½) minute topographic map or other such map acceptable to the *cabinet* [department] on which the operator has indicated the location of the operation, the course which would be taken by drainage from the operation to the stream or streams to which such drainage would normally flow, the name of the applicant and date, and the name of the person who located the operation on the map.

(4) Enlarged maps. The application shall include one (1) copy of an enlarged United States Geological Survey seven and one-half (7½) minute topographic map or other such map enlarged to a scale of 1:6000 or larger acceptable to the *cabinet* [department] and meeting the requirements of paragraphs (a) through (h) of this subsection. The map shall:

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

(b) Show adjacent surface, underground, and in situ mining operations and the boundaries of surface properties and names of owners of the affected area and owners of properties contiguous to any part of the affected area;

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

(d) Show the names and locations of all streams, lakes, creeks, or other bodies of public water, roads, buildings, cemeteries, oil and gas wells, public parks, public property, and utility lines on the area of land affected within 1,000 feet of such area;

(e) Show by appropriate markings the boundaries of the area of land to be affected, the deposit of oil shale to be mined, and the total number of acres involved in the area of land to be affected;

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

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

(5) Prime farmland. If the area to be mined has been designated as prime farmland, the application shall include a plan for the mining and restoration of prime farmland consistent with the requirements of 405 KAR 30:280.

(6) Postmining land use plan. The application shall include a plan for postmining land use which shall demonstrate to the satisfaction of the *cabinet* [department] that the proposed operation will comply with the requirements of 405 KAR 30:220 regarding postmining land use.

(7) Use of explosives plan. The application shall include a plan for use of explosives which shall demonstrate to the satisfaction of the *cabinet* [department] that the proposed operation will comply with the requirements of 405 KAR 30:250 with regard to use of explosives.

(8) Topsoil handling and restoration plan. The application shall include a plan for the handling and restoration of topsoil which shall demonstrate to the satisfaction of the *cabinet* [department] that the proposed operation will comply with the requirements of 405 KAR 30:290 with regard to topsoil handling.

(9) Backfilling and grading plan. The application shall include a plan for backfilling and grading which shall demonstrate to the satisfaction of the *cabinet* [department] that the proposed operation will comply with the requirements of 405 KAR 30:390 with regard to backfilling and grading.

(10) Revegetation Plan. The application shall include a plan for the revegetation of all disturbed areas which shall demonstrate to the satisfaction of the *cabinet* [department] that the proposed operation will comply with the requirements of 405 KAR 30:400 with regard to revegetation.

(11) Spoil *and spent shale* disposal plan. The application shall include a plan for the disposal of spoil *and spent shale* in excess of that required to meet the backfilling and grading requirements of 405 KAR 30:390 *which shall demonstrate to the satisfaction of the cabinet that the proposed operation will comply with the requirements of 405 KAR 30:370 with regard to disposal of spoil and spent shale.*

(12) Plan for handling of waste materials and acid-forming and toxic-forming materials. The application shall include a plan for the handling of acid-forming and toxic-forming materials, waste materials or other unstable materials which shall demonstrate to the satisfaction of the *cabinet* [department] that the operation will comply with the requirements of *405 KAR 30:360, Waste management provisions* [applicable laws and regulations].

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

(a) 405 KAR 30:300 with regard to protection of the hydrologic system;

(b) 405 KAR 30:320 with regard to water quality standards and surface water monitoring;

(c) 405 KAR 30:330 with regard to sediment control measures; and

(d) 405 KAR 30:310 with regard to diversions of surface flows and water withdrawal.

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

(a) 405 KAR 30:300 with regard to protection of the hydrologic system;

(b) 405 KAR 30:320 with regard to ground water; and

(c) 405 KAR 30:310 with regard to diversion of underground flows.

(15) Air resources protection plan. The application shall include an air resources protection plan which shall demonstrate to the satisfaction of the *cabinet* [department] that the proposed operation will comply with the requirements of 405 KAR 30:230 with regard to air resources protection.

(16) Fish and wildlife plan. The application shall include a fish and wildlife plan which shall demonstrate to the satisfaction of the *cabinet* [department] that the operation will comply with the requirements of 405 KAR 30:240 with regard to fish and wildlife.

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

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

Section *7.* [6.] Procedures for Processing of Application. (1) Five (5) separate copies of the complete application shall be submitted to the *cabinet* [department] at the location and address prescribed by the *cabinet* [department]. The *cabinet* [department] will provide written acknowledgement of receipt of the application.

(2) Within twenty-one (21) days of receipt of an application for a permit to conduct oil shale operations, the *cabinet* [department] shall provide written notification to the applicant as to the completeness of the application. A determination by the *cabinet* [department] that the application is complete shall not be construed to mean that the application is technically sufficient.

(3) The *cabinet* [department] shall act upon a complete application within 120 days after the filing of the complete application.

(4) The *cabinet* [department] shall approve a complete application filed in accordance with this regulation, if it finds, in writing, that the applicant has demonstrated that the oil shale operation described in the application:

(a) Will be conducted in accordance with applicable statutes and regulations;

(b) Will not jeopardize the continued existence of an endangered or threatened species listed pursuant to Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) or result in the destruction or adverse modification of critical habitat of those species; and

(c) Will not adversely affect any cultural resources or districts, sites, buildings, structures, or objects listed on the National Register of Historic Places, unless the proposed exploration has been approved by both the *cabinet* [department] and the agency with management responsibility over such areas.

Section *8.* [7.] Notice and Hearing. (1) The *cabinet* [department] shall notify the applicant and any person who requests such notification, in writing, of its decision to approve or disapprove the application. If the application is disapproved, the notice to the applicant shall include a statement of the reason for disapproval.

(2) Any person with an interest which is or may be adversely affected by a decision of the *cabinet* [department] pursuant to paragraph (1) of this section, shall have the opportunity for administrative and judicial review.

Section *9.* [8.] Compliance. (1) Permit conditions. Permits issued by the *cabinet* [department] may contain certain conditions necessary to ensure that the oil shale operation will be conducted in compliance with all applicable statutes and regulations.

(2) All oil shale operations shall be conducted in accordance with all applicable statutes and regulations and

any conditions imposed by the *cabinet* [department] on the permit.

Section *10.* [9.] *Cabinet* [Department] Review of Outstanding Permits. (1) The *cabinet* [department] shall review each permit issued and outstanding under this chapter during the term of the permit. This review shall occur not later than the middle of the permit term.

(2) After this review, the *cabinet* [department] may, by order, require revision or modification of the permit provisions or may increase the amount of the bond to ensure compliance with all applicable statutes and regulations.

(3) Copies of the decision of the *cabinet* [department] shall be sent to the permittee.

(4) Any order of the *cabinet* [department] which requires revision or modification of the permit or increases the amount of the bond shall be based upon written findings and shall be subject to the provisions for administrative and judicial review.

Section *11.* [10.] Permit Revisions. (1) A revision to a permit shall be obtained:

(a) For changes in the oil shale operation described in the original application and approved under the original permit;

(b) When required by an order issued under Section 10; or

(c) When there is an increase of the area under the permit.

(2) The application for a revision shall be filed with the *cabinet* [department] sixty (60) days prior to the date on which the permittee expects to revise the oil shale operation. The term of a permit shall remain unchanged by a revision.

(3) Application for changes in the method of operation or when required by an order issued under Section 10:

(a) An application for a revision under subsections (1)(a) or (b) of this section shall meet the following requirements:

1. The application for revision shall be submitted in the form prescribed by the *cabinet* [department].

2. The permittee shall submit, in the manner prescribed by the *cabinet* [department], all revised or updated information required by the *cabinet* [department]. Such information shall include, but not be limited to, an updated operational plan current to the date of the request for the revision, showing the status and extent of all oil shale operations on the existing permit.

3. The permittee shall provide evidence of any additional bond which the *cabinet* [department] might require.

4. The permittee shall provide public notice as required under Section 5 of this regulation.

(b) The revision shall be granted provided that:

1. The permittee is in compliance with the terms and conditions of the existing permit.

2. The present oil shale mining and reclamation operation is in compliance with all applicable statutes and regulations.

(c) The permit for the revision may contain conditions necessary to ensure compliance with all applicable statutes and regulations.

(4) Application for a revision to increase the area under permit. Upon application by the operator, the *cabinet* [department] may amend a valid existing permit so as to increase the permitted area of land to be affected by operations under that permit. Such applications for amendment may be filed at any time during the term of the permit.

(a) Application. The permittee shall file an application in the same form and with the same content as required for an original application under this regulation.

(b) Fees. *The application submitted to the Department for Surface Mining Reclamation and Enforcement for a revision to an oil shale operation permit shall be accompanied by a fee determined by the cabinet. The amount of such fee shall be $500, plus fifty dollars ($50) for each acre or fraction thereof of the increased area; provided however, such fee shall not exceed the actual or anticipated cost of reviewing the permit. The fee shall accompany the application in the form of a cashier's check or money order payable to the Kentucky State Treasurer.* [The application shall be accompanied by a cashier's check or money order payable to the Kentucky State Treasurer in the amount of $500, plus fifty dollars ($50) for each acre or fraction thereof of the increased area.] No application for a revision will be processed unless such fee[s] *has* [have] been paid. *The payment of such fee shall only cover the permit required by the Department for Surface Reclamation and Enforcement and shall not relieve the applicant from the obligation to pay additional fees for any other permits required from the cabinet.*

(c) The operator shall file with the *cabinet* [department] a supplemental bond in an amount to be determined as provided under 405 KAR 30:040 for each acre or fraction of an acre of the increased area.

(5) Notice and hearing. (a) The *cabinet* [department] shall notify the applicant and any person who requests such notification, in writing, of its decision to approve or disapprove the application. If the application is disapproved, the notice to the applicant shall include a statement of the reason for disapproval.

(b) Any person with an interest which is or may be adversely affected by a decision of the *cabinet* [department] pursuant to paragraph (1) of this section shall have the opportunity for administrative and judicial review.

Section *12.* [11.] Permit Renewals. (1) Any valid permit issued pursuant to KRS 350.600 and the regulations promulgated pursuant thereto shall carry with it the right of successive renewal upon expiration of the term of the permit. Successive renewal shall be available only for those areas specifically within the boundaries of the existing permit.

(2) Any permit renewal shall be for a term not to exceed the period of the original permit.

(3) An application for renewal of a permit shall be filed with the *cabinet* [department] at least sixty (60) days before the expiration date of the permit.

(4) If an application for renewal of a valid existing permit includes a proposal to extend the operation beyond the boundaries authorized in the existing permit, the portion of the application which addresses any new land areas shall be subject to the full standards applicable to a new application pursuant to KRS 350.600 and the regulations promulgated pursuant thereto, and a new and original application shall be required for such areas.

(5) The permit renewal shall be issued provided that the requirements of paragraphs (a) through (f) of this subsection are met.

(a) The application for renewal shall be submitted in the form prescribed by the *cabinet* [department].

(b) The operator shall submit all revised or updated information required by the *cabinet* [department]. Such information shall include, but not be limited to, an updated operational plan current to the date of request for renewal,

showing the status and extent of all oil shale operations on the existing permit.

(c) The permittee is in compliance with the terms and conditions of the existing permit.

(d) The present oil shale operation is in compliance with all applicable statutes and regulations.

(e) The permittee shall provide evidence of any additional bond which the *cabinet* [department] might require.

(f) The permittee shall provide public notice as provided for under Section 5 of this regulation.

(6) Notice and hearing.

(a) The *cabinet* [department] shall notify the applicant and any person who requests such notification, in writing, of its decision to approve or disapprove the application. If the application is disapproved, the notice to the applicant shall include a statement of the reason for disapproval.

(b) Any person with an interest which is or may be adversely affected by a decision of the *cabinet* [department] pursuant to this section shall have the opportunity for administrative and judicial review.

Section *13.* [12.] Criteria for Permit Approval and Denial. No application for a permit and no oil shale operation shall be approved or allowed, unless the application affirmatively demonstrates and the *cabinet* [department] determines on the basis of information set forth in the application, and other available information as necessary, that:

(1) The permit application is accurate, complete and that all requirements of KRS Chapters 151, 224, and 350 and the regulations promulgated pursuant thereto have been complied with.

(2) The oil shale operations proposed can be carried out under the method of operation contained in the application in a manner that will satisfy all requirements of KRS Chapters 151, 224, and 350, and the regulations promulgated pursuant thereto.

(3) The oil shale operations proposed have been designed to minimize adverse effects to the hydrologic balance.

(4) The proposed operation will not constitute a hazard to, or do physical damage to life, to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, other public property or to members of the public, their real and personal property. All necessary measures shall be included in the method of operation in order to eliminate such hazard or damage. If it is not technologically feasible to eliminate such hazard or damage by adopting specifications in the method of operation, then that part of the operation which constitutes the cause of the hazard or damage shall be deleted from the application.

(5) The proposed operation will not adversely affect: [fragile lands, natural hazard lands, a wild river established pursuant to KRS Chapter 146, or the continued existence of an endangered or threatened species listed pursuant to Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533), or result in the destruction or adverse modifications of the habitat of such a species.]

(a) A wild river established pursuant to KRS Chapter 146;

(b) The continued existence of an endangered or threatened species listed pursuant to Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533), or result in the destruction or adverse modifications of the habitat of such a species;

(c) Fragile or historic lands in which the oil shale operations could result in significant damage to important historic, cultural, scientific, aesthetic values and natural systems;

(d) Renewable resource lands in which the oil shale operations could result in substantial loss or reduction of the long-range availability of water supplies;

(e) Renewable resource lands in which the oil shale operations could result in substantial loss or reduction of the long-range productivity of food and fiber products; and

(f) Natural hazard lands in which oil shale operations could substantially endanger life and property.

(6) The applicant has with respect to prime farmland obtained either a negative determination or satisfied the requirements of Section *6(5)* [6(6)] of this regulation and 405 KAR 30:280.

(7) The proposed operation will not be inconsistent with other oil shale operations anticipated to be performed in areas adjacent to the proposed permit area.

(8) The proposed permit area is:

[(a) Not included within an area designated unsuitable for oil shale operations under 405 KAR 30:190 and 405 KAR 30:200;]

[(b) Not included within an area under study for designation as unsuitable for oil shale operations in an administrative proceeding begun under 405 KAR 30:190 and 405 KAR 30:200;]

(a) [(c)] Not included within the boundaries of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act, and the National Recreation Areas designated by Act of Congress;

(b) [(d)] Not included within 300 feet, measured horizontally, of any public park, public building, school, church, community or institutional building;

(c) [(e)] Not included within 100 feet, measured horizontally, of a cemetery;

(d) [(f)] Not within 100 feet, measured horizontally, of the outside right-of-way line of any public road, except where mine access roads or haulage roads join such right-of-way. The *cabinet* [department] may permit such roads to be relocated or, in the area affected, to lie within 100 feet of such road, if the applicant has obtained necessary approval from the governmental authority with jurisdiction over the public road and if after public notice and opportunity for public hearing a written finding is made by the *cabinet* [department] that the interest of the public and the landowner affected thereby will be protected. The public notice required shall be published in the counties of the affected area in the newspaper(s) of largest bona fide circulation according to the definition in KRS Chapter 424;

(e) [(g)] Not within 300 feet, measured horizontally, of an occupied dwelling unless the applicant submits with the permit application a written waiver from the owner of the dwelling consenting to such an operation within a closer distance of the dwelling specified in the waiver. The waiver must be knowingly and intelligently given and be separate from a lease or deed unless the lease or deed contains an explicit waiver; and

(f) [(h)] Not within 100 feet of an intermittent or perennial stream unless the *cabinet* [department] specifically authorizes operations at a closer distance to, or through, the stream. Such authorization shall not be given unless the applicant demonstrates to the satisfaction of the *cabinet* [department] that such authorization is environmentally sound and that all other applicable laws and regulations have been complied with.

(9) If the cabinet is unable to determine whether the proposed oil shale operation is located within the distances or boundaries of any of the lands identified in subsections (5),

(6), and (8) of this section, the cabinet shall transmit a copy of the relevant portions of the permit application to the appropriate federal, state, or local government agency for a determination or clarification of the relevant boundaries or distances, with a notice to the agency that it must respond in writing within thirty (30) days of receipt of the request. Upon failure of the agency to respond in writing within the thirty (30) day period, the cabinet shall presume that the proposed oil shale operation is not located within the boundaries of any such lands.

Section *14.* [13.] Denial of Permit for Past Violations. (1) An operator or person whose permit has been revoked or suspended shall not be eligible to receive another permit or begin another operation, or be eligible to have suspended permits or operations reinstated until he shall have complied with all the requirements of KRS Chapter 350 with respect to all permits issued him.

(2) An operator or person who has forfeited any bond shall not be eligible to receive another permit or begin another operation unless the land for which the bond was forfeited has been reclaimed without cost to the state, or the operator or person has paid such sum as the *cabinet* [department] finds is adequate to reclaim such lands.

(3) If the applicant, operator, any subcontractor of the applicant, or any person acting on behalf of the applicant, has either conducted activities with a demonstrated pattern of willful violations of KRS Chapter 350 or has repeatedly been in non-compliance of KRS Chapter 350, then the application should be denied; provided nothing contained herein shall be construed as to relieve a permittee of responsibility with respect to any permit issued to him.

(4) If the *cabinet* [department] determines that any activity regulated pursuant to KRS Chapter 350 which is owned or controlled by the applicant is currently in violation of any environmental law or regulation of the Commonwealth, then the *cabinet* [department] shall require the applicant, before the issuance of the permit, to either:

(a) Submit proof which is satisfactory to the *cabinet* [department] that the violation:

1. Has been corrected, or
2. Is in the process of being corrected in good faith; or

(b) Establish to the satisfaction of the *cabinet* [department] that the applicant has filed and is presently pursuing a good faith administrative or judicial appeal to contest the validity of the violation.

(5) If the applicant submits the proof specified in either subparagraph 2 of subsection (4)(a) or subsection (4)(b) of this section, then the *cabinet* [department] may issue the permit with an appropriate condition that either the reclamation work be continued in good faith until completion or that, if the applicant loses his action contesting the violation, such violation be corrected within a specified time. Failure to comply with any conditions shall be grounds for revocation of the permit.

(6) If the applicant disagrees with the *cabinet's* [department's] determination under this section then the applicant has the right to request an administrative hearing pursuant to KRS 224.081(2).

JACKIE A. SWIGART, Secretary

ADOPTED: January 14, 1983

RECEIVED BY LRC: January 14, 1983 at 4:30 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Steven D. Taylor, Environmental Engineer Chief, Division of Reclamation Services, Department for Surface Mining Reclamation and Enforcement, Natural Resources and Environmental Protection Cabinet, 3rd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

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

405 KAR 30:250. Use of explosives.

RELATES TO: KRS 350.600

PURSUANT TO: KRS 13.082, 224.033, 350.028, 350.050, 350.600

NECESSITY AND FUNCTION: KRS 350.600 requires the [Department for] Natural Resources and Environmental Protection *Cabinet* to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation sets forth the requirements relating to the use of explosives.

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

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

(3) All blasting operations shall be conducted by experienced, trained, and competent persons who understand the hazards involved. Persons working with explosive materials shall:

(a) Have demonstrated a knowledge of, and a willingness to comply with, safety and security requirements;

(b) Be capable of using mature judgment in all situations;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 4. Public Notice of Blasting Schedule. At least ten (10) days, but not more than twenty (20) days before beginning a blasting program in which explosives that use more than the equivalent of five (5) pounds of TNT are detonated, the permittee shall publish a blasting schedule in a newspaper of general circulation in the locality of the proposed site. Copies of the schedule shall be distributed by mail to local governments and public utilities and to each residence within one-half (½) mile of the blasting sites described in the schedule. *Copies sent to residences shall be accompanied by information advising the owner or resident how to request a pre-blasting survey.* The permittee shall republish and redistribute the schedule by mail at least every three (3) months. Blasting schedules shall not be so general as to cover all working hours but shall identify as accurately as possible the location of the blasting sites and the time periods when blasting will occur. The blasting schedules shall contain at a minimum:

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

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

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

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

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

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

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

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

(3) Warning and all-clear signals shall be given which are of different character and are audible within a range of one-half (½) mile from the point of the blast. All persons within the permit area shall be notified of the meaning of the signals through appropriate instructions and signs posted as required by 405 KAR 30:210 relating to signs and markers.

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

(5) Areas in which charged holes are awaiting firing shall be guarded, barricaded and posted, or flagged against unauthorized entry.

(6) Airblast shall be controlled such that it does not exceed *the values specified in Appendix A of this regulation at any dwelling, public building, school, church, or commercial or institutional structure, unless such structure is owned by the permittee and is not leased to any other person. If a building owned by the permittee is leased to another person, the lessee may sign a waiver relieving the permittee from meeting the airblast limitations of this subsection.* [128 decibel linear-peak at any man-made dwelling or structure located within one-half (½) mile of the permit area.]

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

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

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

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

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

(b) *Three hundred (300)* [Five hundred (500)] feet of facilities including, but not limited to, disposal wells, petroleum or gas-storage facilities, fluid-transmission pipelines, municipal water-storage facilities, gas or oil-

collection lines, or water and sewage lines; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Name of person conducting the blast;

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

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

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

(5) Weather conditions, *including temperature, wind direction, and approximate velocity*;

(6) Type of material blasted;

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

(8) Diameter and depth of holes;

(9) Types of explosives used;

(10) Total weight of explosives used;

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

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

(13) *Initiation system* [Methods of firing and type of circuit];

(14) Type and length of stemming;

(15) If mats or other protections were used;

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

(17) Sketch of the delay pattern;

(18) Number of persons in the blasting crew; and

(19) [(17)] Seismograph records, if required pursuant to Section 8.

APPENDIX A OF 405 KAR 30:250

Airblast Limitations

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

JACKIE A. SWIGART, Secretary

ADOPTED: January 14, 1983

RECEIVED BY LRC: January 14, 1983 at 4:30 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Steven D. Taylor, Environmental Engineer Chief, Division of Reclamation Services, Department for Surface Mining Reclamation and Enforcement, Natural Resources and Environmental Protection Cabinet, 3rd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

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

405 KAR 30:280. Prime farmland.

RELATES TO: KRS 350.600
PURSUANT TO: KRS 13.082, 151.125, 224.033, 350.028, 350.050, 350.600
NECESSITY AND FUNCTION: KRS 350.600 requires the [Department for] Natural Resources and Environmental Protection *Cabinet* to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and environment of the Commonwealth. This regulation specifies definition, determination and special requirements for the removal, stockpiling and replacement of soil, and revegetation of prime farmland to assure its productivity for the production of food and fiber.

Section 1. Prime Farmland Definition. The criteria used by the United States Department of Agriculture, Soil Conservation Service for identification of prime farmland published in the Federal Register on August 23, 1977, is the basis of the definition for prime farmland to be used in these regulations. The definition is based on soil characteristics and the terms used are defined in United States Department of Agriculture publications: Soil Taxonomy Agricultural Handbook 436; Soil Survey Manual, Agricultural Handbook 18; Rainfall-Erosion Losses from Cropland, Agricultural Handbook 282.

Section 2. Prime Farmland Determination. The applicant shall before making a permit application investigate the proposed permit area to determine whether lands within the area may be prime farmland.

(1) Land shall not be considered prime farmland where the applicant can demonstrate one (1) of the following:

(a) The slope of the land is ten (10) percent or greater;

(b) Other relevant factors exist, which would preclude the soils from being defined as prime farmland according to 7 CFR 657, such as a very rocky surface, or the land is flooded during the growing season more often than once in two (2) years, and the flooding has reduced crop yields; or

(c) On the basis of a soil survey of lands within the permit area, there are no soil map units that have been designated prime farmland by the U.S. Soil Conservation Service.

(2) If the investigation establishes that the lands are not prime farmland, the applicant shall submit with the permit application a request for a negative determination and results of the investigation which show that the land for which the negative determination is sought meets one (1) of the criteria of subsection (1) of this section.

(3) If the investigation indicates that lands within the proposed permit area may be prime farmlands, the applicant shall contact the U.S. Soil Conservation Service to determine if a soil survey exists for those lands and whether the applicable soil map units have been designated as prime farmlands. If a soil survey exists, the applicant shall file for a positive or negative determination of prime farmland on the bases of the soil survey characteristics as interpreted in the U.S. Department of Agriculture publications referenced in Section 1.

(4) A soil survey may be conducted by either soil scientists from the United States Department of Agriculture, Soil Conservation Service or the Kentucky [Department for] Natural Resources and Environmental Protection *Cabinet*, Division of Conservation, who have experience and knowledge in conducting soil surveys in accordance with the standards and procedures of the National Cooperative Soil Survey program. If no soil survey has been made for the lands within the proposed permit area, the applicant shall cause such a survey to be made.

(5) Soil survey for prime farmland determination shall include the following and any other data deemed necessary by the *cabinet* [department]:

(a) Location of permit boundaries, flood frequency data, water table, erosion characteristics, permeability and other information needed to make the prime farmland determination in accordance with the prime farmland definition in Section 1;

(b) The map must also delineate the exact location and extent of prime farmland;

(c) A detailed description of each soil mapping unit in the permit area; and

(d) A detailed soil description of the representative soil of each soil mapping unit in the permit area.

(6) Positive prime farmland determination. When a soil survey of the acreage within the proposed permit area contains soil mapping units which have been designated as prime farmlands, the applicant shall submit an application, in accordance with 405 KAR 30:130, Section *6(5)* [6(6)] for such designated land and must meet the requirements of Sections 3 through 9 of this regulation.

(7) Negative prime farmland determination. When a soil survey of the acreage within the proposed permit area contains soil mapping units which have not been designated as prime farmland after review by either the United States Department of Agriculture, Soil Conservation Service or Kentucky [Department for] Natural Resources and Environmental Protection *Cabinet*, Division of Conservation soil scientist, the applicant shall submit with the permit application a request for negative determination. The applicant shall then submit an application, in accordance with 405 KAR 30:130, Section *6(8)* [6(9)] for such non-designated prime farmland permits and must meet the requirements of 405 KAR 30:290 and 405 KAR 30:400.

Section 3. Restoration Plan for Prime Farmland Areas. The applicant shall submit to the *cabinet* [department] a plan for the mining and restoration of any prime farmland within the proposed permit boundaries. This plan shall be used by the *cabinet* [department] in judging the technological capability of the applicant to restore prime farmlands. The plan shall include the following and any other data required by the *cabinet* [department]:

(1) Information contained in the soil survey as required in Section 2;

(2) A description of the original undisturbed soil profile, as determined from the soil survey of the permit area, showing the depth and thickness of each of the soil horizons to be removed, stored, and replaced in accordance with Sections 6, 7, and 8;

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

(4) The proposed method and type of equipment to be used for removal, storage, and replacement of the soil;

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

practices cannot be established due to weather conditions; and

(6) Separate small areas of prime farmland located in the permit boundary may be combined and restored as one larger manageable prime farmland area upon the approval of the *cabinet* [department]. The number of prime farmland acres restored must be at least equal the number of prime farmland acres disturbed.

Section 4. Restoration Plan Approval and Consultation. The *cabinet* [department] will evaluate each proposed prime farmland mining restoration plan to assure the following:

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

(2) Will achieve compliance with the standards of Section 5 of this regulation.

(3) Before any permit is issued for areas that include prime farmlands, the *cabinet* [department] shall consult with the United States Soil Conservation Service and Kentucky Division of Conservation or other agencies to provide a review of the proposed method of soil reconstruction and comment on possible revisions that will result in a more complete and adequate restoration.

Section 5. Special Requirements. Oil shale operations conducted on prime farmland areas shall meet the following requirements:

(1) Soil materials to be used in the reconstruction of the prime farmland soil shall be removed before drilling, blasting, or mining, in accordance with Section 6 and handled in a manner that prevents mixing, compacting, or contaminating these materials with less desirable materials. Where removal of soil materials results in erosion or increased stormwater runoff that may cause air and water pollution, the permittee shall take appropriate action as approved by the *cabinet* [department] to control erosion or stormwater runoff from freshly exposed soil materials.

(2) Soil productivity will be restored to support equivalent or higher levels of yield as equally managed nonmined prime farmland of the same soil type in the surrounding area.

Section 6. Soil Removal. Oil Shale operations on prime farmland shall be conducted to:

(1) Remove separately the entire A horizon, B horizon, C horizon, a combination of B horizon and underlying C horizon, or other favorable soil material which will create a final soil having an equal or greater productive capacity than that which existed prior to mining.

(2) The minimum depth of soil and soil material (A horizon, B horizon, C horizon, a combination of B horizon and underlying C horizon, or other favorable soil materials) to be removed for use in reconstruction of prime farmland soils shall be sufficient to meet the soil replacements standards in Section 8.

Section 7. Soil Stockpiling. If not utilized immediately, the A horizon, B horizon, or other suitable soil materials specified in Section 6 shall be stored separately from each other and from soil. The stockpiles must be placed within the permit area and where they will not be disturbed or exposed to erosion by water or wind before the stockpiled horizons can be redistributed on terrain graded to final contour. Stockpiles in place for more than thirty (30) days shall be protected. Measures to accomplish this can be either of the following:

(1) An effective cover of nonnoxious, quick-growing annual and perennial plants, seeded or planted during the first normal period after removal for favorable planting conditions; or other methods demonstrated to and approved by the *cabinet* [department] to provide equal protection.

(2) Stockpiling of separate soil horizons shall also meet the requirements of 405 KAR 30:290, Section 3, with regard to storage of topsoil.

(3) Unless approved by the *cabinet* [department], stockpiled soil and other materials shall not be moved until required for redistribution on a regraded area.

Section 8. Soil Replacement. Oil shale operations on prime farmland shall be conducted according to the following:

(1) The minimum depth of soil and soil material to be reconstructed for prime farmland shall be forty-eight (48) inches, or a depth equal to the depth of a subsurface horizon in the natural soil that inhibits root penetration, whichever is shallower. The *cabinet* [department] shall specify a depth greater than forty-eight (48) inches wherever necessary to restore productive capacity due to favorable soil horizons at greater depths. Soil horizons shall be considered as inhibiting root penetration if their densities, chemical properties, or water supplying capacities restrict or prevent penetration by roots of plants common to the vicinity of the permit area and can be proven to have little or no beneficial effect on soil productive capacity. However, in the case of a fragipan, if it can be shown that destruction of the fragipan material during soil removal proves beneficial and as a result is beneficial to plant growth, fragipan destruction will be allowed.

(2) Replace soil material only on land which has first been returned to final grade and scarified according to 405 KAR 30:390, unless site-specific evidence is provided and approved by the *cabinet* [department] showing that scarification will not enhance the capability of the reconstructed soil to achieve equivalent or higher levels of yield.

(3) Soil replacement starts with those soil horizons in the reverse order in which they were removed and stockpiled. The replacement of each soil horizon or other suitable soil material shall be done in such a manner that avoids excessive compaction.

(a) Replace the C horizon material or other suitable material approved for use as specified in paragraphs (a) and (b) of Section 6(1) to the thickness needed to meet the requirements of subsection (1) of this section.

(b) Replace the B horizon material or other suitable material approved for use as specified in paragraphs (a) and (b) of Section 6(1) to the thickness needed to meet the requirements of subsection (1) of this section.

(c) Replace the A horizon material or other suitable materials approved for use as specified in paragraphs (a) and (b) of Section 6(1) as the final surface soil layer. This surface soil layer shall equal or exceed the thickness of the original soil A horizon.

(4) The replacement of all soil horizons shall be done in a manner which prevents excessive compaction of the soil. Permeability shall not be less than the permeability rate existing in the original soil or less than six hundredths (0.06) inches per hour in the upper twenty (20) inches of the reconstructed soil profile, whichever permeability rate is lower.

(5) After the reconstruction of the soil profile is complete the soil shall be protected in such a manner to prevent

erosion from wind and water before it is seeded or planted.

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

Section 9. Revegetation. Each permittee who conducts oil shale operations on prime farmland shall meet the following revegetation requirements during reclamation:

(1) Following soil replacement, the permittee shall establish a vegetative cover capable of stabilizing the soil surface with respect to erosion. All vegetation shall be in compliance with the plan approved by the *cabinet* [department] under Section 3, and carried out in a manner that encourages prompt vegetative cover and recovery of productive capacity. The timing and mulching provisions of 405 KAR 30:400, Sections 3 and 4 shall be met.

(2) The period of liability under the performance bond for prime farmland areas shall be for not less than seven (7) years. The liability period begins at the last time of substantially augmented seeding necessary to ensure successful revegetation.

(a) For the purposes of erosion control and soil reconstruction, during the first two (2) or three (3) growing seasons grasses and legumes will be allowed upon the approval of the *cabinet* [department].

(b) If crop comparisons are to be used to demonstrate successful restoration of prime farmland, the remaining four (4) or five (5) years must be used for crops commonly grown, such as corn, soybeans, grain, sorghum, wheat, oats, barley, or other crops on surrounding prime farmland. Crops may be grown in rotation with hay or pasture crops as long as the crop shows equal or higher yields as compared to other rotation crops on surrounding prime farmland.

(c) If a soil survey is to be used to demonstrate successful restoration of prime farmland, the prime farmland area should be maintained in vegetation in accordance with 405 KAR 30:400, until the *cabinet* [department] has determined if the prime farmland has been restored successfully under subsection (3)(a) of this section.

(3) Success of prime farmland restoration. Soil productivity shall be restored to support equivalent or higher levels of yield as nonmined prime farmland of the same soil type in the surrounding area under equivalent levels of management. Successful restoration of soil productivity shall be demonstrated by either:

(a) A soil survey of the restored permit area. The soil survey must meet the standards of and be conducted by an individual with experience and knowledge of the standards and procedures of the National Cooperative Soil Survey and in accordance with the procedures set forth in United States Department of Agriculture Handbooks 436 (Soil Taxonomy, 1975) and 18 (Soil Survey Manual, 1951). In addition, the *cabinet* [department] may require other chemical and physical data, laboratory test and information to evaluate soil productivity of the permit area. The *cabinet* [department] shall make the determination on the success of restoration of prime farmland areas after consultation with United States Soil Conservation Service, Kentucky Division of Conservation, and other appropriate agencies; or

(b) A comparison of actual average annual crop production on the restored area for three (3) consecutive years prior to bond release, with predetermined estimated average annual yields (target yields) of similar crops on nonmined prime farmland of the same soil type in the surrounding area under equivalent levels of management. The *cabinet* [department], in consultation with other appropriate agencies, shall develop the predetermined target yields for prime farmland soils for the area, in which crop comparison shall be evaluated to determine that the soil productivity has been restored.

JACKIE A. SWIGART, Secretary

ADOPTED: January 14, 1983

RECEIVED BY LRC: January 14, 1983 at 4:30 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Steven D. Taylor, Environmental Engineer Chief, Division of Reclamation Services, Department for Surface Mining Reclamation and Enforcement, Natural Resources and Environmental Protection Cabinet, 3rd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

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

405 KAR 30:320. Water quality standards, effluent limitations, and monitoring.

RELATES TO: KRS 350.600

PURSUANT TO: KRS 13.082, 224.033, 350.028, 350.050, 350.600

NECESSITY AND FUNCTION: KRS 350.600 requires the [Department for] Natural Resources and Environmental Protection *Cabinet* to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation sets forth water quality standards and monitoring requirements.

Section 1. Water Quality Standards. (1) For the purpose of this regulation, disturbed area shall not include those areas in which only diversion ditches or roads are installed and the upstream area is not otherwise disturbed by the oil shale operations. All sedimentation ponds required shall be constructed in accordance with this chapter and in appropriate locations prior to any mining in the affected drainage area in order to control sedimentation or otherwise treat water. Sedimentation ponds shall be certified by a qualified registered engineer as having been constructed as designed and as approved by the *cabinet* [department].

(2) The discharges from areas disturbed by oil shale operations must meet all applicable federal and state laws and regulations and at a minimum in the numerical limitations in Appendix A of this regulation. As sufficient data becomes available, the *cabinet* [department] may establish effluent limitations for other parameters.

(3) The permittee shall install, operate, and maintain adequate facilities to treat any water discharged from the disturbed area that violates applicable federal or state laws or regulations or the effluent limitations listed in Appendix A of this regulation.

(4) If the pH of waters discharged from the disturbed area is normally less than 6.0, an automatic lime feeder or other neutralization process approved by the *cabinet* [department] shall be installed, operated, and maintained. If the *cabinet* [department] finds that small and infrequent treatments are required to meet effluent limitations and do

not necessitate use of an automatic neutralization process, the *cabinet* [department] may approve the use of a manual system if the *cabinet* [department] finds that consistent and timely treatment can be assured by the permittee.

Section 2. Surface Water Monitoring. (1) A surface water monitoring program which meets the requirements of this section shall be prepared and submitted with the permit application, and this program shall be subject to the approval of the *cabinet* [department]. The program shall:

(a) Provide adequate monitoring to characterize all discharges from the disturbed area;

(b) The frequency of sampling shall be twice a month or as deemed necessary by the *cabinet* [department];

(c) Provide adequate data to describe the likely daily and seasonal variation in discharges from the disturbed area to the satisfaction of the *cabinet* [department];

(d) Provide monitoring at appropriate frequencies to measure normal and abnormal variations in concentrations;

(e) Provide an analytical quality control system including standard methods of analysis as specified in 40 CFR 136; and

(f) Provide a regular quarterly report of all measurements and analyses to the *cabinet* [department], unless violations of permit conditions occur in which case the *cabinet* [department] shall be notified immediately after receipt of analytical results by the permittee. If the discharge is subject to regulation by a federal or state permit issued in compliance with the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251-1378) a copy of the reporting form supplied to meet the permit requirements may be submitted to the *cabinet* [department] to satisfy the reporting requirements of this regulation if the data meet the sampling frequency and other requirements of this section.

(2) After disturbed areas have been regraded and stabilized in accordance with the provisions of these regulations, the permittee shall monitor surface water flow and quality. Data from this monitoring shall be used to demonstrate that the quality and quantity of runoff without treatment will be consistent with the requirements of this chapter to minimize disturbance to the prevailing hydrologic balance and to attain the approved postmining land use. These data shall provide a basis for approval by the *cabinet* [department] for removal of water quality or flow control systems and for determining when the requirements of this regulation are met. The *cabinet* [department] shall approve the nature of data, frequency of collection, and reporting requirements.

(3) Equipment, structures, and other measures necessary to adequately measure and sample the quality and quantity of surface water discharges from the disturbed area of the permit area shall be properly installed, maintained, and operated and shall be removed when no longer required as determined by the *cabinet* [department].

Section 3. Recharge Capacity of Reclaimed Lands. The disturbed area shall be reclaimed to restore approximate premining recharge capacity, *except when otherwise approved by the cabinet*, through restoration of the capability of the reclaimed areas as a whole to transmit water to the ground water system. The recharge capacity shall be restored to support the approved postmining land use and to minimize disturbances to the prevailing hydrologic balance to the mined area and in associated offsite areas. The permittee shall be responsible for monitoring according to Section 5 of this regulation to ensure that operations conform to this requirement.

Section 4. Ground Water Systems. Backfilled materials shall be placed to minimize adverse effects on ground water flow and quality, to minimize offsite effects, and to support the approved postmining land use. The permittee shall be responsible for performing monitoring according to Section 5 of this regulation to ensure that operations conform to this requirement.

Section 5. Ground Water Monitoring. Ground water levels, infiltration rates, subsurface flow and storage characteristics, and the quality of ground water shall be monitored in a manner approved by the *cabinet* [department] to determine the effects of oil shale operations on the recharge capacity of reclaimed lands and on the quantity and quality of water in ground water systems at the mine area and in associated offsite areas. When operations are conducted in such a manner that may affect the ground water system, ground water levels and ground water quality shall be periodically monitored using wells that can accurately reflect changes in ground water quantity and quality resulting from such operations. Sufficient water wells must be used by the permittee. The *cabinet* [department] may require drilling and development of additional wells if needed to adequately monitor the ground water system. As specified and approved by the *cabinet* [department], additional hydrologic tests, such as infiltration tests, and aquifer tests, must be undertaken by the permittee to demonstrate compliance with Sections 3 and 4 of this regulation.

Appendix A of 405 KAR 30:320

Effluent Limitations[1]

Type of Discharge	*Fe*	*Mn*	*TSS*	*SS*	*pH*
Drainage from disturbed areas other than reclamation areas	*6.0/3.0*[2]	*4.0/2.0*[2][3]	*70/35*[2]	—	*6-9*
Reclamation areas (Post mining thru final bond release)[4]	—	—	—	*0.5*	*6-9*
Discharge resulting from precipitation event less than or equal to 10-year, 24-hour storm[5]	—	—	—	*0.5*	*6-9*
Discharge resulting from precipitation event greater than 10-year, 24-hour storm	—	—	—	—	*6-9*

(1) *Fe—Total iron (mg/l)*
Mn—Total manganese (mg/l)
TSS—Total suspended solids (mg/l)
SS—Settleable solids (ml/l)
pH—Standard pH units

(2) *Maximum concentration for one day/average concentration for 30 consecutive days.*

(3) *Manganese applicable only if prior to treatment of discharge the pH is normally less than 6.0 or total iron is normally equal to or greater than 10 mg/l.*

(4) *Reclamation areas include areas where active mining is completed and backfilling, grading, soil preparation, and seeding and planting have been successfully completed on all disturbed areas within the drainage area in accordance with the applicable regulations.*

(5) *Does not include discharges which are not a direct result of a precipitation event.*

[Appendix A of 405 KAR 30:320

Effluent Limitations, in Milligrams per Liter (mg/l, except for pH)

Effluent characteristics[1]	Maximum allowable[2]	Average of daily values for 30 consecutive discharge days[2]
Iron, total[5]	7.0	3.5
Manganese, total[3]	4.0	2.0
Total suspended solids	70.0	35.0
pH[4]	Within the range 6.0 to 9.0	

1 To be determined according to collection and analytical procedures adopted by Environmental Protection Agency's regulations for wastewater analyses (40 CFR 136).

2 Based on representative sampling.

3 The manganese limitation shall not apply to untreated discharges which are alkaline as defined by the Environmental Protection Agency (40 CFR 434).

4 Where the application of neutralization and sedimentation treatment technology results in inability to comply with the manganese limitations set forth above, the department may allow the pH level in the discharge to exceed, to a small extent, the upper limit of 9.0 in order that the manganese limitations will be achieved.

5 Discharges of iron from new sources, as defined under 40 CFR Section 434.11(i), shall be limited to 6.0 mg./l (maximum allowable) and 3.0 mg./l (average of daily values for thirty (30) consecutive discharge days).]

JACKIE A. SWIGART, Secretary

ADOPTED: January 14, 1983

RECEIVED BY LRC: January 14, 1983 at 4:30 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Steven D. Taylor, Environmental Engineer Chief, Division of Reclamation Services, Department for Surface Mining Reclamation and Enforcement, Natural Resources and Environmental Protection Cabinet, 3rd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

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

405 KAR 30:390. Backfilling and grading.

RELATES TO: KRS 350.600

PURSUANT TO: KRS 13.082, 151.125, 224.033, 350.028, 350.050, 350.600

NECESSITY AND FUNCTION: KRS 350.600 requires the [Department for] Natural Resources and Environmental Protection *Cabinet* to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation sets forth requirements relating to the backfilling and grading of areas affected by oil shale operations.

Section 1. Postmining final graded slopes need not be uniform nor does the mined area have to be backfilled to achieve the approximate original contour of the land surface.

Section 2. *Spoil, spent shale and other wastes* [Wastes] may be disposed of in the mined area provided it is demonstrated to the satisfaction of the *cabinet* [department] by hydrological means and chemical and physical analyses that these waste materials are suitable for use as fill material and that use of these materials will not adversely affect water quality, water flow, and vegetation; will not present hazards for public health and safety; and will not cause instability in the backfilled area.

[Section 3. All processing wastes shall be handled and disposed of in accordance with the requirements of KRS Chapter 224 and regulations promulgated pursuant thereto and all other applicable state and federal laws and regulations.]

Section *3.* [4.] Covering and Stabilizing. (1) Any acid-forming or toxic-forming materials, combustible materials, or any other mining waste materials that are exposed, used, or produced during mining shall be covered with a minimum of four (4) feet of non-toxic and non-acid forming material; or, if necessary, treated in order to prevent water pollution and sustained combustion, and the minimize adverse effects on plant growth and land uses. These four (4) feet of non-toxic, non-acid forming material do not include the topsoil or topsoil substitute material required in 405 KAR 30:290 relating to topsoil and 405 KAR 30:280 covering prime farmland. Acid-forming or toxic-forming material shall not be buried or stored in proximity to a drainage course so as to pose a threat of water pollution or otherwise adversely affect the hydrologic balance.

(2) Backfilled materials shall be selectively placed and compacted as necessary to prevent leaching of acid-forming and toxic-forming materials into surface or subsurface waters and wherever necessary to ensure the stability of the backfilled materials. The method of compacting backfill material and the design specifications shall be approved by the *cabinet* [department] before the acid-forming or toxic-forming materials are covered.

(3) Where highwalls are created during mining which contain various geologic zones with substantially different weathering rates, the permittee shall, at a minimum, backfill all zones which are overlain by a formation with a much slower weathering rate.

(4) All backfilling shall be placed and compacted to achieve a minimum static safety factor of *1.3* [1.5] or higher if deemed necessary by the *cabinet* [department] based on specific site conditions.

(5) Spent shale shall be disposed of in mined areas in accordance with the requirements of *405 KAR 30:370, Section 1(1) and Section 2* [KRS Chapter 224 and regulations promulgated pursuant thereto and all other applicable state and federal laws and regulations].

Section *4.* [5.] (1) Where deemed necessary by the *cabinet* [department] impervious liner(s) will be required in backfill areas to protect water quality, water flow, water quantity, and vegetation, and to prevent hazards to public health and safety.

(2) The *cabinet* [department] shall approve the type and order in which all materials are backfilled.

Section *5.* [6.] Grading Along the Contour. All final grading, preparation of overburden before replacement of topsoil or topsoil substitute, and placement of topsoil, in accordance with the provisions of 405 KAR 30:290, shall be conducted in a manner which minimizes erosion and

provides a surface for replacement of topsoil which will minimize slippage.

Section 6. [7.] Regrading or Stabilizing Rills and Gullies. When rills or gullies deeper than nine (9) inches form in areas that have been regraded and the topsoil or topsoil substitute material replaced but vegetation has not yet been established, the permittee shall fill, grade, or otherwise stabilize the rills and gullies and reseed or replant the areas in accordance with 405 KAR 30:400 with regard to revegetation. The *cabinet* [department] shall specify that rills or gullies of lesser size be stabilized if the rills or gullies will be disruptive to the approved postmining land use or may result in additional erosion and sedimentation.

Section 7. [8.] Small Depressions. If approved by the *cabinet* [department], small depressions may be constructed to minimize erosion, conserve soil moisture, or promote revegetation. The depressions shall be compatible with the approved postmining land use and shall not be inappropriate substitutes for construction of lower grades on the reclaimed lands. Depressions approved under this section shall have a holding capacity of less than one (1) cubic yard of water or, if it is necessary that they be larger, shall not restrict normal access throughout the area or constitute a hazard.

Section 8. [9.] Permanent Impoundments. If approved in the postmining land use plan, permanent impoundments may be retained on mined and reclaimed areas. No impoundments shall be constructed on top of areas in which mining and processing waste materials or spent shale are deposited. Impoundments shall not be used to meet the requirements of Section 4 of this regulation with regard to covering of acid-forming and toxic-forming materials, spent shale or other waste materials.

JACKIE A. SWIGART, Secretary
ADOPTED: January 14, 1983
RECEIVED BY LRC: January 14, 1983 at 4:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Steven D. Taylor, Environmental Engineer Chief, Division of Reclamation Services, Department for Surface Mining Reclamation and Enforcement, Natural Resources and Environmental Protection Cabinet, 3rd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

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

806 KAR 14:080. *Municipal* premium [must show municipal] taxes.

RELATES TO: KRS *91A.080, 304.12-080,* 304.14-030
PURSUANT TO: KRS 13.082, *91A.080,* 304.2-110
NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. *KRS 91A.080 provides that the commissioner may establish regulations for the accounting and reporting of municipal premium taxes.* This regulation requires that *municipal premium taxes be separately stated* [policies issued for the first time must contain a notice that the premium charged includes a municipal or county fee or tax].

Section 1. Whenever by city ordinance or by county fiscal court resolution a fee or tax is imposed upon insurers for the privilege of engaging in business in said county or city, *such fee or tax shall be charged to each policyholder in addition to the premium charge* [the premium charge shall make provision for such fee or tax]. The amount of such fee or tax *shall be separately stated* [may, at the option of the insurer, be shown on the policy].

Section 2. *Insurers may waive the collection fee authorized by KRS 91A.080 and 806 KAR 2:090 on a statewide basis. If an insurer assesses the collection fee, it shall be charged on all policies subject to municipal premium taxes. The collection fee shall be separately stated.* [Each policy issued to an insured for the first time shall include a notice that the premium includes a charge for the fee or tax. Such notice shall be placed upon the title sheet of the policy by use of a typewriter, stamp, sticker or any reasonable means approved by the commissioner. Such notice may, at the option of the insurer, be placed on renewal certificates and billings issued subsequent to the original policy.]

Section 3. In accordance with KRS 91A.080, the governmental unit which has imposed such a tax shall file a copy of such ordinance or resolution, and any amendments thereto, with the Commissioner of Insurance.

Section 4. Severability. If any provision of this regulation or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of this regulation and the application of such provision to other persons or circumstances shall not be affected thereby.

DANIEL D. BRISCOE, Commissioner
ADOPTED: January 13, 1983
APPROVED: NEIL J. WELCH, Secretary
RECEIVED BY LRC: January 14, 1983 at 4:20 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Daniel D. Briscoe, Commissioner, Kentucky Department of Insurance, P.O. Box 517, Frankfort, Kentucky 40602.

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

808 KAR 5:040. Retention of records; examination.

RELATES TO: KRS Chapter 291
PURSUANT TO: KRS 13.082, 291.530
NECESSITY AND FUNCTION: To promote the proper conduct of business by an industrial loan certificate holder and to further insure effective examination by the commissioner or his representatives.

Section 1. Every certificate holder shall keep and maintain the following books and accounting records:

(1) "Loan register" or its equivalent record, which shall be the book of original entry and permanent record and shall properly identify each account by number, date of loan and amount of loan.

(2) An individual account ledger or card with borrowers which shall show the name and address of the borrower, the loan number, the amount and date of the loan and of its maturity, rate of interest, terms of repayment, and nature of the security, if any, for the loan and the dates of receipt and payment of recording fees together with the amount.

(a) The account ledger or card shall provide separate columns for payments of principal and shall be kept in such manner as to show clearly the balance due on principal. All payments of principal shall be credited promptly upon account ledger or cards.

(b) Loan or payment cards for industrial loans and sales finance contracts shall be maintained in separate files at all times.

(c) If any error should be made on the individual account ledger or card, appropriate correction should be made without erasures.

(3) An appropriate filing system, which shall contain all the current evidences of indebtedness or security which have been signed by the borrower.

(4) An individual index record shall be maintained for every endorser, accommodation co-maker, or surety, except a spouse listed on the record of the borrower. The above office record shall be made available for examination upon request by the Commissioner of Banking and Securities or his representatives.

(5) In lieu of the books and records described in Section 1(1), (2), and (4) of this regulation, the certificate holder may, with the prior written approval of the commissioner, maintain such required information with electronic data processing equipment. Such required information shall be readily accessible and retrievable; its form and content shall be consistent with the information available from the books and records described in Section 1(1), (2), and (4) of this regulation.

NEIL J. WELCH, Secretary

ADOPTED: January 6, 1983

RECEIVED BY LRC: January 6, 1983 at 11 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Andrew J. Palmer, General Counsel, Department of Banking and Securities, 911 Leawood Drive, Frankfort, Kentucky 40601.

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

808 KAR 6:105. Records required.

RELATES TO: KRS Chapter 288

PURSUANT TO: KRS 13.082, 288.610

NECESSITY AND FUNCTION: To promote the proper conduct of business by a small loan licensee and to further insure effective examination by the commissioner or his representatives.

Section 1. Every licensee shall keep and maintain the following books and accounting records:

(1) "Loan register" or its equivalent record, which shall be the book of original entry and permanent record and shall properly identify each account by number, date of loan and amount of loan.

(2) An individual account ledger card with borrowers which shall show the name and address of the borrower, the loan number, the amount and date of the loan and of its maturity, rate of interest, terms of repayment, the nature of the security, if any, for the loan and the dates of receipt and payment of recording fees together with the amount.

(a) The account ledger or card shall provide separate columns for payments of principal, and shall be kept in such manner as to show clearly the balance due on principal. All payments shall be credited promptly upon the account ledger or card.

(b) Loan or payment cards for small loans and/or sales finance loans shall be maintained in separate files at all times.

(c) If any error should be made on the individual account ledger or card, appropriate correction should be made without erasures.

(3) An appropriate filing system, which shall contain all the current evidences of indebtedness or security which have been signed by the borrower.

(4) An individual index record shall be maintained for every endorser, accommodation co-maker, or surety, except a spouse listed on the record of the borrower. The above office record shall be made available for examination upon request by the Commissioner of Banking and Securities or his representatives.

(5) In lieu of the books and records described in Section 1(1), (2), and (4) of this regulation, the licensee may, with the prior written approval of the commissioner, maintain such required information with electronic data processing equipment. Such required information shall be readily accessible and retrievable; its form and content shall be consistent with the information available from the books and records described in Section 1(1), (2), and (4) of this regulation.

NEIL J. WELCH, Secretary

ADOPTED: January 6, 1983

RECEIVED BY LRC: January 6, 1983 at 11 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Andrew J. Palmer, General Counsel, Department of Banking and Securities, 911 Leawood Drive, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Harness Racing Commission
(Proposed Amendment)

811 KAR 1:020. Registration and identification of horses.

RELATES TO: KRS 230.630(1), (2), (3), 230.640(2)
PURSUANT TO: KRS 13.082, 230.630(3),(4), (7)
NECESSITY AND FUNCTION: To regulate conditions under which harness racing shall be conducted in Kentucky. The function of this regulation is to provide for the registration, ownership, identification and information concerning horses.

Section 1. Registration. All matters relating to registration of standardbred horses shall be governed by the rules of the United State Trotting Association.

Section 2. Bona Fide Owner or Lessee. Horses not under lease must race in the name of the bona fide owner. Horses under lease must race in the name of the lessee and a copy of the lease must be recorded with the Kentucky Harness Racing Commission. Persons violating this rule may be fined, suspended or expelled.

Section 3. Program Information. (1) A printed program shall be available to the public at all meetings where purses are raced for. All programs shall furnish:
(a) Horse's name and sex.
(b) Color and age.
(c) Sire and dam.
(d) Owner's name.
(e) Driver's name and colors.
(f) Age and weight.
(2) At extended pari-mutuel meetings the following additional information shall be furnished.
(a) In claiming races the price for which the horse is entered to be claimed must be indicated.
(b) At least the last six (6) performance and accurate chart lines. An accurate chart line shall include: date of race, place, size of track if other than a half-mile track, symbol for free-legged pacers, track condition, type of race, distance, the fractional times of the leading horse including race time, post position, position of one quarter (¼), one half (½), three quarters (¾), stretch with lengths behind leader, finish with lengths behind leader, individual time of the horse, closing dollar odds, name of the driver, names of the horses placed first, second and third by the judges. The standard symbols for breaks and park-outs shall be used, where applicable.
(c) Indicate drivers racing with a provisional license.
(d) Indicate pacers that are racing without hopples.
(e) Summary of starts in purse races, earnings, and best win time for current and preceding year. A horse's best win time may be earned in either a purse or non-purse race.
(f) The name of the trainer.
(g) The consolidated line shall carry date, place, time, driver, finish, track condition and distance, if race is not at one (1) mile.
(h) All horses drawn into an early closer, a late closer, stake or futurity shall be listed on the official program.
Explanation:
Early closer—a race in which entries close at least six (6) weeks preceding the race.
Late closer—a race in which entries close less than six (6) weeks and more than three (3) days before the race is contested.
Futurity—a stake in which the dam of the competing animal is nominated.
Stake—a race which will be contested in a year subsequent to its closing.

Section 4. Failure to Furnish Reliable Program Information. May subject the track and/or program director to a fine not to exceed $500 and the track and/or the program director may be suspended until arrangements are made to provide reliable program information.

Section 5. Inaccurate Information. Owners, drivers, or others found guilty of providing inaccurate information on a horse's performance, or of attempting to have misleading information given on a program may be fined, suspended or expelled.

Section 6. Check on Identity of Horse. Any track official, member of the Kentucky Harness Racing Commission or their agent, or owner, trainer or driver of any horse declared into a race wherein the question arises may call for information concerning the identity and eligibility of any horse on the grounds of a track, and may demand an opportunity to examine such horse with a view to establishing his identify or eligibility. If the owner or party controlling such horse shall refuse to afford such information, or to allow such examination, or fail to give satisfactory identification, the horse and the said owner or party may be barred and suspended or expelled.

Section 7. Frivolous Demand for Identification. Any person demanding the identification of a horse without cause or merely with the intent to embarrass a race, shall be punished by a fine not exceeding $100 or by suspension or expulsion.

Section 8. Tattoo Requirements. No horse will be permitted to start at an extended pari-mutuel meeting that has not been tattooed unless the permission of the presiding judge is obtained and arrangements are made to have the horse tattooed. Any person refusing to allow a horse to be tattooed may be fined, suspended or expelled.

Section 9. False Chart Lines. Any official, clerk, or person who enters a chart line on an eligibility certificate when the race has not been charted by a licensed charter may be fined, suspended or expelled.

Section 10. Withholding Registration or Eligibility Certificate. Any person withholding an eligibility or registration certificate from the owner or lessee of a horse, after proper demand has been made for the return thereof, may be suspended until such time as the certificate is returned.

CARL B. LARSEN, Supervisor of Racing
ADOPTED: November 5, 1982
APPROVED: NEIL WELCH, Secretary
RECEIVED BY LRC: January 11, 1983 at 3:45 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Carl B. Larsen, Supervisor of Racing, Kentucky Harness Racing Commission, 1051-H Newtown Pike, Lexington, Kentucky 40511-1278.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Harness Racing Commission
(Proposed Amendment)

811 KAR 1:055. Declaration to start; drawing horses.

RELATES TO: KRS 230.630(1), (3), 230.640
PURSUANT TO: KRS 13.082, 230.630(3), (4), (7)
NECESSITY AND FUNCTION: To regulate conditions under which harness racing shall be conducted in Kentucky. The function of this regulation is to regulate declarations to start; drawing horses.

Section 1. Declaration. (1) At extended pari-mutuel meetings. Unless otherwise specified in the conditions, or approved in writing by the commission three (3) days prior to the day of the race omitting Sundays, the declaration time shall be 9 a.m.

(2) Declaration time at other meetings. At all other meetings starters must be declared in at 10 a.m. unless another time is specified in the conditions.

(3) No horse shall be declared to start in more than one (1) race on any one (1) racing day.

(4) Timed used. In order to avoid confusion and misunderstanding, the time when declarations close will be considered to be standard time, except the time in use at an extended pari-mutuel meeting shall govern that meeting.

(5) Declaration box. The management shall provide a locked box with an aperture through which declarations shall be deposited.

(6) Responsibility for declaration box. The presiding judge shall be in charge of the declaration box.

(7) Search for declarations by presiding judge before opening box. Just prior to opening of the box at extended pari-mutuel meetings where futurities, stakes, early closing or late closing events are on the program, the presiding judge shall check with the race secretary to ascertain if any declarations by mail, telegraph, or otherwise, are in the office and not deposited in the entry box, and he shall see that they are declared and drawn in the proper event.

(8) Opening of declaration box. At the time specified the presiding judge shall unlock the box, assort the declarations found therein and immediately draw the positions in the presence of such owners or their representatives, as may appear.

(9) Entry box and drawing of horses at extended pari-mutuel meetings. The entry box shall be opened by the presiding judge at the advertised time and the presiding judge will be responsible to see that at least one (1) horseman or an official representative of the horsemen is present. No owner or agent for a horse with a declaration in the entry box shall be denied the privilege of being present. Under the supervision of the presiding judge, all entries shall be listed, the eligibility verified, preference ascertained, starters selected and post positions drawn. If it is necessary to reopen any race, public announcement shall be made at least twice and the box reopened to a definite time.

(10) Drawing of post positions for second heat in races of more than one (1) dash or heat at pari-mutuel meetings. In races of a duration of more than one (1) dash or heat at pari-mutuel meetings, the judges may draw post positions from the stand for succeeding dashes or heats.

(11) Declarations by mail, telegraph or telephone. Declarations by mail, telegraph, or telephone actually received and evidence of which is deposited in the box before the time specified to declare in, shall be drawn in the same manner as the others. Such drawings shall be final. Mail, telephone and telegraph declarations must state the name and address of the owner or lessee; the name, color, sex, sire and dam of the horse; the name of the driver and his colors; the date and place of last start; a current summary, including the number of starts, first, seconds, thirds, earnings and best winning time for the current year; and the event or events in which the horse is to be entered.

(12) Effect of failure to declare on time. When a track requires a horse to be declared at a stated time, failure to declare as required shall be considered a withdrawal from the event.

(13) Drawings of horses after declaration. After declaration to start has been made no horse shall be drawn except by permission of the judges. A fine, not to exceed $500, or suspension, may be imposed for drawing a horse without permission, the penalty to apply to both the horse and the party who violates the regulation.

(14) Horses omitted through error. Such drawings shall be final unless there is conclusive evidence that a horse properly declared, other than by telephone, was omitted from the race through error of a track or its agent or employee in which event the horse may be added to this race but given the outside post position. This shall not apply at pari-mutuel meetings unless the error is discovered prior to the publication of the official program.

Section 2. Qualifying Races. At all extended pari-mutuel meetings declarations for overnight events shall be governed by the following:

(1) Within two (2) weeks of being declared in, a horse that has not raced previously at the gait chosen must go a qualifying race under the supervision of a judge holding a presiding or associate judge's license for pari-mutuel meetings and acquire at least one (1) charted line by a licensed charter. In order to provide complete and accurate chart information on time and beaten lengths a standard photo finish shall be in use.

(2) A horse that does not show a charted line for the previous season, or a charted line within its last six (6) starts, must go a qualifying race as set forth in subsection (1) of this section. Uncharted races contested in heats or more than one (1) dash and consolidated according to subsection (4) of this section will be considered one (1) start.

(3) A horse that has not started at a charted meeting by *April 1* [August 1] of a season must go a qualifying race *and meet the qualifying standards of the meet* [as set forth in subsection (1)].

(4) When a horse has raced at a charted meeting during the current season, then gone to meetings where the races are not charted, the information from the uncharted races may be summarized, including each start, and consolidated in favor of charted lines and the requirements of subsection (2) of this section would then not apply.

(5) The consolidated line shall carry date, place, time, driver, finish, track condition and distance if race is not at one (1) mile.

(6) The judges may require any horse that has been on the steward's list to go a qualifying race. If a horse has raced in individual time not meeting the qualifying standards for that class of horse, he may be required to go a qualifying race.

(7) The judges may permit a fast horse to qualify by means of a timed workout consistent with the time of the races in which he will compete in the event adequate competition is not available for a qualifying race. However, a

horse that is on the steward's list for breaks or refusing to come to the gate must qualify in a qualifying race.

(8) To enable a horse to qualify, qualifying races should be held at least one (1) full week prior to the opening of any meeting of ten (10) days or more and shall be scheduled at least twice a week. Qualifying races shall also be scheduled twice a week during the meeting and through the last week of the meeting.

(9) Where a race is conducted for the purpose of qualifying drivers and not horses, the race need not be charted, timed or recorded. This subsection is not applicable to races qualifying both drivers and horses.

(10) If a horse takes a win race record in a qualifying race, such record must be prefaced with the letter "Q" wherever it appears, except in a case where, immediately prior to or following the race, the horse taking the record has been submitted to an approved urine, saliva or blood test. It will be the responsibility of the presiding judge to report the test on the judges' sheet.

(11) Any horse that fails to race at a charted meeting within thirty (30) days after having started in a current year, shall start in a charted race or a qualifying race and meet the standards of the meeting before being allowed to start in a race with pari-mutuel wagering.

Section 3. Coupled Entries. (1) When the starters in a race include two (2) or more horses owned or trained by the same person, or trained in the same stable or by the same management, they shall be coupled as an "entry" and a wager on one (1) horse in the "entry" shall be a wager on all horses in the "entry." Provided, however, that when a trainer enters two (2) or more horses in a stake, early closing, futurity, free-for-all or other special event under bona fide separate ownerships, the said horses may, at the request of the association and with the approval of the commission, be permitted to race as separate betting entries. The fact that such horses are trained by the same person shall be indicated prominently in the program. If the race is split in two (2) or more divisions, horses in an "entry" shall be seeded insofar as possible, first by owners, then by trainers, then by stables; but the divisions in which they compete and their post positions shall be drawn by lot. The above provision shall also apply to elimination heats.

(2) The presiding judge shall be responsible for coupling horses. In addition to the foregoing, horses separately owned or trained may be coupled as an entry where it is necessary to do so to protect the public interest for the purpose of pari-mutuel wagering only. However, where this is done, entries may not be rejected.

(3) If an owner, lessor, or lessee has a vested interest in another horse in the same race, it shall constitute an entry.

Section 4. Also Eligibles. Nor more than two (2) horses may be drawn as also eligibles for a race and their positions shall be drawn along with the starters in the race. In the event one (1) or more horses are excused by the judges, the also eligible horse or horses shall race and take the post position drawn by the horse that it replaces, except in handicap races. In handicap races the also eligible horse shall take the place of the horse that it replaces in the event that the handicap is the same. In the event the handicap is different, the also eligible horse shall take the position on the outside of horses with a similar handicap. No horse may be added to a race as an also eligible unless the horse was drawn as such at the time declarations closed. No horse may be barred from a race to which it is otherwise eligible by reason of its preference due to the fact that it has been drawn as an also eligible. A horse moved into the race from the also eligible list cannot be drawn except by permission of the judges, but the owner or trainer of such a horse shall be notified that the horse is to race and it shall be posted at the race secretary's office. All horses on the also eligible list and not moved into race by 9 a.m. on the day of the race shall be released.

Section 5. Preference. (1) Preference shall be given in all overnight events according to a horse's last previous purse race during the current year. The preference date on a horse that has drawn to race and been scratched is the date of the race from which he was scratched.

(2) When a horse is racing for the first time in the current year, the date of the first declaration shall be considered its last race date, and preference applied accordingly.

(3) If an error has been made in determining or posting a preference date and said error deprives an eligible horse of an opportunity to race, the trainer involved shall report the error to the racing secretary within one (1) hour of the announcement of the draw. If in fact a preference date error has occurred, the race will be redrawn.

Section 6. Steward's List. (1) A horse that is unfit to race because he is dangerous, unmanageable, sick, lame, unable to show a performance to qualify for races at the meeting, or otherwise unfit to race at the meeting may be placed on a "steward's list" by the presiding judge, and declarations on said horse shall be refused, but the owner or trainer shall be notified in writing of such action and the reason as set forth above shall be clearly stated on the notice. When any horse is placed on the steward's list, the clerk of the course shall make a note on the eligibility certificate of such horse, showing the date the horse was put on the steward's list, the reason therefor and the date of removal if the horse has been removed.

(2) No presiding judge or other official at a non-extended meeting shall have the power to remove from the steward's list and accept as an entry any horse which has been placed on a steward's list and not subsequently removed therefrom for the reason that he is a dangerous or unmanageable horse. Such meetings may refuse declarations on any horse that has been placed on the steward's list and has not been removed therefrom.

(3) A horse scratched from a race because of lameness or sickness may not enter another race for at least three (3) days from the date of the scratch.

Section 7. Driver. Declarations shall state who shall drive the horse and give the driver's colors. Drivers may be changed until 9 a.m. of the day preceding the race, after which no driver may be changed without permission of the judges and for good cause. When a nominator starts two (2) or more horses, the judges shall approve or disapprove the second and third drivers.

Section 8. (1) It shall be the duty of the presiding judge to call a meeting of all horsemen on the grounds before the opening of an extended pari-mutuel meeting for the purpose of their electing a member and an alternate to represent them on matters relating to the withdrawal of horses due to bad track or weather conditions.

(2) In case of questionable track conditions due to weather, the presiding judge shall call a meeting consisting of an agent of the track member, the duly elected representative of the horsemen and himself.

(3) Upon unanimous decision by this committee of three (3) that track conditions are safe for racing, no unpermitted withdrawals may be made.

(4) Any decision other than unanimous by this committee will allow any entrant to scratch his horse or horses after posting ten (10) percent of the purse to be raced for. In the event sufficient withdrawals are received to cause the field to be less than six (6), then the track member shall have the right of postponement of an early closing event or stake and cancellation of an overnight event.

(5) Said money posted shall be forwarded to the commission and shall be retained as a fine, or refunded to the individual upon the decision of the commission as to whether the withdrawal was for good cause.

(6) The above procedure applies only to the withdrawal of horses that have been properly declared in and does not relate to postponement which is covered in 811 KAR 1:060.

CARL B. LARSEN, Supervisor of Racing
ADOPTED: November 5, 1982
APPROVED: NEIL WELCH, Secretary
RECEIVED BY LRC: January 11, 1983 at 3:45 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Carl B. Larsen, Supervisor of Racing, Kentucky Harness Racing Commission, 1051-H Newtown Pike, Lexington, Kentucky 40511-1278.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Harness Racing Commission
(Proposed Amendment)

811 KAR 1:070. Licensing; owners, drivers, trainers, grooms and agents.

RELATES TO: KRS 230.630(1),(3), 230.640, 230.700, 230.710
PURSUANT TO: KRS 13.082, 230.630(3),(4),(7)
NECESSITY AND FUNCTION: To regulate conditions under which harness racing shall be conducted in Kentucky. The function of this regulation is to set out the requirements of and to provide for the licensing of owners, trainers, drivers, grooms and agents.

Section 1. Owners. Every person owning a horse that is entered at a race meeting licensed by the commission shall be required to obtain a license from the commission and the United States Trotting Association. Said application shall be on forms provided by the commission and shall be filed at any commission office. Such license shall be presented to the clerk of the course at the time said horse is entered in a race.

Section 2. Driver's Application for License. Every person desiring to drive a harness horse at a race meeting licensed by the commission shall be required to obtain a license from the commission and the United States Trotting Association. Such application shall be on forms provided by the commission. Applications may be filed at any commission office. Such license shall be presented to the clerk of course before driving. Pending a valid license by the United States Trotting Association, the commission may, at its discretion, issue a provisional or full driver's license to those who qualify as hereinafter set out.

Section 3. Qualification for a Provisional and/or Full Driver's License. (1) Every applicant for a provisional license to drive a harness horse at a race meeting licensed by the commission in addition to any other requirements mentioned herein shall:

(a) Submit evidence of good moral character.

(b) Submit evidence of his ability to drive in a race and, if he is a new applicant, this must include the equivalent of one (1) year's training experience.

(c) Be at least eighteen (18) years of age.

(d) Furnish a completed application form.

(e) Submit satisfactory evidence of an eye examination indicating $^{20}/_{40}$ corrected vision in both eyes, or if one (1) eye blind, at least $^{20}/_{30}$ corrected vision in the other eye; and, when requested, submit evidence of physical and mental ability and/or submit to a physical examination.

(f) No person sixty (60) years of age or older who has never held any type of driver's license previously shall be issued a driver's license.

(g) When requested, submit a written examination at a designated time and place to determine his qualifications to drive and his knowledge of racing and the rules. In addition, any driver who presently holds a license and wishes to obtain a license in a higher category, who has not previously submitted to such written test, shall be required to take a written test before becoming eligible to obtain a license in a higher category.

(h) No applicant who has previously held any type of driver's license shall be subsequently denied a driver's license solely on the basis of age.

(2) A full license will be granted to an applicant who qualifies for a provisional license and has acquired:

(a) At least one (1) year's driving experience while holding a provisional license from the United States Trotting Association.

(b) Twenty-five (25) satisfactory starts in the calendar year preceding the date of his application at an extended pari-mutuel meeting.

(3) In the event any person is involved in an accident on the track, the commission may order such person to submit to a physical examination and such examination must be completed within thirty (30) days from such request or his license may be suspended until compliance therewith.

(4) All penalties imposed on any driver may be recorded on the reverse side of his commission driver's license by the presiding judge.

(5) The Kentucky Harness Racing Commission reserves the right to require any driver to take a physical examination at any time.

Section 4. Trainers' Application for License. An applicant for a license as trainer shall be licensed by the United States Trotting Association and must be at least eighteen (18) years of age and satisfy the commission that he possesses the necessary qualifications both mental and physical, to perform the duties required. Elements to be considered, among others, shall be character, reputation, temperament, experience, knowledge of the rules of racing and of the duties of a trainer in the preparation, training, entering and managing of horses for racing.

Section 5. Absence of Trainers. When any licensed trainer is absent from a racing meet for more than six (6) days, it shall be the duty of the trainer to appoint and have properly licensed a new trainer of record.

Section 6. Grooms' Application for License. An applicant for a license as a groom must satisfy the commission

that he possesses the necessary qualifications, both mental and physical to perform the duties required. Elements to be considered, among others, shall be character, reputation, temperament, experience, knowledge of the rules of racing and of the duties of a groom. No license shall be issued to applicants under sixteen (16) years of age.

Section 7. (1) The holder of a license issued by the United States Trotting Association or a holder of a license issued by the Kentucky Harness Racing Commission for the prior year, may be presumed to be qualified to receive a license, all others must be tested by the deputy commissioner (supervisor of racing), his assistant, or agent of the commission, at such locations as shall be designated by the commission as to the capability of said applicant for a license to perform the functions required of him. Said tests shall be either in writing or by demonstrations or both and shall be administered in a uniform manner. The cost of said testing shall be borne by the applicant.

(2) A holder of a current qualifying license issued by the United States Trotting Association may be allowed to drive a horse that is already qualified, however, if the horse does not meet the standards of the meeting, the horse shall be placed on the stewards list. If a race is held solely for qualifying drivers, the race may not be charted. A race solely for qualifying drivers must have more than four (4) starters.

Section 8. The following shall constitute disorderly conduct and be reason for a fine, suspension, or revocation of an owner's, driver's, trainer's, or groom's license:

(1) Failure to obey the judges' or other officials' orders that are expressly authorized by the rules of this commission.

(2) Failure to drive when programmed unless excused by the judges.

(3) Drinking intoxicating beverages within four (4) hours of the first post time of the programs on which he is carded to drive.

(4) Appearing in the paddock in an unfit condition to drive.

(5) Fighting.

(6) Assaults.

(7) Offensive and profane language.

(8) Smoking on the track in colors during actual racing hours.

(9) Warming up a horse prior to racing without colors.

(10) Disturbing the peace.

(11) Refusing to take a breath analyzer test when directed by the presiding judge, deputy commissioner (supervisor of racing), or assistant deputy commissioner (assistant supervisor of racing).

Section 9. Colors and Helmet. Drivers must wear distinguishing colors, *and clean white pants,* and shall not be allowed to start in a race or other public performance unless in the opinion of the judges they are properly dressed. No one shall drive during the time when colors are required on a race track unless he is wearing a type of protective helmet, constructed with a hard shell, and containing adequate padding and a chin strap in place. *This shall include drivers of prompters during time trials.*

Section 10. Miscondut in Colors. Any driver wearing colors who shall appear at a betting window or at a bar or in a restaurant dispensing alcoholic beverages shall be fined not to exceed $100 for each such offense.

Section 11. Driver Change. No driver can, without good and sufficient reasons, decline to be substituted by the judges. Any driver who refuses to be so substituted may be fined or suspended, or both by order of the judges.

Section 12. Amateur Definition. An ameteur driver is one who has never accepted any valuable consideration by way of or in lieu of compensation for his services as a trainer or driver during the past ten (10) years.

Section 13. Registered Colors. Drivers holding an "A" license or drivers with a "V" license who formerly held an "A" license, shall register their colors with the United States Trotting Association. Registered stables or corporations may register their racing colors with the United States Trotting Association.

CARL B. LARSEN, Supervisor of Racing
ADOPTED: November 5, 1982
APPROVED: NEIL WELCH, Secretary
RECEIVED BY LRC: January 11, 1983 at 3:45 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Carl B. Larsen, Supervisor of Racing, Kentucky Harness Racing Commission, 1051-H Newtown Pike, Lexington, Kentucky 40511-1278.

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

815 KAR 7:020. Building code.

RELATES TO: KRS Chapter 198B
PURSUANT TO: KRS 198B.040(7), 198B.050
NECESSITY AND FUNCTION: The Kentucky Board of Housing, Buildings and Construction is required by KRS 198B.040(7) to adopt and promulgate a mandatory uniform state building code, which establishes standards for construction of buildings in the state. This regulation establishes the Kentucky Building Code basic provisions relating to new construction, including general building limitations, special use and occupancy, light, ventilation and sound transmission control, means of egress, structural and foundation loads and stresses, acceptable materials and tests, fire resistive construction and fire protection systems, safety during building operations, mechanical systems, energy conservation and electrical systems.

Section 1. The Kentucky Building Code shall include the National Electrical Code, 1981 Edition, N.F.P.A. #70, published by and copies available from the National Fire Protection Association, 470 Atlantic Avenue, Boston, Massachusetts 02210. The National Electrical Code is hereby adopted by reference.

Section 2. The Kentucky Building Code shall include the "BOCA Basic Building Code/1981," Eighth Edition, published by and copies available from Building Officials and Code Administrators International, 17926 South Halsted Street, Homewood, Illinois 60430. That code, including all standards listed in Appendices A through F are hereby adopted by reference with the following additions, exceptions and deletions:

(1) Delete Article 1 in its entirety.
(2) Change subsection 201.0 to include the following additional definitions:
(a) "Construction: The erection, fabrication, reconstruction, substantial alteration or conversion of a building, or the installation of equipment therein."
(b) "Equipment: Facilities or installations including but not limited to, heating, electrical, ventilating, air-conditioning, and refrigerating facilities or installations."
(c) "Reconstruction: The process of reproducing by new construction the exact form and detail of a vanished building, structure or object or a part thereof as it appeared at a specific period of time."
(d) "Rehabilitation: The process of returning a property to a state of utility through repair or alteration which makes possible an efficient contemporary use of while preserving those portions or features of the property which are significant to historical, architectural and cultural values."
(e) "Restoration: The process of accurately recovering the form and details of the property and its setting as it appeared at a particular period of time by means of the removal of later work or by the replacement of missing earlier work."
(f) "Stabilization: The process of applying measures designed to re-establish a weather-resistant enclosure and the structural stability of an unsafe or deteriorated property while maintaining the essential form as it exists."
(3) Change subsection 201.0 definitions to read as follows:
(a) "Basement: That portion of a building the average height of which is at least half below grade, which is ordinarily used for purposes such as storage, laundry facilities, household tool shops, and installation and operation of heating, cooling, ventilating facilities, but which is not ordinarily used for purposes of general household habitation."
(b) "Story: That part of the building comprised between a floor and the floor or roof next above which is not a basement or an attic."
(4) Change subsection 308.5 to read as follows: "308.5 Use group R-4 Structures: This use group shall include all detached one (1) or two (2) family dwellings not more than than three (3) stories in height, and their accessory structures as indicated in the Appendix A Standard, One- and Two-Family Dwelling Code. All such structures shall be designed and built in accordance with the requirements of this code for use group R-3 structures or shall be designed and built in accordance with all the requirements of the one (1) and two (2) family dwelling code as listed in Appendix B, except that the requirements of the state plumbing code (Article 22) shall supersede those conflicting requirements of the one (1) and two (2) family dwelling code. This choice shall be made by the builder at the time of plans submission."
(5) Change subsection 504.1 to read as follows: "504.1 Limitations: These provisions shall not be deemed to prohibit alterations within the limitations of Section 6 of 815 KAR 7:010 provided an unlawful change of use is not involved."
(6) Delete Sections 515.1 through 515.11 and substitute the following: "515.1 Requirements for accessibility of the handicapped: Please see 815 KAR 40:010 for construction requirements providing accessibility to the handicapped in public buildings and public accommodations."
(7) Change subsection 516.1 to read as follows: "516.1 Approval: The provisions of this code relating to the reconstruction, restoration, stabilization, rehabilitation, and moving of buildings or structures shall not be mandatory for existing buildings or structures, identified and classified on the National Register of Historic Places or otherwise classified as historic by the Kentucky Heritage Commission or the department when such buildings or structures are judged by the department to be safe and in the public interest of health, safety and welfare. The department may require submission of architectural and engineering plans and specifications prior to a determination.
(8) Change subsection 603.2 to read as follows: "603.2 Housekeeping: Periodic inspections of existing uses and occupancies shall be made by the appropriate fire and health officials to insure maintenance of good housekeeping conditions."
(9) Change Section 613.1 to read as follows: "Private garages located beneath a one- and two-family dwelling shall have walls, partitions, floors and ceilings separating the garage space from the dwelling constructed of not less than one (1) hour fireresistance rating. Private garages attached to a one- and two-family dwelling shall be completely separated from the dwelling and its attic area by means of one-half (½) inch gypsum board or equivalent applied to the garage side. In lieu of the required one and three quarter (1¾) inch solid core door, an approved automatic sprinkler head located directly above the door in the garage and properly connected to the domestic water system or an approved automatic smoke detector located directly above the door in the garage shall be acceptable."
(10) Delete Section 705 and Section 804 in their entirety.
(11) Change Section 900.0 by creating a new subsection which shall read as follows: "900.2 Certificate of Compliance: the provisions of this article may be deemed to have been satisfied when certification of an architect or engineer registered in Kentucky to that effect is placed on drawings submitted to the building official."
(12) Delete subsections 1404.4.2, 1404.4.3, 1404.4.4 in their entirety.
(13) Change subsection 1600.2 to read as follows: "1600.2 Boilers: All boilers and associated pressure piping shall meet the standards for construction, installation and inspection as set forth in Title 815, Chapter 15, Kentucky Administrative Regulations."
(14) Add two new subsections to Section 1600.0 which shall read as follows:
(a) "1600.3 Unfired Pressure Vessels. All unfired pressure vessels shall meet the standards set forth in Section VIII of the 1977 Edition of the ASME Boiler and Pressure Vessel Code, ANSI/ASME BPV-VIII-1."
(b) "1600.4 Mechanical Code: All mechanical equipment and systems not covered by 1600.2 or 1600.3 but which are required by other provisions of this code to be installed in accordance with the mechanical code listed in Appendix B, shall be constructed, installed and maintained in conformity with the BOCA Basic Mechanical Code/1981 including all applicable standards listed within Appendices B through E."
(15) Delete Article Nineteen (19) in its entirety.
(16) Delete subsections 2000.1 through 2005.3 and substitute the following:
(a) "2000.1 Installations and Repairs. All electrical wiring and equipment shall be installed in conformity with the National Electrical Code incorporated by reference in the Kentucky Building Code.
(b) "2000.2 Electrical Inspections. Inspections conducted to determine compliance with the National Elec-

trical Code shall be conducted by a certified electrical inspector in accordance with 815 KAR 35:010.

(c) "2000.3 Certificate of Approval:"

1. After the Kentucky Building Code becomes effective pursuant to KRS 198B.110 and after a certified electrical inspector has been employed, contracted for or with, or otherwise provided for by the local government or the department, no utility shall initiate permanent electrical service to any new building until a final certificate of approval has been issued by a certified electrical inspector. Unless the department shall notify the utility in writing as to which buildings are subject to departmental approval, it shall be presumed by the utility that the building is subject to the jurisdiction of the local government.

2. Nothing in this section shall prohibit the supply or use of necessary electrical services during the construction and testing process.

(d) "Section 2000.4 Temporary use and Permission: The building official may in his discretion give temporary permission for a reasonable time to supply and use current in part of an electrical installation before such installation has been fully completed and the final certificate of approval has been issued; provided, that the part covered by the temporary certificate complies with all the requirements specified for lighting, heat or power in the National Electrical Code."

(17) Delete subsections 2200.1 through 2206.3.1 in their entirety and substitute the following: "2200.1 Scope: The design and installation of all plumbing systems, including sanitary and storm water sewage disposal in buildings shall comply with the requirements of the Kentucky State Plumbing Code as set out in Title 815, Chapter 20, Kentucky Administrative Regulations."

Section 3. Elevator Installation and Maintenance. The following subsections of Article 21 of the BOCA Basic Building Code are deleted or changed to read as follows:

(1) 2100.1 Scope: Except as may be otherwise provided by statute, the provisions of this article shall control the design, construction, installation, maintenance and operation of all elevators, escalators, moving stairways, moving walks, hereafter operated, installed, relocated or altered in all buildings and structures. The design, construction, installation, maintenance and operation of all miscellaneous hoisting and elevating equipment shall be subject to such special requirements as are deemed necessary by the building official to secure their safe operation. The provisions of this article shall not apply to portable elevating devices used to handle materials only, and located and operated entirely within one (1) story. All such equipment shall be constructed, operated and maintained in compliance with accepted engineering practice. The construction, alteration, maintenance, operation, inspection and tests of manlifts shall be in conformity to the Safety Standard for Manlifts listed in ANSI A17.1.

(2) 2101.3 Identification of equipment: All elevators which are subject to periodic inspections shall be identified by a serial number stamped on the crosshead of the elevator car and on the front of the car door sill; and on devices other than elevators, on truss or frame, in figures not less than three-eighths (3/8) inch high. After such devices have been so designated, their numbers shall not be changed except by permission of the building official, and all correspondence in regard to such device shall refer to said number.

(3) 2102.3.2 Deleted.

(4) 2102.4.1 Periodic inspection intervals: Annual Inspection. Every passenger elevator and escalator shall be inspected once every twelve (12) months.

(5) 2107.4.2 Maintenance test intervals: Full load safety tests shall be made at intervals not exceeding the following:

(a) Power elevator car and counterweight safeties, governors and oil buffers, every five (5) years; and

(b) Hydraulic elevator shall have pressure relief test at no less than every twelve (12) months.

(6) 2102.5.2 Deleted.

(7) 2102.5.3 Manlifts: All equipment and machinery of manlifts shall be inspected and tested to insure reasonable safety of operation and shall include tests of the brake, terminal stopping device, cables and emergency stopping device. Acceptance tests shall also include a load capacity test as provided in the accepted standard listed in ANSI A17.1.

(8) 2102.5.4 Deleted.

(9) 2107.2.1 Buildings with elevator service: In all buildings and structures serviced by an elevator, all elevators shall be provided with a minimum clear distance between walls, or between wall and door excluding return panels, not less than sixty-eight (68) inches by fifty-four (54) inches (1727 mm by 1372 mm), and a minimum distance from wall to return panel not less than fifty-one (51) inches (1295 mm). The minimum clear width of the door shall be thirty-two (32) inches (813 mm).

(10) 2107.2.2 Elevators for fire department use: In all structures where elevator service is required for fire department use (see Section 629.8), all elevators shall be provided with a minimum distance between walls, or between wall and door excluding return panels, not less than eighty (80) inches by fifty-four (54) inches (2032 mm by 1372 mm) and a minimum distance from wall to return panel not less than fifty-one (51) inches (1295 mm), with a forty-two (42) inch (1067 mm) side slide door to allow for turning a wheelchair or accommodating an ambulance stretcher in its horizontal position.

(11) 2107.4 Use by handicapped persons: If interior access in multi-story buildings is provided by elevator(s), all passenger elevators shall meet the following requirements of Sections 2107.4.1 through 2107.4.11.

(a) 2107.4.4 Car call: The minimum acceptable time for doors to remain open shall not be less than five (5) seconds.

(b) 2107.4.6 Car controls: Elevator control panels shall have the following features:

1. Buttons. All control buttons shall be at least three-fourths (¾) inch (nineteen (19) mm) in their smallest dimensions. They may be raised, flush, or recessed.

2. Tactile and visual control indicators. All control buttons shall be designated by raised or indented standard alphabet characters for letters, arabic characters for numerals, or standard symbols, and as required in ANSI A17.1-1978 and A17.1a-1979. Raised and indented characters and the main entry floor shall be designated by a raised or indented star at the left of the floor designation. All raised or indented designations for control buttons shall be placed immediately to the left of the button to which they apply. Applied plates, permanently attached, are an acceptable means to provide raised or indented control designations. Floor buttons shall be provided with visual indicators to show when each call is registered. The visual indicators shall be extinguished when each call is answered.

3. Height. All floor buttons shall be no higher than fifty-four (54) inches (1370 mm) above the floor. Emergency controls, including the emergency alarm and emergency stop, shall be grouped at the bottom of the panel and shall

have their centerlines no less than thirty-five (35) inches (890 mm) above the floor.

4. Location. Controls shall be located on a front wall if cars have center opening doors, and at the side wall or at the front wall next to the door if cars have side opening doors.

(c) 2107.4.7 Hall buttons: The centerline of the hall call buttons shall be a nominal forty-two (42) inches above the floor. Director buttons, exclusive of border, shall be a minimum of three-fourths (¾) inch (nineteen (19) mm) in size and raised, flush or recessed. Visual indication shall be provided to show each call registered, and extinguished when the call is answered. Depth of flush or recessed buttons when operated shall not exceed 3.8 inch (ten (10) mm). Button shall not be obstructed by chairs, ashtrays, or decorative ornaments, etc.

(d) 2107.4.10 Car position indicators: In elevator cars, a visual car position indicator shall be provided above the car control panel or over the door to show the position of the elevator in the hoistway. As the car passes or stops at a floor served by the elevators, the corresponding numeral shall illuminate. Numerals shall be a minimum of one-half (½) inch (thirteen (13) mm) high.

(e) 2107.4.11 Emergency communications: Emergency two (2) way communication systems between the elevator and a point outside the hoistway, shall comply with ANSI A17.1-1980. The highest operable part of a two (2) way communication system shall be a maximum of fifty-four (54) inches (1370 mm) from the floor of the car. It shall be identified by raised or recessed symbol and lettering complying with Section 30, and located adjacent to the device. If the system uses a handset, then the length of the cord from the panel to the handset, shall be at least twenty-nine (29) inches (735 mm).

(12) 2108.4 Vents shall be located:

(a) In the side of the hoistway enclosure directly below the floor or floors at the top of the hoistway, and shall open either directly to the outer air or through noncombustible ducts to the outer air; or

(b) In the wall or roof of the penthouse or overhead machinery space above the roof, provided that openings have a total of not less than the minimum specified in Section 2108.5 in lieu of the required vents.

(13) 2114.1 Restricted use: Special purpose personnel elevators shall be restricted to employees only. They shall comply with the applicable requirements of this Article and shall be installed only when permitted by the building official in feed, flour and cereal mills, grain elevators and in similar buildings of other use groups.

(14) 2114.2 Hoistways and hoistway enclosures: Where the hoistway is adjacent to areas permitting passage of people (e.g., passageways, stairwells, elevator landings), it shall be enclosed to a height of not less than seven (7) feet above the floor or stair treads. The enclosure shall be of sufficient strength to prevent contact between the enclosure material and the car or counterweight when the enclosure is subjected to a force of 250 pounds applied at right angles at any point over an area of four (4) inches by four (4) inches. Openwork enclosures may be used and shall reject a ball one (1) inch in diameter.

(15) 2114.2.1 Enclosure required: Except at the entrance, cars shall be fully enclosed with metal at sides and top. The enclosure at the sides shall be solid or of openwork which will reject a ball of one (1) inch in diameter. The minimum clear height inside the car shall be seventy-eight (78) inches.

(16) 2114.3 Limitation of load, speed and platform area: The rated load shall not exceed 650 pounds. The inside net platform area shall not exceed nine (9) square feet. The minimum rated load shall not be less than that based on seventy (70) pounds per square foot of inside net platform area or 250 pounds, whichever is greater. The rated speed shall not exceed 100 feet per minute.

(17) 2114.4 Emergency signal and/or communication: Each elevator shall be equipped with an alarm button or switch in the car operating station and an alarm device mounted in a location which shall be readily available to a person who is normally situated in the vicinity when the elevator is in use, or a means of voice communication to a receiving station always attended when the installation is in use. If the alarm device or means of voice communication is normally activated by utility power supply, it shall be backed up by a manual or battery operated device.

(18) 2114.5 through 2117.5 Deleted.

[Section 3. Elevator Installation and Maintenance. The following subsections of Article 21 of the Kentucky Building Code shall be changed to read:]

[(1) "2101.3 Identification of equipment: In buildings containing more than one (1) elevator or device and where such devices are subject to annual inspections, each such elevator or device shall be identified by a serial number attached to or painted, stenciled or otherwise registered on the crosshead of the elevator car and on the motor or machine; and on devices other than elevators on the motor or machine. After such devices have been so designated, their numbers shall not be changed except by permission of the building official and all correspondence in regard to such device shall refer to said number."]

[(2) "2102.4.1 Annual inspections. Annual inspections shall hereinafter be made for all passenger elevators, manlifts and moving stairways."]

[(3) "2103.2 Final certificate of compliance: The building official shall issue a final certificate of compliance for each unit of equipment which has satisfactorily met all the inspections and tests required by this article. Such final certificate shall bear the name of the person who made the inspections, the date of the inspections, the rated load and speed, and the signature of the chief elevator inspector and the Commissioner of Housing, Buildings and Construction."]

Section 4. Elevators. Appendix A and B, of the *BOCA Basic* [Kentucky] Building Code under "Elevators, Escalators and Moving Walks," shall be changed to read as follows:

(1) Change the standard citation for "Practice for the Inspection of" by changing to read "ANSI A17.2-*1982* [1979 and 1980 Supplement ANSI A17.2a-1980]."

(2) *Change* [Delete] all citations relating to the "Safety Code for" and substitute *"ANSI 17.1-1980."* [as follows:]

[(a) "ANSI 17.1.1978."]

[(b) "1979 Supplement—ANSI A17.1-1979."]

[(c) "1980 Supplement—ANSI A17.1-1980."]

Section 5. A new subsection of Article 3 of the Kentucky Building Code is hereby added to read as follows: "309.5 Tobacco auction warehouses: Warehouses, construction, may be constructed without a sprinkler system when all the following requirements have been met:

(1) The initial submission of plans to the Department of Housing, Buildings and Construction shall include a signed certificate by the owner that the warehouse will be used

solely for the sale of tobacco on a seasonal basis or for the storage of non-combustibles.

(2) A manual fire alarm and smoke detection system with notification to the local fire service shall be provided with installation in accordance with Section 1707.0 of this code.

(3) An eighteen (18) foot paved and posted fire lane surrounding the entire perimeter of the building shall be provided and be accessible from a public street.

(4) A fifty (50) foot fire separation shall be maintained between the warehouse and the lot line and the warehouse and the nearest building.''

CHARLES A. COTTON, Commissioner
ADOPTED: January 14, 1983
APPROVED: NEIL J. WELCH, Secretary
RECEIVED BY LRC: January 14, 1983 at 3:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: James R. Smith, General Counsel, Department of Housing, Buildings and Construction, U.S. 127 South, Frankfort, Kentucky 40601.

CABINET FOR HUMAN RESOURCES
(Proposed Amendment)

900 KAR 2:010. Access and hours of visitation.

RELATES TO: KRS *216.537,* 216.540
PURSUANT TO: KRS 194.050, *216.540,* 216.545
NECESSITY AND FUNCTION: The Cabinet for Human Resources must set forth criteria pertaining to the ability of the administrator of a long term care facility to terminate visitation to that facility. This regulation is designed to give guidance to administrators under the provisions of KRS 216.540(4) and to comply with the requirements of KRS *216.537* [216.545(1)] concerning hours of visitation.

Section 1. Definitions. (1) ''Administrator'' means the administrator of a long term care facility subject to the provisions of the nursing home reform act, KRS *216.535* [216.540] et seq.

(2) ''Cabinet'' means Cabinet for Human Resources.

(3) ''Designated representative'' means an individual association or corporation authorized in writing to act as agent for certain specified purposes in behalf of a designating entity.

(4) ''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.

(5) ''Resident'' means any person admitted to a long term care facility.

Section 2. The administrator of a long term care facility or his designated representative may request those groups or individuals assured access during visiting hours under the provisions of KRS 216.540(1)(a) through (c) and those groups or individuals assured access under KRS 216.540(5) to terminate visitation upon the occurence of any one (1) of the following:

(1) A resident of the facility is physically or verbally abused by the individual or group;

(2) Any individual carries a firearm or other deadly weapon into the facility who is not a peace officer. For the purpose of this regulation, ''deadly weapon'' is defined as including, but not limited to, any weapon from which a shot, readily capable of producing death or serious physical injury, may be discharged, or a switchblade knife, gravity knife, billy, blackjack, or metal knuckles;

(3) Any individual or group commits a felony or misdemeanor while on the facility's premises; or

(4) Any individual or group is visibly under the influence of alcohol or controlled substances.

Section 3. With respect to those groups or individuals assured access during visiting hours under the provisions of KRS 216.540(1)(a) through (c), the administrator of a long term care facility or his designated representative may request the termination of visitation upon the unwarranted interference with an employee of a facility during the performance of his duties within the scope of his employment.

Section 4. Those individuals assured access during visiting hours under the provisions of KRS 216.540(1)(b) and (c) have assured access to only the residents' dining area, living area, recreation area, lounge and areas open to the general public. Access to other areas within the facility may be gained after having received the permission of the administrator or his designated representative to enter the area in question.

Section 5. Those groups or individuals assured access during visiting hours under the provisions of KRS 216.540(1)(a) through (c), except for family and legal guardians, including employees of agencies within the Cabinet duly appointed legal guardian by a court of law, and KRS 216.540(5) are:

(1) Upon entering the facility, to promptly advise the administrator or his designated representative of their presence; and

(2) Not to enter the living area of any resident without identifying themselves to the resident.

Failure to comply with the requirements of this *section* [regulation] may be grounds for requesting termination of visitation.

Section 6. In order to satisfy the requirements for licensure by the state, a long term care facility shall establish daily visiting hours which, at a minimum, shall consist of six (6) hours between the hours of 8:00 a.m. and 5:00 p.m. local time, and two (2) hours between the hours of 5:00 p.m. and 8:00 p.m. local time. All visiting hours are to be posted in a conspicuous place in the lobby, in the entrance way, or at the front door of the long term care facility.

Section 7. Administrators of long term care facilities may establish visiting hours in addition to those required pursuant to KRS 216.537.

Section 8. Representatives or employees of the Cabinet for Human Resources, including the long term care ombudsman or his designated representative in the process of complaint resolution, any representative or employee of any local government entity having responsibility regarding residents of long term care facilities, and the family or legal guardian(s) of any individual resident shall have unrestricted access to and in all long term care facilities.

Section 9. Nothing in this regulation shall be deemed to prohibit or restrain the right of a resident of a long term care facility to deny visitation or to terminate a visit by any individual or group.

Section 10. Each administrator of a long term care facility shall appoint a member of the facility's existing staff to act as his designated representative present at the facility and authorized to act in the absence of the administrator.

Section 11. This regulation shall become part of the statement required by KRS 216.545(1) to be posted in the long term care facility.

BUDDY H. ADAMS, Secretary
ADOPTED: January 14, 1983
RECEIVED BY LRC: January 14, 1983 at 4:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

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

902 KAR 20:115. Ambulance services.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1)(2)
PURSUANT TO: KRS 13.082, 216B.040, 216B.105(3)
NECESSITY AND FUNCTION: KRS 216B.040 and 216B.105(3) mandate that the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board regulate health facilities and health services. This regulation provides for the licensure requirements for ambulance services.

Section 1. Definitions. *(1) "Board" means the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board.*

(2) [(1)] "Emergency care ambulance *transportation* [service]" means health care [and] transportation provided *on an emergency or scheduled basis to* [by any individual or private or public organization having a vehicle or vehicles that are specially designed, constructed or that have been modified or equipped with the intent of using the same, or maintaining or operating the same for the health care and transportation of] persons who are sick, injured, or otherwise incapacitated, *and may require immediate stabilization and continued medical response and intervention during transit or upon arrival at the patient's destination to safeguard the patient's life or physical well being,* except *transportation provided by* on-duty police and fire department personnel [in counties containing cities of the first class] assisting in emergency situations by providing first-aid or transportation when regulation emergency units licensed to provide first-aid or transportation are unable to arrive at the scene of an emergency situation within a reasonable time.

(3) [(2)] "Non-emergency health [care] transportation" means health care transportation provided on a [routine] scheduled basis to individuals whose impaired health condition requires special *transportation considerations* [patient care], supervision or handling but does not indicate a need for [emergency] medical treatment during transit or *emergency medical treatment* upon arrival at the *final* [patient's] destination.

Section 2. Licensure. No person shall provide ambulance services without having first obtained a license from the board.

(1) The license shall designate the geographic area to be served by the licensee allowing for a maximum thirty (30) minutes initial response time for ninety-five percent (95%) of the population within the service area for all emergency calls. This does not preclude the service from providing mutual aid, disaster assistance, non-emergency health transportation or scheduled patient transfers requiring emergency care ambulance transportation outside the geographic service area. [Licenses issued by the board for emergency care ambulance services shall include designation thereon of "conforming" or "non-conforming" with the standards set forth in this regulation.]

[(1) Existing services: An "existing service" is defined as an emergency care ambulance service in operation prior to January 1, 1973 and continuously thereafter.]

[(a) Upon submission of a properly completed application to the board, accompanied by the prescribed fee, an existing service in full compliance with the standards herein may be issued a license designated as "conforming." Any existing service not in full compliance, upon submission of properly completed application accompanied by the prescribed fee, may be issued a license designated as "non-conforming." An existing licensed non-conforming service may be redesignated as a conforming service upon full compliance with the standards herein.]

[(b) Licenses issued to existing services designated as "non-conforming" shall not be subject to renewal when adequate services conforming to standards have been developed and are available to serve the community or area in which the non-conforming service is operating. The license shall designate the geographical area served by the licensee.]

(2) *The license shall designate the number of vehicles to be operated by the licensee. Upon application for licensure and renewal of licensure the applicant or licensee shall specify the number of vehicles to be operated and provide the licensure agency with identifying information (e.g., license numbers, vehicle numbers, serial numbers, etc.) for each vehicle. The licensee shall notify the licensure agency of any change in the number of vehicles to be operated. Additional vehicles shall not be operated until after the licensure agency has been notified and has verified that the vehicle meets design specifications.* [Newly developed services: A "newly developed service" is defined as an emergency care ambulance service beginning operation on or after January 1, 1973.]

[(a) Upon submission of a properly completed application to the board, accompanied by the prescribed fee, a newly developed service in full compliance with the standards herein may be eligible to receive a license designated as "conforming." A newly developed service not in full compliance with the standards herein may, upon submission of a properly completed application accompanied by the prescribed fee, be eligible to receive a license designated as "non-conforming," provided that reasonable assurances including a plan setting dates for compliance with standards is submitted by the applicant and is accepted by the board. Newly developed services shall not be

eligible for licensure when adequate services conforming to the standards herein exist in the area to be served. A newly developed service licensed as "non-conforming" may be redesignated as "conforming" upon full compliance with the standards herein.]

[(b) Licenses issued to newly developed services designated as "non-conforming" shall not be subject to renewal when adequate services conforming to standards have been developed and are available to serve the community or area in which the non-conforming service is operating. The license shall designate the geographical area served by the licensee.]

(3) All ambulance services licensed as "nonconforming" on the effective date of these amendments shall continue to be licensed upon payment of the prescribed fee, until adequate conforming services are licensed for the area served by the nonconforming service.

Section 3. Standards for the Operation of Emergency Care Ambulance *Transportation* Services. [To be issued a license designated as "conforming,"] The ambulance service shall comply with the following standards: (1) Vehicle design and maintenance.

(a) [On and after January 1, 1976] All vehicles used in the provision of *emergency care* ambulance services shall be designed to provide adequately for the care and transportation of patients and [shall conform to the following patient compartment minimum dimensions: width twenty-five (25) inches of unobstructed floor space between stretcher and squad bench for the technician to perform cardiopulmonary resuscitation on the primary patient when the technician is in a right angle, kneeling position to the side of the patient; length, 116 inches (twenty-five (25) inches at the head plus fifteen (15) inches at the foot of a seventy-six (76) inch litter); height, fifty-four (54) inches from floor to ceiling; provided however, that for some of the vehicles in use by the applicant reasonable variation in dimensions may be allowed where such vehicles are to be utilized only for designated limited purposes which are specified by the applicant and approved by the board. Effective January 1, 1980, all conforming vehicles utilized (except limited purpose units)] shall comply fully with vehicle design criteria contained in GSA Federal Specifications *in effect at the time the vehicle is manufactured except that vehicles in service or licensed prior to the effective date of this regulation which do not comply with GSA Federal Specifications may be granted a waiver of vehicle design requirements by the board until such time as the vehicle changes ownership or is replaced* [KKK-A-1822, dated January 2, 1974. Vehicles licensed as conforming prior to January 1, 1980 shall continue to be considered conforming until such time as the vehicle is replaced].

(b) All vehicles shall be kept in optimum working order. The interior of the vehicle and equipment shall be cleaned after each use, unless precluded by emergency conditions.

(2) Personnel.

(a) Ambulance services shall provide emergency service on a twenty-four (24) hour basis. This provision may be met through an adequate call system *or mutual aid agreement with another licensed ambulance service.*

(b) Each emergency ambulance service shall be staffed to provide at least one (1) driver and one (1) attendant for each run. The attendant shall remain with the patient at all times during transport.

(c) *One (1) attendant on each emergency care ambulance run shall be certified as an Emergency Medical Technician—Ambulance (EMT-A) by the Cabinet for Human Resources pursuant to 902 KAR 13:010 through 13:090 or shall be a physician or registered nurse.* [Each employee shall receive pre-employment and annual physical examinations which shall include at least a chest x-ray (or recommended tuberculin testing procedure).]

(d) *Either the driver or a second attendant on each emergency care ambulance run* [All attendants utilized in the provision of ambulance services] shall *have certification for one (1) of the following levels within six (6) months after employment* [be trained to at least minimal level. Until such time as EMT-A training becomes mandatory, the following are acceptable]:

1. EMT-A certification;

2. Medical Corpsman Training within the last five (5) years*; or* [supersede the above listed programs. Certification must be current.]

3. Red Cross Advanced, Red Cross Standard First Aid and Personal Safety, *or* [either to be supplemented by ten (10) hours Cardio-Pulmonary Resuscitation;] Red Cross Advanced First Aid and Emergency Care Certification *each* with [ten (10) hours] supplemental CPR instruction *certified by the American Red Cross or the American Heart Association.*

[(e) Effective January 1, 1976, each attendant shall be certified as an EMT-A by the Department for Human Resources. All additional personnel utilized in the provision of EMS Transportation shall be trained to the minimal levels specified in paragraph (d) above. New personnel added after January 1, 1976, shall receive the minimal training within six (6) months from date of inital utilization.]

(3) Equipment. All vehicles used in the provision of emergency care ambulance services shall have at least the following essential equipment [or such equipment as is prescribed by the board, including]:

(a) Suction apparatus (fixed or portable);

(b) Hand operated bag-mask ventilation unit with adult, child, and infant size masks (capable of use with oxygen);

(c) Oropharyngeal airways in adult, child, and infant sizes;

(d) Oxygen equipment (fixed or portable);

1. Pressure gauge and flow rate regulator;
2. Adaptor and tubing;
3. Transparent masks in adult, child, and infant sizes; and
4. Filled spare cylinder.

(e) Mouth gags (commercial or made from tongue blades);

(f) Universal dressing approximately ten (10) inches by thirty-six (36) inches, compactly folded and packaged;

(g) Sterile gauze pads, four (4) inches by four (4) inches;

(h) Soft roller self-adhering bandages, various sizes;

(i) Roll of aluminum foil, sterlized and wrapped;

(j) Adhesive tape, various size rolls;

(k) Two (2) sterile burn sheets;

(l) [Hinged half-ring] Lower extremity traction splint [, length forty-three (43) inches or substitute padded board splints four and one-half feet by three inches (4½ ′ x 3″)];

(m) Inflatable air splints for arm, leg and foot as minimum or a suitable substitute (i.e., padded boards, etc.);

(n) Short and long spine boards with accessories (orthopedic "scoop" stretcher preferred over long spine board);

(o) Triangular bandages;

(p) Large safety pins;
(q) Shears for bandages;
(r) Sterile obstetrical kit; [and]
(s) Sphygmomanometer and stethoscope;
(t) [Effective January 1, 1980,] *A* poison kit to contain at least one (1) bottle of Syrup of Ipecac and one (1) bottle of Activated Charcoal; *and*
(u) One (1) five (5) pound dry chemical fire extinguisher.

(4) Extrication equipment. [Effective January 1, 1980,] All [conforming] vehicles shall carry the full contingent of access and extrication equipment for ambulance use as stipulated in the Highway Safety Program Manual No. 11, date April 1974 except for, those ambulance services which have written agreements with rescue squads, fire departments or any emergency service agency that meets the requirements of the Highway Safety Program manual, for extrication service.

(5) Radio communications equipment. All ambulance services shall be equipped with two (2) way radio communications equipment compatible with the statewide ambulance-to-hospital emergency radio communications system. This requirement becomes effective upon implementation of the regional communications network for the region in which a particular ambulance service is located.

(6) Records and reports. All conforming and nonconforming ambulance services shall keep adequate reports and records, which are maintained at the ambulance base headquarters, and are available for periodic review as deemed necessary by the board. Required records and reports are as follows:

(a) The Kentucky emergency medical service ambulance run report form. Completed forms shall be forwarded to the *Cabinet* [Department] for Human Resources in accordance with submission dates established by that *cabinet* [department].

(b) Employee records, including a resume of each employe's training, and experience *and evidence of current certification* shall be maintained;

(c) Health records of all drivers and attendants including [evidence of pre-employment and annual physical examination, chest x-ray (or recommended tuberculin testing procedure) and] records *and* [of] all illnesses or accidents occurring on duty.

Section 4. Standards for the Operation of Non-emergency Health Transportation Services. (1) Non-emergency health transportation services may be provided in vehicles not conforming to the requirements of Section 3 of this regulation, and may be provided with only one (1) *person* [emergency medical technician] per service run, who may also be the driver of the vehicle *and who shall have the following qualifications:*

(a) Red Cross Advanced, Red Cross Standard First Aid and Personal Safety, or Red Cross Advanced First Aid and Emergency Care Certification, each with supplemental CPR instruction certified by the American Red Cross or the American Heart Association; or

(b) Medical Corpsman Training within the last five (5) years; or

(c) EMT-A certification; or

(d) Licensure as a registered nurse or physician.

(2) All vehicles used in the provision of non-emergency health transportation services shall have at least the following essential equipment and accessories [as prescribed by the Board, including]:

(a) One (1) five (5) lb. dry chemical fire extinguisher.
(b) One (1) first aid kit.
(c) Oxygen equipment (portable) including:
1. One (1) "D" size oxygen cylinder.
2. One (1) pressure gauge and flow rate regulator.
3. Adaptor and tubing.
4. Transparent masks for adults and children. Nasal cannulas may be substituted.

(3) All vehicles used in the provision of non-*emergency* [conforming] health transportation shall be kept in optimum order, with clean interiors and equipment, and shall be constructed to allow verbal communication between driver and patient during transit. There shall be adequate heating and air-conditioning capability in both the driver and patient compartment.

(4) All vehicles designed to transport stretcher or wheelchair patients shall be equipped with mechanisms to secure the patient and the stretcher or wheelchair while in transit.

(5) [(4)] The requirements of Section 3(6)(a) and (b) of this regulation, regarding run forms and employee records shall apply to non-emergency health transportation services.

(6) Vehicles used exclusively in the provision of non-emergency health transportation shall not be equipped with emergency lights or sirens required by KRS 189.920 for emergency vehicles or display the "star of life." This shall not prevent a licensed ambulance service from utilizing an emergency care vehicle so equipped; however, lights and sirens shall not be utilized in the course of a non-emergency run.

FRANK W. BURKE, SR., Chairman
ADOPTED: January 6, 1983
APPROVED: BUDDY H. ADAMS, Secretary
RECEIVED BY LRC: January 14, 1983 at 4:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Frank W. Burke, Sr., Chairman, Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board, 275 East Main Street, Frankfort, Kentucky 40621.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
(Proposed Amendment)

904 KAR 1:013. Payments for hospital inpatient services.

RELATES TO: KRS 205.520
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the method for determining amounts payable by the cabinet for hospital inpatient services.

Section 1. Hospital Inpatient Services. The state agency will pay for inpatient hospital services provided to eligible recipients of Medical Assistance through the use of rates that are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated hospitals to provide services in conformity with applicable state and federal laws, regulations, and quality and safety standards.

Section 2. Establishment of Payment Rates. The policies, methods, and standards to be used by the cabinet in setting payment rates are specified in the cabinet's "Inpatient Hospital Reimbursement Manual" *revised January 1, 1983,* which is incorporated herein by reference. For any reimbursement issue or area not specified in the manual, the cabinet will apply the Medicare standards and principles described in 42 CFR Sections 405.402 through 405.488 (excluding the Medicare inpatient routine nursing salary differential).

Section 3. Compliance with Federal Medicaid Requirements. The cabinet will comply with the requirements shown in 42 CFR 447.250 through 447.272.

Section 4. General Description of the Payment System. (1) Use of prospective rates. Each hospital will be paid using a prospective payment rate based on allowable Medicaid costs and Medicaid inpatient days. The prospective rate will be all inclusive in that both routine and ancillary cost will be reimbursed through the rate. The prospective rate will not be subject to retroactive adjustment except to the extent that an audited cost report alters the basis for the prospective rate and/or the projected inflation index utilized in setting the individual rate is different from actual inflation as determined by the index being used. However, total prospective payments shall not exceed the total customary charges in the prospective year. Overpayments will be recouped by payment from the provider to the cabinet of the amount of the overpayment, or alternatively, by the withholding of the overpayment amount by the cabinet from future payments otherwise due the provider.

(2) Use of a uniform rate year. A uniform rate year will be set for all facilities, with the rate year established as January 1 through December 31 of each year. Hospitals are not required to change their fiscal years.

(3) Trending of cost reports. Allowable Medicaid cost as shown in cost reports on file in the cabinet, both audited and unaudited, will be trended to the beginning of the rate year so as to update Medicaid costs. When trending, capital costs and return on equity capital are excluded. The trending factor to be used will be *the Data Resources, Inc. rate of inflation for the period being trended* [derived from the percentage of change in the aggregate per diem cost of all participating hospitals between the last two (2) state fiscal years preceding the rate year. In determining this trending factor, only cost reports relative to the two (2) fiscal years being compared will be utilized].

(4) Indexing for inflation. After allowable costs have been trended to the beginning of the rate year, an indexing factor is applied so as to project inflationary cost in the uniform rate year. The forecasting index currently in use is prepared by Data Resources, Inc.

(5) Peer grouping. Hospitals will be peer grouped according to bed size. The peer groupings for the payment system will be: 0-50 beds, 51-100 beds, 101-200 beds, *201-400 beds, and 401 beds and up* [and 201 beds and up]. *No facility in the 201-400 peer group shall have its operational per diem reduced below that amount in effect in the 1982 rate year as a result of the establishment of a peer grouping of 401 beds and up.*

(6) Use of a minimum occupancy factor. A minimum occupancy factor will be applied to capital costs attributable to the Medicaid program. A sixty (60) percent occupany factor will apply to hospitals with 100 or fewer beds. A seventy-five (75) percent occupancy factor will apply to facilities with 101 or more beds. Capital costs are interest and depreciation related to plant and equipment.

(7) Use of upper limits. An upper limit will be established on all costs (except Medicaid capital cost) at 110 percent of the weighted median per diem cost for hospitals in each peer group, using the latest available cost data; upon being set, the arrays and upper limits will not be altered due to revisions or corrections of data. Exceptions have been made for the University of Kentucky and University of Louisville hospitals in recognition of special costs relating to the educational functions. For these two (2) hospitals, the upper limit is established at 150 percent of the *basic upper limit* [weighted median cost]. In addition, the upper limit is established at 120 percent for those hospitals serving a disproportionate number of poor patients (defined as twenty (20) percent or more Medicaid clients as compared to the total number of clients served).

(8) Operating costs shall not include professional (physician) costs for purposes of establishing the median based upper limits. Professional costs shall be trended and indexed separately.

(9) Hospitals whose general characteristics are not those of an acute care hospital (i.e., because they are primarily rehabilitative in nature) are not subject to the operating cost upper limits.

(10) [(9)] Rate appeals. As specified in the Inpatient Hospital Reimbursement Manual, hospitals may request an adjustment to the prospective rate with the submittal of supporting documentation. The established appeal procedure allows a representative of the hospital group to participate as a member of the rate review panel.

Section 5. Implementation Date. *Payments in accordance with Sections 1 through 4 shall be made beginning January 1, 1983.* [This payment system shall be implemented March 1, 1982.]

JOHN CUBINE, Commissioner
ADOPTED: December 28, 1982
APPROVED: BUDDY H. ADAMS, Secretary
RECEIVED BY LRC: January 3, 1983 at 11:30 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
(Proposed Amendment)

904 KAR 1:026. Dental services.

RELATES TO: KRS 205.520
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520(3) empowers the cabinet, by regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the provisions relating to dental services for which payment shall be made by the medical assistance program in behalf of both the categorically needy and the medically needy.

Section 1. Out-of-Hospital Services. Payment for services is limited to those procedures listed in the cabinet's Dental Benefit Schedule which are included in the following categories:
(1) Diagnostic;
(2) Preventive;
(3) Oral surgery;
(4) Endodontics;
(5) Orthodontics;
(6) Prosthetics;
(7) Operative;
(8) Crown; and
(9) Other services.

Section 2. Limitations for Those Under Age Twenty-one (21). The following limitations shall be applicable with regard to services provided to eligible recipients of medical assistance who are under age twenty-one (21):
(1) Dental prophylaxis, to include application of stannous fluoride, is limited to one (1) treatment per year.
(2) Bitewing x-rays are limited to four (4) x-rays per patient per year per dentist.
(3) Full mouth radiograph is limited to one (1) per patient per every two (2) years per dentist.
(4) The following orthodontic procedures are limited per twelve (12) month period to any combination totaling two (2) per patient: fixed space maintainer, band type; removable space maintainer, acrylic; removable appliance for tooth guidance; and fixed or cemented appliance for tooth guidance.
(5) The following prosthetic procedures are limited as specified for the individual procedure:
(a) Transitional appliance, includes one (1) tooth on appliance, upper appliance, is limited to one (1) per twelve (12) month period, per patient;
(b) Transitional appliance, includes one (1) tooth on appliance, lower appliance, is limited to one (1) per twelve (12) month period, per patient;
(c) Repair of fracture of transitional appliance and space maintainer is limited to three (3) per twelve (12) month period, per patient;
(d) Repair of fracture and replacement of one (1) broken tooth on a transitional appliance and space maintainer is limited to three (3) per twelve (12) month period, per patient;
(e) Repairing broken complete denture with no teeth damaged is limited to three (3) per twelve (12) month period, per patient; and
(f) Repairing broken complete denture and replacing one (1) broken tooth is limited to three (3) per twelve (12) month period, per patient.
(g) Relining upper denture (flask cured only) is limited to one (1) per twelve (12) month period per patient.
(h) Relining lower denture (flask cured only) is limited to one (1) twelve (12) month period per patient.

[Section 3. Limitations by Age Group. Payment for the following procedures shall be limited to recipients of medical assistance who are under age twenty-one (21):]
[(1)Extirpation of pulp filling of one (1) rooted, two (2) rooted and three (3) rooted canal, excluding restoration.]
[(2)All orthodontics procedures.]
[(3)All prosthetics procedures.]

Section *3.* [4.] Inpatient Hospital Services. (1) Payment shall be made for all hospital inpatient services rendered by oral surgeons.
(2) Payment for services rendered by general dentists for hospital inpatient care for patients termed to be "medically a high risk," defined as:
(a) Heart disease;
(b) Respiratory disease;
(c) Chronic bleeder;
(d) Uncontrollable patient, i.e., retardate, emotionally disturbed;
(e) Other, e.g., car accident, high temperature, massive infection.

Section *4.* [5.] Coverage of Dental Benefits for Adults. The following named dental benefits only shall be covered for adults (eligible individuals aged twenty-one (21) or over), effective January 1, 1982.
(1) Oral surgery, as follows:
(a) Extraction, uncomplicated, single tooth, with local anesthetic and including routine post-operative care; and
(b) Extraction, uncomplicated, each additional tooth, with local anesthetic and including routine post-operative care.
(2) Operative, as follows:
(a) Amalgam filling for one (1) surface cavity;
(b) Amalgam filling for two (2) surface cavity;
(c) Amalgam filling for cavity involving three (3) or more surfaces;
(d) Silicate cement filling; [and]
(e) Acrylic, plastic, or composite filling*; and* [.]
(f) Buildup to repair a fractured incisal or anterior tooth.
(3) Diagnostic services, as follows:
(a) Bitewing x-rays, limited to four (4) x-rays per patient per year per dentist;
(b) Intraoral periapical radiograph, single view; and
(c) Full mouth radiograph, single panaramic film limited to one (1) per patient per every two (2) years per dentist.
(4) Other services, as follows: emergency treatment for pain, infection and hemorrhage.

Section 5. Other Provisions, Limitations and Clarifications. (1) Intraoral periapical radiograph, single view, is limited to fourteen (14) per patient, per year, per dentist.
(2) The procedure code for stainless steel crown will also include polycarbonate (acrylic) and full composite crown for anterior teeth. However, should a provider choose to provide crowns for anterior teeth, the usual and customary charge for a stainless steel crown must be billed.
(3) Bonded veneers are not covered as a separate entity,

nor should they be provided and billed under any existing procedure code.

(4) The Sargenti method of root canal treatment is not covered under the present root canal procedure codes.

(5) The Medical Assistance Program recognizes five (5) surfaces of a tooth (buccal or labial, mesial, distal, lingual, occlusal or incisal). Only one (1) filling may be billed per surface with a maximum of five (5) per tooth.

(6) Nitrous oxide is not covered under the procedure for general anesthesia or any other procedure.

Section 6. The *provisions of this regulation, as provided for in Sections 1 through 5, shall be effective April 1, 1983* [services expansion authorized by this regulation shall be implemented as of February 1, 1982].

JOHN CUBINE, Commissioner
ADOPTED: January 14, 1983
APPROVED: BUDDY H. ADAMS, Secretary
RECEIVED BY LRC: January 14, 1983 at 4:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
(Proposed Amendment)

904 KAR 2:110. Refugee assistance.

RELATES TO: KRS 194.050
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The *Cabinet* [Department] for Human Resources is authorized by KRS 194.050 to administer programs to qualify for the receipt of federal funds providing cash and medical assistance to eligible Kentucky residents. This regulation sets forth the eligibility criteria and types and amounts of assistance for refugees residing in Kentucky.

Section 1. Definitions. Terms used in this regulation are defined as follows:

(1) "Refugee" is defined as any person of any nationality who:

(a) Because of persecution or fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion fled from their country or the country where such person habitually resided and cannot return there because of fear of persecution on account of race, religion, nationality, membership in particular social group, or political opinion; and

(b) Has been granted status by the United States Department for Immigration and Naturalization Service (INS) as refugee, asylee, parolee, voluntary departure, permanent resident alien, conditional entrant, or Cuban Haitian entrant.

(2) "Cuban Haitian Entrant Program (CHEP)" is the program for Cuban or Haitian persons who meet the status, documentation, and period of eligibility criteria as set forth in 45 CFR Parts 401.2 and 401.12(c).

(3) "Refugee Resettlement Program (RRP)" is that program for persons who meet the following criteria, excluding those persons who qualify for the Cuban Haitian Entrant Program:

(a) Have been United States residents for not more than eighteen (18) months beginning with the month a refugee entered the United States; and

(b) Meet one (1) of the following status criteria as determined by the Immigration and Naturalization Service (INS).

1. A person who was receiving assistance or services under the Indochinese Refugee Assistance Program when that program terminated.
2. A person from Cambodia, Laos, or Vietnam who has parolee status, provided that the person's status, if assigned on or after June 1, 1980, clearly indicates that the person has been paroled as a refugee or asylee.
3. A person from Cuba who has parolee status as a refugee or asylee and who entered the United States on or after October 1, 1978.
4. A person from any other country other than Cambodia, Laos, Vietnam, or Cuba who has parolee status as a refugee or asylee.
5. A person admitted from any country with a conditional entrant status under Section 203(a)(7) of the Immigration and Nationality Act (INA).
6. A person from any country admitted as a refugee under Section 207 of the INA (as added by the Refugee Act of 1980).
7. A person from any country who has been granted asylum status under Section 208 of the INA (as added by the Refugee Act of 1980).
8. A person from any country who previously held one (1) of the statuses identified above whose status has subsequently been adjusted to that of permanent resident alien.

Section 2. Application. Each refugee household requesting assistance shall be required to complete an application and provide such information as may be deemed necessary to determine eligibility in accordance with the procedural requirements prescribed by the department.

Section 3. Eligibility Criteria. The applicant shall meet the following conditions of eligibility for receipt of cash and/or medical assistance under the Refugee Resettlement Program or Cuban Haitian Entrant Program:

(1) The applicant shall meet the definition of a refugee as contained in Section 1 of this regulation; and

(2) The applicant shall be ineligible for Aid to Families with Dependent Children (AFDC) and Medical Assistance Programs; and

(3) The applicant shall be a Kentucky resident as specified in 904 KAR 2:006, AFDC technical requirements; and

(4) The applicant shall meet the financial need and resource limitations criteria of Aid to Families with Dependent Children as set forth in 904 KAR 2:016, Standards for need and amount; AFDC, or if the application is for medical assistance only, the applicant shall meet the AFDC-related Medical Assistance Program financial eligibility standard, as set forth in 904 KAR 1:004, Resource and income standard of medically needy; and

(5) For receipt of cash assistance the applicant shall *participate in any available and appropriate social service program providing job or language training in the area in which the refugee resides. In addition, the applicant shall register for employment with the state employment office, unless exempt under one (1) of the following criteria:* [within sixty (60) days from the date of entry to the United States meet the AFDC work registration criteria as set forth in 904 KAR 2:006, AFDC technical requirements.]

(a) A child under age sixteen (16);
(b) A child age sixteen (16) through seventeen (17), if enrolled as a full-time student at the high school level or the equivalent level of vocational or technical school;
(c) An individual who has a medically determined temporary illness or injury with recovery anticipated within ninety (90) days;
(d) An individual who has a medically determined physical or mental incapacity which is expected to exist longer than ninety (90) days;
(e) An individual sixty-five (65) or over;
(f) An individual whose presence is required in the home to care for another member of the household who has been medically determined to be precluded from self-care and for whom alternate care arrangements are not feasible;
(g) A mother or other caretaker relative of a child under six (6); and
(h) A mother, if the father is required to register.
(6) For receipt of cash assistance, the refugee must not refuse an appropriate offer of employment or refuse to participate in an available and appropriate social service program as referenced in subsection (5) of this section.
(7) [(6)] The applicant shall meet the period of eligibility and status criteria contained in the definition of the Cuban Haitian Entrant Program or the Refugee Resettlement Program in Section 1 of this regulation.

Section 4. Benefit Levels. (1) Cash assistance shall be the same as for AFDC as set forth in 904 KAR 2:016, standards for need and amount; AFDC, except that the thirty dollars ($30) plus one-third (⅓) disregard of earned income does not apply.
(2) Medical assistance benefits shall be the same as for all other Medicaid recipients.
(3) Payment of benefits is subject to the availability of federal funds, i.e., payments may be reduced, suspended or terminated if federal funds are insufficient or are not provided to the state in a timely manner.

Section 5. Time and Manner of Payment. Time and manner of payment shall be in accordance with the standards for AFDC as shown in 904 KAR 2:050, Time and manner of payment.

Section 6. Right to a Fair Hearing. Any individual has a right to request and receive a fair hearing in accordance with 904 KAR 2:055, Hearings and appeals.

JOHN CUBINE, Commissioner
ADOPTED: January 14, 1982
APPROVED: BUDDY H. ADAMS, Secretary
RECEIVED BY LRC: January 14, 1983 at 4:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

Proposed Regulations

FINANCE AND ADMINISTRATION CABINET
State Investment Commission

200 KAR 14:010. General rules.

RELATES TO: KRS Chapter 42
PURSUANT TO: KRS 13.082, 42.525
NECESSITY AND FUNCTION: KRS 42.525 provides that the State Investment Commission shall prescribe rules for the operation of the state's investment program. This regulation establishes the general rules which apply to the investment of state funds.

Section 1. Definitions. For purposes of this regulation: (1) "Commission" means the State Investment Commission; and
(2) "Office" means the Office for Investment and Debt Management.

Section 2. General. The purpose of this regulation is to provide standard rules that will govern the Commonwealth's investment and cash management programs.

Section 3. Goals of Investments. (1) The primary goal of all investments of the Commonwealth is to maximize the yield received.
(2) (a) The limiting factors to the primary goal of maximizing yield are liquidity and security.
(b) The office is charged with the duty of determining the Commonwealth's liquidity needs pursuant to KRS 42.410. In light of this responsibility, the office shall not execute nor allow the execution of any investment that will negatively impact the short or long-term cash needs of the Commonwealth.
(c) The commission shall not allow the investment of state funds in any institution or instrument which it deems unsafe and a threat to the security of those funds.

Section 3. Monies to be Invested. The commission shall invest all state funds as defined in KRS 446.010.

Section 4. Minimum Interest Rates. The commission shall not allow the investment of state funds in any institution or instrument for a term of one (1) year or less at a yield less than the yield available on Treasury Bills of similar maturity. For funds to be invested for more than one (1) year, the commission shall not allow investment in any institution or instrument at a yield less than the yield available on Treasury Notes of similar maturity.

Section 5. Acceptable Maturity of Investments. The limits on the maturity of investments made by the commission shall first be KRS Chapter 42 and secondly, the liquidity needs of the state as determined by the office.

Section 6. In-State and Out-of-State Deposits. All funds eligible for investment in certificates of deposit as determined by the commission shall first be offered to financial institutions chartered in Kentucky or by the United States that have their main office located in Kentucky. The rate at which these funds will be offered shall be set by the commission as set out in KRS Chapter 42.

Should Kentucky financial institutions eligible for these funds refuse any part of the funds offered, the commission may offer the funds to any commercial bank chartered in the United States, approved by the State Investment Commission. Any out-of-state investments shall be subject to the same collateralization requirements as in-state investments.

Section 7. Distribution of Funds Among Types of Institutions. The commission shall allocate funds eligible for investments in certificates of deposit among eligible types of financial intermediaries at its open meetings. The allocation by type may be changed from time to time as market conditions change.

Section 8. Deviation from Rules. In special cases for good cause shown upon application to and approval by, the commission may permit deviation from these rules.

ROBERT L. WARREN, Secretary
ADOPTED: December 17, 1982
RECEIVED BY LRC: December 21, 1982 at 3 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Dr. James Ramsey, Director, Office of Investment and Debt Management, 201 Capitol Annex Building, Frankfort, Kentucky 40601.

FINANCE AND ADMINISTRATION CABINET
State Investment Commission

200 KAR 14:020. Public depositories, priorities.

RELATES TO: KRS Chapter 42
PURSUANT TO: KRS 13.082, 42.520
NECESSITY AND FUNCTION: KRS 42.520 requires the State Investment Commission to assign priority to public depositories on the basis of compliance with regulations promulgated pursuant to KRS Chapter 13.

Section 1. Definitions. For purposes of this regulation:
(1) "Commission" means the State Investment Commission; and
(2) "Office" means the Office for Investment and Debt Management.

Section 2. General. The purpose of this regulation is to provide rules and standards by which the commission will devise a scoring system to assign priorities to public depositories in relation to their effectiveness in serving the convenience and economic development need of the communities in which they are chartered to do business.

Section 3. Source of Data. (1) The commission shall advise all commercial banks chartered in Kentucky or by the United States with their main office in Kentucky, that wish to be considered as a depository for state certificates of deposit or that wish to remain a depository for state certificates of deposit, that they must submit a copy of their quarterly Report of Condition, including all accompanying schedules, to the commission. A photostatic copy of this report and schedules, as prepared for the Federal Deposit Insurance Corporation, the Comptroller of the Currency, or the appropriate Federal Reserve Bank will be sufficient to meet this reporting requirement.
(2) The commission shall direct the office to compile the appropriate data from the submitted reports and schedules and report the results of the scoring to the commission at the end of each quarter.
(3) (a) The scoring system shall assign positive scoring values to the following ratios according to their magnitude:
1. Ratio of loans to deposits.
2. Ratio of real estate loans, including farm land but excluding commercial property, to total loans.
3. Ratio of commercial loans, including commercial real estate and farm operating, to total loans.
4. Ratio of consumer loans to total loans.
(b) The scoring system shall assign negative scoring values to the following ratio according to its magnitude: Ratio of loans to financial institutions or to brokers or individuals to carry securities to total loans.

Section 4. Frequency of Scoring. The office shall update the scoring of potential depositories quarterly and submit the same to the commission quarterly. Any bank not submitting its report and schedules in a timely manner will not be considered eligible for the receipt of new funds or renewal of existing instruments until the most current report and schedules are submitted by the bank and accepted by the commission. The scoring shall be kept as a moving average for each fiscal year. This moving average will be restarted with the September 30 Reports of Condition each year.

Section 5. Appeal Process. Any bank shall have the opportunity to appeal the results of the prioritization process or the appliation of the prioritization process to the State Investment Commission.

Section 6. Deviation from Rules. In special cases for good cause shown upon these rules.

ROBERT L. WARREN, Secretary
ADOPTED: December 17, 1982
RECEIVED BY LRC: December 21, 1982 at 3 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Dr. James Ramsey, Director, Office of Investment and Debt Management, 201 Capitol Annex Building, Frankfort, Kentucky 40601.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department of Surface Mining Reclamation and Enforcement

405 KAR 30:160. Data requirements.

RELATES TO: KRS 350.600
PURSUANT TO: KRS 13.082, 151.125, 224.033, 350.028, 350.050, 350.600
NECESSITY AND FUNCTION: KRS 350.600 requires the Natural Resources and Environmental Protection Cabinet to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation sets forth various data collection requirements.

Section 1. General. This regulation applies to any person who engages in an oil shale operation. The extent and duration of data collection will be determined by the cabinet. Such determination will be made based on the proposed activity by the applicant and its potential for adverse environmental impacts on the area to be affected by such activity.

Section 2. Baseline and Background Data Requirements. (1) Any permit applicant shall submit with the application as determined by the cabinet data collected on the following environmental parameters: air quality and climatology, water quality, water quantity, aquatic flora and fauna, terrestorial flora and fauna, and historic, geologic, pedologic, and archaeological features.

(2) In the design and operation of the baseline data collection and monitoring programs, the permittee shall strive to collect data for the greatest period of time practicable as approved by the cabinet with emphasis on acquisition of quality data. The minimum period of data collection shall be one (1) year. The permittee shall establish and implement a quality assurance program approved by the cabinet to assure high quality data collection. This quality assurance program shall include but not be limited to: quality control by standard reference materials such as those available through the National Bureau of Standards; data validation through established criteria of acceptability; method and frequency of calibration and maintenance; and testing programs to identify and quantify data anomalies.

(a) Air quality and climatology monitoring by the applicant will include a network of air sampling stations capable of repeated measurements of physical and chemical parameters including but not limited to windspeed and direction, minimum, maximum, and mean air temperature, precipitation, and concentrations of the following; SO_2, NO_x, CO, O_3, Pb, H_2S, Hg, F, total residual sulfur and total suspended particulates. The number and location of sampling sites shall be recommended by the applicant and approved by the cabinet. Monitoring stations should be permanent sites. Temporary or mobile stations may be used if approved by the cabinet.

(b) To assist in the identification of pollutants to be monitored under the permittee's monitoring program, the permittee shall submit to the cabinet a detailed description of emissions anticipated during the development of the proposed site.

(3) Surface water monitoring by the applicant shall include monitoring sites established on major streams, upstream and downstream from anticipated sources of pollution including adjacent impacted tributaries. Seasonal sampling (winter, spring, summer, and fall) is required with a minimum of six (6) samples taken in each affected perennial stream per year. A minimum of two (2) samples shall be taken during high flow and a minimum of two (2) samples shall be taken during low flow. Sampling for metals, organic compounds, and water quality assessment shall be performed during low flow periods. Sampling of intermittent streams shall be during the maximum flow regime. The sampling parameters for intermittent streams shall be recommended by the applicant and approved by the cabinet. All sampling shall be performed by a qualified agency and the analyses performed by a qualified laboratory. The number and location of sampling sites shall be recommended by the applicant for approval by the cabinet.

(4) Water sampling parameters shall include but not be limited to the following:

(a) Physical parameters monitored will include: total dissolved solids or specific conductance, total suspended solids, and temperature.

(b) Chemical parameters will include ph, acidity, alkalinity, sulfate, iron, manganese, silver, arsenic, barium, cadmium, chromium, mercury, lead, selenium, nickel, molybdenum, vanadium, boron, fluorine, copper, total organic carbon (TOC), total phenols, inorganic carbon, cyanides, sulfides, ammonia, and thiocyanates.

(c) Biological parameters will include biochemical oxygen demand (BOD) and chemical oxygen demand (COD).

(d) Radiological parameters will include gross alpha (once in high flow and once in low flow) and further testing as prescribed by the Natural Resources and Environmental Protection Cabinet if radioactivity is found.

(e) All chemicals and their by-products that will be involved in processing the shale will be sampled for seasonally in winter, spring, summer and fall including two (2) samples in each flow regime.

(5) Ground water will be monitored for the same parameters as surface water with the exceptions of biochemical oxygen demand (BOD), chemical oxygen demand (COD) and dissolved oxygen (DO). Sampling will be performed on a biannual basis during periods of surface high flow and low flow regimes and accomplished by using test wells whose number and location will be determined by the site plan. The wells will be placed after the submission of the site plan and prior to the start-up of the operation.

(6) Water quantity will be assessed during minimum, maximum, and average discharge conditions to identify critical low flow and peak discharge rates of streams to identify seasonal variations.

(7) Aquatic flora and fauna will be sampled quarterly at a minimum of five (5) stations. These stations will include at least one (1) above the point source, one (1) at the point source, at least one (1) in the same stream below the point source and one (1) in the next order higher stream below the point source. The location of these stations shall be recommended by the applicant for approval by the cabinet.

(a) Invertebrates will be sampled for qualitatively using a minimum of three (3) surber samples at a riffle at each station. If no riffles exist in the stream, then the pool at each station should be sampled by dredge.

(b) Aquatic vertebrates will be qualitatively sampled for at a pool and riffle at each station using small mesh minnow seines and portable electroshockers.

(c) Aquatic macroflora will be qualitatively sampled along the stream between the upstream and downstream stations.

(d) Sampling and identification will be performed by qualified personnel acceptable to the Natural Resources and Environmental Protection Cabinet. The specimens will be identified at the collection site if possible and returned to place of capture unless record of species existance or further identification is needed whereupon the specimens will be deposited in a university museum or herbarium in the state.

(8) Terrestrial flora and fauna will be qualitatively sampled for species composition.

(a) Plant communities will be sampled to include canopy understory and ground cover. General age characteristics of forest communities will be assessed by either coring (preferably) or measuring the diameter breast high of three (3) of the largest trees and five (5) of the average size trees.

(b) Existing agencies should be utilized to determine if any federally listed, proposed or under review threatened or endangered plant or animal species are known on the proposed permit site or its vicinity and search shall be con-

ducted for any species which could occur there. This search should take place at the peak flowering or activity season for each species which may be involved.

(c) Mammals should be sampled in late spring, summer and fall by randomly selecting three (3) plots per habitat type and trapping for four (4) nights with twenty-five (25) traps regularly placed in each plot. The plots should be selected from a grid based on twenty-five (25) x twenty-five (25) meters. The results should be reported in number of specimens per species per plot per season.

(d) Bird species should be observed in spring, summer, fall and winter for two (2) consecutive days each season. Observation should occur for one (1) hour periods in early morning, midday, and late afternoon or early evening. The results should be reported as number of individuals per species per unit time per season.

(e) Reptiles and amphibians should be searched for in the spring, summer and fall and reported in the same manner as the bird data.

(f) Wetlands, critical habitats and ecological areas which are off site but could be affected by the mining or processing should be identified.

(g) The data should be collected by qualified personnel acceptable to the Natural Resources and Environmental Protection Cabinet.

(h) All specimens of flora and fauna should be deposited at a university museum or herbarium in the state, in accordance with this regulation.

(9) The following geologic and hydrologic data shall be submitted to the cabinet:

(a) Each appplication shall contain a description of the geology and hydrology of lands within the proposed permit area and adjacent areas. The description shall include information on the characteristics of surface and ground waters within these areas, and any water which will flow into or receive discharges of water from these areas.

(b) Hydrologic data including water quality and quantity, and geologic data related to hydrology of areas outside the permit area and within the adjacent areas shall be submitted to the cabinet. This data may be obtained from appropriate federal or state agencies. If the cabinet determines that this data is not sufficient, the applicant will be required to collect such additional data as determined by the cabinet and submit it as part of the permit application.

(c) Geologic data shall include a general statement of the geology within the proposed permit area and adjacent areas down to and including the first aquifer which may be affected below the lowest oil shale stratum to be mined.

(d) Test borings or core samples from the proposed permit area shall be collected and analyzed down to and including the stratum immediately below the lowest oil shale stratum to be mined, to provide the following data:

1. Location of subsurface water, if encountered;
2. Logs of drill holes showing the lithologic characteristics and thickness of each stratum and each oil shale stratum;
3. Physical properties of each stratum within the overburden;
4. Chemical analyses of each stratum within the overburden, and including the stratum immediately below the lowest oil shale stratum to be mined to identify, at a minimum, those horizons which contain potential acid-forming, toxic-forming, or alkalinity producing materials; and,
5. Analyses of the oil shale stratum including, but not limited to, an analysis of the total sulfur and pyritic sulfur content.

(e) If required by the cabinet, geologic data shall be collected and analyzed to greater depths within the proposed permit area and adjacent areas to provide for evaluation of the impact of the proposed activities on the hydrologic balance.

(10) Historical, pedological, and archaeological data should be gathered from the appropriate agencies. Where insufficient data exists, the cabinet may require the applicant to collect such data. Where no archaeological information exists, a survey or prediction analysis should be done in coordination with the State Archaeologist.

Section 3. Technical and Engineering Data Requirements. (1) As determined by the applicant and approved by the cabinet, sampling and monitoring locations used in the collection of baseline data shall be operated by the applicant during the active life of the operation and thereafter as deemed necessary to assess the environmental impacts of the operation.

(2) The cabinet shall have the power to require the applicant to collect any technical or engineering data related to a specific oil shale operation as the cabinet deems necessary to assess the impacts of such activities on the environment and natural resources of the affected area. The parameters to be monitored and the method of monitoring shall be determined on a case-by-case basis.

(3) Data and information required in this section shall be subject to the provisions of 405 KAR 30:150 relating to confidentiality.

Section 4. Variance Procedures. (1) The cabinet may authorize in writing such exceptions and variances to the requirements of this regulation as the cabinet may deem necessary to reasonably and properly address site specific conditions. A written finding shall be made by the cabinet that the public and the environment will, in the administration of this variance, be provided adequate protection consistent with the purposes of KRS 350.600. The permittee shall publish a Notice of Intention to Request a Variance.

(2) Publication of notice of intention to request a variance. An applicant for a variance shall place an advertisement in the newspaper of largest bona fide circulation, according to the definition of KRS 424.110 to 424.120, in the county or counties wherein the proposed oil shale operation is to be located. The advertisement shall be published at least once each week for four (4) consecutive weeks with the first advertisement to be published not less than ten (10) nor more than thirty (30) days prior to the filing of the variance application with the cabinet. The public notice of intention to file an application for a variance shall be entitled "Notice of Intention to File for a Variance from Kentucky Oil Shale Mining Regulations" and shall be in a manner and form prescribed by the cabinet and shall include, but not be limited to the following:

(a) The name and address of the applicant;
(b) The permit or permit application number;
(c) The location of the permit or proposed permit area;
(d) A brief description of the kind of variance proposed together with a statement of the amount of acreage affected by the proposed variance and the number of the cabinet regulation from which a variance is being sought;
(e) The address of the cabinet to which interested persons may submit written comments on the variance; and
(f) The location where a copy of the variance application is available for public inspection.

(3) The applicant for a variance shall establish the date and place at which the "Notice of Intention to File for a

Variance from Kentucky Oil Shale Mining Regulations" was published by attaching to his application an affidavit from the publishing newspaper certifying the time, place, and content of the published notices. The applicant shall make a full copy of the complete application for a variance available for the public to inspect and copy. This shall be done by filing a copy of the variance submitted to the cabinet at the courthouse of the county or counties where the mining is proposed to occur. Any person with an interest which is or may be adversely affected shall have the right to file with the cabinet written comments on the application for a variance within thirty (30) days of the final publication in the newspaper.

(4) If the data requirements listed in this regulation duplicate regulation requirements of other federal or state permits, a completed copy of the reporting form supplied to meet the requirements of the federal or state permit may be submitted to the cabinet to replace the duplicated portions of this regulation. The submission of this data will satisfy the requirements of the duplicated portions of this regulation, provided the applicant has requested such in writing and the cabinet has approved the request. The applicant's request for exception of duplicated requirements will not be subject to the requirement to publish a Notice of Intention to Request a Variance.

JACKIE A. SWIGART, Secretary
ADOPTED: January 14, 1983
RECEIVED BY LRC: January 14, 1983 at 4:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Steven D. Taylor, Environmental Engineer Chief, Division of Reclamation Services, Department for Surface Mining Reclamation and Enforcement, Natural Resources and Environmental Protection Cabinet, 3rd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement

405 KAR 30:201. Repeal.

RELATES TO: KRS 350.600
PURSUANT TO: KRS 13.082, 146.270, 151.125, 224.033, 350.028, 350.050, 350.600
NECESSITY AND FUNCTION: KRS 350.600 requires the Natural Resources and Environmental Protection Cabinet to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and environmental of the Commonwealth. The function of this regulation is to repeal the lands unsuitable for oil shale operations regulations since these regulations overlap 405 KAR 30:130, Section 13(4) and (5). There is insufficient data available at the present itme to support the use of these regulations, and they are therefore deemed not to be in the best interest of the Commonwealth.

Section 1. 405 KAR 30:190, Process and criteria for designating lands unsuitable for oil shale operations and 405 KAR 30:200, Petition requirements to designate lands unsuitable, are hereby repealed.

JACKIE SWIGART, Secretary
ADOPTED: January 14, 1983
RECEIVED BY LRC: January 14, 1983 at 4:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING: Steven D. Taylor, Environmental Engineer Chief, Division of Reclamation Services, Department for Surface Mining Reclamation and Enforcement, Natural Resources and Environmental Protection Cabinet, 3rd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department of Surface Mining Reclamation and Enforcement

405 KAR 30:370. Disposal of excess spoil materials and spent shale.

RELATES TO: KRS 350.600
PURSUANT TO: KRS 13.082, 151.125, 224.033, 350.028, 350.050, 350.600
NECESSITY AND FUNCTION: KRS 350.600 requires the Natural Resources and Environmental Protection Cabinet to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation sets forth specific requirements for the location of areas used for the disposal of excess spoil materials and spent shale and the design, construction, and inspection of fill structures composed of such materials.

Section 1. General Requirements. (1) Spoil and spent shale not disposed of in the mine workings shall be transported and placed in designated disposal areas within a permit area in a manner approved by the cabinet. The spoil and spent shale shall be placed in a controlled manner to ensure:

(a) That leachate and surface runoff from the fill will not degrade surface or groundwaters or exceed the effluent limitations of 405 KAR 30:320;

(b) Stability of the fill; and

(c) That the land mass designated as the disposal area is suitable for reclamation and revegetation compatible with the natural surroundings.

(2) The fill shall be designed using recognized professional standards, certified by a registered professional engineer, and approved by the 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 30:290. 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) All surface drainage from the undisturbed area above the fill shall be diverted away from the fill. Diversion design shall conform with the requirements of 405

KAR 30:310. All disturbed areas, including diversion ditches that are not riprapped, shall be vegetated upon completion of construction.

(5) The disposal areas shall be located on the most moderately sloping and naturally stable areas available as approved by the cabinet. Slope protection shall be provided to minimize surface erosion at the site. If such placement provides additional stability and prevents mass movement, fill materials suitable for disposal shall be placed upon or above a natural terrace, bench, or berm.

(6) The spoil and spent shale shall be transported and placed in horizontal lifts in a controlled manner, concurrently compacted as necessary to ensure mass stability and prevent mass movement, covered, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings and ensure a long-term static safety factor of 1.3.

(7) A minimum of four (4) feet of non-toxic and non-acid forming material shall be placed on the final layer of spent shale. In addition, the cabinet may require an impermeable cover between the final layer of spent shale and the four (4) feet of non-toxic and non-acid forming material. Greater depths may be specified by the cabinet if deemed necessary. This four (4) foot cover does not include the topsoil required in 405 KAR 30:290.

(8) The final configuration of the fill must be suitable for proposed postmining land uses approved in accordance with 405 KAR 30:220, except that no impoundments shall be allowed on the completed fill, and no depressions shall be allowed on the completed fill unless they are determined by the 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.

(9) Fills shall not be contructed in the 100-year floodplain of any perennial stream. A stream channel may not be changed to circumvent this requirement.

(10) Terraces may be utilized to control erosion and enhance stability.

(11) Where the natural land slope in the disposal area exceeds 1v:2.8h (thirty-six (36) percent), or such lesser slope as may be designated by the cabinet based on local conditions, keyway cuts (excavations to stable bedrock) or rock toe buttresses shall be contructed to stabilize the fill. Where the toe of the spoil rests on a downslope, stability analyses shall be performed to determine the size of rock toe buttresses and keyway cuts.

(12) The fill shall be inspected for stability by a registered engineer or other qualified person under the direct supervision of the responsible registered professional engineer experienced in the construction of earth and rockfill embankments at least monthly throughout construction and during the following critical construction periods: removal of all organic material and topsoil; placement of underdrainage systems; installation of surface drainage systems; placement and compaction of fill materials; and revegetation. The responsible registered professional engineer shall provide to the cabinet a certified report 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 mine site.

(13) Leachate ponds shall be constructed below all spent shale disposal areas at locations approved by the cabinet. Ponds shall be sized to contain all leachate from excess spoil and spent shale disposal areas. Leachate ponds shall be constructed in accordance with the requirements of 405 KAR 30:340.

(14) Oil shale processing wastes and spent shale shall not be disposed of in head-of-hollow or valley fills with excess spoil unless specific approval is granted by the cabinet.

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

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

Section 2. Additional Requirements for Spent Shale Disposal. (1) At a minimum, the permit applicant shall conduct tests to determine the active and potential acid levels of spent shale and an EP toxicity test to identify toxic contaminants. The results of these tests shall be submitted to the cabinet prior to receiving a permit. The cabinet will use the results of these tests to determine if the proposed handling method for spent shale in conjunction with excess spoil will fulfill the requirements of Section 1(1). The cabinet may require additional tests as necessary to make this determination.

(2) If the cabinet determines that the proposed handling method for spent shale in combination with excess spoil will not adequately fulfill the requirements of Section 1(1) of this regulation spent shale shall be handled according to the provisions of 405 KAR 30:360. Excess spoil shall be handled in accordance with the provisions of Section 1 of this regulation excluding subsections (7) and (13).

(3) Spent shale shall be cooled to a temperature approved by the cabinet, prior to disposal.

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

(1) The fill shall be designed to attain a long-term static safety factor of 1.3 based upon data obtained from subsurface exploration, geotechnical testing, foundation design, and accepted engineering analyses.

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

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

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

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

(c) In constructing the underdrains, no more than ten (10) percent of the rock may be less than twelve (12) inches in size and no single rock may be larger than twenty-five (25) percent of the width of the drain. Rock used in underdrains shall meet the requirement of paragraph (d) of this

subsection. The main underdrain shall be sized so as to function properly under all probable conditions and must meet the approval of the cabinet.

(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.

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

(a) Achieve the densities designed to ensure mass stability;

(b) Prevent mass movement;

(c) Avoid contamination of the rock underdrain or rock core; and

(d) Prevent formation of voids.

(4) Surface water runoff from the area above the fill shall be diverted away from the fill and into stabilized diversion channels designed to pass safely the runoff from a 100-year, twenty-four (24) hour precipitation event or larger event specified by the 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 30:310, Section 1(2).

(5) The tops of the fill and any terrace constructed to stabilize the face shall be graded no steeper than 1v:20h (five (5) percent). The vertical distance between terraces shall not exceed fifty (50) feet.

(6) Drainage shall not be directed over the outslope of the fill.

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

(8) The cabinet may approve other methods of design and construction if demonstrated by the applicant using sound engineering principles that such design and construction meets or exceeds the requirement of this regulation.

Section 4. Other Disposal Requirements. The cabinet may require other measures to ensure the protection of fish and wildlife, water, vegetation, and other environmental resources of the area as well as public health and safety.

JACKIE A. SWIGART, Secretary

ADOPTED: January 14, 1983

RECEIVED BY LRC: January 14, 1983 at 4:30 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Steven D. Taylor, Environmental Engineer Chief, Division of Reclamation Services, Department for Surface Mining Reclamation and Enforcement, Natural Resources and Environmental Protection Cabinet, 3rd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

Reprint

COMPILER'S NOTE: This regulation is being reprinted in order to show bracketed material omitted from the original publication in the January Register.

LEGISLATIVE RESEARCH COMMISSION
Personal Service Contracts
(Proposed Amendment)

1 KAR 2:010. Personal Service Contract Review Subcommittee; procedure; records.

RELATES TO: KRS 45.700, 45.705, 45.710, 45.715, 45.720

PURSUANT TO: KRS 7.320(2), 45.720

NECESSITY AND FUNCTION: KRS 45.720 requires the Legislative Research Commission to prescribe rules governing the manner and form which personal service contracts are to be reviewed.

Section 1. A permanent subcommittee of the Legislative Research Commission, to be known as the Personal Service Contract Review Subcommittee, shall be composed of seven (7) members which shall include members of the minority party as nearly proportioned to their membership in the general assembly as mathematically possible.

(1) The Legislative Research Commission shall appoint from the membership of the general assembly as follows:

(a) Four (4) members from the House of Representatives; and

(b) Three (3) members from the Senate.

(2) The personal service contract review subcommittee shall meet monthly at such time and place as selected by the chairman.

(3) A quorum shall require at least four (4) members present and the vote shall be by majority.

(4) The members of the subcommittee shall serve for a term of two (2) years, with the chairman being appointed by the subcommittee.

(5) Vacanies which may occur in the membership of the subcommittee shall be filled by the Legislative Research Commission at its next regularly scheduled meeting after the occurrance of the vacancy.

(6) The subcommittee shall act on a personal service contract properly submitted to the Legislative Research Commission within thirty (30) days of its submission, except as provided in Section 2(2) of this regulation.

Section 2. *No one shall begin work on a personal service contract made by any contracting body after July 15, 1982, except in the event of a governmental emergency,* [No personal service contract made by any contracting body after March 12, 1980, shall become effective] until after three (3) copies of the personal service contract are forwarded to the office of the Legislative Research Commission.

(1) The Legislative Research Commission shall cause to be endorsed on the copies of each personal service contract submitted the time and date of the filing thereof and shall maintain a file of such personal service contracts for public inspection, indexed as follows:

(a) By vendor name (alphabetically);

(b) By state agency (organization); and

(c) By type of service provided.

(2) For a contract to be reviewed by the subcommittee at its next regularly scheduled meeting, it must be submitted to the Legislative Research Commission on or before the last day of the month preceeding the meeting. All

documents received after the end of the month will be deferred to the next regularly scheduled meeting.

(3) Each personal service contract and each copy thereof submitted for review will have attached a completed *proof of necessity* [contract review] form which at a minimum will include the following information:

(a) A statement which describes, in detail, the need for such services;

(b) A statement which justifies, in detail, the purchase of service as opposed to the provision of service, i.e., unavailability/non-feasibility;

(c) [A statement which justifies] The total projected cost [and explains, in detail how the cost was derived];

(d) [A statement which justifies] The stated duration [and explains in detail how the duration was derived];

(e) An affirmative statement attesting to the existence of a thirty (30) day cancellation clause;

(f) A copy of the purchase contract indicating maximum amount of the contract.

(4) Notification of approval will be transmitted back to the contracting body in the form of a stamped contract attesting to such approval, within thirty (30) days of such action.

(5) If the subcommittee believes that the contract service [, except for emergency contracts approved by the governor,] is not needed, the service could and should be performed by state personnel, the cost is excessive, or the duration is excessive, the subcommittee shall:

(a) Attach to the personal service contract a written notation of its *disapproval* [objection], including a statement of the reasons therefore, and shall return the personal service contract to the Secretary of *the Finance and Administration Cabinet* [Finance].

(b) Notice of such *disapproval* [objection] shall be given by the subcommittee to the Director of the Legislative Research Commission and agency involved.

Section 3. Payment on a personal service contract shall not be made until after the contract has been approved by the subcommittee except as provided for in Section 4 or 5.

Section 4. If the Secretary of *the Finance and Administration Cabinet* [Finance] determines that the time involved with the normal review procedure would cause a detrimental effect upon the Commonwealth's ability to act or procure services, he may approve an emergency payment after notification and explanation of this action is forwarded to the subcommittee.

Section 5. In the event of a governmental emergency, three (3) copies of the statement declaring the emergency, approved by the Secretary of the Finance and Administration Cabinet, shall be filed with the contract.

Section *6.* [5.] (1) Personal service contracts objected to or disapproved by the subcommittee shall be forwarded to the *Secretary of the Finance and Administration Cabinet* [Department of Finance]. The secretary of the *Finance and Administration Cabinet* [Department of Finance] shall determine whether a personal service contract:

(a) Shall be revised to comply with the objections of the subcommittee; or

(b) Shall be cancelled if disapproved by the subcommittee; or

(c) Shall remain effective as originally approved by the *Finance and Administration Cabinet* [Department of Finance].

(2) The *Finance and Administration Cabinet* [Department of Finance] shall notify the subcommittee of the action taken on personal service contracts *disapproved* [referred to the department] by the subcommittee within thirty (30) days from the date the contracts were reviewed by the subcommittee.

(3) The subcommittee shall report monthly to the Legislative Research Commission all action taken on personal service contracts by the *Secretary of the Finance and Administration Cabinet* [Department of Finance] and the subcommittee.

VIC HELLARD, JR., Director

ADOPTED: December 1, 1982

RECEIVED BY LRC: December 2, 1982 at 3 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Robert L. Doris, Jr., Staff Administrator, Personal Service Contract Review Subcommittee, Capitol Annex, Room 35, Frankfort, Kentucky 40601.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the December 20-21, 1982 Meeting

(Subject to subcommittee approval at the January 26 meeting.)

The Administrative Regulation Review Subcommittee held its monthly meeting on Monday, December 20, and on Tuesday, December 21, 1982, at 10 a.m., in Room 103 of the Capitol Annex. Present were:

Members: Representative William T. Brinkley, Chairman; Senators James Bunning, Pat McCuiston, and Bill Quinlan; Representatives Albert Robinson, James Bruce and Greg Stumbo.

Guests: Representatives Clayton Little and Clarence Noland; Andrew Cammack, William Eddins, Lawrence Grasch, Laurie Keller, George Risk, Joshua Santana, Steven Taylor and Jim Villines, Cabinet for Natural Resources and Environmental Protection; Tom Fitzgerald, Appalachian Research Defense Fund; Jerry Lombardo, Island Creek Coal Co.; Daniel Geiger, Interstate Coal Co.; Bill Caylor, Kentucky Coal Association; Steve Collins, Mell Coal Co.; Everett Green, Peabody Coal Co.; Michael McCann and William Gorton, Skelly & Loy Engineers; Kevin Howard, Summitt Engineering; Ken Hart, Kentucky Independent Coal Producers; Ilse Dickerson and Addie Stokley, Board of Claims; Dave Nicholas, Division of Occupations and Professions; Gwynne Goldberg, Board of Examiners of Social Work; J. H. Voige, Board of Pharmacy; Richard McDougall and Nancy Brinly, Board of Physical

Therapy; Ted Little, Board of Proprietary Education; Davis Sledd, Real Estate Commission; Ben McCray, Greg Lawther, Donna Smith, John Walker and Sue Turner, Cabinet for Human Resources; Sara Bell and Marie Alagia, Commerce Cabinet; Bill Criscillis, J. Michael Noyes and Hughes Walker, Department of Agriculture; Paul Jones, Sidney Simandle and Gary Bale, Department of Education; Patrick Watts, Department of Insurance; Dee Maynard, Department of Personnel; Arthur Hatterick, Jr., Personnel Board; Richard Casey and Thomas Braun, Kentucky Higher Education Assistance Authority; Paul Borden, Kentucky Higher Education Student Loan Corporation; Scott Smith, John Van Volkenburgh and Ellyn Crutcher, Public Service Commission; Thomas Townes, Tim Helson and Charles Moore, Jr., Transportation Cabinet; W. Terry McBrayer, Harry Weber and Shirley Matthews, Kentucky Association of Career Colleges and Schools; Bill Noel, Education Systems, Inc.; H. Hurt and Diane Evans, Kentucky State University; Alan Smothers, Western Kentucky University; Marvin Coates, Watterson College; Stanley Rising and Clara Rising, Kentucky Ginseng Growers Association; Ralph Pappert, Columbia Gas of Kentucky; Mason Wood and Donald Thornsbury, Kentucky Power Company; Jan Gould and John Hinkle, Kentucky Retail Federation; Mike Clyburn, Capitol Christian Preschool; Camille Haggard and Myrna Wall, Fayette County Child Care Association; Ted Estes, Kentucky Association for Child Care Management; Nicky Triplett, Leslie Weigel and John DeStefano, Kentucky Youth Research Center; Susan Goddard and Paula Juett, Rainbow Day Care Center; Larry Warren, Bell-Whitley C.S.A.; Tony Novello, Sandoz Pharmaceuticals; Jim Looney, Tenure Club; Don Dampier and Lucille Turner.

Staff: Susan Harding, Joe Hood, Dan Risch, June Mabry, Shirley Hart, Carla Arnold, Paula Payne, John Downard, Sheila Mason, Scott Payton, Bob Fallon, Debbie McGuffey, Don Stosberg and Jim Curtis.

Press: Herb Sparrow, Associated Press.

Representative Bruce called the meeting to order and the secretary called the roll. On motion of Senator Quinlan, seconded by Senator Bunning, the minutes of the November 22-23 meeting were approved. Representative Bruce relinquished the Chair to Representative Brinkley. On motion of Senator Bunning, seconded by Representative Stumbo, the minutes of the public hearings held on the primacy regulations were approved.

On motion of Representative Bruce, seconded by Senator McCuiston, the following regulation was deferred by the subcommittee until December 21 provided the interested parties were available for discussion:

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining and Reclamation
General Provisions

405 KAR 7:030. Applicability. (Roll call vote—5 yeas, 1 pass.)

On motion of Representative Bruce, seconded by Senator Bunning, the following regulations were recommended for filing:

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining and Reclamation
Strip Mining of Coal

405 KAR 1:005. Applicability of chapter.

Surface Effects of Underground Coal Mining

405 KAR 3:005. Applicability of chapter.

General Provisions

405 KAR 7:020. Definitions and abbreviations.
405 KAR 7:040. General obligations of operators and permittees.
405 KAR 7:060. Experimental practices mining.
405 KAR 7:080. Small operator assistance.
405 KAR 7:090. Hearings.
405 KAR 7:095. Assessment of civil penalties.
405 KAR 7:100. Notice of citizen suits.
405 KAR 7:110. Petitions for rulemaking.

Permits

405 KAR 8:010. General provisions for permits.
405 KAR 8:020. Coal exploration.
405 KAR 8:030. Surface coal mining permits.
405 KAR 8:040. Underground coal mining permits.
405 KAR 8:050. Permits for special categories of mining.

Bond and Insurance Requirements

405 KAR 10:010. General requirements for performance bond and liability insurance.
405 KAR 10:020. Amount and duration of performance bond.
405 KAR 10:030. Types, terms and conditions of performance bonds and liability insurance.
405 KAR 10:040. Procedures, criteria and schedule for release of performance bond.
405 KAR 10:050. Bond forfeiture.

Inspection and Enforcement

405 KAR 12:010. General provisions for inspection and enforcement.
405 KAR 12:020. Enforcement.
405 KAR 12:030. Public participation in inspection and enforcement.

Performance Standards for Surface Mining Activities

405 KAR 16:010. General provisions.
405 KAR 16:020. Contemporaneous reclamation.
405 KAR 16:030. Signs and markers.
405 KAR 16:040. Casing and sealing of drilled holes.
405 KAR 16:050. Topsoil.
405 KAR 16:060. General hydrologic requirements.
405 KAR 16:070. Water quality standards and effluent limitations.
405 KAR 16:080. Diversions.
405 KAR 16:090. Sedimentation ponds.
405 KAR 16:100. Permanent and temporary impoundments.
405 KAR 16:110. Surface and groundwater monitoring.
405 KAR 16:120. Use of explosives.
405 KAR 16:130. Disposal of excess spoil.
405 KAR 16:140. Disposal of coal processing waste.
405 KAR 16:150. Disposal of waste other than coal, soil or rock.
405 KAR 16:160. Coal processing waste dams and impoundments.
405 KAR 16:170. Air resources protection.
405 KAR 16:180. Protection of fish, wildlife, and related environmental values.
405 KAR 16:190. Backfilling and grading.
405 KAR 16:200. Revegetation.
405 KAR 16:210. Postmining land use.

405 KAR 16:220. Roads.
405 KAR 16:250. Other facilities.
Performance Standards for Underground Mining Activities
405 KAR 18:010. General provisions.
405 KAR 18:020. Contemporaneous reclamation.
405 KAR 18:030. Signs and markers.
405 KAR 18:040. Casing and sealing of underground openings.
405 KAR 18:050. Topsoil.
405 KAR 18:060. General hydrologic requirements.
405 KAR 18:070. Water quality standards and effluent limitations.
405 KAR 18:080. Diversions.
405 KAR 18:090. Sedimentation ponds.
405 KAR 18:100. Permanent and temporary impoundments.
405 KAR 18:110. Surface and groundwater monitoring.
405 KAR 18:120. Use of explosives.
405 KAR 18:130. Disposal of underground development waste and excess spoil.
405 KAR 18:140. Disposal of coal processing waste.
405 KAR 18:150. Disposal of waste other than coal, soil, or rock.
405 KAR 18:160. Coal processing waste dams and impoundments.
405 KAR 18:170. Air resources protection.
405 KAR 18:180. Protection of fish, wildlife, and related environmental values.
405 KAR 18:190. Backfilling and grading.
405 KAR 18:200. Revegetation.
405 KAR 18:210. Subsidence control.
405 KAR 18:220. Postmining land use capability.
405 KAR 18:230. Roads.
405 KAR 18:260. Other facilities.
Special Performance Standards
405 KAR 20:010. Coal exploration.
405 KAR 20:020. Concurrent surface and underground mining.
405 KAR 20:030. Auger mining.
405 KAR 20:040. Prime farmland.
405 KAR 20:050. Mountaintop removal.
405 KAR 20:060. Steep slopes.
405 KAR 20:070. Offsite coal processing plants.
405 KAR 20:080. In situ processing.
Areas Unsuitable for Mining
405 KAR 24:020. Petition requirements.
405 KAR 24:030. Process and criteria for designating lands unsuitable for surface mining operations.
405 KAR 24:040. Permit application review.
Surface Coal Mining and Reclamation Operations of Two (2) Acres or Less
405 KR 26:001. Operation of two (2) acres or less.

The subcommittee recommended that no action be taken on the following emergency regulations:

FINANCE AND ADMINISTRATION CABINET
Department of Personnel
Personnel Rules
101 KAR 1:055E. Compensation plan, pay for performance. (Senator Bunning moved that the subcommittee object to the emergency. Motion failed to pass on a roll call vote—3 yeas, 4 nays.)

ENERGY AND AGRICULTURE CABINET
Department of Agriculture
Livestock Sanitation
302 KAR 20:130E. Treatment of contagious equine metritis.

The following regulations were recommended for deferral by the subcommittee until the January 26 meeting:

CABINET FOR HUMAN RESOURCES
Department for Social Services
Day Care
905 KAR 2:010. Standards for all child day care facilities.

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission
Utilities
807 KAR 5:006. General rules.

KENTUCKY HIGHER EDUCATION STUDENT LOAN CORPORATION
Guaranteed Student Loans and Loans to Parents
15 KAR 1:020. Purchasing policies.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining and Reclamation
General Provisions
405 KAR 7:030. Applicability.

The subcommittee recommended that the following regulations be approved for filing:

CABINET FOR HUMAN RESOURCES
Department for Health Services
Certificate of Need and Licensure Board
902 KAR 20:008. License procedures and fee schedule.
Department for Social Services
Block Grants
905 KAR 3:040. Allocation formula.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
Surplus Lines
806 KAR 10:015. Repeal of 806 KAR 10:010.
Public Service Commission
Utilities
807 KAR 5:026. Gas service; gathering systems. (As amended.)
807 KAR 5:027. Gas pipeline safety; reports of leaks. (As amended.)

EDUCATION AND HUMANITIES CABINET
Department of Education
Bureau of Administration and Finance
Pupil Transportation
702 KAR 5:120. Blind and deaf pupils, reimbursement for.
Bureau of Instruction
Teacher Certification
704 KAR 20:005. Kentucky standards for preparation program approval.
704 KAR 20:135. Kindergarten teachers.
704 KAR 20:206. Repeal of 704 KAR 20:205.
704 KAR 20:275. Teaching English as a second language.

COMMERCE CABINET
Department of Economic Development
Economic Development
306 KAR 1:010. Definitions.
306 KAR 1:020. Application process.
306 KAR 1:030. Eligibility requirements.
306 KAR 1:040. Qualification.
306 KAR 1:050. Removal of designation.
306 KAR 1:060. Conflict of interest.
306 KAR 1:070. Duties of the authority.
306 KAR 1:080. Regulations review.
306 KAR 1:090. Geographic neighborhood area.

ENERGY AND AGRICULTURE CABINET
Department of Agriculture
Livestock Sanitation
302 KAR 20:130. Treatment of contagious equine metritis.

FINANCE AND ADMINISTRATION CABINET
Division of Occupations and Professions
Board of Pharmacy
201 KAR 2:110. Drug products for which there is insufficient data.
201 KAR 2:115. Controlled release tablets, capsules and injectables.
201 KAR 2:120. Enteric coated oral dosage forms.
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201 KAR 2:130. Schedule I and II controlled substances.
201 KAR 2:135. Drug products with bioinequivalence problems.
201 KAR 2:140. Drug products having drug standard deficiencies.
201 KAR 2:145. Drug products with potential bioequivalence issues.
201 KAR 2:150. Topical products.
201 KAR 2:155. Suppositories and enemas for systemic use.
Board of Medical Licensure
201 KAR 9:050. License renewal; annual registration.
Real Estate Commission
201 KAR 11:006. Repeal of 201 KAR 11:005.
Board of Physical Therapy
201 KAR 22:031. Therapist's licensing procedure.
201 KAR 22:130. Per diem of board members.
Board of Examiners of Social Work
201 KAR 23:080. Code of ethical practice.
201 KAR 23:110. Advertising.

BOARD OF CLAIMS
Practice and Procedure
108 KAR 1:010. Board operation and claim procedure.

KENTUCKY HIGHER EDUCATION
STUDENT LOAN CORPORATION
Guaranteed Student Loans and Loans to Parents
15 KAR 1:010. Qualifications to applicants.

On December 21, Representative Stumbo moved to recommend rejection of the following regulation:

TRANSPORTATION CABINET
Department of Vehicle Regulation
Motor Vehicle Tax
601 KAR 9:072. Kentucky highway use license, taxes and records. (Roll call vote—4 yeas, 2 nays.)

The subcommittee made no recommendation on the following regulation:

DEPARTMENT OF PERSONNEL
Personnel Rules
101 KAR 1:055. Compensation plan, pay for performance. (Representative Robinson moved to recommend rejection of regulation. Motion failed to pass on a roll call vote—2 yeas, 4 nays, 1 pass.)

On December 21, due to lack of a quorum, three members of the subcommittee expressed their recommendation for approval on the following regulation as amended:

ENERGY AND AGRICULTURE CABINET
Department of Agriculture
Marketing Service
302 KAR 45:010. Ginseng, general provisions. (As amended.)

The meeting was adjourned at 2:30 p.m. on December 21 until January 26, 1983.

Administrative Register of kentucky

Cumulative Supplement

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NOTE: Emergency regulations expire upon being repealed or replaced.

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