

LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

VOLUME 10, NUMBER 2
MONDAY, AUGUST 1, 1983



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MEETING NOTICE: For information concerning the next meeting of the Administrative Regulation Review Subcommittee, call toll-free 1-800-372-7613, or 502-564-8100, ext. 535.

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 1984 Edition of KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE.

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

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

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

Administrative Register of Kentucky

(ISSN 0096-1493)

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The *Administrative Register of Kentucky* is published monthly by the Legislative Research Commission, Frankfort, Kentucky 40601. Subscription rate, postpaid in the United States: \$36 per volume of 12 issues, beginning in July and ending with the June issue of the subsequent year.

Second class postage paid at Frankfort, Kentucky.

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

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Public Hearings Scheduled

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET

A public hearing has been scheduled on August 2, 1983, at 10 a.m. in the Auditorium of the State Office Building, Frankfort, Kentucky, on the following regulations:

401 KAR Chapters 30 through 47 printed in this register.

A public hearing has been scheduled on August 2, 1983, at 7 p.m. at the Harley Hotel, 2143 North Broadway, Lexington, Kentucky; and on August 4, 1983, at 7 p.m. at the Executive Inn, Ohio Room, East Annex, Owensboro, Kentucky on the following regulations:

401 KAR 5:110. Disposal of produced water from oil and gas facilities. [10 Ky.R. 184]

401 KAR 5:120. Fees for permits to control water pollution from oil and gas facilities. [10 Ky.R. 185]

Emergency Regulations Now In Effect

(NOTE: Emergency regulations expire upon being repealed or replaced.)

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 85-567
June 21, 1983

EMERGENCY REGULATION State Investment Commission

WHEREAS, the State Investment Commission is required by KRS 42.520 to assign priorities to depositories for public funds based on their demonstrated effectiveness in serving the convenience and economic development of the communities in which they are chartered to do business; and

WHEREAS, the implementation of administrative regulations in as expedient a manner as possible is both necessary and desirable in order to achieve the objectives and public benefit to be derived from the statutory program; and

WHEREAS, the State Investment Commission has found and so recommended that the administrative regulations it is authorized to promulgate pursuant to KRS 42.520 and KRS 13.082 should be implemented on an emergency basis:

NOW, THEREFORE, I, John Y. Brown, Jr., Governor of the Commonwealth of Kentucky, pursuant to the authority vested in me by Section 13.088 of the Kentucky Revised Statutes hereby acknowledge the finding and recommendation of the State Investment Commission that an emergency exists and direct that the attached administrative regulation be effective upon filing with the Legislative Research Commission.

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

FINANCE AND ADMINISTRATION CABINET State Investment Commission

200 KAR 14:040E. Priority to public depositories.

RELATES TO: KRS Chapter 42

PURSUANT TO: KRS 13.082, 42.520

EFFECTIVE: June 21, 1983

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) "DIDM" means the Division of Investment and Debt Management.

Section 2. General. The purpose of this regulation is to provide a standard procedure by which the commission will assign priorities to public depositories to receive time deposits, as required by KRS 42.520. Priority must be based on their demonstrated effectiveness in serving the convenience and economic development need of the communities in which they are chartered to do business. This regulation does not affect the process by which bank transaction services are contracted. KRS 45A.475 provides that those services are to be selected on the basis of competitive bidding, as regulated by the Kentucky Model Procurement Code.

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, 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 DIDM shall report the results of the scoring, based on the publicly available data, to the commission at the end of each quarter.

Section 4. Application of Methodology. The formula of the methodology is hereby incorporated by reference (adopted April 26, 1983). Copies may be obtained by contacting:

James R. Ramsey, Director
Division of Investment and Debt Management
Finance and Administration Cabinet
Room 201, Capitol Annex
Frankfort, Kentucky 40601

Section 5. Frequency of Scoring. The DIDM 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. Reports will be submitted to the DIDM no later than forty-five (45) days following the close of each calendar quarter.

Section 6. Appeal Process. Any bank shall have the opportunity to appeal the results of the prioritization process to the State Investment Commission.

ROBERT L. WARREN, Secretary
ADOPTED: June 21, 1983
RECEIVED BY LRC: June 21, 1983 at 3 p.m.

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 83-563
June 21, 1983

EMERGENCY REGULATION
Cabinet for Public Protection and Regulation
Public Service Commission

WHEREAS, the Public Service Commission is statutorily charged with regulating the rates and service of all gas, electric, telephone, water and sewer utilities operating within Kentucky; and

WHEREAS, KRS 278.115 provides that the Public Service Commission shall, by regulation, organize its offices for administration and management under the executive director to reflect its functions; and

WHEREAS, the Public Service Commission has determined that the functions of the Technical Services Division

have been absorbed by other divisions within the agency, and that the Technical Services Division is no longer needed as an organizational entity and, therefore, should be abolished; and

WHEREAS, the Public Service Commission with the approval of the Secretary of the Cabinet for Public Protection has determined in writing that an emergency with respect to said regulation exists and that, therefore, in accordance with KRS 13.088(1) said regulation should become effective upon filing with the Legislative Research Commission:

NOW, THEREFORE, I, John Y. Brown, Jr., Governor of the Commonwealth of Kentucky, by the authority vested in me by KRS 13.088(1) do hereby acknowledge the finding of the Public Service Commission and the Secretary of the Cabinet for Public Protection and Regulation that an emergency exists and direct that the attached regulation pertaining to the organization of the Public Service Commission become effective immediately upon being filed with the Legislative Research Commission, as provided in Chapter 13 of the Kentucky Revised Statutes.

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

PUBLIC PROTECTION AND REGULATION CABINET Public Service Commission

807 KAR 5:002E. Organization.

RELATES TO: KRS Chapter 278

PURSUANT TO: KRS 278.115

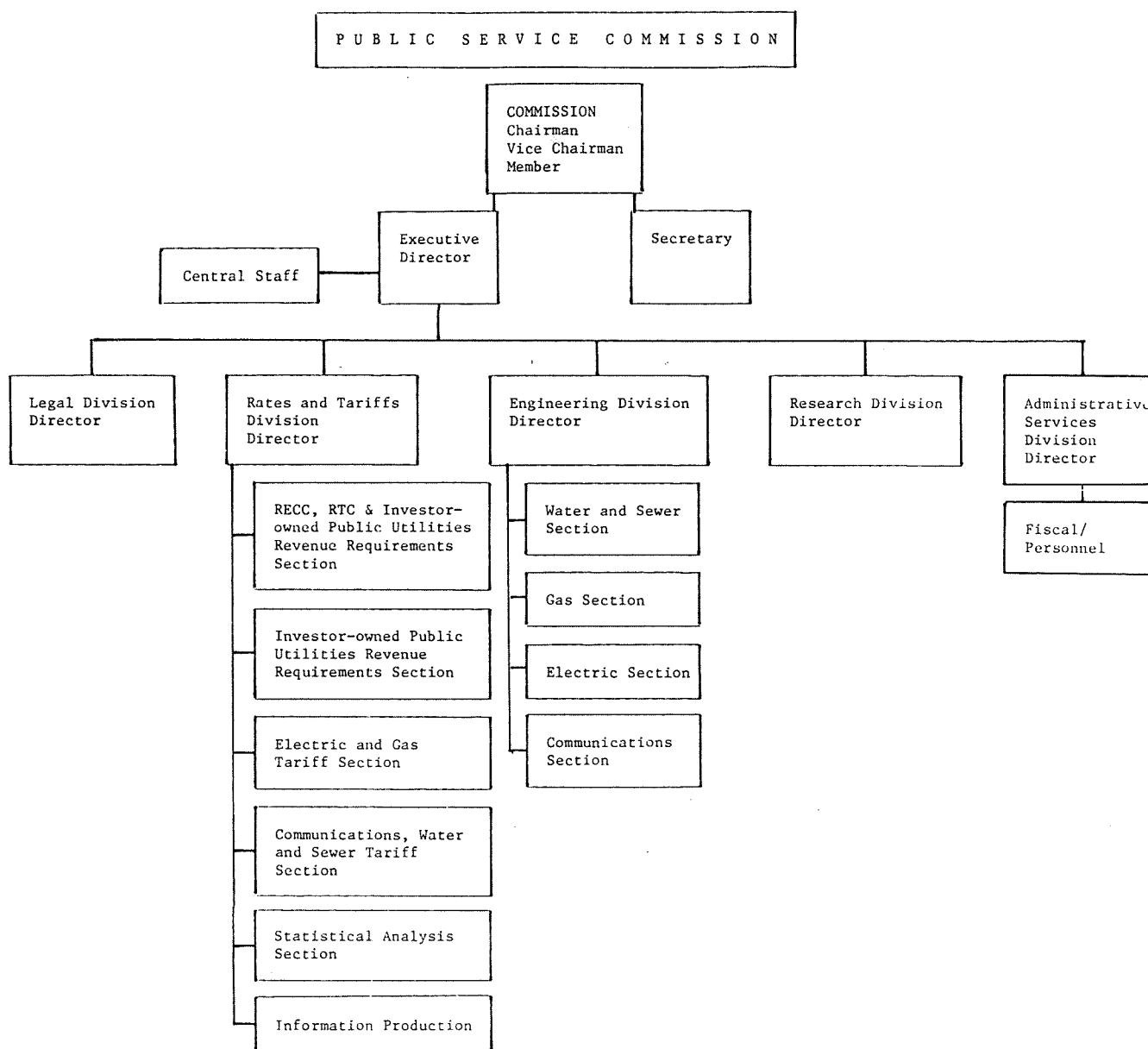
EFFECTIVE: June 27, 1983

NECESSITY AND FUNCTION: KRS 278.115 provides that the Public Service Commission shall organize its offices for administration and management under the executive director. This regulation prescribes the organization of the Public Service Commission's offices.

Section 1. The offices of the Public Service Commission are organized for administration and management under the executive director, adopted May 31, 1983, to reflect their functions as follows:

(See Flow Chart on following page.)

LAURA MURRELL, Chairman
ADOPTED: May 31, 1983
APPROVED: LEONARD B. MARSHALL, JR.
Secretary
RECEIVED BY LRC: June 27, 1983 at 3 p.m.



JOHN Y. BROWN, JR. GOVERNOR
Executive Order 83-594
June 30, 1983

EMERGENCY REGULATIONS
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 Cabinet for Human Resources is required by Part I, Section 52 of Chapter 398 of the 1982 Kentucky Acts to contain costs; and

WHEREAS, the Secretary has determined that in order to reduce the rate of spending and avoid the imposition of a federal fiscal penalty against the Medical Assistance Program, it is necessary to implement new regulations govern-

ing payments for a variety of medical assistance services; and

WHEREAS, the Secretary has promulgated regulations pertaining to payments for Primary Care Services, Nurse Anesthetists' Services, Nurse Midwife Services, Skilled Nursing and Intermediate Care Services, Mental Health Center Services, Physicians' Services, Hospital Inpatient and Outpatient Services, and Dental Services; and

WHEREAS, in order to maximize the savings to be derived from the revised regulations for this fiscal year, the Secretary has determined in writing that these regulations should be effective on July 1, 1983 and that therefore an emergency exists with respect to these regulations:

NOW, THEREFORE, I, John Y. Brown, Jr., Governor of the Commonwealth of Kentucky, by virtue of the authority vested in me by 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 regulations, 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

CABINET FOR HUMAN RESOURCES
Department for Social Insurance

904 KAR 1:010E. Payment for physicians' services.

RELATES TO: KRS 205.550, 205.560

PURSUANT TO: KRS 13.082, 194.050

EFFECTIVE: June 30, 1983

NECESSITY AND FUNCTION: The Cabinet [Department] for Human Resources has responsibility to administer a program of Medical Assistance under Title XIX of the Social Security Act. KRS 205.550 and 205.560 require that the secretary prescribe the methods for determining costs for vendor payments for medical care services. This regulation sets forth the method for establishing payment for physician services.

Section 1. Amount of Payment. Payment for covered services rendered to eligible medical assistance recipients is based on the physicians' usual, customary, reasonable and prevailing charges.

Section 2. Definitions. For purposes of determination of payment: (1) Usual and customary charge refers to the uniform amount the individual physician charges in the majority of cases for a specific medical procedure or service.

(2) Prevailing charge refers to those charges which fall within the range of charges as computed by the use of a pre-determined and established statistical percentile. Prevailing charges for each medical procedure are derived from the overall pattern existing within the state.

Section 3. Method and Source of Information on Charges. (1) Effective October 1, 1974, the individual fee profiles for participating physicians were generated from historical data accumulated from charges submitted and processed by the medical assistance program during all of calendar year 1973.

(2) Effective October 1, 1974, the Title XIX prevailing fee maximums were generated from the same historical data as referenced in subsection (1) of this section.

(3) Effective October 1, 1974, the Title XVIII, Part B, current reasonable charge profiles were utilized by the medical assistance program to comply with 45 C.F.R. section 250.30, now recodified as 42 C.F.R. 447.341.

(4) Effective October 1, 1974, the Title XVIII, Part B, current prevailing charge data was utilized by the medical assistance program to comply with 45 C.F.R. section 250.30, now recodified as 42 C.F.R. 447.341.

(5) Percentile:

(a) The Title XIX prevailing charges were established by utilizing the statistical computation of the seventy-fifth (75th) percentile.

(b) The Title XVIII, Part B, prevailing charges were established by utilizing the statistical computation of the seventy-fifth (75th) percentile.

Section 4. Maximum Reimbursement for Covered Procedures. (1) Reimbursement for covered procedures is limited to the lowest of the following:

(a) Actual charge for service rendered as submitted on billing statement;

(b) The physician's median charge for a given service derived from claims processed or from claims for services rendered during all of the calendar year preceding the start of the fiscal year in which the determination is made.

(2) In no case may payment exceed the prevailing charge established under Part B, Title XVIII for similar service on a statewide basis.

(3) In instances where a prevailing charge has not been established for a specific medical procedure by Part B, Title XVIII, the prevailing charge established under Title XIX is utilized as the maximum allowable fee.

(4) The upper limit for new physicians shall not exceed the fiftieth (50th) percentile.

Section 5. Exceptions. Exceptions to reimbursement as outlined in foregoing sections are as follows: (1) Reimbursement for physician's services provided to inpatients of hospitals is made on the basis of 100 percent reimbursement per procedure for the first *twenty dollars (\$20)* [fifty dollars (\$50)] of allowable reimbursement and on the basis of a percentage of the physician's usual, customary and reasonable charge in excess of *twenty dollars (\$20)* [fifty dollars (\$50)] per procedure, after the appropriate prevailing fee screens are applied. The percentage rate applied to otherwise allowable reimbursement in excess of *twenty dollars (\$20)* [fifty dollars (\$50)] per procedure is established at *thirty-five (35)* [sixty (60)] percent. The percentage rate will be reviewed periodically and adjusted according to the availability of funds.

(2) Payment for individuals eligible for coverage under Title XVIII, Part B, Supplementary Medical Insurance, is made in accordance with Sections 1 through 4 and Section 5(1) within the individual's deductible and coinsurance liability.

ADOPTED: June 29, 1983
APPROVED: BUDDY H. ADAMS, Secretary
RECEIVED BY L.R.C: June 30, 1983 at 4 p.m.

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: June 30, 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 July 1 [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.

(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. 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 occupancy 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 105 [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.] 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) 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.]

JOHN CUBINE, Commissioner

ADOPTED: June 29, 1983

APPROVED:

BUDDY H. ADAMS, Secretary

RECEIVED BY LRC: June 30, 1983 at 4 p.m.

CABINET FOR HUMAN RESOURCES Department for Social Insurance

904 KAR 1:015E. Payments for hospital outpatient services.

RELATES TO: KRS 205.520

PURSUANT TO: KRS 13.082, 194.050

EFFECTIVE: June 30, 1983

NECESSITY AND FUNCTION: The *Cabinet* [Department] for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520(3) empowers the *cabinet* [department], by regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the method for determining amounts payable by the *cabinet* [department] for hospital outpatient services.

Section 1. Outpatient Hospital Services: *In accordance with the provisions of 42 CFR 447.321, the cabinet shall reimburse participating hospitals for outpatient services at the rate of eighty (80) percent of usual and customary charges billed to the Medical Assistance Program. There is no settlement to the lower of cost or charges, nor may charges or costs be transferred between the inpatient and outpatient service units.* [In accordance with the provisions of 45 CFR section 250.30 the department shall reimburse participating hospitals for outpatient services on the basis of reasonable costs as related to charges utilizing the Title XVIII Standards for Reimbursement applied to the Title XIX patient services.]

Section 2. The payment provisions shown in Section 1 of this regulation shall not affect cost settlements or payment adjustments for services provided prior to July 1, 1983.

JOHN CUBINE, Commissioner

ADOPTED: June 29, 1983

APPROVED: BUDDY H. ADAMS, Secretary

RECEIVED BY LRC: June 30, 1983 at 4 p.m.

CABINET FOR HUMAN RESOURCES Department for Social Insurance

904 KAR 1:027E. Payment for dental services.

RELATES TO: KRS 205.520

PURSUANT TO: KRS 13.082, 194.050

EFFECTIVE: June 30, 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 dental services.

Section 1. Out-of-Hospital Care. (1) The cabinet shall reimburse participating dentists for covered services rendered to eligible medical assistance recipients at rates based on the dentist's usual customary, reasonable, and prevailing charges.

(2) Definitions: For purpose of determination of payment:

(a) "Usual and customary charge" refers to the uniform amount which the individual dentist charges in the majority of cases for a specific dental procedure or service.

(b) "Prevailing charge" refers to those charges which fall within the range of charges as computed by the use of a pre-determined and established statistical percentile. Prevailing charges for each dental procedure are derived from the overall pattern existing within the state.

(3) Method and source of information on charges:

(a) Effective with fee revisions December 1, 1974 and after, individual fee profiles for participating dentists will be generated from historical data accumulated from charges submitted and processed by the Medical Assistance Program during all of the calendar year preceding the start of the fiscal year in which the determination is made.

(b) Effective with revisions December 1, 1974 and after, Title XIX prevailing fee maximums will be generated from the same historical data as referenced in paragraph (a) of this subsection.

(c) Effective with revisions December 1, 1974 and after, when applicable, Title XVIII, Part B current aggregate prevailing charge data will be utilized by the Medical Assistance Program.

(d) Percentile. The Title XIX prevailing charges were established by utilizing the statistical computation of the 50th and 75th percentile.

(4) Maximum reimbursement for covered procedures: Reimbursement for covered procedures shall be limited to the lowest of the following:

(a) The actual charge for services rendered as submitted on the billing statement.

(b) The dentist's median charge for a given service derived from claims processed during all of the calendar year preceding the start of the fiscal year in which the determination is made.

(c) The Title XIX prevailing fee maximum for a given service, derived from claims processed as described in paragraph (b) of this subsection.

Section 2. Hospital Inpatient Care. (1) Hospitalized inpatient care refers to those services provided inpatients. It does not include dental services provided in the outpatient, extended care or home health units of hospitals. Any dentist or oral surgeon submitting a claim for either of the two (2) hospital inpatient care benefits—attendance or consultation—must agree to accept payment in full for services rendered that patient during that admission.

(2) An oral surgeon may additionally provide those services included under the in-hospital surgery section of the dental benefit schedule and be reimbursed on a per-procedure basis. Reimbursement for these services shall be at a rate of 100 percent of the first *twenty dollars (\$20)* [fifty dollars (\$50)] of the allowable charges plus *thirty-five (35)* [sixty (60)] percent of the amount of allowable charges over *twenty dollars (\$20)* [fifty dollars (\$50)]. Maximum allowable charges will initially be the same as physician maximums, with the maximums being based on dentists' charges after sufficient data for the establishing of allowable charge maximums has been collected by the cabinet. Services not included under in-hospital surgery and performed by an oral surgeon on an inpatient basis should be billed as attendance or consultation as applicable. The "attendance fee" shall be fifty dollars (\$50) and the "consultation fee" shall be twenty-five dollars (\$25).

(3) A general dentist may submit a claim for hospital inpatient services for the patient termed "medically a high risk." Medically high risk is defined as a patient in one (1) of the following classifications:

- (a) Heart disease;
- (b) Respiratory disease;
- (c) Chronic bleeder;
- (d) Uncontrollable patient (retardate, emotionally disturbed); or
- (e) Other (car accident, high temperature, massive infection, etc.).

(4) A general dentist shall receive "attendance fee" or "consultation fee" for the hospital inpatient service in the amount of forty dollars (\$40) as "attendance fee" and twenty dollars (\$20) as "consultation fee."

(5) "Attendance fee" is considered to be full payment for daily attendance of a hospital inpatient, per admission, regardless of length of stay, diagnosis, or type of professional service rendered. This fee is to be requested by the attending dentist or oral surgeon for any given admission. The attendance fee is not applicable to services included under in-hospital surgery.

(6) "Consultation fee" is considered to be in full payment of consultation provided on behalf of a hospital inpatient or at the request of the consulting oral surgeon/dentist. This fee may be paid to more than one (1) oral surgeon/dentist per admission. The fee is thus considered full payment for all consultation provided by a given oral surgeon/dentist (other than the attending oral surgeon/dentist) during a given admission. For purpose of payment in this program the administration of anesthesia by an oral surgeon will be considered consultation.

[Section 3. The provisions contained in Sections 1 and 2 of this regulation shall be effective July 1, 1983.]

JOHN CUBINE, Commissioner

ADOPTED: June 29, 1983

APPROVED: BUDDY H. ADAMS, Secretary

RECEIVED BY LRC: June 30, 1983 at 4 p.m.

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: June 30, 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 July 1 [January 1], 1983, 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 105 [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 105 [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 105 [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 in-

terest 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 considered 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 class) 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 ($\frac{2}{3}$) 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 uniform 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 participating facilities, 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 non-profit 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 7-1-83 [1-1-83])

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 - 33.17 [34.29]	.53	—

Maximum Payment \$33.17 [34.29]

* 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 7-1-83 [1-1-83])

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 - 49.35 [49.99]	.53	—

Maximum Payment \$49.35 [52.51]**

* 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 \$79.47 [81.02].

(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 105 [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 105 [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 105 [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, band-aids 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: June 29, 1983

APPROVED: BUDDY H. ADAMS, Secretary

RECEIVED BY LRC: June 30, 1983 at 4 p.m.

CABINET FOR HUMAN RESOURCES Department for Social Insurance

904 KAR 1:045E. Payments for mental health center services.

RELATES TO: KRS 205.520

PURSUANT TO: KRS 13.082, 194.050

EFFECTIVE: June 30, 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 mental health center services.

Section 1. Mental Health Centers. In accordance with 42 CFR 447.321, the cabinet shall make payment to providers who are appropriately licensed and have met the conditions for participation (including the signing of such contractual arrangements as the cabinet may require of this class of provider) set by the cabinet, on the following basis:

(1) Payment shall be on a prospective basis based on *reasonable allowable prior year costs not to exceed usual and customary charges or the [compared against the mental health center's annualized] upper limits on payments. Allowable costs shall be trended to the beginning of the rate year [Payments may not exceed usual and customary charges or the annualized upper limits].*

(2) Payment amounts shall be determined by application of the "Community Mental Health Center General Policies and Guidelines and Principles of Reimbursement" (revised July 1, 1983) [herein incorporated by reference,] developed and issued by the cabinet (*incorporated by reference to the extent that such policies, guidelines and principles are applicable to Title XIX services and reimbursement, and filed herein*), supplemented by the use of Title XVIII reimbursement principles.

(3) Under this system, a center will receive in total Title XIX payments during the year the amount of its usual and customary charges for services rendered Title XIX eligible recipients, so long as such usual and customary charges do not exceed (on a cumulative basis) the annualized upper limit (total payments amount) which has been set for the center.]

(3) [(4) The annualized upper limit shall be the lesser of the prior fiscal year (July 1—June 30) audited allowable Title XIX costs or Title XIX payments to the center, with such amount increased by ten (10) percent to allow for inflation in the payment period.] Allowable costs shall not exceed customary charges which are reasonable. Allowable costs shall not include the costs associated with political contributions, membership dues, 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.

(4) *The prospective rate shall not exceed 105 percent of the median of the reasonable allowable cost for each reimbursable departmental cost center (i.e., inpatient, outpatient, partial hospitalization and personal care) for all participating facilities.*

Section 2. Implementation of Payment System. (1) *Payments may be based on units of service such as fifteen*

(15) minute or hourly increments, or at a daily rate, depending on the type of service. [Interim payments made shall be based on charges, and shall be considered final payments except under the following circumstances:]

[(a) The program may pay a percentage of charges to assure that the annualized upper limit (the lesser of fiscal year 1982 costs or program expenditures) with respect to the center is not exceeded. When a reduction factor is used, any payments owing to the center at the end of the payment period shall be settled (paid) to ensure that payments for the period equal usual and customary charges subject to the upper limit for the center. Reduction factors shall (to the extent possible) be applied in such a manner as to ensure an even flow of reimbursement to the center throughout the year, i.e., generally so as to ensure that the payments for any one (1) month do not exceed by a substantial amount the prorated annual amount.]

[(b) Any overpayments due the program at the end of the period as a result of exceeding the upper limit shall be recouped in a similar manner, i.e., by settlement or by withholding.]

[(c) Overpayments discovered as a result of audits may be settled in the usual manner.]

(2) *Overpayments discovered as a result of audits may be settled in the usual manner, i.e., through recoupment or withholding.*

(3) [(2)] The vendor shall complete an annual cost report on forms provided by the cabinet not later than sixty (60) days from the end of the vendor's accounting year and the vendor shall maintain an acceptable accounting system to account for the cost of total services provided, charges for total services rendered, and charges for covered services rendered eligible recipients.

(4) [(3)] Each community mental health center provider shall make available to the cabinet at the end of each fiscal reporting period, and at such intervals as the cabinet may require, all patient and fiscal records of the provider, subject to reasonable prior notice by the cabinet.

(5) [(4)] Payments due the community mental health center shall be made at reasonable intervals but not less often than monthly.

(6) *Rates for the first rate year (July 1, 1983—June 30, 1984) shall be determined using an unaudited nine (9) month cost report for the period July 1, 1982—March 31, 1983, trended to the beginning of the rate year.*

[Section 3. Billing and Data Collection. For purposes of Title XIX program payments, this regulation and the "Title XIX Payments Addendum" to the reimbursement manual shall supersede any conflicting sections (e.g., sections 100, 103, 205, and 207) of the reimbursement manual. However, no provision of this regulation should be construed as relieving any center of the necessity of collecting and submitting such data as the program may require, for implementation of the unit system for payments, during the payment period covered by this regulation.]

Section 3. [4.] Nonallowable Costs. The cabinet shall not make reimbursement under the provisions of this regulation for services not covered by 904 KAR 1:044, community mental health center services, nor for that portion of a community mental health center's costs found unreasonable or nonallowable in accordance with the cabinet's "Community Mental Health Center General Policies and Guidelines and Principles of Reimbursement."

[Section 5. Implementation Date. Payments under this system shall begin effective July 1, 1982.]

JOHN CUBINE, Commissioner

ADOPTED: June 29, 1983

APPROVED:

BUDDY H. ADAMS, Secretary

RECEIVED BY LRC: June 30, 1983 at 4 p.m.

CABINET FOR HUMAN RESOURCES Department for Social Insurance

904 KAR 1:055E. Payments for primary care center services.

RELATES TO: KRS 205.520

PURSUANT TO: KRS 13.082, 194.050

EFFECTIVE: June 30, 1983

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

Section 1. Primary Care Centers. In accordance with 42 CFR 447.325 [450.30], the cabinet [department] shall make payment to providers who are appropriately licensed and have met the conditions for participation set by the cabinet [department], on the following basis:

(1) Payment shall be made on the basis of reasonable allowable cost.

(2) Payment amounts shall be determined by application of the "Primary Care Center General Policies and Guidelines and Principles of Reimbursement" (revised July 1, 1983, and hereby incorporated by reference) developed and issued by the cabinet [department], supplemented by the use of title XVIII-A reimbursement principles.

(3) Allowable costs shall not exceed customary charges which are reasonable.

(4) *Reimbursement for medical and nursing cost center costs shall be subject to adjustment for a growth allowance. The growth allowance shall be computed in July each year, and shall be based on a projection of the change in the medical component of the Consumer Price Index (for the rate year as compared to the previous year) as applied to the weighted median service cost of medical and nursing services, on a per visit basis, for all participating providers. Increases in medical and nursing center costs in excess of the growth allowance shall be disallowed. For those facilities with medical and nursing cost increases which are less than the growth allowance, the difference between the two (2) shall be reimbursable as a cost containment incentive payment at the time of the usual cost settlement.*

(5) *During the first six (6) months after the implementation of the policy contained in Section 1(4) of this regulation, centers with fiscal year endings occurring in the six (6) month period shall not have medical and nursing center costs disallowed as a result of imposition of the growth*

allowance upper limit, but shall be entitled to receive any applicable incentive payment.

(6) The amount of any allowable incentive payment determined pursuant to the policy specified in Section 1(4) of this regulation may not exceed the growth allowance, and must be added to allowable costs for application of the lower of costs or charges principle.

Section 2. Implementation of the Payment System. (1) The reimbursement system developed by the *cabinet* [department] for primary care centers is supported by the Title XVIII-A reimbursement principles which will serve as guidelines for determining reasonable allowable cost in areas not addressed specifically by the *cabinet* [department].

(2) The system shall utilize a method whereby primary care providers are paid an interim rate based on a reasonable estimation of current year costs followed by a year end adjustment to actual reasonable allowable costs. When the need can be demonstrated, adjustment to an interim rate will be made.

(3) The vendor shall complete an annual cost report on forms provided by the *cabinet* [department] not later than sixty (60) days from the end of the vendor's accounting year and the vendor shall maintain an acceptable accounting system to account for the cost of total services provided, charges for total services rendered, and charges for covered services rendered eligible recipients.

(4) Each primary care center provider shall make available to the *cabinet* [department] at the end of each fiscal reporting period, and at such intervals as the *cabinet* [department] may require, all patient and fiscal records of the provider, subject to reasonable prior notice by the *cabinet* [department].

(5) Interim payments due the primary care center shall be made at reasonable intervals but not less often than monthly.

Section 3. Prohibition Against Joint Participation. Dual or joint participation in the medical assistance program by a primary care center is not permitted. When a primary care center elects to participate as such in the medical assistance program it may not participate concurrently under other regular ongoing elements of the medical assistance program, including the rural health clinic services element. In addition, when a center elects to participate as such in the medical assistance program, it is considered to elect participation for all eligible service elements, components, or sub-units of the center.

Section 4. Nonallowable Costs. The *cabinet* [department] shall not make reimbursement under the provisions of this regulation for services not covered by 904 KAR 1:054, primary care center services, nor for that portion of a primary care center's costs found unreasonable or nonallowable in accordance with the *cabinet's* [department's] "Primary Care Center General Policies and Guidelines and Principles of Reimbursement." In addition, when the utilization review processes of the *cabinet* [department] find that costs have been incurred through provision of unnecessary medical treatment services, such costs shall be disallowed.

JOHN CUBINE, Commissioner

ADOPTED: June 29, 1983

APPROVED: BUDDY H. ADAMS, Secretary

RECEIVED BY LRC: June 30, 1983 at 4 p.m.

CABINET FOR HUMAN RESOURCES Department for Social Insurance

904 KAR 1:095E. Payments for nurse-midwife services.

RELATES TO: KRS 205.520, 205.560

PURSUANT TO: KRS 13.082, 194.050

EFFECTIVE: June 30, 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 nurse-midwife services.

Section 1. General Requirements Relating to Payments. Participating nurse-midwife providers shall be paid only for covered services rendered to eligible recipients, and services provided must be within the scope of practice of the nurse-midwife.

Section 2. Outpatient Reimbursement. (1) Payments to nurse-midwives shall be at actual billed charges on a procedure-by-procedure basis, with reimbursement for a procedure not to exceed seventy-five (75) percent of the amount reimbursable to general practice physicians (non-specialists) at the seventy-fifth (75th) percentile for the procedure.

(2) All procedures shall have the upper limits recomputed at the same time the seventy-fifth (75th) percentile is recomputed for physicians.

Section 3. Inpatient Reimbursement. Reimbursement for nurse-midwife services provided to inpatients of hospitals is made on the basis of 100 percent reimbursement per procedure for the first *twenty dollars (\$20)* [fifty dollars (\$50)] of allowable reimbursement and on the basis of a percentage of the nurse-midwife's usual, customary and reasonable charge in excess of *twenty dollars (\$20)* [fifty dollars (\$50)] per procedure, after the appropriate prevailing fee screen is applied. The "prevailing fee screen" means, in this instance, application of the limitation shown in Section 2(1) of this regulation. The percentage rate applied to otherwise allowable reimbursement in excess of *twenty dollars (\$20)* [fifty dollars (\$50)] per procedure is established at *thirty-five (35)* [sixty (60)] percent. The percentage rate will be reviewed periodically and adjusted according to the availability of funds.

[Section 4. Implementation Date. Covered services provided by participating providers may be paid for on the basis of this payment system for services rendered on or after July 16, 1982.]

JOHN CUBINE, Commissioner

ADOPTED: June 29, 1983

APPROVED: BUDDY H. ADAMS, Secretary

RECEIVED BY LRC: June 30, 1983 at 4 p.m.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance

904 KAR 1:200E. Nurse anesthetists' services.

RELATES TO: KRS 205.520

PURSUANT TO: KRS 13.082, 194.050

EFFECTIVE: June 30, 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 provisions relating to nurse anesthetists' 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. Coverage. Participating nurse anesthetists may provide anesthesia services to eligible Title XIX recipients when such services are within the scope of practice of the nurse anesthetist and are covered anesthesia services in the Medical Assistance Program.

JOHN CUBINE, Commissioner

ADOPTED: June 29, 1983

APPROVED: BUDDY H. ADAMS, Secretary

RECEIVED BY LRC: June 30, 1983 at 4 p.m.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance

904 KAR 1:210E. Payments for nurse anesthetists' services.

RELATES TO: KRS 205.520

PURSUANT TO: KRS 13.082, 194.050

EFFECTIVE: June 30, 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 nurse anesthetists' services.

Section 1. Payments. Participating nurse anesthetists shall be paid at the rate of seventy-five (75) percent of the anesthesiologist's allowable charge for the same procedure under the same conditions, or at actual billed charges if less.

JOHN CUBINE, Commissioner

ADOPTED: June 29, 1983

APPROVED: BUDDY H. ADAMS, Secretary

RECEIVED BY LRC: June 29, 1983 at 4 p.m.

Amended After Hearing

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

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

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) "Critical areas" means areas which are considered irreplaceable resources and include national parks, state parks, national forests, Kentucky fish and wildlife management areas, state forests, university owned scientific and educational areas, important species habitat, karst areas, wetlands, natural preserves, unique geological features, Kentucky Wild Rivers, natural national landmarks, ecological areas, and private conservation areas.

(20) [(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.]

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

(22) [(21)] "Developed water resources land" means land used for storing water for beneficial uses such as stock ponds, irrigation, fire protection, flood control, recreation, and water supply.

(23) [(22)] "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spent shale, and mining or processing waste is placed during oil shale operations. Those areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by Title 405, Chapter 30 is released.

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

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

(26) "Ecological areas" are areas which have been identified to be significant reservoirs of Kentucky's natural heritage including areas containing rare plant and animal species, old growth or undisturbed forests, and intact wetlands.

(27) [(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.

(28) [(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.

(29) [(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.

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

(31) "Floodplain" means the area in a watershed that is subject to inundation by a particular size precipitation event.

(32) [(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.

(33) [(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.

(34) [(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.

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

(36) [(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.

(37) [(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.

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

(39) [(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.

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

(41) [(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.

(42) [(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.

(43) [(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.

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

(45) [(42)] "Impoundment" means a closed basin, naturally formed or artificially built, which is dammed or

excavated for the retention of water, sediment, or waste.

(46) [(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.

(47) [(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.

(48) [(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.

(49) [(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.

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

(51) [(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.

(52) [(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.

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

(54) [(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.

(55) [(52)] "Natural hazard lands" means geographic areas in which natural conditions exist that pose or, as a result of oil shale operations, may pose a threat to the health, safety, or welfare of people, property or the environment, including but not limited to, areas subject to landslides, cave-ins, subsidence, substantial erosion, unstable geology, or frequent flooding.

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

(57) [(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.

(58) [(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.

(59) [(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.

(60) [(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.

(61) [(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.

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

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

(64) [(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.

(65) [(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.

(66) [(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.

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

(68) [(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.

(69) [(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.

(70) [(67)] "Person" means an individual, partnership,

association, society, joint venture, joint stock company, firm, company, government agency, utility, corporation, or other business organization.

(71) [(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.

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

(73) [(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.

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

(75) [(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.

(76) [(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.

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

(78) [(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.

(79) [(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].

(80) [(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.

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

(82) [(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.

(83) [(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.

(84) [(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.

(85) [(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.

(86) [(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.

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

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

(89) [(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 repairable.

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

(91) [(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.

(92) [(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.

(93) [(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.

(94) [(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.

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

(96) [(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.

(97) [(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.

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

(99) [(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.

(100) [(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.

(101) [(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.

(102) [(99)] [(98)] "Topsoil" means the A horizon soil layer.

(103) [(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.

(104) [(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.

(105) [(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.

(106) [(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.

(107) [(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.

(108) [(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.

(109) "Wetlands" are areas containing much soil moisture due to the groundwater table being at or near the earth's surface.

JACKIE A. SWIGART, Secretary

ADOPTED: June 27, 1983

RECEIVED BY LRC: June 27, 1983 at 10 a.m.

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET**
Department for Surface Mining
Reclamation and Enforcement
Amended After Hearing

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 *encourage advances in mining and reclamation technology* and [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 post-mining 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 provisions 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: June 27, 1983

RECEIVED BY LRC: June 27, 1983 at 10 a.m.

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

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 *with the exception of exploration operations*. 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, terrestrial 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; SO₂, NO_x, CO, O₃, Pb, H₂S, 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 *personnel* [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 or *three (3) samples collected using an equivalent methodology* 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) *Fishes* [Aquatic vertebrates] will be qualitatively sampled for at a pool and riffle at each station using small mesh minnow seines and portable electroshockers. *For streams which contain pools with water depths greater than four (4) feet, this data will be supplemented by using gill or trammel nets.*

(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 existence or further identification is needed whereupon the specimens will be deposited in a university museum or herbarium in the state.

(8) Terrestrial flora and fauna will be qualitatively sampled for species composition.

(a) Plant communities will be sampled to include canopy understory and ground cover. General age characteristics of forest communities will be assessed by either coring (preferably) or measuring the diameter breast high of three (3) of the largest trees and five (5) of the average size trees.

(b) Existing agencies should be utilized to determine if any federally listed, proposed or under review threatened or endangered plant or animal species are known on the proposed permit site or its vicinity and search shall be conducted for any species which could occur there. This search should take place at the peak flowering or activity season for each species which may be involved.

(c) Mammals should be sampled in late spring, summer and fall by randomly selecting three (3) plots per habitat type and trapping for four (4) nights with twenty-five (25) traps regularly placed in each plot. The plots should be selected from a grid based on twenty-five (25) x twenty-five (25) meters. The results should be reported in number of specimens per species per plot per season. *Equivalent sampling techniques may be approved by the cabinet.*

(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 observations should take place within areas representative of each distinct habitat type.* 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. *The searches shall take place within areas representative of each distinct habitat type. The results should be [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 application 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 accordance with current methods used by the Kentucky Heritage Council and the Office of State Archaeology [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: June 27, 1983

RECEIVED BY LRC: June 27, 1983 at 10 a.m.

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET**
Department for Surface Mining
Reclamation and Enforcement
Amended After Hearing

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 ($\frac{1}{2}$) mile of any part of the permit area, the permittee shall promptly 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 ($\frac{1}{2}$) 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 ($\frac{1}{2}$) mile from the point of the blast. All persons within the permit area shall be notified of the meaning of the signals through appropriate instructions and signs posted as required by 405 KAR 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 ($\frac{1}{2}$) 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) *One thousand (1,000) [Three hundred (300)]* [One thousand (1,000)] feet of any building used as a dwelling, school, church, hospital, or nursing facility;

(b) *Five hundred (500) [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 $W = (D/60)^2$, where W = the maximum weight of explosives, in pounds, that can be detonated in any eight (8) millisecond period, and D = the distance, in feet, to the nearest dwelling, school, church, or commercial or institutional building. If the blasting is conducted in accordance with this equation, the *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 ($\frac{1}{2}$) inch per second after a period of one (1) second following the maximum ground particle velocity, the department shall require the blasting procedures to be revised to limit the ground motion.]

Section 8. Seismograph Measurements. (1) Where a seismograph is used to monitor the velocity of ground mo-

tion 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: June 27, 1983

RECEIVED BY LRC: June 27, 1983 at 10 a.m.

PUBLIC PROTECTION AND REGULATION CABINET

Public Service Commission

Division of Utility Engineering and Services

Amended After Hearing

807 KAR 5:008. Winter hardship reconnection of residential electric and gas service.

RELATES TO: KRS Chapter 278

PURSUANT TO: KRS 13.082, 278.280(2)

NECESSITY AND FUNCTION: KRS 278.280(2) provides that the commission shall prescribe rules for the performance of any service or the furnishing of any commodity by any utility. This regulation establishes a reconnection rule which applies to electric and gas utility service during the winter months in hardship situations.

Section 1. Notwithstanding the provision of 807 KAR 5:006, Section 11(5) to the contrary, an electric or gas utility shall reconnect service to a residential customer who has been previously disconnected for nonpayment of bills during the [previous] fifteen (15) months prior to application for reconnection pursuant to 807 KAR 5:006, Section 11(2)(a) and who applies for such reconnection of service during the months from November through March when the customer or his or her agent:

(1) Presents a certificate of need from the Department for Social Insurance including a certification that a referral for weatherization services has been made in accordance with Section 3 of this regulation;

(2) Pays one-third ($\frac{1}{3}$) of his or her outstanding bill or \$200, whichever is less; and

(3) Agrees to a repayment schedule which would permit the customer to become current in the payment of his or her electric or gas bill as soon as possible but no later than October 15 provided, however, that if, at the time of application for reconnection, the customer has an outstanding bill in excess of \$600 and agrees to a repayment plan that would pay current charges and makes a good faith reduction in the outstanding bill consistent with his or her ability to pay, then such plan shall be accepted.

Section 2. Certificate of Need for Reconnection. Federal and statewide energy assistance programs are administered by the Kentucky Cabinet for Human Resources, Department for Social Insurance. A customer who is eligible for energy assistance under the department's guidelines or is certified as being in genuine financial need, defined as any household with gross income at or below 130 percent of the poverty level, may obtain a certificate of need from the department to be used in obtaining a service reconnection from the utility.

Section 3. Weatherization Program. Customers obtaining a certificate of need under this regulation shall agree to accept referral to and utilize weatherization services which are administered by the Department for Manpower Services. The provision and acceptance of weatherization services is contingent on the availability of funds and other program guidelines. Weatherization services include, but are not limited to, weather-stripping, insulation and caulking.

Section 4. Customers who are current in their payment plans under Section 1(3) of this regulation shall not be disconnected.

LAURA MURRELL, Chairman

ADOPTED: July 15, 1983

APPROVED: LEONARD B. MARSHALL, JR.
Secretary

RECEIVED BY LRC: July 15, 1983 at 2:30 p.m.

Proposed Amendments

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

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

RELATES TO: KRS 150.010, 150.025, 150.470, 150.990

PURSUANT TO: KRS 13.082

NECESSITY AND FUNCTION: In order to perpetuate and protect the size and well being of fish populations, it is necessary to govern the size and numbers fishermen can harvest.

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

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

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

Section 2. The following special limits apply: (1) The impounded waters of Grayson Lake:

Species	Daily Creel Limits	Pos- session Limits	Size Limits Inches
Black bass (largemouth, smallmouth, Kentucky & Coosa bass)	10	20	15
Crappie	None	None	None

(2) The impounded waters of Herrington Lake and Dix River and their tributary streams upstream from Dix Dam:

Species	Daily Creel Limits	Pos- session Limits	Size Limits Inches
White bass, rockfish, and hybrids	20	40	See (a)

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

(3) The impounded waters of Taylorsville Lake:

Species	Daily Creel Limits	Pos- session Limits	Size Limits Inches
Black bass (largemouth, smallmouth, Kentucky & Coosa bass)	10	20	15

(4) The impounded waters of Kentucky Lake including that portion of the canal to the Highway 453 bridge:

Species	Daily Creel Limits	Pos- session Limits	Size Limits Inches
Black bass (largemouth, smallmouth, Kentucky & Coosa bass)	10	20	15

All other angling limits and seasons apply as set forth in Section 1 of this regulation.

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

CARL E. KAYS, Commissioner

ADOPTED: June 10, 1983

APPROVED: W. BRUCE LUNSFORD, Secretary

RECEIVED BY LRC: July 12, 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.

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

704 KAR 20:005. Kentucky standards for preparation program approval.

RELATES TO: KRS 161.020, 161.025, 161.030

PURSUANT TO: KRS 13.082, 156.070, 161.030

NECESSITY AND FUNCTION: KRS 161.020 prohibits any person from holding the position of superintendent, principal, teacher, supervisor, director of pupil personnel, or other public school position for which certificates may be issued unless he holds a certificate of legal qualifications for the particular position; KRS 161.025

gives the Kentucky Council on Teacher Education and Certification the duty to develop and recommend policies and standards relating to teacher preparation and certification; and KRS 161.030 rests the certification of teachers and other school personnel and the approval of teacher-preparatory colleges and universities and their curricula with the State Board of Education. This regulation establishes the standards and procedures which are to be used for the approval of the various teacher preparation programs offered by the colleges and universities.

Section 1. Pursuant to the statutory authority placed upon the Superintendent of Public Instruction, the State Board of Education, and the Kentucky Council on Teacher Education and Certification under KRS Chapter 161, there is hereby devised, created, and incorporated by reference the Kentucky Standards for the Preparation-Certification of Professional School Personnel, which shall include the standards and procedures for the approval of college and university curricula for the preparation programs.

Section 2. The Kentucky Standards for the Preparation-Certification of Professional School Personnel is amended by the selective revision of certain standards, the deletion of certain standards, and by the addition of other new standards, and the amended document is hereby incorporated by reference and identified as the Kentucky Standards for the Preparation-Certification of Professional School Personnel, revised July, 1983 [November, 1982]. A copy of this document can be obtained from the Bureau of Instruction, Department of Education, Capital Plaza Tower, Frankfort, Kentucky.

RAYMOND BARBER

Superintendent of Public Instruction

ADOPTED: July 12, 1983

RECEIVED BY LRC: July 15, 1983 at 2:30 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING

TO: Laurel True, Secretary, Kentucky State Board of Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

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

704 KAR 20:020. Rank II equivalency.

RELATES TO: KRS 157.390

PURSUANT TO: KRS 13.082, [156.030,] 156.070, 157.390

NECESSITY AND FUNCTION: KRS 157.390 authorizes the State Board of Education to adopt regulations to determine the salary ranks of certified teachers and to determine equivalent qualifications for the salary ranks. This regulation defines an equivalency for the Rank II salary classification.

Section 1. The Planned Fifth Year Program required for the renewal of provisional teaching certificates shall be planned as outlined in 704 KAR 20:010 and shall be accepted as an equivalency for a Rank II classification under

the Foundation Law and may be satisfied by any one (1) of the three (3) plans as described in the following sections.

Section 2. The Plan I Fifth Year Program shall be the completion of a master's degree from a regionally accredited college or university.

Section 3. The Plan II Fifth Year Program shall consist of a program completed in accordance with the following guidelines:

(1) The Plan II Fifth Year Program shall be planned individually with each applicant by the teacher education institution which shall be an institution approved for offering programs leading to the standard teaching certificates.

(2) The Plan II Fifth Year Program shall consist of thirty-two (32) semester hours of credit *earned above and beyond the bachelor's degree and the four (4) year program of preparation required for a provisional certificate, except that persons who complete a mandated dual certification program shall be allowed to count toward the Plan II Fifth Year Program those credits in the second certification area which are beyond those required for a bachelor's degree and certification in the first area. The [with an] academic standing for the thirty-two (32) semester hour program shall be [of] no less than is required at the planning institution for the teacher education graduates and of the total program at least eighteen (18) semester hours must be earned at the planning institution; at least twelve (12) semester hours shall be graduate level course work; at least twelve (12) semester hours shall be professional education; and at least twelve (12) semester hours shall be from the area of the teacher's specialization.*

(3) Once the Plan II Fifth Year Program has been planned with the individual, the planning institution may authorize in advance the completion of a maximum of six (6) semester hours of the program at a senior college.

(4) Course work earned by the applicant prior to planning the fifth year program may be evaluated for acceptance by the planning institution.

(5) Credit earned by correspondence shall not apply toward the Plan II Fifth Year Program.

Section 4. (1) *The Plan III Fifth Year Program shall follow the same guidelines as for the Plan II Fifth Year Program described in Section 3 of this regulation except for the modifications described and permitted in this section.*

(2) [(1)] The Plan III Fifth Year Program shall include at least thirty-two (32) semester hours of credit, except that continuing education units and/or professional staff development units may be substituted under an equivalent formula for up to twelve (12) semester hours of the total program. Among the college credits there shall be included at least twelve (12) semester hours in professional education and six (6) semester hours from the area of the teacher's specialization. Furthermore, at least eighteen (18) semester hours of credit must be earned at the planning institution and twelve (12) semester hours of the total program must be for graduate level credit.

(3) [(2)] The Plan III Fifth Year Program shall be planned by the teacher education institution individually with each applicant in terms of the position held by the applicant or in terms of a position anticipated by the applicant. Standard college credits earned by the applicant prior to planning the program shall be evaluated for possible acceptance by the planning institution; however, all preparation recorded as continuing education units or as professional

staff development units must be included as a component of applicant's planned program as approved in advance for acceptance as a part of the Plan III Fifth Year Program. The grade point standing for the college credit portion of the Plan III Fifth Year Program shall be no less than that required at the planning institution for teacher education graduates. Once the Plan III Fifth Year Program has been planned with the individual, the planning institution may authorize in advance the completion of a maximum of six (6) semester hours of the program at a senior college. Credit earned by correspondence shall not apply toward the Plan III Fifth Year Program.

(4) [(3)] The continuing education unit as used in the Plan III Fifth Year Program shall be the continuing education unit now in use by accredited colleges and universities and defined as ten (10) contact clock hours of participation in an organized professional experience under responsible sponsorship, capable direction, and qualified instruction. For purposes of the Plan III Fifth Year Program the studies and experiences for continuing education units shall be planned in advance to insure relevance to the total program being planned with the applicant. For purposes of the Plan III Fifth Year Program two (2) continuing education units shall be applied on the same basis as one (1) semester hour of college credit.

(5) [(4)] The professional staff development unit as used in the Plan III Fifth Year Program shall be awarded for participation in short term workshops organized by the local school district or by the State Department of Education and shall require a minimum of ten (10) contact clock hours of participation for each unit. For purposes of the Plan III Fifth Year Program two (2) professional staff development units shall be applied on the same basis as one (1) semester hour of college credit. For this purpose the local district *inservice education [professional staff development] committee established under 704 KAR 3:035 [as appointed under 704 KAR 3:280]* shall approve in advance the local district workshops that are to be offered for professional staff development units on the basis of the following criteria:

(a) There is an assessment of educational need based upon input from the persons who are to be participants in the workshop activity.

(b) There is a statement of objectives relating to the assessment.

(c) The workshop activities and the study materials are appropriate to the attainment of the objectives. Participants have input into the design of the workshop.

(d) The instructor(s) has appropriate expertise for the nature of the workshop.

(e) Appropriate records will be prepared using forms authorized by the State Department of Education; each participant will be given an individual record of PSDU's granted.

(6) [(5)] The Superintendent of Public Instruction shall monitor and evaluate the effectiveness of the Plan III Fifth Year Program and report annually by September 1 his evaluation of program effectiveness to the State Board of Education. For this purpose local school districts and teacher education institutions shall provide pertinent information in such form as he may require.

RAYMOND BARBER

Superintendent of Public Instruction

ADOPTED: July 12, 1983

RECEIVED BY LRC: July 15, 1983 at 2:30 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING

TO: Laurel True, Secretary, Kentucky State Board of Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

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

704 KAR 20:100. Administrators and supervisors.

RELATES TO: KRS 161.020, 161.025, 161.030

PURSUANT TO: KRS 13.082, [156.030,] 156.070, 161.030 [156.160]

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

Section 1. (1) The Professional Certificate for School Administration and Supervision shall be issued in accordance with the pertinent Kentucky statutes and State Board of [for Elementary and Secondary] Education regulations to an applicant who has completed the approved program of preparation for one (1) of the school leadership positions—elementary school principal, middle school-junior high school principal, secondary school principal, supervisor of instruction, director of pupil personnel or school superintendent—at a teacher education institution approved under the standards and procedures included in the *Kentucky Standards* [State Plan] for the [Approval of] Preparation- [Programs for the] Certification of Professional School Personnel.

(2) The Professional Certificate for School Administration and Supervision shall be endorsed for the specific position for which the program of preparation has been completed. Once the certificate has been issued and endorsed for one (1) position it may be further endorsed for any of the other school leadership positions upon completion of the corresponding program of preparation. The Professional Certificate for School Administration and Supervision may also be endorsed to show other programs of preparation-certification for which the holder is qualified.

(3) As a prerequisite to the issuance of the Professional Certificate for School Administration and Supervision with an endorsement for the position of school superintendent the applicant shall have completed five (5) years successful school teaching and/or school administrative experience. As a prerequisite to the issuance of the certificate

with an endorsement for any of the other school leadership positions the applicant shall have completed three (3) years of successful teaching experience.

(4) The duration of the Professional Certificate for School Administration and Supervision shall be for continuing service.

Section 2. The Professional Certificate for School Administration and Supervision, endorsed for secondary school principal, may be endorsed for a one (1) year period for the position of elementary school principal upon completion of at least eight (8) semester hours graduate credit selected from the endorsement curriculum and upon recommendation from the superintendent of the local district in which the applicant is to be employed as an elementary school principal. The endorsement may be extended for subsequent years upon completion of at least six (6) semester hours graduate credit annually until the total program has been completed.

Section 3. The older type certificates which are still in force and valid for the position of secondary school principal may be endorsed for the position of elementary school principal in accordance with the same provisions outlined in Section 2 of this regulation.

Section 4. Persons holding a valid certificate for principalship, supervision, or superintendency issued under the curricula in effect prior to September, 1970, shall not be required to hold a standard teaching certificate as a prerequisite to qualify for any of the administrative endorsements for the Professional Certificate for School Administration and Supervision.

Section 5. *In the event that a person holding continuing certification for the position of director of pupil personnel cannot be secured by the local board of education either locally or from a listing of available personnel supplied by the Department of Education, a one (1) year certificate for director of pupil personnel may be issued at the request of the local board of education to a person who holds a master's degree, a classroom teaching certificate, and has completed at least two (2) years of successful teaching experience.*

RAYMOND BARBER
 Superintendent of Public Instruction

ADOPTED: July 12, 1983

RECEIVED BY LRC: July 15, 1983 at 2:30 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING

TO: Laurel True, Secretary, Kentucky State Board of Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

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

704 KAR 20:185. Psychometrists.

RELATES TO: KRS 161.020, 161.025, 161.030

PURSUANT TO: KRS 13.082, [156.030,] 156.070, 161.030 [156.160]

NECESSITY AND FUNCTION: KRS 161.020, 161.025, and 161.030 require that teachers and other pro-

professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Kentucky Council on Teacher Education and Certification and approved by the State Board of [for Elementary and Secondary] Education; furthermore, the teacher education institutions are required to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures recommended by the Council and approved by the State Board. This regulation establishes an appropriate certificate for school psychometrists and relates to the corresponding standards and procedures for program approval as included in the Kentucky Standards [State Plan] for the [Approval of] Preparation- [Programs for the] Certification of Professional School Personnel, *but establishes a phase-out schedule for future certification as a psychometrist.*

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

(2) Certification for school psychometrist shall be issued initially for a duration period of five (5) years and may be renewed for subsequent five (5) year periods upon completion within each preceding five (5) year period of two (2) years of experience as a school psychometrist. If any portion of the renewal experience is not completed, the certificate may be renewed upon completion of six (6) semester hours of additional graduate credit appropriate for the position of school psychometrist.

(3) *No new persons shall be admitted to the program of preparation for school psychometrist after September 1, 1983. Persons admitted to this preparation program prior to September 1, 1983, must complete the program by September 1, 1985.*

RAYMOND BARBER

Superintendent of Public Instruction

ADOPTED: July 12, 1983

RECEIVED BY LRC: July 15, 1983 at 2:30 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING

TO: Laurel True, Secretary, Kentucky State Board of Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

EDUCATION AND HUMANITIES CABINET

Department of Education

Bureau of Instruction

(Proposed Amendment)

704 KAR 20:198. *Director of special education [directors].*

RELATES TO: KRS 161.020, 161.025, 161.030

PURSUANT TO: KRS 13.082, [156.030,] 156.070, 161.030 [156.160]

NECESSITY AND FUNCTION: KRS 161.020,

161.025, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Kentucky Council on Teacher Education and Certification and approved by the State Board of [for Elementary and Secondary] Education; furthermore, the teacher education institutions are required to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures recommended by the Council and approved by the State Board. This regulation establishes an appropriate certificate for director of special education which shall also be valid for the position of teacher consultant for special education, and relates to the corresponding standards and procedures for program approval as included in the Kentucky Standards [State Plan] for the [Approval of] Preparation- [Programs for the] Certification of Professional School Personnel.

Section 1. (1) The endorsement for director of special education shall be issued in accordance with the pertinent Kentucky statutes and State Board of [for Elementary and Secondary] Education regulations to an applicant who holds a provisional certificate for any category of special education, has completed at least three (3) years of experience as a teacher or teacher consultant of which two (2) years are in special education, and who in addition thereto, has completed the approved program of preparation which corresponds to the certificate at a teacher education institution approved under the standards and procedures included in the Kentucky Standards [State Plan] for the [Approval of] Preparation- [Programs for the] Certification of Professional School Personnel, *as adopted by 704 KAR 20:005.* The approved program shall consist of forty-five (45) [forty-eight (48)] semester hours of credit above the bachelor's degree level and shall include a master's degree or planned fifth year program in special education.

(2) The endorsement for director of special education shall have the same duration period as the base certificate.

(3) *The endorsement for director of special education shall be valid for the position of teacher consultant for special education or director of special education.*

Section 2. 704 KAR 20:203, *Special education teacher-consultant, is hereby repealed.*

RAYMOND BARBER

Superintendent of Public Instruction

ADOPTED: July 12, 1983

RECEIVED BY LRC: July 15, 1983 at 2:30 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING

TO: Laurel True, Secretary, Kentucky State Board of Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

EDUCATION AND HUMANITIES CABINET

Department of Education

Bureau of Vocational Education

(Proposed Amendment)

705 KAR 5:040. *Steering committee.*

RELATES TO: KRS 156.031, [156.112,] 163.020, 163.030

PURSUANT TO: KRS 13.082, 156.031, [156.112,] 163.030

NECESSITY AND FUNCTION: KRS 156.031 [156.112] gives the State Board of Education the function and authority to develop and adopt policies and regulations by which the Department of [for Occupational] Education is to be governed in planning, coordinating, administering, supervising, operating, and evaluating the [occupational] education programs, services, and activities within the department; and KRS 163.020 and 163.030 mandate a state vocational education program with certain purposes. This regulation establishes responsibilities of steering committees for [area] vocational education facilities serving secondary students [centers].

Section 1. Each [area] vocational education facility serving secondary students [center] that is operated by the State Department of Education, Bureau of Vocational Education, shall have an official steering committee appointed by the Superintendent of Public Instruction. It shall provide systematic contact with and participation by responsible leaders in the cooperating local school districts. The [center] steering committee shall be composed of the following:

- (1) *The principal of the vocational school;*
- (2) [(1)] The superintendent of each cooperating school district;
- (3) [(2)] A board member from each cooperating school district;
- (4) [(3)] One (1) principal from each cooperating school district;
- (5) [(4)] A lay citizen from each cooperating school district; [and]
- (6) [(5)] A member of the Regional Advisory Committee on Vocational Education; and
- (7) *A guidance counselor from each cooperating school district.*

Section 2. The [center] steering committee shall be authorized to consult, counsel, and advise with the principal [coordinator] of the [area] vocational education facility [center], the regional director of vocational education and staff, and the Superintendent of Public Instruction, on all matters pertaining to the operation of the school [center].

Section 3. The steering committee shall consult, counsel, and advise with the administrators responsible for the operation of the secondary program at the school [center] on such things as:

- (1) Annual and long-range program planning for the school [center];
- (2) Procedures to be followed in implementing the program plans; and
- (3) Management procedures in handling the details pertaining to secondary program operations.

Section 4. The management procedures referred to in the preceding section of this regulation include such areas as determining the programs to be offered, curriculum development, employment of personnel, in-service training of personnel, enrollment quotas for secondary school students from the different participating local school districts, discipline of students, class and school schedules, transportation of students, equipping and maintaining the facilities, program evaluation, student counseling and guidance, records and reports, and other areas of concern pertaining to the operation of the facility [center].

Section 5. The [center] steering committee shall be used to provide for active exchange of information, views, problem identification, and future requirements for program improvements. It shall serve as a forum for the resolution of issues, identification of needs, and the development of common understandings and approaches, and serve as a catalyst for cooperative support and assistance. The committee shall supplement and assist, but not supplant, administrative and program responsibilities assigned to the Superintendent of Public Instruction.

Section 6. The [center] steering committee shall have a minimum of one (1) [two (2)] regularly scheduled meeting per school year and called meetings as needed.

Section 7. The principal of the vocational school [chairperson] shall develop and distribute a well-planned agenda to each member of the [center] steering committee prior to each meeting.

Section 8. When the membership of a steering committee, as established by Section 1 of this regulation, exceeds twenty-one (21) persons, the Superintendent of Public Instruction shall reasonably limit each cooperating school district's assigned membership in subsections (3), (4), (5), and (7) of Section 1 so that membership on the committee is limited to twenty-one (21).

RAYMOND BARBER

Superintendent of Public Instruction

ADOPTED: July 12, 1983

RECEIVED BY LRC: July 15, 1983 at 2:30 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurel True, Secretary, Kentucky State Board of Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

EDUCATION AND HUMANITIES CABINET

Department of Education
Bureau of Vocational Education
(Proposed Amendment)

705 KAR 5:050. Policy for vocational-technical education regional advisory committee.

RELATES TO: KRS 156.031 [156.070], 163.020, 163.030

PURSUANT TO: KRS 13.082, 156.031, 163.030

NECESSITY AND FUNCTION: KRS 156.031 gives the State Board of Education the function and authority to develop and adopt policies and regulations by which the Department of Education is to be governed in planning, coordinating, administering, supervising, operating, and evaluating the education programs, services, and activities within the Department; and KRS 163.020 and 163.030 mandate a state vocational education program with certain purposes. This regulation defines the purpose, functions, composition, and organization of vocational-technical education regional advisory committees authorized by [in] Kentucky's State Plan for the Administration of Vocational Education [must be defined by the State Board of Education].

Section 1. The Regional Advisory Committee shall advise and assist those responsible for vocational education in the development and improvement of the entire voca-

tional education program in the region. The Committee shall help identify the vocational education needs of individuals and communities, help assess labor market requirements, contribute to the establishment and maintenance of realistic and relevant programs, participate in developing community understanding and support, assist in building the prestige of and respect for programs of occupational education, help establish long-range and annual goals, be concerned with continuing program evaluation, and give attention to policy matters that influence the quality of program development. [Pursuant to the authority vested in the Kentucky State Board of Education, the policy for vocational-technical education regional advisory committees in Kentucky shall be prepared and provided to regional advisory committees and other interested parties. This document is incorporated by reference. Copies of the policy may be obtained from the Bureau of Vocational Education, Department of Education, Frankfort, Kentucky 40601.]

Section 2. (1) The Regional Advisory Committee shall consist of a minimum of nineteen (19) members to serve for terms of three (3) years, with one-third ($\frac{1}{3}$) rotated annually. The regional director will forward the list of nominees for membership to the State Board of Education through the Bureau of Vocational Education and the State Department of Education.

(2) In selecting nominees for committee membership, the appointing authority will ensure that there is appropriate representation of both sexes, racial and ethnic minorities, and the various geographic areas of the regions.

(3) Membership shall include at least fifty-one (51) percent, not to exceed sixty (60) percent, representation of business industry and labor with the remaining members being selected from organizations, agencies, and the general public such as manpower, economic development, disadvantaged, handicapped, public education, community colleges, and private or proprietary schools.

Section 3. (1) The Regional Advisory Committee shall select among its members a chairperson, vice chairperson, and other officers as necessary. The members shall develop rules of operation to indicate the time, place, and manner of meetings for the Regional Advisory Committee. Such rules shall provide for not less than three (3) meetings annually.

(2) The Assistant Superintendent for Vocational Education and the Regional Director of Vocational Education shall be designated as the liaison persons to assist the Advisory Committee in carrying out its responsibilities.

(3) The Assistant Superintendent for Vocational Education shall serve as a general consultant and be responsible for securing resource people residing outside the region and for providing statistical and descriptive information about the state program of vocational education and national programs or resources requested by the Advisory Committee which can be made available to it.

(4) The Regional Director of Vocational Education shall serve as the local consultant and be responsible for securing resource people within the region and providing statistical and descriptive information about vocational education or related programs in the region requested by the Advisory Committee which can be made available to it. The Regional Director shall assist the officers of the Advisory Committee in arranging for each meeting and will provide the clerical help needed in the work of the Advisory Committee, including the preparation of minutes of

each meeting, notices of meetings, necessary reports, recommendations, and correspondence.

(5) Minutes of each meeting and other activities of the Regional Advisory Committee shall be kept by the duly appointed secretary or recorder. Arrangements shall be made for the records of the Advisory Committee to be kept in the office of the Regional Director of Vocational Education. Outcomes of all meetings and activities of the Committee shall be reported to the Assistant Superintendent for Vocational Education and the State Advisory Council. The Assistant Superintendent for Vocational Education shall submit an annual report and recommendations of all regional advisory committees to the Superintendent of Public Instruction and the State Board of Education.

(6) All recommendations of the regional advisory committee shall represent the majority viewpoints of the membership, and shall be made in writing to the regional director for response. The recommendations needing additional action shall be appended to the minutes and shall be responded to by the appropriate administrator.

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SUBMIT COMMENT OR REQUEST FOR HEARING

TO: Mr. L. W. True, Secretary, Kentucky State Board of Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

EDUCATION AND HUMANITIES CABINET

Department of Education

Bureau of Rehabilitation Services

(Proposed Amendment)

706 KAR 1:010. [Interim] Three-year plan for vocational rehabilitation services.

RELATES TO: KRS 156.010, 156.031, 156.070, 163.140, 163.160

PURSUANT TO: KRS 13.082, 163.140

NECESSITY AND FUNCTION: Section 101, Title I, P.L. 93-112, as amended, requires the submission of an Interim Three-Year State Plan for Vocational Rehabilitation Services, to the Secretary, Department of Education. The plan must be approved in order for a state to be eligible for grants from the allotments of funds under Title I, P.L. 93-112, as amended by P.L. 93-516 and P.L. 95-602, and this regulation adopts the pertinent state plan developed and approved by the Department of Education and setting forth rules governing the services, personnel, and administration of the Bureau of Rehabilitation Services.

Section 1. Pursuant to the authority vested in the Kentucky State Board of Education by KRS 163.140, the revised Kentucky State Plan for Vocational Rehabilitation Services for the period October 1, 1982 through September 30, 1985, effective October 1, 1983, is presented herewith for filing with the Legislative Research Commission, and incorporated by reference. A copy of said plan can be ob-

tained from the Bureau of Rehabilitation Services, Department of Education.

RAYMOND BARBER
Superintendent of Public Instruction

ADOPTED: July 12, 1983

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TO: L. W. True, Secretary, Kentucky State Board of Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

EDUCATION AND HUMANITIES CABINET
Department of Education
Bureau of Education for Exceptional Children
(Proposed Amendment)

707 KAR 1:060. Identification, evaluation and placement policy and procedure.

RELATES TO: KRS 156.035, 157.200 to 157.290 [157.285]

PURSUANT TO: KRS 13.082, 156.035, 156.070, 157.221

NECESSITY AND FUNCTION: KRS 156.035 authorizes the State Board of Education to implement the provisions of any act of Congress appropriating and apportioning funds to the state; and KRS 157.200 to 157.240 establishes the state's statutory framework for special education programs. This regulation establishes policies and procedures to [The Consent Agreement in Kentucky Association for Retarded Children, et.al., v. Kentucky State Department of Education, et.al., Civil Action No. 435, U.S. District Court, Eastern District of Kentucky, specifies that regulations and guidelines be established for the identification and placement of exceptional children in local school districts. 707 KAR 1:051, Section 9, and P.L. 94-142, Section 615.] assure that each child, parents and the local school districts will be guaranteed procedural safeguards relative to the identification, evaluation and placement of exceptional children, in compliance with 20 USC §1415 and the consent agreement settling Kentucky Association for Retarded Children, et al. v. Kentucky State Board of Education et al., Civil Action No. 435, U.S. District Court, Eastern District of Kentucky. [This manual provides policies and procedures relative to the fulfillment of the Consent Agreement, 707 KAR 1:051, Section 9, and P.L. 94-142, Section 615.]

Section 1. The "Due Process Policy and Procedure Manual, July, 1983 [September, 1980]," copy of which is attached hereto and filed by reference, is hereby approved. This manual fulfills requirements of the Consent Agreement, Civil Action No. 435 [, 707 KAR 1:051, Section 9], and 20 USC §1415 [P.L. 94-142, Section 615], and shall be referred to as the "Due Process Policy and Procedure Manual," for identification, evaluation and placement of exceptional children. Copies may be obtained from the

Bureau of Education for Exceptional Children, State Department of Education, Frankfort, Kentucky 40601.

RAYMOND BARBER
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TO: L. W. True, Secretary, Kentucky State Board of Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

EDUCATION AND HUMANITIES CABINET
Department of Education
Bureau of Education for Exceptional Children
(Proposed Amendment)

707 KAR 1:080. Appeals board.

RELATES TO: KRS 156.035, 157.200 to 157.290 [157.305]

PURSUANT TO: KRS 13.082, 156.035, 156.070, 157.221

NECESSITY AND FUNCTION: KRS 156.035 authorizes the State Board of Education to implement the provisions of any act of Congress appropriating apportioning funds to the state; and KRS 157.200 to 157.290 establishes the state's statutory framework for special education programs. This regulation establishes the Exceptional Appeals Board to review initial due process hearing decisions by local education agencies, in compliance with 20 USC § 1415(c) and current federal interpretation thereof and in compliance with the consent agreement settling [The Consent Agreement in] Kentucky Association for Retarded Children, et.al., v. Kentucky State Board [Department] of Education, et.al., Civil Action No. 435, U.S. District Court, Eastern District of Kentucky. [provides "To adopt a regulation establishing an appeals procedure within the Department of Education of the Commonwealth of Kentucky for appeals by a parent of an exceptional child for whom no local regular or special program has been provided in order to coordinate various special education programs which may be available to the child outside the local school district. The regulation shall direct the state Superintendent of Public Instruction to designate an individual or individuals within the Department of Education of the Commonwealth of Kentucky to hear such appeals. Such procedure shall be so structured as to guarantee that said appeal may be prosecuted in the minimum amount of time."]

Section 1. There is hereby established for [within] the Department of Education the Exceptional Children Appeals Board consisting, for each appeal filed, of three (3) members of the department's pool of due process hearing officers. The Superintendent of Public Instruction shall appoint, for each appeal filed, three (3) of such persons [employees within the Department of Education] to serve as members of said board and shall designate one (1) of them as chairman. Such members shall not be employees of a public agency which is involved in the education or care of the child, or an employee of the Department of

Education and shall not appear to have a vested interest in the outcome of the appeal. [Such members shall serve at the pleasure of the Superintendent of Public Instruction.]

Section 2. Any person who is a party to the hearing at the local school system level in a matter involving the identification, evaluation, or placement of an exceptional child as provided in 707 KAR 1:051 and 707 KAR 1:060, and who is aggrieved by the order on such hearing, may appeal such order in writing by certified mail to the Exceptional Children Appeals Board within fourteen (14) calendar days of the entry of such order. This appeal shall also be submitted to the opposing party who will then have seven (7) calendar days in which to respond in writing to the Exceptional Children Appeals Board. The board may also hear such a matter upon a showing that no hearing was provided at the local level.

Section 3. The chairman of the Exceptional Children Appeals Board shall set the matter for the hearing within ten (10) calendar days after receipt of the written appeal unless the parties to the appeal agree to a longer period of time.

Section 4. The Exceptional Children Appeals Board shall determine the case upon the record established at the hearing at the local level. It may allow the introduction of additional testimony, documents and other evidence, including oral arguments upon a showing of good cause. The board shall not be bound by the formal rules of evidence.

Section 5. [Within ten (10) calendar days of the conclusion of the hearing on appeal,] The Exceptional Children Appeals Board shall make findings of fact, conclusions of law, and a decision within thirty (30) days of receipt of the appeal of a due process hearing decision [and recommendations to the Superintendent of Public Instruction, who shall within three (3) calendar days of receipt thereof make a final determination of the case].

RAYMOND BARBER

Superintendent of Public Instruction

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TO: L. W. True, Secretary, Kentucky State Board of Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

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

803 KAR 2:015. General industry standards.

RELATES TO: KRS Chapter 338

PURSUANT TO: KRS 13.082

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, regulations, and standards. Consistent with this authority the following regulations contain those standards to be enforced by the Division of Occupational Safety and Health Compliance. The Occupa-

tional Safety and Health Standards Board hereby adopts the following regulations applicable to general industry.

Section 1. Batteries. Changing and charging storage batteries (for automotive-type battery charging installations, in-vehicle charging of batteries, and battery jump starting of vehicles).

(1) Facilities shall be provided for flushing electrolyte from the eyes and skin with water when changing or charging storage batteries. An adequate water supply shall be within the work area.

(2) No battery shall be charged or discharged within a closed or unvented container. The batteries shall be charged:

(a) In the open; or

(b) In a mechanically-ventilated space; or

(c) In a space providing at least twenty (20) cubic feet per ampere of charging capacity.

(3) A face shield or goggles shall be provided and available at each charging unit. The use of the face shield or goggles shall be required for connection and disconnection of vehicle or charger leads to the battery terminals and for the addition or pouring of electrolyte.

(4) Employees shall wear face shields or goggles during installation and removal of batteries from vehicles, while connecting and disconnecting battery charger or jumper cable leads, and while handling electrolyte.

(5) Employees shall be instructed to:

(a) Turn off the battery charger to connect or disconnect the battery;

(b) Wash acid spills immediately; and

(c) Flush electrolyte from eyes and skin with water for ten (10) minutes.

[Section 2. Confined Spaces. Definitions: A confined space is a space having limited means of ingress and/or egress and so enclosed that adequate dilution ventilation cannot be obtained by natural air movement, or mechanically induced movement. In order to be a confined space for purposes of this standard, a space must be subject to the accumulation of toxic, combustible, or corrosive agents, or to a deficiency of oxygen. Any of the following, among others, may be a confined space if it meets the criteria set forth in the definition above:]

[(1) Storage tanks, tank cars, process vessels, bins, trailers and other tank-like compartments usually with one (1) or more manholes for entry.]

[(2) Open topped spaces of more than four (4) feet in depth such as bins, silos, pits, vats, tubs, vaults, vessels or floating roof storage tanks.]

[(3) Ventilation or exhaust ducts, manholes, sewers, underground utility tunnels, pipelines and similar structures.]

[(4) Ovens, furnaces, kilns and similar structures.]

[Section 3. Confined Space Entry; Non-Utility Operations: Except as provided in Section 4, entry into a confined space shall not be made unless the following procedures have been accomplished.]

[(1) Insure that all lines containing harmful agents, e.g., supply, discharge, overflow, vent, drain or similar connections entering the space are physically separated or blocked by means of blinds or other devices, capable of insuring complete closure.]

[(2) Fixed mechanical devices and/or equipment which utilize electric, air or hydraulic power shall be placed in zero (0) mechanical state by disconnecting. Electrical ser-

vice equipment, excluding lighting, shall be padlocked or tagged.]

[(3) The internal atmosphere shall be tested for combustible gas, toxics and corrosives where there is reason to suspect their presence and, except when adequate natural air movement or adequate continuous forced ventilation is provided, the atmosphere shall also be tested for oxygen deficiency.]

[(4) Ventilation:]

[(a) If the tests made in accordance with subsection (3) above indicate that the atmosphere is unsafe, before any employee is permitted to enter the confined space, the space shall be ventilated until the concentration of hazardous substance is reduced to a safe level or removed, and ventilation shall be continued as long as recurrence of the hazard is probable.]

[(b) As an alternative to ventilation or if the ventilation does not adequately reduce or remove the hazardous substance, an employee may enter a confined space only if that employee wears a supplied air respirator, approved by NIOSH for that purpose. If the employee utilizes a self-contained respirator, sufficient primary air capacity shall be available as well as reserve capacity to perform the task inside the confined space. Under no circumstances shall the wearer of the respirator be permitted to remain in the confined space when the primary air system is depleted or is being replaced. The reserve air supply shall be used only in the event of an emergency.]

[(5) No employee shall enter a confined space unless:]

[(a) Provisions have been made for constant communication with an employee in the immediate vicinity not in the confined space; and]

[(b) Provision has been made for adequate rescue procedure including rescue equipment specifically designed for rescue from the confined space in which work is being performed; and]

[(c) The employees working inside and outside the confined space have been adequately trained in rescue procedures; the training having been renewed at least yearly.]

[(6) An employee entering a confined space for rescue shall wear a respirator that meets NIOSH certification and shall have sufficient capacity to effect the rescue from the confined space.]

[(7) Lighting:]

[(a) Temporary lights shall be equipped with guards to prevent accidental contact with the bulb, except that guards are not required when the construction of the reflector is such that the bulb is deeply recessed.]

[(b) Temporary lights shall be equipped with heavy duty electric cords with connections and insulation maintained in safe condition. Temporary lights shall not be suspended by their electric cords unless cords and lights are designed for this means of suspension. Splices shall have insulation equal to that of the electrical cord.]

[(c) Working spaces, walkways, and similar locations shall be kept clear of cords so as not to create a hazard to employees.]

[(d) Portable electric lighting used in moist and/or other hazardous locations, as, for example, drums, tanks, and vessels, shall be operated at a maximum of twelve (12) volts.]

[Section 4. Emergency Confined Space Entry. (1) Definition. "Emergency" is a sudden and unexpected condition requiring immediate action.]

[(2) The employer shall establish a written procedure

covering confined space entry under emergency conditions. The emergency may exclude Section 3(1), (3) and (4)(a).]

[Section 5. Confined Space Entry: Utility Operations Including Gas, Water and Sewage: (For Electric Utility Operations See 1926.956(b). For Tele-Communication Utility Operations See 1910.268(o).)]

[(1) When work by a gas, water, or sewage utility is performed in a manhole, unvented vault, tunnel, pit, or pipeline, the following steps shall be taken before an employee enters:]

[(a) The internal atmosphere shall be tested for combustible gas, toxics and corrosives where there is reason to suspect their presence and, except when adequate natural air movement or adequate continuous forced ventilation is provided, the atmosphere shall also be tested for oxygen deficiency;]

[(b) When unsafe conditions are detected by testing or other means, the work area shall be adequately ventilated and otherwise made safe before entry.]

[(2) An adequate continuous supply of air shall be provided while work is performed under any of the following conditions:]

[(a) Where combustible or explosive gas vapors have been initially detected and subsequently reduced to a safe level by ventilation;]

[(b) Where organic solvents are used in the work procedures;]

[(c) Where open flame torches are used in the work procedures;]

[(d) Where the manhole is located in that portion of a public right of way open to vehicular traffic and/or exposed to seepage of gas or gases, or]

[(e) Where a toxic gas or oxygen deficiency is found.]

[(3) An employee with basic first-aid and rescue training shall be available in the immediate vicinity to render emergency assistance as may be required. The employee whose presence is required in the immediate vicinity for the purposes of rendering emergency assistance is not to be precluded from occasionally entering to provide assistance other than in an emergency. The requirement of this paragraph does not preclude a qualified employee, working alone, from entering for brief periods of time for the purpose of inspection, housekeeping, taking readings, or similar work if testing for oxygen deficiency, combustible gas and suspected toxic substances has been performed.]

[(4) Ladders or other safe means shall be used to enter and exit manholes exceeding four (4) feet in depth.]

[(5) When open flames are used, the following precautions shall be taken to protect against the accumulation of combustible gas:]

[(a) A test for combustible gas shall be made immediately before using the open flame device, and at least once per hour while using the device; and]

[(b) A fuel tank (e.g., acetylene) may not be in the manhole unless in actual use.]

[Section 6. This regulation shall not pre-empt any specific applicable standard; and shall not preclude any specific applicable standard now in effect.]

Section 2. [7.] Safety and Testing of Supply Lines in Excess of 600 Volts. (1) Definitions:

(a) Disconnected means disconnected from any electrical source of supply;

(b) Guarded: Protected by personnel, covered, fenced,

or enclosed by means of suitable castings, barrier, rails, screens, mats, platforms, or other suitable devices in accordance with standard barricading techniques designed to prevent dangerous approach or contact by persons or objects. (Note: Wires, which are insulated but not otherwise protected, are not considered as guarded);

(c) Hold cards (also called "hold tags"): A card or tagtype device, usually having a predominant color of white or red which warns against or which cautions against the operation of a particular switch, device, circuit, tool, machine, etc.;

(d) Near: A distance no closer than that shown in the table in subsection (3)(c) of this section;

(e) Qualified person: A person who, because of experience and training is familiar with the construction and operation of the apparatus or equipment and the hazards involved in the performance of the job.

(2) Purpose:

(a) The intent and purpose of this regulation is to provide and establish safety procedures for testing equipment to protect electrical workers from hazards resulting from exposure to high voltage;

(b) This regulation shall apply to non-utility electrical workers who are engaged in electrical construction and/or maintenance of electrical conductors and equipment rated at 600 volts and above.

(3) Energized conductors and equipment:

(a) Only qualified employees shall work on or near high voltage conductors or equipment;

(b) Personal protective equipment shall be provided by the employer and used by the employee when working on or near energized, ungrounded high voltage conductors or equipment;

(c) No employee shall approach or take any conductive object, without an approved insulating handle, within the minimum distance specified in the table below, unless the energized part is insulated or guarded from the employee, or the employee is effectively insulated from the live parts. Rubber gloves (sleeves if necessary) rated for the voltage involved shall be considered effective insulation of the employee from the energized part.

Minimum Clear Distance From Live Parts

Voltage Phase to Phase (Kilovolts)	Distance Phase to Employee
0.6 to 34.5	2'
34.5 to 46	2½'
46 to 69	3'
69 to 115	3' 4"
115 to 138	3' 6"
138 to 169	3' 8"

(4) De-energized conductor or equipment:

(a) Existing conditions shall be determined before starting work on electrical conductor and/or equipment;

(b) Before any work is performed, all electrical switches, breakers and associated disconnecting devices shall be opened, made inoperable and hold tagged out by the person in charge. Employees shall be trained and thoroughly instructed in the tagging procedure. One (1) qualified person, for example: foreman, general foreman or first class electrician, of each crew shall be responsible for attaching hold tags and/or hold cards to the disconnecting means. When more than one (1) crew is involved in the work, multiple hold tags or hold cards shall be placed in the han-

dle of the disconnecting equipment. The use of such tags must be respected. Equipment or items so tagged must not be activated or used without full and proper authority of a responsible person whose signature appears on the tag;

(c) Conductors shall be short circuited and grounded wherever possible;

(d) Capacitors may be components of apparatus of the disconnected electrical system. Before employees are allowed to work, the capacitors shall be discharged, short circuited and grounded;

(e) When de-energizing conductors and equipment and the means of disconnecting from the energy source is not visible open, a voltage test shall be made before starting work. An operational check shall be made of the voltage tester prior to and following the voltage test to determine reliability of the testing device. The test device must be handled and used while wearing or using approved protective equipment during the test;

(f) All conductors and equipment shall be treated as energized until tested, short circuited and effectively grounded except when the circuit involved is isolated from all possible sources of energizing voltage from another circuit, induced voltage or back feed;

(g) The voltage condition of de-energized conductors and/or equipment shall be determined with testing equipment designed for the applicable voltage;

(h) Upon completion of work on de-energized conductors and equipment, the person responsible shall ascertain that all employees under his jurisdiction are clear and that all protective short circuit and grounding lines are removed. The qualified person(s) shall then remove his hold tag(s). Only at this time shall conductors and equipment be re-energized.

Section 3. [8.] Safety Belts, Lanyards and Lifelines. (1) Employees working from open-sided unguarded floors, pipe racks, and ledges, platforms, walkways, machinery, stockshelves, or similar unguarded working surfaces which are elevated ten (10) feet or more above a lower level shall be secured by safety belts and lanyards, lifelines where necessary, or shall be protected by safety nets.

(2) Lanyards shall have a nominal breaking strength of 5,400 lbs. The combination of safety belts and lanyards, lifelines where necessary, shall be designed to permit a fall of not more than five (5) feet.

(3) All safety belt and lanyard hardware, except rivets, shall be capable of withstanding a tensile loading of 4,000 lbs. without cracking, breaking or taking a permanent deformation.

(4) Lifelines, where necessary, shall be secured above the point of operation to an anchorage of structural member capable of supporting a minimum dead weight of 5,400 lbs.

(5) This standard shall not pre-empt any applicable standard now in effect.

THELMA L. STOVALL, Commissioner

ADOPTED: July 14, 1983

APPROVED: LEONARD B. MARSHALL, JR.
Secretary

RECEIVED BY LRC: July 15, 1983 at 1:15 p.m.

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

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

803 KAR 2:016. Construction industry standards.

RELATES TO: KRS Chapter 338

PURSUANT TO: KRS 13.082

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, regulations, and contains those standards to be enforced by the Division of Occupational Safety and Health Compliance. The Occupational Safety and Health Standards Board hereby adopts the following regulations applicable to the construction industry.

[Section 1. Confined Spaces. Definitions: A confined space is a space having limited means of ingress and/or egress and so enclosed that adequate dilution ventilation cannot be obtained by natural air movement, or mechanically induced movement. In order to be a confined space for purposes of this standard, a space must be subject to the accumulation of toxic, combustible, or corrosive agents, or to a deficiency of oxygen. Any of the following, among others, may be a confined space if it meets the criteria set forth in the definition above.]

[(1) Storage tanks, tank cars, process vessels, bins, trailers and other tank-like compartments usually with one (1) or more manholes for entry.]

[(2) Open-topped spaces of more than four (4) feet in depth such as bins, silos, pits, vats, tubs, vaults, vessels or floating roof storage tanks.]

[(3) Ventilation or exhaust ducts, manholes, sewers, underground utility tunnels, pipelines and similar structures.]

[(4) Ovens, furnaces, kilns and similar structures.]

[Section 2. Confined Space Entry; Non-Utility Operations: Except as provided in Section 3, entry into a confined space shall not be made unless the following procedures have been accomplished:]

[(1) Insure that all lines containing harmful agents, e.g., supply, discharge, overflow, vent, drain or similar connections entering the space are physically separated or blocked by means of blinds or other devices, capable of insuring complete closure.]

[(2) Fixed mechanical devices and/or equipment which utilize electric, air or hydraulic power shall be placed in zero (0) mechanical state by disconnecting. Electrical service equipment, excluding lighting, shall be padlocked or tagged.]

[(3) The internal atmosphere shall be tested for combustible gas, toxics and corrosives where there is reason to suspect their presence and, except when adequate natural air movement or adequate continuous forced ventilation is provided, the atmosphere shall also be tested for oxygen deficiency.]

[(4) Ventilation:]

[(a) If the tests made in accordance with subsection (3) above indicate that the atmosphere is unsafe, before any employee is permitted to enter the confined space, the space shall be ventilated until the concentration of hazardous substance is reduced to a safe level or removed, and ventilation shall be continued as long as recurrence of the hazard is probable.]

[(b) As an alternative to ventilation or if ventilation does not adequately reduce or remove the hazardous substance, an employee may enter a confined space only if that employee wears a supplied air respirator, approved by NIOSH for that purpose. If the employee utilizes a self-contained respirator, sufficient primary air capacity shall be available as well as reserve capacity to perform the task inside the confined space. Under no circumstances shall the wearer of the respirator be permitted to remain in the confined space when the primary air system is depleted or is being replaced. The reserve air supply shall be used only in the event of an emergency.]

[(5) No employee shall enter a confined space unless:]

[(a) Provisions have been made for constant communication with an employee in the immediate vicinity not in the confined space; and]

[(b) Provision has been made for adequate rescue procedure including rescue equipment specifically designed for rescue from the confined space in which work is being performed; and]

[(c) The employees working inside and outside the confined space have been adequately trained in rescue procedures; the training having been renewed at least yearly.]

[(6) An employee entering a confined space for rescue shall wear a respirator that meets NIOSH certification and shall have sufficient capacity to effect the rescue from the confined space.]

[(7) Lighting:]

[(a) Temporary lights shall be equipped with guards to prevent accidental contact with the bulb, except that guards are not required when the construction of the reflector is such that the bulb is deeply recessed.]

[(b) Temporary lights shall be equipped with heavy duty electric cords with connections and insulation maintained in safe condition. Temporary lights shall not be suspended by their electric cords unless cords and lights are designed for this means of suspension. Splices shall have insulation equal to that of the electrical cord.]

[(c) Working spaces, walkways, and similar locations shall be kept clear of cords so as not to create a hazard to employees.]

[(d) Portable electric lighting used in moist and/or other hazardous locations, as, for example, drums, tanks, and vessels, shall be operated at a maximum of twelve (12) volts.]

[Section 3. Emergency Confined Space Entry. (1) Definition. "Emergency" is a sudden unexpected condition requiring immediate action.]

[(2) The employer shall establish a written procedure covering confined space entry under emergency conditions. The emergency may exclude Section 2(1), (3) and (4)(a).]

[Section 4. Confined Space Entry; Utility Operations Including Gas, Water and Sewage: (For Electric Utility Operations See 1926.956(b). For Tele-Communication Utility Operations See 1910.268(o).)]

[(1) When work by a gas, water, or sewage utility is performed in a manhole, unvented vault, tunnel, pit, pipe or pipeline, the following steps shall be taken before an employee enters:]

[(a) The internal atmosphere shall be tested for combustible gas, toxics and corrosives where there is reason to suspect their presence and, except when adequate natural air movement or adequate continuous forced ventilation is provided, the atmosphere shall also be tested for oxygen deficiency.]

[(b) When unsafe conditions are detected by testing or

other means, the work area shall be adequately ventilated and otherwise made safe before entry.]

[(2) An adequate continuous supply of air shall be provided while work is performed under any of the following conditions:]

[(a) Where combustible or explosive gas vapors have been initially detected and subsequently reduced to a safe level by ventilation;]

[(b) Where organic solvents are used in the work procedures;]

[(c) Where open flame torches are used in the work procedures;]

[(d) Where the manhole is located in that portion of a public right of way open to vehicular traffic and/or exposed to a seepage of gas or gases; or]

[(e) Where a toxic gas or oxygen deficiency is found.]

[(3) An employee with basic first-aid and rescue training shall be available in the immediate vicinity to render emergency assistance as may be required. The employee whose presence is required in the immediate vicinity for the purposes of rendering emergency assistance is not to be precluded from occasionally entering to provide assistance other than in an emergency. The requirement of this paragraph does not preclude a qualified employee, working alone, from entering for brief periods of time for the purpose of inspection, housekeeping, taking readings, or similar work if testing for oxygen deficiency, combustible gas and suspected toxic substances has been performed.]

[(4) Ladders or other safe means shall be used to enter and exit manholes exceeding four (4) feet in depth.]

[(5) When open flames are used, the following precautions shall be taken to protect against the accumulation of combustible gas:]

[(a) A test for combustible gas shall be made immediately before using the open flame device, and at least once per hour while using the device; and]

[(b) A fuel tank (e.g., acetylene) may not be in the manhole unless in actual use.]

[Section 5. This regulation shall not pre-empt any specific applicable standard; and shall not preclude any specific applicable standard now in effect.]

Section 1. [6.] Safety and Testing of Supply Lines in Excess of 600 Volts. (1) Definitions:

(a) Disconnected means disconnected from any electrical source of supply.

(b) Guarded: Protected by personnel, covered, fenced, or enclosed by means of suitable castings, barrier, rails, screens, mats, platforms, or other suitable devices in accordance with standard barricading techniques designed to prevent dangerous approach or contact by persons or objects. (Note: Wires, which are insulated but not otherwise protected, are not considered as guarded.)

(c) Hold cards: (Also called "hold tags.") A card or tag-type device, usually having a predominant color of white or red which warns against or which cautions against the operation of a particular switch, device, circuit, tool, machine, etc.

(d) Near: A distance no closer than that shown in the table in subsection (3)(c) of this section.

(e) Qualified person: A person who, because of experience and training is familiar with the construction and operation of the apparatus or equipment and the hazards involved in the performance of the job.

(2) Purpose:

(a) The intent and purpose of this regulation is to pro-

vide and establish safety procedures for testing equipment to protect electrical workers from hazards resulting from exposure to high voltage.

(b) This regulation shall apply to non-utility electrical workers who are engaged in electrical construction and/or maintenance of electrical conductors and equipment rated at 600 volts and above.

(3) Energized conductors and equipment.

(a) Only qualified employees shall work on or near high voltage conductors or equipment.

(b) Personal protective equipment shall be provided by the employer and used by the employee when working on or near energized, ungrounded high voltage conductors or equipment.

(c) No employee shall approach or take any conductive object, without an approved insulating handle, within the minimum distance specified in the table below, unless the energized part is insulated or guarded from the employee, or the employee is effectively insulated from the live parts. Rubber gloves (sleeves if necessary) rated for the voltage involved shall be considered effective insulation of the employee from the energized part.

Minimum Clear Distance From Live Parts

Voltage Phase to Phase (Kilovolts)	Distance Phase to Employee
0.6 to 34.5	2'
34.5 to 46	2½'
46 to 69	3'
69 to 115	3' 4"
115 to 138	3' 6"
138 to 169	3' 8"

(4) De-energized conductor or equipment:

(a) Existing conditions shall be determined before starting work on electrical conductor and/or equipment.

(b) Before any work is performed, all electrical switches, breakers and associated disconnecting devices shall be opened, made inoperable and hold tagged out by the person in charge. Employees shall be trained and thoroughly instructed in the tagging procedure. One (1) qualified person, for example: foreman, general foreman or first class electrician, of each crew shall be responsible for attaching hold tags and/or hold cards to the disconnecting means. When more than one (1) crew is involved in the work, multiple hold tags or hold cards shall be placed in the handle of the disconnecting equipment. The use of such tags must be respected. Equipment or items so tagged must not be activated or used without full and proper authority of a responsible person whose signature appears on the tag.

(c) Conductors shall be short-circuited and grounded wherever possible.

(d) Capacitors may be components of apparatus of the disconnected electrical system. Before employees are allowed to work, the capacitors shall be discharged, short-circuited and grounded.

(e) When de-energizing conductors and equipment and the means of disconnecting from the energy source is not visibly open, a voltage test shall be made before starting work. An operational check shall be made of the voltage tester prior to and following the voltage test to determine reliability of the testing device. The test device must be handled and used while wearing or using approved protective equipment during the test.

(f) All conductors and equipment shall be treated as

energized until tested, short-circuited and effectively grounded except when the circuit involved is isolated from all possible sources of energizing voltage from another circuit, induced voltage or back feed.

(g) The voltage condition of de-energized conductors and/or equipment shall be determined with testing equipment designed for the applicable voltage.

(h) Upon completion of work on de-energized conductors and equipment, the person responsible shall ascertain that all employees under his jurisdiction are clear and that all protective short-circuit and grounding lines are removed. The qualified person(s) shall then remove his hold tag(s). Only at this time shall conductors and equipment be re-energized.

THELMA L. STOVALL, Commissioner

ADOPTED: July 14, 1983

APPROVED: LEONARD B. MARSHALL, JR.
Secretary

RECEIVED BY LRC: July 15, 1983 at 1:15 p.m.

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

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

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

RELATES TO: KRS Chapter 338

PURSUANT TO: KRS 13.082

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to adopt by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1910 of the Code of Federal Regulations revised as of July 1, 1981, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby adopted by reference with the following additions, exceptions, and deletions.

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

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

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

(a) "Act" means KRS Chapter 338.

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

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

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

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

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

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

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

(3) 29 CFR 1910.20 "Access to employee exposure and medical records" is amended as follows:

(a) 29 CFR 1910.20(e)(1)(i) is amended to read "Whenever an employee or designated representative requests access to an exposure or medical record, the employer shall assure that access is provided in a reasonable time, place, and manner, but not later than fifteen (15) days after the request for access is made unless sufficient reason is given why such a time is unreasonable or impractical."

(b) 29 CFR 1910.20(e)(1)(ii) is amended to read "Whenever an employee or designated representative requests a copy of a record, the employer shall, except as specified in (v) of this section, within the period of time previously specified assure that either:"

(c) 29 CFR 1910.20(e)(1)(v) is added and shall read "Original x-ray film will be made available to the employee and/or designated representative for inspection, review, and duplication under the supervision of the employer or his representative. The employer is not required to bear the cost of duplication of x-ray film."

(d) 29 CFR 1910.20(e)(3)(ii) shall read "Whenever OSHA seeks access to personally identifiable employee medical information by presenting to the employer a written access order pursuant to 29 CFR 1913.10(d), the employer shall prominently post a copy of the written access order and its accompanying cover letter for at least fifteen (15) working days. OSHA will have access to employee medical records maintained by an employee's personal physician fifteen (15) days after written consent is given to OSHA by the affected employee. The consent must contain a general description of the medical information that is authorized to be released."

(e) 29 CFR 1910.20(g)(1) is amended to read "Upon an employee's first entering into employment, and at least annually thereafter, each employer shall inform each employee exposed to toxic substances or harmful physical agents of the following:"

(f) 29 CFR 1910.20(g)(2) is amended to read "Each employer shall make readily available to employees a copy of this standard and its appendices, and shall make readily available to employees any informational materials concerning this standard which are provided to the employer by the Assistant Secretary of Labor for Occupational Safety and Health."

(4) Subparagraph 29 CFR 1910.23(a)(7) shall be amended to read as follows: "Every temporary or permanent floor opening shall have standard railings, or shall be constantly attended by someone."

(5) 29 CFR 1910.95 "Hearing Conservation Program" paragraphs (c) through (p) and appendices A, B, C, D, E, F, G, H, and I as published in the Federal Register, Volume 48, Number 46, March 8, 1983 are adopted by reference and amended as follows:

(a) 29 CFR 1910.95(h)(1) shall read: Audiometric tests shall be pure tone, air conduction, hearing threshold examinations with test frequencies including as a minimum 500, 1,000, 2,000, 3,000, 4,000, and 6,000 Hz. Testing at 8,000 Hz must be included in the audiometric tests for employers using audiometers with that capacity and all audiometric tests must include 8,000 Hz after January 15, 1985.

(b) 29 CFR 1910.95(h)(4) shall read: Audiometric examinations shall be administered in a room meeting the requirements listed in Appendix D: Audiometric Test Rooms. When an audiometric test room is located in a mobile test van, background sound pressure level measurements shall be taken at each testing location.

(c) 29 CFR 1910.95(h)(5)(ii) shall read: Audiometer calibration shall be checked acoustically at least annually in accordance with Appendix E: Acoustic Calibration of Audiometers. Test frequencies below 500 Hz and above 8,000 Hz (6,000 Hz until January 15, 1985 for audiometers without 8,000 Hz capability) may be omitted from this check. Deviations of fifteen (15) decibels or greater require an exhaustive calibration.

(d) 29 CFR 1910.95(h)(5)(iii) shall read: An exhaustive calibration shall be performed at least every two (2) years in accordance with sections 4.1.2; 4.1.3; 4.1.4.3; 4.2; 4.4.1; 4.4.2; 4.4.3; and 4.5 of the American National Standard Specification for Audiometers, S3.6-1969. Test frequencies below 500 Hz and above 8,000 Hz (6,000 Hz until January 15, 1985 for audiometers without 8,000 Hz capability) may be omitted from this calibration.

(e) 29 CFR 1910.95(L)(1) shall read: The employer shall make available to affected employees or their representatives copies of this standard and shall also post a notice of the availability of this standard in the workplace.

(f) 29 CFR 1910.95(o) shall read: Paragraphs (c) through (n) of this section shall not apply to employers engaged in oil and gas well-drilling and servicing operations, agriculture, or construction.

(g) 29 CFR 1910.95 Appendix E shall read: Acoustic Calibration of Audiometers.

This appendix is mandatory.

Audiometer calibration shall be checked acoustically, at least annually, according to the procedures described in this Appendix. The equipment necessary to perform these measurements is a sound level meter, octave-band filter set, and a National Bureau of Standards 9A coupler. In making these measurements, the accuracy of the calibrating equipment shall be sufficient to determine that the audiometer is within the tolerances permitted by American Standard Specification for Audiometers, S3.6-1969.

1. Sound Pressure Output Check.

a. Place the earphone couler over the microphone of the sound level meter and place the earphone on the coupler.

b. Set the audiometer's hearing threshold level (HTL) dial to seventy (70) dB.

c. Measure the sound pressure level of the tones that

each test frequency from 500 Hz through 8,000 Hz (6,000 Hz until January 15, 1985 for audiometers without 8,000 Hz capability) for each earphone.

d. At each frequency the readout on the sound level meter should correspond to the levels in Table E-1 or Table E-2, as appropriate, for the type of earphone, in the column entitled "sound level meter reading."

2. Linearity check.

a. With the earphone in place, set the frequency to 1,000 Hz and the HTL dial on the audiometer to seventy (70) dB.

b. Measure the sound levels in the coupler at each coupler at each ten (10) dB decrement from seventy (70) dB to ten (10) dB, noting the sound level meter reading at each setting.

c. For each ten (10) dB decrement on the audiometer the sound level meter should indicate a corresponding ten (10) dB decrease.

d. This measurement may be made electrically with a voltmeter connected to the earphone terminals.

3. Tolerances.

When any of the measured sound levels deviate from the levels in Table E-1 or Table E-2 by \pm three (3) dB at any test frequency between 500 and 3,000 Hz, four (4) dB at 4,000 Hz, or five (5) dB at 6,000 Hz and 8,000 Hz, an exhaustive calibration is advised. An exhaustive calibration is required if the deviations are greater than ten (10) dB at any test frequency.

Table E-1—Reference Threshold Levels for Telephonics—TDH-39 Earphones

Frequency, Hz	Reference threshold level for TDH-39 earphones, dB	Sound level meter reading, dB
500	11.5	81.5
1,000	7	77
2,000	9	79
3,000	10	80
4,000	9.5	79.5
6,000	15.5	85.5
8,000	13.0	83.0

Table E-2—Reference Threshold Levels for Telephonics—TDH-49 Earphones

Frequency, Hz	Reference threshold level for TDH-49 earphones, dB	Sound level meter reading, dB
500	13.5	83.5
1,000	7.5	77.5
2,000	11	81.0
3,000	9.5	79.5
4,000	10.5	80.5
6,000	13.5	83.5
8,000	13.0	83.0

[(5) 29 CFR 1910.95 "Hearing Conservation Program" paragraph (c) through (s) and appendices A, C, D, E, G, H, and I as published in the Federal Register, Volume 46, Number 162, August 21, 1981 and the "Correction to Appendix A" as published in the Federal Register, Volume

46, Number 176, September 11, 1981 are adopted by reference and amended as follows:]

[(a) 29 CFR 1910.95(j)(3) shall read: "Audiometric tests shall be performed by a licensed or certified audiologist, otolaryngologist, or other qualified physician, or by a technician who is certified by the Council of Accreditation in Occupational Hearing Conservation, or who has satisfactorily demonstrated competence in administering audiometric examinations, obtaining valid audiograms, and properly using, maintaining, and checking the calibration and functional operation of audiometers. A technician who performs audiometric tests must be responsible to an audiologist, otolaryngologist or qualified physician."]

[(b) 29 CFR 1910.95(k)(1) shall read: "Audiometric tests shall be pure tone, air conduction, hearing threshold examinations, with test frequencies including as a minimum 500, 1000, 2000, 3000, 4000 and 6000 Hz. Testing at 8000 Hz must be included in the audiometric test within three (3) years of the effective date of this standard. Tests at each frequency shall be taken separately for each ear."]

[(c) 29 CFR 1910.95(o)(1) shall read: "The employer shall make available to affected employees or their representatives copies of this standard and shall also post a notice of the availability of this standard in the workplace."]

[(d) 29 CFR 1910.95(s)(1) shall read: "Paragraphs (c) through (r) of this section shall become effective January 15, 1982 unless otherwise noted below."]

[(e) 29 CFR 1910.95(s)(2) shall read: "Monitoring conducted pursuant to paragraph (e) of this section shall be completed by July 15, 1982."]

[(f) 29 CFR 1910.95(s)(3) shall read: "Baseline audiograms required by paragraphs (j) of this section shall be completed by January 15, 1983."]

(6) 29 CFR 1910.101(b) shall be amended by revocation of referenced pamphlet P-1-1965 and the adoption of P-1-1974, herein filed by reference.

(7) 29 CFR 1910.106 "Flammable and combustible liquids" is amended as follows:

(a) 29 CFR 1910.106(a)(3) shall read: "The term automotive service station, or service station, shall mean that portion of property where flammable or combustible liquids used as motor fuel are stored and dispensed from fixed equipment and into the fuel tanks of motor vehicles and shall include any facilities available for the sale and servicing of tires, batteries, accessories and for minor automotive maintenance work and shall also include private stations not accessible or open to the public such as those used by commercial, industrial or governmental establishments. This section shall not apply to agriculture."

(b) Revisions to 29 CFR 1910.106(g)(2) and 1910.106(g)(3)(vi)(a) and (b) as published in the Federal Register, Volume 47, Number 173, Tuesday, September 7, 1982 are adopted by reference.

(8) 29 CFR 1910.134 is amended as follows:

(a) 29 CFR 1910.134(c) shall read: "Proper selection of respirators shall be made according to the guidance of American National Standard Practices for Respiratory Protection Z88.2—1980."

(b) 29 CFR 1910.134(d) the third sentence shall read: "Breathing air shall meet at least the requirements of the specification for Grade D breathing air as described in Compressed Gas Association Commodity Specification G-7.1—1973."

(c) 29 CFR 1910.134(g) shall read: Identification of Air-Purifying Respirator Canisters and Cartridges.

1. The primary means of identifying an air-purifying respirator canister or cartridge shall be by means of properly worded labels. The secondary means of identifying an air-purifying respirator canister or cartridge shall be by an identifying color or colors.

2. All who issue or use air-purifying respirators falling within the scope of this standard shall ensure that all canisters and cartridges purchased or used by them are properly labeled and colored in accordance with this standard before they are placed in service and that the labels and colors are properly maintained at all times thereafter until the canisters and cartridges have completely served their purpose. The user shall refer to the label wording to determine the type and degree of protection the canister or cartridge will afford.

3. On each air-purifying respirator canister and cartridge, the following shall appear in bold letters:

CANISTER FOR _____
(Name of atmospheric contaminant)
OR
CARTRIDGE FOR _____
(Name of atmospheric contaminant)

In addition, either or both of subparagraphs a and b of this paragraph, and subparagraph c of this paragraph, shall appear beneath the appropriate phrase on the canister or cartridge label.

a.

For respiratory protection in atmospheres containing not more than _____ by volume of
(Concentration)

(Name of atmospheric contaminant)

b.

For respiratory protection in atmospheres containing _____
(Type of particulate contaminant)

c.

Do not use in atmospheres containing less than 19.5% oxygen by volume at sea level.

4. Each respirator canister or cartridge, or canister or cartridge label, shall be a distinctive color as indicated in Table I-1. The color coating used shall offer a high degree of resistance to changes such as chipping, scaling, peeling, blistering, and fading, and to the effects of ordinary atmospheres to which they may be exposed under normal conditions of storage and use.

(d) 29 CFR 1910.134 Table I-1 shall read:

TABLE I-1
Color Assigned to Canister or Cartridge

Atmospheric Contaminant(s) to be Protected Against	Color Assigned	ISCC-NBS Centroid Color Number	ISCC-NBS Centroid Color Name
Acid gases	White	263	White
Organic vapors	Black	267	Black
Ammonia gas	Green	139	Vivid green
Carbon monoxide gas	Blue	178	Strong blue
Acid gases and organic vapors	Yellow	82	Vivid yellow
Acid gases, ammonia, and organic vapors	Brown	75	Deep yellow brown
Acid gases, ammonia, carbon monoxide, and organic vapors	Red	11	Vivid red
Other vapors and gases not listed above	Olive	106	Light olive
Radioactive materials (except tritium and noble gases)	Purple	218	Strong purple
Dusts, fumes, and mists (other than radioactive materials)	Orange	48	Vivid orange

NOTES:

(1) A purple (ISCC-NBS Centroid Number 218) stripe shall be used to identify radioactive materials in combination with any vapor or gas.

(2) An orange (ISCC-NBS Centroid Number 48) stripe shall be used to identify dusts, fumes, and mists in combination with any vapor or gas.

(3) Where labels only are colored to conform with this table, the canister or cartridge body shall be gray (ISCC-NBS Centroid Number 265), or a metal canister or cartridge body may be left in its natural metallic color.

(4) The user shall refer to the wording of the label to determine the type and degree of protection the canister or cartridge will afford.

(9) 29 CFR 1910.141(c)(2)(i) shall read as follows:

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

(10) 29 CFR 1910.151 relating to medical services and first aid shall be changed to read as follows:

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

"(b) Employers with eight (8) or more employees within the establishment shall have persons adequately trained to render first aid and first-aid supplies approved by a consulting physician, along with a signed list of these supplies, shall be readily available. Outside salesmen, truck drivers, seasonal labor, and others who while performing their duties, are away from the premises more than fifty (50) percent of the time are not to be included in determining the number of employees."

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

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

(11) 1910.156(a)(2) "Application" is amended to read "The requirements of this section apply to fire brigades; industrial fire departments; private fire departments; and municipal public fire departments and fire protection districts. Personal protective equipment requirements apply only to members of fire brigades and fire departments performing interior structural fire fighting. The requirements of this section do not apply to airport crash rescue, forest fire fighting operations, or volunteer fire fighters."

(12) 29 CFR 1910.217(b)(7)(xii) relating to machines using part revolution clutches shall be amended by adding the following:

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

(13) Subparagraph 29 CFR 1910.252(a)(6)(iv), (d)(2) shall be corrected to read as follows:

"Wiring and electrical equipment in compressor or booster pump rooms or enclosures shall conform to the provisions of section 1910.309(a) for Class I, Division 2 locations."

(14) Corrections to 29 CFR 1910 Subpart S "Electrical" as published in the Federal Register, Volume 46, Number 152, August 7, 1981 are adopted by reference.

(15) Amendments to 29 CFR 1910.401(a)(2)(iv) and 29 CFR 1910.402 "Commercial Diving Operations" as published in the Federal Register, Volume 47, Number 228, November 26, 1982 are adopted by reference.

(16) [(15)] 29 CFR 1910.1001(d)(2)(iv)(a) is amended to read:

"The employer shall establish a respirator program in accordance with the requirements of the American National Standards Practices for Respiratory Protection, ANSI Z88.2—1980, which is incorporated by reference herein."

(17) Amendments to 29 CFR 1910.1002 "Coal Tar Pitch Volatiles" as published in the Federal Register Volume 48, Number 15, January 21, 1983 are adopted by reference.

(18) [(16)] 29 CFR 1910.1005 4,4'-methylene bis (2-chloroaniline) and 29 CFR 1910.1003 through .1016 paragraphs (c)(6), Laboratory Activities, printed in the Federal Register, Volume 39, Number 125, June 27, 1974, are in effect.

(19) [(17)] Paragraph 1910.1005(c)(7) of the 29 CFR 1910 General Industry Standards shall read as follows:

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

(20) [(18)] 29 CFR 1910.1025 "Occupational Exposure to Lead" shall be amended as follows:

(a) Revisions as published in the Federal Register, Volume 46, Number 238, Friday, December 11, 1981, are adopted by reference.

(b) Revisions published in the Federal Register, Volume 47, Number 219, November 12, 1982, and Volume 48, Number 46, March 8, 1983 are adopted by reference.

(c) [(b)] "Table 1—Implementation Schedule" is amended to read:

TABLE 1—Implementation Schedule

INDUSTRY ¹	COMPLIANCE DATES		
	200 $\mu\text{g}/\text{m}^3$	100 $\mu\text{g}/\text{m}^3$	50 $\mu\text{g}/\text{m}^3$
Primary lead production	(2)	6-29-84	6-29-91
Secondary lead production	(2)	6-29-84	6-29-86
Lead acid battery manufacture	(2)	6-29-83	6-29-86
Automobile manufacture/ solder grinding	(2)	N/A	6-29-88
Electronics, gray iron foundries, ink manufacture, paints and coatings manufacture, wallpaper manufacture, can manufacture, and printing	(2)	N/A	6-29-82
Lead pigment manufacture, non-ferrous foundries, leaded steel manufacture, lead chemical manufacture, ship building and ship repair, battery breaking in the collection and processing of scrap (excluding collection and processing of scrap which is part of a secondary smelting operation), secondary smelting of copper, and lead casting	(2)	N/A	N/A
All other industries	(2)	N/A	6-11-84

¹Includes ancillary activities located on the same worksite.

(2) On effective date. This continues an obligation from Table Z-2 of 29 CFR 1910.1000 which had been in effect since 1971 but which was deleted upon effectiveness of this section.

THELMA L. STOVALL, Commissioner
ADOPTED: July 14, 1983
APPROVED: LEONARD B. MARSHALL, JR.
Secretary

RECEIVED BY LRC: July 15, 1983 at 1:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING
TO: OSH Technical Support, Kentucky Department of Labor, Occupational Safety and Health, U.S. 127 South, Frankfort, Kentucky 40601.

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

803 KAR 2:027. Adoption of 29 CFR Parts 1915, 1918 and [to] 1919, maritime employment.

RELATES TO: KRS Chapter 338
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to adopt by reference established

federal standards and national consensus standards is also given to the Board. The following regulations contain those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of Maritime employment.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, *Part 1915 as published in the April 20, 1983, Federal Register and Parts [Parts 1915, 1916, 1917,] 1918 and 1919* of the Code of Federal Regulations revised as of July 1, 1981, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby adopted by reference with the following additions, exceptions, and deletions.

(1) 29 CFR 1915.1, [1916.1, 1917.1,] 1918.1, and 1919.1 shall read as follows: "The provisions of this regulation adopt and extend the applicability of established Federal Maritime Standards contained in 29 CFR 1915, 1916, 1917, 1918, and 1919 to all Maritime employers, Maritime employees, and places of Maritime employment throughout the Commonwealth except those excluded in KRS 338.021."

(2) 29 CFR 1915.4(b) and 1918.3(b) [1915.2(b), 1916.2(b), 1917.2(b), and 1918.2(b)] "Secretary" is changed to read: "Commissioner" means the Commissioner of Labor, Kentucky Department of Labor, Commonwealth of Kentucky, or his authorized representative.

(3) 29 CFR 1919.2(d) "Assistant Secretary" is changed to read: "Commissioner" means the Commissioner of Labor, Kentucky Department of Labor, Commonwealth of Kentucky, or his authorized representative.

(4) 29 CFR 1919.2(e) "Administration" is changed to read: "Program" means the Kentucky Occupational Safety and Health Program, Frankfort, Kentucky.

(5) An employer, required under 29 CFR 1915, [1916, 1917,] 1918 or 1919 to report information to the U.S. Department of Labor, or any subsidiary thereof, shall instead report such information to the Kentucky Department of Labor, U.S. 127 South, Frankfort, Kentucky 40601.

THELMA L. STOVALL, Commissioner
ADOPTED: July 14, 1983
APPROVED: LEONARD B. MARSHALL, JR.
Secretary

RECEIVED BY LRC: July 15, 1983 at 1:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING
TO: OSH Technical Support, Kentucky Department of Labor, Occupational Safety and Health, U.S. 127 South, Frankfort, Kentucky 40601.

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

803 KAR 2:070. Inspection; procedure.

RELATES TO: KRS 338.101
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: Pursuant to the authority granted the *Commissioner of Labor* by KRS 338.121 [Kentucky Occupational Safety and Health Standards Board by 338.051], the following rules and regulations are adopted, governing the authority to conduct in-

spections. The function of the regulation is to identify this authority for conducting occupational safety and health inspections and the procedure to be followed by the compliance officers during the conduct of the inspections.

Section 1. Authority for Inspections. (1) Compliance Safety and Health Officers of the Department of Labor are authorized to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein; to question privately any employer, owner, operator, agent or employee; and to review records required by KRS Chapter 338 and regulations issued pursuant thereto, and other records which are directly related to the purpose of the inspection.

(2) Prior to inspecting areas containing information which is classified by an agency of the United States Government, in the interest of national security, compliance safety and health officers shall have obtained the appropriate security clearance.

Section 2. Objection to Inspection. Upon a refusal to permit a compliance safety and health officer, in the exercise of his official duties, to enter without delay and at reasonable times any place of employment or any place therein, to inspect, to review records, or to question any employer, owner, operator, agent, or employee, in accordance with this regulation, or to permit a representative of employees to accompany the compliance safety and health officer during the physical inspection of any workplace in accordance with 803 KAR 2:110, the compliance safety and health officer shall terminate the inspection or confine the inspection to other areas, conditions, structures, machines, apparatus, devices, equipment, materials, records, or interviews concerning which no objection is raised. The compliance safety and health officer shall endeavor to ascertain the reason for such refusal, and he shall immediately report the refusal and the reason therefor to the Commissioner of the Department of Labor. The commissioner shall promptly take appropriate action including compulsory process, if necessary.

Section 3. Entry Not a Waiver. Any permission to enter, inspect, review records, or question any person, shall not imply or be conditioned upon a waiver of any cause of action, citation, or penalty under KRS Chapter 338. Compliance safety and health officers are not authorized to grant any such waiver.

Section 4. Conduct of Inspections. (1) Subject to the provisions herein, inspections shall take place at such times and in such places of employment as the Commissioner of the Department of Labor or the compliance safety and health officer may direct. At the beginning of an inspection, compliance safety and health officers shall present their credentials to the owner, operator, or agent in charge at the establishment; explain the nature and purpose of the inspection; and indicate generally the scope of the inspection and the records specified herein which they wish to review. However, such designation of records shall not preclude access to additional records specified herein.

(2) Compliance safety and health officers shall have authority to take environmental samples and to take or obtain photographs related to the purpose of the inspection, employ other reasonable investigative techniques, and question privately any employer, owner, operator, agent or employee of an establishment. *As used herein, the term "employ other reasonable investigative techniques" includes, but is not limited to, the use of devices to measure employee exposures and the attachment of personal sampling equipment such as dosimeters, pumps, badges, and other similar devices to employees in order to monitor their exposures.*

(3) In taking photographs and samples, compliance safety and health officers shall take reasonable precautions to ensure that such actions with flash, spark-producing, or other equipment would not be hazardous. Compliance safety and health officers shall comply with all employer safety and health rules and practices at the establishment being inspected, and they shall wear and use appropriate protective clothing and equipment.

(4) The conduct of inspection shall be such as to preclude unreasonable disruption of the operations of the employer's establishment.

(5) At the conclusion of an inspection, the compliance safety and health officer shall confer with the employer or his representative and informally advise him of any apparent safety and health violations disclosed by the inspection. During such conference, the employer shall be afforded an opportunity to bring to the attention of the compliance safety and health officer any pertinent information regarding conditions in the workplace.

(6) Inspection shall be conducted in accordance with the requirements of this section.

THELMA L. STOVALL, Commissioner

ADOPTED: July 14, 1983

APPROVED: LEONARD B. MARSHALL, JR.
Secretary

RECEIVED BY LRC: July 15, 1983 at 1:15 p.m.

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

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

803 KAR 2:180. Recordkeeping; statistics.

RELATES TO: KRS 338.161

PURSUANT TO: KRS 13.082

NECESSITY AND FUNCTION: Pursuant to the authority granted the Kentucky Department of Labor by KRS 338.161, this regulation provides for recordkeeping and reporting by employers covered under KRS Chapter 338 as necessary and appropriate for the enforcement of KRS Chapter 338, for developing information regarding the causes and prevention of occupational accidents and illnesses, and for maintaining a program of collection, compilation, and analysis of occupational safety and health statistics.

Section 1. Log and Summary of Occupational Injuries and Illnesses. (1) Each employer shall, except as provided in subsection (2) of this section, *Sections 14 and 15 of this regulation*: maintain in each establishment a log and summary of all recordable occupational injuries and illnesses for that establishment; and enter each recordable injury and illness on the log and summary as early as practicable but not later than six (6) working days after receiving information that a recordable injury or illness has occurred. For this purpose, Occupational Safety and Health Administration OSHA Form No. 200 or an equivalent which is as readable and comprehensible to a person not familiar with it shall be used. The log and summary shall be completed in the detail provided in the form and instructions on Form OSHA No. 200.

(2) Any employer may maintain [in] the log and summary of occupational injuries and illnesses at a place other than the establishment or by means of data-processing equipment, or both, under the following circumstances:

(a) There is available at the place where the log and summary are maintained sufficient information to complete the log and summary to a date within six (6) working days after receiving information that a recordable case has occurred, as required by subsection (1) of this section.

(b) At each of the employer's establishments, there is available a copy of the log and summary which reflects separately the injury and illness experience of that establishment complete and current to a date within forty-five (45) calendar days.

Section 2. Period Covered. Records shall be established on a calendar year basis.

Section 3. Supplementary Record. In addition to the log and summary of occupational injuries and illnesses provided for under Section 1, each employer shall have available at each establishment within six (6) working days after receiving information that a recordable case has occurred, a supplementary record for each occupational injury or illness for that establishment. The record shall be completed in the detail prescribed in the instructions accompanying Occupational Safety and Health Administration Form OSHA No. 101. Workmen's Compensation, insurance, or other reports are acceptable alternative records if they contain the information required by Form OSHA No. 101. If no acceptable alternative record is maintained for other purposes, Form OSHA No. 101 shall be used or the necessary information shall be otherwise maintained. The Kentucky workmen's compensation form SF-1 is an acceptable alternative record for those employers covered by the Workmen's Compensation Act.

Section 4. Annual Summary. (1) Each employer shall post an annual summary of occupational injuries and illnesses for each establishment. This summary shall consist of a copy of the year's totals from the Form OSHA No. 200 and the following information from that form: calendar year covered, company name, establishment name, establishment address, certification signature, title, and date. A Form OSHA No. 200 shall be used in presenting the summary. If no injuries or illnesses occurred in the year, zeroes must be entered on the totals line, and the form must be posted.

(2) The summary shall be completed by February 1 beginning with calendar year 1979. The summary of 1977 calendar year's occupational injuries and illnesses shall be posted on Form OSHA No. 102.

(3) Each employer, or the officer or employee of the employer who supervises the preparation of the log and summary of occupational injuries and illnesses, shall certify that the annual summary of occupational injuries and illnesses is true and complete. The certification shall be accomplished by affixing the signature of the employer or the officer or employee of the employer who supervises the preparation of the annual summary of occupational injuries and illnesses, at the bottom of the last page of the log and summary or by appending a separate statement to the summary certifying that the summary is true and complete.

(4) (a) Each employer shall post a copy of the establishment's summary in each establishment in the same manner that notices are required to be posted under 803 KAR 2:060. The summary covering the previous calendar year shall be posted no later than February 1, and shall remain in place until March 1. For employees who do not primarily report for work at a single establishment, or who do not report to any fixed establishment on a regular basis, employer shall satisfy this posting requirement by presenting or mailing a copy of the summary portion of the log and summary during the month of February of the following year to each such employee who receives pay during that month. For multi-establishment employers where operations have closed down in some establishments during the calendar year, it will not be necessary to post summaries for those establishments.

(b) A failure to post a copy of the establishment's annual summary may result in the issuance of citations and assessment of penalties pursuant to KRS 338.991.

Section 5. Retention of Records. Records provided for in Sections 1, 3, and 4 (including Form OSHA No. 200 and its predecessor Form OSHA No. 100 and OSHA No. 102) shall be retained in each establishment for five (5) years following the end of the year to which they relate.

Section 6. Access to Records. (1) Each employer shall provide, upon request, records provided for in Sections 1, 3, and 4 for inspection and copying by:

(a) Compliance safety and health officers of the Occupational Safety and Health Program, Kentucky Department of Labor, during an inspection or by other representatives of the Kentucky Commissioner of the Department of Labor authorized to make statistical compilations, pursuant to the authority of KRS Chapter 338;

(b) Representatives of the Bureau of Labor Statistics, United States Department of Labor; and

(c) Representatives of the Secretary of Health, Education, and Welfare during any investigation under Section 20(b) of the Williams-Steiger Occupational Safety and Health Act of 1970.

(2) The log and summary of all recordable occupational injuries and illnesses (OSHA No. 200) (the log) provided for in Section 1 shall, upon request, be made available by the employer to any employee, former employee, and to their representatives for examination and copying in a reasonable manner and at reasonable times. The employee, former employee, and their representatives shall have access to the log for any establishment in which the employee is or has been employed.

(3) Nothing in this section shall be deemed to preclude employees and employee representatives from collectively bargaining to obtain access to information relating to occupational injuries and illnesses in addition to the information made available under this section.

(4) Access to the log, provided under this section, shall

pertain to all logs retained under the requirements of Section 5.

Section 7. Reporting of Fatality or Multiple Hospitalization Accidents. Within forty-eight (48) hours after the occurrence of an employment accident which is fatal to one (1) or more employees or which results in hospitalization of five (5) or more employees, the employer of any employees so injured or killed shall report the accident either orally or in writing to the Commissioner of [the Department of] Labor. The reporting may be by telephone or telegraph. The report shall relate the circumstances of the accident, the number of fatalities, and the extent of any injuries. The commissioner may require such additional reports, in writing or otherwise, as he deems necessary concerning the accident.

Section 8. Falsification, or Failure to Keep Records or Reports. (1) KRS 338.991(8) provides that "whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this Act shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment, for not more than six (6) months or both."

(2) Failure to maintain records or file reports required by this part, or in the details required by forms and instructions issued under this part, may result in the issuance of citations and assessment of penalties as provided for in KRS 338.991.

Section 9. Change of Ownership. Where an establishment has changed ownership, the employer shall be responsible for maintaining records and filing reports only for that period of the year during which he owned such establishment. However, in the case of any change in ownership, the employer shall preserve those records, if any, of the prior ownership which are required to be kept under this part. These records shall be retained at each establishment to which they relate, for the period, or remainder thereof, required under Section 5.

Section 10. Definitions. (1) "Act" means the Kentucky Occupational Safety and Health Act of 1972 (KRS Chapter 338).

(2) The definitions and interpretations contained in KRS 338.015 shall be applicable to such terms when used in this regulation.

(3) "Recordable occupational injuries or illnesses" are any occupational injuries or illnesses which result in: ["Recordable occupational injuries and illnesses" of employees are:]

(a) *Fatalities, regardless of the time between the injury and death, or the length of the illness; or [Occupational fatalities, regardless of the time between injury and death, or the length of the illness (no recording is required for fatalities occurring after termination of employment except when recording may otherwise be required under a standard issued pursuant to KRS 338.051(3) and published in this chapter); or]*

(b) *Lost workday cases, other than fatalities, that result in lost workdays; or [Occupational illnesses; or]*

(c) *Nonfatal cases without lost workdays which result in transfer to another job or termination of employment, or require medical treatment (other than first aid) or involve: loss of consciousness or restrictions of work or motion. This category also includes any diagnosed occupational ill-*

nesses which are reported to the employer but are not classified as fatalities or lost workday cases. [Occupational injuries which involve one or more of the following: loss of consciousness, restriction of work or motion, transfer to another job, or medical treatment (other than first aid).]

(4) "Medical treatment" includes treatment administered by a physician or by registered professional personnel under the standing orders of a physician. Medical treatment does not include first aid treatment even though provided by a physician or registered professional personnel.

(5) "First aid" is any one-time treatment, and any follow-up visit for the purpose of observation, of minor scratches, cuts, burns, splinters, and so forth, which do not ordinarily require medical care. Such one-time treatment, and follow-up visit(s) for the purpose of observation, is considered first aid even though provided by a physician or registered professional personnel.

(6) (a) "Establishment:" A single physical location where business is conducted or where services or industrial operations are performed. (For example: A factory, mill, store, hotel, restaurant, movie theatre, farm, ranch, bank, sales office, warehouse, or central administrative office.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities operated from the same physical location as a lumber yard), each activity shall be treated as a separate establishment.

(b) For firms engaged in activities such as agriculture, construction, transportation, communications, and electric, gas and sanitary services, which may be physically dispersed, records may be maintained at a place to which employees report each day.

(c) Records for personnel who do not primarily report to work at a single establishment, and who are generally not supervised in their daily work, such as traveling salesmen, technicians, engineers, etc., shall be maintained at the location from which they are paid or the base from which personnel operate to carry out their activities.

(7) "Lost workdays:" *The number of days (consecutive or not) after, but not including, the day of injury or illness during which the employee would have worked but could not do so; that is, could not perform all or any part of his normal assignment during all or any part of the workday or shift, because of the occupational injury or illness.*

(8) "Establishments Classified in Standard Industrial Classification Codes (SIC) 52-89."

(a) Establishments whose primary activity constitutes retail trade; finance, insurance, real estate and services are classified in SIC's 52-89.

(b) Retail trades are classified as SIC's 52-59 and for the most part include establishments engaged in selling merchandise to the general public for personal household consumption. Some of the retail trades are: automotive dealers, apparel and accessory stores, furniture and home furnishing stores, and eating and drinking places.

(c) Finance, insurance and real estate are classified as SIC's 60-67 and include establishments which are engaged in banking, credit other than banking, security dealings, insurance, and real estate.

(d) Services are classified as SIC's 70-89 and include establishments which provide a variety of services for individuals, businesses, government agencies, and other organizations. Some of the service industries are: personal and business services, in addition to legal, educational, social, and cultural; and membership organizations.

(e) The primary activity of an establishment is determin-

ed as follows: for finance, insurance, real estate, and services establishments, the value of receipts or revenue for services rendered by an establishment determines its primary activity. In establishments with diversified activities, the activities determined to account for the largest share of production, sales or revenue will identify the primary activity. In some instances these criteria will not adequately represent the relative economic importance of each of the varied activities. In such cases, employment or payroll should be used in place of the normal basis for determining the primary activity.

Section 11. Petitions for Recordkeeping Exceptions. (1) Petitions for recordkeeping exceptions shall be filed in accordance with the provisions of 29 CFR Part 1904.13.

(2) Any employer filing a petition for recordkeeping exceptions in accordance with CFR Part 1904.13 shall notify the Commissioner of [the Department of] Labor that he is making such application and the results thereof;

(3) Exceptions granted pursuant to 29 CFR Part 1904.13 shall be recognized by the commissioner.

Section 12. Employees not in Fixed Establishments. Employers of employees engaged in physically dispersed operations such as occur in construction, installation, repair or service activities who do not report to any fixed establishment on a regular basis but are subject to common supervision may satisfy the provisions of Sections 1, 3, and 4 of this regulation with respect to such employees by:

(1) Maintaining the required records for each operation or group of operations, which is subject to common supervision (field superintendent, field supervisor, etc.) in an established central place;

(2) Having the address and telephone number of the central place available at each worksite; and

(3) Having personnel available at the central place during normal business hours to provide information from the records maintained there by telephone and by mail.

Section 13. Duties of Employer. Upon receipt of an occupational injuries and illnesses survey form, the employer shall promptly complete the form in accordance with the instructions contained therein, and return it in accordance with the aforesaid instructions.

Section 14. Small Employers. An employer who had no more than ten (10) employees at any time during the calendar year immediately preceding the current calendar year need not comply with any of the requirements of this part except the following:

(1) Obligation to report under Section 7 of this regulation concerning fatalities or multiple hospitalization accidents; and

(2) Obligation to maintain a log and summary of occupational injuries and illnesses under Section 1 of this regulation and to make reports under Section 13 of this regulation upon being notified in writing by the Bureau of Labor Statistics or the Kentucky Department of Labor that the employer has been selected to participate in a statistical survey of occupational injuries and illnesses.

Section 15. Private Sector Establishments Classified in Standard Industrial Classification Codes (SIC) 52-89, (except 52-54, 70, 75, 76, 79 and 80). A private sector employer whose establishment is classified in SIC's 52-89, (excluding 52-54, 70, 75, 76, 79 and 80) need not comply, for such establishment, with any of the requirements of this part except the following:

(1) Obligation to report under Section 7 of this regulation concerning fatalities or multiple hospitalization accidents; and

(2) Obligation to maintain a log of occupational injuries and illnesses under Section 13 of this regulation, upon being notified in writing by the Bureau of Labor Statistics or the Kentucky Department of Labor that the employer has been selected to participate in a statistical survey of occupational injuries and illnesses.

THELMA L. STOVALL, Commissioner

ADOPTED: July 14, 1983

APPROVED: LEONARD B. MARSHALL, JR.
Secretary

RECEIVED BY LRC: July 15, 1983 at 1:15 p.m.

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

PUBLIC PROTECTION AND REGULATION CABINET
Department of Mines and Minerals
Division of Explosives and Blasting
(Proposed Amendment)

805 KAR 4:090. Storage of explosives and blasting agents.

RELATES TO: KRS 351.350, 351.990

PURSUANT TO: KRS 13.082, 351.335

NECESSITY AND FUNCTION: KRS 351.335 requires the Department of Mines and Minerals to promulgate rules and regulations concerning the manufacture, transportation, sale, storage, or use of explosives and unassembled components of explosives, and the maintenance of such explosives which has a direct bearing on safety to life and property. This regulation effects the provisions of that law.

Section 1. Storage of Explosives and Blasting Agents. (1) Explosives and related materials shall be stored in approved facilities required under the applicable provisions of the Internal Revenue Service regulations contained in 27 CFR 55 [26 CFR 181], Commerce in Explosives.

(2) Blasting caps, electric blasting caps, detonating primers, and primed cartridges shall not be stored in the same magazine with other explosives or blasting agents.

(3) Smoking and open flames shall not be permitted within fifty (50) feet of explosives and detonator storage magazines.

(4) Permanent underground magazines containing detonators shall not be located closer than twenty-five (25) feet to any magazine containing other explosives or blasting agents.

WILLARD STANLEY, Commissioner

ADOPTED: June 28, 1983

APPROVED: LEONARD B. MARSHALL, Jr.
Secretary

RECEIVED BY LRC: June 29, 1983 at 11 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Larry C. Schneider, Director, Division of Explosives and Blasting, P.O. Box 680, Lexington, Kentucky 40586.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Mines and Minerals
Division of Explosives and Blasting
(Proposed Amendment)

805 KAR 4:100. Surface transportation of explosives.

RELATES TO: KRS 351.350, 351.990

PURSUANT TO: KRS 13.082, 351.335

NECESSITY AND FUNCTION: KRS 351.335 requires the Department of Mines and Minerals to promulgate rules and regulations concerning the manufacture, transportation, sale, storage, or use of explosives and unassembled components of explosives, and the maintenance of such explosives which has a direct bearing on safety to life and property. This regulation effects the provisions of that law.

Section 1. Surface Transportation of Explosives. (1) Transportation of explosives, blasting agents, and blasting supplies, shall meet the provisions of Department of Transportation regulations contained in 14 CFR Part 103, Air Transportation; 46 CFR Parts 146-149, Water Carriers; 49 CFR Parts 171-179, Highways and Railways; and 49 CFR Parts 390-397, Motor Carriers.

(2) Motor vehicles or conveyances transporting explosives shall only be driven by, and be in the charge of, a licensed driver who is physically fit. He shall be familiar with the local, state and federal regulations governing the transportation of explosives.

(3) No person shall smoke, or carry matches or any other flame-producing device, nor shall firearms or loaded cartridges be carried while in or near a motor vehicle or conveyance transporting explosives, blasting agents, and blasting supplies.

(4) Explosives or [,] blasting agents [, and blasting supplies] shall not be transported with other materials or cargoes in the same compartment. In no case shall flammable material be carried on the same vehicle as explosives. [Explosives or blasting agents shall be transported in separate vehicles from detonators unless separated by four (4) inches of hardwood or a type 2 outdoor or type 3 magazine.]

(5) Explosives or blasting agents shall be transported in separate vehicles from detonators unless:

(a) The detonators are placed in a type 2 or type 3 magazine secured within the body of the truck; or

(b) The detonators and explosives are separated by four (4) inches of hardwood, and the detonators are totally enclosed or confined by the hardwood construction; or

(c) The detonators are placed in suitable containers or compartments constructed in accordance with the Institute of Makers of Explosives Safety Library Publication No. 22, entitled "IME Standard for the Safe Transportation of Electric Blasting Caps in the Same Vehicle with Other Explosives."

(6) [(5)] Vehicles used for transporting explosives shall be strong enough to carry the load without difficulty, and shall be in good mechanical condition.

(7) [(6)] When Class A, B, or C explosives are transported by a vehicle with an open body, a Class II magazine or original manufacturer's container shall be securely mounted within [on] the bed to contain the cargo. No explosives shall be stacked higher than the sides or the tailgate of the vehicle. Blasting agents shall be loaded in a stable manner so that they cannot fall from the vehicle.

(8) [(7)] All vehicles used for the transportation of explosives shall have tight floors and any exposed spark-producing metal on the inside of the body shall be covered with wood, or other non-sparking material, to prevent contact with containers of explosives.

(9) [(8)] Every motor vehicle or conveyance used for

transporting explosives shall be marked or placarded on both sides, the front and [the] rear with either the word "explosives" in red letters, not less than four (4) inches in height, on white background, or the Transportation Cabinet-approved orange and black, square on point, explosives placards. [In addition to such marking or placarding, the motor vehicle or conveyance may display, in such a manner that it will be readily visible from all directions, a red flag eighteen (18) inches by thirty (30) inches, with the word "explosives" painted, stamped, or sewn thereon, in white letters, at least six (6) inches in height.]

(10) [(9)] Each vehicle used for transportation of explosives shall be equipped with a fully charged fire extinguisher, in good condition. An Underwriters Laboratory-approved extinguisher of not less than ten (10) ABC rating will meet the minimum requirement. The driver shall be trained in the use of the extinguisher on his vehicle.

(11) [(10)] Motor vehicles or conveyances carrying explosives, blasting agents, or blasting supplies, shall not be taken inside a garage or shop for repairs or servicing.

(12) [(11)] No motor vehicle transporting explosives shall be left unattended.

WILLARD STANLEY, Commissioner

ADOPTED: June 28, 1983

APPROVED: LEONARD B. MARSHALL, Jr.
Secretary

RECEIVED BY LRC: June 29, 1983 at 11 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Larry C. Schneider, Director, Division of Explosives
and Blasting, P.O. Box 680, Lexington, Kentucky 40586.

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission
(Proposed Amendment)

807 KAR 5:002. Organization.

RELATES TO: KRS Chapter 278

PURSUANT TO: KRS 278.115

NECESSITY AND FUNCTION: KRS 278.115 provides that the Public Service Commission shall organize its offices for administration and management under the executive director. This regulation prescribes the organization of the Public Service Commission's offices.

Section 1. The offices of the Public Service Commission are organized for administration and management under the executive director, adopted May 31, 1983, to reflect their functions as follows:

(See Flow Chart on following page.)

LAURA MURRELL, Chairman

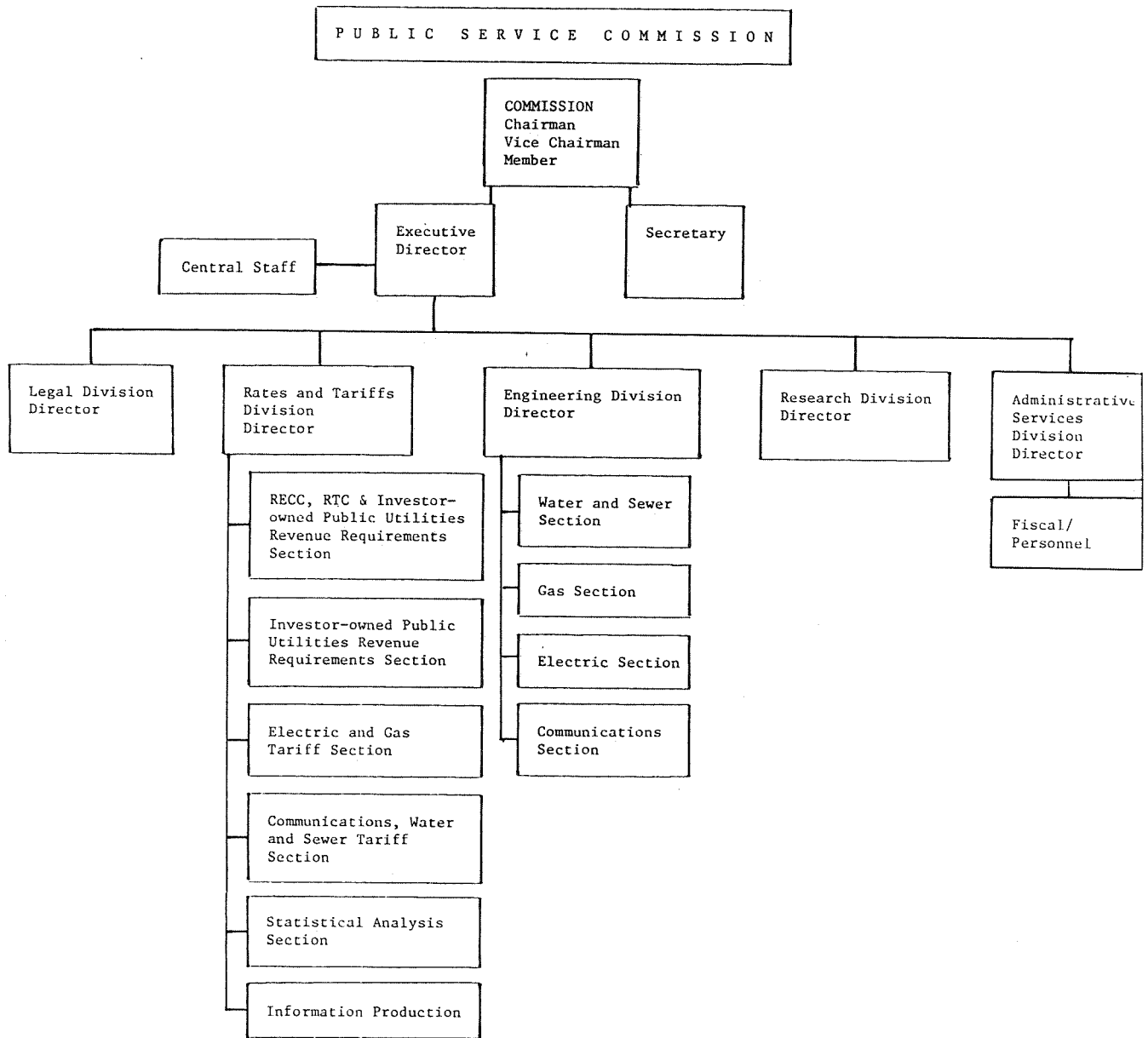
ADOPTED: May 31, 1983

APPROVED: LEONARD B. MARSHALL, JR.
Secretary

RECEIVED BY LRC: June 27, 1983 at 3 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Secretary, Public Service Commission, P.O. Box 615,
730 Schenkel Lane, Frankfort, Kentucky 40602.

ADMINISTRATIVE REGISTER



CABINET FOR HUMAN RESOURCES
Department for Social Insurance
(Proposed Amendment)

904 KAR 1:010. Payment for physicians' services.

RELATES TO: KRS 205.550, 205.560

PURSUANT TO: KRS 13.082, 194.050

NECESSITY AND FUNCTION: The *Cabinet* [Department] for Human Resources has responsibility to administer a program of Medical Assistance under Title XIX of the Social Security Act. KRS 205.550 and 205.560 require that the secretary prescribe the methods for determining costs for vendor payments for medical care services. This regulation sets forth the method for establishing payment for physician services.

Section 1. Amount of Payment. Payment for covered services rendered to eligible medical assistance recipients is

based on the physicians' usual, customary, reasonable and prevailing charges.

Section 2. Definitions. For purposes of determination of payment: (1) Usual and customary charge refers to the uniform amount the individual physician charges in the majority of cases for a specific medical procedure or service.

(2) Prevailing charge refers to those charges which fall within the range of charges as computed by the use of a pre-determined and established statistical percentile. Prevailing charges for each medical procedure are derived from the overall pattern existing within the state.

Section 3. Method and Source of Information on Charges. (1) Effective October 1, 1974, the individual fee profiles for participating physicians were generated from historical data accumulated from charges submitted and processed by the medical assistance program during all of calendar year 1973.

(2) Effective October 1, 1974, the Title XIX prevailing fee maximums were generated from the same historical data as referenced in subsection (1) of this section.

(3) Effective October 1, 1974, the Title XVIII, Part B, current reasonable charge profiles were utilized by the medical assistance program to comply with 45 C.F.R. section 250.30, now recodified as 42 C.F.R. 447.341.

(4) Effective October 1, 1974, the Title XVIII, Part B, current prevailing charge data was utilized by the medical assistance program to comply with 45 C.F.R. section 250.30, now recodified as 42 C.F.R. 447.341.

(5) Percentile:

(a) The Title XIX prevailing charges were established by utilizing the statistical computation of the seventy-fifth (75th) percentile.

(b) The Title XVIII, Part B, prevailing charges were established by utilizing the statistical computation of the seventy-fifth (75th) percentile.

Section 4. Maximum Reimbursement for Covered Procedures. (1) Reimbursement for covered procedures is limited to the lowest of the following:

(a) Actual charge for service rendered as submitted on billing statement;

(b) The physician's median charge for a given service derived from claims processed or from claims for services rendered during all of the calendar year preceding the start of the fiscal year in which the determination is made.

(2) In no case may payment exceed the prevailing charge established under Part B, Title XVIII for similar service on a statewide basis.

(3) In instances where a prevailing charge has not been established for a specific medical procedure by Part B, Title XVIII, the prevailing charge established under Title XIX is utilized as the maximum allowable fee.

(4) The upper limit for new physicians shall not exceed the fiftieth (50th) percentile.

Section 5. Exceptions. Exceptions to reimbursement as outlined in foregoing sections are as follows: (1) Reimbursement for physician's services provided to inpatients of hospitals is made on the basis of 100 percent reimbursement per procedure for the first *twenty dollars (\$20)* [fifty dollars (\$50)] of allowable reimbursement and on the basis of a percentage of the physician's usual, customary and reasonable charge in excess of *twenty dollars (\$20)* [fifty dollars (\$50)] per procedure, after the appropriate prevailing fee screens are applied. The percentage rate applied to otherwise allowable reimbursement in excess of *twenty dollars (\$20)* [fifty dollars (\$50)] per procedure is established at *thirty-five (35)* [sixty (60)] percent. The percentage rate will be reviewed periodically and adjusted according to the availability of funds.

(2) Payment for individuals eligible for coverage under Title XVIII, Part B, Supplementary Medical Insurance, is made in accordance with Sections 1 through 4 and Section 5(1) within the individual's deductible and coinsurance liability.

JOHN CUBINE, Commissioner

ADOPTED: June 29, 1983

APPROVED: BUDDY H. ADAMS, Secretary

RECEIVED BY LRC: June 30, 1983 at 11 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Secretary for Human Resources, CHR Building, 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 *July 1* [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.

(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. 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 occupancy 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 105 [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.] 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) 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.]

JOHN CUBINE, Commissioner

ADOPTED: June 29, 1983

APPROVED: BUDDY H. ADAMS, Secretary

RECEIVED BY LRC: June 30, 1983 at 11 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, CHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
(Proposed Amendment)

904 KAR 1:015. Payments for hospital outpatient services.

RELATES TO: KRS 205.520

PURSUANT TO: KRS 13.082, 194.050

NECESSITY AND FUNCTION: The *Cabinet* [Department] for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520(3) empowers the *cabinet* [department], by regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the method for determining amounts payable by the *cabinet* [department] for hospital outpatient services.

Section 1. Outpatient Hospital Services: *In accordance with the provisions of 42 CFR 447.321, the cabinet shall reimburse participating hospitals for outpatient services at the rate of eighty (80) percent of usual and customary charges billed to the Medical Assistance Program. There is no settlement to the lower of cost or charges, nor may charges or costs be transferred between the inpatient and outpatient service units. [In accordance with the provisions of 45 CFR section 250.30 the department shall reimburse participating hospitals for outpatient services on the basis of reasonable costs as related to charges utilizing the Title XVIII Standards for Reimbursement applied to the Title XIX patient services.]*

Section 2. *The payment provisions shown in Section 1 of this regulation shall not affect cost settlements or payment adjustments for services provided prior to July 1, 1983.*

JOHN CUBINE, Commissioner

ADOPTED: June 29, 1983

APPROVED: BUDDY H. ADAMS, Secretary

RECEIVED BY LRC: June 30, 1983 at 11 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, CHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
(Proposed Amendment)

904 KAR 1:027. Payment for 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 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 dental services.

Section 1. Out-of-Hospital Care. (1) The cabinet shall reimburse participating dentists for covered services rendered to eligible medical assistance recipients at rates based on the dentist's usual customary, reasonable, and prevailing charges.

(2) Definitions: For purpose of determination of payment:

(a) "Usual and customary charge" refers to the uniform amount which the individual dentist charges in the majority of cases for a specific dental procedure or service.

(b) "Prevailing charge" refers to those charges which fall within the range of charges as computed by the use of a pre-determined and established statistical percentile. Prevailing charges for each dental procedure are derived from the overall pattern existing within the state.

(3) Method and source of information on charges:

(a) Effective with fee revisions December 1, 1974 and after, individual fee profiles for participating dentists will be generated from historical data accumulated from charges submitted and processed by the Medical Assistance Program during all of the calendar year preceding the start of the fiscal year in which the determination is made.

(b) Effective with revisions December 1, 1974 and after, Title XIX prevailing fee maximums will be generated from the same historical data as referenced in paragraph (a) of this subsection.

(c) Effective with revisions December 1, 1974 and after, when applicable, Title XVIII, Part B current aggregate prevailing charge data will be utilized by the Medical Assistance Program.

(d) Percentile. The Title XIX prevailing charges were established by utilizing the statistical computation of the 50th and 75th percentile.

(4) Maximum reimbursement for covered procedures: Reimbursement for covered procedures shall be limited to the lowest of the following:

(a) The actual charge for services rendered as submitted on the billing statement.

(b) The dentist's median charge for a given service derived from claims processed during all of the calendar year preceding the start of the fiscal year in which the determination is made.

(c) The Title XIX prevailing fee maximum for a given service, derived from claims processed as described in paragraph (b) of this subsection.

Section 2. Hospital Inpatient Care. (1) Hospitalized inpatient care refers to those services provided inpatients. It does not include dental services provided in the outpatient, extended care or home health units of hospitals. Any dentist or oral surgeon submitting a claim for either of the two (2) hospital inpatient care benefits—attendance or consultation—must agree to accept payment in full for services rendered that patient during that admission.

(2) An oral surgeon may additionally provide those services included under the in-hospital surgery section of the dental benefit schedule and be reimbursed on a per-procedure basis. Reimbursement for these services shall be at a rate of 100 percent of the first *twenty dollars (\$20)* [fifty dollars (\$50)] of the allowable charges plus *thirty-five (35)* [sixty (60)] percent of the amount of allowable charges over *twenty dollars (\$20)* [fifty dollars (\$50)]. Maximum allowable charges will initially be the same as physician maximums, with the maximums being based on dentists' charges after sufficient data for the establishing of allowable charge maximums has been collected by the cabinet. Services not included under in-hospital surgery and performed by an oral surgeon on an inpatient basis should be billed as attendance or consultation as ap-

plicable. The "attendance fee" shall be fifty dollars (\$50) and the "consultation fee" shall be twenty-five dollars (\$25).

(3) A general dentist may submit a claim for hospital inpatient services for the patient termed "medically a high risk." Medically high risk is defined as a patient in one (1) of the following classifications:

(a) Heart disease;

(b) Respiratory disease;

(c) Chronic bleeder;

(d) Uncontrollable patient (retardate, emotionally disturbed); or

(e) Other (car accident, high temperature, massive infection, etc.).

(4) A general dentist shall receive "attendance fee" or "consultation fee" for the hospital inpatient service in the amount of forty dollars (\$40) as "attendance fee" and twenty dollars (\$20) as "consultation fee."

(5) "Attendance fee" is considered to be full payment for daily attendance of a hospital inpatient, per admission, regardless of length of stay, diagnosis, or type of professional service rendered. This fee is to be requested by the attending dentist or oral surgeon for any given admission. The attendance fee is not applicable to services included under in-hospital surgery.

(6) "Consultation fee" is considered to be in full payment of consultation provided on behalf of a hospital inpatient or at the request of the consulting oral surgeon/dentist. This fee may be paid to more than one (1) oral surgeon/dentist per admission. The fee is thus considered full payment for all consultation provided by a given oral surgeon/dentist (other than the attending oral surgeon/dentist) during a given admission. For purpose of payment in this program the administration of anesthesia by an oral surgeon will be considered consultation.

[Section 3. The provisions contained in Sections 1 and 2 of this regulation shall be effective July 1, 1983.]

JOHN CUBINE, Commissioner

ADOPTED: June 29, 1983

APPROVED: BUDDY H. ADAMS, Secretary

RECEIVED BY LRC: June 30, 1983 at 11 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Secretary for Human Resources, CHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

CABINET FOR HUMAN RESOURCES Department for Social Insurance (Proposed Amendment)

904 KAR 1:036. Amounts payable for skilled nursing and intermediate care facility 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 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 July 1 [January 1], 1983, 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 105 [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 105 [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 105 [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 considered 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 classes) 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 ($\frac{2}{3}$) 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 uniform 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 participating facilities, 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 non-profit 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 7-1-83 [1-1-83])

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 - 33.17 [34.29]	.53	—

Maximum Payment \$33.17 [34.29]

* 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 7-1-83 [1-1-83])

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 - 49.35 [49.99]	.53	—

Maximum Payment \$49.35 [52.51]**

* 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 \$79.47 [81.02].

(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 105 [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 105 [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 105 [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: June 29, 1983

APPROVED: BUDDY H. ADAMS, Secretary

RECEIVED BY LRC: June 30, 1983 at 11 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING

TO: Secretary for Human Resources, CHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

CABINET FOR HUMAN RESOURCES Department for Social Insurance (Proposed Amendment)

904 KAR 1:045. Payments for mental health center services.

RELATES TO: KRS 205.520

PURSUANT TO: KRS 13.082, 194.050

NECESSITY AND FUNCTION: The 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 mental health center services.

Section 1. Mental Health Centers. In accordance with 42 CFR 447.321, the cabinet shall make payment to providers who are appropriately licensed and have met the conditions for participation (including the signing of such contractual arrangements as the cabinet may require of this class of provider) set by the cabinet, on the following basis:

(1) Payment shall be on a prospective basis based on *reasonable allowable prior year costs not to exceed* usual and customary charges or *the* [compared against the mental health center's annualized] upper limits on payments. *Allowable costs shall be trended to the beginning of the rate year* [Payments may not exceed usual and customary charges or the annualized upper limits].

(2) Payment amounts shall be determined by application of the "Community Mental Health Center General Policies and Guidelines and Principles of Reimbursement" (*revised July 1, 1983*) [herein incorporated by reference,] developed and issued by the cabinet (*incorporated by reference to the extent that such policies, guidelines and principles are applicable to Title XIX services and reimbursement, and filed herein*), supplemented by the use of Title XVIII reimbursement principles.

[(3) Under this system, a center will receive in total Title XIX payments during the year the amount of its usual and customary charges for services rendered Title XIX eligible recipients, so long as such usual and customary charges do not exceed (on a cumulative basis) the annualized upper limit (total payments amount) which has been set for the center.]

(3) [(4) The annualized upper limit shall be the lesser of the prior fiscal year (July 1—June 30) audited allowable Title XIX costs or Title XIX payments to the center, with such amount increased by ten (10) percent to allow for inflation in the payment period.] Allowable costs shall not exceed customary charges which are reasonable. Allowable costs shall not include the costs associated with political contributions, membership dues, 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.

(4) *The prospective rate shall not exceed 105 percent of the median of the reasonable allowable cost for each reimbursable departmental cost center (i.e., inpatient, outpatient, partial hospitalization and personal care) for all participating facilities.*

Section 2. Implementation of Payment System. (1) *Payments may be based on units of service such as fifteen (15) minute or hourly increments, or at a daily rate, depending on the type of service.* [Interim payments made shall be based on charges, and shall be considered final payments except under the following circumstances:]

[(a) The program may pay a percentage of charges to assure that the annualized upper limit (the lesser of fiscal year 1982 costs or program expenditures) with respect to the center is not exceeded. When a reduction factor is used, any payments owing to the center at the end of the payment period shall be settled (paid) to ensure that payments

for the period equal usual and customary charges subject to the upper limit for the center. Reduction factors shall (to the extent possible) be applied in such a manner as to ensure an even flow of reimbursement to the center throughout the year, i.e., generally so as to ensure that the payments for any one (1) month do not exceed by a substantial amount the prorated annual amount.]

[(b) Any overpayments due the program at the end of the period as a result of exceeding the upper limit shall be recouped in a similar manner, i.e., by settlement or by withholding.]

[(c) Overpayments discovered as a result of audits may be settled in the usual manner.]

(2) *Overpayments discovered as a result of audits may be settled in the usual manner, i.e., through recoupment or withholding.*

(3) [(2)] The vendor shall complete an annual cost report on forms provided by the cabinet not later than sixty (60) days from the end of the vendor's accounting year and the vendor shall maintain an acceptable accounting system to account for the cost of total services provided, charges for total services rendered, and charges for covered services rendered eligible recipients.

(4) [(3)] Each community mental health center provider shall make available to the cabinet at the end of each fiscal reporting period, and at such intervals as the cabinet may require, all patient and fiscal records of the provider, subject to reasonable prior notice by the cabinet.

(5) [(4)] Payments due the community mental health center shall be made at reasonable intervals but not less often than monthly.

(6) *Rates for the first rate year (July 1, 1983—June 30, 1984) shall be determined using an unaudited nine (9) month cost report for the period July 1, 1982—March 31, 1983, trended to the beginning of the rate year.*

[Section 3. Billing and Data Collection. For purposes of Title XIX program payments, this regulation and the "Title XIX Payments Addendum" to the reimbursement manual shall supersede any conflicting sections (e.g., sections 100, 103, 205, and 207) of the reimbursement manual. However, no provision of this regulation should be construed as relieving any center of the necessity of collecting and submitting such data as the program may require, for implementation of the unit system for payments, during the payment period covered by this regulation.]

Section 3. [4.] Nonallowable Costs. The cabinet shall not make reimbursement under the provisions of this regulation for services not covered by 904 KAR 1:044, community mental health center services, nor for that portion of a community mental health center's costs found unreasonable or nonallowable in accordance with the cabinet's "Community Mental Health Center General Policies and Guidelines and Principles of Reimbursement."

[Section 5. Implementation Date. Payments under this system shall begin effective July 1, 1982.]

JOHN CUBINE, Commissioner

ADOPTED: June 29, 1983

APPROVED:

BUDDY H. ADAMS, Secretary

RECEIVED BY LRC: June 30, 1983 at 11 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Secretary for Human Resources, CHR Building, 275
East Main Street, Frankfort, Kentucky 40621.

CABINET FOR HUMAN RESOURCES Department for Social Insurance (Proposed Amendment)

904 KAR 1:055. Payments for primary care center services.

RELATES TO: KRS 205.520

PURSUANT TO: KRS 13.082, 194.050

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

Section 1. Primary Care Centers. In accordance with 42 CFR 447.325 [450.30], the *cabinet* [department] shall make payment to providers who are appropriately licensed and have met the conditions for participation set by the *cabinet* [department], on the following basis:

(1) Payment shall be made on the basis of reasonable allowable cost.

(2) Payment amounts shall be determined by application of the "Primary Care Center General Policies and Guidelines and Principles of Reimbursement" (revised July 1, 1983, and hereby incorporated by reference) developed and issued by the *cabinet* [department], supplemented by the use of title XVIII-A reimbursement principles.

(3) Allowable costs shall not exceed customary charges which are reasonable.

(4) *Reimbursement for medical and nursing cost center costs shall be subject to adjustment for a growth allowance. The growth allowance shall be computed in July each year, and shall be based on a projection of the change in the medical component of the Consumer Price Index (for the rate year as compared to the previous year) as applied to the weighted median service cost of medical and nursing services, on a per visit basis, for all participating providers. Increases in medical and nursing center costs in excess of the growth allowance shall be disallowed. For those facilities with medical and nursing cost increases which are less than the growth allowance, the difference between the two (2) shall be reimbursable as a cost containment incentive payment at the time of the usual cost settlement.*

(5) *During the first six (6) months after the implementation of the policy contained in Section 1(4) of this regulation, centers with fiscal year endings occurring in the six (6) month period shall not have medical and nursing center costs disallowed as a result of imposition of the growth allowance upper limit, but shall be entitled to receive any applicable incentive payment.*

(6) *The amount of any allowable incentive payment determined pursuant to the policy specified in Section 1(4) of this regulation may not exceed the growth allowance, and must be added to allowable costs for application of the lower of costs or charges principle.*

Section 2. Implementation of the Payment System. (1) The reimbursement system developed by the *cabinet* [department] for primary care centers is supported by the Title XVIII-A reimbursement principles which will serve as

guidelines for determining reasonable allowable cost in areas not addressed specifically by the *cabinet* [department].

(2) The system shall utilize a method whereby primary care providers are paid an interim rate based on a reasonable estimation of current year costs followed by a year end adjustment to actual reasonable allowable costs. When the need can be demonstrated, adjustment to an interim rate will be made.

(3) The vendor shall complete an annual cost report on forms provided by the *cabinet* [department] not later than sixty (60) days from the end of the vendor's accounting year and the vendor shall maintain an acceptable accounting system to account for the cost of total services provided, charges for total services rendered, and charges for covered services rendered eligible recipients.

(4) Each primary care center provider shall make available to the *cabinet* [department] at the end of each fiscal reporting period, and at such intervals as the *cabinet* [department] may require, all patient and fiscal records of the provider, subject to reasonable prior notice by the *cabinet* [department].

(5) Interim payments due the primary care center shall be made at reasonable intervals but not less often than monthly.

Section 3. Prohibition Against Joint Participation. Dual or joint participation in the medical assistance program by a primary care center is not permitted. When a primary care center elects to participate as such in the medical assistance program it may not participate concurrently under other regular ongoing elements of the medical assistance program, including the rural health clinic services element. In addition, when a center elects to participate as such in the medical assistance program, it is considered to elect participation for all eligible service elements, components, or sub-units of the center.

Section 4. Nonallowable Costs. The *cabinet* [department] shall not make reimbursement under the provisions of this regulation for services not covered by 904 KAR 1:054, primary care center services, nor for that portion of a primary care center's costs found unreasonable or nonallowable in accordance with the *cabinet's* [department's] "Primary Care Center General Policies and Guidelines and Principles of Reimbursement." In addition, when the utilization review processes of the *cabinet* [department] find that costs have been incurred through provision of unnecessary medical treatment services, such costs shall be disallowed.

JOHN CUBINE, Commissioner

ADOPTED: June 29, 1983

APPROVED: BUDDY H. ADAMS, Secretary

RECEIVED BY LRC: June 30, 1983 at 11 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Secretary for Human Resources, CHR Building, 275
East Main Street, Frankfort, Kentucky 40621.

CABINET FOR HUMAN RESOURCES Department for Social Insurance (Proposed Amendment)

904 KAR 1:095. Payments for nurse-midwife services.

RELATES TO: KRS 205.520, 205.560

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 nurse-midwife services.

Section 1. General Requirements Relating to Payments. Participating nurse-midwife providers shall be paid only for covered services rendered to eligible recipients, and services provided must be within the scope of practice of the nurse-midwife.

Section 2. Outpatient Reimbursement. (1) Payments to nurse-midwives shall be at actual billed charges on a procedure-by-procedure basis, with reimbursement for a procedure not to exceed seventy-five (75) percent of the amount reimbursable to general practice physicians (non-specialists) at the seventy-fifth (75th) percentile for the procedure.

(2) All procedures shall have the upper limits recomputed at the same time the seventy-fifth (75th) percentile is recomputed for physicians.

Section 3. Inpatient Reimbursement. Reimbursement for nurse-midwife services provided to inpatients of hospitals is made on the basis of 100 percent reimbursement per procedure for the first *twenty dollars (\$20)* [fifty dollars (\$50)] of allowable reimbursement and on the basis of a percentage of the nurse-midwife's usual, customary and reasonable charge in excess of *twenty dollars (\$20)* [fifty dollars (\$50)] per procedure, after the appropriate prevailing fee screen is applied. The "prevailing fee screen" means, in this instance, application of the limitation shown in Section 2(1) of this regulation. The percentage rate applied to otherwise allowable reimbursement in excess of *twenty dollars (\$20)* [fifty dollars (\$50)] per procedure is established at *thirty-five (35)* [sixty (60)] percent. The percentage rate will be reviewed periodically and adjusted according to the availability of funds.

[Section 4. Implementation Date. Covered services provided by participating providers may be paid for on the basis of this payment system for services rendered on or after July 16, 1982.]

JOHN CUBINE, Commissioner

ADOPTED: June 29, 1983

APPROVED: BUDDY H. ADAMS, Secretary

RECEIVED BY LRC: June 30, 1983 at 11 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Secretary for Human Resources, CHR Building, 275
East Main Street, Frankfort, Kentucky 40621.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
(Proposed Amendment)

904 KAR 2:015. Supplemental programs for the aged, blind and disabled.

RELATES TO: KRS 205.245

PURSUANT TO: KRS 13.082, 194.050

NECESSITY AND FUNCTION: The Cabinet for Human Resources is responsible under Title XVI of the Social Security Act as amended by Public Law 92-603 to administer a state funded program of supplementation to all December, 1973, recipients of aid to the aged, blind and disabled, hereinafter referred to as AABD, disadvantaged by the implementation of the Supplemental Security Income Program, hereinafter referred to as SSI. KRS 205.245 provides not only for the mandatory supplementation program but also for supplementation to other needy aged, blind and disabled persons. This regulation sets forth the provisions of the supplementation program.

Section 1. Mandatory State Supplementation. Mandatory state supplementation payments must be equal to the difference between the AABD payment for the month of December, 1973, plus any other income available to the recipient as of that month and the total of the SSI payment and other income. Also included are those former aged, blind or disabled recipients ineligible for SSI due to income but whose special needs entitled them to an AABD payment as of December, 1973. Mandatory payments must continue until such time as the needs of the recipient as recognized in December, 1973, have decreased or income has increased to the December level.

(1) The mandatory payment is increased only when income as recognized in December, 1973, decreases, the SSI payment is reduced but the recipient's circumstances are unchanged, or the standard of need utilized by the department in determining optional supplementation payments for a class of recipients is increased.

(2) In cases of man and wife, living together, income changes after September, 1974, will result in increased mandatory payment only if total income of the couple is less than December, 1973, total income.

Section 2. Optional State Supplementation. Optional state supplementation is available to those persons meeting technical requirements and resource limitations of the aged, blind or disabled medically needy program as contained in 904 KAR 1:011 and 904 KAR 1:004 who require special living arrangements and who have insufficient income to meet their need for care. Special living arrangements include residence in a personal care home as defined in 902 KAR 20:036 or family care home as defined in 902 KAR 20:041 or situations in which a caretaker must be hired to provide care other than room and board. A supplemental payment is not made to or on behalf of an otherwise eligible individual when the caretaker service is provided by the spouse, parent (of an adult disabled child or a minor child), or adult child (of an aged or disabled parent) who is living with the otherwise eligible individual. When this circumstance exists and a person living outside the home is hired to provide caretaker services, the supplemental payment may be made. Application for SSI, if potential eligibility exists, is mandatory.

Section 3. Income Considerations. In determining the amount of optional supplementation payment, total net in-

come of the applicant or recipient, or applicant or recipient and spouse, including any payments made to a third party in behalf of an applicant or recipient, is deducted from the standard of need with the following exceptions:

(1) Income of the ineligible spouse is conserved for the needs of the ineligible, non-SSI spouse and/or minor dependent children in the amount of one-half ($\frac{1}{2}$) of the SSI standard for an individual for each person adjusted by deduction of sixty-five dollars (\$65) and one-half ($\frac{1}{2}$) of the remainder from monthly earnings of spouse. Income of the eligible individual is not conserved for the needs of the ineligible spouse and/or minor dependent children. When conserving for the needs of the minor dependent children, income of the children must be appropriately considered so that the amount conserved does not exceed the allowable amount. When the eligible individual and spouse each have earnings, the earnings must be combined prior to the application of the earnings disregard of sixty-five dollars (\$65) and one-half ($\frac{1}{2}$) of the remainder.

(2) If one (1) member of a couple is institutionalized and the SSI spouse maintains a home, income in the amount of the SSI standard for one (1) is conserved for the spouse.

Section 4. Standard of Need. (1) The standard, based on living arrangement, from which income as computed in Section 3 is deducted to determine the amount of optional payment is as follows:

(a) Personal care home: [not less than \$436, effective 7/1/81;] not less than \$456, effective 7/1/82; *not less than \$466, effective 7/1/83;*

(b) Family care home: [not less than \$349, effective 7/1/81;] not less than \$369, effective 7/1/82; *not less than \$379, effective 7/1/83;*

(c) Caretaker:

1. Single individual, or eligible individual with ineligible spouse (one who is not aged, blind, or disabled): [not less than \$303, effective 7/1/81;] not less than \$323, effective 7/1/82; *not less than \$333, effective 7/1/83;*

2. Married couple, both eligible (aged, blind, or disabled), with one (1) requiring care: [not less than \$435, effective 7/1/81;] not less than \$465, effective 7/1/82; *not less than \$480, effective 7/1/83;*

3. Married couple, both eligible and both requiring care: [not less than \$473, effective 7/1/81;] not less than \$503, effective 7/1/82; *not less than \$518, effective 7/1/83.*

(2) In couple cases, both eligible, the couple's income is combined prior to comparison with the standard of need, and one-half ($\frac{1}{2}$) of the deficit is payable to each.

Section 5. Institutional Status. No aged, blind or disabled person shall be eligible for state supplementation while residing in a personal care home or family care home unless such home is licensed under KRS 216B.010 to 216B.131.

Section 6. Residency. (1) To be eligible, an applicant or recipient must be a citizen of the United States, or an alien legally admitted to this country or an alien who is residing in this country under color of law. An alien must have been admitted for permanent residence. The applicant or recipient must also be a resident of Kentucky. Generally, this means the individual must be residing in the state for other than a temporary purpose; however, there are exceptions with regard to applicants for or recipients of a state supplementary payment and institutionalized individuals.

(2) Supplemental payments may be made to Kentucky residents residing outside the state only when the individual has been placed in the other state by this state. In these

situations, the other requirements for eligibility shown in other sections of this regulation shall be applicable, except that with regard to the requirement shown in Section 5, the licensure shall be in accordance with a similar licensure act of the other state. If there is no similar licensure act in the other state, the payment may be made only if this state determines that, except for being in another state, the facility meets standards for licensure under the provisions of KRS 216B.010 to 216B.131. To be eligible for a supplemental payment while placed out-of-state the individual must require the level of care provided in the out-of-state placement, there must be no suitable placement available in Kentucky, and the placement must be pre-authorized by staff of the Department for Social Insurance.

(3) When determining residency, ability of the individual to indicate intent (to become a Kentucky resident) must be considered if the individual is institutionalized. The individual is considered incapable of indicating intent if:

(a) His I.Q. is forty-nine (49) or less or he has a mental age of seven (7) or less, based on tests acceptable to the department; or

(b) He is judged legally incompetent; or

(c) Medical documentation, or other documentation acceptable to the state, supports a finding that he is incapable of indicating intent.

(4) An individual is institutionalized if he is residing in a facility providing some services other than room and board. Personal care facilities are considered to be institutions.

(5) For any non-institutionalized individual under age twenty-one (21) whose eligibility for a supplemental payment is based on blindness or disability, his state of residence is Kentucky if he is actually residing in the state.

(6) For any non-institutionalized individual age twenty-one (21) or over, his state of residence is Kentucky if he is residing in the state and has the intention to remain permanently or for an indefinite period (or, if incapable of indicating intent, is simply residing in the state).

(7) For any institutionalized individual living in Kentucky who is under age twenty-one (21) or who is age twenty-one (21) or older and became incapable of indicating intent before age twenty-one (21), the state of residence is Kentucky if:

(a) The state of residence of the individual's parents, or his legal guardian if one has been appointed, is Kentucky; or

(b) The state of residence of the parent applying for the supplemental payment on behalf of the individual is Kentucky, when the other parent lives in another state and there is no appointed legal guardian.

(8) For any institutionalized individual living in Kentucky who became incapable of indicating intent at or after age twenty-one (21), the state of residence is Kentucky if he was living in Kentucky when he became incapable of indicating intent. If this cannot be determined, the state of residence is Kentucky unless he was living in another state when he was first determined to be incapable of indicating intent.

(9) For individuals subject to determinations of residency pursuant to subsections (7) and (8) of this section, the state of residency is Kentucky when the individual is residing in Kentucky, and a determination of residency applying those criteria does not show the individual to be a resident of another state.

(10) For an individual subject to a determination of residency pursuant to subsections (7) and (8) of this section, the state of residence is Kentucky when Kentucky and the state which would otherwise be the individual's state of

residency have entered into an interstate residency agreement providing for reciprocal residency status; i.e., when a similarly situated individual in either state would by written agreement between the states be considered a resident of the state in which he is actually residing.

(11) For other institutionalized individuals (i.e., those individuals who are both age twenty-one (21) or over and capable of indicating intent), the state of residence is Kentucky if the individual is residing in Kentucky with the intention to remain permanently or for an indefinite period.

(12) Notwithstanding subsections (3) through (11) of this section, any individual placed by the cabinet in an institution in another state may, with appropriate preauthorization, be considered a resident of Kentucky, and any individual placed in an institution in Kentucky by another state shall not be considered a resident of Kentucky.

(13) An individual receiving a mandatory state supplemental payment from Kentucky shall be considered a resident of Kentucky so long as he continues to reside in Kentucky. An individual receiving a mandatory or optional supplemental payment from another state shall not be considered a resident of Kentucky.

(14) An individual eligible for and receiving a supplemental payment in October, 1979, shall be considered a Kentucky resident through June 23, 1983, even if he does not meet the residency requirements specified in this section, so long as such individual continues to reside in Kentucky and his receipt of supplementary payments has not since October, 1979 been interrupted by a period of ineligibility.

(15) Notwithstanding the preceding provisions of this section, a former Kentucky resident who becomes incapable of indicating intent while residing out of this state shall be considered a Kentucky resident if he returns to this state and he has a guardian, parent or spouse residing in this state. Such individual shall not be considered a Kentucky resident on the basis of this subsection whenever, subsequent to that time, he leaves this state to reside in another state except when the provisions of subsection (11) of this section are met. An individual leaving the state may, however, reestablish Kentucky residency by returning to the state if he has a guardian, parent or spouse residing in this state.

[Section 7. Date and Method of Implementation. The policies shown in this regulation, as amended, shall be effective December 1, 1982, except that for current recipients (individuals eligible on November 30, 1982) the policies shall be implemented at the time of the next interim or regularly scheduled redetermination of eligibility.]

JOHN CUBINE, Commissioner

ADOPTED: June 16, 1983

APPROVED:

BUDDY H. ADAMS, Secretary

RECEIVED BY LRC: June 20, 1983 at 10 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Secretary for Human Resources CHR Building, 275
East Main Street, Frankfort, Kentucky 40621.

Proposed Regulations

TRANSPORTATION CABINET Department of Vehicle Regulation Division of Motor Vehicle Licensing

✓ 601 KAR 9:080. Assigned or replacement vehicle identification number.

RELATES TO: KRS 186A.090

PURSUANT TO: KRS 13.082, 186A.090, KRS 186.1911

NECESSITY AND FUNCTION: This regulation prescribes how to apply for a vehicle identification number plate through the Department of Vehicle Regulation when the previous number is missing or when the vehicle has never had a vehicle identification number; and how a vehicle identification number plate shall be placed on the vehicle after approval and production by the Department of Vehicle Regulation as required by KRS 186A.090.

Section 1. When applying for a vehicle identification number, the owner shall do the following:

(1) Complete, in full, form TC 96-169, Application for Motor Number or Vehicle Identification Number. This application must be signed and notarized.

(2) All completed applications must be submitted to the county court clerk or delivered in person to the Department of Vehicle Regulation, Division of Motor Vehicle Licensing, Frankfort, Kentucky.

(3) Submit, together with a completed application, proof of vehicle ownership, such as title, registration, affidavit, or court order.

(4) Submit, together with a completed application, a notarized statement explaining why there is no serial or identification number on the vehicle.

(5) Submit, together with a completed application, the address where the vehicle may be examined.

Section 2. When the Department of Vehicle Regulation approves the application, a vehicle identification number will be assigned and the application will be returned to the county court clerk, and the owner shall do the following:

(1) After the vehicle identification number is assigned, the Kentucky State Police (Auto Theft Section) will designate how and where the assigned number shall be affixed on the vehicle.

(2) After the assigned number has been affixed to the vehicle, the certified inspector from the county where the registration and/or title is to be obtained shall inspect the vehicle identification number and verify that the number has been affixed to the vehicle in the prescribed location designated by the Kentucky State Police.

(3) A fully completed inspection form TC 96-182, Application for Title, shall be forwarded to the county clerk. The county clerk shall register the vehicle and then forward the application to the Department of Vehicle Regulation.

TIMOTHY D. HELSON, Commissioner

ADOPTED: June 17, 1983

APPROVED:

JAMES B. RUNKE, Secretary

RECEIVED BY LRC: June 22, 1983 at 3 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING

TO: Stephen Reeder, Deputy Secretary for Legal Affairs, 1008 State Office Building, Frankfort, Kentucky 40622.

TRANSPORTATION CABINET Department of Vehicle Regulation Division of Motor Vehicle Licensing

✓ 601 KAR 9:085. Procedures for becoming a certified motor vehicle inspector.

RELATES TO: KRS 186A.115

PURSUANT TO: KRS 13.082, 186A.115

NECESSITY AND FUNCTION: This regulation sets forth requirements by which a person shall become a certified motor vehicle inspector.

Section 1. The requirements for an individual to become a certified motor vehicle inspector are:

(1) The county sheriff of the county for which the individual is to be certified shall designate, on a form provided by the Department of Vehicle Regulation, the name of each applicant to be certified.

(a) A certified motor vehicle inspector must have reached his or her eighteenth birthday.

(b) A certified motor vehicle inspector must be a resident of the county for which he or she is certified.

(c) A designee shall not have a felony criminal record nor any pending felony charges at the time of his or her designation.

(d) A licensed motor vehicle dealer, or any employee in his dealership, is ineligible to become a certified motor vehicle inspector.

(2) The designee must satisfactorily complete a training program conducted by the Department of Vehicle Regulation in conjunction with the Kentucky State Police.

(3) Upon satisfactory completion of the program and notification of same by the instructor, the Commissioner of the Department of Vehicle Regulation shall issue a certificate certifying the designee to serve as a certified motor vehicle inspector.

(4) The county sheriff may withdraw a designation at any time by notifying, in writing, the Commissioner of the Department of Vehicle Regulation.

(5) When notification of withdrawal of designation is received by the Department of Vehicle Regulation, the commissioner shall revoke the individual's certification.

(6) No certified motor vehicle inspector shall be allowed to inspect a motor vehicle after his or her certification has been suspended or revoked.

(7) Upon written notice to the county sheriff, the Commissioner of the Department of Vehicle Regulation may require additional in-service training or recertification of any certified motor vehicle inspector.

(8) For cause, the Commissioner of the Department of Vehicle Regulation may designate an individual to be a certified motor vehicle inspector.

TIMOTHY D. HELSON, Commissioner

ADOPTED: June 17, 1983

APPROVED:

JAMES B. RUNKE, Secretary

RECEIVED BY LRC: June 22, 1983 at 3 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING

TO: Stephen Reeder, Deputy Secretary for Legal Affairs, 1008 State Office Building, Frankfort, Kentucky 40622.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Vehicle Licensing

601 KAR 9:090. Procedures for inspecting vehicles.

RELATES TO: KRS 186A.115

PURSUANT TO: KRS 13.082, 186A.115

NECESSITY AND FUNCTION: This regulation sets forth an alternate procedure for inspecting vehicles.

Section 1. If an owner of a vehicle does not have the title to that vehicle available at the time of the vehicle's physical inspection, the certified motor vehicle inspector shall be allowed to inspect the vehicle and complete the certified inspector section of the application for title. However, the certified inspector shall not sign nor date the application for title until the title for that vehicle has been surrendered to the certified motor vehicle inspector for examination and verification.

Section 2. If the federal safety standard label which appears on the door of the vehicle is either missing or is rendered illegible, the certified motor vehicle inspector shall document this discrepancy on the application. The certified motor vehicle inspector may then certify the inspection by using both the vehicle identification number plate and the corresponding number on the vehicle title document.

Section 3. The certified motor vehicle inspector may inspect and certify a specially constructed or reconstructed vehicle when no outstanding motor vehicle title or manufacturing statement of origin document exists. However, an application for specially constructed or reconstructed vehicle must be completed.

Section 4. Owners who are applying for a "salvage" title are not required to have a certified motor vehicle inspection.

Section 5. A certified motor vehicle inspector is prohibited from inspecting any vehicle for which he has an interest or ownership or if the vehicle is owned by his or her immediate family.

TIMOTHY D. HELSON, Commissioner

ADOPTED: June 17, 1983

APPROVED: JAMES B. RUNKE, Secretary

RECEIVED BY LRC: June 22, 1983 at 3 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
 TO: Stephen Reeder, Deputy Secretary for Legal Affairs,
 1008 State Office Building, Frankfort, Kentucky 40622.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Vehicle Licensing

601 KAR 9:095. Information entered into the Automated Vehicle Information System (AVIS).

RELATES TO: KRS 186A.145

PURSUANT TO: KRS 13.082, 186A.145

NECESSITY AND FUNCTION: This regulation prescribes the manner in which information contained on

the application for title is to be entered into the Automated Vehicle Information System (AVIS).

Section 1. Information contained on the application for title is to be entered into the AVIS in the following manner:

(1) All information required to be printed on the title document pursuant to KRS 186A.725 shall be entered into the AVIS by the county clerk in accordance with the format displayed.

(2) All information required to be printed on the registration document which has not previously been captured in the AVIS shall be entered into the AVIS by the county clerk.

(3) The AVIS shall be programmed in such a manner that will prohibit the production of the title or the registration until all required information is complete.

TIMOTHY D. HELSON, Commissioner

ADOPTED: June 17, 1983

APPROVED: JAMES B. RUNKE, Secretary

RECEIVED BY LRC: June 22, 1983 at 3 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
 TO: Stephen Reeder, Deputy Secretary for Legal Affairs,
 1008 State Office Building, Frankfort, Kentucky 40622.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Vehicle Licensing

601 KAR 9:100. Alternate procedures.

RELATES TO: KRS 186A.135, 186A.140

PURSUANT TO: KRS 13.082, 186A.135, 186A.140

NECESSITY AND FUNCTION: This regulation provides an alternate method for the issuance of registration certificates when the Automated Vehicle Information System (AVIS) has been rendered inoperable.

Section 1. In the event the Automated Vehicle Information System (AVIS) becomes inoperable, the following procedures shall be followed:

(1) When the AVIS becomes temporarily inoperable, the county clerk shall use temporary receipts to issue registrations.

(2) The Commissioner of the Department of Vehicle Regulation shall determine the extent of calamity and prescribe the method of production of registrations during the period that the AVIS is inoperable. This determination shall be consistent with the concept that liens associated with motor vehicles will be filed with the county clerk and that a title will be issued by the Department of Vehicle Regulation.

(3) Should the AVIS be rendered inoperable for an extended period of time, the county clerk shall request permission from the Commissioner of the Department of Vehicle Regulation to manually type registrations during the period of outage.

(4) The county clerk shall not produce any registrations until the Commissioner of the Department of Vehicle Regulation has approved the production method, if by means other than the AVIS.

(5) When the AVIS again becomes operable, the county

clerk shall be responsible for entering into the AVIS all transactions that occurred during the outage.

TIMOTHY D. HELSON, Commissioner

ADOPTED: June 17, 1983

APPROVED: JAMES B. RUNKE, Secretary

RECEIVED BY LRC: June 22, 1983 at 3 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Stephen Reeder, Deputy Secretary for Legal Affairs,
1008 State Office Building, Frankfort, Kentucky 40622.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Vehicle Licensing

601 KAR 9:105. Filing of duplicate applications.

RELATES TO: KRS 186A.160

PURSUANT TO: KRS 13.082, 186A.160

NECESSITY AND FUNCTION: This regulation prescribes the manner in which the county clerk's copy of the application for title is to be filed and the manner in which the county clerk shall forward a copy of the application for title to the Revenue Cabinet.

Section 1. The manner in which the county clerk's copy of the application for title is to be filed and the manner in which the county clerk shall forward a copy of the application for title to the Revenue Cabinet is as follows:

(1) The county clerk may file his copy of the application for title by title number or in alphabetical order, whichever may be the most efficient method for title retrieval.

(2) The county clerk shall forward a copy of the application for title to the Revenue Cabinet with the weekly report. The application for title shall be separated from the registration certificate.

TIMOTHY D. HELSON, Commissioner

ADOPTED: June 17, 1983

APPROVED: JAMES B. RUNKE, Secretary

RECEIVED BY LRC: June 22, 1983 at 3 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Stephen Reeder, Deputy Secretary for Legal Affairs,
1008 State Office Building, Frankfort, Kentucky 40622.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Superintendent

701 KAR 5:050. Summary hearing procedures.

RELATES TO: KRS 156.132, 156.134, 156.210

PURSUANT TO: KRS 13.082, 156.070, 156.132

NECESSITY AND FUNCTION: KRS 156.132 requires that the State Board of Education, after a summary hearing as provided for by regulations, suspend any district board of education member or superintendent who is believed to be guilty of immorality, misconduct in office,

incompetence, or willful neglect of duty; 156.134 authorizes the State Board to issue subpoenas and administer oaths in removal proceedings; and KRS 156.210 authorizes the Superintendent of Public Instruction to administer oaths and examine witnesses, issue subpoenas, and to have access to public school records. This regulation implements KRS 156.132 by establishing summary hearing procedures for suspension prior to full-blown removal hearing procedures instituted under KRS 156.134.

Section 1. When, within its reasonable discretion, the State Board of Education, pursuant to KRS 156.132, feels a summary hearing to determine whether a district board of education member or superintendent is to be suspended should be held, the hearing shall either be scheduled before the full board, or a panel thereof, or referred to a hearing examiner who is a full-time employee of the Department of Education and who has been recommended by the Superintendent of Public Instruction, and the district board member or superintendent shall be furnished the specific charges against him.

Section 2. The full board, or a panel thereof, or any hearing examiner designated to conduct a hearing under this regulation shall have full authority to, and shall, do the following:

(1) Schedule the hearing, on not less than ten (10) days' written notice, and grant continuances thereof through the chairman of the State Board or the hearing panel or through the hearing examiner for just cause shown by verified statement of the accused or by signed statement of his attorney, although when a panel of the State Board or a hearing examiner conducts the hearing, a report in the form hereinafter required shall, whenever practicable, be made to the State Board for its next regular meeting following referral of the matter to such a panel or hearing examiner;

(2) Administer oaths, examine witnesses under oath, issue requested subpoenas to compel attendance of witnesses or production of physical evidence;

(3) Tape-record all testimony taken; and

(4) Issue, whenever a hearing panel or hearing examiner is utilized, a written report to the State Board containing a synopsis of the testimony taken, any exhibits filed, and a recommendation.

Section 3. Any hearing held under this regulation shall be for the purpose of allowing the accused district board member or superintendent to appear, with or without counsel, and to reply to the charges, although witnesses testifying in support of the charges may, at the option of the State Board, also be heard. Formal rules of evidence and confrontation and cross-examination of witnesses shall not be applicable unless specifically ordered by the State Board.

Section 4. Any hearing held under this regulation shall be closed to the public, unless otherwise requested by the accused district board member or superintendent, and any hearing panel's or hearing examiner's report shall be held confidential.

Section 5. Any failure of a district board member or superintendent to avail himself of the summary hearing procedures set forth herein shall not be deemed a waiver of his right to contest removal from office under KRS 156.134, and the procedures set forth herein shall not be

deemed, purely by force of this regulation, to apply to any hearing which must be held under KRS 156.134.

RAYMOND BARBER

Superintendent of Public Instruction

ADOPTED: July 12, 1983

RECEIVED BY LRC: July 15, 1983 at 2:30 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurel True, Secretary, Kentucky State Board of Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

EDUCATION AND HUMANITIES CABINET

Department of Education
Bureau of Instruction

704 KAR 20:208. Educational diagnostician.

RELATES TO: KRS 161.020, 161.025, 161.030

PURSUANT TO: KRS 13.082, 156.070, 161.030

NECESSITY AND FUNCTION: KRS 161.020, 161.025, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Kentucky Council on Teacher Education and Certification and approved by the State Board of Education. This regulation establishes an appropriate certificate for educational diagnostician, such certification being designed to replace, for the future, certification as a school psychometrist and as a special education diagnostician, and relates to the corresponding curriculum standards in the Kentucky Standards for the Preparation-Certification of Professional School Personnel.

Section 1. (1) The Certificate for Educational Diagnostician shall be issued in accordance with the pertinent Kentucky statutes and State Board of Education regulations to an applicant who holds a valid classroom teaching certificate, has completed three (3) years of full-time teaching experience, and has completed the approved program of preparation which corresponds to the certificate at a teacher education institution approved under the standards and procedures included in the Kentucky Standards for the Preparation-Certification of Professional School Personnel, as adopted by 704 KAR 20:005.

(2) The Certificate for Educational Diagnostician shall be issued initially for a duration period of five (5) years and may be renewed for subsequent five (5) year periods upon completion within each preceding five (5) year period of two (2) years of experience as an educational diagnostician. If any portion of the renewal experience is not completed, the certificate may be renewed upon completion of six (6) semester hours of additional graduate credit appropriate for the position of educational diagnostician.

Section 2. 704 KAR 20:207, Special education diagnosticians, is hereby repealed.

RAYMOND BARBER

Superintendent of Public Instruction

ADOPTED: July 12, 1983

RECEIVED BY LRC: July 15, 1983 at 2:30 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Laurel True, Secretary, Kentucky State Board of Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET

Department of Labor

Kentucky Occupational Safety and Health

803 KAR 2:200. Confined space entry.

RELATES TO: KRS Chapter 338

PURSUANT TO: KRS 13.082

NECESSITY AND FUNCTION: Pursuant to the authority granted to the Kentucky Occupational Safety and Health Standards Board by 338.051 and 338.061, the following regulation is adopted. The function of this regulation is to set forth minimum safety and health requirements for those employees who must enter confined spaces for the purposes of performing their duties in the course of their employment.

Section 1. Application and Scope. (1) This regulation applies only to those confined spaces, as defined in Section 2(1) of this regulation, which are not specifically covered by other regulations such as:

(a) 803 KAR 2:020, General industry standards, 29 CFR 1910;

(b) 803 KAR 2:027, Maritime standards, 29 CFR 1915-1919; and

(c) 803 KAR 2:030, Construction industry standards, 29 CFR 1926.

(2) This regulation does not apply to agricultural production operations.

(3) This regulation does not preempt any specific applicable regulation.

Section 2. Definitions. (1) Confined space. A space having the following characteristics:

(a) Limited means for exit and entry; and

(b) Ventilation of the space is lacking or inadequate, allowing for the accumulation of toxic air contaminants, flammable or explosive agents, and/or depletion of oxygen.

(2) Emergency entry. Entry into a confined space necessitated by a sudden and unexpected condition requiring immediate action.

(3) Toxic air contaminants. Those substances listed in Subpart Z of 29 CFR 1910 as adopted by 803 KAR 2:020; and, whenever a substance is not listed in Subpart Z, those substances with exposure limits listed in the National Institute for Occupational Safety and Health (NIOSH), 1980 "Registry of Toxic Effects of Chemical Substances."

(4) Lower explosive limit (LEL). The minimum concentration of gas or vapor below which propagation of flame does not occur on contact with a source of ignition.

(5) Zero mechanical state (ZMS). The mechanical state of a machine or equipment in which:

(a) Every power source that can produce a machine or equipment member movement has been locked/tagged out as outlined in National Fire Protection Association Pamphlet (NFPA) 70-E-1981, Part II, Chapter 4, or American National Standard Z244.1-1982;

(b) Pressurized fluid (air, oil, or other) power lockoffs (shut-off valves), if used, will block pressure from the power source and will reduce pressure on the machine or equipment side port of that valve by venting to atmosphere or draining to tank;

(c) All accumulators and air surge tanks are reduced to atmospheric pressure or are treated as power sources to be locked/tagged out, as outlined in National Fire Protection Association Pamphlet (NFPA) 70-E-1981, Part II, Chapter 4, or American National Standard Z244.1-1982;

(d) The mechanical potential energy of all portions of the machine or equipment is at its lowest practical value so that the opening of the pipe(s), tube(s), hose(s), or actuation of any valve or lever will not produce a movement which could cause injury;

(e) Pressurized fluid (air, oil, or other) trapped in the machine or equipment lines, cylinders, or other components is not capable of producing a machine motion upon actuation of any valve or lever;

(f) The kinetic energy of the machine or equipment members is at its lowest practical value;

(g) Loose or freely movable machine or equipment members are secured against accidental movement; and

(h) A workpiece or material support, retained or controlled by the machine or equipment, shall be considered as part of the machine or equipment if the workpiece or material can move or can cause machine or equipment movement.

(6) Agricultural production operation. Establishments engaged primarily in the production of crops and/or livestock.

Section 3. Confined Space Entry: Non-emergency and Non-rescue. Except as provided in Section 4 of this regulation, entry into a confined space shall not be made unless the following procedures have been accomplished:

(1) All pipes, lines, or other connections which may carry harmful agents into the confined space have been disconnected or blocked by some means which assures complete closure. In continuous systems, such as but not limited to sewers or utility tunnels, where complete isolation is not possible, written safety procedures to ensure employees' safety and health shall be developed and administered.

(2) Fixed mechanical devices and/or equipment that are capable of causing injury shall be placed at zero mechanical state (ZMS). The electrical equipment, excluding lighting, shall be locked out and/or tagged out in accordance with National Fire Protection Pamphlet (NFPA) 70-E-1981, Part II, Chapter 4, or American National Standard Z244.1-1982.

(3) The internal atmosphere of the confined space shall be tested for oxygen content, flammable or explosive agents, and/or any toxic air contaminant(s) of which an employer, who is or should be reasonably familiar with the practices, procedures, and methods of operation in the industry, has or should have knowledge. If the oxygen content is less than nineteen and five-tenths (19.5) percent (148 mm Hg), or if the flammable or exposure agents are detected in excess of twenty-five (25) percent of the lower explosive limit (LEL), or if the toxic air contaminant(s) are present in levels which exceed allowable limits as set forth in 29 CFR 1910, Subpart Z as adopted by 803 KAR 2:020, and whenever a substance is not listed in Subpart Z, the exposure levels listed in the National Institute for Occupational Safety and Health (NIOSH), 1980 "Registry of Toxic Effects of Chemical Substances," the following provisions apply:

(a) The confined space shall be ventilated until the unsafe condition(s) are eliminated, and the ventilation shall be continued as long as there is a possibility of recurrence of the unsafe condition(s) while the confined space is occupied by employee(s).

(b) If oxygen deficiency and/or toxic air contaminant level(s) cannot be eliminated by ventilation, or as an alternative to ventilation, employee(s) may be allowed to enter a confined space only with appropriate respiratory protec-

tion. Respirator usage shall be in accordance with the requirements of 29 CFR 1910.134 as adopted by 803 KAR 2:020. Respiratory protection shall be provided and maintained at no cost to employee(s). If a self-contained respirator is used, the wearer shall not be permitted to remain within the confined space, when the primary air system is depleted or being replaced. The reserve air supply shall be used only for escape purposes. Employee(s) shall be allowed to enter a confined space containing explosive or flammable agents exceeding twenty-five (25) percent lower explosive limits (LEL), only during emergency or rescue operations.

(4) Provisions shall be made for constant communications: visual, voice and/or other means, between employee(s) within the confined space and an employee in the immediate vicinity outside the confined space.

(5) Provision shall be made for rescue procedures, including rescue equipment and rescue training, as outlined in Section 4 of this regulation.

(6) Ladders or other safe means shall be used to enter and exit confined spaces exceeding four (4) feet in depth.

Section 4. Confined Space Entry: Emergency and Rescue. (1) The employer shall establish a written procedure for emergency and rescue methods and operations covering all confined space entries. The procedure shall include at a minimum:

(a) An assessment of the hazard(s);

(b) Personnel required to perform the rescue or emergency entry;

(c) Precautions to be taken while in the confined space;

(d) Personal protective equipment to be used;

(e) Rescue equipment such as but not limited to respirators, lifelines, safety belts, safety harnesses, wristlets, hoisting equipment when an employee must be lifted vertically, and other equipment; and

(f) Tools and other equipment to be used.

(2) The employer shall establish a training program to instruct affected employees in the procedures and practices for emergency and rescue confined space entry. The training shall be repeated annually or more often as needed. The employer shall maintain records of the most recent training program conducted. The records shall include the date(s) of the training program, the instructor(s) of the training program, and the employee(s) to whom the training was given.

(3) The employer shall assure that personnel with rescue training, basic first aid, and CPR, in the vicinity of the confined space are readily available to render emergency assistance as may be required.

THELMA L. STOVALL, Commissioner

ADOPTED: July 14, 1983

APPROVED: LEONARD B. MARSHALL, JR.
Secretary

RECEIVED BY LRC: July 15, 1983 at 1:15 p.m.

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

CABINET FOR HUMAN RESOURCES
Department for Social Insurance

904 KAR 1:200. Nurse anesthetists' 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 provisions relating to nurse anesthetists' 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. Coverage. Participating nurse anesthetists may provide anesthesia services to eligible Title XIX recipients when such services are within the scope of practice of the nurse anesthetist and are covered anesthesia services in the Medical Assistance Program.

JOHN CUBINE, Commissioner

ADOPTED: June 29, 1983

APPROVED: BUDDY H. ADAMS, Secretary

RECEIVED BY LRC: June 30, 1983 at 11 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Secretary for Human Resources, CHR Building, 275 East Main Street, Frankfort, Kentucky 40621

CABINET FOR HUMAN RESOURCES
Department for Social Insurance

904 KAR 1:210. Payments for nurse anesthetists' 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 nurse anesthetists' services.

Section 1. Payments. Participating nurse anesthetists shall be paid at the rate of seventy-five (75) percent of the anesthesiologist's allowable charge for the same procedure under the same conditions, or at actual billed charges if less.

JOHN CUBINE, Commissioner

ADOPTED: June 29, 1983

APPROVED: BUDDY H. ADAMS, Secretary

RECEIVED BY LRC: June 29, 1983 at 11 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Secretary for Human Resources, CHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the June 22, 1983 Meeting

(Subject to subcommittee approval at the July 27 meeting.)

The Administrative Regulation Review Subcommittee held its monthly meeting on Wednesday, June 22, 1983, at 10:00 a.m. in Room 103 of the Capitol Annex. Present were:

Members: Representative William T. Brinkley, Chairman; Senators Pat McCuiston and Jim Bunning; Representatives James Bruce and Albert Robinson.

Guests: Representative Gerta Bendl, Senator Jack Trevey; Jim Ahler, Board of Accountancy; Joanne Lang, Council on Higher Education; J. D. Wolf, Department of Agriculture; Raymond Barber, Paul Jones, Lou Perry, James White, Don Hunter, Gary Bale, Fred Schultz and Clyde Caudill, Department of Education; Henry E. Pogue, State Board of Education; Larry Powers, Kentucky School Board Association; William Nallia, Kentucky Association of School Administrators; Les Westerfield, Department of Housing, Buildings and Construction; Patrick Watts, Department of Insurance; Tanya Gritz, Grant Satterly and Lynda Clark, Finance Cabinet; Edward Martin, Charles Moore, Jr. and William Hamilton, Kentucky Airport Zoning Commission; D. J. Linder, Roger Conn and Helen Hawkins, Natural Resources and Environmental Protection Cabinet; Laura Murrell, Larry Stanley and John Van Volkenburgh, Public Service Commission; Lenee Weller,

Karen Eades, L. M. Gordon, John Walker, Joe Miller, Greg Lawther, Paul Gibson and Ked Fitzpatrick, Cabinet for Human Resources; William Cunningham, William McDuffie, O. L. O'Rear and Jermaine McGregor, Bluegrass Long-Term Care Ombudsman Program; Hattie Lois Hughes, Helping Hand; Jim Judy, KAHCF; Jean Gossick, Quality Care Advocates; Hayden Timmons and Barry Mayfield, Big Rivers Electric Corporation; Ted LaPin and Jane Greenebaum, KCCOA; Jay Runyon, W. R. Miller and Eugene Buchheit, Kentucky Power Company; John Hinkle, Kentucky Retail Federation; Lindsey Ingram and Jack Royse, Kentucky Utilities Company; Ward Bradford Boone, MFCU; Mrs. Bobbie Patray.

LRC Staff: Susan Harding, Joe Hood, Dan Risch, June Mabry, Carla Arnold, Paula Payne, Mary Helen Wilson, Janie Jones, Sandy Deaton, Jim Peyton, Roy Haddix, Pat Ingram, Larry Groce and Shirley Hart.

Press: Herb Sparrow, Associated Press; Michael Days, The Courier Journal.

Chairman Brinkley announced that a quorum was present and called the meeting to order. On motion of Representative Bruce, seconded by Senator McCuiston, the minutes of the May 25-26, 1983 meeting were approved.

The following regulations were recommended for deferral by the subcommittee until the July 28 meeting:

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission

Utilities

807 KAR 5:006. General rules.

TRANSPORTATION CABINET

Division of Aeronautics and Airport Zoning

Airport Zoning

- 602 KAR 50:020. Administrator.
- 602 KAR 50:040. Airport land uses.
- 602 KAR 50:050. Airport zoning map.
- 602 KAR 50:080. Permit application content.
- 602 KAR 50:090. Application procedure.
- 602 KAR 50:100. Marking and lighting obstruction standards.
- 602 KAR 50:110. Alteration, construction, valid permit period.
- 602 KAR 50:115. Enforcement procedures, violations.
- 602 KAR 50:120. Hearing procedures.

PUBLIC PROTECTION AND REGULATION CABINET

Department of Housing, Buildings and Construction
Mobile Homes and Recreational Vehicles
815 KAR 25:020. Recreational vehicles.

CABINET FOR HUMAN RESOURCES

Administration

900 KAR 2:010. Access and hours of visitation.

EDUCATION AND HUMANITIES CABINET

Department of Education

School Terms, Attendance and Operation

703 KAR 2:010. Terms and months.

Instructional Services

704 KAR 3:304. Required program of studies.
704 KAR 3:305. Minimum unit requirements for high school graduation.

Elementary and Secondary Education Act

704 KAR 10:022. Elementary, middle and secondary schools standards.

Representative Robinson moved to recommend deferral of 703 KAR 2:010, 704 KAR 3:304, 704 KAR 3:305 and 704 KAR 10:022, seconded by Senator McCuiston. Motion failed to pass on a roll call vote—2 yeas, 2 nays, 1 pass. Senator Bunning moved to recommend approval of 703 KAR 2:010, 704 KAR 3:304, 704 KAR 3:305 and 704 KAR 10:022, seconded by Representative Bruce. Motion failed to pass on a roll call vote—2 yeas, 2 nays, 1 pass. Senator McCuiston moved to rescind the two previous motions and moved to recommend deferral of 703 KAR 2:010, 704 KAR 3:304, 704 KAR 3:305 and 704 KAR 10:022 until the July 28 meeting so the members of the subcommittee could attend the State Board of Education meeting on July 12. The motion passed—3 yeas, 2 nays.

FINANCE AND ADMINISTRATION CABINET

Department of Administration

State Investment Commission

200 KAR 14:040. Priority to public depositories.

Senator McCuiston moved to recommend rejection of 200 KAR 14:040, seconded by Representative Bruce. Senator McCuiston withdrew his motion to recommend rejection. Representative Bruce moved to defer 200 KAR 14:040, Senator McCuiston seconded the motion. The motion was adopted by voice vote to recommend deferral of 200 KAR 14:040.

The subcommittee took no action on the following emergency regulations:

CABINET FOR HUMAN RESOURCES

Department for Social Insurance

Medical Assistance

904 KAR 1:120E. Health insuring organizations and prepaid health plan services.

904 KAR 1:130E. Payments for health insuring organization and prepaid health plan services.

FINANCE AND ADMINISTRATION CABINET

Department of Administration

State Investment Commission

200 KAR 14:040E. Priority to public depositories.

The subcommittee recommended that the following regulations be approved for filing:

FINANCE AND ADMINISTRATION CABINET

Division of Occupations and Professions

Board of Accountancy

201 KAR 1:095. Code of ethics.

ENERGY AND AGRICULTURE CABINET

Department of Agriculture

Livestock Sanitation

- 302 KAR 20:040. Entry into Kentucky.
- 302 KAR 20:065. Sale and exhibition for Kentucky livestock only. (Repeals 302 KAR 20:060.)
- 302 KAR 20:090. Biological.

NATURAL RESOURCES AND

ENVIRONMENTAL PROTECTION CABINET

Department for Environmental Protection

Division of Sanitary Engineering

401 KAR 6:015. Public and semipublic water supplies.

EDUCATION AND HUMANITIES CABINET

Department of Education

Bureau of Administration and Finance

Pupil Transportation

- 702 KAR 5:020. Program cost calculation.
- 702 KAR 5:060. Buses; specifications and purchases.
- 702 KAR 5:110. Vocational pupils, reimbursement for.

Bureau of Instruction

Instructional Services

704 KAR 3:025. Classroom units.

Health and Physical Education Programs

704 KAR 4:020. Comprehensive school health.

Bureau of Vocational Education

Administration

705 KAR 1:010. Annual program plan.

Management of State-Operated Schools

705 KAR 5:080. Suspension and expulsion of students.

PUBLIC PROTECTION AND REGULATION CABINET

Department of Insurance

Agents, Consultants, Solicitors and Adjusters

806 KAR 9:030. Adjusters; examinations, licenses, restrictions.

CABINET FOR HUMAN RESOURCES

Department for Health Services

Certificate of Need and Licensure Board

902 KAR 20:008. Licensure procedures and fee schedule.

902 KAR 20:016. Hospitals operation and services.

902 KAR 20:132. Certificate of need expenditure minimums.

902 KAR 20:170. Facility specifications; psychiatric hospitals.

Food and Cosmetics

902 KAR 45:005. Food service code.

Department for Social Insurance**Medical Assistance**

904 KAR 1:120. Health insuring organizations and prepaid health plan services.

904 KAR 1:130. Payments for health insuring organizations and prepaid health plan services.

The meeting was adjourned at 2:30 p.m. on June 22 until July 27, 1983.

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NOTE: Emergency regulations expire on being repealed or replaced.

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