Administrative Register of Kentucky

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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.

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

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Public Hearings Scheduled

HUMAN RESOURCES CABINET

A public hearing will be held on December 8, 1983 at 9 a.m. in the Vital Statistics Conference Room, CHR Building, Frankfort, Kentucky, on the following regulations:

904 KAR 1:150. Payments for alternate home and community based services for the mentally retarded. [10 Ky.R. 687]
904 KAR 2:015. Supplemental programs for the aged, blind and disabled. [10 Ky.R. 688]

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Division of Water

A public hearing will be held on December 15, 1983, at 7 p.m. in the Auditorium, State Office Building, Frankfort, Kentucky, on the following regulation:

401 KAR 5:026. Classification of water. [10 Ky.R. 627]

Emergency Regulations Now In Effect

(NOTE: Emergency regulations expire upon being repealed or replaced.)

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 83-977
October 31, 1983

EMERGENCY REGULATIONS
Natural Resources and Environmental Protection Cabinet

WHEREAS, KRS 350.028(5) authorizes the Natural Resources and Environmental Protection Cabinet to adopt rules and regulations to allow the State to administer and enforce the initial and permanent regulatory programs of Public Law 95-87, "Surface Mining Control and Reclamation Act of 1977;" and

WHEREAS, pursuant to the above authority, on May 18, 1982 the Commonwealth of Kentucky assumed exclusive jurisdiction over the regulation of surface coal mining and reclamation subject to certain conditions; and

WHEREAS, certain of the conditions require the Commonwealth to have effective regulations in place by no later than October 31, 1983, and those conditions are satisfied by emergency regulations numbered 400 KAR 1:030E, 400 KAR 1:040E, 400 KAR 1:050E, 405 KAR 7:090E, 405 KAR 8:030E, 405 KAR 8:040E, 405 KAR 16:090E, 405 KAR 18:090E, 405 KAR 16:060E, 405 KAR 16:140E and 405 KAR 18:140E; and

WHEREAS, due to a change in federal law, the United States Department of the Interior has demanded that Kentucky amend certain regulations by no later than November 5, 1983 or face withdrawal of program approval, and those changes are accomplished by 405 KAR 7:020E; and

WHEREAS, certain changes to 405 KAR 7:030E are necessary to protect operators who qualify for an exemption; and

WHEREAS, due to another change in federal law (48 FR 41720, September 16, 1983) the Kentucky provisions relating to the remining of previously disturbed areas are now more stringent than the minimum federal requirements, in contravention of KRS 350.028(5); and

WHEREAS, 405 KAR 16:190E and 405 KAR 18:190E shall make the Cabinet regulations relating to remining consistent with the minimum federal requirements; and

WHEREAS, the Secretary of the Natural Resources and Environmental Protection Cabinet advises that it is in the best interest of the Commonwealth to promulgate the accompanying regulations and that since an emergency exists with respect to satisfying the conditions of the grant of exclusive jurisdiction to the Cabinet, conforming to change federal requirements, and protecting operators entitled to exemptions, these regulations should, pursuant to KRS 13.088, become effective upon being filed with the Legislative Research Commission:

NOW, THEREFORE, I, John Y. Brown, Jr., Governor of the Commonwealth of Kentucky, pursuant to the authority vested in me by KRS 13.088(1), hereby acknowledge the finding by the Secretary of the Natural Resources and Environmental Protection Cabinet that an emergency exists and direct that the attached regulations, upon being filed with the Legislative Research Commission, pursuant to Chapter 13 of the Kentucky Revised Statutes, become effective under the terms contained therein.

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

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Office of the Secretary

400 KAR 1:030E. Administrative rules of procedure, service of process.

RELATES TO: KRS 151.182, 151.297, 151.990, 224.033, 224.071, 224.073, 224.081, 224.083, 224.740,

224.866, 224.994, 224.995, 350.028, 350.070, 350.085, 350.093, 350.130, 350.465, 350.990

PURSUANT TO: KRS 13.082, 151.125, 224.033, 350.028, 350.255, 350.465

EFFECTIVE: October 31, 1983

NECESSITY AND FUNCTION: KRS Chapter 151, 224, and 350 require the cabinet to conduct hearings and investigations concerning a wide variety of matters. This regulation establishes procedures for initiation of an administrative action and for service of process.

Section 1. Commencement of Action. An administrative action is commenced upon the filing of an initiating document with the cabinet. An initiating document is a complaint, petition, or notice of investigation under KRS 151.182 (1) and (2), 151.297, 224.033(11), 224.071, 224.073(2), 224.081(1) and (2), 224.750, 224.886(4), 350.028(2), 350.070, 350.085(6), 350.093(6)(b), 350.130(1) and 350.465(3)(i). These rules shall apply to formal hearings initiated pursuant to 405 KAR 7:090, Section 5, but shall not apply to preliminary hearings pursuant to 405 KAR 7:090, Sections 3 and 4.

Section 2. Process. (1) Summons issuance, by whom served.

(a) Upon the filing of the initiating document the docket coordinator shall issue an administrative summons and shall either:

1. Place a copy of the administrative summons and initiating document to be served in an envelope, address the envelope to the person to be served at the address set forth in the caption or at the address set forth in written instructions furnished by the initiating party. The docket coordinator shall affix adequate postage and place the sealed envelope in the United States mail as certified mail return receipt requested. The docket coordinator shall forthwith enter the fact of mailing in the record and make a similar entry when the return receipt is received. If the envelope is returned with an endorsement showing failure of delivery, the docket coorinator shall enter that fact in the record. The docket coordinator shall file the return receipt or returned envelope in the record. Service by certified mail is complete upon delivery of the envelope or as provided by Section 2(1)(b) of this regulation. The return receipt shall be proof of the time, place and manner of service. To the extent that the United States postal regulations permit authorized representatives of local, state, or federal governmental offices to accept and sign for "addressee only" mail, signature by such authorized representative shall constitute service on the officer; or

2. Cause the administrative summons and initiating document, with necessary copies, to be transferred for service to any person authorized by the Secretary or by any statute or rule, other than by paragraph (a)1 of this subsection, to deliver them, who shall serve the administrative summons and initiating documents, and the return endorsed thereon shall be proof of the time and manner of service.

(b) As an alternative to other methods of service specified by statute, regulation, or these rules, service of process upon a person issued a permit by the cabinet may be made by placing in the United States mail as certified mail, return receipt requested, a copy of the administrative summons and initiating document directed to the named permittee as specified on the face of the permit at the permanent address specified in the permit application or by the permittee. Service is effective upon acceptance of the administrative summons and initiating document by any person at the permanent address, or upon failure to claim the administrative summons and initiating document by any person at the permanent address, upon refusal to accept the administrative summons and initiating document prior to its return to the cabinet by the United States Postal Service. The return receipt shall be proof of the acceptance, refusal, or failure to claim the administrative summons and initiating document.

(c) The methods of service of process specified by these rules shall be supplemental to and shall be accepted as an alternative to any other method of service specified by other applicable statutes, rules or regulations.

(2) Administrative summons. The administrative summons shall be issued in the name of the cabinet, be dated and signed by the docket coordinator or other authorized individual, contain the name of the presiding hearing officer and the style and number of the action, and be directed to each party, giving notice that a legal action has been filed and that failure to appear in person or by counsel as directed may result in a decision adverse to the party's position. The administrative summons shall be served with the initiating document and may include notices of hearing.

(3) Personal service. (a) Service shall be made upon an individual within this Commonwealth, other than an unmarried infant or person of unsound mind, by delivering a copy of the administrative summons and initiating document to such person or, if acceptance is refused, by offering personal delivery to such person, or by delivering a copy of the administrative summons and initiating document to an agent authorized by appointment or by law to receive service of process for such individuals.

(b) Service shall be made upon an unmarried infant or a person of unsound mind by serving the person's resident guardian or committee if there is one known to the initiating party or, if none, by serving either the person's father or mother within this state or, if none, by serving the person within this state having control of such individual. If there are no such persons enumerated above, application shall be made to the appropriate court to appoint a practicing attorney as guardian ad litem who shall be served. If any of the persons directed by this section to be served is an initiating party, the person who stands first in the order named who is not an initiating party shall be served.

(c) Service shall be made upon a partnership or unincorporated association subject to suit under a common name by serving a partner or managing agent of the partnership or an officer or managing agent of the association, or an agent authorized by appointment or by law to receive service on its behalf.

(d) Service shall be made upon a corporation by serving an officer or managing agent thereof, or any other agent authorized by appointment or by law to receive service on its behalf.

(e) Service shall be made upon the Commonwealth or any agency other than the cabinet by serving the attorney-general or any assistant attorney-general. Service of a request for hearing shall be made upon the cabinet by serving the general counsel or any cabinet representative designated in any notice.

(f) Service shall be made upon a county by serving the county judge or, if said judge is absent from the county, the county attorney. Service shall be made upon a city by serving the chief executive officer thereof or an official attorney thereof. Service on any public board or other such body, except state agencies, shall be made by serving a member thereof.

(g) Service may be made upon an individual out of this state, other than an unmarried infant, a person of unsound mind or a prisoner, by certified mail in the manner prescribed in Section 2(1) of this regulation, by personal delivery of a copy of the administrative summons and initiating document by a person over eighteen (18) years of age, or by other methods allowed by law. Proof of service may be made either by the return receipt mentioned in Section 2(1) of this regulation or by affidavit of the person making such service, upon or appended to a copy of the initiating document, stating the time and place of service and the fact that the individual served was personally known to the person making service.

(h) Service may be made upon a nonresident individual who transacts business through an office or agency in this state, or a resident individual who transacts business through an office or agency in any action growing out of or connected with the business of such office or agency, by serving the person in charge thereof.

(4) Unknown party. In an action against a person whose name is unknown to the initiating party, the person shall be described in the initiating document and administrative summons as unknown party. If the person's name or place of residence be discovered pending the action, then the initiating document shall be amended accordingly.

Section 3. Service and Filing of Pleadings and Other Papers. (1) Service; when required. Every order required by its terms to be served, every pleading subsequent to the original initiating document unless the hearing officer otherwise orders because of numerous responding parties, every paper relating to discovery required to be served upon a party unless the hearing officer otherwise orders, every written motion other than one (1) which may be heard ex parte, and every written notice, appearance, demand, and similar papers shall be served upon each party except those in default for failure to appear. Parties so in default shall be given notice of pleadings asserting new or additional claims for relief against them by an initiating document issued thereon as provided in Section 2 of this regulation.

(2) Service; how made. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party is ordered by the hearing officer. Service upon the attorney or upon a party shall be made by delivering a copy to the attorney or party or by mailing it to the attorney's or party's last known address. Delivery of a copy within this rule means handing it to the attorney or to the party; or leaving it at the attorney's or party's office with the person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the attorney's or party's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

(3) Service; proof of. Whenever any pleading or other paper is served under subsections (1) or (2) of this section, proof of the time and manner of such service shall be filed before action is to be taken thereon by the hearing officer or the parties. Proof may be by certificate of a member of the bar or by affidavit of the person who served the papers, or by any other proof satisfactory to the hearing officer. Such certificate or affidavit shall identify by name the persons so served.

(4) Service; numerous responding parties. If the initiating or responding parties are numerous, the hearing officer upon motion or of the hearing officer's own initiative, may designate one (1) initiating or responding party for the service of the pleadings. The filing of any such pleading with the cabinet and service thereof upon the party constitutes due notice of it to the parties. The hearing officer upon motion or of the hearing officer's own initiative may order that any party not appearing at a pre-trial conference or preliminary hearing not be served with further pleadings. A copy of every such order shall be served upon the parties in such manner and form as the hearing officer directs.

(5) Filing. (a) All papers after the initiating document required to be served upon a party shall be filed with the cabinet either before service or within a reasonable time thereafter.

(b) The filing of pleadings and other papers with the cabinet as required by these rules shall be made by filing them with the docket coordinator.

(c) The docket coordinator shall endorse upon every pleading and other paper filed in an action the date of its filing. Such endorsement shall constitute the filing of the pleading or other paper and no order of the hearing officer shall be required.

Section 4. Time. (1) Computation. In computing any period of time prescribed or allowed by these rules, by order of the hearing officer, or by any applicable statute or regulation, the day of the act, event or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a legal holiday. Unless otherwise directed by the hearing officer, when the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

(2) Enlargement. When by statute, regulation, these rules or by order an act is required or allowed to be done at or within a specified time, the hearing officer for cause shown may, at any time in the hearing officer's discretion, order the period enlarged with or without motion or notice if request therefor is made before the expiration of the period originally prescibed or as extended by a previous order or, upon motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect.

(3) For motions; affidavits. (a) A written motion, other than one (1) which may be heard ex parte, and notice of the hearing thereof shall be served not less than five (5) days before the time specified for the hearing, unless a specific period is fixed by statute, regulation, these rules or by order of the hearing officer. Such an order may for cause shown be made on ex parte application. All written motions shall be accompanied by a brief statement of the grounds and reasons for the motion.

(b) When a motion is supported by affidavit, the affidavit shall be served with the motion; and opposing affidavits may be served not later than one (1) day before the hearing, unless the hearing officer permits them to be served at some other time.

(4) Additional time after service by mail. Whenever a party has the right or is required to do some act or take some proceeding within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served by mail, three (3) days shall be

added to the prescribed period. This provision shall not apply to the service of administrative summons and initiating documents by mail under Section 2(1) of this regulation.

JACKIE A. SWIGART, Secretary
ADOPTED: October 26, 1983
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: October 31, 1983 at 4:30 p.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Office of the Secretary

400 KAR 1:040E. Administrative rules of procedure, discovery.

RELATES TO: KRS 151.182, 151.297, 151.990, 224.033, 224.071, 224.073, 224.081, 224.083, 224.750, 224.866, 224.994, 224.995, 350.028, 350.070, 350.085, 350.093, 350.130, 350.465, 350.990
PURSUANT TO: KRS 13.082, 151.125, 224.028, 350.033, 350.255, 350.465
EFFECTIVE: October 31, 1983
NECESSITY AND FUNCTION: KRS Chapters 151, 224, and 350 require the cabinet to conduct hearings and investigations concerning a wide variety of matters. This regulation establishes procedures for discovery.

Section 1. General Provisions Governing Discovery. (1) Discovery methods. In all proceedings under these rules except preliminary hearings pursuant to 405 KAR 7:090, Sections 3 and 4, parties may obtain discovery by one (1) or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or, for parties other than the cabinet, permissions to enter upon land or other property, for inspection and other purposes; and requests for admission. Unless the hearing officer orders otherwise under subsection 1(3) of this regulation, the frequency of use of these methods is not limited.

(2) Scope of discovery.

(a) In general. Parties may obtain discovery regarding any matter, not privileged or confidential under KRS 61.870 et seq., 224.035, 224.036 or other law, whether it relates to a claim or defense of the party seeking discovery or to a claim or defense of any other party, which is relevant to the subject matter involved in the proceeding, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not grounds for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(b) Insurance agreements. A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.

(c) Hearing preparation: materials.

1. Subject to the provisions of paragraph (d) of this subsection, a party may obtain discovery of documents and tangible things otherwise discoverable under subsection (1) of this section and prepared in anticipation of the hearing by or for another party or by or for that other party's representative (including the party's attorney, consultant, surety, indemnitor, insurer, or agent) provided; however, that the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the proceeding may not be discovered.

2. A party may obtain a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for an order of the hearing officer. For purposes of this paragraph, a statement previously made is a written statement signed or otherwise adopted or approved by the person making it, or a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(d) Hearing preparations: experts. The parties shall exchange all information directed by the hearing officer, which may include facts known and opinions held by experts and acquired or developed in anticipation of a hearing. In addition, a party may, through interrogatories, require any other party to identify each person whom the other party expects to call as an expert witness at the hearing, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. Upon motion, the hearing officer may order further discovery by other means, subject to such restrictions as to scope as the hearing officer may deem appropriate, and such discovery shall be liberally allowed.

(3) Protective orders. (a) Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the hearing officer may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one (1) or more of the following: that the discovery not be had; that the discovery may be had only on specified terms and conditions, including a designation of the time or place; that the discovery may be had only by a method of discovery other than selected by the party seeking discovery; that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; that discovery be conducted with no one present except persons designated by the hearing officer; that a deposition after being sealed be opened only by order of the cabinet; that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way.

(b) If the motion for a protective order is denied in whole or in part, the hearing officer may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Section 10(1)(c) of this regulation apply to the award of expenses incurred in relation to the motion.

(4) Sequence and timing of discovery. Unless the hearing officer upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(5) Supplementation of responses. A party who has

responded to a request for discovery with a response that was complete when made is under no duty to supplement that response to include information thereafter acquired, except as follows:

(a) A party is under a duty seasonably to supplement a response with respect to any question directly addressed to the identity and location of persons having knowledge of discoverable matters, or the identity of each person expected to be called as an expert witness at the hearing, the subject matter on which the person is expected to testify, and the substance of the person's testimony.

(b) A party is under a duty seasonably to amend a prior response if the party obtains information upon the basis of which the party knows that the response was incorrect when made, or the party knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(c) A duty to supplement responses may be imposed by order of the hearing officer, agreement of the parties, or at any time prior to the hearing through new requests for supplementation of prior responses.

Section 2. Persons Before Whom Depositions May Be Taken. (1) Within the state. Depositions taken in this state shall be taken before an examiner; a judge, clerk, commissioner or official reporter of a court; a notary public; or before such other persons and under such other circumstances as shall be authorized by law. The term "officer" in Sections 4(3),(5), (6), 5(1), (2), and 6(4) of this regulation means any person before whom a deposition may be taken under this section.

(2) Without the state. Depositions may be taken out of this state before a commissioner appointed by the Governor of the state where taken or before any person empowered by a commission directed to the person by consent of the parties or by order of the hearing officer; or before a judge of a court, a justice of the peace, mayor of a city, or notary public; or before such other persons and under such circumstances as shall be authorized by the law of this state or the place where the deposition is taken.

Section 3. Stipulations Regarding Discovery Procedure. Unless the hearing officer orders otherwise, the parties may, by written stipulation, provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and modify the procedures provided by these rules for other methods of discovery, except that stipulations extending the time for responses to discovery may be made only with the approval of the hearing officer.

Section 4. Depositions Upon Oral Examination. (1) When depositons may be taken. After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. The attendance of witnesses may be compelled by subpoena. The deposition of a person confined in prison may be taken only by leave of a court having appropriate jurisdiction and on such terms as the court prescribes.

(2) General requirements.

(a) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs, the matter upon which each person will be examined, and the name or descriptive title and address of the person before whom the deposition is to be taken. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(b) The hearing officer may for cause shown enlarge or shorten the time for taking the deposition.

(c) The hearing officer may upon motion order that the testimony at a deposition be recorded by other than stenographic means, in which event the order shall designate the manner of recording, preserving, and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. If the order is made, a party may nevertheless arrange to have a stenographic transcription made at the party's own expense.

(d) The notice to a party deponent may be accompanied by a request made in compliance with Section 8 of this regulation for the production of documents and tangible things at the taking of the deposition. The procedure of Section 8(2) of this regulation shall apply to the request.

(e) A party may in the notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one (1) or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. A subpoena shall advise a non-party organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This paragraph does not preclude taking a deposition by any other procedure authorized in these rules.

Section 3. Examination and Cross-Examination. (1) Examination and cross-examination of witnesses may proceed as permitted at the hearing. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with Section 4(2)(c) of this regulation. If requested by one (1) of the parties, the testimony shall be transcribed.

(b) All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and that party shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(4) Motion to terminate or limit examination. At any time during the taking of the deposition, or motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the

deponent or party, the hearing officer may order the person conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Section 1(3) of this regulation. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the hearing officer. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Section 10(1)(c) of this regulation apply to the award of expenses incurred in relation to the motion.

(5) Submission to witness. Any party to an action may make a written request before the officer taking a deposition therein that it be submitted to the witness. In such an event, when the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by the witness. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness unless the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness, the officer before whom the deposition is taken shall sign it and state on the record the fact of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress the hearing officer holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(6) Certification and filing by officer. (a) The officer before whom the deposition is taken shall certify on the deposition that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. The officer before whom the deposition is taken shall promptly deliver the deposition to the docket coordinator or send it by certified mail to the docket coordinator for filing.

(b) Documents and things produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that the person producing the materials may substitute copies to be marked for identification, if a fair opportunity is afforded all parites to verify the copies by comparison with the originals, and if the person producing the materials requests their return, the officer before whom the deposition is taken shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the hearing officer, pending final disposition of the case.

(c) Upon payment of reasonable charges therefor, not to exceed those fixed by statute, the officer shall furnish a copy of the deposition to any party or to the deponent.

(7) Failure to attend or to serve subpoena; expenses. (a) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the hearing officer may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by the party and the party's attorney in so attending, including reasonable attorney's fees.

(b) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon the witness and the witness because of such failure does not attend, and if another party attends in person or by attorney because the party expects the deposition of that witness to be taken, the hearing officer may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by the party and the party's attorney in so attending, including reasonable attorney's fees.

Section 5. Depositions Upon Written Questions. (1) Serving questions; notice. (a) After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoenas. The deposition of a person confined in prison may be taken only by leave of court of appropriate jurisdiction on such terms as that court prescribes.

(b) A party desiring to take a desposition upon written questions shall serve them upon every other party with a notice stating the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs, and the name or description title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Section 4(2)(e) of this regulation.

(c) The hearing officer may establish an expeditious schedule for the service of cross, redirect, and recross questions.

(2) The officer before whom the deposition is to be taken to take responses and prepare record. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Sections 4(3), (5) and (6) of this regulation, to take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions which were received. Neither party agent, or attorney shall be present at the examination of the witness.

Section 6. Use of Depositions in Proceedings. (1) Use of depositions. At the hearing any part or all of a deposition so far as admissible may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(a) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

1. The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Section 4(2)(e) or 5(1)(b) of this regulation to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(c) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the hearing officer finds that: the witness is dead; or the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or the witness is at a greater distance than 100 miles from the place of the hearing or out

of the state, unless it appears that the absence of the witness was procured by the party offering the deposition; or the witness is the Governor, Secretary, Auditor or Treasurer of the state; or the witness is a judge or clerk of a court; or the witness is a postmaster; or the witness is a president, cashier, teller or clerk of a bank; or the witness is a practicing physician, dentist or laywer; or the witness is a keeper, officer or guard of a penitentiary; or the witness is of unsound mind, having been of sound mind when his deposition was taken; or the witness is prevented from attending the trial by illness, infirmity, or imprisonment; or the witness is in the military service of the United States or of this state or if the hearing officer finds that such circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witness orally at the hearing, to allow the deposition to be used.

(d) If only a part of a deposition is offered in evidence by a party, an adverse party may require introduction of any other part which ought in fairness to be considered with the party introduced, and any party may introduce any other parts.

(e) Substitution of parties does not effect the right to use depositions previously taken.

(2) Objections to admissibility. Objection may be made at the hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(3) Effect of taking or using depositions. The taking of a deposition or the questioning of a deponent shall not make evidence admissible which is otherwise incompetent or constitute a waiver of objections to its admissibility.

(4) Effect of errors and irregularities. (a) As to notice. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(b) As to disqualification of person before whom deposition is to be taken. Objection to taking a deposition because of disqualification of the person before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(c) As to taking of deposition.

1. Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one (1) which might have been obviated or removed if presented at that time.

2. Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

3. Objections to the form of written questions are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within three (3) days after service of the last questions authorized.

(d) As to completion and return of deposition. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer before when the deposition was taken under Sections 5 and 6 of this regulation are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

Section 7. Interrogatories to Parties. (1) Availability; procedures for use. (a) Any party may serve upon any other party written interrogatories to be answered by the party served, or if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may be served upon any party at any time after the commencement of the action. A copy of the interrogatories, answers and all related pleadings shall be filed with the docket coordinator and, unless otherwise ordered, upon all parties.

(b) Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within thirty (30) days of service or within such other time as specified by the hearing officer. The party submitting the interrogatories may move for an order under Section 10(1) of this regulation with respect to any objection to or other failure to answer an interrogatory.

(2) Scope; use at trial.

(a) Interrogatories may relate to any matters which may be inquired into under Section 1(2) of this regulation, and the answers may be used to the extent permitted by the rules of evidence.

(b) An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the hearing officer may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pre-hearing conference or other later time.

(3) Option to produce business records. Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries.

Section 8. Production of Documents and Things. (1) Scope. Any party may serve on any other party a request to produce and permit the party making the request, or someone acting on the party's behalf, to inspect and copy any designated documents (including writings, drawings, graphs, charts, photographs, phonorecords, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which

constitute or contain matters within the scope of Section 1(2) of this regulation and which are in the possession, custody or control of the party upon whom the request is served; provided, however, that nothing herein shall be construed so as to limit or impose additional requirements on the cabinet with respect to its authority to enter property or to conduct inspections authorized by law.

(2) Procedure. The request may be served on any party without leave of the hearing officer at any time after commencement of the action. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. The party upon whom the request is made shall serve written response within thirty (30) days or within such other time as specified by the hearing officer.

Section 9. Requests for Admission. (1) A party may serve upon any other party a written request for admission, for purposes of the pending action only, of the truth of any matters within the scope of Section 1(2) of this regulation set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. The request may be served at any time after the commencement of the action. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying.

(2) Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within thirty (30) days after service of the request, or within such shorter or longer time as the hearing officer may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify the answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that a reasonble inquiry has been made and that the information known or readily obtainable is insufficient to enable the party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for the hearing may not, on that ground alone, object to the request; the party may deny the matter or set forth reasons why the matter cannot be admitted or denied.

(3) The party who has requested the admissions may move to determine the sufficiency of the anwers or objections. Unless the objection is justified, the hearing officer shall order that an answer be served. If the hearing officer determines that an answer does not comply with the requirements of this section, the hearing officer may order either that the matter is admitted or that an amended answer be served. The hearing officer may, in lieu of these orders, determine that final disposition of the request be made at a pre-hearing conference or at a designated time prior to the hearing. The provisions of Section 10(3) of this regulation apply to the award of expenses incurred in relation to the motion.

(2) Effect of admission. Any matter admitted under Section 9 of this regulation is conclusively established unless the hearing officer on motion permits withdrawal or amendment of the admission. The hearing officer may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the hearing officer that withdrawal or amendment will prejudice the party in maintaining the action or defense on the merits. An admission made by a party under Section 9 of this regulation is for the purpose of the pending action only and is not an admission for any other purpose nor may it be used against the party in any other proceeding.

Section 10. Failure to Make Discovery: Sanctions. (1) Motion for order compelling discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(a) Motion.

1. If a deponent fails to answer a question propounded or submitted under Section 4 or 5 of this regulation or a corporation or other entity fails to make a designation under Sections 4(2)(e) or 5(1)(b) of this regulation, or a party fails to answer an interrogatory submitted under Section 7 of this regulation, or a party fails to allow examination under Section 8 of this regulation, the discovering party may move for an order compelling an answer or a designation or an order compelling examination in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

2. If the motion is denied in whole or in part, the hearing officer may make such protective order as the hearing officer would have been empowered to make on a motion made pursuant to Section 1(3) of this regulation.

(b) Evasive or incomplete answer. For the purposes of this rule an evasive or incomplete answer is to be treated as a failure to answer.

(c) Award of expenses of motion.

1. If the motion is granted the hearing officer shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the hearing officer finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

2. If the motion is denied, the hearing officer shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the hearing officer finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

3. If the motion is granted in part and denied in part, the hearing officer may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(2) Failure to comply with order.

(a) Sanctions by the hearing officer. If a party or an officer, director, or managing agent of a party or a person

designated under Section 4(2)(e) or 5(1)(b) of this regulation to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under Section 10(1) of this regulation, the hearing officer may make such orders in regard to the failure as are just, and among others the following:

1. An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purpose of the action in accordance with the claim of the party obtaining the order;

2. An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the party from introducing designated matters in evidence;

3. An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.

(b) Expenses on failure to obey order. In lieu of any of the foregoing orders or in addition thereto, the hearing officer shall require the party failing to obey the order or the attorney advising the party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the hearing officer finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(3) Expenses on failure to admit. If a party fails to admit the genuineness of any document or the truth of any matter as requested under Section 9 of this regulation, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may apply to the hearing officer for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The hearing officer shall make the order unless it finds that the request was held objectionable pursuant to Section 9(1) of this regulation, or the admission sought was of no substantial importance, or the party failing to admit had reasonable ground to believe that the party might prevail on the matter, or there was other good reason for the failure to admit.

(4) Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection.

(a) If a party or an officer, director, or managing agent of a party or a person designated under Section 4(2)(e) or 5(1)(b) of this regulation to testify on behalf of a party fails to appear before the officer who is to take his deposition, after being served with a proper notice, or to serve answers or objections to interrogatories submitted under Section 7 of this regulation, after proper service of the interrogatories, or to serve a written response to a request for examination submitted under Section 8 of this regulation, after proper service of the request, the hearing officer on motion may make such orders in regard to the failure as are just, and among others, the hearing officer may take any action authorized under subparagraphs 1, 2, and 3 of Section 10(2)(a) of this regulation. In lieu of any order or in addition thereto, the hearing officer shall require the party failing to act to pay the reasonable expenses, including attorney's fees, caused by the failure unless the hearing officer finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(b) The failure to act described in this rule may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided in Section 1(3) of this regulation.

(5) Expenses against the Commonwealth. Expenses and attorney's fees are not to be imposed upon the Commonwealth under Section 10 of this regulation, except as otherwise provided in 405 KAR 7:090, Section 13.

JACKIE A. SWIGART, Secretary
ADOPTED: October 26, 1983
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: October 31, 1983 at 4:30 p.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Office of the Secretary

400 KAR 1:050E. Administrative rules of procedure, burden of proof.

RELATES TO: KRS 151.182, 151.297, 151.990, 224.033, 224.071, 224.073, 224.081, 224.083, 224.750, 224.866, 224.994, 224.995, 350.028, 350.070, 350.085, 350.093, 350.130, 350.465, 350.990
PURSUANT TO: KRS 13.082, 151.125, 224.028, 350.033, 350.255, 350.465
EFFECTIVE: October 31, 1983
NECESSITY AND FUNCTION: KRS Chapters 151, 224, and 350 require the cabinet to conduct hearings and investigations concerning a wide variety of matters. This regulation identifies burdens of proof.

Section 1. (1) In a hearing held pursuant to KRS 151.182(1), 151.297, 224.081(1), 405 KAR 7:090, Sections 5(1)(b) and (2), the cabinet shall have the burden of persuasion to establish a case for the requested relief.

(2) In a hearing held pursuant to KRS 151.182(2), 224.071, and 224.081(2), or 405 KAR 7:090, Section 5(1)(a), the petitioner shall have the burden of persuasion to establish a case for the requested relief.

(3) The respondent in any action shall have the burden of persuasion to establish any affirmative defense.

(4) Any person seeking an exemption shall have the burden of persuasion to establish that the person qualifies for the exemption.

JACKIE A. SWIGART, Secretary
ADOPTED: October 26, 1983
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: October 31, 1983 at 4:30 p.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement

405 KAR 7:020E. Definitions and abbreviations.

RELATES TO: KRS Chapter 350
PURSUANT TO: KRS 13.082, 350.028, 350.465
EFFECTIVE: October 31, 1983
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to surface coal mining and reclama-

tion operations under the permanent regulatory program. This regulation provides for the defining of certain essential terms used in Title 405, Chapters 7 through 24.

Section 1. Definitions. Unless otherwise specifically defined or otherwise clearly indicated by their context, terms in Title 405, Chapters 7 through 24 shall have the meanings given in this regulation.

(1) "Acid drainage" means water with a pH of less than 6.0 and in which total acidity exceeds total alkalinity, discharged from active, inactive or abandoned surface coal mine and reclamation operation or from an area affected by surface coal mining and reclamation operations.

(2) "Acid-forming materials" means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acids that may create acid drainage.

(3) "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface or ground water, fish, wildlife, vegetation or other resources protected by KRS Chapter 350 may be adversely impacted by surface coal mining and reclamation operations.

(4) "Affected area" means any land or water *area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, suface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property or material on the surface resulting from, or incident to, surface coal mining and reclamation opertions; and the area located above underground workings associated with underground mining activities, auger mining, or in situ mining. The affected area shall include every road used for the purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road:*

(a) Was designated as a public road pursuant to the laws of the jurisdiction in which it is located;

(b) Is maintained with public funds, and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and

(c) There is substantial (more than incidental) public use. [any land or water upon which surface coal mining and reclamation operations are conducted or located, and land or water which is located above underground mine workings.]

(5) "Agricultural use" means the use of any tract of land for the production of animal or vegetable life. The uses include, but are not limited to, the pasturing, grazing, and watering of livestock, and the cropping, cultivation, and harvesting of plants.

(6) "Applicant" means any person seeking a permit from the cabinet to conduct surface coal mining and reclamation operations or approval to conduct coal exploration operations pursuant to KRS Chapter 350 and all applicable regulations.

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

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

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

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

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

(12) "Best technology currently available" means equipment, devices, systems, methods, or techniques which will prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area and minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the cabinet, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with Title 405, Chapters 16 and 18. The cabinet shall have the discretion to determine the best technology currently available on a case-by-case basis, as authorized by KRS Chapter 350 and Title 405, Chapters 7 through 24.

(13) "Cabinet" means the Natural Resources and Environmental Protection Cabinet.

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

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

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

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

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

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

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

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

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

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

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

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

(24) "Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops. Land used for facilities in support of cropland farming operations which is adjacent to or an integral part of these operations is also included for purposes of land use categories.

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

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

(27) "Department" means the Department for Surface Mining Reclamation and Enforcement.

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

(29) "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by Title 405, Chapter 10 is released.

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

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

(32) "Embankment" means a man-made deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.

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

(34) "Existing structure" means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations for which construction begins prior to January 18, 1983.

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

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

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

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

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

(40) "Forest land" means land used or managed for the long-term production of wood, wood fiber, or wood derived products. Land used for facilities in support of forest harvest and management operations which is adjacent to or an integral part of these operations is also included.

(41) "Fragile lands" means geographic areas containing natural, ecologic, scientific or aesthetic resources that could be damaged or destroyed by surface coal mining operations. These lands may include, but are not limited to, uncommon geologic features, National Natural Landmark sites, valuable habitats for fish and wildlife, critical habitats for endangered or threatened species of animals and plants, wetlands, environmental corridors containing concentration of ecologic and aesthetic features, state-designated nature preserves and wild rivers, areas of recreational value due to high environmental quality, buffer zones around areas where surface coal mining is prohibited, and important, unique or highly productive soils or mineral resources other than coal.

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

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

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

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

(46) "Grazingland" means grassland and forest lands where the indigenous vegetation is actively managed for grazing, browsing, or occasional hay production. Land used for facilities in support of grazing operations which are adjacent to or an integral part of these operations is also included.

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

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

(49) "Head-of-hollow fill" means a fill structure consisting of any material, other than coal processing waste and organic material, placed in the uppermost reaches of a hollow near the approximate elevation of the ridgeline, where there is no significant natural drainage area above the fill, and where the side slopes of the existing hollow measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than ten (10) degrees.

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

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

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

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

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

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

1. Land that would likely have been used as cropland for any five (5) out of the last ten (10) years immediately preceding the acquisition or the application but for some fact of ownership or control of the land unrelated to the productivity of the land; and
2. Lands that the cabinet determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, are clearly cropland but fall outside the specific five (5) years in ten (10) criterion.

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

(53) "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationship between precipitation, runoff, evaporation, and changes in ground and surface water storage.

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

(55) "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirements of KRS Chapter 350 in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

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

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

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

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

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

(58) "Industrial/commercial lands" means lands used for:

(a) Extraction or transformation of materials for fabrication of products, wholesaling of products or for long-term storage of products; and heavy and light manufacturing facilities. Land used for facilities in support of these operations which is adjacent to or an integral part of that operation is also included.

(b) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial

establishments. Lands used for facilities in support of commercial operations which is adjacent to or an integral part of these operations is also included.

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

(59) "In situ processes" means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.

(60) "Intermittent stream" means:

(a) A stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year; or

(b) A stream or reach of stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and ground water discharge.

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

(62) "Land use" means specific uses or management-related activities rather than the vegetation or cover of the land, and may be identified in combination when joint or seasonal uses occur.

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

(64) "Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing micro-climatic conditions suitable for germination and growth.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(75) "Pastureland" means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed. Land used for facilities in support of pastureland which is adjacent to or an integral part of these operations is also included.

(76) "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of ground-water discharge or surface runoff. The term does not include "intermittent stream" or "ephemeral stream."

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

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

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

(80) "Permit area" means the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas which are or will be affected by surface coal mining and reclamation operations under that permit.

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

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

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

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

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

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

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

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

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

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

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

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

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

(92) "Public office" means a facility under the direction and control of a governmental entity which is open to public access on a regular basis during reasonable business hours.

(93) "Public park" means an area dedicated or designated by any federal, state, or local agency for public recreational use, despite whether such use is limited to certain times or days. It includes any land leased, reserved or held open to the public because of that use.

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

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

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

(97) "Recreation land" means land used for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

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

(99) "Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity and plant species diversity that are produced naturally or by crop production methods approved by the cabinet. Reference areas must be representative of geology, soil, slope and vegetation in the permit area.

(100) "Renewable resource lands" means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazing lands.

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

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

(103) "Safety factor" means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

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

(105) "Sedimentation pond" means a primary sediment controlled structure designed, constructed and maintained in accordance with 405 KAR 16:090 or 405 KAR 18:090 and including but not limited to a barrier, dam, or excavated depression which slows down water runoff to allow suspended solids to settle out. A sedimentation pond shall not include secondary sedimentation control structures such as straw dikes, riprap, check dams, mulches, dugouts and other measures that reduce overland flow velocity, reduce runoff volume or trap sediment, to the extent that such secondary sedimentation structures drain to a sedimentation pond.

(106) "Significant, imminent environmental harm" is an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life as further defined in this subsection.

(a) An environmental harm is imminent, if a condition, practice, or violation exists which:

1. Is causing such harm; or

2. May reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set by the cabinet's authorized agents pursuant to the provisions of KRS Chapter 350.

(b) An environmental harm is significant if that harm is appreciable and not immediately reparable.

(107) "Slope" means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g. 1v:5h). It may also be expressed as a percent or in degrees.

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

(109) "Soil horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The three (3) major soil horizons are:

(a) "A horizon." The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

(b) "B horizon." The layer that typically is immediately beneath the A horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A or C horizons.

(c) "C horizon." The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

(110) "Soil survey" means a field or other investigation, resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets such soils for use. Soil surveys must meet the standards of the National Cooperative Soil Survey.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(125) "Toxic-mine drainage" means water that is discharged from active or abandoned mines or other areas

affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

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

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

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

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

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

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

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

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

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

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

(132) "Water table" means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

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

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

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

JACKIE A. SWIGART, Secretary
ADOPTED: October 26, 1983
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: October 31, 1983 at 4:30 p.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement

405 KAR 7:030E. Applicability.

RELATES TO: KRS 350.010, 350.028, 350.057, 350.060, 350.151, 350.465
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.465
EFFECTIVE: October 31, 1983
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to surface coal mining and reclamation operations. This regulation designates Title 405, Chapters 7 through 24 as applicable to all coal exploration and surface coal mining and reclamation operations, and specifies those activities to which Title 405, Chapters 7 through 24 do not apply. This regulation reflects the jurisdiction of the cabinet over coal exploration and surface coal mining and reclamation operations and sets forth certain non-jurisdictional activities.

Section 1. Applicability. Title 405, Chapter 7 through 24 apply to all coal exploration and surface coal mining and reclamation operations, except *any* surface coal mining and reclamation operation *which, together with any related operation, has or will have an affected area* of two (2) acres or less *in which case the provisions of Title 405, Chapter 26 shall apply* [which are exempt from the requirements of SMCRA].

(1) For purposes of this regulation, where a segment of a road is used for access or coal haulage by more than one (1) surface coal mining operation, the entire segment shall be included in the affected area of each of those operations; provided, that two (2) or more operations which are deemed related pursuant to subsection (2) of this section shall be considered as one operation for purposes of this subsection.

(2) Except as provided in subsection (3) of this section, surface coal mining operations shall be deemed related if they occur within twelve (12) months of each other, are physically related, and are under common ownership or control.

(a) Operations shall be deemed physically related if drainage from both operations flows into the same watershed at or before a point within five (5) aerial miles of both operations.

(b) Operations shall be deemed under common ownership or control if they are owned or controlled, directly or indirectly, by or on behalf of:

1. The same person;

2. Two (2) or more persons, one (1) of whom controls, is under common control with, or is controlled by the other; or

3. Members of the same family and their relatives, unless it is established that there is no direct or indirect business relationship between or among them;

(c) For purposes of this paragraph, "control" means: ownership of fifty (50) percent or more of the voting shares of, or general partnership in, an entity; any relationship which gives one (1) person the ability in fact or in law to direct what the other does; or any relationship which gives one (1) person express or implied authority to determine the manner in which coal at different sites will be mined, handled, sold or disposed of.

(3) Notwithstanding the provisions of subsection (2) of this section, the cabinet may determine, in accordance with the procedures applicable to requests for determination of exemption pursuant to Section 3 of this regulation, that two (2) or more surface coal mining operations shall not be deemed related if, considering the history and circumstances relating to the coal, its location, the operations at the sites in question, all related operations and all persons mentioned in subsection (2)(b) of this section, the cabinet concludes in writing that the operations are not of the type which SMCRA was intended to regulate and that there is no intention on the part of such operations or persons to evade the requirements of KRS Chapter 350 or Title 405, Chapters 7 through 24.

(4) The exemption provided by this section applies only to operations with an affected area of less than two (2) acres where coal is being extracted for commercial purposes and to surface coal mining operations within that affected area incidental to such operations.

Section 2. Coal Extraction Incidental to Government Financed Construction.

(1) (a) Coal extraction which is an incidental part of government-financed construction is exempt from KRS Chapter 350 and Title 405, Chapters 7 through 24, except subsection (2) of this section shall apply.

(b) Any person who conducts or intends to conduct coal extraction which does not satisfy paragraph (a) of this subsection shall not proceed until a permit has been obtained from the cabinet.

(c) Reclamation of abandoned mined lands funded under Title IV of SMCRA, shall be deemed government-financed construction.

(2) Information to be maintained on site. Any person extracting coal incident to government-financed highway or other construction who extracts more than 250 tons of coal or affects more than two (2) acres shall maintain, on the site of the extraction operation and available for inspection, documents which show:

(a) A description of the construction project;

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

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

Section 3. Exemptions. (1) The cabinet may on its own initiative and shall, within a reasonable time of a request from any person who intends to extract coal, make a written determination whether the operation is exempt from Title 405, Chapters 7 through 24. Where appropriate, exemptions shall be recognized for:

(a) The extraction of coal by a landowner for his or her own noncommercial use from land owned or leased by him or her. Noncommercial use does not include the extraction of coal by one (1) unit of an integrated company or other business or nonprofit entity which uses the coal in its own manufacturing or power plants;

(b) The extraction of or intent to extract 250 tons of coal or less by any person by surface coal mining operations within twelve (12) successive calendar months;

(c) The extraction of coal as an incidental part of federal, state or local government-financed highway or other construction;

(d) Surface coal mining and reclamation operations of two (2) acres or less covered by Title 405, Chapter 26.

(2) The cabinet shall give reasonable notice of the request to interested persons. Prior to the time a determination is made, any person may submit, and the cabinet shall consider, any written information relevant to the determination. A person requesting that an operation be declared exempt shall have the burden of establishing the exemption.

(3) If a written determination of exemption is reversed through subsequent administrative or judicial action, any person who, in good faith, has made a complete and accurate request for an exemption and relied upon the determination, shall not be cited for violations which occurred prior to the date of the reversal.

JACKIE A. SWIGART, Secretary
ADOPTED: October 26, 1983
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: October 31, 1983 at 4:30 p.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement

405 KAR 7:090E. Hearings.

RELATES TO: KRS 224.033, 224.081, 224.083, 350.028, 350.070, 350.090, 350.093, 350.130, 350.255, 350.465, 350.990

PURSUANT TO: KRS 13.082, 224.033, 350.020, 350.028, 350.255, 350.465, 350.610

EFFECTIVE: October 31, 1983

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to surface coal mining and reclamation operations and coal exploration. This regulation sets forth hearing, notice, penalty assessment and other procedural and due process provisions for the permanent regulatory program.

Section 1. Applicability. This regulation shall govern the conduct of all hearings by the cabinet for the review of determinations on permits for surface coal mining and reclamation operations and coal exploration, including issuance, denial, suspension, revocation, modification, and compliance with the terms of any permit; notices of noncompliance and orders for remedial measures; orders for cessation and immediate compliance issued pursuant to KRS 350.130(1) and (4); orders to abate and alleviate; determinations on performance bond amount, duration, release, and forfeiture; and all other matters which in the discretion of the cabinet are appropriate for adjudication and determination by the cabinet and arise by virtue of an order or determination of the cabinet pursuant to the permanent regulatory program for surface coal mining and reclamation operations and coal exploration as set forth in KRS Chapter 350 and Title 405, Chapters 7 through 24.

Section 2. Construction. This regulation shall be construed to achieve just, timely and inexpensive determinations of all questions appropriate for determination pursuant to Section 1 of this regulation.

Section 3. Proposed Penalty Assessment. (1) The cabinet shall notify any person issued a notice of noncompliance and order for remedial measures or an order for cessation and immediate compliance of its proposed penalty assessment. The proposed assessment shall be made by authorized personnel within the Department of Surface Mining Reclamation and Enforcement.

(2) In determining the amount of the penalty, consideration shall be given to the permittee's history of previous violations at the particular surface coal mining operation; the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public; whether the permittee was negligent; and the demonstrated good faith of the permittee in attempting to achieve rapid compliance after notification of the violation.

(3) *(a)* The cabinet shall *mail, postage prepaid,* [send] its notice of the proposed penalty assessment, together with copies of applicable worksheets, to the person *to whom the notice or order was issued or that person's representative,* [against whom the assessment is proposed] within fifteen (15) working days after issuance of the final notice of inspection of noncompliance. [The notice of assessment shall be sent by certified mail, return receipt requested, or by registered mail, addressed to the agent for service or the permanent address shown on the permit application; or if no address is shown on the application, to such other address as is known to the cabinet.]

(b) Failure by the cabinet to serve any proposed assessment within fifteen (15) working days after issuance of the final notice of inspection of noncompliance shall not be grounds for dismissal of all or part of such assessment unless the person against whom the proposed penalty has been assessed:

1. Proves actual and substantial prejudice as a result of the delay; and

2. Makes a timely written objection to the delay. An objection shall be timely only if made on or before the date of the preliminary hearing, or if the preliminary hearing is waived, on or before the date of the formal hearing.

(4) (a) The person to whom a proposed penalty assessment was sent who chooses not to contest the fact of the violation or the assessment shall pay the proposed penalty assessment in full to the cabinet within thirty (30) days from the date of mailing of the assessment.

(b) The person to whom a proposed penalty assessment was sent may contest the penalty, as well as the fact of the violation, by attending the preliminary hearing scheduled pursuant to Section 4 of this regulation or by requesting a formal hearing in writing pursuant to Section *5(1)(b)* [(2)]. Prepayment of penalties shall be made as provided therein.

Section 4. Preliminary Hearings. (1) Following issuance by the cabinet of a notice of noncompliance and order for remedial measures or an order for cessation and immediate compliance, the cabinet shall schedule a preliminary hearing on the fact of the violation and the proposed penalty assessment unless such hearing is waived by the person to whom the notice or order was issued. The preliminary hearing shall be *scheduled for a date* [held] no later than sixty (60) days after the date of mailing of the proposed penalty assessment: Provided that, where the preliminary hearing is to consider a notice or order requiring cessation of mining by a permittee, such hearings shall be held within thirty (30) days of the issuance of such notice or order. *Failure by the cabinet to schedule a hearing for a date within sixty (60) days or to hold a hearing concerning a notice or order requiring cessation of mining within thirty (30) days, respectively, shall not be grounds for dismissal of all or part of an assessment unless the person against whom the proposed penalty has been assessed makes a timely objection on or before the date of the preliminary hearing and proves actual and substantial prejudice as a result of the delay.* The scheduling of the preliminary hearings shall not operate as a stay of any notice or order.

(2) Notice of the preliminary hearing shall be *served in accordance with Section 6 of this regulation* [sent by certified mail, return receipt requested, to the person to whom the notice or order was issued]. Notice shall also be sent to any person who filed a report which led to the *issuance of the* notice or order being contested. The cabinet shall post notice of the preliminary hearing at the regional office closest to the minesite at least five (5) days before the hearing. Any person shall have the right to attend and participate in the preliminary hearing.

(3) If a preliminary hearing is held before the time provided in Section 3 for mailing of the proposed penalty assessment, the cabinet may propose such assessment at the preliminary hearing.

(4) The person contesting the assessment need not pay the proposed amount into escrow prior to the preliminary hearing. [, but may wait and make payment pursuant to subsection (7) of this section, unless] *If* such person waives the preliminary hearing, [in which case] the payment provisions of subsection (6) shall apply.

(5) The hearing officer may make a preliminary determination to affirm, raise, lower, or vacate the proposed penalty, or to *affirm,* terminate, modify, or vacate the notice or order with which the preliminary hearing is concerned. The hearing officer shall state his or her reasons therefor in writing and with particularity. Within thirty (30) days after the preliminary hearing is held, the *hearing officer shall file his or her preliminary determination with the cabinet. Upon receipt, the cabinet shall immediately mail, postage prepaid* [cabinet shall send by certified mail, return receipt requested, or by registered mail], notice of the hearing officer's determination to the parties to the hearing and to any person who filed a report which led to the issuance of the notice or order which was the subject of the preliminary hearing.

(6) The person to whom the notice or order was issued may, within fifteen (15) days of the mailing of the proposed penalty assessment, waive the preliminary hearing in

writing and request a formal hearing to contest either the fact of the violation or the proposed penalty assessment, or both. Such person must forward to the cabinet *an amount equal to* the proposed penalty assessment for placement into an escrow account, within thirty (30) days after mailing of the proposed assessment.

(7) (a) An authorized representative of the cabinet shall attend the preliminary hearings.

(b) If a person to whom a notice or order was issued fails without good cause to attend the scheduled preliminary hearing or to comply with subsection (6) above, he or she *shall* [may] be deemed to have waived all rights to contest the fact of the violation or the proposed penalty, and the cabinet *shall* [may] enter a final order containing the findings set forth in *subsection (10) of this section* [Section 5(2)(c) of this regulation].

(8) [(c)] If an agreement is reached at the preliminary hearing, the cabinet shall present *the terms of the agreement to the hearing officer and shall present* in person or *mail, postage prepaid* [send by certified mail, return receipt requested, or by registered mail], a written settlement agreement to the person to whom the notice or order was issued. Such person shall sign the settlement agreement upon presentation immediately following the preliminary hearing or return it to the cabinet within ten (10) days of the date on which it was mailed. *If the signed settlement agreement is returned more than ten (10) days after its presentation or mailing, it may be voided at the cabinet's discretion.* The parties to the agreement will be deemed to have waived their rights to further hearings or review of the matter, except as expressly provided in the settlement agreement. The settlement agreement shall set forth the facts and circumstances giving rise to the agreement, including a statement of the violation or violations concerned. The penalty agreed to shall be due and payable thirty (30) days after signing of the settlement agreement. [Failure to return the signed settlement order within ten (10) days after its presentation or mailing by the cabinet shall render the agreement void.] *If the matter is not settled, the hearing officer shall [then] issue his or her preliminary determination not later than thirty (30) days after the preliminary hearing was held, and the provisions of subsection (9) of this section* [paragraph (d)] shall apply.

(9) [(d)] If no agreement is reached, any party may, within fifteen (15) days after the presentation or mailing of the hearing officer's determination following the preliminary hearing, request a formal hearing [pursuant to Section 5]. Any such request by the person to whom the notice or order was issued shall be accompanied by payment of an amount equal to the proposed penalty (as amended or affirmed pursuant to the preliminary hearing) to the cabinet, to be held in escrow. If the cabinet is the party requesting a formal hearing, the payment into escrow need not be made. Failure to request a formal hearing or to submit payment within the prescribed time shall be deemed a waiver of all rights to further hearings or review of the matter, and shall be grounds for issuance of a final order of the cabinet pursuant to *subsection (10) of this section* [Section 5(2)(c)].

(10) Failure to request a formal hearing in a timely manner shall be considered an admission of the fact of the violation and acceptance of the proposed penalty assessment. If no request for a formal hearing is made within fifteen (15) days after the mailing of the hearing officer's preliminary determination following the preliminary hearing, the cabinet shall forthwith enter and mail a final order finding:

1. That the person has waived his or her right to a hearing;

2. That the findings and conclusions contained in the preliminary determination of the hearing officer are admitted; and

3. That the penalty assessment contained in the preliminary determination of the hearing officer is due and payable to the cabinet within fifteen (15) days, after mailing of the final order.

[(8) [The hearing office shall terminate any preliminary hearing when he or she determines that the dispute cannot be resolved or that the parties are not diligently pursuing a resolution of the dispute.]

(11) [(9)] No person who presided at a preliminary hearing shall either preside at a subsequent hearing in the same matter or participate in any further decision or any subsequent administrative appeal.

Section 5. Formal Hearing. (1) *Requests for formal hearing by persons other than the cabinet:*

(a) Except as provided in *paragraph (b) of this subsection* [subsection (2) of this section], any person aggrieved by an order or determination of the cabinet may request in writing, pursuant to KRS 224.081(2), that a hearing be conducted by the cabinet. The right to demand such a hearing shall be limited to a period of thirty (30) days after the requester has had actual notice of the action, or could reasonably have had such notice.

(b) [(2) (a)] Any person issued a notice of noncompliance and order for remedial measures or an order for cessation and immediate compliance may request a de novo formal hearing with the cabinet *and pay the proposed penalty assessment into escrow* pursuant to Section 4(6) or Section 4*(9) of this regulation* [(7)(d)]. Such request shall be *filed with the Docket Coordinator, Office of General Counsel,* [sent by certified mail, return receipt requested, or by registered mail, to] *at* the *cabinet's* central office in Frankfort.

[(b)] The request for a hearing shall include a short and plain statement why the amount of the penalty proposed to be assessed, or the fact of the violation, or both, is being contested. The request for a hearing shall plainly identify the notice or order that the requester is contesting. The request shall not operate as a stay of any order or notice.

[(c) Failure to request a formal hearing in a timely manner shall be considered a waiver of the right to contest the fact of the violation or the proposed penalty assessment. If no request for a formal hearing is made within fifteen (15) days after the mailing of the hearing officer's preliminary determination following the preliminary hearing, the cabinet shall forthwith enter and mail by certified mail, return receipt requested, or by registered mail, a final order finding:]

[1. That the person should be considered to have waived his or her right to a hearing;]

[2. That the findings and conclusions contained in the preliminary determination of the hearing officer should be deemed admitted; and]

[3. That the proposed penalty assessment, as adjusted by the hearing officer following the preliminary hearing, is due and payable to the cabinet within fifteen (15) days.]

(2) Initiation of formal hearing by the cabinet.

[(3)] (a) The cabinet may initiate *a formal hearing* [show cause proceedings] whenever:

1. It has reason to believe that a violation of KRS Chapter 350 or Title 405, Chapters 7 through 24 has occurred or is occurring; or

2. A permittee has failed to pay a civil penalty assessed in a final order of the cabinet *or to undertake remedial measures mandated by a final order of the cabinet or to abate violations it was determined to have committed by a final order of the cabinet; or*

3. The cabinet chooses to contest a preliminary hearing determination, or

4. The provisions of KRS 350.990(9) apply.

(b) The cabinet shall initiate *a formal hearing* [show cause proceedings] whenever:

1. The cabinet has reason to believe that additional remedies should be sought or order entered against any person to protect the environment or the health or safety of the public; or

2. The permittee has willfully failed to comply with an order for cessation and immediate compliance; or

3. The cabinet has determined, pursuant to paragraph *(c)1* [(f)] of this subsection, that a pattern of violations of any requirements of KRS Chapter 350, Title 405, Chapters 7 through 24, or any permit conditions exists or has existed, and that the violations were caused by the permittee willfully, or through unwarranted failure to comply with those requirements or conditions.

[(c) The complaint issued by the cabinet may require a person to show cause why his permit should not be suspended or revoked or his bond forfeited. The cabinet shall:]

[1. If practicable, publish notice of the show cause order, including a brief statement of the procedure for intervention in the proceeding, in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county or counties of the surface coal mining and reclamation operations or coal exploration operation; and]

[2. Post the notice at the appropriate regional office of the department.]

[(d) If the permittee requests a hearing on the show cause order, a formal hearing shall be provided pursuant to this regulation. The cabinet shall give at least twenty-one (21) days' written notice of the date, time, and place of hearing to the permittee and any intervenor and shall post notice at the appropriate regional office of the department.]

[(e) The cabinet may decline to issue a show cause order, or may vacate an outstanding show cause order, if it finds that, taking into account exceptional factors present in the particular case, it would be demonstrably unjust to issue or to fail to vacate the show cause order. The basis for this finding shall be fully explained and documented in the records of the case.]

(c) Pattern of violations.

1. [(f) The cabinet shall determine that a pattern of violations exists if it finds there were violations of the same or related requirements of KRS Chapter 350, Title 405, Chapters 7 through 24, or permit conditions, during three (3) or more inspections of the permit area within any twelve (12) month period.] The cabinet may determine that a pattern of violations exists or has existed, based on two (2) or more inspections of the permit area within any twelve (12) month period, after considering the circumstances, including:

a. [1.] The number of violations, cited on more than one (1) occasion, of the same or related requirements of KRS Chapter 350, Title 405, Chapters 7 through 24, or permit conditions;

b. [2.] The number of violations, cited on more than one (1) occasion, of different requirements of KRS Chapter 350, Title 405, Chapters 7 through 24, or permit conditions; and

c. [3.] The extent to which the violations were isolated departures from lawful conduct.

2. The cabinet shall promptly review the history of violations of any permittee who has been cited for violations of the same or related requirements of KRS Chapter 350, Title 405, Chapters 7 through 24 or permit conditions during three (3) or more inspections of the permit area within any twelve (12) month period. If, after such review, the cabinet determines that a pattern of violations exists or has existed, the cabinet shall request a formal hearing pursuant to subsection (2) of this section.

3. [(g)] In determining the number of violations within any twelve (12) month period, the cabinet shall consider only violations issued as a result of inspections carried out on or after May 3, 1978. The cabinet may *not* consider violations issued as a result of other inspections in determining whether to exercise its discretion under paragraph *(c)1* [(f)] of this subsection, *except as evidence of the willful or unwarranted nature of the permittee's failure to comply.*

4. Whenever a permittee fails to abate a violation contained in a notice of noncompliance or cessation order within the abatement period set in the notice or order or as subsequently extended, the cabinet shall review the permittee's history of violations to determine whether a pattern of violations exists pursuant to this subsection and shall initiate a formal hearing as provided in this section.

(3) At any formal hearing held pursuant to Section 5(1) or (2) of this regulation to which it is a party, the cabinet may seek any combination of the following:

(a) Permit suspension or revocation;

(b) Bond forfeiture;

(c) Civil penalties;

(d) A determination, pursuant to KRS 350.060, 350.085, and 350.130, that a person or persons shall not be eligible to receive another permit or conduct future operations;

(e) A determination, pursuant to KRS 350.990(9), that any director, officer, or agent of a corporation willfully and knowingly authorized, ordered, or carried out a violation or failed or refused to comply with any final order; and

(f) Any and all other relief to which it may be entitled by KRS Chapters 224 and 350.

(4) [(h)] If the cabinet revokes or suspends the permit or exploration approval, the permittee shall immediately cease surface coal mining operations on the permit area shall:

(a) [1.] If the permit or exploration approval is revoked, complete reclamation within the time specified in the order; or

(b) [2.] If the permit or exploration approval is suspended, complete all affirmative obligations to abate all conditions, practices or violations, as specified in the order.

(5) If a final order of the cabinet has been issued after a preliminary hearing, any issues adjudicated by such order shall be conclusive as between the parties to that hearing and shall not be readjudicated at any subsequent formal hearing between the same parties.

(6) [(4)] *Administrative summons.* [Notice of hearing.] Upon request pursuant to subsection (1) [or (2)] of this section, or upon initiation by the cabinet pursuant to subsection *(2)* [(3)], the cabinet shall schedule a hearing before the cabinet to be held not less than twenty-one (21) days after the notice of demand for such a hearing, unless the person complained against waives in writing the twenty-one (21)

day period. The *administrative summons, including a* notice of hearing, shall be served in *accordance with Section 6 of this regulation* [person, or sent by certified mail, return receipt requested, or by registered mail]; and shall include a statement of the time, place, and nature of the hearing; the legal authority for the hearing; reference to the statutes and regulations involved; and a short statement of the reason for granting of the hearing. *For all formal hearings initiated pursuant to Section 5(2) of this regulation, notice shall also be mailed to any intervenors, shall be posted at the appropriate regional office of the cabinet and, if practicable, notice shall be published in a newspaper of general circulation in the area of the surface coal mining operation or coal exploration operation.*

(7) [(5)] Prior to a formal hearing, and upon seven (7) days' written notice to all parties, [delivered personally or sent by certified mail, return receipt requested, or by registered mail,] the hearing officer may hold a pre-hearing conference to consider simplification of the issues, admission of facts and documents which will avoid unnecessary proof, limitation of the number of witnesses, and such other matters as will aid in the disposition of the matter. Final disposition of the matter may be made at such a conference by stipulation, settlement, agreed order, or default for non-appearance. The parties may hold such additional conferences as may be proper to resolve any issue in dispute.

(8) [(6)(a)] All formal hearings shall be de novo *as to all issues of fact and law, provided that those findings previously adjudicated by a final order of the cabinet following a preliminary hearing shall be binding against any party or parties to the preliminary hearing leading to the final order.* Any party to a hearing may be represented by counsel, make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of such actions. The cabinet may compel the attendance of witnesses and the production of documents by the issuance of subpoenas. An independent hearing officer shall preside at the hearing, shall keep order, and shall conduct the hearing in accordance with reasonable administrative practice. Oaths and affirmations *shall* [may] be administered by the hearing officer or court reporter. [The pertinent] Provisions of *400 KAR 1:030, 400 KAR 1:040, and 400 KAR 1:050* [the Kentucky Rules of Civil Procedure] shall apply to cases before the cabinet, consistent with KRS Chapter 350 and these regulations. The hearing officer shall permit any party to represent himself. Failure to appear without good cause or failure to comply with any pre-hearing or interlocutory order of the hearing officer shall be grounds for a default.

(9) [(b)] Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. When necessary to ascertain facts not reasonably susceptible of proof under judicial rules of evidence, evidence not admissible thereunder may be admitted (except where precluded by statute) if it is of a type commonly relied upon by reasonable and prudent persons in the conduct of their affairs. Hearing officers shall give effect to the rules of privilege recognized by law. Objections may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form. Documentary evidence may be received in the form of copies or excerpts [, if the original is not readily available]. Upon request, parties shall be given an opportunity to compare the copy with the original. A party may conduct cross-examinations required for a full and true disclosure of the facts. Notice may be taken of generally recognized technical or scientific facts within the cabinet's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The cabinet's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

(10) [(c)] Each formal hearing shall be recorded, and a transcript made available on the motion of any party or by order of the hearing officer. Unless otherwise agreed, the party requesting the transcript shall provide payment for the original, and all others desiring copies shall pay the cost thereof. The record of such hearing, consisting of all pleadings, motions, rulings, documentary and physical evidence received or considered, a statement or matters officially noticed, questions and offers of proof, objections and rulings thereon, proposed findings and recommended orders, and legal briefs, shall be open to public inspection and copies thereof shall be made available to any person upon payment of the actual cost of reproducing the original except as provided in KRS 224.035. When certified as a true and correct copy of the testimony by the cabinet, the transcript shall constitute the official transcript of the evidence.

(11) [(7)] The hearing officer shall make a determination after hearing and based on *a preponderance of the* [substantial] evidence appearing in the record as a whole, setting forth whether the violation did in fact occur, the amount of the penalty recommended by the hearing officer, and remedial or compliance actions recommended to be taken by the permittee. The hearing officer may *recommend* [order] suspension or revocation of a permit or forfeiture of a bond *if a permittee has violated any provision of KRS Chapter 350 or Title 405, any permit condition or final order, including failure to pay a civil penalty assessed in a final order of the cabinet. The hearing officer shall recommend revocation of a permit and forfeiture of a bond if the permittee has demonstrated a pattern of violations or willfully failed to comply with an order for cessation and immediate compliance or the conditions of 405 KAR 10:050, Section 3(1) are met. The hearing officer may recommend, pursuant to KRS 350.060, 350.085, and 350.130 that a person or persons should not be eligible to receive another permit or conduct future operations.* The hearing officer *may recommend that* [shall require] a person or permittee [in a recommended order, agreed settlement order, consent order, or stipulation,] *be required* to abate, repair, alleviate *or* [and] prevent violations of KRS Chapter 350, Title 405, Chapters 7 through 24, or any permit condition, which violations are found to exist on the basis of *a preponderance of the* [substantial] evidence.

(12) [(8)] *Subject to Section 5(5) of this regulation,* the [civil penalties assessed for violations of KRS Chapter 350, Title 405, Chapters 7 through 24 or for violation of any permit condition shall be part of the affirmative case presented by the cabinet. The] hearing officer shall *recommend* [determine] the amount of a civil penalty based exclusively on the record of the hearing. The hearing officer may compute the amount of the penalty to be assessed irrespective of any computation offered by any party, and shall consider the same factors set forth above at Section 3(2) for consideration in setting proposed penalty assessments. The hearing officer shall state with particularity the reasons, supported by the record of the hearing, for the penalty assessed in his final written report.

(13) [(9)(a)] Except as provided in Section *9* [8] of this regulation for permit hearings, the hearing officer shall, within thirty (30) days of the close of the hearing record, make a report and a recommended order to the secretary. The report and recommended order shall contain the appropriate findings of fact and conclusions of law. If the secretary finds upon written request of the hearing officer that additional time is needed, then the secretary may grant a reasonable extension. The hearing officer shall *mail, postage pre-paid,* [serve] a copy of his report and recommended order *to* [upon] all parties. The parties may file within seven (7) days of *mailing* [service] of the hearing officer's report and recommended order exceptions to the report and recommended order. There shall be no other or further submissions.

(14) The secretary shall consider the report and recommended order and any exceptions filed and pass upon the case within a reasonable time. The secretary may remand the matter to the hearing officer [for further deliberation], adopt the report and recommended order of the hearing officer as the cabinet's final order, or issue his or her own final order [based on the hearing officer's report and any exceptions thereto].

(15) [(b) After completion of the hearing and filing of exceptions,] The cabinet shall *mail* [notify the parties in writing, by certified mail, return receipt requested, of] the final decision of the cabinet *to the parties.* If any extension of time is granted by the secretary for a hearing officer to complete his report, the cabinet shall notify all parties at the time of the granting of the extension.

(16) [(c)] The secretary shall not grant extensions of time to the hearing officer for more than thirty (30) days for any one (1) extension, and no more than two (2) such extensions shall be granted.

(17) [(d)] A final order of the cabinet shall be based on substantial evidence appearing in the record as a whole and shall set forth the decision of the cabinet and the facts and law upon which the decision is based.

(18) [(10)] There shall be no ex-parte communications between *the parties or* representatives of the parties and the hearing officer.

(19) [(11)] Any person aggrieved by a final order of the cabinet may seek judicial review as set forth in KRS 224.085 and 350.032(2).

Section 6. Service. Any proposed penalty assessment, notice of preliminary hearing, notice of formal hearing or other document required to be served in accordance with this section shall be served by one (1) of the following methods:

(1) The cabinet may place a copy of the document to be served in an envelope, and address the envelope to the person to be served at the address set forth in the caption or at the address set forth in written instructions furnished by the initiating party. The cabinet shall affix adequate postage and place the sealed envelope in the United States mail as certified mail return receipt requested. The cabinet shall forthwith enter the fact of mailing in the record and make a similar entry when the return receipt is received. If the envelope is returned with an endorsement showing failure of delivery, that fact shall be entered in the record. The cabinet shall file the return receipt or returned envelope in the record. Service by certified mail is complete upon delivery of the envelope or as provided by subsection (3) of this section. The return receipt shall be proof of the time, place and manner of service. To the extent that the United States postal regulations permit authorized representatives of local, state, or federal governmental offices to accept and sign for 'addressee only' mail, signature by such authorized representative shall constitute service on the addressee; or

(2) The cabinet may cause the document, with necessary copies, to be transferred for service to any person authorized by the secretary or by any statute or rule, other than by paragraph (1) of this subsection, to deliver them, who shall serve the documents, and the return endorsed thereon shall be proof of the time and manner of service; or

(3) As an alternative to other methods of service specified by statute or regulation, service of process may be made upon a person issued a permit by the cabinet or upon a person who has submitted an exploration notice pursuant to 405 KAR 8:020 by placing in the United States mail as certified mail, return receipt requested, a copy of the document directed to the named agent for service or the permittee as specified on the face of the permit at the permanent address specified in the permit application or by the permittee. Service is effective upon acceptance of the document by any person at the permanent address, upon refusal to accept the document by any person at the permanent address, or upon failure to claim the document prior to its return to the cabinet by the United States Postal Service. The return receipt shall be proof of the acceptance, refusal, or failure to claim the document.

(4) The methods of service specified by this regulation shall be supplemental to and shall be accepted as an alternative to any other method of service specified by other applicable law.

Section *7.* [6] Location of Hearings. Preliminary hearings and formal hearings shall, upon written request filed within fifteen (15) days of the mailing of the proposed penalty assessment, by the *cabinet or the* operator to whom the notice or order was issued, be held at or reasonably close to the minesite, or at any other location acceptable to the parties. The appropriate regional office of the department [of Surface Mining Reclamation and Enforcement] nearest to the mine site shall be deemed reasonably close unless a closer location is requested *by the cabinet or the operator* and agreed to by the hearing officer in his or her discretion.

Section *8.* [7.] Temporary Relief. (1) Pending the completion of the investigation and hearings provided for in this regulation, the chief hearing officer may, *subject to review by the secretary,* grant temporary relief from any notice or order issued pursuant to 405 KAR 12:020 or permit determination of the cabinet. Any request for such relief shall be in writing and shall contain a detailed statement giving reasons why such relief should be granted. The chief hearing officer may grant such temporary relief after making a written finding that such relief is warranted, and shall state the reasons for his or her finding. The chief hearing officer shall grant or deny such relief expeditiously: Provided that, where the person requests temporary relief from an order for cessation and immediate compliance issued pursuant to KRS 350.130(1) or (4), the chief hearing officer shall grant or deny such temporary relief within five (5) days of receipt of such request.

(2) The chief hearing officer may grant temporary relief from notices and orders of the cabinet issued pursuant to 405 KAR 12:020, under such conditions as he or she may prescribe, if:

(a) A hearing on the request for temporary relief has been held in the locality of the permit area, or at any other

location acceptable to the cabinet and the person to whom the notice or order was issued, in which all parties were given an opportunity to be heard;

(b) The person requesting such relief shows that there is substantial likelihood that the findings on the merits in a hearing conducted by the cabinet will be favorable to such person; and

(c) Such relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources.

(3) Where a person requests temporary relief from a permit or coal exploration determination, the chief hearing officer may, under such conditions as he or she may prescribe, pending final determination of the proceeding, grant such temporary relief as he or she deems appropriate, if:

(a) All parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief.

(b) The person requesting that relief shows that there is a substantial likelihood that he or she will prevail on the merits of the final determination of the proceeding; and

(c) The relief will not effect adversely the public health or safety, or cause significant, imminent environmental harm to land, air, or water resources; and

(d) The relief sought is not the issuance of a permit where a permit has been denied, in whole or in part, by the cabinet.

Section *9.* [8.] Review of Permit and Coal Exploration Determinations. Review of determinations by the cabinet on permits and revisions and renewals thereof, concerning issuance; denial; imposition of conditions; application for transfer, sale, or assignment of rights; or applications for coal exploration shall be conducted pursuant to this regulation, provided that the cabinet shall issue its final decision within twenty (20) days after the hearing, as set forth in KRS 350.090(1). The burden of proof shall be on the party seeking to reverse the determination of the cabinet. Temporary relief may be requested pursuant to Section *8* [7] of this regulation.

Section *10.* [9.] Orders to Abate and Alleviate. Whenever the secretary, pursuant to KRS 224.071, issues an order to abate and alleviate, the cabinet shall, as soon as possible, not to exceed ten (10) days thereafter, provide the person to whom the order was issued an opportunity to be heard. The holding of a hearing pursuant to this section shall not operate as a termination or stay of such an order or of the affirmative obligations imposed on any person by the order, unless the hearing officer shall find on the record that the obligations have been met or that the order was improper or inappropriate.

Section *11.* [10.] Penalties. (1) Any person or permittee who violates any of the provisions of KRS Chapter 350, Title 405, Chapters 7 through 24, or a permit condition or who fails to perform the duties imposed by these provisions, except the refusal or failure to obtain a permit, exploration approval or other authorization or who violates any determination or order promulgated pursuant to the provisions therein, may be assessed a civil penalty of not more than $5,000 for each day during which such violation continues. A civil penalty of not more than $5,000 for each day shall be assessed against any person issued an order pursuant to KRS 350.130(4).

(2) Whenever a violation has not been abated during the abatement period set forth in a notice of noncompliance and order for remedial measures or in an order for cessation and immediate compliance, a civil penalty of not less than $750 shall be assessed for each day during which such *failure to abate* [violation] continues, up to a maximum of thirty (30) days, *except that*: [Provided that,]

(a) Such penalty for the failure to abate the violation shall not be assessed for more than thirty (30) days for each such violation. If the permittee has not abated the violation within the thirty (30) day period, the cabinet shall take appropriate action within thirty (30) days to ensure that abatement occurs or to ensure that there will not be a reoccurrence of the failure to abate; and

(b) If the person to whom the notice or order was issued initiates review proceedings with respect to the violation, and the abatement requirements are suspended in a temporary relief proceeding pursuant to Section *8* [7] of this regulation, following a determination that the person requesting relief will suffer irreparable loss or damage from the application of the requirements, then the abatement period shall be extended until the date when the cabinet issues its final order concerning the violation in question.

(3) Any person who engages in surface coal mining and reclamation operations or coal exploration operations without first securing a permit or exploration approval according to Title 405, Chapters 7 through 24, shall be assessed a civil penalty of not less than $5,000 nor more than $25,000. Each day shall constitute a separate violation. However, the penalties provided in subsection (1) of this section shall apply in lieu of the penalties provided for in this subsection where a permittee through inadvertence has exceeded the boundaries of the permit in effect at that time.

(4) Whenever a corporate permittee violates any provision of KRS Chapter 350 or regulations promulgated pursuant thereto, or fails or refuses to comply with any final order issued by the secretary, any director, officer, or agent of such corporation who willfully and knowingly authorized, ordered, or carried out such violation, failure or refusal shall be subject to the same civil penalties, fines, and imprisonment as may be imposed upon a person pursuant to this section.

(5) [(4)] Penalties shall be recoverable in an action brought in the name of the Commonwealth of Kentucky or the Cabinet for Natural Resources and Environmental Protection by the cabinet's office of general counsel, or upon the secretary's request, by the attorney general.

(6) [(5)] (a) If any party seeks judicial review of a final order of the cabinet involving a penalty, the proposed penalty shall continue to be held in escrow until completion of the review. If no judicial review is sought, the escrowed funds shall be transferred to the cabinet for payment to the Kentucky State Treasurer as provided by law.

(b) If a final order of the cabinet or final decision of a reviewing court results in the reduction or elimination of the proposed penalty, the cabinet shall within thirty (30) days of receipt of the order refund the appropriate amount with interest at the statutory rate from the date of payment into escrow.

(c) If a final order of the cabinet or final decision of a reviewing court increases the penalty, the person to whom the notice or order was issued shall pay the difference to the cabinet within thirty (30) days after receipt of the order.

Section *12.* [11.] Intervention and Consolidation. (1) Any person may petition in writing for leave to intervene at any stage of a proceeding under this regulation.

(2) A petitioner for leave to intervene shall incorporate in the petition a statement setting forth the interest of the petitioner and, where required, a showing of why that interest is or may be adversely affected.

(3) Unless the petitioner's interest is adequately represented by existing parties, the hearing officer shall grant intervention where the petitioner:

(a) Had a statutory right to initiate the proceeding in which he wishes to intervene; or

(b) Has an interest which is or may be adversely affected by the outcome of the proceeding.

(4) If neither paragraph (a) nor paragraph (b) of subsection (3) above applies, the hearing officer shall consider the following in determining whether intervention is appropriate:

(a) The nature of the issues;

(b) The adequacy of representation of petitioner's interest which is provided by the existing parties to the proceeding;

(c) The ability of the petitioner to present relevant evidence and argument; and

(d) The effect of intervention on the agency's implementation of its statutory mandate.

(5) Any person granted leave to intervene in a proceeding may participate in such proceeding as a full party or, if desired, in a capacity less than that of a full party. If an intervenor wishes to participate in a limited capacity, the extent and the terms of the participation shall be in the discretion of the hearing officer.

(6) When proceedings involving the same permittee or a common question of law or fact are pending before the cabinet, such proceedings are subject to consolidation pursuant to a motion by a party or at the initiative of the hearing officer.

Section *13.* [12.] Costs and Expenses. (1) Any person may file a petition for award of costs and expenses including attorneys' fees reasonably incurred as a result of that person's participation in any proceeding held pursuant to this regulation which results in a final order of the cabinet.

(2) The petition for an award of costs and expenses, including attorneys' fees, must be filed with the *cabinet* [hearing officer who issued the final order] within forty-five (45) days of receipt of *the final* [such] order. Failure to make a timely filing of the petition may constitute a waiver of the right to such an award.

(3) A petition filed under this section shall include the name of the *party* [person] from *which* [whom] costs and expenses are sought and the following shall be submitted in support of the petition:

(a) An affidavit setting forth in detail all costs and expenses including attorneys' fees reasonably incurred for, or in connection with, the person's participation in the proceeding;

(b) Receipts or other evidence of such costs and expenses; and

(c) Where attorneys' fees are claimed, evidence concerning the hours expended on the case, the customary commercial rate of payment for such services in the area, and the experience, reputation and ability of the individual or individuals performing the services.

(4) Any person served with a copy of the petition shall have thirty (30) days from service of the petition within which to file an answer to such petition.

(5) Appropriate costs and expenses including attorneys' fees may be awarded *as follows:* [by the cabinet to any person as the secretary deems proper.]

(a) To any person from the permittee, if the person initiates any administrative proceedings reviewing enforcement actions, upon a finding that, on or after May 18, 1982, a notice of noncompliance or order for cessation was issued for violations of KRS Chapter 350, Title 405, or permit conditions or that an imminent hazard existed, or to any person who participates in an enforcement proceeding where such a finding is made, if the hearing officer finds and the secretary concurs that the person made a substantial contribution to the full and fair determination of the issues; or

(b) To any person other than a permittee or his representative from the cabinet, if the person initiates or participates in any proceeding under KRS Chapter 350 upon a finding that the person made a substantial contribution to a full and fair determination of the issues; or

(c) To a permittee from the cabinet when the permittee demonstrates that the cabinet issued an order of cessation or a notice of noncompliance or initiated a formal hearing in bad faith and for the purpose of harassing or embarrassing the permittee; or

(d) To a permittee from any person where the permittee demonstrates that the person initiated a proceeding under this regulation or participated in such a proceeding in bad faith and for the purpose of harassing or embarrassing the permittee; or

(e) To the cabinet where it demonstrates that any person applied for review pursuant to this regulation or that any party participated in such a proceeding in bad faith and for the purpose of harassing or embarrassing the cabinet or the Commonwealth.

(6) An award under this section may include reimbursement for:

(a) Costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred as a result of initiation and/or participation in a proceeding under this regulation; and

(b) Costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred in seeking the award before the cabinet.

Section *14.* [13.] Judicial Review. The commencement of proceedings for judicial review of any determination of the cabinet shall not operate as a stay of the final order of the cabinet, unless specifically ordered by the court.

JACKIE A. SWIGART, Secretary
ADOPTED: October 26, 1983
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: October 31, 1983 at 4:30 p.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement

405 KAR 8:030E. Surface coal mining permits.

RELATES TO: KRS 350.060, 350.465
PURSUANT TO: KRS 13.082, 350.020, 350.028 350.060, 350.465
EFFECTIVE: October 31, 1983
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to permits for surface mining activities. This regulation specifies certain information to be

shown by the applicant related to legal and compliance status, environmental resources, and his mining and reclamation plan. This regulation further specifies certain showings to be made by the applicant to obtain a permit.

Section 1. General. (1) This regulation applies to any person who applies for a permit to conduct surface mining activities.

(2) The requirements set forth in this regulation specifically for applications for permits to conduct surface mining activities are in addition to the requirements applicable to all applications for permits to conduct surface coal mining and reclamation operations as set forth in 405 KAR 8:010.

(3) This regulation sets forth information required to be contained in applications for permits to conduct surface mining activities, including:

(a) Legal, financial, compliance, and related information;

(b) Environmental resources information; and

(c) Mining and reclamation plan information.

Section 2. Identification of Interests. (1) Each application shall contain the names and addresses of:

(a) The permit applicant, including his or her telephone number;

(b) Every legal or equitable owner of record of the property to be mined;

(c) The holders of record of any leasehold interest in the property to be mined;

(d) Any purchaser of record, under a real estate contract, of the property to be mined;

(e) The operator, if different from the applicant, who will conduct surface mining activities on behalf of the applicant, including his or her telephone number; and

(f) The resident agent of the applicant who will accept service of process, including his or her telephone number.

(2) If any owner, holder, purchaser, or operator, identified under subsection (1) of this section, is a business entity other than a single proprietor, the application shall contain the names and addresses of their respective principals, officers, and resident agents.

(3) Each application shall contain a statement of whether the applicant is a corporation, partnership, single proprietorship, association or other business entity. For businesses other than single proprietorships, the application shall contain the following information, where applicable:

(a) Names and addresses of every officer, partner, director, or other person performing a function similar to a director of the applicant;

(b) Name and address of any person who is a principal shareholder of the applicant;

(c) Names under which the applicant, partner, or principal shareholder previously operated a surface coal mining operation in the United States within the five (5) years preceding the date of application;

(d) If a partnership, a certified copy of the partnership agreement; and

(e) If a domestic corporation, a certified copy of the certificate of incorporation from the Secretary of State; and if a foreign corporation, a certified copy of the certificate of authority to conduct business within the Commonwealth of Kentucky.

(4) Each application shall contain a statement of any current or previous coal mining permits in the United States held by the applicant during the five (5) years preceding the application and by any person identified in subsection (3)(c) of this section, and of any pending permit application to conduct surface coal mining and reclamation operations in the United States. The information shall be listed by permit or application number and identify the regulatory authority for each of those coal mining operations.

(5) Each application shall contain the names and addresses of the owners of record of all surface and subsurface areas contiguous to any part of the proposed permit area.

(6) Each application shall contain the name of the proposed mine and all MSHA identification numbers that have been assigned for the mine and all sections.

(7) Each application shall contain proof, such as a power of attorney or a resolution of the board of directors, that the individual signing the application has the power to represent the applicant in the permit matter.

(8) Each application shall contain a statement of all lands, interests in lands, options, or pending bids on interests held or made by the applicant for lands which are contiguous to the area to be covered by the permit.

Section 3. Compliance Information. (1) Each application shall contain a statement of whether the applicant, any subsidiary, affiliate, or persons controlled by or under common control with the applicant has:

(a) Had a coal mining permit of the United States or any state suspended or revoked in the last five (5) years; or

(b) Forfeited a coal mining performance bond or similar security deposited in lieu of bond.

(2) If any such suspension, revocation, or forfeiture as described in subsection (1) of this section has occurred, the application shall contain a statement of the facts involved, including:

(a) Identification number and date of issuance of the permit, and date and amount of bond or similar security;

(b) Identification of the authority that suspended or revoked a permit or forfeited a bond and the stated reasons for that action;

(c) The current status of the permit, bond, or similar security involved;

(d) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

(e) The current status of these proceedings.

(3) Each application shall contain a list of each violation notice pertaining to SMCRA (PL 95-87) or KRS Chapter 350 and regulations promulgated thereto, received by the applicant in connection with any surface coal mining operation during the three (3) year period before the application date. Each application shall also contain a list of each violation notice pertaining to air or water environmental protection received by the applicant in connection with any surface coal mining operation during the three (3) year period before the application date, for violations of any law, rule or regulation of the United States, or of any state law, rule or regulation enacted pursuant to federal law, rule or regulation. The application shall also contain a statement regarding each violation notice, including:

(a) The date of issuance and identity of the issuing regulatory authority, department, or agency;

(b) A brief description of the particular violation alleged in the notice;

(c) The final resolution of each violation notice, if any;

(d) For each violation notice that has not been finally resolved:

1. The date, location, and type of any administrative or judicial proceedings initiated concerning the fact of the violation, including, but not limited to, proceedings initiated by the applicant to obtain administrative or judicial review of the fact of the violation and the current status of the proceedings; and

2. The actions, if any, taken or being taken by the applicant to abate the violation.

(4) Upon request by a small operator as defined in KRS 350.450(4)(d), the cabinet will provide to the small operator, with regard to persons under subsection (1) of this section which are identified by the small operator, the compliance information required by this section regarding suspension and revocation of permits and forfeiture of bonds under KRS Chapter 350, and information pertaining to violations of KRS Chapter 350 and regulations promulgated thereunder.

Section 4. Right of Entry and Right to Surface Mine. (1) Each application shall contain a description of the documents upon which the applicant bases his or her legal right to enter and begin surface mining activities in the permit area and whether that right is the subject of pending litigation. The description shall identify those documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

(2) Where the private mineral estate to be mined has been severed from the private surface estate, the application shall also provide for lands within the permit area, a copy of the document of conveyance that grants or reserves the right to extract the coal by surface mining methods.

(3) Nothing in this section shall be construed to afford the cabinet the authority to adjudicate property title disputes.

Section 5. Relationship to Areas Designated Unsuitable for Mining. (1) Each application shall contain a statement of available information on whether the proposed permit area is within an area designated unsuitable for surface mining activities under Title 405, Chapter 24 or under study for designation in an administrative proceeding under that chapter.

(2) If an applicant claims the exemption in 405 KAR 8:010, Section 14(4)(b), the application shall contain information supporting the applicant's assertion that it made substantial legal and financial commitments before January 4, 1977, concerning the proposed surface mining activities.

(3) If an applicant proposes to conduct surface mining activities within 300 feet of an occupied dwelling, the application shall contain the waiver of the owner of the dwelling as required in 405 KAR 24:040, Section 2(5).

Section 6. Permit Term Information. (1) Each application shall state the anticipated or actual starting and termination date of each phase of the surface mining activities and the anticipated number of acres of land to be affected for each phase of mining and over the total life of the permit.

(2) If the applicant proposes to conduct the surface mining activities in excess of five (5) years, the application shall contain the information needed for the showing required under 405 KAR 8:010, Section 17(1).

Section 7. Personal Injury and Property Damage Insurance Information. Each permit application shall contain a certificate of liability insurance according to 405 KAR 10:030, Section 4.

Section 8. Identification of Other Licenses and Permits. Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed surface mining activities. This list shall identify each license and permit by:

(1) Type of permit or license;

(2) Name and address of issuing authority;

(3) Identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses; and

(4) If a decision has been made, the date of approval or disapproval by each issuing authority.

Section 9. Identification of Location of Public Office for Filing of Application. Each application shall identify, by name and address, the appropriate regional office of the cabinet where the applicant will file a copy of the complete application for public inspection under 405 KAR 8:010, Section 8(8).

Section 10. Newspaper Advertisement and Proof of Publication. A copy of the newspaper advertisement of the application and proof of publication of the advertisement shall be filed with the cabinet and made a part of the complete application, not later than fifteen (15) days after the last date of publication required under 405 KAR 8:010, Section 8(2).

Section 11. Environmental Resources Information. (1) Each permit application shall include descriptions of the existing environmental resources within the proposed permit area and adjacent areas as required by Sections 11 through 23. The descriptions required by this regulation may, where appropriate, be based upon published texts or other public documents together with reasonable extrapolations from specific data available from existing permit areas or other appropriate areas.

(2) Each application shall describe and identify the nature of cultural and historic resources listed in or eligible for listing in the National Register of Historic Places and known archaeological features within the proposed permit area and adjacent areas. The description shall be based on all available information, including, but not limited to, data of state and local archaeological, historical, and cultural preservation agencies.

Section 12. General Requirements for Geology and Hydrology. (1) Each application shall contain a description of the geology and hydrology of lands within the proposed permit area, adjacent area, and general area. The description shall include information on the characteristics of surface and ground waters within the general area, and any water which will flow into or receive discharges of water from the general area. The description shall be prepared according to Sections 12 through 16.

(2) (a) Information on hydrology including water quality and quantity, and geology related to hydrology of areas outside the proposed permit area and within the general area shall be provided by the cabinet, to the extent that this data is available from an appropriate federal or state agency.

(b) If this information is not available from such agencies, the applicant may gather and submit this information to the cabinet as part of the permit application.

(3) The use of modeling techniques may be included as part of the permit application, but the same surface and ground water information may be required for each site as when models are not used.

Section 13. Geology Information. (1) The geology description 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 coal seam to be mined.

(2) (a) 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 coal seam to be mined, to provide the following data in the description:

1. Location of subsurface water, if encountered;
2. Logs of drill holes showing the lithologic characteristics and thickness of each stratum and each coal seam;
3. Physical properties of each stratum within the overburden;
4. Chemical analyses of each stratum within the overburden down to and including the stratum immediately below the lowest coal seam 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 coal seam, including, but not limited to, an analysis of the total sulfur and pyritic sulfur content.

(b) If required by the cabinet, geologic information shall be collected and analyzed to greater depths within the proposed permit area, or for areas outside the proposed permit area to provide for evaluation of the impact of the proposed activities on the hydrologic balance.

(c) An applicant may request that the requirement for a statement of the results of test borings or core samplings required under paragraph (a) of this subsection be waived by the cabinet. The waiver may be granted only if the cabinet makes a written determination that the statement is unnecessary because other equivalent information is accessible to the cabinet in a satisfactory form.

Section 14. Ground Water Information. (1) The application shall contain a description of the ground water hydrology for the proposed permit area and adjacent area, including, at a minimum:

(a) The depth below the surface and the probable horizontal extent of the water table and aquifers;
(b) The lithology and thickness of the aquifers;
(c) Known uses of the water in the aquifers and water table; and
(d) The quality of ground water, if encountered.

(2) The application shall contain additional information which describes the recharge, storage, and discharge characteristics of aquifers and the quality and quantity of ground water, according to the parameters and in the detail required by the cabinet.

Section 15. Surface Water Information. (1) Surface water information shall be described, including the name of the stream or watershed which will receive water discharges, the location of all surface water bodies such as streams, lakes, ponds, and springs, the location of any water discharge into any surface body of water, and descriptions of surface drainage systems sufficient to identify the seasonal variations in water quantity and quality within the proposed permit area and adjacent areas.

(2) Surface water information shall include:

(a) Minimum, maximum, and average discharge conditions which identify critical low flow and peak discharge rates of streams sufficient to identify seasonal variations; and

(b) Water quality data to identify the characteristics of surface waters in, discharging into, or which will receive flows from surface or ground water from affected areas sufficient to identify seasonal variations. These data shall include, but not be limited to, the parameters listed in this paragraph. The cabinet may add [or delete] parameters as appropriate to ensure collection of information which the cabinet determines is relevant [except that total dissolved solids (or specific conductance) and total suspended solids shall be required in every case].

1. Total dissolved solids in milligrams per liter or specific conductance in micromhos per centimeter;
2. Total suspended solids in milligrams per liter;
3. Acidity;
4. Alkalinity;
5. pH in standard units;
6. Total [and dissolved] iron in milligrams per liter;
7. Total [and dissolved] manganese in milligrams per liter; and
8. Sulfate in miligrams per liter.

Section 16. Alternative Water Supply Information. (1) The application shall identify the extent to which the proposed surface mining activities may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit area or adjacent areas for domestic, agricultural, industrial, or other legitimate use.

(2) If contamination, diminution, or interruption may result, then the description shall identify the alternative sources of water supply that could be developed to replace the existing sources.

Section 17. Climatological Information. (1) When requested by the cabinet, the application shall contain a statement of the climatological factors that are representative of the proposed permit area, including:

(a) The average seasonal precipitation;
(b) The average direction and velocity of prevailing winds; and
(c) Seasonal temperature ranges.

(2) The cabinet may request such additional data as deemed necessary to ensure compliance with the requirements of this chapter.

Section 18. Soil Resources Information. (1) If soil survey information for the proposed permit area is available from SCS, the application shall include such information as a part of the description of premining land use capability and productivity required by Section 22(1)(b).

(2) Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of analyses, trials, and tests as required under 405 KAR 16:050, Section 2.

Section 19. Vegetation Information. (1) The permit application shall, as required by the cabinet, contain a map that delineates existing vegetative types and a description of the plant communities within the proposed permit area and within any proposed reference area. This description shall include information adequate to predict the potential for reestablishing vegetation.

(2) When a map or aerial photograph is required, sufficient adjacent areas shall be included to allow evaluation of vegetation as important habitat for fish and wildlife.

Section 20. Fish and Wildlife Resources Information. Permit applications shall not be required under this section to contain a study of fish and wildlife unless and until federal regulations requiring such study have been promulgated and this regulation has been amended as necessary to be consistent with the corresponding federal regulations.

Section 21. Prime Farmland Investigation. (1) The applicant shall before making application investigate the proposed permit area to determine whether lands within the area may be prime farmland.

(2) Land shall not be considered prime farmland where the applicant can demonstrate one (1) of the following:

(a) The land has not been historically used as cropland;

(b) The slope of the land is ten (10) percent or greater;

(c) Other relevant factors exist, which would preclude the soils from being defined as prime farmland according to 7 CFR 657, such as a very rocky surface, or the land is flooded during the growing season more often than once in two (2) years, and the flooding has reduced crop yields; or

(d) On the basis of a soil survey of lands within the permit area, there are no soil map units that have been designated prime farmland by the U.S. SCS.

(3) If the investigation establishes that the lands are not prime farmland, the applicant shall submit with the permit application a request for a negative determination and results of the investigation which show that the land for which the negative determination is sought meets one (1) of the criteria of subsection (2) of this section.

(4) If the investigation indicates that lands within the proposed permit area may be prime farmlands, the applicant shall contact the U.S. SCS to determine if a soil survey exists for those lands and whether the applicable soil map units have been designated as prime farmlands. If no soil survey has been made for the lands within the proposed permit area, the applicant shall cause such a survey to be made.

(a) When a soil survey of lands within the proposed permit area contains soil map units which have been designated as prime farmlands, the applicant shall submit an application, in accordance with 405 KAR 8:050, Section 3 for such designated land.

(b) When a soil survey for lands within the proposed permit area contains soil map units which have not been designated as prime farmland after review by the U.S. SCS, the applicant shall submit with the permit application a request for negative determination under subsection (2)(d) of this section for such non-designated land.

Section 22. Land-use Information. (1) The application shall contain a statement of the condition, capability, and productivity of the land within the proposed permit area, including:

(a) A map and supporting narrative of the uses of the land existing at the time of the filing of the application. If the premining use of the land was changed within five (5) years before the date of application, the historic use of the land shall also be described.

(b) A narrative of land use capability and productivity, which analyzes the land-use description in conjunction with other environmental resources information required under this regulation. The narrative shall provide analyses of:

1. The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover and the hydrology of the proposed permit area; and

2. The productivity of the proposed permit area before mining, expressed as average yield of food, fiber, forage, or wood products from such lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the U.S. Department of Agriculture, state agricultural universities or appropriate state natural resource or agricultural agencies.

(2) The application shall state whether the proposed permit area has been previously mined, and, if so, the following information, if available:

(a) The type of mining method used;

(b) The coal seams or other mineral strata mined;

(c) The extent of coal or other minerals removed;

(d) The approximate dates of past mining; and

(e) The uses of the land preceding mining.

(3) The application shall contain a description of the existing land uses and local government land use classifications, if any, of the proposed permit area and adjacent areas.

Section 23. Maps and Drawings. (1) The permit application shall include a map or maps showing:

(a) The boundaries of all subareas which are proposed to be affected over the estimated total life of the proposed surface mining activities, with a description of the size, sequence, and timing of the surface mining operations for which it is anticipated that additional permits will be sought;

(b) Any land within the proposed permit area and adjacent area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 USC 1276(a)), or which is within the boundaries of a wild river established pursuant to KRS Chapter 146;

(c) The boundaries of any public park and locations of any cultural or historical resources listed in or eligible for listing in the National Register of Historic Places and known archaeological sites within the permit area and adjacent areas;

(d) The locations of water supply intakes for current users of surface water within a hydrologic area defined by the cabinet, and those surface waters which will receive discharges from affected areas in the proposed permit area;

(e) All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area;

(f) The boundaries of land within the proposed permit area upon which the applicant has the legal right to enter and begin surface mining activities;

(g) The location of surface and subsurface manmade features within, passing through, or passing over the proposed permit area, including, but not limited to, major electric transmission lines, pipelines, and agricultural drainage tile fields;

(h) The location and boundaries of any proposed reference areas for determining the success of revegetation for the permit area;

(i) The location of all buildings on and within 1,000 feet of the proposed permit area, with identification of the current use of the buildings;

(j) Each public road located in or within 100 feet of the proposed permit area;
(k) Each public or private cemetery or Indian burial ground located in or within 100 feet of the proposed permit area;
(l) Other relevant information required by the cabinet.
(2) The application shall include drawings, cross sections, and maps showing:
(a) Elevations and locations of test borings and core samplings;
(b) Elevations and locations of monitoring stations or other sampling points in the permit area and adjacent areas used to gather data on water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the application, or which will be used for such data gathering during the term of the permit;
(c) Nature, depth, and thickness of the coal seams to be mined, any coal or rider seams above the seam to be mined, each stratum of the overburden, and the stratum immediately below the lowest coal seam to be mined, for the permit area;
(d) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;
(e) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit area and adjacent areas;
(f) Location and extent of subsurface water, if encountered, within the proposed permit area or adjacent areas;
(g) Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drainage patterns, and irrigation ditches within the proposed permit area and adjacent areas;
(h) Location and extent of existing or previously surface-mined areas within the proposed permit area;
(i) Location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent areas;
(j) Location and dimensions of existing areas of spoil, waste, and non-coal waste disposal, dams, embankments, other impoundments, and water treatment and air pollution control facilities within the proposed permit area;
(k) Sufficient slope measurements to adequately represent the existing land surface configuration of the proposed permit area, measured and recorded according to the following:
1. Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed or, where this is impractical, at locations and in a manner as specified by the cabinet.
2. Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances, or any other distance determined by the cabinet to be representative of the premining configuration of the land.
3. Slope measurements shall take in account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.
(3) The permit application shall include the map information specified in Sections 22(1)(a), 24(3), 24(4)(c), 24(4)(h), 27(1), 28(1), 31, 32, 33, 34, 38, and 405 KAR 8:010, Section 5(6).
(4) Maps, drawings, and cross-sections included in a permit application which are required by this section shall be prepared by or under the direction of and certified by a qualified registered professional engineer, and shall be updated as required by the cabinet. The qualified registered professional engineer shall not be required to certify true ownership of property.

Section 24. Mining and Reclamation Plan; General Requirements. (1) Each application shall contain a detailed mining and reclamation plan (MRP) for the proposed permit area as set forth in this section through Section 38, showing how the applicant will comply with KRS Chapter 350 and Title 405, Chapters 16 through 20.
(2) Each application shall contain a description of the mining operations proposed to be conducted within the proposed permit area, including, at a minimum, the following:
(a) A narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations; and
(b) A narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of such facilities is approved as necessary for postmining land use as specified in 405 KAR 16:210):
1. Dams, embankments, and other impoundments;
2. Overburden and topsoil handling and storage areas and structures;
3. Coal removal, handling, storage, cleaning, and transportation areas and structures;
4. Spoil, coal processing waste, and non-coal waste removal, handling, storage, transportation, and disposal areas and structures;
5. Mine facilities; and
6. Water and air pollution control facilities.
(3) Each application shall contain plans and maps of the proposed permit area and adjacent areas as follows:
(a) The plans and maps shall show the lands proposed to be affected throughout the operation and any change in a facility or feature to be caused by the proposed operations, if the facility or feature was shown under Section 23.
(b) The following shall be shown for the proposed permit area:
1. Buildings, utility corridors and facilities to be used;
2. The area of land to be affected within the proposed permit area, according to the sequence of mining and reclamation;
3. Each area of land for which a performance bond or other equivalent guarantee will be posted under Title 405, Chapter 10;
4. Each coal storage, cleaning and loading area;
5. Each topsoil, spoil, coal waste, and non-coal waste storage area;
6. Each water diversion, collection, conveyance, treatment, storage, and discharge facility to be used;
7. Each air pollution collection and control facility;
8. Each source of waste and each waste disposal facility relating to coal processing or pollution control;
9. Each facility to be used to protect and enhance fish and wildlife and related environmental values;
10. Each explosive storage and handling facility; and
11. Location of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, in accordance with Section 34, and fill area for the disposal of excess spoil in accordance with Section 27.

(c) Plans, maps, and drawings required under this section shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer.

(4) Each plan shall contain the following information for the proposed permit area:

(a) A projected timetable for the completion of each major step in the mining and reclamation plan;

(b) A detailed estimate of the cost of reclamation of the proposed operations required to be covered by a performance bond under Title 405, Chapter 10, with supporting calculations for the estimates;

(c) A plan for backfilling, soil stabilization, compacting, and grading, with contour maps or cross-sections that show the anticipated final surface configuration of the proposed permit area, in accordance with 405 KAR 16:190;

(d) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of 405 KAR 16:050;

(e) A plan for revegetation as required in 405 KAR 16:200, including, but not limited to, descriptions of the: schedule of revegetation; species and amounts per acre of seeds and seedlings to be used; methods to be used in planting and seeding; mulching techniques; irrigation, if appropriate; pest and disease control measures, if any; and measures proposed to be used to determine the success of revegetation as required in 405 KAR 16:200, Section 6; and a soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation;

(f) A description of the measures to be used to maximize the use and conservation of the coal resource as required in 405 KAR 16:010, Section 2;

(g) A description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with 405 KAR 16:150, and 405 KAR 16:190, Section 3, and a description of the contingency plans which have been developed to preclude sustained combustion of such materials;

(h) A description, including appropriate maps and drawings, of the measures to be used to seal or manage mine openings, and to plug, case, or manage exploration holes, other bore holes, wells, and other openings within the proposed permit area, in accordance with 405 KAR 16:040; and

(i) A description of steps to be taken to comply with the requirements of the Clean Air Act (42 USC Sec. 7401 et seq.), the Clean Water Act (33 USC Sec. 1251 et seq.), and other applicable air and water quality laws and regulations and health and safety standards. This description shall, at a minimum, consist of identification of permits or approvals required by these laws and regulations which the applicant either has obtained, has applied for, or intends to apply for.

Section 25. MRP; Existing Structures. (1) Each application shall contain a description of each existing structure proposed to be used in connection with or to facilitate the surface coal mining and reclamation operation. The description shall include:

(a) Location;

(b) Plans of the structure which describe its current condition;

(c) Approximate dates on which construction of the existing structure was begun and completed; and

(d) A showing, including relevant monitoring data or other evidence, whether the structure meets the performance standards of Title 405, Chapters 16 through 20 or, if the structure does not meet those performance standards, a showing whether the structure meets the performance standards of the interim performance standards of Title 405, Chapter 1.

(2) Each application shall contain a compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate the surface coal mining and reclamation operation. The compliance plan shall include:

(a) Design specifications for the modification or reconstruction of the structure to meet the performance standards of Title 405, Chapters 16 through 20;

(b) A construction schedule which shows dates for beginning and completing interim steps and final reconstruction;

(c) Provisions for monitoring the structure as required by the cabinet to ensure that the performance standards of Title 405, Chapters 16 through 20 are met; and

(d) A showing that the risk of harm to the environment or to public health or safety is not significant during the period of modification or reconstruction.

Section 26. MRP; Blasting. (1) Each application shall contain a blasting plan for the proposed permit area, explaining how the applicant intends to comply with the requirements of 405 KAR 16:120.

(2) The blasting plan shall also include:

(a) Types and approximate amounts of explosives to be used for each type of blasting operation to be conducted;

(b) Description of procedures and plans for recording and retention of information of the following during blasting:

1. Drilling patterns, including size, number, depths, and spacing of holes;
2. Charge and stemming of holes;
3. Types of detonators and detonation controls; and
4. Sequence and timing of firing holes.

(c) Description of blasting warning and site access control equipment and procedures;

(d) Description of types, capabilities, sensitivities, and locations of use of any blast monitoring equipment and procedures proposed to be used in lieu of the formula provided in 405 KAR 16:120;

(e) Description of plans for recording and reporting to the cabinet the results of preblasting surveys, if required; and

(f) Description of unavoidable hazardous conditions for which deviations from the blasting schedule may be needed under 405 KAR 16:120, Section 4(2).

Section 27. MRP; Disposal of Excess Spoil. (1) Each application shall contain descriptions, including appropriate maps and cross-section drawings, of the proposed disposal site and design of the spoil disposal structures according to 405 KAR 16:130. These plans shall describe the geotechnical investigation, design, construction, operation, maintenance, and removal if appropriate, of the site and structures.

(2) Each application shall contain the results of a geotechnical investigation of the proposed disposal site, including the following:

(a) The character of bedrock and any adverse geologic conditions in the disposal area;

(b) A survey identifying all springs, seepage, and groundwater flow observed or anticipated during wet periods in the area of the disposal site;

(c) An assessment of the potential effects of subsidence of the subsurface strata due to past and future mining operations;

(d) A technical description of the rock materials to be utilized in the construction of those disposal structures containing rock chimney cores or underlain by a rock drainage blanket; and

(e) A stability analysis including, but not limited to, strength parameters, pore pressures and long-term seepage conditions. These data shall be accompanied by a description of all engineering design assumptions and calculations and the alternatives considered in selecting the specific design specifications and methods.

(3) If, under 405 KAR 16:130, Section 1(9), rock toe buttresses or key way cuts are required, the application shall include the following:

(a) The number, location, and depth of borings or test pits which shall be determined with respect to the size of the spoil disposal structure and subsurface conditions; and

(b) Engineering specifications utilized to design the rock toe buttresses or key way cuts which shall be determined in accordance with subsection (2)(e) of this section.

Section 28. MRP; Transportation Facilities. (1) Each application shall contain a transportation facilities plan including a description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area. The description shall include a map, appropriate cross-sections, and the following:

(a) Specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure.

(b) A report of appropriate geotechnical analysis, where approval of the cabinet is required for alternative specifications, or for steep cut slopes under 405 KAR 16:220.

(c) A description of measures to be taken to obtain approval of the cabinet for alteration or relocation of a natural drainageway under 405 KAR 16:220.

(d) A description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for approval by the cabinet under 405 KAR 16:220.

(2) Each plan shall contain a general description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area.

Section 29. MRP; Surface Mining Near Underground Mining. For surface mining activities within the proposed permit area to be conducted within 500 feet of an underground mine, the application shall describe the measures to be used to comply with 405 KAR 16:010, Section 3.

Section 30. MRP; Protection of Public Parks and Historic Places. For any public parks or historic places that may be adversely affected by the proposed operations, each plan shall describe the measures to be used to minimize or prevent these impacts and to obtain approval of the cabinet and other agencies as required in 405 KAR 24:040, Section 2(4).

Section 31. MRP; Protection of Public Roads. Each application shall describe, with appropriate maps and drawings, the measures to be used to ensure that the interests of the public and landowners affected are protected if, under 405 KAR 24:040, Section 2(6), the applicant seeks to have the cabinet approve:

(1) Conducting the proposed surface mining activities within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or

(2) Relocating a public road.

Section 32. MRP; Protection of the Hydrologic Balance. (1) Each plan shall contain a description, with appropriate maps and cross-section drawings, of the measures to be taken during and after the proposed surface mining activities, in accordance with Title 405, Chapter 16, to ensure the protection of:

(a) The quality of surface and groundwater systems, both within the proposed permit area and adjacent areas, from the adverse effects of the proposed surface mining activities;

(b) The rights of present users of surface and groundwater; and

(c) The quantity of surface and groundwater both within the proposed permit area and adjacent area from adverse effects of the proposed surface mining activities, or to provide alternative sources of water in accordance with Section 16 of this regulation and 405 KAR 16:060, Section 8, where the protection of quantity cannot be ensured.

(2) The description shall include:

(a) A plan for the control, in accordance with Title 405, Chapter 16, of surface and groundwater drainage into, through and out of the proposed permit area;

(b) A plan for the treatment, where required under Title 405, Chapters 16 through 20, of surface and groundwater drainage from the area to be disturbed by the proposed activities, and proposed quantitative limits on pollutants in discharges subject to 405 KAR 16:070, according to the more stringent of the following:

1. Title 405, Chapters 16 through 20; or
2. Other applicable state and federal laws.

(c) A plan for the restoration of the approximate recharge capacity of the permit area in accordance with 405 KAR 16:060, Section 6.

(d) A plan for the collection, recording, and reporting of ground and surface water quality and quantity data, according to 405 KAR 16:110.

(3) The description shall include a determination of the probable hydrologic consequences of the proposed surface mining activities, on the proposed permit area and adjacent area, with respect to the hydrologic regime and the quantity and quality of water in surface and groundwater systems under all seasonal conditions, including concentrations of dissolved solids, suspended solids, total iron, pH, acidity, alkalinity, total manganese, and other parameters required by the cabinet.

Section 33. MRP; Diversions. Each application shall contain descriptions, including maps and cross-sections, of stream channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with 405 KAR 16:080.

Section 34. MRP; Impoundments and Embankments. (1) General. Each application shall include detailed design plans for each proposed sedimentation pond, water impoundment, and coal processing waste bank, dam, or embankment within the proposed permit area. Each plan shall:

(a) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer;

(b) Contain a description, map, and appropriate cross-

sections and drawings of the structure and its location;

(c) Contain all hydrologic and geologic information and computations necessary to demonstrate compliance with the design and performance standards of Title 405, Chapter 16; and all information utilized by the applicant to determine the probable hydrologic consequences of the mining operations under Section 32(3);

(d) Contain an assessment of the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred;

(e) Include any geotechnical investigation, design, and construction requirements for the structure;

(f) Describe the operation and maintenance requirements for each structure; and

(g) Describe the timetable and plans to remove each structure, if appropriate.

(2) Sedimentation ponds.

(a) Sedimentation ponds, whether temporary or permanent, shall be designed in compliance with the requirements of 405 KAR 16:090. Any sedimentation pond or earthen structure which will remain on the proposed permit area as a permanent water impoundment shall also be designed to comply with the requirements of 405 KAR 16:100.

(b) Each plan shall, at a minimum, comply with the requirements of the MSHA, 30 CFR 77.216-1 and 77.216-2.

(3) Permanent and temporary impoundments. Permanent and temporary impoundments shall be designed to comply with the requirements of 405 KAR 16:100. Each plan shall comply with the requirements of the MSHA, 30 CFR 77.216-1 and 77.216-2.

(4) Coal processing waste banks. Coal processing waste banks shall be designed to comply with the requirements of 405 KAR 16:140.

(5) Coal processing waste dams and embankments. Coal processing waste dams and embankments shall be designed to comply with the requirements of 405 KAR 16:160. Each plan shall comply with the requirements of MSHA, 30 CFR 77.216-1 and 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:

(a) The number, location, and depth of borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment, quantity or material to be impounded, and subsurface conditions.

(b) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site shall be considered.

(c) All springs, seepage, and groundwater flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan.

(d) Consideration shall be given to the possibility of mudflows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

(6) If the structure is twenty (20) feet or higher or impounds more than twenty (20) acre-feet, each plan under subsections (2), (3), and (5) of this section shall include a stability analysis of each structure. The stability analysis shall include, but not be limited to, strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

Section 35. MRP; Air Pollution Control. For all surface mining activities the application shall contain an air pollution control plan which includes the following:

(1) An air quality monitoring program, if required by the cabinet, to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices under subsection (2) of this section to comply with applicable federal and state air quality standards; and

(2) A plan for fugitive dust control practices, as required under 405 KAR 16:170.

Section 36. MRP; Fish and Wildlife. Permit applications shall not be required under this section to contain a fish and wildlife plan unless and until federal regulations requiring such plan have been promulgated and this regulation has been amended as necessary to be consistent with the corresponding federal regulations.

Section 37. MRP; Postmining Land Use. (1) Each plan shall contain a description of the proposed use, following reclamation, of the land within the proposed permit area, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land use policies and plans. This description shall explain:

(a) How the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use;

(b) Where a land use different from the pre-mining land use is proposed, all supporting documentation submitted for approval of the proposed use under 405 KAR 16:210;

(c) The consideration which has been given to making all of the proposed surface mining activities consistent with surface owner plans and applicable state and local land use plans and programs; and

(d) Where grazing is the proposed postmining land use, the detailed management practices necessary to properly implement the postmining use for grazing.

(2) The description shall be accompanied by a copy of the comments concerning the proposed use by the legal or equitable owner of record of the surface of the proposed permit area and the state and local government agencies, if any, which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

(3) Approval of the initial postmining land use plan pursuant to this section, shall not preclude subsequent consideration and approval of a revised postmining land use plan in accordance with the applicable requirements of this Title.

Section 38. MRP; Transportation on Public Roads. The application shall include or be accompanied by a public roads transportation plan and map (at least the scale and detail of the separate county maps published by the Kentucky Transportation Cabinet) which shall set forth the portions of the public road system, if any, over which the applicant proposes to transport coal extracted in the surface coal mining operation.

(1) The plan shall specify the legal weight limits for each portion of any such road or bridge over which the applicant proposes to transport coal.

(2) The plan shall include any proposal by the applicant to obtain a special permit pursuant to the provisions of KRS 189.271 to exceed the weight limits on any road or bridge.

(3) The plan shall contain a certification by a duly authorized official of the Kentucky Transportation Cabinet attesting the accuracy of the plan in regard to the locations and identities of roads and bridges on the public road system and the accuracy of the specifications of weight limits on such roads and bridges.

JACKIE A. SWIGART, Secretary
ADOPTED: October 26, 1983
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: October 31, 1983 at 4:30 p.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement

405 KAR 8:040E. Underground coal mining permits.

RELATES TO: KRS 350.060, 350.151
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.060, 350.151, 350.465
EFFECTIVE: October 31, 1983
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to permits for underground mining activities. This regulation recognizes the distinct differences between surface mining activities and underground mining activities. This regulation specifies certain information to be shown by the applicant related to legal and compliance status, environmental resources, and his mining and reclamation plan. This regulation further specifies certain showings to be made by the applicant to obtain a permit.

Section 1. General. (1) Applicability.

(a) This regulation applies to any person who applies for a permit to conduct underground mining activities.

(b) The requirements set forth in this regulation specifically for applications for permits to conduct underground mining activities, are in addition to the requirements applicable to all applications for permits to conduct surface coal mining and reclamation operations as set forth in 405 KAR 8:010.

(c) This regulation sets forth information required to be contained in applications for permits to conduct underground mining activities, including:

1. Legal, financial, compliance, and related information;
2. Environmental resources information; and
3. Mining and reclamation plan information.

(2) The permit applicant shall provide to the cabinet in the application all the information required by this regulation.

Section 2. Identification of Interests. (1) Each application shall contain the names and addresses of:

(a) The permit applicant, including his or her telephone number;

(b) Every legal or equitable owner of record of the areas to be affected by surface operations and facilities and every legal or equitable owner of record of the coal to be mined;

(c) The holders of record of any leasehold interest in areas to be affected by surface operations or facilities and the holders of record of any leasehold interest in the coal to be mined;

(d) Any purchaser of record under a real estate contract of areas to be affected by surface operations and facilities and any purchaser of record under a real estate contract of the coal to be mined;

(e) The operator, if different from the applicant, who will conduct underground coal mining activities on behalf of the applicant, including his or her telephone number; and

(f) The resident agent of the applicant who will accept service of process, including his or her telephone number.

(2) If any owner, holder, purchaser, or operator, identified under subsection (1) of this section, is a business entity other than a single proprietor, the application shall contain the names and addresses of their respective principals, officers, and resident agents.

(3) Each application shall contain a statement of whether the applicant is a corporation, partnership, single proprietorship, association, or other business entity. For businesses other than single proprietorships, the application shall contain the following information where applicable:

(a) Names and addresses of every officer, partner, director, or other person performing a function similar to a director of the applicant;

(b) Name and address of any person who is a principal shareholder of the applicant;

(c) Names under which the applicant, partner, or principal shareholder previously operated a surface coal mining operation in the United States within the five (5) years preceding the date of application;

(d) If a partnership, a certified copy of the partnership agreement; and

(e) If a domestic corporation, a certified copy of the certificate of incorporation from the Secretary of State, and if a foreign corporation, a certified copy of the Certificate of Authority to conduct business within the Commonwealth of Kentucky.

(4) Each application shall contain a statement of any current or previous coal mining permits in the United States held by the applicant during the five (5) years preceding the application, and by any person identified in subsection (3)(c) of this section and of any pending permit application to conduct surface coal mining and reclamation operations in the United States. The information shall be listed by permit or application number and identify the regulatory authority for each of those coal mining operations.

(5) Each application shall contain the names and addresses of the owners of record of all surface and subsurface areas contiguous to any part of the proposed permit area.

(6) Each application shall contain the name of the proposed mine and all MSHA identification numbers that have been assigned for the mine and all sections.

(7) Each application shall contain proof, such as a power of attorney or resolution of the board of directors, that the individual signing the application has the power to represent the applicant in the permit matter.

(8) Each application shall contain a statement of all lands, interests in lands, options, or pending bids on interests held or made by the applicant for lands which are contiguous to the area to be covered by the permit.

Section 3. Compliance Information. (1) Each applica-

tion shall contain: a statement of whether the applicant, any subsidiary, affiliate, or persons controlled by or under common control with the applicant has:

(a) Had a coal mining permit of the United States or any state suspended or revoked in the last five (5) years; or

(b) Forfeited a coal mining performance bond or similar security deposited in lieu of bond.

(2) If any such suspension, revocation, or forfeiture, as described in subsection (1) of this section, has occurred, the application shall contain a statement of the facts involved, including:

(a) Identification number and date of issuance of the permit, and date and amount of bond or similar security;

(b) Identification of the authority that suspended or revoked a permit or forfeited a bond and the stated reasons for that action;

(c) The current status of the permit, bond, or similar security involved;

(d) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

(e) The current status of these proceedings.

(3) Each application shall contain a list of each violation notice pertaining to SMCRA (PL 95-87) or KRS Chapter 350 and regulations promulgated pursuant thereto, received by the applicant in connection with any surface coal mining operation during the three (3) year period before the application date. Each application shall also contain a list of each violation notice pertaining to air or water environmental protection received by the applicant in connection with any surface coal mining operation during the three (3) year period before the application date, for violations of any law, rule, or regulation of the United States, or of any state law, rule, or regulation enacted pursuant to federal law, rule or regulation. The application shall also contain a statement regarding each violation notice, including:

(a) The date of issuance and identity of the issuing regulatory authority, department, or agency;

(b) A brief description of the particular violation alleged in the notice;

(c) The final resolution of each violation notice, if any;

(d) For each violation notice that has not been finally resolved:

1. The date, location, and type of any administrative or judicial proceedings initiated concerning the fact of the violation, including, but not limited to, proceedings initiated by the applicant to obtain administrative or judicial review of the fact of the violation and the current status of the proceedings; and

2. The actions, if any, taken or being taken by the applicant to abate the violation.

(4) Upon request by a small operator as defined in KRS 350.450(4)(d), the cabinet will provide to the small operator, with regard to persons under subsection (1) of this section which are identified by the small operator, the compliance information required by this section regarding suspension and revocation of permits and forfeiture of bonds under KRS Chapter 350, and information pertaining to violations of KRS Chapter 350 and regulations promulgated thereunder.

Section 4. Right of Entry and Right to Mine. (1) Each application shall contain a description of the documents upon which the applicant bases his or her legal right to enter and begin underground mining activities in the permit area and whether that right is the subject of pending litigation. The description shall identify those documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

(2) For underground mining activities where the associated surface operations involve the surface mining of coal and the private mineral estate to be mined has been severed from the private surface estate, the application shall also provide, for lands to be affected by those operations within the permit area, a copy of the document of conveyance that grants or reserves the right to extract the coal by surface mining methods.

(3) Nothing in this section shall be construed to afford the cabinet the authority to adjudicate property title disputes.

Section 5. Relationship to Areas Designated Unsuitable for Mining. (1) Each application shall contain a statement of available information on whether the proposed permit area is within an area designated unsuitable for underground mining activities under Title 405, Chapter 24, or designated unsuitable for surface mining activities if the proposed underground mining activities also involve surface mining of coal, or under study for designation in an administrative proceeding initiated under that chapter.

(2) If an applicant claims the exemption in 405 KAR 8:010, Section 14(4)(b), the application shall contain information supporting the applicant's assertion that it made substantial legal and financial commitments before January 4, 1977, concerning the proposed underground mining activities.

(3) If an applicant proposes to conduct or locate surface operations or facilities within 300 feet of an occupied dwelling, the application shall include the waiver of the owner of the dwelling as required in 405 KAR 24:040, Section 2(5).

Section 6. Permit Term Information. (1) Each application shall state the anticipated or actual starting and termination date of each phase of the underground mining activities and the anticipated number of acres of surface lands to be affected, and the horizontal and vertical extent of proposed underground mine workings including the surface acreage overlying such underground workings, for each phase of mining and over the total life of the permit.

(2) If the applicant proposes to conduct the underground mining activities in excess of five (5) years, the application shall contain the information needed for the showing required under 405 KAR 8:010, Section 17(1).

Section 7. Personal Injury and Property Damage Insurance Information. Each application shall contain a certificate of liability insurance according to 405 KAR 10:030, Section 4.

Section 8. Identification of Other Licenses and Permits. Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed underground mining activities. This list shall identify each license and permit by:

(1) Type of permit or license;

(2) Name and address of issuing authority;

(3) Identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses; and

(4) If a decision has been made, the date of approval or disapproval by each issuing authority.

Section 9. Identification of Location of Public Office for Filing of Application. Each application shall identify, by name and address, the appropriate regional office of the cabinet where the applicant will file a copy of the complete application for public inspection under 405 KAR 8:010, Section 8(8).

Section 10. Newspaper Advertisement and Proof of Publication. A copy of the newspaper advertisement of the application and proof of publication of the advertisement shall be filed with the cabinet and made a part of the complete application not later than fifteen (15) days after the last date of publication required under 405 KAR 8:010, Section 8(2).

Section 11. Environmental Resource Information. (1) Each permit application shall include a description of the existing, premining environmental resources either within the areas affected by proposed surface operations and facilities, or within the proposed permit area and adjacent areas, as required by Sections 11 through 23. The descriptions required by this regulation may, where appropriate, be based upon published texts or other public documents together with reasonable extrapolations from specific data available from existing permit areas or other appropriate areas.

(2) Each application shall describe and identify the nature of cultural and historic resources listed in or eligible for listing in the National Register of Historic Places and known archaeological sites within the proposed permit and adjacent areas. The description shall be based on all available information, including, but not limited to, data of state and local archaeological, historic, and cultural preservation agencies.

Section 12. General Requirements for Geology and Hydrology. (1) Each application shall contain a description of the geology and hydrology of lands within the proposed permit area, adjacent area, and general area. The description shall include information on the characteristics of surface and ground waters within the general area, and any water which will flow into or receive discharges of water from the general area. The description shall be prepared according to Sections 12 through 16.

(2) (a) Information on hydrology including water quality and quantity, and geology related to hydrology of areas outside the proposed permit area and within the general area shall be provided by the cabinet, to the extent that this data is available from an appropriate federal or state agency.

(b) If this information is not available from such agencies, the applicant may gather and submit this information to the cabinet as part of the permit application.

(3) The use of modeling techniques may be included as part of the permit application, but the same surface and ground water information may be required for each site as when models are not used.

Section 13. Geology Information. (1) The geology description shall include a general statement of the geology within the proposed permit area and adjacent areas, down to and including the first aquifer to be affected below the lowest coal seam to be mined. The geology for areas proposed to be affected by surface operations and facilities, those surface lands overlying coal to be mined, and the coal to be mined shall be separately described, as follows:

(a) Areas affected by surface operations or facilities. Geology of all strata to be affected by surface operations or facilities shall be described; and where any coal seam is to be extracted by surface operations, geology of all strata down to and including the stratum immediately below the coal seam shall be described, including the following data resulting from analyses of test borings, core samplings, or outcrop samples:

1. The location of areas where subsurface water will be exposed at the face-up area;
2. The logs of drill holes showing the lithologic characteristics of the strata to be affected;
3. The physical properties of each stratum within the overburden; and
4. Chemical analyses of each stratum to be affected, including the stratum immediately below the lowest coal seam to be mined, to identify, at a minimum, those horizons which contain potential acid-forming, toxic-forming, or alkalinity-producing materials.

(b) Areas underlain by coal seams to be mined. The geology for all surface lands within the proposed permit area which are underlain by the coal seam to be extracted and the geology of the coal seam itself shall be described, including:

1. Location of subsurface water, if encountered;
2. The depth, classification, and geologic structure of the overburden;
3. Pyritic content and potential acidity or alkalinity of the stratum immediately above and below the coal seam to be mined and the clay content of the stratum immediately below the coal seam to be mined; and
4. Total sulfur and pyritic sulfur content of the coal seam.

(2) An applicant may request that the requirements of subsection (1)(a) of this section be waived by the cabinet. The waiver may be granted only if the cabinet makes a written determination that the information is unnecessary because other equivalent information is accessible to the cabinet in a satisfactory form.

Section 14. Ground Water Information. (1) The application shall contain a description of the ground water hydrology for the proposed permit and adjacent area, including, at a minimum:

(a) The depth below the surface and the probable horizontal extent of the water table and aquifers;

(b) The lithology and thickness of the aquifers;

(c) The uses of the water in the aquifers and water table; and

(d) The quality of ground water, if encountered.

(2) The application shall contain additional information which describes the recharge, storage, and discharge characteristics of aquifers and the quality and quantity of ground water, according to the parameters and in the detail required by the cabinet.

Section 15. Surface Water Information. (1) Surface water information shall be described, including the name of the stream or watershed which will receive water discharges, the locations of any water discharge into any surface body of water, and descriptions of surface drainage systems sufficient to identify, in detail, the seasonal variations in water quantity and quality within areas affected by surface operations and facilities and adjacent areas. The description shall also include the location of all surface water bodies such as streams, lakes, ponds, and springs, within the proposed permit area and adjacent area.

(2) Surface water information for areas affected by surface operations and facilities and adjacent areas shall include:

(a) Minimum, maximum, and average discharge conditions, which identify critical low flows and peak discharge rates of streams sufficient to identify seasonal variations; and

(b) Water quality data to identify the characteristics of surface waters in, discharging into, or which will receive flows of surface or ground water from the affected area sufficient to identify seasonal variations. These data shall include, but not be limited to, the parameters listed in this paragraph. The cabinet may add [or delete] parameters as appropriate to ensure collection of information which the cabinet determines is relevant [, except that, total dissolved solids (or specific conductance) and total suspended solids shall be required in every case].

1. Total dissolved solids in milligrams per liter or specific conductance in micromhos per centimeter;
2. Total suspended solids in milligrams per liter;
3. Acidity;
4. Alkalinity;
5. pH in standards units;
6. Total [and dissolved] iron in milligrams per liter;
7. Total [and dissolved] manganese in milligrams per liter; and
8. Sulfate in milligrams per liter.

Section 16. Alternative Water Supply Information. (1) The application shall identify the extent to which the proposed underground mining activities may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit area or adjacent area for domestic, agricultural, industrial, or other legitimate use.

(2) If contamination, diminution, or interruption may result, then the description shall identify the alternative sources of water supply that could be developed to replace the existing sources.

Section 17. Climatological Information. (1) When requested by the cabinet, the application shall contain a statement of the climatological factors that are representative of the proposed permit area, including:

(a) The average seasonal precipitation;

(b) The average direction and velocity of prevailing winds; and

(c) Seasonal temperature ranges.

(2) The cabinet may request such additional data as deemed necessary to ensure compliance with the requirements of this chapter.

Section 18. Soil Resources Information. (1) If soil survey information for the proposed permit area is available from SCS, the application shall include such information as a part of the description of premining land use capability and productivity required by Section 22(1)(b).

(2) Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of the analyses, trials and tests required under 405 KAR 18:050, Section 2.

Section 19. Vegetation Information. (1) The permit application shall, as required by the cabinet, contain a map that delineates existing vegetative types and a description of the plant communities within the area affected by surface operations and facilities and within any proposed reference area. This description shall include information adequate to predict the potential for reestablishing vegetation.

(2) When a map or aerial photograph is required, sufficient adjacent areas shall be included to allow evaluation of vegetation as important habitat for fish and wildlife.

Section 20. Fish and Wildlife Resources Information. Permit applications shall not be required under this section to contain a study of fish and wildlife unless and until federal regulations requiring such study have been promulgated and this regulation has been amended as necessary to be consistent with the corresponding federal regulations.

Section 21. Prime Farmland Investigation. (1) The applicant shall conduct a pre-application investigation of the area proposed to be affected by surface operations or facilities to determine whether lands within the area may be prime farmland.

(2) Land shall not be considered prime farmland where the applicant can demonstrate one (1) or more of the following:

(a) The land has not been historically used as cropland;

(b) The slope of the land is ten (10) percent or greater;

(c) Other relevant factors exist which would preclude the soils from being defined as prime farmland according to 7 CFR 657, such as a very rocky surface, or the land is frequently flooded during the growing season more often than once in two (2) years and the flooding has reduced crop yields; or

(d) On the basis of a soil survey of the lands within the permit area there are no soil map units that have been designated prime farmland by the U.S. SCS.

(3) If the investigation establishes that the lands are not prime farmland, the applicant shall submit with the permit application a request for a negative determination and results of the investigation which show that the land for which the negative determination is sought meets one (1) or more of the criteria in subsection (2) of this section.

(4) If the investigation indicates that lands within the proposed area to be affected by surface operations and facilities may be prime farmlands, the applicant shall contact the U.S. SCS to determine if these lands have a soil survey and whether the applicable soil map units have been designated prime farmlands. If no such soil survey has been made for these lands, the applicant shall cause such a survey to be made.

(a) When a soil survey as required by this section contains soil map units which have been designated as prime farmlands, the applicant shall submit an application, in accordance with 405 KAR 8:050, Section 3 for such designated land.

(b) When a soil survey as required by this section contains soil map units which have not been designated as prime farmland, after review by the U.S. SCS, the applicant shall submit with the permit application a request for negative determination under subsection (2)(d) of this section for such non-designated land.

Section 22. Land-use Information. (1) The application shall contain a statement of the condition, capability and productivity of the land which will be affected by surface operations and facilities within the proposed permit area, including:

(a) A map and supporting narrative of the uses of the land existing at the time of the filing of the application. If the premining use of the land was changed within five (5) years before the date of application, the historic use of the land shall also be described.

(b) A narrative of land capability and productivity, which analyzes the land use description in conjunction with other environmental resources information required under this regulation. The narrative shall provide analyses of:

1. The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover, and the hydrology of the area proposed to be affected by surface operations or facilities; and

2. The productivity of the area proposed to be affected by surface operations and facilities before mining, expressed as average yield of food, fiber, forage, or wood products from such lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the U.S. Department of Agriculture, state agricultural universities or appropriate state natural resources or agricultural agencies.

(2) The application shall state whether the proposed permit area has been previously mined, and, if so, the following information, if available:

(a) The type of mining method used;

(b) The coal seams or other mineral strata mined;

(c) The extent of coal or other minerals removed;

(d) The approximate dates of past mining; and

(e) The uses of the land preceding mining.

(3) The application shall contain a description of the existing land uses and local government land use classifications, if any, of the proposed permit area and adjacent areas.

Section 23. Maps and Drawings. (1) The permit application shall include maps showing:

(a) The boundaries of all subareas which are proposed to be affected over the estimated total life of the underground mining activities, with a description of size, sequence and timing of the underground mining activities for which it is anticipated that additional permits will be sought;

(b) Any land within the proposed permit area and adjacent area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 USC 1276(a)), or which is within the boundaries of a wild river established pursuant to KRS Chapter 146;

(c) The boundaries of any public park and locations of any cultural or historical resources listed in or eligible for listing in the National Register of Historic Places and known archaeological sites within the permit area and adjacent areas;

(d) The locations of water supply intakes for current users of surface waters within a hydrologic area defined by the cabinet, and those surface waters which will receive discharges from affected areas in the proposed permit area;

(e) All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area;

(f) The boundaries of land within the proposed permit area upon which, or under which, the applicant has the legal right to conduct underground mining activities. In addition, the map shall indicate the boundaries of that portion of the permit area which the applicant has the legal right to enter upon the surface to conduct surface operations.

(g) The location of surface and subsurface manmade features within, passing through, or passing over the proposed permit area, including, but not limited to, major electric transmission lines, pipelines, and agricultural drainage tile fields;

(h) The location and boundaries of any proposed reference areas for determining the success of revegetation for the permit area;

(i) The location of all buildings in and within 1000 feet of the proposed permit area, with identification of the current use of the buildings;

(j) Each public road located in or within 100 feet of the proposed permit area;

(k) Each public or private cemetery or Indian burial ground located in or within 100 feet of the proposed permit area;

(l) Other relevant information required by the cabinet.

(2) The application shall include drawings, cross-sections, and maps showing:

(a) Elevations and locations of test borings and core samplings;

(b) Elevations and locations of monitoring stations or other sampling points in the permit area and adjacent areas used to gather data on water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the application or which will be used for such data gathering during the term of the permit;

(c) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;

(d) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit area and adjacent areas;

(e) Location and extent of subsurface water, if encountered, within the proposed permit area or adjacent areas;

(f) Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drainage patterns, and irrigation ditches within the proposed permit area and adjacent areas;

(g) Location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent areas;

(h) Location and dimensions of existing coal refuse disposal areas and dams, or other impoundments within the proposed permit area;

(i) Sufficient slope measurements to adequately represent the existing land surface configuration of the area to be affected by surface operations and facilities, measured and recorded according to the following:

1. Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed or, where this is impractical, at locations and in a manner as specified by the cabinet.

2. Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances, or any other distance determined by the cabinet to be representative of the premining configuration of the land.

3. Slope measurements shall take into account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.

(3) The permit application shall include the map information specified in Sections 22(1)(a), 24(3), 24(4)(c), 24(4)(h), 27(1), 28, 31, 32, 33, 34, 38 and 405 KAR 8:010, Section 5(6).

(4) Maps, drawings and cross-sections included in a permit application and required by this section shall be prepared by, or under the direction of and certified by a qualified registered professional engineer, and shall be updated as required by the cabinet. The qualified registered professional engineer shall not be required to certify the true ownership of property.

Section 24. Mining and Reclamation Plan; General Requirements. (1) Each application shall contain a detailed mining and reclamation plan (MRP) for the proposed permit area as set forth in this section through Section 38, showing how the applicant will comply with KRS Chapter 350 and Title 405, Chapters 16 through 20.

(2) Each application shall contain a description of the mining operations proposed to be conducted within the proposed permit area, including, at a minimum, the following:

(a) A narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations; and

(b) A narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of such facility is approved as necessary for postmining land use as specified in 405 KAR 18:220):

1. Dams, embankments, and other impoundments;
2. Overburden and topsoil handling and storage areas and structures;
3. Coal removal, handling, storage, cleaning, and transportation areas and structures;
4. Spoil, coal processing waste, mine development waste, and non-coal waste removal, handling, storage, transportation, and disposal areas and structures;
5. Mine facilities; and
6. Water pollution control facilites.

(3) Each application shall contain plans and maps of the proposed permit area and adjacent areas as follows:

(a) The plans, maps and drawings shall show the underground mining activities to be conducted, the lands to be affected throughout the operation, and any change in a facility or feature to be caused by the proposed operations, if the facility or feature was shown under Section 23.

(b) The following shall be shown for the proposed permit area:

1. Buildings, utility corridors, and facilities to be used;
2. The area of land to be affected within the proposed permit area, according to the sequence of mining and reclamation;
3. Each area of land for which a performance bond or other equivalent guarantee will be posted under Title 405, Chapter 10;
4. Each coal storage, cleaning and loading area;
5. Each topsoil, spoil, coal preparation waste, underground development waste, and non-coal waste storage area;
6. Each water diversion, collection, conveyance, treatment, storage and discharge facility to be used;
7. Each source of waste and each waste disposal facility relating to coal processing or pollution control;
8. Each facility to be used to protect and enhance fish and wildlife related environmental values;
9. Each explosive storage and handling facility;
10. Location of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, in accordance with Section 34, and disposal areas for underground development waste and excess spoil, in accordance with Section 28;
11. Cross-sections, at locations as required by the cabinet, of the anticipated final surface configuration to be achieved for the affected areas;
12. Location of each water and any subsidence monitoring point;
13. Location of each facility that will remain on the proposed permit area as a permanent feature, after the completion of underground mining activities.

(c) Plans, maps and drawings required under this section shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer.

(4) Each plan shall contain the following information for the proposed permit area:

(a) A projected timetable for the completion of each major step in the mining and reclamation plan;

(b) A detailed estimate of the cost of the reclamation of the proposed operations required to be covered by a performance bond under Title 405, Chapter 10, with supporting calculations for the estimates;

(c) A plan for backfilling, soil stabilization, compacting and grading, with contour maps or cross-sections that show the anticipated final surface configuration of the proposed permit area, in accordance with 405 KAR 18:190;

(d) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of 405 KAR 18:050;

(e) A plan for revegetation as required in 405 KAR 18:200, including, but not limited to, descriptions of the: schedule of revegetation; species and amounts per acre of seeds and seedlings to be used; methods to be used in planting and seeding; mulching techniques; irrigation, if appropriate, and pest and disease control measures, if any; measures proposed to be used to determine the success of revegetation as required in 405 KAR 18:200, Section 6; and a soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation;

(f) A description of the measures to be used to maximize the use and conservation of the coal resource as required in 405 KAR 18:010, Section 2;

(g) A description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with 405 KAR 18:150 and 405 KAR 18:190, Section 3 and a description of the contingency plans which have been developed to preclude sustained combustion of such materials;

(h) A description, including appropriate drawings and maps, of the measures to be used to seal or manage mine openings, and to plug, case or manage exploration holes, other bore holes, wells and other openings within the proposed permit area, in accordance with 405 KAR 18:040; and

(i) A description of steps to be taken to comply with the requirements of the Clean Air Act (42 USC Sec. 7401 et seq.), the Clean Water Act (33 USC Sec. 1251 et seq.), and other applicable air and water quality laws and regulations and health and safety standards. This description shall, at a minimum, consist of identification of the permits or approvals required by these laws and regulations which the applicant has obtained, has applied for, or intends to apply for.

Section 25. MRP; Existing Structures. (1) Each application shall contain a description of each existing structure proposed to be used in connection with or to facilitate the surface coal mining and reclamation operation. The description shall include:

(a) Location;

(b) Plans of the structure which describe its current condition;

(c) Approximate dates on which construction of the existing structure was begun and completed; and

(d) A showing, including relevant monitoring data or other evidence, whether the structure meets the performance standards of Title 405, Chapters 16 through 20, or if the structure does not meet those performance standards, a showing whether the structure meets the interim performance standards of Title 405, Chapter 3.

(2) Each application shall contain a compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate the surface coal mining and reclamation operation. The compliance plan shall include:

(a) Design specifications for the modification or reconstruction of the structure to meet the performance standards of Title 405, Chapters 16 through 20;

(b) A construction schedule which shows dates for beginning and completing interim steps and final reconstruction;

(c) Provisions for monitoring the structure as required by the cabinet to ensure that the performance standards of Title 405, Chapters 16 through 20 are met; and

(d) A showing that the risk of harm to the environment or to public health or safety is not significant during the period of modification or reconstruction.

Section 26. MRP; Subsidence Control. (1) The application shall include a survey which shall show whether structures or renewable resource lands exist within the proposed permit area and adjacent areas and whether subsidence, if it occurred could cause material damage or diminution of reasonably foreseeable use of such structures or renewable resource lands.

(2) If the survey shows that no such structures or renewable resource lands exist, or no such material damage or diminution could be caused in the event of mine subsidence, and if the cabinet agrees with such conclusion, no further information need be provided in the application under this section.

(3) In the event the survey shows such structures or renewable resource lands exist, or that subsidence could cause material damage or diminution of value or foreseeable use of the land, or if the cabinet determines that such damage or diminution could occur, the application shall include a subsidence control plan which shall contain the following information:

(a) A detailed description of the mining method and other measures to be taken which may affect subsidence, including:

1. The technique of coal removal, such as longwall mining, room and pillar with pillar removal, hydraulic mining or other methods; and

2. The extent, if any, to which planned and controlled subsidence is intended.

(b) A detailed description of the measures to be taken to prevent subsidence from causing material damage or lessening the value of reasonably foreseeable use of the surface, including:

1. The anticipated effects of planned subsidence, if any;

2. Measures, if any, to be taken in the mine to reduce the likelihood of subsidence, including such measures as backstowing or backfilling of voids; leaving support pillars of coal; and areas in which no coal removal is planned, including a description of the overlying area to be protected by leaving coal in place.

3. Measures to be taken on the surface to prevent material damage or lessening of the value or reasonably foreseeable use of the surface including such measures as reinforcement of sensitive structures or features; installation of footers designed to reduce damage caused by movement; change of location of pipelines, utility lines or other features; relocation of movable improvements to sites outside the angle-of-draw; and monitoring, if any, to determine the commencement and degree of subsidence so that other appropriate measures can be taken to prevent or reduce material damage.

(c) A detailed description of the measures to be taken to mitigate the effects of any material damage or diminution of value or foreseeable use of lands which may occur, including one (1) or more of the following as required by 405 KAR 18:210, Section 3:

1. Restoration or rehabilitation of structures and features, including approximate land-surface contours, to premining condition;

2. Replacement of structures destroyed by subsidence;

3. Purchase of structures prior to mining and restoration of the land after subsidence to condition capable of supporting and suitable for the structures and foreseeable land uses;

4. Purchase of non-cancellable insurance policies payable to the surface owner in the full amount of the possible material damage or other comparable measures.

(d) A detailed description of measures to be taken to determine the degree of material damage or diminution of value or foreseeable use of the surface, including such measures as:

1. The results of pre-subsidence surveys of all structures and surface features which might be materially damaged by subsidence;

2. Monitoring, if any, proposed to measure deformations near specified structures or features or otherwise as appropriate for the operation.

Section 27. MRP; Return of Coal Processing Waste to Abandoned Underground Workings. (1) Each plan shall describe the design, operation and maintenance of any proposed use of abandoned underground workings for coal processing waste disposal, including flow diagrams and any other necessary drawings and maps, for the approval of the cabinet and MSHA under 405 KAR 18:140, Section 7.

(2) Each plan shall describe the source and quality of waste to be stowed, area to be backfilled, percent of the mine void to be filled, method of constructing underground retaining walls, influence of the backfilling operation on active underground mine operations, surface area to be supported by the backfill, and the anticipated occurrence of surface effects following backfilling.

(3) The applicant shall describe the source of the hydraulic transport mediums, method of dewatering the placed backfill, retainment of water underground, treatment of water if released to surface streams, and the effect on the hydrologic regime.

(4) The plan shall describe each permanent monitoring well to be located in the backfilled area, the stratum underlying the mined coal, and gradient from the backfilled area.

(5) The requirements of this section shall also apply to pneumatic backfilling operations, except where the operations are exempted by the cabinet from requirements specifying hydrologic monitoring.

Section 28. MRP; Underground Development Waste. Each plan shall contain descriptions, including appropriate maps and cross-section drawings of the proposed disposal methods and sites for placing underground development waste and excess spoil generated at surface areas affected by surface operations and facilities, according to 405 KAR 18:130. Each plan shall describe the geotechnical investigation, design, construction, operation, maintenance and removal, if appropriate, of the structures and be prepared according to 405 KAR 8:030, Section 27.

Section 29. MRP; Transportation Facilities. (1) Each application shall contain a description of each road, conveyor, and rail system to be constructed, used, or maintained within the proposed permit area. The description shall include a map, appropriate cross-sections, and the following:

(a) Specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure.

(b) A report of appropriate geotechnical analysis, where approval of the cabinet is required for alternative specifications or for steep cut slopes under 405 KAR 18:230.

(c) A description of each measure to be taken to obtain approval of the cabinet for alteration or relocation of a natural drainageway under 405 KAR 18:230.

(d) A description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for approval by the cabinet under 405 KAR 18:230.

(2) Each plan shall contain a general description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area.

Section 30. MRP; Protection of Public Parks and Historic Places. For any public parks or historic places that may be adversely affected by the proposed operation, each plan shall describe the measures to be used to minimize or prevent these impacts and to obtain approval of the cabinet and other agencies as required in 405 KAR 24:040, Section 2(4).

Section 31. MRP; Relocation or Use of Public Roads. Each application shall describe, with appropriate maps and drawings the measures to be used to ensure that the interests of the public and landowners affected are protected if, under 405 KAR 24:040, Section 2(6), the applicant seeks to have the cabinet approve:

(1) Conducting the proposed underground mining activities within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or

(2) Relocating a public road.

Section 32. MRP; Protection of Hydrologic Balance. (1) Each plan shall contain a description, with appropriate maps and drawings, of the measures to be taken during and after the proposed underground mining activities, in accordance with Title 405, Chapter 18, to ensure the protection of:

(a) The quality of surface and ground water, both within the proposed permit area and adjacent areas, from adverse effects of the proposed underground mining activities;

(b) The rights of present users to surface and ground water;

(c) The quantity of surface and ground water both within the proposed permit area and adjacent area from adverse effects of the proposed underground mining activities;

(d) Water quality by locating openings for mines in accordance with 405 KAR 18:060, Section 5.

(2) The description shall include:

(a) A plan for the control, in accordance with Title 405, Chapter 18, of surface and ground water drainage into, through, and out of the proposed permit area;

(b) A plan for the treatment, where required under Title 405, Chapters 16 through 20, and surface and ground water drainage from the area to be affected by the proposed activities, and proposed quantitative limits on pollutants in discharges subject to 405 KAR 18:070, according to the more stringent of the following:

1. Title 405, Chapters 16 through 20; or
2. Other applicable state and federal laws.

(c) A plan for the collection, recording, and reporting of ground and surface water quality and quantity data, according to 405 KAR 18:110.

(3) The description shall include a determination of the probable hydrologic consequences of the proposed underground mining activities, on the proposed permit area and adjacent area, with respect to the hydrologic regime and the quantity and quality of water in surface and ground water systems under all seasonal conditions, including the contents of dissolved solids, suspended solids, total iron, pH, total manganese, acidity, alkalinity and other parameters required by the cabinet.

(4) Each plan shall contain a description, with appropriate drawings, of permanent entry seals and downslope barriers designed to ensure stability under anticipated hydraulic heads developed while promoting mine inundation after mine closure for the proposed permit area.

Section 33. MRP; Diversions. Each application shall contain descriptions, including maps and cross-sections, of stream channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with 405 KAR 18:080.

Section 34. MRP; Impoundments and Embankments. (1) General. Each application shall include detailed design plans for each proposed sedimentation pond, water impoundment, and coal processing waste bank, dam, or embankment within the proposed permit area. Each design plan shall:

(a) Be prepared by, or under the direction of, and certified by, a qualified registered professional engineer;

(b) Contain a description, map, and appropriate cross-sections and drawings of the structure and its location;

(c) Contain all hydrologic and geologic information and computations necessary to demonstrate compliance with the design and performance standards of Title 405, Chapter 18; and all information utilized by the applicant to determine the probable hydrologic consequences of the mining operation under Section 32(3);

(d) Contain an assessment of the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred;

(e) Include any geotechnical investigation, design, and construction requirements for the structure;

(f) Describe the operation and maintenance re-

quirements for each structure; and

(g) Describe the timetable and plans to remove each structure, if appropriate.

(2) Sedimentation ponds.

(a) Sedimentation ponds, whether temporary or permanent, shall be designed in compliance with the requirements of 405 KAR 18:090. Any sedimentation pond or earthen structure which will remain on the proposed permit area as a permanent water impoundment shall also be designed to comply with the requirements of 405 KAR 18:100.

(b) Each plan shall, at a minimum, comply with the requirements of MSHA, 30 CFR 77.216-1 and 77.216-2.

(3) Permanent and temporary impoundments. Permanent and temporary impoundments shall be designed to comply with the requirements of 405 KAR 18:100. Each plan shall comply with the requirements of MSHA, 30 CFR 77.216-1 and 77.216-2.

(4) Coal processing waste banks. Coal processing waste banks shall be designed to comply with the requirements of 405 KAR 18:140.

(5) Coal processing waste dams and embankments. Coal processing waste dams and embankments shall be designed to comply with the requirements of 405 KAR 18:160. Each plan shall comply with the requirements of MSHA, 30 CFR 77.216-1 and 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:

(a) The number, location, and depth of borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions.

(b) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site shall be considered.

(c) All springs, seepage, and ground water flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan.

(d) Consideration shall be given to the possibility of mudflows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

(6) If the structure is twenty (20) feet or higher or impounds more than twenty (20) acre-feet, each plan under subsection (2), (3), and (5) of this section shall include a stability analysis of each structure. The stability analysis shall include, but not be limited to, strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

Section 35. MRP; Air Pollution Control. For all surface operations associated with underground mining activities, the application shall contain an air pollution control plan which includes the following:

(1) An air quality monitoring program, if required by the cabinet, to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices, under subsection (2) of this section to comply with applicable federal and state air quality standards; and

(2) A plan for fugitive dust control practices, as required under 405 KAR 18:170.

Section 36. MRP; Fish and Wildlife. Permit applications shall not be required under this section to contain a fish and wildlife plan unless and until federal regulations requiring such plan have been promulgated and this regulation has been amended as necessary to be consistent with the corresponding federal regulations.

Section 37. MRP; Postmining Land Use. (1) Each plan shall contain a description of the proposed use, following reclamation, of the land to be affected within the proposed permit area by surface operations or facilities, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land use policies and plans. This description shall explain:

(a) How the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use;

(b) Where a land use different from the premining land use is proposed, all supporting documentation submitted for approval of the proposed use under 405 KAR 18:220;

(c) The consideration given to making all of the proposed underground mining activities consistent with surface owner plans and applicable state and local land use plans and programs;

(d) Where grazing is the proposed postmining land use, the detailed management practices necessary to properly implement the postmining use for grazing.

(2) The description shall be accompanied by a copy of the comments concerning the proposed use from the legal or equitable owner of record of the surface areas to be affected by surface operations or facilities within the proposed permit area and the state and local government agencies, if any, which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

(3) Approval of the initial postmining land use plan pursuant to this section, shall not preclude subsequent consideration and approval of a revised postmining land use plan in accordance with the applicable requirements of this Title.

Section 38. MRP; Transportation on Public Roads. The application shall include or be accompanied by a transportation plan and map (at least the scale and detail of the separate county maps published by the Kentucky Transportation Cabinet) which shall set forth the portions of the public road system, if any, over which the applicant proposes to transport coal extracted in the underground mining activities.

(1) The plan shall specify the legal weight limits for each portion of any such road or bridge over which the applicant proposes to transport coal.

(2) The plan shall include any proposal by the applicant to obtain a special permit pursuant to the provisions of KRS 189.271 to exceed the weight limits on any road or bridge.

(3) The plan shall contain a certification by a duly authorized official of the Kentucky Transportation Cabinet attesting the accuracy of the plan in regard to the locations and identities of roads and bridges on the public road system and the accuracy of the specifications of weight limits on such roads and bridges.

JACKIE A. SWIGART, Secretary
ADOPTED: October 26, 1983
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: October 31, 1983 at 4:30 p.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement

405 KAR 16:060E. General hydrologic requirements.

RELATES TO: KRS 350.100, 350.410, 350.420, 350.421, 350.440, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.100, 350.420, 350.465
EFFECTIVE: October 31, 1983
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during surface mining activities and for restoration and reclamation of surface areas affected by mining activities. This regulation sets forth general requirements for protection of the hydrologic balance, including general requirements for protection of surface and groundwater quantity and quality, control of erosion and sediment, protection of groundwater recharge capacity, protection of streams, and protection of water rights.

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

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

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

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

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

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

1. Stabilizing disturbed areas through land shaping;
2. Diverting runoff;
3. Achieving quickly germinating and growing stands of temporary vegetation;
4. Regulating channel velocity of water;
5. Lining drainage channels with rock or vegetation;
6. Mulching;
7. Selectively placing and sealing acid-forming and toxic-forming materials; and
8. Selectively placing waste materials in bankfill areas.

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

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

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

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

(c) Minimize erosion to the extent possible.

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

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

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

(c) Retaining sediment within disturbed areas;

(d) Diverting runoff away from disturbed areas;

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

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

(g) Treating with chemicals.

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

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

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

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

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

forming or toxic-forming spoil to be stored shall be placed on impermeable material and protected from erosion and contact with surface water.

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

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

Section 6. Protection of Ground Water Recharge Capacity. *Groundwater quality shall be protected by handling earth materials and runoff in a manner that will restore the approximate premining recharge capacity of the reclaimed area as a whole, excluding coal processing waste and underground development waste disposal areas and fills, so as to allow the movement of water to the underground system.*

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

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

[(a) Supports the approved postmining land use;]

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

[(c) Approximates the premining conditions, except when otherwise approved by the department.]

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

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

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

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

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

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

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

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

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

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

(a) Coal processing waste;

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

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

(d) Flue gas desulfurization sludge;

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

(f) Underground mine development wastes.

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

(4) Minimizes disturbance to the hydrologic balance; and

(5) Meets with the approval of the MSHA.

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

Section 11. Stream Buffer Zones. (1) No land within 100 feet of an intermittent or perennial stream shall be disturbed by surface mining activities, unless the cabinet specifically authorizes surface mining activities closer to or through such a stream under the following conditions:

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

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

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

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

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

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

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

JACKIE A. SWIGART, Secretary
ADOPTED: October 26, 1983
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: October 31, 1983 at 4:30 p.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement

405 KAR 16:090E. Sedimentation ponds.

RELATES TO: KRS 350.020, 350.100, 350.420, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.100, 350.420, 350.465
EFFECTIVE: October 31, 1983
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during surface mining activities and for restoration and reclamation of surface areas affected by mining activities. This regulation sets forth specific requirements for the location, design, construction, and removal or retention of sedimentation ponds.

Section 1. General Requirements. Sedimentation ponds shall be used individually or in series and shall:
(1) Be constructed and certified under Section 5(14) before any disturbance of the undisturbed area to be drained into the pond;
(2) Be located as near as possible to the disturbed area, and out of perennial streams unless approved by the cabinet;
(3) Meet all the criteria of this regulation;
(4) Be removed pursuant to Section 5(18) unless approved for retention under Section 5(19).

Section 2. Sediment Storage Volume. Sedimentation ponds shall provide a sediment storage volume as approved on a case-by-case basis by the cabinet based upon the anticipated volume of sediment to be collected and a feasible time schedule for clean-out operations. The sediment storage volume shall be the anticipated volume of sediment that will be collected by the pond between scheduled clean-out operations. The proposed clean-out schedule shall be included in the design and will be approved if the cabinet determines that the proposed schedule is feasible.

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

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

Section 5. Other Requirements. (1) Each permittee shall design, construct, and maintain sedimentation ponds to prevent short-circuiting to the extent possible.
(2) The design, construction, and maintenance of a sedimentation pond or other sediment control measures in accordance with this regulation shall not relieve the permittee from compliance with 405 KAR 16:070, Section 1(1)(g).
(3) There shall be no outflow through an emergency spillway during the passage through the sedimentation pond of the runoff resulting from the ten (10) year, twenty-four (24) hour precipitation event or lesser events.
(4) Sediment shall be removed from sedimentation ponds when the designed sediment storage volume has filled with sediment.
(5) An appropriate combination of principal and emergency spillways shall be provided to safely discharge the runoff from a twenty-five (25) year, twenty-four (24) hour precipitation event, or larger event specified by the cabinet. The elevation of the crest of the emergency spillway shall be a minimum of 1.5 feet above the crest of the principal spillway. Emergency spillway grades and allowable velocities shall be approved by the cabinet. *Sedimentation ponds not meeting the size or other qualifying criteria of 30 CFR 77.216(a) may use a single spillway if the spillway:* [The cabinet may establish size and other criteria under which a pond design may be approved which provides for a single spillway.]
(a) Is an open channel of nonerodible construction and capable of maintaining sustained flows; and
(b) Is not earth or grass lined.
(6) The minimum elevation at the top of the settled embankment shall be 1.0 foot above the water surface in the pond with the emergency spillway flowing at design depth. For embankments subject to settlement, this 1.0 foot minimum elevation requirement shall apply at all times, including the period after settlement.
(7) The constructed height of the dam shall be increased a minimum of five (5) percent over the design height to allow for settlement, unless it has been demonstrated to the cabinet that the material used and the design will ensure against all settlement.
(8) The minimum top width of the embankment shall not be less than the quotient of (H + 35)/5, where H is the height, in feet, of the embankment as measured from the upstream toe of the embankment.
(9) The combined upstream and downstream side slopes of the settled embankment shall not be less than 1v:5h, with neither slope steeper than 1v:2h. Slopes shall be designed to be stable in all cases, even if flatter side slopes are required.
(10) The embankment foundation area shall be cleared of all organic matter, all surfaces sloped to no steeper than 1v:1h, and the entire foundation surface scarified.
(11) The fill material shall be free of sod, large roots, other large vegetative matter, and frozen soil, and in no case shall coal-processing waste be used.
(12) The placing and spreading of fill material shall be started at the lowest point of the foundation. The fill shall be brought up in horizontal layers of such thickness as is required to facilitate compaction and meet the design requirement of this regulation. Compaction shall be conducted as specified in the design approved by the cabinet.
(13) If a sedimentation pond has an embankment that is more than twenty (20) feet in height, as measured from the upstream toe of the embankment to the crest of the emergency spillway, or has a storage volume of twenty (20) acre-feet or more, the following additional requirements shall be met:
(a) An appropriate combination of principal and

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

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

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

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

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

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

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

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

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

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

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

JACKIE A. SWIGART, Secretary
ADOPTED: October 26, 1983
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: October 31, 1983 at 4:30 p.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement

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

RELATES TO: KRS 350.410, 350.420, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.465
EFFECTIVE: October 31, 1983
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during surface mining activities and for restoration and reclamation of surface areas affected by mining activities. This regulation sets forth requirements for the disposal of coal processing waste, including design and construction requirements for coal processing waste banks, site inspection requirements, water control measures, provisions for extinguishing burning coal waste and utilization of burned coal waste, and the return of coal processing waste to underground mine workings.

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

(a) In accordance with 405 KAR 16:130, Sections 1 and 2, and this regulation; and

(b) To prevent combustion.

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

(a) Adversely affect water quality, water flow, or vegetation;

(b) Create public health hazards; or

(c) Cause instability in the disposal areas.

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

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

(b) Inspections shall include such observations and tests as may be necessary to evaluate the potential hazard to human life and property, to ensure that all organic material and topsoil have been removed and that proper

construction and maintenance are occurring in accordance with the plan submitted under 405 KAR 8:030, Section 34, and approved by the cabinet.

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

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

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

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

(a) Intercept all ground water sources;

(b) Be protected by an adequate filter; and

(c) Be covered so as to protect against the entrance of surface water or leachate from the coal processing waste.

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

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

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

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

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

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

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

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

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

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

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

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

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

JACKIE A. SWIGART, Secretary
ADOPTED: October 26, 1983
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: October 31, 1983 at 4:30 p.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement

405 KAR 16:190E. Backfilling and grading.

RELATES TO: KRS 350.020, 350.093, 350.100, 350.405, 350.410, 360.450, 350.465

PURSUANT TO: KRS 13.082, 350.028, 350.100, 350.465

EFFECTIVE: October 31, 1983

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

forth requirements for backfilling and grading, including requirements for highwall elimination, return to approximate original contour, timing of backfilling and grading, use of terraces, thick and thin overburden conditions, covering coal and acid and toxic materials, and regrading or stabilizing rills and gullies.

Section 1.Timing of Backfilling and Grading. Backfilling and grading shall be conducted in accordance with the requirements for contemporaneous reclamation as set forth in 405 KAR 16:020.

Section 2. General Grading Requirements. (1) Method for backfilling and grading:

(a) Except as specifically exempted in Title 405, Chapters 16 through 20, all disturbed areas shall be returned to their approximate original contour. All spoil shall be transported, backfilled, compacted (where advisable to insure stability or to prevent leaching) and graded to eliminate all highwalls, spoil piles, and depressions, and to ensure a long-term static factor of safety of at least 1.3 for all portions of the reclaimed land.

(b) Backfilled material shall be placed to minimize adverse effects on ground water, minimize offsite effects, and to support the approved postmining land use.

(c) Cut-and-fill terraces may be used only in those situations expressly identified in subsection (3) of this section.

(2) The final graded slopes shall not exceed slopes approved by the cabinet based on consideration of soil, climate, or other characteristics of the surrounding area. Postmining final graded slopes need not be uniform but shall approximate the general nature of the premining topography. [The requirements of this section may be modified by the cabinet where the surface mining activities are reaffecting previously mined lands that have not been restored to the standards of this chapter and sufficient spoil is not available to otherwise comply with this section. However, the permittee shall, at a minimum:]

[(a) Retain all overburden and spoil on the solid portion of existing or new benches; and]

[(b) Backfill and grade to the most moderate slope possible, to eliminate any newly created highwall and, except as provided in paragraph (c) of this subsection, those portions of existing highwalls that are adversely, physically impacted. The slope shall not exceed either the angle of repose or such lesser slope as is necessary to achieve a minimum static safety factor of 1.3.]

[(c) Where the permittee is conducting augering operations on previously mined lands under a permit issued under 405 KAR 8:050, Section 2(2), the permittee shall use all reasonably available spoil material to backfill the highwall to the extent practical and feasible; provided, however, that in all cases the permittee shall backfill the highwall to a minimum of four (4) feet above the coal seam being mined, seal all holes in accordance with 405 KAR 20:030, and stablize any adversely, physically impacted highwall.]

(3) On approval by the cabinet in order to conserve soil moisture, ensure stability, and control erosion on final graded slopes, cut-and-fill terraces may be allowed, if the terraces are compatible with the approved postmining land use and are appropriate substitutes for construction of lower grades on the reclaimed lands. The terraces shall meet the following requirements:

(a) The width of the individual terrace bench shall not exceed twenty (20) feet, unless specifically approved by the cabinet as necessary for stability, erosion control, or roads included in the approved postmining land use plan.

(b) The vertical distance between terraces shall be as specified by the cabinet, to prevent excessive erosion and to provide long-term stability.

(c) The slope of the terrace outslope shall not exceed 1v:2h (fifty (50) percent). Outslopes which exceed 1v:2h (fifty (50) percent) may be approved, if they have a minimum static safety factor of more than 1.3, provide adequate control over erosion, and closely resemble the surface configuration of the land prior to mining. In no case may highwalls be left as part of terraces.

(d) Culverts and underground rock drains shall be used on the terrace only when approved by the cabinet.

(4) Small depressions may be constructed, if they:

(a) Are approved by the cabinet to minimize erosion, conserve soil moisture, or promote vegetation;

(b) Do not restrict normal access; and

(c) Are not inappropriate substitutes for lower grades on the reclaimed lands.

(5) All surface mining activities on slopes above twenty (20) degrees, or on lesser slopes that the cabinet defines as steep slopes, shall meet the provisions of 405 KAR 20:060.

(6) All final grading, preparation of overburden before replacement of topsoil, and placement of topsoil, shall be done along the contour to minimize subsequent erosion and instability. If such grading, preparation, or placement along the contour is hazardous to equipment operators, then grading, preparation, or placement in a direction other than generally parallel to the contour may be used. In all cases, grading, preparation, or placement shall be conducted in a manner which minimizes erosion and provides a surface for replacement of topsoil which will minimize slippage.

Section 3. Covering Coal and Acid- and Toxic-forming Materials. (1) Cover.

(a) The permittee shall either cover, with a minimum of four (4) feet of the best available non-toxic and noncombustible material, or treat all exposed coal seams remaining after mining and all acid-forming, toxic-forming, combustible, or other materials identified by the cabinet as exposed, used or produced during mining. Cover or treatment shall be provided so as to neutralize toxicity, acidity and combustibility, in order to prevent water pollution and sustained combustion and to minimize adverse effects on plant growth and land uses.

(b) Where necessary to protect against upward migration of salts, exposure by erosion, formation of acid or toxic seeps, to provide an adequate depth for plant growth, or otherwise to meet local conditions, the cabinet shall specify thicker amounts of cover using non-toxic material, or special compaction and isolation from groundwater contact.

(c) Acid-forming or toxic-forming material shall not be buried or stored in proximity to a drainage course so as to cause or pose a threat of water pollution.

(2) Stabilization. Backfilled materials shall be selectively transported, placed in a controlled manner, and compacted, wherever necessary to prevent leaching of acid-forming and toxic-forming materials into surface or groundwaters and wherever necessary to ensure the stability of the backfilled materials. The method and design specifications of compacting material shall be approved by the cabinet before acid-forming or toxic-forming materials are covered.

Section 4. Thin Overburden. (1) The provisions of this section apply only where the final thickness is less than 0.8 of the initial thickness. Initial thickness is the sum of the

overburden thickness and coal thickness prior to removal of coal. Final thickness is the product of the overburden thickness prior to removal of coal times the bulking factor to be determined for each permit area. The provisions of this section apply only when surface mining activities cannot be carried out to comply with Section 1 of this regulation to achieve the approximate original contour.

(2) In surface mining activities carried out continuously in the same limited pit area for more than one (1) year from the day coal removal operations begin and where the volume of all available spoil and suitable waste materials over the permit area is demonstated to be insufficient to achieve the approximate original contour of the lands disturbed, surface mining activities shall be conducted to meet, at a minimum, the following standards:

(a) Transport, backfill, and grade, using all available spoil and suitable waste materials from the entire mine area, to attain the lowest practicable stable grade, to achieve a static safety factor of 1.3, and to provide adequate drainage and long-term stability of the regraded areas and cover all acid-forming and toxic-forming materials;

(b) Eliminate highwalls by grading or backfilling to stable slopes not exceeding 1v:2h (fifty (50) percent), or such lesser slopes as the cabinet may specify to reduce erosion, maintain the hydrologic balance, or allow the approved postmining land use;

(c) Transport, backfill, grade, and revegetate in accordance with 405 KAR 16:200, to achieve an ecologically sound land use compatible with the prevailing use in unmined areas surrounding the permit area; and

(d) Transport, backfill, and grade, to ensure impoundments are constructed only where:

1. It has been demonstrated to the cabinet's satisfaction that all requirements of 405 KAR 16:060, 405 KAR 16:070, 405 KAR 16:080, 405 KAR 16:090, 405 KAR 16:100 and 405 KAR 16:110 have been met; and

2. The impoundments have been approved by the cabinet as suitable for the approved postmining land use and as meeting the requirements of this chapter and all other applicable federal and state laws and regulations.

Section 5. Thick Overburden. (1) The provisions of this section apply only where the final thickness is greater than 1.2 of the initial thickness. Initial thickness is the sum of the overburden thickness and coal thickness prior to removal of coal. Final thickness is the product of the overburden thickness prior to removal of coal times the bulking factor to be determined for each permit area. The provisions of this section apply only when surface mining activities cannot be carried out to comply with Section 1 of this regulation to achieve the approximate original contour.

(2) In surface mining activities where the volume of spoil over the permit area is demonstrated to be more than sufficient to achieve the approximate original contour, surface mining activities shall be conducted to meet, at a minimum, the following standards:

(a) Transport, backfill, and grade all spoil and wastes, not required to achieve the approximate original contour of the permit area, to the lowest practicable grade, to achieve a static factor of safety of 1.3 and cover all acid-forming and other toxic-forming materials;

(b) Transport, backfill and grade excess spoil and wastes only within the permit area and dispose of such materials in accordance with 405 KAR 16:130;

(c) Transport, backfill, and grade excess spoil and wastes to maintain the hydrologic balance, in accordance with 405 KAR 16:060, 405 KAR 16:070, 405 KAR 16:080, 405 KAR 16:090, 405 KAR 16:100 and 405 KAR 16:110 and to provide long-term stability by preventing slides, erosion and water pollution;

(d) Transport, backfill, grade, and revegetate wastes and excess spoil to achieve an ecologically sound land use approved by the cabinet as compatible with the prevailing land uses in unmined areas surrounding the permit area;

(e) Eliminate all highwalls and depressions by backfilling with spoil and suitable waste materials; and

(f) Meet the revegetation requirements of 405 KAR 16:200 for all disturbed areas.

Section 6. Regrading or Stabilizing Rills and Gullies. When rills or gullies deeper than nine (9) inches form in areas that have been regraded and topsoiled, the rills and gullies shall be filled, graded, or otherwise stabilized and the area reseeded or replanted according to 405 KAR 16:200. The cabinet may specify that rills or gullies of lesser size be stabilized and the area reseeded or replanted if the rills or gullies are disruptive to the approved postmining land use or may result in additional erosion and sedimentation.

Section 7. Remining Previously Mined Areas. (1) General requirements. Remining operations on previously mined areas, including steep slope areas, that contain a pre-existing highwall shall comply with Sections 1 through 6 of this regulation except as provided in this section.

(2) Definitions.

(a) "Adverse physical impact" means, with respect to a highwall created or impacted by remining, conditions such as sloughing of material, subsidence, instability, or increased erosion of highwalls, which occur or can reasonably be expected to occur as a result of remining and which pose threats to property, public health, safety, or the environment.

(b) "Modified highwall" means either:

1. The highwall resulting from remining where the pre-existing highwall face is removed; or

2. The highwall resulting from remining where the pre-existing highwall is vertically enlarged.

(c) "Highwall remnant" means that portion of highwall that remains after backfilling and grading of a remining permit area.

(d) "Previously mined area" means land disturbed or affected by earlier coal mining operations that was not reclaimed to the standards of this title, and there is no continuing responsibility to reclaim to such standards.

(e) "Reasonably available spoil" means spoil and suitable coal mine waste material generated by the remining operation and other spoil or suitable coal mine waste material located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to public safety or significant damage to the environment. For this purpose, the permit area shall include all such poil in the immediate vicinity of the mining operation.

(f) "Remining" means conducting surface coal mining and reclamation operations which affect previously mined areas.

(3) Auger remining operations. The requirement within Section 2(1) of this regulation to completely eliminate the highwall shall not apply to auger remining operations where the volume of all reasonably available spoil is demonstrated in writing to the cabinet to be insufficient to

completely backfill the pre-existing or modified highwall. The highwall shall be eliminated to the maximum extent technically practical in accordance with the following criteria:

(a) All reasonably available spoil shall be used to backfill the area, provided, however, that in all cases the coal seam mined shall be covered with a minimum of four (4) feet of noncombustible, non-acid, non-toxic forming material and all holes shall be sealed in accordance with 405 KAR 20:030.

(b) All spoil generated or handled by the remining operation shall be retained on the solid portion of existing or new benches.

(c) The backfill shall be graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability.

(d) Any highwall remnant shall be made stable and not pose a hazard to public health and safety or to the environment. The permittee shall demonstrate to the satisfaction of the cabinet that the highwall remnant is stable.

(e) Spoil placed on the outslope during previous mining operations shall not be disturbed if such disturbance will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment.

(4) Remining operations other than augering.

(a) The requirements within Section 2(1) of this regulation to completely eliminate the highwall shall not apply to remining operations that are not reasonably expected to cause an adverse physical impact on the pre-existing or modified highwall. Such remining operations shall comply with the following:

1. All spoil generated by the remining operation shall be used to backfill and grade the area to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability, provided, however, that the coal seam mined shall be covered with a minimum of four (4) feet of noncombustible, non-acid, non-toxic forming material.

2. All spoil generated or handled by the remining operation shall be retained on the solid portion of existing or new benches.

3. Any highwall remnant shall be stable and not pose a hazard to the public health and safety or to the environment. The permittee shall demonstrate to the satisfaction of the cabinet that the highwall remnant is stable. If unexpected adverse physical impacts do occur, the permittee shall stablilize the highwall remnant.

4. Spoil placed on the outslope during previous mining operations shall not be disturbed if such disturbance will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment.

(b) Where the remining operation is reasonably expected to cause an adverse physical impact on the pre-existing or modified highwall, the requirement of Section 2(1) of this regulation to completely eliminate the highwall shall apply except where the volume of all reasonably available spoil is demonstrated in writing to the cabinet to be insufficient to completely backfill the highwall. In such case, the highwall shall be eliminated to the maximum extent technically practical in accordance with the following criteria:

1. All reasonably available spoil shall be used to backfill the area, provided, however, that the coal seam mined shall be covered with a minimum of four (4) feet of noncombustible, non-acid, non-toxic forming material.

2. All spoil generated or handled by the remining operation shall be retained on the solid portion of existing or new benches.

3. The backfill shall be graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability.

4. Any highwall remnant shall be made stable and not pose a hazard to public health and safety or to the environment. The permittee shall demonstrate to the satisfaction of the cabinet that the highwall remnant is stable.

5. Spoil placed on the outslope during previous mining operations shall not be disturbed if such disturbance will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment.

JACKIE A. SWIGART, Secretary
ADOPTED: October 26, 1983
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: October 31, 1983 at 4:30 p.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement

405 KAR 18:090E. Sedimentation ponds.

RELATES TO: KRS 350.020, 350.100, 350.151, 350.420, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.100, 350.151, 350.420, 350.465
EFFECTIVE: October 31, 1983
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This regulation sets forth specific requirements for the location, design, construction, and removal or retention of sedimentation ponds used for treatment of discharges from areas affected by surface operations and discharges from underground workings.

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

(1) Be constructed and certified under Section 5(14) before any disturbance of the area to be drained into the pond and prior to any discharge of water to surface waters from underground mine workings;

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

(3) Meet all the criteria of this regulation;

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

Section 2. Sediment Storage Volume. Sedimentation ponds shall provide a sediment storage volume as approved on a case-by-case basis by the cabinet based upon the anticipated volume of sediment to be collected and a feasible time schedule for clean-out operations. The sediment storage volume shall be the anticipated volume of sediment that will be collected by the pond between scheduled clean-

out operations. The proposed clean-out schedule shall be included in the design and will be approved if the cabinet determines that the proposed schedule is feasible.

Section 3. Detention Time. Sedimentation ponds shall provide detention time such that discharges from the pond shall meet the requirements of 405 KAR 18:070, Section 1(1)(g).

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

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

(2) The design, construction, and maintenance of a sedimentation pond or other sediment control measures in accordance with this regulation shall not relieve the permittee from compliance with 405 KAR 18:070, Section 1(1)(g).

(3) There shall be no outflow through an emergency spillway during the passage through the sedimentation pond of the runoff resulting from the ten (10) year, twenty-four (24) hour precipitation events and lesser events. The design shall take into account the volume of water and sediment contributed by the underground mine discharge.

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

(5) An appropriate combination of principal and emergency spillways shall be provided to discharge safely the runoff from a twenty-five (25) year, twenty-four (24) hour precipitation event, or larger event specified by the cabinet plus any inflow from the underground mine. The elevation of the crest of the emergency spillway shall be a minimum of 1.5 feet above the crest of the principal spillway. Emergency spillway grades and allowable velocities shall be approved by the cabinet. *Sedimentation ponds not meeting the size or other qualifying criteria of 30 CFR 77.216(a) may use a single spillway if the spillway:* [The cabinet may establish size and other criteria under which a pond design may be approved which provides for a single spillway.]

(a) Is an open channel of nonerodible construction and capable of maintaining sustained flows; and

(b) Is not earth or grass lined.

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

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

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

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

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

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

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

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

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

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

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

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

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

(15) The entire embankment including the surrounding areas disturbed by construction shall be stabilized with respect to erosion by a vegetative cover or other means immediately after the embankment is completed. The active upstream face of the embankment where water is being impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated, in accordance with 405 KAR 18:190, Section 4.

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

(17) Sedimentation ponds shall be properly maintained and shall not be removed until the requirements of 405 KAR 18:070, Section 1(1)(b) have been met.

(18) Sedimentation ponds shall be removed prior to final release of bond liability for the permit area unless retention

of the pond is approved by the cabinet under subsection (19) of this section. When a sedimentation pond is removed, the affected land shall be regraded and revegetated in accordance with 405 KAR 18:190 and 405 KAR 18:200.

(19) If the cabinet approves retention of a sedimentation pond as a permanent impoundment, the sedimentation pond shall meet all the requirements for permanent impoundments under 405 KAR 18:060, Section 8 and 405 KAR 18:100.

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

JACKIE A. SWIGART, Secretary
ADOPTED: October 26, 1983
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: October 31, 1983 at 4:30 p.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement

405 KAR 18:140E. Disposal of coal processing waste.

RELATES TO: KRS 350.151, 350.410, 350.420, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.151, 350.465
EFFECTIVE: October 31, 1983
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This regulation sets forth requirements for the disposal of coal processing waste, including design and construction requirements for coal processing waste banks, site inspection requirements, water control measures, provisions for extinguishing burning coal waste and utilization of burned coal waste, and the return of coal processing waste to underground mine workings.

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

(a) In accordance with this regulation and the criteria set forth in 405 KAR 18:130, Sections 1 and 2; and

(b) To prevent combustion.

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

(a) Adversely affect water quality, water flow, or vegetation;

(b) Create public health hazards; or

(c) Cause instability in the disposal areas.

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

(a) Inspections shall occur at least quarterly, beginning within seven (7) days after preparation of the disposal area begins. The cabinet may require more frequent inspections based upon an evaluation of the potential danger to the health or safety of the public and the potential harm to land, air and water resources. Inspections may terminate when the coal processing waste bank has been graded, covered in accordance with Section 4, topsoil has been distributed on the bank in accordance with 405 KAR 18:050, Section 4, or at such a later time as the cabinet may require.

(b) Inspections shall include such observations and tests as may be necessary to evaluate the potential hazard to human life and property, ensure that all organic material and topsoil have been removed and that proper construction and maintenance are occurring in accordance with the plan submitted under 405 KAR 8:040, Section 34, and approved by the cabinet.

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

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

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

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

(a) Intercept all ground water sources;

(b) Be protected by an adequate filter; and

(c) Be covered so as to protect against the entrance of surface water or leachate from the coal processing waste.

(2) *During and after* [Upon final] construction, all surface drainage from the area above the coal processing waste bank and from the crest and face of the waste disposal area shall be diverted, in accordance with 405 KAR 18:130, Section 2(4). [During construction, such drainage shall be diverted as approved by the cabinet.]

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

(4) Discharges of all water from a coal processing waste bank shall comply with 405 KAR 18:060, Sections 1, 2 and

7, 405 KAR 18:070, 405 KAR 18:090, and 405 KAR 18:110.

Section 4. Construction Requirements. (1) Coal processing waste banks shall be constructed in compliance with 405 KAR 18:130, Sections 1 and 2, except to the extent the requirements of those sections are specifically varied in this section.

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

(3) Compaction requirements during construction or modification of all coal processing waste banks shall meet the requirements of this subsection, instead of those specified in 405 KAR 18:130, Section 2(3). The coal processing waste shall be:

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

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

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

(4) Following grading of the coal processing waste bank, the site shall be covered with a minimum of four (4) feet of the best available non-toxic and non-combustible material, in accordance with 405 KAR 18:050, Section 2(5), and in a manner that does not impede flow from subdrainage systems. The coal processing waste bank shall be revegetated in accordance with 405 KAR 18:200. The cabinet may allow less than four (4) feet of cover material based on physical and chemical analyses which show that the requirements of 405 KAR 18:200 will be met.

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

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

Section 7. Return to Underground Workings. Coal processing waste may be returned to underground mine workings only in accordance with the waste disposal program approved by the cabinet and MSHA under 405 KAR 8:040, Sections 27 and 28.

JACKIE A. SWIGART, Secretary
ADOPTED: October 26, 1983
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: October 31, 1983 at 4:30 p.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement

405 KAR 18:190E. Backfilling and grading.

RELATES TO: KRS 350.020, 350.093, 350.100, 350.151, 350.405, 350.410, 360.450, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.100, 350.151, 350.465
EFFECTIVE: October 31, 1983
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This regulation sets forth requirements for backfilling and grading of areas affected by surface operations, including requirements for backfilling and grading of face-up areas and other cut slopes and limited exemptions, timing of backfilling and grading, covering coal and acid and toxic materials, and regrading or stabilizing rills and gullies.

Section 1. General Requirements. Surface areas disturbed incident to underground mining activities shall be backfilled and graded in accordance with this regulation and a time schedule approved by the cabinet as a condition of the permit.

Section 2. General Grading Requirements. (1) Method for backfilling and grading.

(a) Except as specifically exempted in Title 405, Chapters 16 through 20, all disturbed areas shall be returned to their approximate original contour. All spoil shall be transported, backfilled, compacted (where advisable to ensure stability or to prevent leaching), and graded to eliminate all highwalls, spoil piles, and depressions and to ensure a long-term static factor of safety of at least 1.3 for all portions of the reclaimed land.

(b) Backfilled material shall be placed to minimize adverse effects on ground water, minimize offsite effects, and to support the approved postmining land use.

(2) Postmining final graded slopes need not be uniform but shall approximate the general nature of the premining topography. Except when necessary for sealing openings under 405 KAR 18:040, face-up areas and similar cut slopes need not be completely backfilled and graded as required by subsection (1) of this section if the cabinet determines that:

(a) No significant adverse environmental impacts will result; and

(b) Sufficient backfill material is not available without redisturbance of settled fills that have become stabilized and successfully revegetated.

(3) In all cases, grading, preparation or placement shall be conducted in a manner which minimizes erosion and, when appropriate, provides a surface for replacement of topsoil which will minimize slippage.

Section 3. Covering Coal and Acid- and Toxic-forming Materials. (1) Cover.

(a) A permittee shall either cover, with a minimum of four (4) feet of the best available non-toxic and non-combustible material, or treat all exposed coal seams remaining after mining and all acid-forming, toxic-forming, combustible, and other materials identified by the cabinet as exposed, used or produced during mining. Cover or treatment shall be provided so as to neutralize toxicity, acidity and combustibility, in order to prevent water pollution and sustained combustion, and to minimize adverse effects on plant growth and land use.

(b) Where necessary to protect against upward migration of salts, exposure by erosion, to provide an adequate depth for plant growth, or to otherwise meet local conditions, the cabinet shall specify thicker amounts of cover using non-toxic material.

(c) Acid-forming or toxic-forming material shall not be buried or stored in proximity to a drainage course so as to cause or pose a threat of water pollution.

(2) Stabilization. Backfilled materials shall be selectively transported, placed in a controlled manner, and compacted, wherever necessary to prevent leaching of acid-forming and toxic-forming materials into surface or ground waters and wherever necessary to ensure the stability of backfilled materials. The method and design specifications of compacting material shall be approved by the cabinet before acid-forming and toxic-forming materials are covered.

Section 4. Regrading or Stabilizing Rills and Gullies. When rills or gullies deeper than nine (9) inches form in areas that have been regraded and topsoiled, the rills and gullies shall be filled, graded, or otherwise stabilized and the area reseeded or replanted according to 405 KAR 18:200. The cabinet may specify that rills or gullies of lesser size be stabilized and the area reseeded or replanted, if the rills or gullies are disruptive to the approved postmining land use or may result in additional erosion and sedimentation.

Section 5. Remining Previously Mined Areas. (1) General requirements. Remining operations on previously mined areas, including steep slope areas, that contain a pre-existing highwall shall comply with Sections 1 through 4 of this regulation except as provided in this section.

(2) Definitions.

(a) "Adverse physical impact" means, with respect to a highwall created or impacted by remining, conditions such as sloughing of material, subsidence, instability, or increased erosion of highwalls, which occur or can reasonably be expected to occur as a result of remining and which pose threats to property, public health, safety, or the environment.

(b) "Modified highwall" means either:

1. The highwall resulting from remining where the pre-existing highwall face is removed; or

2. The highwall resulting from remining where the pre-existing highwall is vertically enlarged.

(c) "Highwall remnant" means that portion of highwall that remains after backfilling and grading of a remining permit area.

(d) "Previously mined area" means land disturbed or affected by earlier coal mining operations that was not reclaimed to the standards of this title, and there is no continuing responsibility to reclaim to such standards.

(e) "Reasonably available spoil" means spoil and suitable coal mine waste material generated by the remining operation and other spoil or suitable coal mine waste material located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to public safety or significant damage to the environment. For this purpose, the permit area shall include all such spoil in the immediate vicinity of the mining operation.

(f) "Remining" means conducting surface coal mining and reclamation operations which affect previously mined areas.

(3) Auger remining operations. The requirements within Section 2(1) of this regulation to completely eliminate the highwall shall not apply to auger remining operations where the volume of all reasonably available spoil is demonstrated in writing to the cabinet to be insufficient to completely backfill the pre-existing or modified highwall. The highwall shall be eliminated to the maximum extent technically practical in accordance with the following criteria:

(a) All reasonably available spoil shall be used to backfill the area, provided however, that in all cases the coal seam mined shall be covered with a minimum of four (4) feet of noncombustible, non-acid, non-toxic forming material and all holes shall be sealed in accordance with 405 KAR 20:030.

(b) All spoil generated or handled by the remining operation shall be retained on the solid portion of existing or new benches.

(c) The backfill shall be graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability.

(d) Any highwall remnant shall be made stable and not pose a hazard to public health and safety or to the environment. The permittee shall demonstrate to the satisfaction of the cabinet that the highwall remnant is stable.

(e) Spoil placed on the outslope during previous mining operations shall not be disturbed if such disturbance will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment.

(4) Remining operations other than augering.

(a) The requirements within Section 2(1) of this regulation to completely eliminate the highwall shall not apply to remining operations that are not reasonably expected to cause an adverse physical impact on the pre-existing or modified highwall. Such remining operations shall comply with the following:

1. All spoil generated by the remining operation shall be used to backfill and grade the area to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability, provided however, that the coal seam mined shall be covered with a minimum of four (4) feet of noncombustible, non-acid, non-toxic forming material.

2. All spoil generated or handled by the remining operation shall be retained on the solid portion of existing or new benches.

3. Any highwall remnant shall be stable and not pose a hazard to the public health and safety or to the environment. The permittee shall demonstrate to the satisfaction of the cabinet that the highwall remnant is stable. If unexpected adverse physical impacts do occur, the permittee shall stabilize the highwall remnant.

4. Spoil placed on the outslope during previous mining operations shall not be disturbed if such disturbance will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment.

(b) Where the remining operation is reasonably expected to cause an adverse physical impact on the pre-existing or modified highwall, the requirement of Section 2(1) of this regulation to completely eliminate the highwall shall apply except where the volume of all reasonably available spoil is demonstrated in writing to the cabinet to be insufficient to completely backfill the highwall. In such case, the highwall shall be eliminated to the maximum extent technically practical in accordance with the following criteria:

1. All reasonably available spoil shall be used to backfill the area, provided however, that the coal seam mined shall be covered with a minimum of four (4) feet of noncombustible, non-acid, non-toxic forming material.

2. All spoil generated or handled by the remining operation shall be retained on the solid portion of existing or new benches.

3. The backfill shall be graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability.

4. Any highwall remnant shall be made stable and not pose a hazard to public health and safety or to the environment. The permittee shall demonstrate to the satisfaction of the cabinet, that the highwall remnant is stable.

5. Spoil placed on the outslope during previous mining operations shall not be disturbed if such disturbance will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment.

JACKIE A. SWIGART, Secretary
ADOPTED: October 26, 1983
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: October 31, 1983 at 4:30 p.m.

Amended Regulations Now In Effect

TRANSPORTATION CABINET
Department of Vehicle Regulation
As Amended

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

RELATES TO: KRS 189.270
PURSUANT TO: KRS 13.082
EFFECTIVE: November 2, 1983
NECESSITY AND FUNCTION: KRS 189.270 authorizes the Department of Vehicle Regulation to issue permits for the movement of house trailers exceeding legal dimensions. This regulation determines requirements necessary in the interest of highway safety.

Section 1. No house trailer of a width greater than eight (8) feet or with a combined length of house trailer and towing vehicle greater than sixty (60) feet, one (1) or both, shall be towed upon any Kentucky highway unless, and until a special written permit has been issued by the Department of Vehicle Regulation.

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

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

Section 4. The issue cost of annual and single trip permits, as set forth in KRS 189.270, shall apply for each towing vehicle and the cost will not be prorated. Permits will not be issued for units, including towing vehicle and house trailer combined, exceeding *ninety-five (95)* [eighty-five (85)] feet in length and fourteen (14) feet in width. The house trailer itself shall not exceed *eighty (80)* [seventy (70)] feet in length. Single trip permits will specify the highway to be used for a trip.

Section 5. All permits shall be issued by the Permit Section, Division of Motor Carriers, Department of Vehicle Regulation, Frankfort, Kentucky.

Section 6. One (1) lead escort vehicle is required for movement of house trailers twelve (12) feet wide on all two (2) lane highways except on sections of toll roads which may be two (2) lane. Escort vehicles, both front and rear, may be required on some highways where highway conditions may dictate the need. Red flags twelve (12) inches by twelve (12) inches square must be displayed both sides front bumper of lead escort and both sides of rear of a following escort. Amber flashing lights may be used on both escort and towing vehicles. Red lights are prohibited.

Section 7. All permit forms and requests for trip permits shall specify make of towing vehicle, license number and state of issue, name and address of owner, dates for travel and routes of travel. Requests and permit forms for

annual permits shall specify make of towing vehicle, rated capacity, serial number, license number, and whether for hire or private carrier.

Section 8. A duplicate permit to replace an annual permit or to transfer the permit to another vehicle may be obtained from the Permit Section, Division of Motor Carriers, Frankfort, by the payment of a fee of ten dollars ($10).

Section 9. Prior departmental approval must be secured from the Permit Section, Division of Motor Carriers, Frankfort, for any house trailer hauled under an annual permit which deviates from the routes prescribed in the permit issued for the towing vehicle.

Section 10. Permits shall be carried in the towing vehicles and must be presented, upon request, to any law enforcement officer or authorized personnel of the Department of Vehicle Regulation for inspection.

Section 11. Permits are valid during daylight hours only, from Monday through Saturday noon, except for those periods before, during and after the following holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; and Christmas Day. In connection with these holidays, travel is not permitted from noon the preceding day until daylight of the next permissible day. If the holiday occurs on Sunday or Monday the restricted period will extend from noon of the preceding Friday to daylight of the following Tuesday. If satisfactory proof of an emergency is furnished the Permit Section, Division of Motor Carriers, Frankfort, Kentucky, the Permit Section may authorize moves during the restricted hours. The term "daylight hours" means the period from one-half (½) hour before sunrise until one-half (½) hour after sunset, but it does not include such period or part thereof when atmospheric conditions render visibility lower than is ordinarily the case during such daylight hours.

Section 12. Single trip permits for moves involving house trailers fourteen (14) feet wide will be issued by the Permit Section, Division of Motor Carriers, Frankfort. The permit fee shall be as described in KRS 189.270.

Section 13. Moves of house trailers fourteen (14) feet wide will be limited to four (4) lane highways and to reasonable distance of two (2) lane highways. The definition of a reasonable distance from a four (4) lane highway to the unit's ultimate destination is defined in the sense that the Department of Vehicle Regulation will in its best judgment designate the shortest and best route to be used. The department shall deny movements on any routes deemed unsuitable for move.

Section 14. Moves *of house trailers fourteen (14) feet wide* cannot be made when the pavement is wet or when wind velocity exceeds twenty-five (25) MPH. *The current standards of traffic safety, based on traffic volume, require that moves of fourteen (14) feet wide house trailers be permitted during daylight hours, weekdays only with the exception of movement within or through Jefferson, Fayette, Boone, Kenton, and Campbell Counties when movements are to be allowed only between the hours of 9:00 a.m. and 3:00 p.m. and 6:00 p.m. to sundown. [Travel will be permitted during daylight hours, week days only, for movements of fourteen (14) feet wide house trailers with the exception of movement within or through Jefferson County, Fayette County, and the Northern Kentucky counties of Boone, Kenton and Campbell. Movement within these counties will be allowed only between the hours of 9:00 a.m. and 3:00 p.m. and 6:00 p.m. to sundown.]* [Moves will be made between the hours of 9:00 a.m. and 3:00 p.m. and from 6:00 p.m. to sundown week days only.] No travel on weekends, holidays or at night.

Section 15. When house trailers fourteen (14) feet wide are moved, one (1) escort will be required in the rear on four (4) lane highways and one (1) escort vehicle, both front and rear, on other highways. Escort vehicles shall have an amber flashing light on the roof. The house trailer shall be equipped with four (4) way amber flashers spaced not less than six (6) feet above the roadway. All running lights must be on while in motion. All axles on the house trailer shall be equipped with brakes.

Section 16. Speed limit on movement of fourteen (14) feet wide house trailers on interstate highways is forty-five (45) MPH. On other highways the speed limit is thirty-five (35) MPH, unless posted minimum speed exceeds this, then this may be increased to the minimum posted speed.

TIMOTHY D. HELSON, Commissioner
ADOPTED: August 19, 1983
APPROVED: JAMES E. RUNKE, Secretary
RECEIVED BY LRC: August 24, 1983 at 8:45 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department of Surface Mining Reclamation and Enforcement
As Amended

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
EFFECTIVE: November 2, 1983
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, terrestorial flora and fauna, and historic, geologic, pedologic, and archaeological features.

[(2)] In the design and operation of the baseline data

collection and monitoring programs, the permittee shall strive to collect data for the greatest period of time practicable as approved by the cabinet with emphasis on acquisition of quality data. [The minimum period of data collection shall be one (1) year.] The permittee shall establish and implement a quality assurance program approved by the cabinet to assure high quality data collection. This quality assurance program shall include but not be limited to: quality control by standard reference materials such as those available through the National Bureau of Standards; data validation through established criteria of acceptability; method and frequency of calibration and maintenance; and testing programs to identify and quantify data anomalies.

(2) [(a)] Air quality and climatology monitoring by the applicant *shall be in accordance with KRS Chapter 224 and the regulations promulgated pursuant thereto* [will include a network of air sampling stations capable of repeated measurements of physical and chemical parameters including but not limited to windspeed and direction, minimum, maximum, and mean air temperature, precipitation, and concentrations of the following; SO_2, NO_x, CO, O_3, Pb, H_2S, Hg, F, total residual sulfur and total suspended particulates. The number and location of sampling sites shall be recommended by the applicant and approved by the cabinet. Monitoring stations should be permanent sites. Temporary or mobile stations may be used if approved by the cabinet].

[(b) To assist in the identification of pollutants to be monitored under the permittee's monitoring program, the permittee shall submit to the cabinet a detailed description of emissions anticipated during the development of the proposed site.]

(3) Surface water monitoring by the applicant shall include monitoring sites established on major streams, upstream and downstream from anticipated sources of pollution including adjacent impacted tributaries. Seasonal sampling (winter, spring, summer, and fall) is required with a minimum of six (6) samples taken in each affected perennial stream per year. A minimum of two (2) samples shall be taken during high flow and a minimum of two (2) samples shall be taken during low flow. Sampling for metals, organic compounds, and water quality assessment shall be performed during low flow periods. Sampling of intermittent streams shall be during the maximum flow regime. The sampling parameters for intermittent streams shall be recommended by the applicant and approved by the cabinet. All sampling shall be performed by [a] qualified *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 *identified by the applicant. The applicant shall recommend a monitoring plan for approval by the cabinet* [sampled for seasonally in winter, spring, summer and fall including two (2) samples in each flow regime].

(5) Groundwater 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 *and the duration of the data collection* 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. *The duration of data collection shall be recommended by the applicant for approval by the cabinet.*

(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 appplication shall contain a description of the geology and hydrology of lands within the proposed permit area and adjacent areas. The description shall include information on the characteristics of surface and ground waters within these areas, and any water which will flow into or receive discharges of water from these areas.

(b) Hydrologic data including water quality and quantity, and geologic data related to hydrology of areas outside the permit area and within the adjacent areas shall be submitted to the cabinet. This data may be obtained from appropriate federal or state agencies. If the cabinet determines that this data is not sufficient, the applicant will be required to collect such additional data as determined by the cabinet and submit it as part of the permit application.

(c) Geologic data shall include a general statement of the geology within the proposed permit area and adjacent areas down to and including the first aquifer which may be affected below the lowest oil shale stratum to be mined.

(d) Test borings or core samples from the proposed permit area shall be collected and analyzed down to and including the stratum immediately below the lowest oil shale stratum to be mined, to provide the following data:

1. Location of subsurface water, if encountered;
2. Logs of drill holes showing the lithologic characteristics and thickness of each stratum and each oil shale stratum;
3. Physical properties of each stratum within the overburden;
4. Chemical analyses of each stratum within the overburden, and including the stratum immediately below the lowest oil shale stratum to be mined to identify, at a minimum, those horizons which contain potential acid-forming, toxic-forming, or alkalinity producing materials; and,
5. Analyses of the oil shale stratum including, but not limited to, an analysis of the total sulfur and pyritic sulfur content.

(e) If required by the cabinet, geologic data shall be collected and analyzed to greater depths within the proposed permit area and adjacent areas to provide for evaluation of the impact of the proposed activities on the hydrologic balance.

(10) Historical, pedological, and archaeological data should be gathered from the appropriate agencies. Where insufficient data exists, the cabinet may require the applicant to collect such data. Where no archaeological information exists, a survey or prediction analysis should be done in *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.

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

815 KAR 45:050. Requirements for obtaining firefighters training facility grants.

RELATES TO: KRS 17.250, 45A.080, 322.360
PURSUANT TO: KRS 13.082, 17.250(4)
EFFECTIVE: November 2, 1983
NECESSITY AND FUNCTION: KRS 17.250 requires that prior to any expenditures of funds for the purpose of constructing new or upgrading existing training facilities for firefighters, plans must be submitted to and reviewed by the Commission on Fire Protection Personnel Standards and Education. The purpose of this regulation is to set out standards and procedures for determining the amount and use of the funds to be expended from the Firefighter's Training Center Fund.

Section 1. Definitions. (1) "Commission" for the purpose of this regulation shall mean the Commission on Fire Protection Personnel Standards and Education established pursuant to KRS 95A.020.

(2) "Cost estimate" for the purpose of this regulation shall mean an itemized list of labor, items or materials needed and their estimated cost at the time of bidding. It can also mean the estimated cost of land or buildings to be purchased.

(3) "Quotations or bids" for the purpose of this regulation shall contain the same information as cost estimates.

Section 2. Eligibility. (1) To qualify to receive aid under the Firefighter's Training Center Fund, fire departments in cities of all classes, fire prevention districts organized pursuant to KRS Chapter 75, county districts established under authority of KRS 67.083 and all other organized fire departments or groups or associations of fire departments operated and maintained on a non-profit basis in the interest of the health, safety, prosperity and security of the inhabitants of the Commonwealth, must maintain at least twelve (12) firefighters, a chief and at least one (1) operational fire apparatus.

(2) Any fire department or entity eligible for and receiving funding pursuant to this regulation shall have a minimum of seventy-five percent (75%) of its personnel certified as recognized by the Commission on Fire Protection Personnel Standards and Education.

Section 3. Participation Requirements. (1) There shall be submitted to the commission an application which shall contain, but not be limited to, a letter of application, containing a general statement of intent; a list of fire departments and agencies that will use the facility; a list of what is available to the applicant, such as land, free labor or materials, etc.; name of an agent or contact person; a drawing or sketch of the proposed training center, as well as building drawing if applicable; and a cost estimate as stated in the definitions of this regulation.

(2) All applications must comply with the state laws applicable to capital construction projects and the requirements stated in this regulation.

(a) Quotations or bids shall be obtained from at least three (3) suppliers for all expenditures of less than $10,000.

(b) Expenditures exceeding $10,000, *or in excess of the requirements of KRS 424.260, whichever applies,* shall require advertisement in newspapers prior to letting the bid to inform the public and suppliers of the needs of the fire department and assure that purchases will be at the lowest cost.

(c) Capital construction projects exceeding the cost of $25,000 shall require bidding, advertisement and the services of an architect or professional engineer registered in the state of Kentucky.

(d) Equipment expenditures exceeding $50,000 shall comply with paragraphs (a), (b) and (c) of this subsection and shall be submitted to and approved by the Capital Construction and Equipment Purchase Oversight Committee.

(3) Permits shall be obtained for all electrical installations, all plumbing installations, all fuel installations, and boiler and pressure vessel installations.

Section 4. Processing Applications. (1) The commission shall review the applications and, subject to funds available, shall recommend to the State Fire Marshal which applications shall be funded and at what levels, together with any terms and conditions the commission deems necessary.

(2) No funds shall be expended for any purpose other than that for which it is approved without the approval of the commission.

(3) If funds are granted to an applicant and are not to be used for the purpose granted, the applicant's agent shall contact the commission through its administrator directly, giving the reason why change is required or desired in the original plan; and resubmit new plans and cost estimates which shall be approved by the commission; or return the funds.

(4) Granted funds shall not be held longer than twelve (12) calendar months after the date of the grant check without reasonable progress toward the purpose of the grant. If no progress has been made or there is insufficient progress in the consideration of a majority of the commission members after twelve (12) months, the remaining funds shall be returned.

(5) When expenditures are made, receipts for funds expended during each quarter shall be sent by the 15th of the following month. Receipts for January, February and March should be in the hands of the commission administrator by the 15th of April and so on.

(6) Maintenance of the training facilities and/or equipment purchased with the granted funds shall be the responsibility of the applicant. A reasonable fee may be charged for use of the facilities by others than the applicant's members. These fees are to be used for the maintenance of the facilities or equipment.

(7) Any false statements made knowingly by an applicant shall call for refund of grant monies and prosecution under existing statutes.

CHARLES A. COTTON, Commissioner
ADOPTED: September 14, 1983
APPROVED: LEONARY B. MARSHALL, JR.
Secretary
RECEIVED BY LRC: September 15, 1983 at 2:30 p.m.

Amended After Hearing

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

DEPARTMENT OF PERSONNEL
Amended After Hearing

101 KAR 1:120. Separations and disciplinary actions.

RELATES TO: KRS 18A.005, 18A.075, 18A.095, 18A.110, 18A.165
PURSUANT TO: KRS 13.082, 18A.030, 18A.075, 18A.110
NECESSITY AND FUNCTION: KRS 18A.075 requires the Personnel Board to adopt comprehensive rules consistent with KRS Chapter 18A. KRS 18A.030 requires the Commissioner of Personnel to prepare and recommend to the board rules which provide for layoffs and for separation of employees deemed unsatisfactory or excessive by agency or department heads. KRS 18A.110 requires the commissioner to prepare and submit to the board rules which provide for layoffs, imposition of fines of not more than ten (10) days' pay, suspension without pay for not longer than thirty (30) days, and for discharge or reduction in rank. This rule is necessary to comply with these statutory requirements.

Section 1. General Provisions. Except as otherwise provided in these rules, the tenure of an employee with status shall be during good behavior and the satisfactory performance of his duties. *At the time that an employee is given written notice of layoff, dismissal, suspension and disciplinary fine, an informational copy shall be transmitted to the Personnel Board.*

Section 2. Layoffs. (1) An appointing authority may layoff an employee in the classified service whenever he deems it necessary by reason of shortage of funds or work, abolishment of a position, or other material change in duties or organization. An employee with status may appeal his lay-off in accordance with 101 KAR 1:130. The employee shall be notified of the effective date at least fourteen (14) calendar days prior to such effective date and shall be given written notice of the reasons for the layoff and of his right to appeal. The appointing authority shall conduct a personal interview with each laid-off employee to explain the re-employment rights available to that employee under the merit system regulations, unless circumstances prevent such an interview; such circumstances must be detailed in writing to the commissioner [of Personnel].

(2) Seniority, performance appraisals, conduct, qualifications and type of appointment shall be considered in determining the order of layoffs in a manner prescribed or approved by the commissioner. No status employee is to be separated by layoff while there are provisional, temporary, emergency, or probationary employees serving in the agency in the same class in the same locality.

(3) The appointing authority and the department shall attempt to place the employee in another position for which the employee is qualified prior to the effective date of layoff.

Section 3. Dismissals. (1) The appointing authority may remove any employee with status only for cause after furnishing the employee and the commissioner with a written statement of the specific reasons for dismissal. Such reasons shall be specific as to the statutory and/or rule violation, the time, place, and persons by name involved in the alleged violation, and a specific description of the alleged unlawful activity. Notifications of dismissal that do not properly specify the reasons shall be considered invalid and the employee shall remain on the payroll until such time as proper charges are affected.

(2) Notifications of dismissal shall inform the employee that he has ten (10) working days, not including the date the notice is received, to reply thereto in writing, or upon request, to appear personally with counsel and reply to the appointing authority or his deputy.

(3) An employee with status may appeal his dismissal as set forth in 101 KAR 1:130.

(4) A dismissed employee may be required to forfeit all accrued leave.

(5) Any employee who has been dismissed for cause or who has resigned while charges for dismissal for cause were pending and who seeks further employment with the state shall not be certified to the agency from which separated unless the agency requests such certification.

Section 4. Separation During Probationary Period. An employee may be separated without the right of appeal at any time during the probationary period as set forth in 101 KAR 1:100, Section 3.

Section 5. Resignations. An employee who desires to terminate his service with the state shall submit a written resignation to the appointing authority. Resignations shall be submitted at least fourteen (14) calendar days before the final working day. A copy of an employee's resignation shall be attached to the advice effecting the separation and be filed in the employee's service record in the department. Failure of an employee to give fourteen (14) calendar days notice with his resignation may result in forfeiture of accrued annual leave.

Section 6. Retirement. If an employee with status is retired, he is considered as separated without prejudice and does not have the right of appeal.

Section 7. Suspensions. An appointing authority, upon written notice stating the reasons therefor, a copy of which shall be sent to the commissioner, may suspend an employee without pay or other compensation as punishment for disciplinary cause. In the case of an employee with status, such reasons shall be specific as to the statutory and/or rule violation, the time, place, and persons by name involved in the alleged violation, and a specific description of the alleged unlawful activity. Such a suspension shall not exceed thirty (30) working days *for each occurrence* [during any twelve (12) month period. The twelve (12) month period begins with the first day of the suspension]. An employee with status may appeal his suspension as set forth in 101 KAR 1:130.

Section 8. Disciplinary Fines. An appointing authority may impose as a disciplinary measure, a fine of not more than ten (10) days pay to be computed on the basis of the employee's current salary. Disciplinary fines may not exceed ten (10) days pay for each occurrence [, and may not exceed a total of thirty (30) days pay in any twelve (12) month period. The twelve (12) month period begins with the first day of the disciplinary fine]. The employee shall be notified in writing by the appointing authority of the reasons for the action, a copy of which shall be sent to the commissioner. In the case of an employee with status, such reasons shall be specific as to the statutory and/or rule violation, the time, place, and persons by name involved in the alleged violation, and a specific description of the alleged unlawful activity. An employee with status may appeal the action in accordance with the provisions of 101 KAR 1:130. For purposes of 101 KAR 1:130, the effective date of a disciplinary fine shall be deemed to be the date the employee receives the notification required by this section.

Section 9. Written Reprimands. An appointing authority may give an employee a written reprimand as a preliminary disciplinary measure. A copy of the written reprimand shall be placed in the employee's personnel file in the agency and a copy shall be given to the employee. The employee shall be given the opportunity to reply in writing to the written reprimand and to include this reply in his personnel file with the written reprimand. The employee shall be informed of his right to reply at the time the written reprimand is given. A written reprimand, in and of itself, is not an appealable penalization and is not a basis for appeal.

DEE MAYNARD, Commissioner
ADOPTED: November 15, 1983
APPROVED: LIBBY WALTHALL, Chairman
RECEIVED BY LRC: November 15, 1983 at 4:30 p.m.

DEPARTMENT OF PERSONNEL
Amended After Hearing

101 KAR 1:130. Appeals.

RELATES TO: KRS 18A.075, 18A.095, 18A.100
PURSUANT TO: KRS 13.082, 18A.075, 18A.095, 18A.110
NECESSITY AND FUNCTION: KRS 18A.075 requires the Personnel Board to adopt comprehensive rules consistent with KRS Chapter 18A. KRS 18A.095 provides that any classified employee who is dismissed, demoted, suspended or otherwise penalized after completing his probationary period may appeal to the Personnel Board within thirty (30) days of the action taken against him. This rule is necessary to assure a uniform and effective procedure for scheduling, hearing, and acting upon such appeals.

Section 1. General Provisions. Any employee, applicant for employment, or eligible on a register, who believes that he has been unjustly discriminated against, may appeal to the board for a hearing subject to the procedural rules of the board.

Section 2. Appeal From Examination Rejection. (1) Any applicant whose application for admission to an open-competitive examination has been rejected and who has been notified of such rejection and the reasons therefor may appeal to the board for reconsideration of his qualifications and for admission to the examination.

(2) Applicants may be conditionally admitted to an examination by the commissioner pending a consideration of an appeal. Admission to a written examination under such circumstances, however, shall not constitute the assurance of a passing grade [in training and experience].

Section 3. Appeal From Examination Rating. (1) Any applicant who has taken an examination may appeal to the board for a review of his rating in any part of such examination to assure that uniform rating procedures have been applied equally and fairly.

(2) Except for correction of clerical errors, a rating in any part of an examination shall not be changed unless it has been found by the board that a mistake has been made, except as provided in 101 KAR 1:070, Section 3. A correction in the rating shall not affect a certification or appointment that may already have been made from the register.

Section 4. Appeal From Removal From Register. An eligible whose name has been removed from a register for any of the reasons specified in 101 KAR 1:070, Section 6(1) and (2), may appeal to the board for reconsideration.

Section 5. Appeal Procedure for Applicants or Eligibles. The appeal to the board by applicants or eligibles under Sections 1, 2, 3, 4, must be filed in writing with the

executive director not later than fifteen (15) calendar days after the notification of the action in question was mailed. The applicant or eligible shall have the right to appear before the board and to be heard.

Section 6. Appeal From Dismissals, Demotion, Suspension, or Penalization. (1) Any employee with status who is dismissed, demoted, suspended, or otherwise penalized may appeal to the board.

(2) An employee may appeal a transfer which he considers to be a penalization in accordance with 101 KAR 1:110, Section 2.

Section 7. Appeal Procedure for Employees. (1) Any employee with status who is dismissed, demoted, suspended, or otherwise penalized may, within thirty (30) days after the effective date of such dismissal, demotion, suspension, or penalization, appeal to the board through the executive director. Such appeal shall be in writing and shall set forth the basis for the appeal. The appeal must be filed in the office of the executive director within the aforementioned thirty-day (30) period. When the thirtieth day of the filing period falls on a day when the executive director's office is closed during normal working hours, the appeal may be filed on the next regular working day. The executive director shall promptly transmit copies of the appeal to the board and to the appointing authority.

(2) The board shall designate an appropriate time and place to conduct the hearing. Such hearing shall be held within sixty (60) calendar days after receipt of the appeal. The appellant and the appointing authority shall be notified in writing at least five (5) working days in advance of the time and place designated for the hearing. The board shall, within ninety (90) days after an appeal is filed, issue a final order for the disposition thereof.

(3) At the hearing, both the appellant and the appointing authority whose action is reviewed shall have the right to be heard publicly and to be represented by counsel to present evidentiary facts. At the hearing of such appeals, technical rules of evidence shall not apply.

(4) If the board finds that the action complained of was taken by the appointing authority for any political, religious, or ethnic reason, or due to sex, race, age (between forty (40) and seventy (70)), or handicap, the employee shall be reinstated to his former position or a position of like status and pay, without loss of pay for the period of his penalization, and without penalization, or shall otherwise be made whole.

(5) If the board finds that the action complained of was taken by the appointing authority without just cause, the board shall order the employee reinstated to his former position or a position of like status and pay, without loss of pay for the period of his penalization, or otherwise make the employee whole. In all other cases, if the board finds that the action taken by the appointing authority was excessive or erroneous in view of all the surrounding circumstances, the board shall alter, modify or rescind the disciplinary action.

(6) When any employee is dismissed and not ordered reinstated after such appeal, the board in its discretion may direct that his name be placed on an appropriate reemployment list for employment in any similar position other than the one from which he had been removed.

Section 8. Hearing of Appeals. (1) Evidentiary hearings in appeals filed pursuant to KRS 18A.095 and this regulation may be conducted by the full board or quorum thereof, or by individual members of the board, by its executive director or by a hearing examiner of the board.

(2) The board may designate one (1) or more hearing examiners to assist the board in appeal proceedings. All such hearing examiners shall be attorneys authorized to practice law in Kentucky and shall be selected solely on their knowledge, ability and experience in the trial of administrative and/or judicial proceedings.

(3) The chairman of the board or a majority of the board may designate a member of the board, the executive director or a hearing examiner to conduct any evidentiary hearing as hearing officer or may request the executive director to establish a calendar designating members of the board, the executive director and/or hearing examiners to conduct evidentiary hearings as hearing officers. A stenographic record or other mechanical recording shall be made of the evidence presented at such hearing. In all such cases, upon the conclusion of the hearing, the hearing officer shall submit to the board the stenographic or mechanical record of the evidence presented, his findings of fact, and dispositive recommendations in the case before him, and the executive director shall transmit [by certified mail unless such transmission is waived in writing,] to both parties a copy of the findings of fact and dispositive recommendations. [Any mechanical recording device and procedures utilized by the board must be similar to that used by the Administrative Office of the Courts at the District Court level.] The board upon review of the findings of fact, stenographic or mechanical recording of the evidence presented, and dispositive recommendations of the hearing officer, [who shall be present during such review,] and after consideration of such written [or oral arguments or] exceptions *and responses thereto* as the parties have presented as a matter of right *and such written or oral arguments as the parties may present by leave of the board,* [or may present with leave or upon request of the board,] shall make a final determination of the appeal by either:

(a) Adopting as submitted the findings and recommendations of the hearing officer;

(b) Altering before adoption, in any manner deemed proper, either or both the findings and recommendations of the hearing officer;

(c) If felt necessary by a majority of the board, remanding the case or any part thereof *to the hearing officer for such further action as the board may deem appropriate subject to final review by the board.* [for rehearing by the same hearing officer, with such hearing officer to prepare and submit to the parties and the board such additional findings of fact and dispositive recommendations as he feels are necessary upon the conclusion of the rehearing. A stenographic or mechanical recording shall be taken of this additional testimony and the hearing officer shall submit to the board a stenographic or mechanical recording of the evidence presented. The board shall then consider the findings of fact, the stenographic or mechanical recording of the evidence presented, and dispositive recommendations from the original hearing and any additional rehearings ordered, and shall, upon request of any member of the board, instruct the executive director to prepare a complete or partial record. The board, upon consideration of these items and such additional written or oral arguments or exceptions as the parties have presented as a matter of right or may present with leave or upon request of the board, shall render its final decision in the case.]

(4) *All appeals* [Any appeal] heard by less than the full board shall be *reviewed* [subject to review] by the full

board *prior to final order.* [upon petition for such review by either party to the appeal. Petition for review by the full board shall be filed with the board within thirty (30) days of the recommended order issued by a member, the executive director, or a hearing examiner.]

(5) At any time after a hearing [but prior to a final order of the Personnel Board,] either party may request a copy of the stenographic or mechanical recording of the evidence presented at the hearing. Such request shall be in writing to the board. Any party requesting such record shall bear the expense of preparing the copy of the record. Payment for the stenographic or mechanical recording copy shall be tendered by certified check or money order prior to the preparation of said copy, and, in the case of an appointing authority, may be tendered by interaccount voucher.

(6) In all appeals pending before the personnel board, the taking of depositions for proof, either prior to or subsequent to the hearing, shall not be permitted except where the deponent is a licensed physician or a nonresident of the State of Kentucky, [or where the taking of said deposition for purposes of proof is agreed to by the opposing party,] or where other extenuating circumstances of such magnitude exist that the hearing officer by order authorizes the taking of such deposition. All hearings of appeals shall be held in Frankfort, Kentucky, unless otherwise designated by the board for good cause. The *board or the* duly appointed hearing officer shall have the power to issue all intermediate orders concerning said appeal [,] prior to the final decision of the board. Upon request of the hearing officer or the board, *all* orders shall be *signed* [issued] by the executive director acting as secretary to the board.

DEE MAYNARD, Commissioner
ADOPTED: November 15, 1983
APPROVED: LIBBY WALTHALL, Chairman
RECEIVED BY LRC: November 15, 1983 at 4:30 p.m.

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

401 KAR 5:090. Control of water pollution from oil and gas facilities.

RELATES TO: KRS Chapters 151, 224
PURSUANT TO: KRS 13.082, 151.125, 224.033, 224.060
NECESSITY AND FUNCTION: KRS 224.033 requires that the cabinet promulgate regulations pertaining to the issuance of permits and the prevention, abatement and control of water pollution. This regulation provides for preventing, abating, and controlling water pollution from oil and gas facilities.

Section 1. Applicability. *(1)* The provisions of this regulation shall apply to the owner or operator of any facility which causes or is capable of causing produced water.

(2) Owners or operators of dry gas wells as defined in Section 2(8) of this regulation shall be exempt from the requirements of this regulation except under Sections 4, 5(2)(b), and 8(3) of this regulation.

Section 2. Definitions. The following definitions describe terms used in this regulation. Terms not defined below shall have the meaning given to them by KRS Chapters 151 and 224 or the meaning attributed by common use.

(1) "Area of review" means a fixed radius around the facility of not less than one-fourth (¼) mile.

(2) "Barrel" means forty-two (42) U.S. gallons.

(3) [(1)] "Cabinet" means the Natural Resources and Environmental Protection Cabinet.

[*(4) "De minimus" means less than or equal to one (1) barrel per day.*]

(4) [(5)] [(2)] "Director" means the secretary of the cabinet or an authorized representative. For purposes of permit issuance decisions, the director is the Director of the Division of Water.

(5) [(6)] [(3)] "Disposal well" means a borehole drilled or proposed to be drilled, or a well converted to be used, for the sole purpose of disposing of any water, gas, produced water or other fluid by injection or other method into a subsurface zone.

(6) [(7)] [(4)] "Division" means Division of Water, Natural Resources and Environmental Protection Cabinet.

(7) "Drilling pit" means an earthen excavation for the collection of fluids associated with the drilling, construction, completion, acidizing, or fracturing of an oil or gas well.

(8) "Dry gas well" means a gas well producing one (1) barrel or less [de minimus amounts] of produced water at maximum production conditions during a given twenty-four (24) hour period.

[(9)"Emergency control pit" means any excavated depression utilized to retain an unexpected release of produced water.]

(9) [(10)] "Enhanced recovery well" means a well used for the injection of fluids to improve or maintain reservoir productivity.

(10) [(11)] [(5)] "Facility" means any well, tank, pit, structure, appurtenance or improvement used in the exploration, drilling, or production of oil or gas or used for treating, storing or disposing of produced water.

(11) [(12)] [(6)] "Gas" means all natural gas, including casinghead gas, and all other hydrocarbons not defined herein as oil.

(12) [(13)] [(7)] "Geologically isolated" means a zone separated from drinking water aquifers and free of known open faults or fractures and *free of* any unprotected wells within the area of review.

(13) [(14)] [(8)] "Holding pit" means an earthen excavated depression designed to receive and *store* [hold] produced water at a facility.

(14) [(15)] [(9)] "Kentucky Pollutant Discharge Elimination System (KPDES)" means the Kentucky program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits to discharge and imposing and enforcing pretreatment requirements. The KPDES regulations are 401 KAR 5:050 to 5:085.

(15) [(16)] [(10)] "Oil" means natural crude oil or petroleum and other hydrocarbons, regardless of specific gravity, which are produced at the well in liquid form and which are not the result of condensation of gas after it leaves the underground reservoir.

(16) [(17)] [(11)] "Operate" means any act relating to the construction, operation or maintenance of any facility.

(17) [(18)] [(12)] "Operator" means any person who operates any facility.

(18) [(19] [(13)] "Owner" means any person who possesses any interest in:

(a) The right to develop, operate, or produce oil or gas; or

(b) Any facility.

(19) [(20)] [(14)] "Person" means as defined in KRS 224.005(12).

(20) [(21)] [(15)] "Pollutant" means as defined in KRS 224.005(28).

(21) [(22)] [(16)] "Produced water" means any and all water and pollutants and combination thereof resulting, obtained or produced from the exploration, drilling, or production of oil or gas.

(22) [(23)] [(17)] "Register" means to file forms with the division which contain information as to oil and gas well geographic location, production, produced water production, methods used for treating, storing or disposing of produced water, and other information deemed necessary by the division.

(23) "Stripper well" means any oil well producing ten (10) barrels or less per day of oil.

(24) "Tank battery" means an installation where oil is collected from wellheads and separated from produced water.

(25) [(18)] "Total dissolved solids" means the total dissolved (filtrable) solids as determined by use of the method specified in 40 CFR Part 136.

(26) [(19)] "Waters of the Commonwealth" means waters of the Commonwealth as defined in KRS 224.005(26).

(27) [(20)] "Well" means a borehole drilled, or proposed to be drilled for the purpose of producing gas or oil or one through which gas or oil is being produced, or a borehole drilled or proposed to be drilled for the purpose of injecting any water, gas, produced water or other fluid therein or one into which any water, gas, produced water or other fluid is being injected.

(28) [(21)] "Zone" means a *subsurface* layer or stratum capable of producing or receiving fluids.

Section 3. Prohibition. No person shall construct, modify, or operate a facility in violation of state or federal water quality standards or other applicable standards in this regulation.

Section 4. Registration. (1) All operators shall register their facilities with the division using a form approved by the director *containing name of operation, location of lease, oil and produced water production rates, method of produced water disposal, and other necessary information. The operator shall register each tank battery with associated wells, pits, and other similar structures as one (1) facility. Those facilities not associated with a tank battery shall be registered individually.* [All contiguous facilities operated or to be operated under a single lease by one (1) owner or operator may register as one (1) facility operation.]

(2) Operators who previously registered their facilities with the division on the form entitled "Division of Water, Crude Oil Producers Brine Disposal Registration Form" shall not be required to register under this section unless there has been a change in operators or to the reported quantity of produced water or a modification to the facility has occurred which affects the operations used for treating, storing or disposing of produced water.

(3) Operators shall post waterproof signs, at each facility, of a size and type approved by the director [, at tank batteries and at disposal wells which] . The signs shall identify the operator's name, address, permit and [or] registration number, [address,] phone number, and other information required by the director.

(4) New facilities are required to register with the division within sixty (60) days after the facility begins producing oil and/or gas.

Section 5. Produced Water Disposal. (1) Produced water shall be disposed of into either an enhanced recovery well, a disposal well permitted under Section 11(3) of this regulation, or a well permitted under 40 CFR 146, the Underground Injection Control Program. [a disposal well permitted under Section 11(3) of this regulation or an enhanced recovery well except when the director determines one (1) of the following occurs:]

[(a) A geological zone suitable to receive the produced water does not meet the criteria set forth in Section 11(4) of this regulation.]

[(b) The cost of constructing and operating disposal well system to meet the requirements of Section 11(4) of this regulation or the inability to use a non-owned disposal well exceeds the economic capabilities of the operator and would necessitate a shutdown of operations at that particular facility.]

[(c) De minimus amounts of produced water are produced, except for those facilities included in Subpart C—Onshore Subcategory of 40 CFR 435.]

(2) If either of the following conditions apply to a facility, surface discharges of produced water will [only] be allowed, but are subject to the requirements of Section 8 of this regulation. It is the obligation of the applicant to demonstrate to the director, with appropriate supporting data, that one (1) of the following applies:

(a) The cost of constructing and operating a disposal well system to meet the requirements of Section 11(4) of this regulation or the legal or actual inability to use a non-owned disposal well would necessitate a shutdown of operations at that particular facility; or

(b) Less than one (1) barrel per twenty-four (24) hour period of produced water is generated, except for those facilities included in Subpart C—Onshore Subcategory of 40 CFR 435.

Section 6. Disposal of Produced Water Off the Facility. (1) No person shall transport [Transportation of] produced water away from a tank battery to any location other than a cabinet-permitted disposal system or an individual Underground Injection Control (UIC) permitted site, or a disposal system in another state [is prohibited].

(2) No operator shall authorize or allow the transportation of produced water away from a facility where it is produced unless such operator has first submitted the following information to the director and obtained approval:

(a) Operator's name, mailing address, and telephone number.

(b) Transporter's name, mailing address, telephone number.

(c) Name of disposer, mailing address, telephone number, disposal site, and permit number.

(d) Vehicle identification information, including license number and vehicle description.

(e) Quantity of produced water to be transported.

(3) The operator of a disposal well may receive produced water from other facilities in accordance with the notification procedures of subsection (2) of this section.

(4) Spills during transfer of produced water shall be reported in accordance with 401 KAR 5:015.

Section 7. [5.] Approval Requirements for Continuation for Operation of Existing Facilities. (1) Applicability. The provisions of this section shall apply to operators of facilities in existence prior to the effective date of this regulation. [*These provisions will not apply to operators of dry gas wells.*]

(2) Continuation requirements. Operators may continue to operate existing facilities for a period not to exceed one (1) year from the *date of the submittal of a compliance plan* [effective date of this regulation] provided all the following provisions are met:

(a) A written request to continue operating existing facilities is submitted to the director. This request shall include a detailed description of existing operations for treating, storing or disposing of produced water.

(b) A plan is submitted to the director which proposes a schedule and outlines the procedures for meeting the requirements of this and other applicable regulations.

(c) Both the written request and plan shall be submitted to the director [*by March 1, 1984*] [[]within ninety (90) days of the effective date of this regulation[]].

(d) Approval for continuation of operation of existing facilities has been obtained from the director pursuant to subsection (3) of this section and the operator has on display at the facility the Division's approval identification number.

(3) Approval procedures. After receiving the written request and plan specified in subsection (2) of this section, the director will:

(a) Review the plan and request any additional information from the operator, if needed, *within twenty (20) working days of receipt of the plan*;

(b) Develop a compliance schedule for each facility or contiguous facility operation; and

(c) Issue a written approval to the operator containing the compliance schedule and an identification number *within forty (40) working days after the plan is deemed complete.*

Section 8. [6.] *Surface* Discharges of Produced Water. (1) Applicability. The provisions of this section apply to operators of facilities discharging produced water into *surface* waters of the Commonwealth. [*These provisions will not apply to operators of dry gas wells.*]

[*(2) No discharge of produced water from a facility shall cause an in-stream chloride concentration of more than 250 mg/l.*]

(2) General requirements. No produced water shall be discharged from a facility unless *one (1) of the requirements of Section 5(2) [(1)] of this regulation is met and such discharge is* authorized by and in accordance with the KPDES regulations 401 KAR 5:050 through 401 KAR 5:085. A KPDES permit is not required for the *discharge* [disposal] of produced water through a permitted disposal well. KPDES permits may be issued to operators of facilities provided the facility meets the criteria for inclusion within Subpart F—Stripper Subcategory of 40 CFR Part 435.

(3) Any operator of oil and gas facilities who files a compliance plan indicating an intent to continue the discharge of produced water under a KPDES permit shall submit, with the compliance plan, information regarding the technological, economic and geologic factors which limit the operator's capability to inject the produced water.

(4) No KPDES permit shall be issued to the operator of an oil and gas facility that would be a new source or new discharger if the discharge from its construction or operation would cause or contribute to a violation of water quality standards.

Section 9. [7.] Holding Pits [*and Emergency Control Pits*]. (1) Applicability. The provisions of this section apply to the operators of holding pits [*and emergency control pits*] which are constructed after the effective date of this regulation, and to the operators of existing pits that are incapable of demonstrating pursuant to Section 7 [5] of this regulation that those pits do not contaminate surface or groundwaters.

(2) Exemption. Spill Prevention Control and Countermeasure (SPCC) pits developed pursuant to Section *13* [11] of this regulation are exempted from the requirements of this section.

(3) General requirements. Operators of holding pits shall supplement the registration form required under Section 4 of this regulation with information regarding the construction and operation of any holding pit and any other information deemed necessary by the director. This information shall be submitted to the director on forms provided by the director *not less than thirty (30) days prior to the date the permit is desired.*

(4) Permits. The director will issue permits to operators of holding pits to contain any condition necessary to satisfy any requirement of this regulation notwithstanding any less stringent provision of the law to the contrary.

(5) Conditions applicable to holding pits.

(a) Construction requirements.

1. Holding pits shall be constructed in accordance with KRS Chapter 151 and Division of Waste Management regulation [401 KAR 34:200, Section 2, et seq., *and] 401 KAR 30:030.*

2. Holding pits shall be constructed with an impermeable synthetic liner having a minimum thickness of twenty (20) mils.

3. Holding pits shall be designed with a continuous bermed area at least two (2) feet above ground level.

4. Facility shall be constructed for the collection of fluids, other than produced water, associated with well construction, acidizing and chemically enhanced recovery in areas where the waters of the Commonwealth may be affected. [An impermeable liner will not be required if the expected operational life of the holding pit is to be thirty (30) days or less.] The closure requirement for the holding pit shall be as specified in subsection 5(c) of this section.

(b) Operating requirements.

1. No holding pit *shall* [may] discharge produced water into waters of the Commonwealth except in accordance with a KPDES permit, *nor shall any holding pit be used for the ultimate disposal of produced waters.*

2. All surface water shall be diverted away from the holding pit so that the holding pit shall have no additional drainage area.

3. *Waste shall be removed from the holding pit to maintain a one (1) foot minimum freeboard.* [All wastes shall be removed from the holding pit when the design storage volume has filled.] Disposal of wastes shall be in accordance with Kentucky laws and regulations.

(c) Closure requirements.

1. Except as provided in subsection (2) of this section, any holding pit no longer used for the purpose for which it was intended shall be backfilled, graded, and revegetated. The vegetative cover shall be capable of stabilizing the soil

surface from erosion. This closure shall be conducted within the time period specified in the permit issued pursuant to subsection (3) of this section.

2. A holding pit may remain as a permanent structure or be used for other purposes upon written approval from the director.

3. Disposal of all wastes shall be in accordance with Kentucky laws and regulations.

(6) A tank, of a size and type approved by the director, may be used in lieu of a holding pit.

[(7) Conditions applicable to emergency control pits. General requirements.]

[(a) The capacity of the pit shall not exceed two (2) days production.]

[(b) The pit shall be kept empty and free of oil.]

[(c) The pit shall be kept separate from all oil spill control facilities as defined in the requirements of 40 CFR Part 112.]

[(d) The pit shall be located and constructed to prevent intrusion by surface, spring, or groundwater.]

[(e) Water tank overflow piping shall be installed to prevent any accumulated oil from entering the pit.]

[(f) Water tank piping shall extend from the tank into the pit and have an outlet accessible for measuring flow.]

[(g) Any use of the emergency pit shall be reported to the appropriate Division District Office within forty-eight (48) hours.]

Section *10.* [8.] Drilling Pits. Facilities shall be constructed for the collection of fluids associated with well construction, acidizing and chemically enhanced recovery in areas where waters of the Commonwealth may be affected. If the life of the facilities is longer than thirty (30) days *following completion of exploration or drilling activities* [or if the facilities receive produced water other than from exploration or drilling activities,] they *shall* [must] meet all requirements of Section *9* [7(5)(c)] of this regulation. *Upon written request, the director may, with [for] good cause, extend the allowable life of the facility [a drilling pit] to a maximum ninety (90) days if the extension will not cause or contribute to contamination of waters of the Commonwealth. The closure requirements for these facilities [drilling pits] shall be as specified in Section 9(5)(c) of this regulation.*

Section *11.* [9.] Disposal Wells. (1) Applicability. The provisions of this section apply to operators of disposal wells *until* [. The provisions of this section will not apply to operators of disposal wells upon] issuance of an individual Underground Injection Control (UIC) permit by the agency having jurisdiction under the Safe Drinking Water Act (42 USC 300f, et seq.).

(2) General requirements. Operators of disposal wells shall supplement the registration form required under Section 4 of this regulation with information regarding the construction and operation of any disposal well, a plan showing the location of all existing and abandoned wells within the *area of review* [zone of influence] and any other information deemed necessary by the director. This information shall be submitted to the director on forms provided by the division *not less than thirty (30) days prior to the date the permit is desired.*

(3) Permits. The director will issue permits to operators of disposal wells to contain any condition necessary to satisfy any requirement of this regulation notwithstanding any less stringent provision of law to the contrary.

(4) Conditions applicable to all disposal wells. Disposal wells shall reinject all produced waters into a formation which is geologically isolated and contains more than 10,000 mg/l of total dissolved solids *or meets the criteria of an exempted aquifer as set forth in 40 CFR 146.4. If a formation is unacceptable for injection solely because abandoned and improperly plugged boreholes have established communication between it and other strata, the operator is obligated to find and properly plug these boreholes within the area of review established by the division.* Disposal well failure or shutdown shall be reported immediately to the director. *All plugging, casing, and operation of wells shall be done in accordance with Department of Mines and Minerals regulations 805 KAR 1:020, 1:060, and 1:070.*

Section *12.* [10.] Inspection and Enforcement. The cabinet may inspect any facility pursuant to KRS 224.033 and *shall* [may] provide written notification of any violation to the operator. Following the determination of any violation of any applicable provision of law, the cabinet may initiate any enforcement action including an order to abate and alleviate such condition or activity pursuant to KRS 224.071 and any other applicable remedy including civil penalties pursuant to KRS 224.994. [Operators shall post waterproof signs, or a size and type approved by the director, at tank batteries and at disposal wells which shall identify the operator's name, address, permit or registration number, phone number and other information defined by the director. All plugging, casing, and operation of wells shall be done in accordance with Department of Mines and Minerals regulations 805 KAR 1:020, 1:060, and 1:070.]

Section *13.* [11.] Spills and Leaks. (1) General provision. Operators of facilities shall develop and implement Spill Prevention Control and Countermeasure (SPCC) Plans when required under 40 CFR Part 112.

(2) Reporting.

(a) Operators shall report to the division all spills and bypasses of oil and produced water from facilities in accordance with 401 KAR 5:015.

(b) Operators shall report all spills, discharges and bypasses of oil from a facility in accordance with the procedures in 40 CFR Part 110.

Section 14. Permit Fees. (1) The provisions of this section shall apply to the operator of each facility required to have a permit by this regulation except for any facility permitted under a general permit.

(a) Every operator who is issued a permit under the provisions of this regulation shall be assessed a permit fee in accordance with the provisions set forth in subsection (2) of this section.

(b) Upon making the determination that a permit can be issued under this regulation, the director will notify upon receipt of the total amount of the permit fee. Failure by the applicant to pay the assessed permit fee on or before the due date may result in the denial of the permit.

(2) The fee for each type of permit is listed below:

Facility and Type of Permit	*Permit Fee*
Construction of "holding pit"	*$100*
Operation of existing "disposal well"	*$125*
Construction of "disposal well"	*$200 [650]*

(3) In addition to the requirements of this regulation, facilities issued KPDES permits will be assessed a fee pursuant to 401 KAR 5:085.

(4) Duplicate permit fee. Upon application for the issuance of a duplicate permit for activities covered under this regulation, the duplicate permit shall be issued by the cabinet upon receipt of a fifteen dollar ($15) permit fee.

(5) Terms of payment.

(a) Payment of a permit fee as provided for by this section will be made within thirty (30) days of the billing date.

(b) Certified checks or money orders, if used, shall be payable to the Kentucky State Treasurer.

JACKIE SWIGART, Secretary
ADOPTED: November 15, 1983
RECEIVED BY LRC: November 15, 1983 at 4 p.m.

TRANSPORTATION CABINET
Kentucky Airport Zoning Commission
Amended After Hearing

602 KAR 50:010. Definitions.

RELATES TO: KRS 183.861 to 183.990
PURSUANT TO: KRS 13.082, 183.861
NECESSITY AND FUNCTION: To define certain terms used in the regulations of the Kentucky Airport Zoning Commission.

Section 1. Administrative Terms. (1) "Administrator" means the Administrator of the Kentucky Airport *Zoning* Commission or any individual to whom he has delegated his authority in the matter concerned.

(2) "Commission" means the Kentucky Airport Zoning Commission created pursuant to KRS 183.861 to 183.990.

(3) "Local zoning body" means an independent, joint or regional planning commission or any local government which is a member of a planning unit created pursuant to KRS Chapter 100.

Section 2. Zoning Terms. (1) "Airport" as used in these regulations, means any area of land or water *used in maneuvering for landing and taking off of aircraft* operated or constructed by *any person,* an airport board or other governmental agency located within the Commonwealth which is *available for public use and is* designed for the landing and taking-off of aircraft, and any appurtenant areas used, or intended for use, for airport building, facilities, or rights of way, and all airport buildings and facilities located thereon; including, but not limited to, runways, taxiways, aircraft ramps, terminal and cargo buildings, gates, hangars, shops, service buildings, automobile parking, motels, restaurants, retail and wholesale stores, banks, automobile service facilities and garages, and entrance and service roads used or useful in connection with or as a part of the airport.

(2) "Jurisdictional surface" means that surface extending from the periphery of the *runway* airport reference points as established on the zoning map and extending outward and upward therefrom at a slope and horizontal distance as defined in these regulations.

(3) *"Public use airport" means an airport that is open to the general public without prior request to use the airport.* ["Zoned airspace" means that airspace within the primary approach surface and above the conical surface in which zoning jurisdiction is assumed by these regulations.]

[(4) "Reference point" for each runway means that point as depicted on the airport map at the end of each runway as presently exists or as depicted on the airport master plan or as proposed to be extended in a letter of intent on file with the Federal Aviation Administration, all of which shall have reasonable assurance of completion. The elevation of each reference point shall in all cases be its height above sea level.]

(4) [(5)] "Runway" means the surface of an airport used for landing and taking off of aircraft as depicted on the airport zoning map and airport master plan, *and FAA form 7480-1 Notice of Landing Area Proposal. There are four (4) types of runways:*

(a) "Nonprecision instrument runway" means a runway having an existing instrument approach procedure utilizing air navigation facilities with only horizontal guidance, or area type navigation equipment, for which a straight-in nonprecision instrument approach procedure has been approved or planned, and for which no precision approach facilities are planned, or indicated on an FAA planning document.

(b) "Precision instrument runway" means a runway having an existing instrument approach procedure utilizing an Instrument Landing System (ILS), or a Precision Approach Radar (PAR). It also means a runway for which a precision approach system is planned and is so indicated by an FAA approved airport layout plan or any other FAA planning document.

(c) "Utility runway" means a runway that is constructed for and intended to be used by propeller driven aircraft of 12,500 pounds maximum gross weight and less.

(d) "Visual runway" means a runway intended solely for the operation of aircraft using visual approach procedures, with no straight-in instrument approach procedure and no instrument designation indicated on an FAA approved airport layout plan, or by any planning document submitted to the FAA by competent authority.

[(6) "Obstruction" means any structure, object of natural growth, or use of land which protrudes into the zoned airspace as herein defined or a height of over 200 feet above the ground level or water level of all waters within the Commonwealth of Kentucky.]

(5) [(7)] "Navigable airspace" means air space above the minimum safe altitudes of flight prescribed by the regulations of the federal aviation administration FAR Part 91.79 or department consistent therewith, and includes the air space necessary for normal landing or taking off of aircraft.

[(8) "Primary approach surface" means the area as depicted on Airport Zoning Maps with the horizontal distance beginning at the width of the primary surface and extending outward to a point where the prescribed approach slope intersects the horizontal surface.]

[(9) "Conical surface" means a surface extending outward and upward from the periphery of the horizontal surface at a slope of twenty (20) to one (1) for a horizontal distance of 4,000 feet.]

[(10) "Horizontal surface" means a horizontal plane 150 feet above the established airport elevation, the perimeter of which is constructed by swinging arcs of specified radii from the center of each end of the primary surface of each runway of each airport and connecting the adjacent arcs by lines tangent to those arcs. The radius of each arc referred to above is:]

[(a) 5,000 feet for all runways designated as utility or visual;]

[(b) 10,000 feet for all other runways. The radius of the arc specified for each end of a runway will have the same arithmetical value. That value will be the highest determin-

ed for either end of the runway. When a 5,000-foot arc is encompassed by tangents connecting two (2) adjacent 10,000-foot arcs, the 5,000-foot arc shall be disregarded on the construction of the perimeter of the horizontal surface.]

(6) Public airport imaginary surfaces. The size of each such imaginary surface is based on the category of each runway according to the type of approach available or planned for that runway. The slope and dimensions of the approach surface applied to each end of a runway are determined by the most precise approach existing or planned for that runway end.

(a) Horizontal surface—a horizontal plane 150 feet above the established airport elevation, the perimeter of which is constructed by swinging arcs of specified radii from the center of each end of the primary surface of each runway of each airport and connecting the adjacent arcs by lines tangent to those arcs. The radius of each arc is:

1. 5,000 feet for all runways designated as utility or visual;

2. 10,000 feet for all other runways. The radius of the arc specified for each end of a runway will have the same arithmetical value. That value will be the highest determined for either end of the runway. When a 5,000-foot arc is encompassed by tangents connecting two (2) adjacent 10,000-foot arcs, the 5,000-foot arc shall be disregarded on the construction of the perimeter of the horizontal surface.

(b) Concial surface—a surface extending outward and upward from the periphery of the horizontal surface at a scope of 20 to 1 for a horizontal distance of 4,000 feet.

(c) Primary surface—a surface longitudinally centered on a runway. When the runway has a specially prepared hard surface, the primary surface extends 200 feet beyond each end of that runway; but when the runway has no specially prepared hard surface, or planned hard surface, the primary surface ends at each end of that runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline. The width of a primary surface is:

1. 250 feet for utility runways having only visual approaches.

2. 500 feet for utility runways having nonprecision instrument approaches.

3. For other than utility runways the width is:

a. 500 feet for visual runways having only visual approaches.

b. 500 feet for nonprecision instrument runways having visibility minimums greater than three-fourths (¾) statute mile.

c. 1,000 feet for a nonprecision instrument runway having a nonprecision instrument approach with visibility minimums as low as three-fourths (¾) of a statute mile, and for precision instrument runways. The width of the primary surface of a runway will be that width prescribed in this section for the most precise approach existing or planned for either end of that runway.

(d) Approach surface—a surface longitudinally centered on the extended runway centerline and extending outward and upward from each end of the primary surface. An approach surface is applied to each end of each runway based upon the type of approach available or planned for that runway end.

1. The inner edge of the approach surface is the same width as the primary surface and it extends uniformly to a width of:

a. 1,250 feet for that end of a utility runway with only visual approaches;

b. 1,500 feet for that end of a runway other than a utility runway with only visual approaches;

c. 2,000 feet for that end of a utility runway with a nonprecision instrument approach;

d. 3,500 feet for that end of a nonprecision instrument runway other than utility, having visibility minimums greater than three-fourths (¾) of a statute mile;

e. 4,000 feet for that end of a nonprecision instrument runway, other than utility, having a nonprecision instrument approach with visibility minimums as low as three-fourth (¾) statute mile; and

f. 16,000 feet for precision instrument runways.

2. The approach surface extends for a horizontal distance of:

a. 5,000 feet at a slope of 20 to 1 for all utility and visual runways;

b. 10,000 feet at a slope of 34 to 1 for all nonprecision instrument runways other than utility; and

c. 10,000 feet at a slope of 50 to 1 with an additional 40,000 feet at a slope of 40 to 1 for all precisions instrument runways.

3. The outer width of an approach surface to an end of a runway will be that width prescribed in this subsection for the most precise approach existing or planned for that runway end.

(e) Transitional surface—these surfaces extend outward and upward at right angles to the runway centerline and the runway centerline extended at a slope of 7 to 1 from the sides of the primary surface and from the sides of the approach surfaces. Transitional surfaces for those portions of the precision approach surface which project through and beyond the limits of the conical surface, extend a distance of 5,000 feet measured horizontally from the edge of the approach surface and at right angles to the runway centerline.

(7) "Aircraft" means a heavier than air fixed wing aircraft or rotocraft that depends principally on its engine(s) for flight through the air.

Section 3. General Definitions. (1) "Person" means any individual, firm, partnership, corporation, company, association, or body politic, and includes any trustee, receiver, assignee or other similar representative thereof.

(2) "Structure" means any object constructed or installed by man, including, but not limited to, buildings, towers, smokestacks, and overhead transmission lines, and objects of natural growth whether temporary or permanent.

(3) "Body politic" means the Commonwealth of Kentucky and its agencies, or any instrumentality of the state government, county or city government.

(4) "Alter a structure" means to increase or decrease the height of a structure or change the visibility of a structure by painting, marking or lighting the structure in a manner different from the painting, marking, and lighting standards set forth in the regulations of the commission.

[(5) "Natural flyway" means a valley or other suitable terrain conducive for air navigation by helicopter which ordinarily contains a highway, railway or waterway which leads to a populated, industrial or commercial area.]

Section 4. Airport Master Plan. As used in the regulations of the commission, *an approved* "Airport Master Plan" or "airport map" means the basic plan for the layout of a public airport that shows as a minimum:

(1) The present boundaries of the airport and of the offsite area that the owner of a public airport owns or controls for airport purposes, and of their proposed additions;

(2) The location and nature of existing and proposed airport facilities (such as runways, taxiways, aprons, terminal buildings, hangars, and roads) and of their proposed modification and extensions; and,
(3) The location of existing and proposed non-aviation areas, and of their existing improvements.
(4) An owner of an existing or proposed public airport may file a copy of its airport layout plan prepared under Part 151 of the Federal Aviation Regulations that has been approved by the FAA in lieu of an airport master plan or airport map.

Section 5. Definitions Relating to Permits. (1) "Permits" means the *written authorization in accordance with the findings and directions of the commission* [approval of an Application for A Permit] to alter or construct a structure *issued* by the administrator of the commission pursuant to [the regulations of the] commission *regulations.*
(2) "Airport land use permit" means the approval by order of the commission of a request by a public airport to change a use or activity within an airport which is otherwise prohibited by the regulations of the commission.

Section 6. "Aeronautical study" means *a review or analysis* [that study] of the effect of the proposed construction or alteration of a structure upon the operation of air navigation facilities and the safe and efficient utilization of the navigable airspace.

CLAIR R. NICHOLS, Chairman
ADOPTED: November 7, 1983
APPROVED: JAMES F. RUNKE, Secretary
RECEIVED BY LRC: November 15, 1983 at 4:30 p.m.

TRANSPORTATION CABINET
Kentucky Airport Zoning Commission
Amended After Hearing

602 KAR 50:060. Construction within *jurisdictional airspace* [conical surface permit].

RELATES TO: KRS 183.861 to 183.890
PURSUANT TO: KRS 13.082, 183.861
NECESSITY AND FUNCTION: To regulate the construction and alteration of structures in the zoned airspace of the state which present an obstruction to safety of air navigation.

Section 1. No person shall construct or alter any structure which constitutes an obstruction as defined by the regulations of the commission, unless the person who intends to construct or alter such a structure obtains a permit from the commission in accordance with the procedures set forth in the regulations of the commission.

Section 2. The commission shall consider the factors set forth in KRS 183.868 *and 183.870* in approving or disapproving an application for a permit under Section 1 of this regulation.

Section 3. Any change or transfer in the care, custody, control or ownership of a structure previously permitted by the commission shall require the original owner to notify the commission in writing of the name and address of the new owner on a form prescribed by the commission, however, the new owner shall comply with all conditions and requirements of the originally issued permit for the transferred structure unless properly amended by the commission.

Section 4. Power lines existing prior to the effective date of this regulation for which no permit has been issued may continue in their present configuration so long as said lines are not subsequently determined to be a hazard to air navigation by the Kentucky Airport Zoning Commission. However, any person proposing to alter or reconstruct any wire, transmission, distribution or other power line subsequent to September 1, 1983 that is 200 feet [or more] above the ground shall be required to obtain all necessary permits from the commission and comply with all applicable marking and lighting requirements in accordance with the rules and regulations of the commission.

CLAIR R. NICHOLS, Chairman
ADOPTED: November 7, 1983
APPROVED: JAMES F. RUNKE, Secretary
RECEIVED BY LRC: November 15, 1983 at 4:30 p.m.

TRANSPORTATION CABINET
Kentucky Airport Zoning Commission
Amended After Hearing

602 KAR 50:070. *Standards for determining obstructions* [navigable airspace outside conical surface construction permit].

RELATES TO: KRS *183.868* [183.870]
PURSUANT TO: KRS 13.082, 183.861, *183.868*
NECESSITY AND FUNCTION: *To establish standards for determining obstructions to air navigation. These standards apply to the use of navigable airspace by aircraft and to existing and planned air navigation facilities, such as an air navigation aid, existing or planned airports on file with the Kentucky Transportation Cabinet, Federal Airways, Instrument Approach or Departure Procedures or approved off-airway routes.* [To regulate the heights of structures in the airspace of the Commonwealth for the benefit of the safety of aircraft and the public.]

Section 1. *Standards for Determining Obstructions. A permanent or temporary object would be an obstruction to air navigation if it is of greater height than any of the following heights or surfaces:*
(1) A height more than 500 feet above ground level at the site of the object.
(2) A height that is more than 200 feet above ground level or above the established airport elevation, whichever is higher, within three (3) nautical miles of the established reference point of an airport, with its longest runway more than 3,200 feet in actual length, and that height increases in the proportion of 100 feet for each additional nautical mile of distance from the airport up to a maximum of 500 feet.
(3) A height within a terminal obstacle clearance area, including an initial approach segment, a departure area, and a circling approach area, which would result in the vertical distance between any point on the object and an established minimum instrument flight altitude within that area or segment to be less than the required obstacle clearance.
(4) A height within an en route obstacle clearance area,

including turn and termination areas, of a federal airway or approved off-airway route, that would increase the minimum obstacle clearance altitude.

(5) The surface of a takeoff and landing area of an airport or any imaginary surface established under 602 KAR 50:010, Section 6 of this regulation [9.] [No person shall construct or alter any existing structure above the ground level or the surface of open water in that remaining airspace of the state outside the conical surface that exceeds: 200 feet in height above ground level, or fifty (50) feet in height above the surface of open water of the Ohio River, Mississippi River, Kentucky Lake, Lake Barkley, Lake Cumberland, and 200 feet above all other waters, unless the persons who intend to construct or alter such a structure obtain a permit from the commission in accordance with the procedures set forth in the regulations of the commission.]

Section 2. *The Kentucky Airport Zoning Commission adopts Federal Aviation Regulations Part 77, objects affecting navigable airspace, Title 14, CFR as part of its Administrative Regulations for reference.* [The commission shall consider the factors set forth in KRS 183.870(1) in approving or disapproving an application for the issuance of a permit under Section 1.]

CLAIR R. NICHOLS, Chairman
ADOPTED: November 7, 1983
APPROVED: JAMES F. RUNKE, Secretary
RECEIVED BY LRC: November 15, 1983 at 4:30 p.m.

TRANSPORTATION CABINET
Kentucky Airport Zoning Commission
Amended After Hearing

602 KAR 50:090. Application procedure.

RELATES TO: KRS 183.869, 183.870, 183.871
PURSUANT TO: KRS 13.082, 183.861
NECESSITY AND FUNCTION: This regulation outlines rules governing procedure that a person must follow in order to obtain a permit to erect or alter a structure, and to define the authority of the Administrator of the Kentucky Airport Zoning Commission to reject or approve applications for permits and provide for the rules of practice for the processing of an application for a permit.

Section 1. (1) Every person who is required by the regulations of this commission to obtain a permit to construct or alter a structure shall send two (2) executed copies of the Form *TD* [DT] 56-50, Application for Permit to Alter or Construct a Structure, to the Administrator of the Kentucky Airport Zoning Commission, Division of *Mass Transportation* [Aeronautics and Airport Zoning], Frankfort, Kentucky *40622* [40601].

(2) The application must be submitted at least [*sixty (60)*] [[]thirty (30)[]] days prior to the date the proposed construction or alteration is to begin [for structures under 200 feet above ground level; and ninety (90) days prior to date for structures 200 feet or more above ground level. The completed height of the structure above ground level determines the time of filing of the application].

Section 2. (1) Upon receipt of the application, the administrator shall review the application to determine whether all information that is required has been submitted.

(2) If the application is incomplete, the administrator shall reject the application and return the application to the person submitting the application along with a statement of the information that is required by the commission for a complete application.

Section 3. (1) If the application is complete, then the administrator shall conduct an aeronautical study for the purpose of determining whether to recommend to the commission that a permit be issued.

(2) The administrator may approve an application for a permit to alter or construct a structure when he has determined that the structure would be shielded by existing structures of a permanent and substantial character, or by natural terrain or topographic features of equal or greater height and would be located in a congested area of a city or unincorporated area where it is evident beyond a reasonable doubt that the proposed structure so shielded will not adversely affect the safety of air navigation.

(3) Otherwise, the administrator shall submit the application along with his recommendation for approval or disapproval to the commission at its next meeting.

(4) Prior to the submission of the application to the commission, the administrator shall circulate a copy of the application and the conclusions of his aeronautical study to any interested parties including, but not limited to, local airport boards, municipal and county governments' officials, airport owners and operators.

(5) Any interested parties shall be permitted to file with the commission written objections to the approval of the applications. Said objections shall be filed at least ten (10) days prior to the date of the meeting of the commission.

(6) The application normally will be considered at the next meeting of the commission and a copy of the commission's decision shall be mailed to the applicant and other interested parties.

[Section 4. (1) In the event an application for a permit is disapproved by order of the commission, the applicant may petition the commission for a hearing within thirty (30) days of the date action was taken on the application.]

[(2) The petition for a hearing must contain in a full statement of the reasons that the application should be approved, and shall be filed with the Administrator, Kentucky Airport Zoning Commission, Division of Aeronautics and Airport Zoning, Frankfort, Kentucky 40601.]

[Section 5. (1) The administrator shall fix a time and place for a hearing on the applicant's petition for a review of the disapproval of an application by the commission or administrator and shall give notice of the time and place of the hearing by mail, not less than twenty (20) days before the date of the hearing to the petitioner and to any party deemed by the commission to have an interest in the proceedings.]

[(2) The airport board, chief executive of a city and county judge, or any person who owns an airport in the proximity of the site of the proposed construction or alteration of a structure shall be deemed an interested party and shall receive notice of the hearing.]

[Section 6. The hearing before the commission shall be

conducted in accordance with the regulation of the commission governing the conduct of hearings.]

CLAIR R. NICHOLS, Chairman
ADOPTED: November 9, 1983
APPROVED: JAMES F. RUNKE, Secretary
RECEIVED BY LRC: November 15, 1983 at 4:30 p.m.

TRANSPORTATION CABINET
Airport Zoning Commission
Amended After Hearing

602 KAR 50:100. Marking and lighting obstruction standards.

RELATES TO: KRS 183.861 to 183.990
PURSUANT TO: KRS 13.082, 183.861
NECESSITY AND FUNCTION: To describe the standards for the marking and lighting of obstructions as official policy of the Kentucky Airport Zoning Commission in order to provide the most effective means of indicating the presence of obstructions to pilots, in accordance with the commission's responsibility to promote the safety of air commerce.

Section 1. (1) The Advisory Circular No. 70/7460-*1F* [latest revision], Obstruction Marking and Lighting, issued by the Federal Aviation Administration, is hereby adopted and incorporated by reference, except as otherwise provided in the regulations of the commission.

(2) The above mentioned material has been published by Federal Aviation Administration and may be obtained from the Administrator, Kentucky Airport Zoning Commission, Frankfort, Kentucky *40622* [40601].

Section 2. Every person who is issued a permit to alter or construct a structure, or who maintains an obstruction as defined in 602 KAR 50:010, is required to mark and light the structure in accordance with the applicable standards described in Section 1 of this regulation, unless the commission determines that the absence of such marking and lighting will not impair the safety of air navigation.

Section 3. The determination that the absence of marking and lighting of a structure will not impair the safety of air navigation shall not be made by the commission unless the applicant for a permit to alter or construct a structure requests such a determination at the time of filing of an application. Otherwise, the marking and lighting standards described in Section 1 of this regulation shall be mandatory.

Section 4. Any structure that exceeds 200 feet above ground level is to be obstruction marked and lighted in accordance with the advisory circular listed under Section 1 of this regulation, unless the commission determines that the absence of such marking and/or lighting will not impair the safety of air navigation.

Section 5. Any holder of a commission variance permit that requires obstruction marking and lighting, as a condition for the approval of the application, may request a change in the obstruction marking and lighting requirements in order to maintain or improve the existing obstruction marking and lighting system based upon technological advances. Said request shall be in writing and approved by the commission prior to any changes or alterations being made to the previously approved obstruction marking and lighting system.

Section 6. In the event that an existing, standing facility is abandoned, the permit holder shall continue to maintain obstruction marking and lighting (if required by the commission) unless the facility is otherwise physically removed.

CLAIR R. NICHOLS, Chairman
ADOPTED: November 9, 1983
APPROVED: JAMES F. RUNKE, Secretary
RECEIVED BY LRC: November 15, 1983 at 4:30 p.m.

TRANSPORTATION CABINET
Kentucky Airport Zoning Commission
Amended After Hearing

602 KAR 50:120. Hearing procedures.

RELATES TO: KRS 183.871
PURSUANT TO: KRS 13.082, 183.861
NECESSITY AND FUNCTION: To provide for general procedures for the conduct of all hearings on any petition to the commission [for a hearing regarding any regulations adopted or orders issued].

Section 1. *Request for a hearing shall be accomplished as follows:* [Every hearing before the commission shall be conducted in a summary manner or as otherwise directed by the chairman. Opportunity will be given to the petitioner and all interested persons to produce witnesses and to present either in person or by counsel the points of issue. Such hearings shall be conducted in such manner as to ascertain the substantial rights of the petitioner and interested parties.]

(1) With the exception of those actions taken under 602 KAR 50:115, any person aggrieved by any action taken by the commission with respect to any application for a permit, request for adoption of airport zoning map, any regulations adopted or any other orders or rulings issued pursuant to these regulations may petition the commission in writing for a hearing.

(2) The petition, which may be in the form of a letter, shall identify the action taken by the commission for which a hearing is sought and it shall state specifically the grounds for the request in addition to a statement of the relief desired.

(3) Any such petition shall be filed within thirty (30) days of when the commission has formalized its action by the signature of the appropriate document whether by its administrator or its chairman and mail to appropriate parties.

(4) Once a petition for a hearing is received, the administrator shall notify all other interested parties of the receipt of the petition for a hearing which may include the applicant, local zoning body, local air board, airport owner and other identifiable person or persons who exhibit an interest in the commission's decision.

(5) The administrator shall within thirty (30) days of the receipt of the petition establish a time and place for the hearing to be conducted and shall notify all interested parties of the time and place of the hearing.

(6) Hearings shall be scheduled to be held within sixty (60) days of the receipt of the petition unless there are ex-

ceptional circumstances which would create an undue hardship upon one (1) or more of the parties. Notice of hearing shall be given by mailing a copy of the order establishing the hearing at least twenty (20) days prior to the date set for the hearing.

(7) If the commission deems it in the best interest of the public whether or not requested by the parties, it may require that the hearing specified herein be conducted prior to taking any action on the regulation, application, permit, zoning map, etc. Any action rendered by the commission as a result of a hearing conducted under this subsection shall constitute a final agency action from which an appeal may be taken.

Section 2. *The rules and procedures that follow shall be observed during the hearing process:* [Thereafter the commission shall consider all relevant evidence and other relevant factors that are set forth in the statutes and regulations of the commission related to the matter concerned. The commission shall then vote on the matter, and issue its written order based on the decision of a majority of the members present.]

(1) The hearing shall be conducted in a formal matter.

(2) A transcript or stenographic record of the hearing shall be taken. The reporter shall furnish an original and one (1) copy of the transcript to the commission. Unless otherwise agreed, the cost of transcribing the evidence and of furnishing an original and one (1) copy to the commission shall be borne by the petitioner.

(3) Opportunity will be given to the petitioner, the applicant and all other interested persons to produce witnesses, present evidence or raise other points of issue.

(4) The burden of proof concerning any action to be taken by the commission as a result of the hearing shall be upon the petitioner.

(5) All parties may be represented by counsel.

(6) The chairman of the commission or his designated representative will preside at the hearing and shall rule on any objection or question that arises. A majority of the commission may overrule or modify any ruling of the chairman.

(7) The administrator or the commission will open the hearing by presenting the petition for the hearing, documents representing the action taken by the commission that prompted the petition for a hearing and conclusions resulting from any aeronautical study conducted.

(8) Unless there are exceptional conditions that would warrant otherwise, the petitioner may make an opening statement outlining its position and any other party who desires the same relief will next be given the opportunity to present an opening statement. Then the adverse party may make an opening statement outlining its position, followed by any other parties seeking the same relief.

(9) After all opening statements, the petitioner will present its evidence and witnesses in support of its claim followed by other parties seeking similar action by the commission. Following the conclusion of the evidence presented by the petitioner and all other parties similarly aligned, the adverse parties are to be afforded the opportunity to present their evidence and witnesses.

(10) Each party shall have the right to cross-examine any witness offered by any other party.

(11) Formal rules of evidence used by the courts shall apply.

(12) The parties may by stipulation enter into the record any agreed facts, and it is desirable that the facts agreed upon be entered by stipulation whenever practical.

(13) Witnesses shall not be permitted to give opinion evidence unless they have first been qualified to show their special familiarity and knowledge with the desired subject.

(14) At the conclusion of all evidence, the parties may offer closing statements to the commission. The order of presentation will be in reverse of the opening statements unless determined otherwise by the chairman of the commission.

(15) The commission may require the filing of briefs in which the time of filing, length of briefs and replies, will be stated at the conclusion of the hearing.

(16) Subsequent to the closing statements, the commission shall consider all relevant, competent, and material evidence and make the necessary findings of facts and conclusions which shall constitute a final decision of the commission. The findings and conclusions of the commission shall be signed by the chairman and a copy sent to each party that appeared at the hearing.

Section 3. Appeals from *any final decision or order* [action or orders] of the commission may thereafter be *made to the Franklin County Circuit Court in accordance with the procedures set forth* [prosecuted under the procedures set out] in KRS 183.620.

CLAIR R. NICHOLS, Chairman
ADOPTED: November 15, 1983
APPROVED: JAMES F. RUNKE, Secretary
RECEIVED BY LRC: November 15, 1983 at 4:30 p.m.

Proposed Amendments

Kentucky Higher Education Assistance Authority (Proposed Amendment)

11 KAR 3:020. Loan insurance program.

RELATES TO: KRS 164.740 to 164.764
PURSUANT TO: KRS 13.082, 164.748(4)
NECESSITY AND FUNCTION: KRS 164.744 provides that the Kentucky Higher Education Assistance Authority may insure loans for students. This regulation names the loan insurance program, establishes an effective date and cites relevant federal and state laws and regulations.

Section 1. Name of Program. The loan insurance program administered by the authority shall be known as the Kentucky Higher Education Assistance Authority Guaranteed Student Loan Program and may be cited as KHEAA-GSLP or as GSLP.

Section 2. Effective Date. The GSLP will begin operation on October 1, 1978, or as soon thereafter as this regulation becomes effective.

Section 3. Federal Laws and Regulations. Pursuant to KRS 164.744 the authority must, when providing a program of student loan insurance, enter into agreements with the U. S. Secretary of Education providing for interest payments, reimbursements, reinsurance and other benefits to the extent provided by the Higher Education Act of 1965 (20 U.S.C. 1071 to 1087-4) and such other federal acts as may be cited in Part 682 of Title 34 of the Code of Federal Regulations. Other applicable legislation includes the General Education Provisions Act (20 U.S.C. 1221-33h) and parts of Title IV, Part F of the Higher Education Act of 1965 (20 U.S.C. 1088-89). The above cited acts and regulations are incorporated by reference in agreements executed on July 18, 1978, between the authority and the U. S. Commissioner of Education. Copies of the agreements are available from the authority. The acts and regulations are available to the public at any federal depository library. A list of such libraries is available free upon request by writing to the Library, Public Documents Department, Government Printing Office, Washington, D.C. 20402.

Section 4. State Law and Regulations. The GSLP is operated under provisions of KRS 164.740 to 164.764, and administrative regulations published under Title 11 of the "Kentucky Administrative Regulations." Chapter 3 pertains both to the KHEAA Student Loan Program and to GSLP. Chapter 4 is applicable to all programs administered by the authority.

Section 5. Loan Manual. The GSLP is operated under procedures established by the authority and delineated in the *1983-84* KHEAA Loan Manual, incorporated herein by reference. A current copy of the loan manual shall be maintained on file with the Legislative Research Commission. Copies of the loan manual may be obtained upon request to the authority.

PAUL P. BORDEN, Executive Director
ADOPTED: October 21, 1983
RECEIVED BY LRC: November 15, 1983 at 1:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601.

Kentucky Higher Education Assistance Authority (Proposed Amendment)

11 KAR 5:080. Disbursement procedures.

RELATES TO: KRS 164.740 to 164.764, 164.780, 164.785
PURSUANT TO: KRS 13.082, 164.748(4)
NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority administers grant programs to provide financial assistance to students to attend Kentucky educational institutions. This regulation sets forth the disbursement procedures for KHEAA grant programs.

Section 1. Eligibility verification. (1) The KHEAA grant program eligibility verification roster will be forwarded to the KGPO at each educational institution prior to the beginning of each semester.
(2) The KGPO shall certify the eligibility of KHEAA grant recipients according to instructions attached to the roster and return it to the authority at least three (3) weeks prior to the date on which receipt of the KHEAA grant checks is requested.

Section 2. Checks, Check Register. (1) Upon receipt of the properly certified eligibility verification roster, the authority will issue to the KGPO individual checks made payable to each award recipient.
(2) The checks will be accompanied by two (2) copies of a KHEAA grant check register, one (1) copy of which shall be retained by the institution and the other returned to the authority in accordance with instructions attached thereto. The instructions will specify:
(a) Conditions under which a check shall be disbursed to the KHEAA grant recipient;
(b) That each recipient shall sign the check register indicating receipt of the check;
(c) Conditions under which a check shall be returned to the authority; and
(d) The date on which the register and any undisbursed checks shall be returned to the authority.
(3) An institution which has not returned a previous check register or completed it according to instructions may not receive another check register and additional checks until it has satisfied the requirements in subsection (2) of this section.

Section 3. Alternative Disbursement. In lieu of the processes respecting the disbursement of checks pursuant to

Section 2 of this regulation, the authority, in its sole discretion, may enter agreements on such terms as the authority deems appropriate to provide alternative methods for economical and efficient disbursement of KHEAA grants.

PAUL P. BORDEN, Executive Director
ADOPTED: October 21, 1983
RECEIVED BY LRC: November 15, 1983 at 1:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601.

Kentucky Higher Education Student Loan Corporation (Proposed Amendment)

15 KAR 1:020. Purchasing policies.

RELATES TO: KRS 164A.060(2), (8)
PURSUANT TO: KRS 13.082, 164A.060(8)
NECESSITY AND FUNCTION: To establish policies for the purchase of Guaranteed Student Loans. The Kentucky Higher Education Student Loan Corporation (Corporation) is authorized by statute to finance, make, and purchase Guaranteed Student Loans. The capability to finance such loans requires the adoption of reasonable purchase policies to minimize defaults and other losses of fund assets.

Section 1. Purchase Conditions. The Corporation will purchase eligible loans from participating lenders under the terms of the operative Corporation Loan Purchase Agreement until the occurrence of one (1) of the following conditions:

(1) Ten (10) percent of the originally disbursed principal amount of loans made by a single participating lender to borrowers for attendance at a single educational institution, and owned by the Corporation, have come due for repayment (matured paper) and the default rate (total dollar amount of default claims paid divided by matured paper) on those loans exceeds ten (10) percent.

(2) Ten (10) percent of the originally disbursed principal amount of all loans made by a single participating lender and owned by the Kentucky Higher Education Student Loan Corporation have come due for repayment (matured paper) and the default rate (total dollar amount of default claims paid divided by matured paper) on those loans exceeds ten (10) percent.

(3) Ten (10) percent of the original disbursed principal amount of all loans, purchased or made by the Corporation, to borrowers for attendance at a single educational institution have come due for repayment (matured paper) and the default rate (total dollar amount of default claims paid divided by matured paper) on those loans exceeds ten (10) percent.

(4) Ten (10) percent of the originally disbursed principal amount of all loans purchased, or made, by the Corporation to borrowers for attendance at a single educational institution have come due for repayment (matured paper) and the default rate (total dollar amount of default claims paid divided by matured paper) on those loans exceeds fifteen (15) percent.

Section 2. Suspension of Purchases. When a condition enumerated in Section 1 of this regulation occurs, as indicated by reports produced on the last day of December, March, June, or September, pursuant to Section 3(1) of this regulation, the Corporation will suspend making purchase commitments as follows:

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

(2) When a condition of Section 1(2) occurs, the Corporation will immediately suspend making purchase commitments to that lender.

(3) When a condition of Section 1(3) occurs, the Corporation will immediately suspend making purchase commitments to any lender for loans to borrowers for attendance at that educational institution, unless the loans are endorsed by a surety acceptable to the Corporation and disbursed in multiple disbursements in accordance with regulations, policies or procedures established by the Corporation, Kentucky Higher Education Assistance Authority or the federal government pertaining to such loans. (This does not preclude the Corporation from otherwise requiring endorsements or multiple disbursements based upon individual credit criteria.)

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

Section 3. Reports, Notification and Appeal. (1) Reports containing data on loan volumes, matured loans, default claims paid and current default rates will be produced by the Corporation effective the last business day of each month and forwarded to each participating lender and to each Kentucky educational institution by the tenth day of the following month.

(2) When on the basis of reports produced under Section 3(1) of this regulation, conditions specified in Section 1(1) of this regulation occur and action is to be taken under Section 2(1) of this regulation, the affected lender(s) will be notified by letter ("the mailing"), signed by the Corporation's Executive Director, enclosed with such reports and placed with the U.S. Postal Service as certified mail, return receipt requested. A copy of such letter and applicable reports will be provided in the same manner to any educational institution whose students may be affected by such action.

(3) When, on the basis of reports produced under Section 3(1) of this regulation, the conditions specified in Section 1(2) of this regulation occur and action is to be taken under Section 2(2) of this regulation, the affected lender(s) will be notified by letter ("the mailing"), signed by the Corporation's Executive Director, enclosed with such reports and placed with the U.S. Postal Service as certified mail, return receipt requested.

(4) When, on the basis of reports produced under Section 3(1) of this regulation, the conditions specified in Section 1(3) or (4) of this regulation occur and action is to be taken under Section 2(3) or (4) of this regulation, any educational institution(s) whose students may be affected by such action will be notified by letter ("the mailing"), signed by the Corporation's Executive Director, enclosed with such reports and placed with the U.S. Postal Service as certified mail, return receipt requested. In the absence of a request for a hearing pursuant to Section 3(5) of this regulation or in the event any action is to be taken respecting suspension of purchase commitments arising from the processes of Section 3(5) or (6) of this regulation, all participating lenders will be notified by letter, signed by the

Corporation's Executive Director. Any lender(s) so notified may, within thirty (30) days following the date of the notice, petition the Corporation for a hearing to appeal the suspension of purchase commitments.

(5) The suspension specified in Section 2 of this regulation will be effective sixty (60) days following the date the mailing, specified in Section 3(2), (3) or (4) of this regulation, is placed with the U.S. Postal Service for delivery, unless, within such sixty (60) days, any interested party or parties petition the Corporation for a hearing to show cause why the suspension should not occur. Any interested party or parties may petition the Corporation by submitting a written request for a hearing to the Executive Director or to the Chairman of the Corporation Board. The Corporation Board will subsequently hear the matter at their next regular meeting scheduled for such purpose. Such meetings will be convened on the first Monday of January, April, July, and October, as necessary, (or the next following business day if Monday falls on a legal holiday). Any action, suspension, remedy, policy, procedure, or other matter resulting from application of this regulation shall remain in force and in effect until modified by the Corporation's Board of Directors.

(6) Upon sending notification to lenders and/or educational institutions, pursuant to Section 3(2), (3), or (4) of this regulation, the Executive Director may negotiate with any or all interested parties to accomplish the purposes of this regulation. Any agreed resolution so derived shall be effective upon ratification by the Corporation Board at the next quarterly meeting or any other regular or special meeting. In the absence of such ratification, the matter shall be placed on the agenda of the next regular meeting scheduled for such purpose pursuant to Section 3(5) of this regulation.

(7) The Chairman of the Corporation Board or a hearing officer appointed by the chairman shall conduct a hearing. The board shall make a determination upon the record of such hearing. For this purpose the Corporation shall cause to be made a transcript of all hearings and said transcript shall be made available to any interested party. Testimony, under oath or affirmation, may be presented to the board orally or by written statement, provided that any written testimony to which a party objects by reason of inability to make inquiry or cross-examination shall not be considered in the board's determination. All parties to the hearing shall be afforded reasonable opportunity to make inquiry of any other party or any evidence offered for the record. Any documentary evidence offered may, at the discretion of the board, be read into the record or incorporated by reference in whole or in part. Unless authorized by the board at the hearing, no documentary evidence will be considered a part of the record when submitted after the close of the testimony. By a written stipulation or affirmation at the hearing, the parties may agree on any facts relevant to the hearing. The board may taken notice of any facts within its competence and may through its own experts or employees obtain such evidence as it considers necessary or desirable.

(8) In the event any hearing is requested by an interested party pursuant to Section 3(4) or (5) of this regulation or any negotiation is undertaken pursuant to Section 3(6) of this regulation, cause for setting aside a suspension of making loan purchase commitments prescribed in Section 2 of this regulation shall be evaluated with consideration given to the purposes of maximizing loan accessibility to borrowers while adequately protecting the corporation's ability to offer its programs by minimizing the risk of future loan defaults. The corporation board may consider in determining cause any public purpose rationale propounded by any party to justify the assumption by the corporation of the risk of excessive defaults or any remedy to control or reduce the risk of loan defaults. In this regard, the board may consider, but is not limited to consideration of:

(a) Exceptional service to low income, minority or handicapped individuals, subject to a showing of consistently applied lending policies, counseling practices, screening practices, and policies and practices designed to assure reasonable potential for the retention and academic success of the student and repayment of the loan;

(b) Failure of the Corporation to abide by the terms of this regulation;

(c) Prior action under this regulation respecting any group of loans which in the judgment of the corporation board may alleviate, over time, the need to suspend the making of loan purchase commitments pursuant to Section 2 of this regulation by adequately accomplishing the purposes of this regulation.

Upon a determination of cause for setting aside a suspension of making loan purchase commitments, the board may authorize the continued purchase of loans by an agreement pursuant to KRS 164A.060(a) under such terms as the board may, in its discretion, establish.

Section 4. Delay of Suspension of Purchases. The Corporation Executive Director may delay implementation of the administrative actions provided in Section 2(1) of this regulation when the applicable volume of matured paper is less than $100,000 or Section 2(2), (3), or (4) of this regulation when the applicable volume of default claims paid is less than $100,000. However, each instance in which this authority is exercised shall be brought to the attention of the board at its next regular meeting.

Section 5. Effective Date. This regulation shall become effective July 31, 1983, except that Section 2(4) of this regulation will become effective September 1, 1983. Prior to the effective date, lenders and educational institutions will be provided with a copy of this regulation.

PAUL P. BORDEN, Executive Director
ADOPTED: October 3, 1983
RECEIVED BY LRC: November 15, 1983 at 1:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Executive Director, Kentucky Higher Education Student Loan Corporation, 1050 U.S. 127 South, Frankfort, Kentucky 40601.

FINANCE AND ADMINISTRATION CABINET
Department of Finance
(Proposed Amendment)

201 KAR 12:125. Schools' student regulations.

RELATES TO: KRS 317A.090
PURSUANT TO: KRS 13.082, 317A.062
NECESSITY AND FUNCTION: To protect the health and safety of the public and to protect the general public and students enrolled in schools of cosmetology against misrepresentation, deceit, or fraud while seeking services or enrolled therein.

Section 1. No student enrolled in a school of

cosmetology is permitted to receive a salary or commission from the school while enrolled as a student in said school.

Section 2. Students shall not be permitted to smoke while providing services to patrons.

Section 3. No student shall be allowed to remain in the school to work on patrons upon completion of the required hours for the appropriate course of enrollment.

Section 4. No student, after he or she has graduated from a school, shall be allowed to return to that school or any other school for further practice and work in the pay departments without permission of the board.

Section 5. Schools must, at all times, display in a centralized conspicuous place the enrollment permits of all students enrolled therein.

Section 6. Schools must require students to wear some kind of insignia, badge, cap, or marking of their uniforms to indicate that he or she is a student in the school.

Section 7. Schools must require students to, at all times, wear a clean washable uniform, coat, or smock.

Section 8. Students must be on time for all class studies and work.

Section 9. No student shall be permitted to leave during school hours without special permission from the manager.

Section 10. No student shall be permitted to leave a class during a lecture or demonstration.

Section 11. Students are not permitted to operate any equipment in which there is known an operating hazard.

Section 12. All student kits containing all equipment, tools, and implements must remain on school premises until completion of the course of enrollment or withdrawal from the school.

Section 13. A student desiring to change from one school to another must notify the school in which the student is presently enrolled of their withdrawal and complete an application for enrollment when entering another school.

Section 14. Students are required to comply with the rules of their school, as long as they do not conflict with KRS Chapter 317A or the regulations of the board.

Section 15. Owners of schools must include the schools' refund policy in school-student contracts.

Section 16. Each student in a school is permitted to file a complaint with this board concerning the school in which they are enrolled, provided the information is clearly and concisely given and the complaint must at all times be signed by the complainant.

Section 17. Student Dismissal and Appeals. (1) Schools may dismiss students for law violations, rule violations, insubordination, or for any reason for which the board could deny, refuse to renew or revoke a license if the students were licensed pursuant to KRS Chapter 317A.

(2) Schools may dismiss students for violations of any of KRS Chapter 317A or for the violation of any rule of the board adopted pursuant thereto or for violation of any school rule not in conflict with said chapter or the board rules.

(3) Any student aggrieved by dismissal from a school may appeal to the board by writing the board and requesting that an appeal be granted, but such appeal shall be taken within ten (10) days after the date of dismissal and such appeal shall be docketed by the board for a hearing within thirty (30) days after the appeal request is received. The hearing day shall be set for as early a day as possible. The hearing and production of evidence shall be in conformity with that provided for board hearings in KRS Chapter 317A.

(a) Upon hearing the appeal, the board shall determine: Whether or not the school acted in scope of its power; and whether or not there is sufficient evidence to support the order of dismissal appeal from said school.

(b) After the hearing the board shall enter an order sustaining or setting aside the school's order of dismissal. If the order of dismissal is overruled and set aside by the board, then the school shall reinstate the student.

Section 18. Within ten (10) working days from a student's withdrawal, a cosmetology school shall report the name of the withdrawing student and send the permit card and a notarized certification of the total number of hours that the withdrawing student has acquired in their cosmetology school to the board's office.

Section 19. In the event that the school after receiving request for the information outlined in Section 18 does not forward same to the board within ten (10) days after receiving requests, a verified affidavit from the student as to the number of hours received shall be accepted by the board and entered on their records as the appropriate number of hours earned.

Section 20. A training period for students is as follows: eight (8) hours per day, forty (40) hours per week (maximum). A student of cosmetology must have a minimum of 225 days of school attendance under instruction. A student of manicuring must have a minimum of thirty-seven and one-half (37½) days of school attendance under instruction.

Section 21. All students shall be allowed thirty (30) minutes toward the middle of any eight (8) hour day for eating or taking a rest break. Students shall not be given credit for the one-half (½) hour break toward meeting the 1,800 hour requirement.

Section 22. An informational copy of the statutes and regulations of the Kentucky Board of Hairdressers and Cosmetologists must be provided to each student enrolled in a school of cosmetology. Copies may be obtained from the board's office.

[Section 23. Persons completing hours in a school of cosmetology within a period of five (5) years from date of enrollment shall be given credit by the board for hours completed. Any hours received beyond this five (5) year period shall be null, void, and held for naught.]

Section *23.* [24.] No student shall be in attendance in a

school of cosmetology more than eight (8) hours in one (1) day and no more than five (5) days in one (1) week.

CARROLL ROBERTS, Administrator
ADOPTED: September 6, 1983
RECEIVED BY LRC: November 10, 1983 at 3:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Carroll Roberts, Administrator, Kentucky State Board of Hairdressers and Cosmetologists, 314 W. Second Street, Frankfort, Kentucky 40601.

FINANCE AND ADMINISTRATION CABINET
Board of Physical Therapy
(Proposed Amendment)

201 KAR 22:031. Therapist's licensing procedure.

RELATES TO: KRS 327.050, 327.060, 327.080
PURSUANT TO: KRS 327.040
NECESSITY AND FUNCTION: The purpose of this regulation is to clearly define the procedure for issuing licenses. This regulation standardizes the administrative procedures involved in granting a physical therapy license through the various means of qualifying.

Section 1. The fee for application by examination shall be *$125* [$110] by money order, cashier's or certified check payable to the Kentucky State Treasurer. Upon approval as a candidate by the board, the candidate for examination will be notified of the date, place and time of the examination by the board. Examination will be held at a time and location set by the board. The board will administer the Professional Examination Service of the American Public Health Association examination and/or other examinations as determined by the board to those qualified candidates permitted to sit for the examination.

Section 2. If an applicant becomes a candidate for licensure by examination after the fifth day of the month preceding the month that the next examination is to be held and credentials of the applicant are in order and fees submitted and the board is in receipt of a completed supervisory agreement statement, then a temporary license shall be issued to be in force until sixty (60) days after the examination held six (6) months later, or until the results of that examination are received and processed, whichever comes first. A temporary license requires that the physical therapist applicant shall work only under the supervision of a physical therapist fully licensed in Kentucky. Supervision means that the responsible therapist be available and accessible by telecommunication to the temporarily licensed therapist at all times during the working hours of the temporarily licensed therapist and be responsible for the direction of the actions of the person supervised when services are performed by the temporarily licensed physical therapist. The board shall issue a temporary license only to:

(1) Graduates who have applied for licensure by examination, have met all requirements and are sitting for the next examination.

(2) Applicants for licensure by endorsement who have met all requirements but must take one (1) or more parts of the examination again.

(3) Foreign-trained physical therapists who have met all requirements for licensure and paid all fees provided for in KRS 327.060(2), except that the applicant has not taken the PES examination and has not yet begun a one (1) year board approved, employment as a physical therapist.

Section 3. The applicant shall have three (3) attempts to pass the examination. The original application fee covers the first attempt. The cost of the examination to the board plus an administrative fee of *forty-seven dollars and fifty cents ($47.50)* [fifteen dollars ($15)] must be assumed by the applicant for the second and third attempts. The temporary license will be issued after request for re-examination on the second and third attempts and payment of required fee at the discretion of the board. If the applicant fails on the third attempt, the temporary license is revoked and the applicant may no longer be employed in Kentucky as a physical therapist. The applicant may reapply after one (1) year but must submit a new application fee and no temporary license will be issued.

Section 4. Candidates examined by boards of other states and territories shall have registered their PES scores with the Interstate Reporting Service of the Professional Examination Service. The applicants' scores, calculated by the PES to meet Kentucky board requirements, shall be submitted to this board for consideration of licensure.

Section 5. The candidate for licensure by endorsement shall submit the regular license application form, shall arrange to have submitted proper evidence that he has been examined by the PES and pay an application fee of *$100* [sixty-five dollars ($65)]. The Kentucky State Board of Physical Therapy will endorse a candidate who has been examined by the Professional Examination Service, meets the board's requirements of national average raw score minus 1.5 standard deviation set equal to a converted score of seventy-five (75) on each part of the examination, and whose physical therapy license has never been revoked or suspended, and is currently not on probation or under disciplinary review in another state.

Section 6. The candidate for licensure through reinstatement may receive renewal of his license without further examination upon requesting renewal, furnishing his complete current home and work addresses and telephone numbers, payment of the renewal fee of *forty dollars ($40)* [thirty dollars ($30)] and reinstatement fee of *thirty dollars ($30)* [fifteen dollars ($15)] by money order, cashier's or certified check made payable to the Kentucky State Treasurer, and mailing these to the executive secretary of the board. Therapists who have not been licensed for three (3) years may, in addition, be required to appear before the board and/or show evidence of professional competency. Reinstatement of the candidate will be at the board's discretion after evaluation of said evidence.

Section 7. A license, which shall be in effect until the next January 31st shall be issued by the board as soon as it receives notice from the Professional Examination Service that the candidate by examination has received a passing grade which shall be set based on the national raw average score minus 1.5 standard deviation set equal to a converted score of seventy-five (75) on each part of the examination, and when candidates by endorsement and reinstatement have meet all requirements.

Section 8. The executive secretary of the board may function administratively to review, process, and interpret

all applications received by the board and correspond with the applicants accordingly.

R. J. McDougall, Chairman
ADOPTED: September 23, 1983
RECEIVED BY LRC: November 7, 1983 at 2 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Mrs. Nancy Brinly, Executive Secretary, Kentucky State Board of Physical Therapy, 1614 Dunbarton Wynde, Louisville, Kentucky 40205.

FINANCE AND ADMINISTRATION CABINET
Board of Physical Therapy
(Proposed Amendment)

201 KAR 22:040. Procedure for renewing licenses.

RELATES TO: KRS 327.050
PURSUANT TO: KRS 327.040
NECESSITY AND FUNCTION: Provides specific directions for the annual renewal of the physical therapy license. The billfold license is a means of identifying those persons holding themselves out as a licensed physical therapist. This mechanism may be beneficial upon the visitation of a board member to the clinic setting.

Section 1. The licensed physical therapist will automatically receive renewal of licensure upon payment on or before January 31, of each year of a renewal fee of *forty dollars ($40)* [thirty dollars ($30)] by money order, certified or cashiers check made payable to the Kentucky State Treasurer and current complete home and business addresses and telephone numbers and sent to the executive secretary of the board. If payment and complete information is not received by the executive secretary by January 31, the license shall lapse.

Section 2. Upon initial licensing and each subsequent renewal, all licensed physical therapists will be furnished a validation that must be posted to the original certificate and kept at the primary business address.

R. J. McDougall, Chairman
ADOPTED: October 3, 1983
RECEIVED BY LRC: November 7, 1983 at 2 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Mrs. Nancy Brinly, Executive Secretary, Kentucky State Board of Physical Therapy, 1614 Dunbarton Wynde, Louisville, Kentucky 40205.

FINANCE AND ADMINISTRATION CABINET
Board of Physical Therapy
(Proposed Amendment)

201 KAR 22:106. Assistant's certification procedure.

RELATES TO: KRS 327.040
PURSUANT TO: KRS 327.040
NECESSITY AND FUNCTION: Because certification may be achieved in several ways, this regulation defines the types of candidates, the fee and procedure for making application to the State Board of Physical Therapy as a candidate for certification as a physical therapist's assistant.

Section 1. The fee for application by examination shall be *$120* [$105] by money order, cashier's or certified check payable to the Kentucky State Treasurer. Upon approval as a candidate by the board, the candidate for examination will be notified of the date, place and time of the examination. Examination will be held at a time and location set by the board. The board will administer the Professional Examination Service of the American Public Health Association examination and/or other examinations as determined by the board to those qualified candidates permitted to sit for the examination.

Section 2. If an applicant becomes a candidate for certification by examination after the fifth (5th) day of the month preceding the month that the next examination is to be held, the credentials of the applicant are in order and correct fee submitted and the board is in receipt of a completed supervisory agreement statement, then a temporary certificate shall be issued to be in force until sixty (60) days after the next examination is held or until the results of that examination are received and processed, whichever comes first. A temporary certificate requires that the physical therapist's assistant work only with on-site supervision of a physical therapist licensed in Kentucky. The board shall issue a temporary certificate to:

(1) Graduates who have applied for certification and have met all requirements and are sitting for the next examination.

(2) Applicants for certification by endorsement who have met all requirements but must take the examination again.

Section 3. The applicant shall have three (3) attempts to pass the examination. The original fee covers the first attempt. The cost of the examination to the board plus an administrative fee of *forty-seven dollars and fifty cents ($47.50)* [fifteen dollars ($15)] must be assumed by the applicant for the second and third attempts. If the applicant fails on the first and second attempts and requests reexamination and pays the required fee, at the discretion of the board, a temporary certificate shall be issued to allow the applicant to practice. If the applicant fails on the third attempt, the temporary certificate is revoked and the applicant may no longer be employed in Kentucky as a physical therapist's assistant. The applicant who has failed the qualifying examination three (3) times may reapply after one (1) year but must submit a new application fee and no temporary certificate will be issued.

Section 4. Candidates examined by boards of other states or territories shall have registered their PES scores with the Interstate Reporting Service of the Professional Examination Service. The applicant's scores, calculated by the PES to meet Kentucky board requirements, shall be submitted to this board for consideration of certification.

Section 5. The candidate for certification by endorsement shall use the regular application form. [The board will process the mechanics of endorsement.] The Kentucky State Board of Physical Therapy will endorse a candidate who has paid *an application fee of $100* [a fee to cover the cost of issuing the certificate which shall be sixty-five dollars ($65)], been examined by the Professional Examination Service, meets the Kentucky board's requirements of the national raw average score minus 1.5 standard deviation set equal to a converted score of seventy-five (75), and has never had a physical therapist's

assistant certificate revoked or suspended or whose certificate is currently not on probation or under disciplinary review in another state.

Section 6. The candidate for reinstatement may receive a renewal of his/her certificate without further examination upon requesting renewal, payment of the renewal fee of *forty dollars ($40)* [twenty dollars ($20)], reinstatement fee of *thirty dollars ($30)* [fifteen dollars ($15)] by money order, cashier's or certified check made payable to the Kentucky State Treasurer, furnishing current complete home and business addresses and telephone numbers and mailing these to the executive secretary of the board. Assistants who have not been certified for three (3) or more years may, in addition, be required to work with on-site supervision for a maximum period of time of up to six (6) months; or possibly, after evaluation of each instance and at the board's discretion, may be required to be re-examined.

Section 7. Physical therapist candidates who fail to pass the physical therapists' licensure examination on three (3) attempts may become special candidates for certification as a physical therapist's assistant by application to the board. The board will only consider those candidates who have achieved at least a converted fifty (50) on each part of their physical therapist examination with a passing set equal to the national average raw score minus 1.5 standard deviation set equal to a converted seventy-five (75) on each part of the physical therapist examination.

Section 8. Certification, which shall be in effect until the next January 31, shall be issued by the board when candidates for certification by endorsement, reinstatement and special means have met all requirements and the board has received notice from the Professional Examination Service that the candidate by examination has received a passing grade of at least the national raw average score minus 1.5 standard deviation set equal to a converted score of seventy-five (75).

R. J. McDougall, Chairman
ADOPTED: September 23, 1983
RECEIVED BY LRC: November 7, 1983 at 2 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Mrs. Nancy Brinly, Executive Secretary, Kentucky State Board of Physical Therapy, 1614 Dunbarton Wynde, Louisville, Kentucky 40205.

FINANCE AND ADMINISTRATION CABINET
Board of Physical Therapy
(Proposed Amendment)

201 KAR 22:110. Renewal of assistant's certification.

RELATES TO: KRS 327.040
PURSUANT TO: KRS 327.040
NECESSITY AND FUNCTION: This regulation provides specific directions for the annual renewal of the assistant's certification. The billfold certificate is a means of identifying those persons holding themselves out as a certified physical therapist's assistant. This mechanism may be beneficial upon the visitation of a board member to the clinic setting.

Section 1. The assistant will automatically receive a renewal certificate upon payment on or before January 31 of each year a renewal fee of *forty dollars ($40)* [twenty dollars ($20)] by money order, certified or cashiers check made payable to the Kentucky State Treasurer and current complete home and business addresses and telephone numbers and sent to the executive secretary of the board. If payment and complete information is not received by the executive secretary by January 31, the certificate shall lapse.

Section 2. Upon initial certification and each subsequent renewal, all certified physical therapist's assistants will be furnished a validation that must be posted to the original certificate and kept at the primary business address.

R. J. McDougall, Chairman
ADOPTED: October 3, 1983
RECEIVED BY LRC: November 7, 1983 at 2 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Mrs. Nancy Brinly, Executive Secretary, Kentucky State Board of Physical Therapy, 1614 Dunbarton Wynde, Louisville, Kentucky 40205.

BOARD OF PODIATRY
(Proposed Amendment)

201 KAR 25:031. Continuing education.

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

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

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

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

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

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

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

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

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

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

CHESTER A. NAVA, Secretary
ADOPTED: April 21, 1983
RECEIVED BY LRC: November 1, 1983 at 10 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Dr. Chester Nava, Secretary, Kentucky State Board of Podiatry, 110 North Hubbard Lane, Louisville, Kentucky 40202.

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

405 KAR 7:020. Definitions and abbreviations.

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

Section 1. Definitions. Unless otherwise specifically defined or otherwise clearly indicated by their context, terms in Title 405, Chapters 7 through 24 shall have the meanings given in this regulation.

(1) "Acid drainage" means water with a pH of less than 6.0 and in which total acidity exceeds total alkalinity, discharged from active, inactive or abandoned surface coal mine and reclamation operation or from an area affected by surface coal mining and reclamation operations.

(2) "Acid-forming materials" means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acids that may create acid drainage.

(3) "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface or ground water, fish, wildlife, vegetation or other resources protected by KRS Chapter 350 may be adversely impacted by surface coal mining and reclamation operations.

(4) "Affected area" means any land or water *area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, suface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property or material on the surface resulting from, or incident to, surface coal mining and reclamation opertions; and the area located above underground workings associated with underground mining activities, auger mining, or in situ mining. The affected area shall include every road used for the purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road:*

(a) Was designated as a public road pursuant to the laws of the jurisdiction in which it is located;

(b) Is maintained with public funds, and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and

(c) There is substantial (more than incidental) public use. [any land or water upon which surface coal mining and reclamation operations are conducted or located, and land or water which is located above underground mine workings.]

(5) "Agricultural use" means the use of any tract of land for the production of animal or vegetable life. The uses include, but are not limited to, the pasturing, grazing, and watering of livestock, and the cropping, cultivation, and harvesting of plants.

(6) "Applicant" means any person seeking a permit from the cabinet to conduct surface coal mining and reclamation operations or approval to conduct coal exploration operations pursuant to KRS Chapter 350 and all applicable regulations.

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

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

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

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

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

(12) "Best technology currently available" means equipment, devices, systems, methods, or techniques which will prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area and minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the cabinet, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements,

vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with Title 405, Chapters 16 and 18. The cabinet shall have the discretion to determine the best technology currently available on a case-by-case basis, as authorized by KRS Chapter 350 and Title 405, Chapters 7 through 24.

(13) "Cabinet" means the Natural Resources and Environmental Protection Cabinet.

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

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

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

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

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

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

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

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

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

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

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

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

(24) "Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops. Land used for facilities in support of cropland farming operations which is adjacent to or an integral part of these operations is also included for purposes of land use categories.

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

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

(27) "Department" means the Department for Surface Mining Reclamation and Enforcement.

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

(29) "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by Title 405, Chapter 10 is released.

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

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

(32) "Embankment" means a man-made deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.

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

(34) "Existing structure" means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations for which construction begins prior to January 18, 1983.

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

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

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

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

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

(40) "Forest land" means land used or managed for the long-term production of wood, wood fiber, or wood derived products. Land used for facilities in support of forest harvest and management operations which is adjacent to or an integral part of these operations is also included.

(41) "Fragile lands" means geographic areas containing natural, ecologic, scientific or aesthetic resources that could be damaged or destroyed by surface coal mining operations. These lands may include, but are not limited to, uncommon geologic features, National Natural Landmark sites, valuable habitats for fish and wildlife, critical habitats for endangered or threatened species of animals and plants, wetlands, environmental corridors containing concentration of ecologic and aesthetic features, state-designated nature preserves and wild rivers, areas of recreational value due to high environmental quality, buffer zones around areas where surface coal mining is prohibited, and important, unique or highly productive soils or mineral resources other than coal.

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

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

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

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

(46) "Grazingland" means grassland and forest lands where the indigenous vegetation is actively managed for grazing, browsing, or occasional hay production. Land used for facilities in support of grazing operations which are adjacent to or an integral part of these operations is also included.

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

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

(49) "Head-of-hollow fill" means a fill structure consisting of any material, other than coal processing waste and organic material, placed in the uppermost reaches of a hollow near the approximate elevation of the ridgeline, where there is no significant natural drainage area above the fill, and where the side slopes of the existing hollow measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than ten (10) degrees.

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

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

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

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

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

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

1. Land that would likely have been used as cropland for any five (5) out of the last ten (10) years immediately preceding the acquisition or the application but for some fact of ownership or control of the land unrelated to the productivity of the land; and
2. Lands that the cabinet determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, are clearly cropland but fall outside the specific five (5) years in ten (10) criterion.

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

(53) "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationship between precipitation, runoff, evaporation, and changes in ground and surface water storage.

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

(55) "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirements of KRS Chapter 350 in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

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

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

tions area for underground mining activities).

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

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

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

(58) "Industrial/commercial lands" means lands used for:

(a) Extraction or transformation of materials for fabrication of products, wholesaling of products or for long-term storage of products; and heavy and light manufacturing facilities. Land used for facilities in support of these operations which is adjacent to or an integral part of that operation is also included.

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

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

(59) "In situ processes" means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.

(60) "Intermittent stream" means:

(a) A stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year; or

(b) A stream or reach of stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and ground water discharge.

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

(62) "Land use" means specific uses or management-related activities rather than the vegetation or cover of the land, and may be identified in combination when joint or seasonal uses occur.

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

(64) "Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing micro-climatic conditions suitable for germination and growth.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(75) "Pastureland" means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed. Land used for facilities in support of pastureland which is adjacent to or an integral part of these operations is also included.

(76) "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of ground-water discharge or surface runoff. The term does not include "intermittent stream" or "ephemeral stream."

(77) "Performance bond" means a surety bond, col-

lateral bond, cash bond, letter of credit or a combination thereof, by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, Title 405, Chapters 7 through 24, and the requirements of the permit and reclamation plan.

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

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

(80) "Permit area" means the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas which are or will be affected by surface coal mining and reclamation operations under that permit.

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

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

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

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

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

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

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

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

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

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

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

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

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

(92) "Public office" means a facility under the direction and control of a governmental entity which is open to public access on a regular basis during reasonable business hours.

(93) "Public park" means an area dedicated or designated by any federal, state, or local agency for public recreational use, despite whether such use is limited to certain times or days. It includes any land leased, reserved or held open to the public because of that use.

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

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

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

(97) "Recreation land" means land used for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

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

(99) "Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity and plant species diversity that are produced naturally or by crop production methods approved by the cabinet. Reference areas must be representative of geology, soil, slope and vegetation in the permit area.

(100) "Renewable resource lands" means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazing lands.

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

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

roadway. The term also excludes any roadway within the immediate mining pit area.

(103) "Safety factor" means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

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

(105) "Sedimentation pond" means a primary sediment controlled structure designed, constructed and maintained in accordance with 405 KAR 16:090 or 405 KAR 18:090 and including but not limited to a barrier, dam, or excavated depression which slows down water runoff to allow suspended solids to settle out. A sedimentation pond shall not include secondary sedimentation control structures such as straw dikes, riprap, check dams, mulches, dugouts and other measures that reduce overland flow velocity, reduce runoff volume or trap sediment, to the extent that such secondary sedimentation structures drain to a sedimentation pond.

(106) "Significant, imminent environmental harm" is an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life as further defined in this subsection.

(a) An environmental harm is imminent, if a condition, practice, or violation exists which:

1. Is causing such harm; or

2. May reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set by the cabinet's authorized agents pursuant to the provisions of KRS Chapter 350.

(b) An environmental harm is significant if that harm is appreciable and not immediately reparable.

(107) "Slope" means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g. 1v:5h). It may also be expressed as a percent or in degrees.

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

(109) "Soil horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The three (3) major soil horizons are:

(a) "A horizon." The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

(b) "B horizon." The layer that typically is immediately beneath the A horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A or C horizons.

(c) "C horizon." The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

(110) "Soil survey" means a field or other investigation, resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets such soils for use. Soil surveys must meet the standards of the National Cooperative Soil Survey.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(132) "Water table" means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

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

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

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

JACKIE A. SWIGART, Secretary
ADOPTED: October 26, 1983
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: October 31, 1983 at 4:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Elmore C. Grim, Commissioner, Department for Surface Mining Reclamation and Enforcement, Natural Resources and Environmental Protection Cabinet, 3rd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

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

405 KAR 7:030. Applicability.

RELATES TO: KRS 350.010, 350.028, 350.057, 350.060, 350.151, 350.465
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.465
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to surface coal mining and reclamation operations. This regulation designates Title 405, Chapters 7 through 24 as applicable to all coal exploration and surface coal mining and reclamation operations, and specifies those activities to which Title 405, Chapters 7 through 24 do not apply. This regulation reflects the jurisdiction of the cabinet over coal exploration and surface coal mining and reclamation operations and sets forth certain non-jurisdictional activities.

Section 1. Applicability. Title 405, Chapter 7 through 24 apply to all coal exploration and surface coal mining and reclamation operations, except *any* surface coal mining and reclamation operation *which, together with any related operation, has or will have an affected area* of two (2) acres or less *in which case the provisions of Title 405, Chapter 26 shall apply* [which are exempt from the requirements of SMCRA].

(1) For purposes of this regulation, where a segment of a road is used for access or coal haulage by more than one (1) surface coal mining operation, the entire segment shall be included in the affected area of each of those operations; provided, that two (2) or more operations which are deemed related pursuant to subsection (2) of this section shall be considered as one operation for purposes of this subsection.

(2) Except as provided in subsection (3) of this section, surface coal mining operations shall be deemed related if they occur within twelve (12) months of each other, are physically related, and are under common ownership or control.

(a) Operations shall be deemed physically related if drainage from both operations flows into the same watershed at or before a point within five (5) aerial miles of both operations.

(b) Operations shall be deemed under common ownership or control if they are owned or controlled, directly or indirectly, by or on behalf of:

1. The same person;

2. Two (2) or more persons, one (1) of whom controls, is under common control with, or is controlled by the other; or

3. Members of the same family and their relatives, unless it is established that there is no direct or indirect business relationship between or among them;

(c) For purposes of this paragraph, "control" means: ownership of fifty (50) percent or more of the voting shares of, or general partnership in, an entity; any relationship which gives one (1) person the ability in fact or in law to direct what the other does; or any relationship which gives one (1) person express or implied authority to determine the manner in which coal at different sites will be mined, handled, sold or disposed of.

(3) Notwithstanding the provisions of subsection (2) of this section, the cabinet may determine, in accordance with the procedures applicable to requests for determination of exemption pursuant to Section 3 of this regulation, that two (2) or more surface coal mining operations shall not be deemed related if, considering the history and circumstances relating to the coal, its location, the operations at the sites in question, all related operations and all persons mentioned in subsection (2)(b) of this section, the cabinet concludes in writing that the operations are not of the type which SMCRA was intended to regulate and that there is no intention on the part of such operations or persons to evade the requirements of KRS Chapter 350 or Title 405, Chapters 7 through 24.

(4) The exemption provided by this section applies only to operations with an affected area of less than two (2) acres where coal is being extracted for commercial purposes and to surface coal mining operations within that affected area incidental to such operations.

Section 2. Coal Extraction Incidental to Government Financed Construction.

(1) (a) Coal extraction which is an incidental part of government-financed construction is exempt from KRS Chapter 350 and Title 405, Chapters 7 through 24, except subsection (2) of this section shall apply.

(b) Any person who conducts or intends to conduct coal extraction which does not satisfy paragraph (a) of this subsection shall not proceed until a permit has been obtained from the cabinet.

(c) Reclamation of abandoned mined lands funded under Title IV of SMCRA, shall be deemed government-financed construction.

(2) Information to be maintained on site. Any person extracting coal incident to government-financed highway or other construction who extracts more than 250 tons of coal or affects more than two (2) acres shall maintain, on the site of the extraction operation and available for inspection, documents which show:

(a) A description of the construction project;

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

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

Section 3. Exemptions. (1) The cabinet may on its own initiative and shall, within a reasonable time of a request from any person who intends to extract coal, make a written determination whether the operation is exempt from Title 405, Chapters 7 through 24. Where appropriate, exemptions shall be recognized for:

(a) The extraction of coal by a landowner for his or her own noncommercial use from land owned or leased by him or her. Noncommercial use does not include the extraction of coal by one (1) unit of an integrated company or other business or nonprofit entity which uses the coal in its own manufacturing or power plants;

(b) The extraction of or intent to extract 250 tons of coal or less by any person by surface coal mining operations within twelve (12) successive calendar months;

(c) The extraction of coal as an incidental part of federal, state or local government-financed highway or other construction;

(d) Surface coal mining and reclamation operations of two (2) acres or less covered by Title 405, Chapter 26.

(2) The cabinet shall give reasonable notice of the request to interested persons. Prior to the time a determination is made, any person may submit, and the cabinet shall consider, any written information relevant to the determination. A person requesting that an operation be declared exempt shall have the burden of establishing the exemption.

(3) If a written determination of exemption is reversed through subsequent administrative or judicial action, any person who, in good faith, has made a complete and accurate request for an exemption and relied upon the determination, shall not be cited for violations which occurred prior to the date of the reversal.

JACKIE A. SWIGART, Secretary
ADOPTED: October 26, 1983
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: October 31, 1983 at 4:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Elmore C. Grim, Commissioner, Department for Surface Mining Reclamation and Enforcement, Natural Resources and Environmental Protection Cabinet, 3rd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

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

405 KAR 7:090. Hearings.

RELATES TO: KRS 224.033, 224.081, 224.083, 350.028, 350.070, 350.090, 350.093, 350.130, 350.255, 350.465, 350.990
PURSUANT TO: KRS 13.082, 224.033, 350.020, 350.028, 350.255, 350.465, 350.610
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to surface coal mining and reclamation operations and coal exploration. This regulation sets forth hearing, notice, penalty assessment and other procedural and due process provisions for the permanent regulatory program.

Section 1. Applicability. This regulation shall govern the conduct of all hearings by the cabinet for the review of determinations on permits for surface coal mining and reclamation operations and coal exploration, including issuance, denial, suspension, revocation, modification, and compliance with the terms of any permit; notices of noncompliance and orders for remedial measures; orders for cessation and immediate compliance issued pursuant to KRS 350.130(1) and (4); orders to abate and alleviate; determinations on performance bond amount, duration, release, and forfeiture; and all other matters which in the discretion of the cabinet are appropriate for adjudication and determination by the cabinet and arise by virtue of an order or determination of the cabinet pursuant to the permanent regulatory program for surface coal mining and reclamation operations and coal exploration as set forth in KRS Chapter 350 and Title 405, Chapters 7 through 24.

Section 2. Construction. This regulation shall be construed to achieve just, timely and inexpensive determinations of all questions appropriate for determination pursuant to Section 1 of this regulation.

Section 3. Proposed Penalty Assessment. (1) The cabinet shall notify any person issued a notice of noncompliance and order for remedial measures or an order for cessation and immediate compliance of its proposed penalty assessment. The proposed assessment shall be made by authorized personnel within the Department of Surface Mining Reclamation and Enforcement.

(2) In determining the amount of the penalty, consideration shall be given to the permittee's history of previous violations at the particular surface coal mining operation; the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public; whether the permittee was negligent; and the demonstrated good faith of the permittee in attempting to achieve rapid compliance after notification of the violation.

(3) *(a)* The cabinet shall *mail, postage prepaid,* [send] its notice of the proposed penalty assessment, together with copies of applicable worksheets, to the person *to whom the notice or order was issued or that person's representative,* [against whom the assessment is proposed] within fifteen (15) working days after issuance of the final notice of inspection of noncompliance. [The notice of assessment shall be sent by certified mail, return receipt requested, or by registered mail, addressed to the agent for service or the permanent address shown on the permit application; or if no address is shown on the application, to such other address as is known to the cabinet.]

(b) Failure by the cabinet to serve any proposed assessment within fifteen (15) working days after issuance of the final notice of inspection of noncompliance shall not be grounds for dismissal of all or part of such assessment unless the person against whom the proposed penalty has been assessed:

1. Proves actual and substantial prejudice as a result of the delay; and

2. Makes a timely written objection to the delay. An objection shall be timely only if made on or before the date of the preliminary hearing, or if the preliminary hearing is waived, on or before the date of the formal hearing.

(4) (a) The person to whom a proposed penalty assessment was sent who chooses not to contest the fact of the violation or the assessment shall pay the proposed penalty assessment in full to the cabinet within thirty (30) days from the date of mailing of the assessment.

(b) The person to whom a proposed penalty assessment was sent may contest the penalty, as well as the fact of the violation, by attending the preliminary hearing scheduled pursuant to Section 4 of this regulation or by requesting a formal hearing in writing pursuant to Section *5(1)(b)* [(2)]. Prepayment of penalties shall be made as provided therein.

Section 4. Preliminary Hearings. (1) Following issuance by the cabinet of a notice of noncompliance and order for remedial measures or an order for cessation and immediate compliance, the cabinet shall schedule a preliminary hearing on the fact of the violation and the proposed penalty assessment unless such hearing is waived by the person to whom the notice or order was issued. The preliminary hearing shall be *scheduled for a date* [held] no later than sixty (60) days after the date of mailing of the proposed penalty assessment: Provided that, where the preliminary hearing is to consider a notice or order requiring cessation of mining by a permittee, such hearings shall be held within

thirty (30) days of the issuance of such notice or order. *Failure by the cabinet to schedule a hearing for a date within sixty (60) days or to hold a hearing concerning a notice or order requiring cessation of mining within thirty (30) days, respectively, shall not be grounds for dismissal of all or part of an assessment unless the person against whom the proposed penalty has been assessed makes a timely objection on or before the date of the preliminary hearing and proves actual and substantial prejudice as a result of the delay.* The scheduling of the preliminary hearings shall not operate as a stay of any notice or order.

(2) Notice of the preliminary hearing shall be *served in accordance with Section 6 of this regulation* [sent by certified mail, return receipt requested, to the person to whom the notice or order was issued]. Notice shall also be sent to any person who filed a report which led to the *issuance of the* notice or order being contested. The cabinet shall post notice of the preliminary hearing at the regional office closest to the minesite at least five (5) days before the hearing. Any person shall have the right to attend and participate in the preliminary hearing.

(3) If a preliminary hearing is held before the time provided in Section 3 for mailing of the proposed penalty assessment, the cabinet may propose such assessment at the preliminary hearing.

(4) The person contesting the assessment need not pay the proposed amount into escrow prior to the preliminary hearing. [, but may wait and make payment pursuant to subsection (7) of this section, unless] *If* such person waives the preliminary hearing, [in which case] the payment provisions of subsection (6) shall apply.

(5) The hearing officer may make a preliminary determination to affirm, raise, lower, or vacate the proposed penalty, or to *affirm,* terminate, modify, or vacate the notice or order with which the preliminary hearing is concerned. The hearing officer shall state his or her reasons therefor in writing and with particularity. Within thirty (30) days after the preliminary hearing is held, the *hearing officer shall file his or her preliminary determination with the cabinet. Upon receipt, the cabinet shall immediately mail, postage prepaid* [cabinet shall send by certified mail, return receipt requested, or by registered mail], notice of the hearing officer's determination to the parties to the hearing and to any person who filed a report which led to the issuance of the notice or order which was the subject of the preliminary hearing.

(6) The person to whom the notice or order was issued may, within fifteen (15) days of the mailing of the proposed penalty assessment, waive the preliminary hearing in writing and request a formal hearing to contest either the fact of the violation or the proposed penalty assessment, or both. Such person must forward to the cabinet *an amount equal to* the proposed penalty assessment for placement into an escrow account, within thirty (30) days after mailing of the proposed assessment.

(7) (a) An authorized representative of the cabinet shall attend the preliminary hearings.

(b) If a person to whom a notice or order was issued fails without good cause to attend the scheduled preliminary hearing or to comply with subsection (6) above, he or she *shall* [may] be deemed to have waived all rights to contest the fact of the violation or the proposed penalty, and the cabinet *shall* [may] enter a final order containing the findings set forth in *subsection (10) of this section* [Section 5(2)(c) of this regulation].

(8) [(c)] If an agreement is reached at the preliminary hearing, the cabinet shall present *the terms of the agreement to the hearing officer and shall present* in person or *mail, postage prepaid* [send by certified mail, return receipt requested, or by registered mail], a written settlement agreement to the person to whom the notice or order was issued. Such person shall sign the settlement agreement upon presentation immediately following the preliminary hearing or return it to the cabinet within ten (10) days of the date on which it was mailed. *If the signed settlement agreement is returned more than ten (10) days after its presentation or mailing, it may be voided at the cabinet's discretion.* The parties to the agreement will be deemed to have waived their rights to further hearings or review of the matter, except as expressly provided in the settlement agreement. The settlement agreement shall set forth the facts and circumstances giving rise to the agreement, including a statement of the violation or violations concerned. The penalty agreed to shall be due and payable thirty (30) days after signing of the settlement agreement. [Failure to return the signed settlement order within ten (10) days after its presentation or mailing by the cabinet shall render the agreement void.] *If the matter is not settled, the hearing officer shall [then] issue his or her preliminary determination not later than thirty (30) days after the preliminary hearing was held, and the provisions of subsection (9) of this section* [paragraph (d)] shall apply.

(9) [(d)] If no agreement is reached, any party may, within fifteen (15) days after the presentation or mailing of the hearing officer's determination following the preliminary hearing, request a formal hearing [pursuant to Section 5]. Any such request by the person to whom the notice or order was issued shall be accompanied by payment of an amount equal to the proposed penalty (as amended or affirmed pursuant to the preliminary hearing) to the cabinet, to be held in escrow. If the cabinet is the party requesting a formal hearing, the payment into escrow need not be made. Failure to request a formal hearing or to submit payment within the prescribed time shall be deemed a waiver of all rights to further hearings or review of the matter, and shall be grounds for issuance of a final order of the cabinet pursuant to *subsection (10) of this section* [Section 5(2)(c)].

(10) Failure to request a formal hearing in a timely manner shall be considered an admission of the fact of the violation and acceptance of the proposed penalty assessment. If no request for a formal hearing is made within fifteen (15) days after the mailing of the hearing officer's preliminary determination following the preliminary hearing, the cabinet shall forthwith enter and mail a final order finding:

1. That the person has waived his or her right to a hearing;

2. That the findings and conclusions contained in the preliminary determination of the hearing officer are admitted; and

3. That the penalty assessment contained in the preliminary determination of the hearing officer is due and payable to the cabinet within fifteen (15) days, after mailing of the final order.

[(8) [The hearing office shall terminate any preliminary hearing when he or she determines that the dispute cannot be resolved or that the parties are not diligently pursuing a resolution of the dispute.]

(11) [(9)] No person who presided at a preliminary hearing shall either preside at a subsequent hearing in the same matter or participate in any further decision or any subsequent administrative appeal.

Section 5. Formal Hearing. (1) *Requests for formal hearing by persons other than the cabinet:*

(a) Except as provided in *paragraph (b) of this subsection* [subsection (2) of this section], any person aggrieved by an order or determination of the cabinet may request in writing, pursuant to KRS 224.081(2), that a hearing be conducted by the cabinet. The right to demand such a hearing shall be limited to a period of thirty (30) days after the requester has had actual notice of the action, or could reasonably have had such notice.

(b) [(2) (a)] Any person issued a notice of noncompliance and order for remedial measures or an order for cessation and immediate compliance may request a de novo formal hearing with the cabinet *and pay the proposed penalty assessment into escrow* pursuant to Section 4(6) or Section 4*(9) of this regulation* [(7)(d)]. Such request shall be *filed with the Docket Coordinator, Office of General Counsel,* [sent by certified mail, return receipt requested, or by registered mail, to] *at* the *cabinet's* central office in Frankfort.

[(b)] The request for a hearing shall include a short and plain statement why the amount of the penalty proposed to be assessed, or the fact of the violation, or both, is being contested. The request for a hearing shall plainly identify the notice or order that the requester is contesting. The request shall not operate as a stay of any order or notice.

[(c) Failure to request a formal hearing in a timely manner shall be considered a waiver of the right to contest the fact of the violation or the proposed penalty assessment. If no request for a formal hearing is made within fifteen (15) days after the mailing of the hearing officer's preliminary determination following the preliminary hearing, the cabinet shall forthwith enter and mail by certified mail, return receipt requested, or by registered mail, a final order finding:]

[1. That the person should be considered to have waived his or her right to a hearing;]

[2. That the findings and conclusions contained in the preliminary determination of the hearing officer should be deemed admitted; and]

[3. That the proposed penalty assessment, as adjusted by the hearing officer following the preliminary hearing, is due and payable to the cabinet within fifteen (15) days.]

(2) Initiation of formal hearing by the cabinet.

[(3)] (a) The cabinet may initiate *a formal hearing* [show cause proceedings] whenever:

1. It has reason to believe that a violation of KRS Chapter 350 or Title 405, Chapters 7 through 24 has occurred or is occurring; or

2. A permittee has failed to pay a civil penalty assessed in a final order of the cabinet *or to undertake remedial measures mandated by a final order of the cabinet or to abate violations it was determined to have committed by a final order of the cabinet; or*

3. The cabinet chooses to contest a preliminary hearing determination, or

4. The provisions of KRS 350.990(9) apply.

(b) The cabinet shall initiate *a formal hearing* [show cause proceedings] whenever:

1. The cabinet has reason to believe that additional remedies should be sought or order entered against any person to protect the environment or the health or safety of the public; or

2. The permittee has willfully failed to comply with an order for cessation and immediate compliance; or

3. The cabinet has determined, pursuant to paragraph *(c)1* [(f)] of this subsection, that a pattern of violations of any requirements of KRS Chapter 350, Title 405, Chapters 7 through 24, or any permit conditions exists or has existed, and that the violations were caused by the permittee willfully, or through unwarranted failure to comply with those requirements or conditions.

[(c) The complaint issued by the cabinet may require a person to show cause why his permit should not be suspended or revoked or his bond forfeited. The cabinet shall:]

[1. If practicable, publish notice of the show cause order, including a brief statement of the procedure for intervention in the proceeding, in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county or counties of the surface coal mining and reclamation operations or coal exploration operation; and]

[2. Post the notice at the appropriate regional office of the department.]

[(d) If the permittee requests a hearing on the show cause order, a formal hearing shall be provided pursuant to this regulation. The cabinet shall give at least twenty-one (21) days' written notice of the date, time, and place of hearing to the permittee and any intervenor and shall post notice at the appropriate regional office of the department.]

[(e) The cabinet may decline to issue a show cause order, or may vacate an outstanding show cause order, if it finds that, taking into account exceptional factors present in the particular case, it would be demonstrably unjust to issue or to fail to vacate the show cause order. The basis for this finding shall be fully explained and documented in the records of the case.]

(c) Pattern of violations.

1. [(f) The cabinet shall determine that a pattern of violations exists if it finds there were violations of the same or related requirements of KRS Chapter 350, Title 405, Chapters 7 through 24, or permit conditions, during three (3) or more inspections of the permit area within any twelve (12) month period.] The cabinet may determine that a pattern of violations exists or has existed, based on two (2) or more inspections of the permit area within any twelve (12) month period, after considering the circumstances, including:

a. [1.] The number of violations, cited on more than one (1) occasion, of the same or related requirements of KRS Chapter 350, Title 405, Chapters 7 through 24, or permit conditions;

b. [2.] The number of violations, cited on more than one (1) occasion, of different requirements of KRS Chapter 350, Title 405, Chapters 7 through 24, or permit conditions; and

c. [3.] The extent to which the violations were isolated departures from lawful conduct.

2. The cabinet shall promptly review the history of violations of any permittee who has been cited for violations of the same or related requirements of KRS Chapter 350, Title 405, Chapters 7 through 24 or permit conditions during three (3) or more inspections of the permit area within any twelve (12) month period. If, after such review, the cabinet determines that a pattern of violations exists or has existed, the cabinet shall request a formal hearing pursuant to subsection (2) of this section.

3. [(g)] In determining the number of violations within any twelve (12) month period, the cabinet shall consider only violations issued as a result of inspections carried out on or after May 3, 1978. The cabinet may *not* consider violations issued as a result of other inspections in deter-

mining whether to exercise its discretion under paragraph *(c)1* [(f)] of this subsection, *except as evidence of the willful or unwarranted nature of the permittee's failure to comply.*

4. Whenever a permittee fails to abate a violation contained in a notice of noncompliance or cessation order within the abatement period set in the notice or order or as subsequently extended, the cabinet shall review the permittee's history of violations to determine whether a pattern of violations exists pursuant to this subsection and shall initiate a formal hearing as provided in this section.

(3) At any formal hearing held pursuant to Section 5(1) or (2) of this regulation to which it is a party, the cabinet may seek any combination of the following:

(a) Permit suspension or revocation;

(b) Bond forfeiture;

(c) Civil penalties;

(d) A determination, pursuant to KRS 350.060, 350.085, and 350.130, that a person or persons shall not be eligible to receive another permit or conduct future operations;

(e) A determination, pursuant to KRS 350.990(9), that any director, officer, or agent of a corporation willfully and knowingly authorized, ordered, or carried out a violation or failed or refused to comply with any final order; and

(f) Any and all other relief to which it may be entitled by KRS Chapters 224 and 350.

(4) [(h)] If the cabinet revokes or suspends the permit or exploration approval, the permittee shall immediately cease surface coal mining operations on the permit area shall:

(a) [1.] If the permit or exploration approval is revoked, complete reclamation within the time specified in the order; or

(b) [2.] If the permit or exploration approval is suspended, complete all affirmative obligations to abate all conditions, practices or violations, as specified in the order.

(5) If a final order of the cabinet has been issued after a preliminary hearing, any issues adjudicated by such order shall be conclusive as between the parties to that hearing and shall not be readjudicated at any subsequent formal hearing between the same parties.

(6) [(4)] *Administrative summons.* [Notice of hearing.] Upon request pursuant to subsection (1) [or (2)] of this section, or upon initiation by the cabinet pursuant to subsection *(2)* [(3)], the cabinet shall schedule a hearing before the cabinet to be held not less than twenty-one (21) days after the notice of demand for such a hearing, unless the person complained against waives in writing the twenty-one (21) day period. The *administrative summons, including a* notice of hearing, shall be served in *accordance with Section 6 of this regulation* [person, or sent by certified mail, return receipt requested, or by registered mail]; and shall include a statement of the time, place, and nature of the hearing; the legal authority for the hearing; reference to the statutes and regulations involved; and a short statement of the reason for granting of the hearing. *For all formal hearings initiated pursuant to Section 5(2) of this regulation, notice shall also be mailed to any intervenors, shall be posted at the appropriate regional office of the cabinet and, if practicable, notice shall be published in a newspaper of general circulation in the area of the surface coal mining operation or coal exploration operation.*

(7) [(5)] Prior to a formal hearing, and upon seven (7) days' written notice to all parties, [delivered personally or sent by certified mail, return receipt requested, or by registered mail,] the hearing officer may hold a pre-hearing conference to consider simplification of the issues, admission of facts and documents which will avoid unnecessary proof, limitation of the number of witnesses, and such other matters as will aid in the disposition of the matter. Final disposition of the matter may be made at such a conference by stipulation, settlement, agreed order, or default for non-appearance. The parties may hold such additional conferences as may be proper to resolve any issue in dispute.

(8) [(6)(a)] All formal hearings shall be de novo *as to all issues of fact and law, provided that those findings previously adjudicated by a final order of the cabinet following a preliminary hearing shall be binding against any party or parties to the preliminary hearing leading to the final order.* Any party to a hearing may be represented by counsel, make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of such actions. The cabinet may compel the attendance of witnesses and the production of documents by the issuance of subpoenas. An independent hearing officer shall preside at the hearing, shall keep order, and shall conduct the hearing in accordance with reasonable administrative practice. Oaths and affirmations *shall* [may] be administered by the hearing officer or court reporter. [The pertinent] Provisions of *400 KAR 1:030, 400 KAR 1:040, and 400 KAR 1:050* [the Kentucky Rules of Civil Procedure] shall apply to cases before the cabinet, consistent with KRS Chapter 350 and these regulations. The hearing officer shall permit any party to represent himself. Failure to appear without good cause or failure to comply with any pre-hearing or interlocutory order of the hearing officer shall be grounds for a default.

(9) [(b)] Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. When necessary to ascertain facts not reasonably susceptible of proof under judicial rules of evidence, evidence not admissible thereunder may be admitted (except where precluded by statute) if it is of a type commonly relied upon by reasonable and prudent persons in the conduct of their affairs. Hearing officers shall give effect to the rules of privilege recognized by law. Objections may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form. Documentary evidence may be received in the form of copies or excerpts [, if the original is not readily available]. Upon request, parties shall be given an opportunity to compare the copy with the original. A party may conduct cross-examinations required for a full and true disclosure of the facts. Notice may be taken of generally recognized technical or scientific facts within the cabinet's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The cabinet's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

(10) [(c)] Each formal hearing shall be recorded, and a transcript made available on the motion of any party or by order of the hearing officer. Unless otherwise agreed, the party requesting the transcript shall provide payment for the original, and all others desiring copies shall pay the cost thereof. The record of such hearing, consisting of all pleadings, motions, rulings, documentary and physical evidence received or considered, a statement or matters of-

ficially noticed, questions and offers of proof, objections and rulings thereon, proposed findings and recommended orders, and legal briefs, shall be open to public inspection and copies thereof shall be made available to any person upon payment of the actual cost of reproducing the original except as provided in KRS 224.035. When certified as a true and correct copy of the testimony by the cabinet, the transcript shall constitute the official transcript of the evidence.

(11) [(7)] The hearing officer shall make a determination after hearing and based on *a preponderance of the* [substantial] evidence appearing in the record as a whole, setting forth whether the violation did in fact occur, the amount of the penalty recommended by the hearing officer, and remedial or compliance actions recommended to be taken by the permittee. The hearing officer may *recommend* [order] suspension or revocation of a permit or forfeiture of a bond *if a permittee has violated any provision of KRS Chapter 350 or Title 405, any permit condition or final order, including failure to pay a civil penalty assessed in a final order of the cabinet. The hearing officer shall recommend revocation of a permit and forfeiture of a bond if the permittee has demonstrated a pattern of violations or willfully failed to comply with an order for cessation and immediate compliance or the conditions of 405 KAR 10:050, Section 3(1) are met. The hearing officer may recommend, pursuant to KRS 350.060, 350.085, and 350.130 that a person or persons should not be eligible to receive another permit or conduct future operations.* The hearing officer *may recommend that* [shall require] a person or permittee [in a recommended order, agreed settlement order, consent order, or stipulation,] *be required* to abate, repair, alleviate *or* [and] prevent violations of KRS Chapter 350, Title 405, Chapters 7 through 24, or any permit condition, which violations are found to exist on the basis of *a preponderance of the* [substantial] evidence.

(12) [(8)] *Subject to Section 5(5) of this regulation,* the [civil penalties assessed for violations of KRS Chapter 350, Title 405, Chapters 7 through 24 or for violation of any permit condition shall be part of the affirmative case presented by the cabinet. The] hearing officer shall *recommend* [determine] the amount of a civil penalty based exclusively on the record of the hearing. The hearing officer may compute the amount of the penalty to be assessed irrespective of any computation offered by any party, and shall consider the same factors set forth above at Section 3(2) for consideration in setting proposed penalty assessments. The hearing officer shall state with particularity the reasons, supported by the record of the hearing, for the penalty assessed in his final written report.

(13) [(9)(a)] Except as provided in Section *9* [8] of this regulation for permit hearings, the hearing officer shall, within thirty (30) days of the close of the hearing record, make a report and a recommended order to the secretary. The report and recommended order shall contain the appropriate findings of fact and conclusions of law. If the secretary finds upon written request of the hearing officer that additional time is needed, then the secretary may grant a reasonable extension. The hearing officer shall *mail, postage pre-paid,* [serve] a copy of his report and recommended order *to* [upon] all parties. The parties may file within seven (7) days of *mailing* [service] of the hearing officer's report and recommended order exceptions to the report and recommended order. There shall be no other or further submissions.

(14) The secretary shall consider the report and recommended order and any exceptions filed and pass upon the case within a reasonable time. The secretary may remand the matter to the hearing officer [for further deliberation], adopt the report and recommended order of the hearing officer as the cabinet's final order, or issue his or her own final order [based on the hearing officer's report and any exceptions thereto].

(15) [(b) After completion of the hearing and filing of exceptions,] The cabinet shall *mail* [notify the parties in writing, by certified mail, return receipt requested, of] the final decision of the cabinet *to the parties.* If any extension of time is granted by the secretary for a hearing officer to complete his report, the cabinet shall notify all parties at the time of the granting of the extension.

(16) [(c)] The secretary shall not grant extensions of time to the hearing officer for more than thirty (30) days for any one (1) extension, and no more than two (2) such extensions shall be granted.

(17) [(d)] A final order of the cabinet shall be based on substantial evidence appearing in the record as a whole and shall set forth the decision of the cabinet and the facts and law upon which the decision is based.

(18) [(10)] There shall be no ex-parte communications between *the parties or* representatives of the parties and the hearing officer.

(19) [(11)] Any person aggrieved by a final order of the cabinet may seek judicial review as set forth in KRS 224.085 and 350.032(2).

Section 6. Service. Any proposed penalty assessment, notice of preliminary hearing, notice of formal hearing or other document required to be served in accordance with this section shall be served by one (1) of the following methods:

(1) The cabinet may place a copy of the document to be served in an envelope, and address the envelope to the person to be served at the address set forth in the caption or at the address set forth in written instructions furnished by the initiating party. The cabinet shall affix adequate postage and place the sealed envelope in the United States mail as certified mail return receipt requested. The cabinet shall forthwith enter the fact of mailing in the record and make a similar entry when the return receipt is received. If the envelope is returned with an endorsement showing failure of delivery, that fact shall be entered in the record. The cabinet shall file the return receipt or returned envelope in the record. Service by certified mail is complete upon delivery of the envelope or as provided by subsection (3) of this section. The return receipt shall be proof of the time, place and manner of service. To the extent that the United States postal regulations permit authorized representatives of local, state, or federal governmental offices to accept and sign for 'addressee only' mail, signature by such authorized representative shall constitute service on the addressee; or

(2) The cabinet may cause the document, with necessary copies, to be transferred for service to any person authorized by the secretary or by any statute or rule, other than by paragraph (1) of this subsection, to deliver them, who shall serve the documents, and the return endorsed thereon shall be proof of the time and manner of service; or

(3) As an alternative to other methods of service specified by statute or regulation, service of process may be made upon a person issued a permit by the cabinet or upon a person who has submitted an exploration notice pursuant to 405 KAR 8:020 by placing in the United States mail as certified mail, return receipt requested, a copy of the document directed to the named agent for service or the permit-

tee as specified on the face of the permit at the permanent address specified in the permit application or by the permittee. Service is effective upon acceptance of the document by any person at the permanent address, upon refusal to accept the document by any person at the permanent address, or upon failure to claim the document prior to its return to the cabinet by the United States Postal Service. The return receipt shall be proof of the acceptance, refusal, or failure to claim the document.

(4) The methods of service specified by this regulation shall be supplemental to and shall be accepted as an alternative to any other method of service specified by other applicable law.

Section *7.* [6] Location of Hearings. Preliminary hearings and formal hearings shall, upon written request filed within fifteen (15) days of the mailing of the proposed penalty assessment, by the *cabinet or the* operator to whom the notice or order was issued, be held at or reasonably close to the minesite, or at any other location acceptable to the parties. The appropriate regional office of the department [of Surface Mining Reclamation and Enforcement] nearest to the mine site shall be deemed reasonably close unless a closer location is requested *by the cabinet or the operator* and agreed to by the hearing officer in his or her discretion.

Section *8.* [7.] Temporary Relief. (1) Pending the completion of the investigation and hearings provided for in this regulation, the chief hearing officer may, *subject to review by the secretary,* grant temporary relief from any notice or order issued pursuant to 405 KAR 12:020 or permit determination of the cabinet. Any request for such relief shall be in writing and shall contain a detailed statement giving reasons why such relief should be granted. The chief hearing officer may grant such temporary relief after making a written finding that such relief is warranted, and shall state the reasons for his or her finding. The chief hearing officer shall grant or deny such relief expeditiously: Provided that, where the person requests temporary relief from an order for cessation and immediate compliance issued pursuant to KRS 350.130(1) or (4), the chief hearing officer shall grant or deny such temporary relief within five (5) days of receipt of such request.

(2) The chief hearing officer may grant temporary relief from notices and orders of the cabinet issued pursuant to 405 KAR 12:020, under such conditions as he or she may prescribe, if:

(a) A hearing on the request for temporary relief has been held in the locality of the permit area, or at any other location acceptable to the cabinet and the person to whom the notice or order was issued, in which all parties were given an opportunity to be heard;

(b) The person requesting such relief shows that there is substantial likelihood that the findings on the merits in a hearing conducted by the cabinet will be favorable to such person; and

(c) Such relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources.

(3) Where a person requests temporary relief from a permit or coal exploration determination, the chief hearing officer may, under such conditions as he or she may prescribe, pending final determination of the proceeding, grant such temporary relief as he or she deems appropriate, if:

(a) All parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief.

(b) The person requesting that relief shows that there is a substantial likelihood that he or she will prevail on the merits of the final determination of the proceeding; and

(c) The relief will not effect adversely the public health or safety, or cause significant, imminent environmental harm to land, air, or water resources; and

(d) The relief sought is not the issuance of a permit where a permit has been denied, in whole or in part, by the cabinet.

Section *9.* [8.] Review of Permit and Coal Exploration Determinations. Review of determinations by the cabinet on permits and revisions and renewals thereof, concerning issuance; denial; imposition of conditions; application for transfer, sale, or assignment of rights; or applications for coal exploration shall be conducted pursuant to this regulation, provided that the cabinet shall issue its final decision within twenty (20) days after the hearing, as set forth in KRS 350.090(1). The burden of proof shall be on the party seeking to reverse the determination of the cabinet. Temporary relief may be requested pursuant to Section *8* [7] of this regulation.

Section *10.* [9.] Orders to Abate and Alleviate. Whenever the secretary, pursuant to KRS 224.071, issues an order to abate and alleviate, the cabinet shall, as soon as possible, not to exceed ten (10) days thereafter, provide the person to whom the order was issued an opportunity to be heard. The holding of a hearing pursuant to this section shall not operate as a termination or stay of such an order or of the affirmative obligations imposed on any person by the order, unless the hearing officer shall find on the record that the obligations have been met or that the order was improper or inappropriate.

Section *11.* [10.] Penalties. (1) Any person or permittee who violates any of the provisions of KRS Chapter 350, Title 405, Chapters 7 through 24, or a permit condition or who fails to perform the duties imposed by these provisions, except the refusal or failure to obtain a permit, exploration approval or other authorization or who violates any determination or order promulgated pursuant to the provisions therein, may be assessed a civil penalty of not more than $5,000 for each day during which such violation continues. A civil penalty of not more than $5,000 for each day shall be assessed against any person issued an order pursuant to KRS 350.130(4).

(2) Whenever a violation has not been abated during the abatement period set forth in a notice of noncompliance and order for remedial measures or in an order for cessation and immediate compliance, a civil penalty of not less than $750 shall be assessed for each day during which such *failure to abate* [violation] continues, up to a maximum of thirty (30) days, *except that:* [Provided that,]

(a) Such penalty for the failure to abate the violation shall not be assessed for more than thirty (30) days for each such violation. If the permittee has not abated the violation within the thirty (30) day period, the cabinet shall take appropriate action within thirty (30) days to ensure that abatement occurs or to ensure that there will not be a reoccurrence of the failure to abate; and

(b) If the person to whom the notice or order was issued initiates review proceedings with respect to the violation, and the abatement requirements are suspended in a temporary relief proceeding pursuant to Section *8* [7] of this

regulation, following a determination that the person requesting relief will suffer irreparable loss or damage from the application of the requirements, then the abatement period shall be extended until the date when the cabinet issues its final order concerning the violation in question.

(3) Any person who engages in surface coal mining and reclamation operations or coal exploration operations without first securing a permit or exploration approval according to Title 405, Chapters 7 through 24, shall be assessed a civil penalty of not less than $5,000 nor more than $25,000. Each day shall constitute a separate violation. However, the penalties provided in subsection (1) of this section shall apply in lieu of the penalties provided for in this subsection where a permittee through inadvertence has exceeded the boundaries of the permit in effect at that time.

(4) Whenever a corporate permittee violates any provision of KRS Chapter 350 or regulations promulgated pursuant thereto, or fails or refuses to comply with any final order issued by the secretary, any director, officer, or agent of such corporation who willfully and knowingly authorized, ordered, or carried out such violation, failure or refusal shall be subject to the same civil penalties, fines, and imprisonment as may be imposed upon a person pursuant to this section.

(5) [(4)] Penalties shall be recoverable in an action brought in the name of the Commonwealth of Kentucky or the Cabinet for Natural Resources and Environmental Protection by the cabinet's office of general counsel, or upon the secretary's request, by the attorney general.

(6) [(5)] (a) If any party seeks judicial review of a final order of the cabinet involving a penalty, the proposed penalty shall continue to be held in escrow until completion of the review. If no judicial review is sought, the escrowed funds shall be transferred to the cabinet for payment to the Kentucky State Treasurer as provided by law.

(b) If a final order of the cabinet or final decision of a reviewing court results in the reduction or elimination of the proposed penalty, the cabinet shall within thirty (30) days of receipt of the order refund the appropriate amount with interest at the statutory rate from the date of payment into escrow.

(c) If a final order of the cabinet or final decision of a reviewing court increases the penalty, the person to whom the notice or order was issued shall pay the difference to the cabinet within thirty (30) days after receipt of the order.

Section *12.* [11.] Intervention and Consolidation. (1) Any person may petition in writing for leave to intervene at any stage of a proceeding under this regulation.

(2) A petitioner for leave to intervene shall incorporate in the petition a statement setting forth the interest of the petitioner and, where required, a showing of why that interest is or may be adversely affected.

(3) Unless the petitioner's interest is adequately represented by existing parties, the hearing officer shall grant intervention where the petitioner:

(a) Had a statutory right to initiate the proceeding in which he wishes to intervene; or

(b) Has an interest which is or may be adversely affected by the outcome of the proceeding.

(4) If neither paragraph (a) nor paragraph (b) of subsection (3) above applies, the hearing officer shall consider the following in determining whether intervention is appropriate:

(a) The nature of the issues;

(b) The adequacy of representation of petitioner's interest which is provided by the existing parties to the proceeding;

(c) The ability of the petitioner to present relevant evidence and argument; and

(d) The effect of intervention on the agency's implementation of its statutory mandate.

(5) Any person granted leave to intervene in a proceeding may participate in such proceeding as a full party or, if desired, in a capacity less than that of a full party. If an intervenor wishes to participate in a limited capacity, the extent and the terms of the participation shall be in the discretion of the hearing officer.

(6) When proceedings involving the same permittee or a common question of law or fact are pending before the cabinet, such proceedings are subject to consolidation pursuant to a motion by a party or at the initiative of the hearing officer.

Section *13.* [12.] Costs and Expenses. (1) Any person may file a petition for award of costs and expenses including attorneys' fees reasonably incurred as a result of that person's participation in any proceeding held pursuant to this regulation which results in a final order of the cabinet.

(2) The petition for an award of costs and expenses, including attorneys' fees, must be filed with the *cabinet* [hearing officer who issued the final order] within forty-five (45) days of receipt of *the final* [such] order. Failure to make a timely filing of the petition may constitute a waiver of the right to such an award.

(3) A petition filed under this section shall include the name of the *party* [person] from *which* [whom] costs and expenses are sought and the following shall be submitted in support of the petition:

(a) An affidavit setting forth in detail all costs and expenses including attorneys' fees reasonably incurred for, or in connection with, the person's participation in the proceeding;

(b) Receipts or other evidence of such costs and expenses; and

(c) Where attorneys' fees are claimed, evidence concerning the hours expended on the case, the customary commercial rate of payment for such services in the area, and the experience, reputation and ability of the individual or individuals performing the services.

(4) Any person served with a copy of the petition shall have thirty (30) days from service of the petition within which to file an answer to such petition.

(5) Appropriate costs and expenses including attorneys' fees may be awarded *as follows:* [by the cabinet to any person as the secretary deems proper.]

(a) To any person from the permittee, if the person initiates any administrative proceedings reviewing enforcement actions, upon a finding that, on or after May 18, 1982, a notice of noncompliance or order for cessation was issued for violations of KRS Chapter 350, Title 405, or permit conditions or that an imminent hazard existed, or to any person who participates in an enforcement proceeding where such a finding is made, if the hearing officer finds and the secretary concurs that the person made a substantial contribution to the full and fair determination of the issues; or

(b) To any person other than a permittee or his representative from the cabinet, if the person initiates or participates in any proceeding under KRS Chapter 350 upon a finding that the person made a substantial contribution to a full and fair determination of the issues; or

(c) To a permittee from the cabinet when the permittee demonstrates that the cabinet issued an order of cessation or a notice of noncompliance or initiated a formal hearing in bad faith and for the purpose of harassing or embarrassing the permittee; or

(d) To a permittee from any person where the permittee demonstrates that the person initiated a proceeding under this regulation or participated in such a proceeding in bad faith and for the purpose of harassing or embarrassing the permittee; or

(e) To the cabinet where it demonstrates that any person applied for review pursuant to this regulation or that any party participated in such a proceeding in bad faith and for the purpose of harassing or embarrassing the cabinet or the Commonwealth.

(6) An award under this section may include reimbursement for:

(a) Costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred as a result of initiation and/or participation in a proceeding under this regulation; and

(b) Costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred in seeking the award before the cabinet.

Section *14.* [13.] Judicial Review. The commencement of proceedings for judicial review of any determination of the cabinet shall not operate as a stay of the final order of the cabinet, unless specifically ordered by the court.

JACKIE A. SWIGART, Secretary
ADOPTED: October 26, 1983
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: October 31, 1983 at 4:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Elmore C. Grim, Commissioner, Department for Surface Mining Reclamation and Enforcement, Natural Resources and Environmental Protection Cabinet, 3rd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

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

405 KAR 8:030. Surface coal mining permits.

RELATES TO: KRS 350.060, 350.465
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.060, 350.465
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to permits for surface mining activities. This regulation specifies certain information to be shown by the applicant related to legal and compliance status, environmental resources, and his mining and reclamation plan. This regulation further specifies certain showings to be made by the applicant to obtain a permit.

Section 1. General. (1) This regulation applies to any person who applies for a permit to conduct surface mining activities.

(2) The requirements set forth in this regulation specifically for applications for permits to conduct surface mining activities are in addition to the requirements applicable to all applications for permits to conduct surface coal mining and reclamation operations as set forth in 405 KAR 8:010.

(3) This regulation sets forth information required to be contained in applications for permits to conduct surface mining activities, including:

(a) Legal, financial, compliance, and related information;

(b) Environmental resources information; and

(c) Mining and reclamation plan information.

Section 2. Identification of Interests. (1) Each application shall contain the names and addresses of:

(a) The permit applicant, including his or her telephone number;

(b) Every legal or equitable owner of record of the property to be mined;

(c) The holders of record of any leasehold interest in the property to be mined;

(d) Any purchaser of record, under a real estate contract, of the property to be mined;

(e) The operator, if different from the applicant, who will conduct surface mining activities on behalf of the applicant, including his or her telephone number; and

(f) The resident agent of the applicant who will accept service of process, including his or her telephone number.

(2) If any owner, holder, purchaser, or operator, identified under subsection (1) of this section, is a business entity other than a single proprietor, the application shall contain the names and addresses of their respective principals, officers, and resident agents.

(3) Each application shall contain a statement of whether the applicant is a corporation, partnership, single proprietorship, association or other business entity. For businesses other than single proprietorships, the application shall contain the following information, where applicable:

(a) Names and addresses of every officer, partner, director, or other person performing a function similar to a director of the applicant;

(b) Name and address of any person who is a principal shareholder of the applicant;

(c) Names under which the applicant, partner, or principal shareholder previously operated a surface coal mining operation in the United States within the five (5) years preceding the date of application;

(d) If a partnership, a certified copy of the partnership agreement; and

(e) If a domestic corporation, a certified copy of the certificate of incorporation from the Secretary of State; and if a foreign corporation, a certified copy of the certificate of authority to conduct business within the Commonwealth of Kentucky.

(4) Each application shall contain a statement of any current or previous coal mining permits in the United States held by the applicant during the five (5) years preceding the application and by any person identified in subsection (3)(c) of this section, and of any pending permit application to conduct surface coal mining and reclamation operations in the United States. The information shall be listed by permit or application number and identify the regulatory authority for each of those coal mining operations.

(5) Each application shall contain the names and addresses of the owners of record of all surface and subsurface areas contiguous to any part of the proposed permit area.

(6) Each application shall contain the name of the proposed mine and all MSHA identification numbers that have been assigned for the mine and all sections.

(7) Each application shall contain proof, such as a power of attorney or a resolution of the board of directors, that the individual signing the application has the power to represent the applicant in the permit matter.

(8) Each application shall contain a statement of all lands, interests in lands, options, or pending bids on interests held or made by the applicant for lands which are contiguous to the area to be covered by the permit.

Section 3. Compliance Information. (1) Each application shall contain a statement of whether the applicant, any subsidiary, affiliate, or persons controlled by or under common control with the applicant has:

(a) Had a coal mining permit of the United States or any state suspended or revoked in the last five (5) years; or

(b) Forfeited a coal mining performance bond or similar security deposited in lieu of bond.

(2) If any such suspension, revocation, or forfeiture as described in subsection (1) of this section has occurred, the application shall contain a statement of the facts involved, including:

(a) Identification number and date of issuance of the permit, and date and amount of bond or similar security;

(b) Identification of the authority that suspended or revoked a permit or forfeited a bond and the stated reasons for that action;

(c) The current status of the permit, bond, or similar security involved;

(d) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

(e) The current status of these proceedings.

(3) Each application shall contain a list of each violation notice pertaining to SMCRA (PL 95-87) or KRS Chapter 350 and regulations promulgated thereto, received by the applicant in connection with any surface coal mining operation during the three (3) year period before the application date. Each application shall also contain a list of each violation notice pertaining to air or water environmental protection received by the applicant in connection with any surface coal mining operation during the three (3) year period before the application date, for violations of any law, rule or regulation of the United States, or of any state law, rule or regulation enacted pursuant to federal law, rule or regulation. The application shall also contain a statement regarding each violation notice, including:

(a) The date of issuance and identity of the issuing regulatory authority, department, or agency;

(b) A brief description of the particular violation alleged in the notice;

(c) The final resolution of each violation notice, if any;

(d) For each violation notice that has not been finally resolved:

1. The date, location, and type of any administrative or judicial proceedings initiated concerning the fact of the violation, including, but not limited to, proceedings initiated by the applicant to obtain administrative or judicial review of the fact of the violation and the current status of the proceedings; and

2. The actions, if any, taken or being taken by the applicant to abate the violation.

(4) Upon request by a small operator as defined in KRS 350.450(4)(d), the cabinet will provide to the small operator, with regard to persons under subsection (1) of this section which are identified by the small operator, the compliance information required by this section regarding suspension and revocation of permits and forfeiture of bonds under KRS Chapter 350, and information pertaining to violations of KRS Chapter 350 and regulations promulgated thereunder.

Section 4. Right of Entry and Right to Surface Mine. (1) Each application shall contain a description of the documents upon which the applicant bases his or her legal right to enter and begin surface mining activities in the permit area and whether that right is the subject of pending litigation. The description shall identify those documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

(2) Where the private mineral estate to be mined has been severed from the private surface estate, the application shall also provide for lands within the permit area, a copy of the document of conveyance that grants or reserves the right to extract the coal by surface mining methods.

(3) Nothing in this section shall be construed to afford the cabinet the authority to adjudicate property title disputes.

Section 5. Relationship to Areas Designated Unsuitable for Mining. (1) Each application shall contain a statement of available information on whether the proposed permit area is within an area designated unsuitable for surface mining activities under Title 405, Chapter 24 or under study for designation in an administrative proceeding under that chapter.

(2) If an applicant claims the exemption in 405 KAR 8:010, Section 14(4)(b), the application shall contain information supporting the applicant's assertion that it made substantial legal and financial commitments before January 4, 1977, concerning the proposed surface mining activities.

(3) If an applicant proposes to conduct surface mining activities within 300 feet of an occupied dwelling, the application shall contain the waiver of the owner of the dwelling as required in 405 KAR 24:040, Section 2(5).

Section 6. Permit Term Information. (1) Each application shall state the anticipated or actual starting and termination date of each phase of the surface mining activities and the anticipated number of acres of land to be affected for each phase of mining and over the total life of the permit.

(2) If the applicant proposes to conduct the surface mining activities in excess of five (5) years, the application shall contain the information needed for the showing required under 405 KAR 8:010, Section 17(1).

Section 7. Personal Injury and Property Damage Insurance Information. Each permit application shall contain a certificate of liability insurance according to 405 KAR 10:030, Section 4.

Section 8. Identification of Other Licenses and Permits. Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed surface mining activities. This list shall identify each license and permit by:

(1) Type of permit or license;

(2) Name and address of issuing authority;

(3) Identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses; and
(4) If a decision has been made, the date of approval or disapproval by each issuing authority.

Section 9. Identification of Location of Public Office for Filing of Application. Each application shall identify, by name and address, the appropriate regional office of the cabinet where the applicant will file a copy of the complete application for public inspection under 405 KAR 8:010, Section 8(8).

Section 10. Newspaper Advertisement and Proof of Publication. A copy of the newspaper advertisement of the application and proof of publication of the advertisement shall be filed with the cabinet and made a part of the complete application, not later than fifteen (15) days after the last date of publication required under 405 KAR 8:010, Section 8(2).

Section 11. Environmental Resources Information. (1) Each permit application shall include descriptions of the existing environmental resources within the proposed permit area and adjacent areas as required by Sections 11 through 23. The descriptions required by this regulation may, where appropriate, be based upon published texts or other public documents together with reasonable extrapolations from specific data available from existing permit areas or other appropriate areas.
(2) Each application shall describe and identify the nature of cultural and historic resources listed in or eligible for listing in the National Register of Historic Places and known archaeological features within the proposed permit area and adjacent areas. The description shall be based on all available information, including, but not limited to, data of state and local archaeological, historical, and cultural preservation agencies.

Section 12. General Requirements for Geology and Hydrology. (1) Each application shall contain a description of the geology and hydrology of lands within the proposed permit area, adjacent area, and general area. The description shall include information on the characteristics of surface and ground waters within the general area, and any water which will flow into or receive discharges of water from the general area. The description shall be prepared according to Sections 12 through 16.
(2) (a) Information on hydrology including water quality and quantity, and geology related to hydrology of areas outside the proposed permit area and within the general area shall be provided by the cabinet, to the extent that this data is available from an appropriate federal or state agency.
(b) If this information is not available from such agencies, the applicant may gather and submit this information to the cabinet as part of the permit application.
(3) The use of modeling techniques may be included as part of the permit application, but the same surface and ground water information may be required for each site as when models are not used.

Section 13. Geology Information. (1) The geology description 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 coal seam to be mined.

(2) (a) 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 coal seam to be mined, to provide the following data in the description:
1. Location of subsurface water, if encountered;
2. Logs of drill holes showing the lithologic characteristics and thickness of each stratum and each coal seam;
3. Physical properties of each stratum within the overburden;
4. Chemical analyses of each stratum within the overburden down to and including the stratum immediately below the lowest coal seam 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 coal seam, including, but not limited to, an analysis of the total sulfur and pyritic sulfur content.
(b) If required by the cabinet, geologic information shall be collected and analyzed to greater depths within the proposed permit area, or for areas outside the proposed permit area to provide for evaluation of the impact of the proposed activities on the hydrologic balance.
(c) An applicant may request that the requirement for a statement of the results of test borings or core samplings required under paragraph (a) of this subsection be waived by the cabinet. The waiver may be granted only if the cabinet makes a written determination that the statement is unnecessary because other equivalent information is accessible to the cabinet in a satisfactory form.

Section 14. Ground Water Information. (1) The application shall contain a description of the ground water hydrology for the proposed permit area and adjacent area, including, at a minimum:
(a) The depth below the surface and the probable horizontal extent of the water table and aquifers;
(b) The lithology and thickness of the aquifers;
(c) Known uses of the water in the aquifers and water table; and
(d) The quality of ground water, if encountered.
(2) The application shall contain additional information which describes the recharge, storage, and discharge characteristics of aquifers and the quality and quantity of ground water, according to the parameters and in the detail required by the cabinet.

Section 15. Surface Water Information. (1) Surface water information shall be described, including the name of the stream or watershed which will receive water discharges, the location of all surface water bodies such as streams, lakes, ponds, and springs, the location of any water discharge into any surface body of water, and descriptions of surface drainage systems sufficient to identify the seasonal variations in water quantity and quality within the proposed permit area and adjacent areas.
(2) Surface water information shall include:
(a) Minimum, maximum, and average discharge conditions which identify critical low flow and peak discharge rates of streams sufficient to identify seasonal variations; and
(b) Water quality data to identify the characteristics of surface waters in, discharging into, or which will receive flows from surface or ground water from affected areas sufficient to identify seasonal variations. These data shall include, but not be limited to, the parameters listed in this

paragraph. The cabinet may add [or delete] parameters as appropriate to ensure collection of information which the cabinet determines is relevant [except that total dissolved solids (or specific conductance) and total suspended solids shall be required in every case].

1. Total dissolved solids in milligrams per liter or specific conductance in micromhos per centimeter;
2. Total suspended solids in milligrams per liter;
3. Acidity;
4. Alkalinity;
5. pH in standard units;
6. Total [and dissolved] iron in milligrams per liter;
7. Total [and dissolved] manganese in milligrams per liter; and
8. Sulfate in miligrams per liter.

Section 16. Alternative Water Supply Information. (1) The application shall identify the extent to which the proposed surface mining activities may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit area or adjacent areas for domestic, agricultural, industrial, or other legitimate use.

(2) If contamination, diminution, or interruption may result, then the description shall identify the alternative sources of water supply that could be developed to replace the existing sources.

Section 17. Climatological Information. (1) When requested by the cabinet, the application shall contain a statement of the climatological factors that are representative of the proposed permit area, including:

(a) The average seasonal precipitation;

(b) The average direction and velocity of prevailing winds; and

(c) Seasonal temperature ranges.

(2) The cabinet may request such additional data as deemed necessary to ensure compliance with the requirements of this chapter.

Section 18. Soil Resources Information. (1) If soil survey information for the proposed permit area is available from SCS, the application shall include such information as a part of the description of premining land use capability and productivity required by Section 22(1)(b).

(2) Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of analyses, trials, and tests as required under 405 KAR 16:050, Section 2.

Section 19. Vegetation Information. (1) The permit application shall, as required by the cabinet, contain a map that delineates existing vegetative types and a description of the plant communities within the proposed permit area and within any proposed reference area. This description shall include information adequate to predict the potential for reestablishing vegetation.

(2) When a map or aerial photograph is required, sufficient adjacent areas shall be included to allow evaluation of vegetation as important habitat for fish and wildlife.

Section 20. Fish and Wildlife Resources Information. Permit applications shall not be required under this section to contain a study of fish and wildlife unless and until federal regulations requiring such study have been promulgated and this regulation has been amended as necessary to be consistent with the corresponding federal regulations.

Section 21. Prime Farmland Investigation. (1) The applicant shall before making application investigate the proposed permit area to determine whether lands within the area may be prime farmland.

(2) Land shall not be considered prime farmland where the applicant can demonstrate one (1) of the following:

(a) The land has not been historically used as cropland;

(b) The slope of the land is ten (10) percent or greater;

(c) Other relevant factors exist, which would preclude the soils from being defined as prime farmland according to 7 CFR 657, such as a very rocky surface, or the land is flooded during the growing season more often than once in two (2) years, and the flooding has reduced crop yields; or

(d) On the basis of a soil survey of lands within the permit area, there are no soil map units that have been designated prime farmland by the U.S. SCS.

(3) If the investigation establishes that the lands are not prime farmland, the applicant shall submit with the permit application a request for a negative determination and results of the investigation which show that the land for which the negative determination is sought meets one (1) of the criteria of subsection (2) of this section.

(4) If the investigation indicates that lands within the proposed permit area may be prime farmlands, the applicant shall contact the U.S. SCS to determine if a soil survey exists for those lands and whether the applicable soil map units have been designated as prime farmlands. If no soil survey has been made for the lands within the proposed permit area, the applicant shall cause such a survey to be made.

(a) When a soil survey of lands within the proposed permit area contains soil map units which have been designated as prime farmlands, the applicant shall submit an application, in accordance with 405 KAR 8:050, Section 3 for such designated land.

(b) When a soil survey for lands within the proposed permit area contains soil map units which have not been designated as prime farmland after review by the U.S. SCS, the applicant shall submit with the permit application a request for negative determination under subsection (2)(d) of this section for such non-designated land.

Section 22. Land-use Information. (1) The application shall contain a statement of the condition, capability, and productivity of the land within the proposed permit area, including:

(a) A map and supporting narrative of the uses of the land existing at the time of the filing of the application. If the premining use of the land was changed within five (5) years before the date of application, the historic use of the land shall also be described.

(b) A narrative of land use capability and productivity, which analyzes the land-use description in conjunction with other environmental resources information required under this regulation. The narrative shall provide analyses of:

1. The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover and the hydrology of the proposed permit area; and
2. The productivity of the proposed permit area before mining, expressed as average yield of food, fiber, forage, or wood products from such lands obtained under high levels of management. The productivity shall be determin-

ed by yield data or estimates for similar sites based on current data from the U.S. Department of Agriculture, state agricultural universities or appropriate state natural resource or agricultural agencies.

(2) The application shall state whether the proposed permit area has been previously mined, and, if so, the following information, if available:

(a) The type of mining method used;

(b) The coal seams or other mineral strata mined;

(c) The extent of coal or other minerals removed;

(d) The approximate dates of past mining; and

(e) The uses of the land preceding mining.

(3) The application shall contain a description of the existing land uses and local government land use classifications, if any, of the proposed permit area and adjacent areas.

Section 23. Maps and Drawings. (1) The permit application shall include a map or maps showing:

(a) The boundaries of all subareas which are proposed to be affected over the estimated total life of the proposed surface mining activities, with a description of the size, sequence, and timing of the surface mining operations for which it is anticipated that additional permits will be sought;

(b) Any land within the proposed permit area and adjacent area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 USC 1276(a)), or which is within the boundaries of a wild river established pursuant to KRS Chapter 146;

(c) The boundaries of any public park and locations of any cultural or historical resources listed in or eligible for listing in the National Register of Historic Places and known archaeological sites within the permit area and adjacent areas;

(d) The locations of water supply intakes for current users of surface water within a hydrologic area defined by the cabinet, and those surface waters which will receive discharges from affected areas in the proposed permit area;

(e) All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area;

(f) The boundaries of land within the proposed permit area upon which the applicant has the legal right to enter and begin surface mining activities;

(g) The location of surface and subsurface manmade features within, passing through, or passing over the proposed permit area, including, but not limited to, major electric transmission lines, pipelines, and agricultural drainage tile fields;

(h) The location and boundaries of any proposed reference areas for determining the success of revegetation for the permit area;

(i) The location of all buildings on and within 1,000 feet of the proposed permit area, with identification of the current use of the buildings;

(j) Each public road located in or within 100 feet of the proposed permit area;

(k) Each public or private cemetery or Indian burial ground located in or within 100 feet of the proposed permit area;

(l) Other relevant information required by the cabinet.

(2) The application shall include drawings, cross sections, and maps showing:

(a) Elevations and locations of test borings and core samplings;

(b) Elevations and locations of monitoring stations or other sampling points in the permit area and adjacent areas used to gather data on water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the application, or which will be used for such data gathering during the term of the permit;

(c) Nature, depth, and thickness of the coal seams to be mined, any coal or rider seams above the seam to be mined, each stratum of the overburden, and the stratum immediately below the lowest coal seam to be mined, for the permit area;

(d) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;

(e) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit area and adjacent areas;

(f) Location and extent of subsurface water, if encountered, within the proposed permit area or adjacent areas;

(g) Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drainage patterns, and irrigation ditches within the proposed permit area and adjacent areas;

(h) Location and extent of existing or previously surface-mined areas within the proposed permit area;

(i) Location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent areas;

(j) Location and dimensions of existing areas of spoil, waste, and non-coal waste disposal, dams, embankments, other impoundments, and water treatment and air pollution control facilities within the proposed permit area;

(k) Sufficient slope measurements to adequately represent the existing land surface configuration of the proposed permit area, measured and recorded according to the following:

1. Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed or, where this is impractical, at locations and in a manner as specified by the cabinet.

2. Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances, or any other distance determined by the cabinet to be representative of the premining configuration of the land.

3. Slope measurements shall take in account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.

(3) The permit application shall include the map information specified in Sections 22(1)(a), 24(3), 24(4)(c), 24(4)(h), 27(1), 28(1), 31, 32, 33, 34, 38, and 405 KAR 8:010, Section 5(6).

(4) Maps, drawings, and cross-sections included in a permit application which are required by this section shall be prepared by or under the direction of and certified by a qualified registered professional engineer, and shall be updated as required by the cabinet. The qualified registered professional engineer shall not be required to certify true ownership of property.

Section 24. Mining and Reclamation Plan; General Requirements. (1) Each application shall contain a detailed

mining and reclamation plan (MRP) for the proposed permit area as set forth in this section through Section 38, showing how the applicant will comply with KRS Chapter 350 and Title 405, Chapters 16 through 20.

(2) Each application shall contain a description of the mining operations proposed to be conducted within the proposed permit area, including, at a minimum, the following:

(a) A narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations; and

(b) A narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of such facilities is approved as necessary for postmining land use as specified in 405 KAR 16:210):

1. Dams, embankments, and other impoundments;
2. Overburden and topsoil handling and storage areas and structures;
3. Coal removal, handling, storage, cleaning, and transportation areas and structures;
4. Spoil, coal processing waste, and non-coal waste removal, handling, storage, transportation, and disposal areas and structures;
5. Mine facilities; and
6. Water and air pollution control facilities.

(3) Each application shall contain plans and maps of the proposed permit area and adjacent areas as follows:

(a) The plans and maps shall show the lands proposed to be affected throughout the operation and any change in a facility or feature to be caused by the proposed operations, if the facility or feature was shown under Section 23.

(b) The following shall be shown for the proposed permit area:

1. Buildings, utility corridors and facilities to be used;
2. The area of land to be affected within the proposed permit area, according to the sequence of mining and reclamation;
3. Each area of land for which a performance bond or other equivalent guarantee will be posted under Title 405, Chapter 10;
4. Each coal storage, cleaning and loading area;
5. Each topsoil, spoil, coal waste, and non-coal waste storage area;
6. Each water diversion, collection, conveyance, treatment, storage, and discharge facility to be used;
7. Each air pollution collection and control facility;
8. Each source of waste and each waste disposal facility relating to coal processing or pollution control;
9. Each facility to be used to protect and enhance fish and wildlife and related environmental values;
10. Each explosive storage and handling facility; and
11. Location of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, in accordance with Section 34, and fill area for the disposal of excess spoil in accordance with Section 27.

(c) Plans, maps, and drawings required under this section shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer.

(4) Each plan shall contain the following information for the proposed permit area:

(a) A projected timetable for the completion of each major step in the mining and reclamation plan;

(b) A detailed estimate of the cost of reclamation of the proposed operations required to be covered by a performance bond under Title 405, Chapter 10, with supporting calculations for the estimates;

(c) A plan for backfilling, soil stabilization, compacting, and grading, with contour maps or cross-sections that show the anticipated final surface configuration of the proposed permit area, in accordance with 405 KAR 16:190;

(d) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of 405 KAR 16:050;

(e) A plan for revegetation as required in 405 KAR 16:200, including, but not limited to, descriptions of the: schedule of revegetation; species and amounts per acre of seeds and seedlings to be used; methods to be used in planting and seeding; mulching techniques; irrigation, if appropriate; pest and disease control measures, if any; and measures proposed to be used to determine the success of revegetation as required in 405 KAR 16:200, Section 6; and a soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation;

(f) A description of the measures to be used to maximize the use and conservation of the coal resource as required in 405 KAR 16:010, Section 2;

(g) A description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with 405 KAR 16:150, and 405 KAR 16:190, Section 3, and a description of the contingency plans which have been developed to preclude sustained combustion of such materials;

(h) A description, including appropriate maps and drawings, of the measures to be used to seal or manage mine openings, and to plug, case, or manage exploration holes, other bore holes, wells, and other openings within the proposed permit area, in accordance with 405 KAR 16:040; and

(i) A description of steps to be taken to comply with the requirements of the Clean Air Act (42 USC Sec. 7401 et seq.), the Clean Water Act (33 USC Sec. 1251 et seq.), and other applicable air and water quality laws and regulations and health and safety standards. This description shall, at a minimum, consist of identification of permits or approvals required by these laws and regulations which the applicant either has obtained, has applied for, or intends to apply for.

Section 25. MRP; Existing Structures. (1) Each application shall contain a description of each existing structure proposed to be used in connection with or to facilitate the surface coal mining and reclamation operation. The description shall include:

(a) Location;

(b) Plans of the structure which describe its current condition;

(c) Approximate dates on which construction of the existing structure was begun and completed; and

(d) A showing, including relevant monitoring data or other evidence, whether the structure meets the performance standards of Title 405, Chapters 16 through 20 or, if the structure does not meet those performance standards, a showing whether the structure meets the performance standards of the interim performance standards of Title 405, Chapter 1.

(2) Each application shall contain a compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate the

surface coal mining and reclamation operation. The compliance plan shall include:

(a) Design specifications for the modification or reconstruction of the structure to meet the performance standards of Title 405, Chapters 16 through 20;

(b) A construction schedule which shows dates for beginning and completing interim steps and final reconstruction;

(c) Provisions for monitoring the structure as required by the cabinet to ensure that the performance standards of Title 405, Chapters 16 through 20 are met; and

(d) A showing that the risk of harm to the environment or to public health or safety is not significant during the period of modification or reconstruction.

Section 26. MRP; Blasting. (1) Each application shall contain a blasting plan for the proposed permit area, explaining how the applicant intends to comply with the requirements of 405 KAR 16:120.

(2) The blasting plan shall also include:

(a) Types and approximate amounts of explosives to be used for each type of blasting operation to be conducted;

(b) Description of procedures and plans for recording and retention of information of the following during blasting:

1. Drilling patterns, including size, number, depths, and spacing of holes;
2. Charge and stemming of holes;
3. Types of detonators and detonation controls; and
4. Sequence and timing of firing holes.

(c) Description of blasting warning and site access control equipment and procedures;

(d) Description of types, capabilities, sensitivities, and locations of use of any blast monitoring equipment and procedures proposed to be used in lieu of the formula provided in 405 KAR 16:120;

(e) Description of plans for recording and reporting to the cabinet the results of preblasting surveys, if required; and

(f) Description of unavoidable hazardous conditions for which deviations from the blasting schedule may be needed under 405 KAR 16:120, Section 4(2).

Section 27. MRP; Disposal of Excess Spoil. (1) Each application shall contain descriptions, including appropriate maps and cross-section drawings, of the proposed disposal site and design of the spoil disposal structures according to 405 KAR 16:130. These plans shall describe the geotechnical investigation, design, construction, operation, maintenance, and removal if appropriate, of the site and structures.

(2) Each application shall contain the results of a geotechnical investigation of the proposed disposal site, including the following:

(a) The character of bedrock and any adverse geologic conditions in the disposal area;

(b) A survey identifying all springs, seepage, and groundwater flow observed or anticipated during wet periods in the area of the disposal site;

(c) An assessment of the potential effects of subsidence of the subsurface strata due to past and future mining operations;

(d) A technical description of the rock materials to be utilized in the construction of those disposal structures containing rock chimney cores or underlain by a rock drainage blanket; and

(e) A stability analysis including, but not limited to, strength parameters, pore pressures and long-term seepage conditions. These data shall be accompanied by a description of all engineering design assumptions and calculations and the alternatives considered in selecting the specific design specifications and methods.

(3) If, under 405 KAR 16:130, Section 1(9), rock toe buttresses or key way cuts are required, the application shall include the following:

(a) The number, location, and depth of borings or test pits which shall be determined with respect to the size of the spoil disposal structure and subsurface conditions; and

(b) Engineering specifications utilized to design the rock toe buttresses or key way cuts which shall be determined in accordance with subsection (2)(e) of this section.

Section 28. MRP; Transportation Facilities. (1) Each application shall contain a transportation facilities plan including a description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area. The description shall include a map, appropriate cross-sections, and the following:

(a) Specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure.

(b) A report of appropriate geotechnical analysis, where approval of the cabinet is required for alternative specifications, or for steep cut slopes under 405 KAR 16:220.

(c) A description of measures to be taken to obtain approval of the cabinet for alteration or relocation of a natural drainageway under 405 KAR 16:220.

(d) A description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for approval by the cabinet under 405 KAR 16:220.

(2) Each plan shall contain a general description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area.

Section 29. MRP; Surface Mining Near Underground Mining. For surface mining activities within the proposed permit area to be conducted within 500 feet of an underground mine, the application shall describe the measures to be used to comply with 405 KAR 16:010, Section 3.

Section 30. MRP; Protection of Public Parks and Historic Places. For any public parks or historic places that may be adversely affected by the proposed operations, each plan shall describe the measures to be used to minimize or prevent these impacts and to obtain approval of the cabinet and other agencies as required in 405 KAR 24:040, Section 2(4).

Section 31. MRP; Protection of Public Roads. Each application shall describe, with appropriate maps and drawings, the measures to be used to ensure that the interests of the public and landowners affected are protected if, under 405 KAR 24:040, Section 2(6), the applicant seeks to have the cabinet approve:

(1) Conducting the proposed surface mining activities within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or

(2) Relocating a public road.

Section 32. MRP; Protection of the Hydrologic Balance. (1) Each plan shall contain a description, with ap-

propriate maps and cross-section drawings, of the measures to be taken during and after the proposed surface mining activities, in accordance with Title 405, Chapter 16, to ensure the protection of:

(a) The quality of surface and groundwater systems, both within the proposed permit area and adjacent areas, from the adverse effects of the proposed surface mining activities;

(b) The rights of present users of surface and groundwater; and

(c) The quantity of surface and groundwater both within the proposed permit area and adjacent area from adverse effects of the proposed surface mining activities, or to provide alternative sources of water in accordance with Section 16 of this regulation and 405 KAR 16:060, Section 8, where the protection of quantity cannot be ensured.

(2) The description shall include:

(a) A plan for the control, in accordance with Title 405, Chapter 16, of surface and groundwater drainage into, through and out of the proposed permit area;

(b) A plan for the treatment, where required under Title 405, Chapters 16 through 20, of surface and groundwater drainage from the area to be disturbed by the proposed activities, and proposed quantitative limits on pollutants in discharges subject to 405 KAR 16:070, according to the more stringent of the following:

1. Title 405, Chapters 16 through 20; or
2. Other applicable state and federal laws.

(c) A plan for the restoration of the approximate recharge capacity of the permit area in accordance with 405 KAR 16:060, Section 6.

(d) A plan for the collection, recording, and reporting of ground and surface water quality and quantity data, according to 405 KAR 16:110.

(3) The description shall include a determination of the probable hydrologic consequences of the proposed surface mining activities, on the proposed permit area and adjacent area, with respect to the hydrologic regime and the quantity and quality of water in surface and groundwater systems under all seasonal conditions, including concentrations of dissolved solids, suspended solids, total iron, pH, acidity, alkalinity, total manganese, and other parameters required by the cabinet.

Section 33. MRP; Diversions. Each application shall contain descriptions, including maps and cross-sections, of stream channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with 405 KAR 16:080.

Section 34. MRP; Impoundments and Embankments. (1) General. Each application shall include detailed design plans for each proposed sedimentation pond, water impoundment, and coal processing waste bank, dam, or embankment within the proposed permit area. Each plan shall:

(a) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer;

(b) Contain a description, map, and appropriate cross-sections and drawings of the structure and its location;

(c) Contain all hydrologic and geologic information and computations necessary to demonstrate compliance with the design and performance standards of Title 405, Chapter 16; and all information utilized by the applicant to determine the probable hydrologic consequences of the mining operations under Section 32(3);

(d) Contain an assessment of the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred;

(e) Include any geotechnical investigation, design, and construction requirements for the structure;

(f) Describe the operation and maintenance requirements for each structure; and

(g) Describe the timetable and plans to remove each structure, if appropriate.

(2) Sedimentation ponds.

(a) Sedimentation ponds, whether temporary or permanent, shall be designed in compliance with the requirements of 405 KAR 16:090. Any sedimentation pond or earthen structure which will remain on the proposed permit area as a permanent water impoundment shall also be designed to comply with the requirements of 405 KAR 16:100.

(b) Each plan shall, at a minimum, comply with the requirements of the MSHA, 30 CFR 77.216-1 and 77.216-2.

(3) Permanent and temporary impoundments. Permanent and temporary impoundments shall be designed to comply with the requirements of 405 KAR 16:100. Each plan shall comply with the requirements of the MSHA, 30 CFR 77.216-1 and 77.216-2.

(4) Coal processing waste banks. Coal processing waste banks shall be designed to comply with the requirements of 405 KAR 16:140.

(5) Coal processing waste dams and embankments. Coal processing waste dams and embankments shall be designed to comply with the requirements of 405 KAR 16:160. Each plan shall comply with the requirements of MSHA, 30 CFR 77.216-1 and 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:

(a) The number, location, and depth of borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment, quantity or material to be impounded, and subsurface conditions.

(b) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site shall be considered.

(c) All springs, seepage, and groundwater flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan.

(d) Consideration shall be given to the possibility of mudflows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

(6) If the structure is twenty (20) feet or higher or impounds more than twenty (20) acre-feet, each plan under subsections (2), (3), and (5) of this section shall include a stability analysis of each structure. The stability analysis shall include, but not be limited to, strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

Section 35. MRP; Air Pollution Control. For all surface mining activities the application shall contain an air pollution control plan which includes the following:

(1) An air quality monitoring program, if required by the cabinet, to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices under subsection (2) of this section to comply with applicable federal and state air quality standards; and

(2) A plan for fugitive dust control practices, as required under 405 KAR 16:170.

Section 36. MRP; Fish and Wildlife. Permit applications shall not be required under this section to contain a fish and wildlife plan unless and until federal regulations requiring such plan have been promulgated and this regulation has been amended as necessary to be consistent with the corresponding federal regulations.

Section 37. MRP; Postmining Land Use. (1) Each plan shall contain a description of the proposed use, following reclamation, of the land within the proposed permit area, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land use policies and plans. This description shall explain:

(a) How the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use;

(b) Where a land use different from the pre-mining land use is proposed, all supporting documentation submitted for approval of the proposed use under 405 KAR 16:210;

(c) The consideration which has been given to making all of the proposed surface mining activities consistent with surface owner plans and applicable state and local land use plans and programs; and

(d) Where grazing is the proposed postmining land use, the detailed management practices necessary to properly implement the postmining use for grazing.

(2) The description shall be accompanied by a copy of the comments concerning the proposed use by the legal or equitable owner of record of the surface of the proposed permit area and the state and local government agencies, if any, which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

(3) Approval of the initial postmining land use plan pursuant to this section, shall not preclude subsequent consideration and approval of a revised postmining land use plan in accordance with the applicable requirements of this Title.

Section 38. MRP; Transportation on Public Roads. The application shall include or be accompanied by a public roads transportation plan and map (at least the scale and detail of the separate county maps published by the Kentucky Transportation Cabinet) which shall set forth the portions of the public road system, if any, over which the applicant proposes to transport coal extracted in the surface coal mining operation.

(1) The plan shall specify the legal weight limits for each portion of any such road or bridge over which the applicant proposes to transport coal.

(2) The plan shall include any proposal by the applicant to obtain a special permit pursuant to the provisions of KRS 189.271 to exceed the weight limits on any road or bridge.

(3) The plan shall contain a certification by a duly authorized official of the Kentucky Transportation Cabinet attesting the accuracy of the plan in regard to the locations and identities of roads and bridges on the public road system and the accuracy of the specifications of weight limits on such roads and bridges.

JACKIE A. SWIGART, Secretary
ADOPTED: October 26, 1983
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: October 31, 1983 at 4:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Elmore C. Grim, Commissioner, Department for Surface Mining Reclamation and Enforcement, Natural Resources and Environmental Protection Cabinet, 3rd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

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

405 KAR 8:040. Underground coal mining permits.

RELATES TO: KRS 350.060, 350.151
PURSUANT TO: KRS 13.082, 350.020, 350.028, 350.060, 350.151, 350.465
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to permits for underground mining activities. This regulation recognizes the distinct differences between surface mining activities and underground mining activities. This regulation specifies certain information to be shown by the applicant related to legal and compliance status, environmental resources, and his mining and reclamation plan. This regulation further specifies certain showings to be made by the applicant to obtain a permit.

Section 1. General. (1) Applicability.

(a) This regulation applies to any person who applies for a permit to conduct underground mining activities.

(b) The requirements set forth in this regulation specifically for applications for permits to conduct underground mining activities, are in addition to the requirements applicable to all applications for permits to conduct surface coal mining and reclamation operations as set forth in 405 KAR 8:010.

(c) This regulation sets forth information required to be contained in applications for permits to conduct underground mining activities, including:

1. Legal, financial, compliance, and related information;
2. Environmental resources information; and
3. Mining and reclamation plan information.

(2) The permit applicant shall provide to the cabinet in the application all the information required by this regulation.

Section 2. Identification of Interests. (1) Each application shall contain the names and addresses of:

(a) The permit applicant, including his or her telephone number;

(b) Every legal or equitable owner of record of the areas to be affected by surface operations and facilities and every legal or equitable owner of record of the coal to be mined;

(c) The holders of record of any leasehold interest in areas to be affected by surface operations or facilities and

the holders of record of any leasehold interest in the coal to be mined;

(d) Any purchaser of record under a real estate contract of areas to be affected by surface operations and facilities and any purchaser of record under a real estate contract of the coal to be mined;

(e) The operator, if different from the applicant, who will conduct underground coal mining activities on behalf of the applicant, including his or her telephone number; and

(f) The resident agent of the applicant who will accept service of process, including his or her telephone number.

(2) If any owner, holder, purchaser, or operator, identified under subsection (1) of this section, is a business entity other than a single proprietor, the application shall contain the names and addresses of their respective principals, officers, and resident agents.

(3) Each application shall contain a statement of whether the applicant is a corporation, partnership, single proprietorship, association, or other business entity. For businesses other than single proprietorships, the application shall contain the following information where applicable:

(a) Names and addresses of every officer, partner, director, or other person performing a function similar to a director of the applicant;

(b) Name and address of any person who is a principal shareholder of the applicant;

(c) Names under which the applicant, partner, or principal shareholder previously operated a surface coal mining operation in the United States within the five (5) years preceding the date of application;

(d) If a partnership, a certified copy of the partnership agreement; and

(e) If a domestic corporation, a certified copy of the certificate of incorporation from the Secretary of State, and if a foreign corporation, a certified copy of the Certificate of Authority to conduct business within the Commonwealth of Kentucky.

(4) Each application shall contain a statement of any current or previous coal mining permits in the United States held by the applicant during the five (5) years preceding the application, and by any person identified in subsection (3)(c) of this section and of any pending permit application to conduct surface coal mining and reclamation operations in the United States. The information shall be listed by permit or application number and identify the regulatory authority for each of those coal mining operations.

(5) Each application shall contain the names and addresses of the owners of record of all surface and subsurface areas contiguous to any part of the proposed permit area.

(6) Each application shall contain the name of the proposed mine and all MSHA identification numbers that have been assigned for the mine and all sections.

(7) Each application shall contain proof, such as a power of attorney or resolution of the board of directors, that the individual signing the application has the power to represent the applicant in the permit matter.

(8) Each application shall contain a statement of all lands, interests in lands, options, or pending bids on interests held or made by the applicant for lands which are contiguous to the area to be covered by the permit.

Section 3. Compliance Information. (1) Each application shall contain: a statement of whether the applicant, any subsidiary, affiliate, or persons controlled by or under common control with the applicant has:

(a) Had a coal mining permit of the United States or any state suspended or revoked in the last five (5) years; or

(b) Forfeited a coal mining performance bond or similar security deposited in lieu of bond.

(2) If any such suspension, revocation, or forfeiture, as described in subsection (1) of this section, has occurred, the application shall contain a statement of the facts involved, including:

(a) Identification number and date of issuance of the permit, and date and amount of bond or similar security;

(b) Identification of the authority that suspended or revoked a permit or forfeited a bond and the stated reasons for that action;

(c) The current status of the permit, bond, or similar security involved;

(d) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

(e) The current status of these proceedings.

(3) Each application shall contain a list of each violation notice pertaining to SMCRA (PL 95-87) or KRS Chapter 350 and regulations promulgated pursuant thereto, received by the applicant in connection with any surface coal mining operation during the three (3) year period before the application date. Each application shall also contain a list of each violation notice pertaining to air or water environmental protection received by the applicant in connection with any surface coal mining operation during the three (3) year period before the application date, for violations of any law, rule, or regulation of the United States, or of any state law, rule, or regulation enacted pursuant to federal law, rule or regulation. The application shall also contain a statement regarding each violation notice, including:

(a) The date of issuance and identity of the issuing regulatory authority, department, or agency;

(b) A brief description of the particular violation alleged in the notice;

(c) The final resolution of each violation notice, if any;

(d) For each violation notice that has not been finally resolved:

1. The date, location, and type of any administrative or judicial proceedings initiated concerning the fact of the violation, including, but not limited to, proceedings initiated by the applicant to obtain administrative or judicial review of the fact of the violation and the current status of the proceedings; and

2. The actions, if any, taken or being taken by the applicant to abate the violation.

(4) Upon request by a small operator as defined in KRS 350.450(4)(d), the cabinet will provide to the small operator, with regard to persons under subsection (1) of this section which are identified by the small operator, the compliance information required by this section regarding suspension and revocation of permits and forfeiture of bonds under KRS Chapter 350, and information pertaining to violations of KRS Chapter 350 and regulations promulgated thereunder.

Section 4. Right of Entry and Right to Mine. (1) Each application shall contain a description of the documents upon which the applicant bases his or her legal right to enter and begin underground mining activities in the permit area and whether that right is the subject of pending litigation. The description shall identify those documents

by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

(2) For underground mining activities where the associated surface operations involve the surface mining of coal and the private mineral estate to be mined has been severed from the private surface estate, the application shall also provide, for lands to be affected by those operations within the permit area, a copy of the document of conveyance that grants or reserves the right to extract the coal by surface mining methods.

(3) Nothing in this section shall be construed to afford the cabinet the authority to adjudicate property title disputes.

Section 5. Relationship to Areas Designated Unsuitable for Mining. (1) Each application shall contain a statement of available information on whether the proposed permit area is within an area designated unsuitable for underground mining activities under Title 405, Chapter 24, or designated unsuitable for surface mining activities if the proposed underground mining activities also involve surface mining of coal, or under study for designation in an administrative proceeding initiated under that chapter.

(2) If an applicant claims the exemption in 405 KAR 8:010, Section 14(4)(b), the application shall contain information supporting the applicant's assertion that it made substantial legal and financial commitments before January 4, 1977, concerning the proposed underground mining activities.

(3) If an applicant proposes to conduct or locate surface operations or facilities within 300 feet of an occupied dwelling, the application shall include the waiver of the owner of the dwelling as required in 405 KAR 24:040, Section 2(5).

Section 6. Permit Term Information. (1) Each application shall state the anticipated or actual starting and termination date of each phase of the underground mining activities and the anticipated number of acres of surface lands to be affected, and the horizontal and vertical extent of proposed underground mine workings including the surface acreage overlying such underground workings, for each phase of mining and over the total life of the permit.

(2) If the applicant proposes to conduct the underground mining activities in excess of five (5) years, the application shall contain the information needed for the showing required under 405 KAR 8:010, Section 17(1).

Section 7. Personal Injury and Property Damage Insurance Information. Each application shall contain a certificate of liability insurance according to 405 KAR 10:030, Section 4.

Section 8. Identification of Other Licenses and Permits. Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed underground mining activities. This list shall identify each license and permit by:

(1) Type of permit or license;

(2) Name and address of issuing authority;

(3) Identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses; and

(4) If a decision has been made, the date of approval or disapproval by each issuing authority.

Section 9. Identification of Location of Public Office for Filing of Application. Each application shall identify, by name and address, the appropriate regional office of the cabinet where the applicant will file a copy of the complete application for public inspection under 405 KAR 8:010, Section 8(8).

Section 10. Newspaper Advertisement and Proof of Publication. A copy of the newspaper advertisement of the application and proof of publication of the advertisement shall be filed with the cabinet and made a part of the complete application not later than fifteen (15) days after the last date of publication required under 405 KAR 8:010, Section 8(2).

Section 11. Environmental Resource Information. (1) Each permit application shall include a description of the existing, premining environmental resources either within the areas affected by proposed surface operations and facilities, or within the proposed permit area and adjacent areas, as required by Sections 11 through 23. The descriptions required by this regulation may, where appropriate, be based upon published texts or other public documents together with reasonable extrapolations from specific data available from existing permit areas or other appropriate areas.

(2) Each application shall describe and identify the nature of cultural and historic resources listed in or eligible for listing in the National Register of Historic Places and known archaeological sites within the proposed permit and adjacent areas. The description shall be based on all available information, including, but not limited to, data of state and local archaeological, historic, and cultural preservation agencies.

Section 12. General Requirements for Geology and Hydrology. (1) Each application shall contain a description of the geology and hydrology of lands within the proposed permit area, adjacent area, and general area. The description shall include information on the characteristics of surface and ground waters within the general area, and any water which will flow into or receive discharges of water from the general area. The description shall be prepared according to Sections 12 through 16.

(2) (a) Information on hydrology including water quality and quantity, and geology related to hydrology of areas outside the proposed permit area and within the general area shall be provided by the cabinet, to the extent that this data is available from an appropriate federal or state agency.

(b) If this information is not available from such agencies, the applicant may gather and submit this information to the cabinet as part of the permit application.

(3) The use of modeling techniques may be included as part of the permit application, but the same surface and ground water information may be required for each site as when models are not used.

Section 13. Geology Information. (1) The geology description shall include a general statement of the geology within the proposed permit area and adjacent areas, down to and including the first aquifer to be affected below the lowest coal seam to be mined. The geology for areas proposed to be affected by surface operations and facilities, those surface lands overlying coal to be mined, and the coal to be mined shall be separately described, as follows:

(a) Areas affected by surface operations or facilities.

Geology of all strata to be affected by surface operations or facilities shall be described; and where any coal seam is to be extracted by surface operations, geology of all strata down to and including the stratum immediately below the coal seam shall be described, including the following data resulting from analyses of test borings, core samplings, or outcrop samples:

1. The location of areas where subsurface water will be exposed at the face-up area;
2. The logs of drill holes showing the lithologic characteristics of the strata to be affected;
3. The physical properties of each stratum within the overburden; and
4. Chemical analyses of each stratum to be affected, including the stratum immediately below the lowest coal seam to be mined, to identify, at a minimum, those horizons which contain potential acid-forming, toxic-forming, or alkalinity-producing materials.

(b) Areas underlain by coal seams to be mined. The geology for all surface lands within the proposed permit area which are underlain by the coal seam to be extracted and the geology of the coal seam itself shall be described, including:

1. Location of subsurface water, if encountered;
2. The depth, classification, and geologic structure of the overburden;
3. Pyritic content and potential acidity or alkalinity of the stratum immediately above and below the coal seam to be mined and the clay content of the stratum immediately below the coal seam to be mined; and
4. Total sulfur and pyritic sulfur content of the coal seam.

(2) An applicant may request that the requirements of subsection (1)(a) of this section be waived by the cabinet. The waiver may be granted only if the cabinet makes a written determination that the information is unnecessary because other equivalent information is accessible to the cabinet in a satisfactory form.

Section 14. Ground Water Information. (1) The application shall contain a description of the ground water hydrology for the proposed permit and adjacent area, including, at a minimum:

(a) The depth below the surface and the probable horizontal extent of the water table and aquifers;

(b) The lithology and thickness of the aquifers;

(c) The uses of the water in the aquifers and water table; and

(d) The quality of ground water, if encountered.

(2) The application shall contain additional information which describes the recharge, storage, and discharge characteristics of aquifers and the quality and quantity of ground water, according to the parameters and in the detail required by the cabinet.

Section 15. Surface Water Information. (1) Surface water information shall be described, including the name of the stream or watershed which will receive water discharges, the locations of any water discharge into any surface body of water, and descriptions of surface drainage systems sufficient to identify, in detail, the seasonal variations in water quantity and quality within areas affected by surface operations and facilities and adjacent areas. The description shall also include the location of all surface water bodies such as streams, lakes, ponds, and springs, within the proposed permit area and adjacent area.

(2) Surface water information for areas affected by surface operations and facilities and adjacent areas shall include:

(a) Minimum, maximum, and average discharge conditions, which identify critical low flows and peak discharge rates of streams sufficient to identify seasonal variations; and

(b) Water quality data to identify the characteristics of surface waters in, discharging into, or which will receive flows of surface or ground water from the affected area sufficient to identify seasonal variations. These data shall include, but not be limited to, the parameters listed in this paragraph. The cabinet may add [or delete] parameters as appropriate to ensure collection of information which the cabinet determines is relevant [, except that, total dissolved solids (or specific conductance) and total suspended solids shall be required in every case].

1. Total dissolved solids in milligrams per liter or specific conductance in micromhos per centimeter;
2. Total suspended solids in milligrams per liter;
3. Acidity;
4. Alkalinity;
5. pH in standards units;
6. Total [and dissolved] iron in milligrams per liter;
7. Total [and dissolved] manganese in milligrams per liter; and
8. Sulfate in milligrams per liter.

Section 16. Alternative Water Supply Information. (1) The application shall identify the extent to which the proposed underground mining activities may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit area or adjacent area for domestic, agricultural, industrial, or other legitimate use.

(2) If contamination, diminution, or interruption may result, then the description shall identify the alternative sources of water supply that could be developed to replace the existing sources.

Section 17. Climatological Information. (1) When requested by the cabinet, the application shall contain a statement of the climatological factors that are representative of the proposed permit area, including:

(a) The average seasonal precipitation;

(b) The average direction and velocity of prevailing winds; and

(c) Seasonal temperature ranges.

(2) The cabinet may request such additional data as deemed necessary to ensure compliance with the requirements of this chapter.

Section 18. Soil Resources Information. (1) If soil survey information for the proposed permit area is available from SCS, the application shall include such information as a part of the description of premining land use capability and productivity required by Section 22(1)(b).

(2) Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of the analyses, trials and tests required under 405 KAR 18:050, Section 2.

Section 19. Vegetation Information. (1) The permit application shall, as required by the cabinet, contain a map that delineates existing vegetative types and a description of the plant communities within the area affected by sur-

face operations and facilities and within any proposed reference area. This description shall include information adequate to predict the potential for reestablishing vegetation.

(2) When a map or aerial photograph is required, sufficient adjacent areas shall be included to allow evaluation of vegetation as important habitat for fish and wildlife.

Section 20. Fish and Wildlife Resources Information. Permit applications shall not be required under this section to contain a study of fish and wildlife unless and until federal regulations requiring such study have been promulgated and this regulation has been amended as necessary to be consistent with the corresponding federal regulations.

Section 21. Prime Farmland Investigation. (1) The applicant shall conduct a pre-application investigation of the area proposed to be affected by surface operations or facilities to determine whether lands within the area may be prime farmland.

(2) Land shall not be considered prime farmland where the applicant can demonstrate one (1) or more of the following:

(a) The land has not been historically used as cropland;

(b) The slope of the land is ten (10) percent or greater;

(c) Other relevant factors exist which would preclude the soils from being defined as prime farmland according to 7 CFR 657, such as a very rocky surface, or the land is frequently flooded during the growing season more often than once in two (2) years and the flooding has reduced crop yields; or

(d) On the basis of a soil survey of the lands within the permit area there are no soil map units that have been designated prime farmland by the U.S. SCS.

(3) If the investigation establishes that the lands are not prime farmland, the applicant shall submit with the permit application a request for a negative determination and results of the investigation which show that the land for which the negative determination is sought meets one (1) or more of the criteria in subsection (2) of this section.

(4) If the investigation indicates that lands within the proposed area to be affected by surface operations and facilities may be prime farmlands, the applicant shall contact the U.S. SCS to determine if these lands have a soil survey and whether the applicable soil map units have been designated prime farmlands. If no such soil survey has been made for these lands, the applicant shall cause such a survey to be made.

(a) When a soil survey as required by this section contains soil map units which have been designated as prime farmlands, the applicant shall submit an application, in accordance with 405 KAR 8:050, Section 3 for such designated land.

(b) When a soil survey as required by this section contains soil map units which have not been designated as prime farmland, after review by the U.S. SCS, the applicant shall submit with the permit application a request for negative determination under subsection (2)(d) of this section for such non-designated land.

Section 22. Land-use Information. (1) The application shall contain a statement of the condition, capability and productivity of the land which will be affected by surface operations and facilities within the proposed permit area, including:

(a) A map and supporting narrative of the uses of the land existing at the time of the filing of the application. If the premining use of the land was changed within five (5) years before the date of application, the historic use of the land shall also be described.

(b) A narrative of land capability and productivity, which analyzes the land-use description in conjunction with other environmental resources information required under this regulation. The narrative shall provide analyses of:

1. The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover, and the hydrology of the area proposed to be affected by surface operations or facilities; and

2. The productivity of the area proposed to be affected by surface operations and facilities before mining, expressed as average yield of food, fiber, forage, or wood products from such lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the U.S. Department of Agriculture, state agricultural universities or appropriate state natural resources or agricultural agencies.

(2) The application shall state whether the proposed permit area has been previously mined, and, if so, the following information, if available:

(a) The type of mining method used;

(b) The coal seams or other mineral strata mined;

(c) The extent of coal or other minerals removed;

(d) The approximate dates of past mining; and

(e) The uses of the land preceding mining.

(3) The application shall contain a description of the existing land uses and local government land use classifications, if any, of the proposed permit area and adjacent areas.

Section 23. Maps and Drawings. (1) The permit application shall include maps showing:

(a) The boundaries of all subareas which are proposed to be affected over the estimated total life of the underground mining activities, with a description of size, sequence and timing of the underground mining activities for which it is anticipated that additional permits will be sought;

(b) Any land within the proposed permit area and adjacent area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 USC 1276(a)), or which is within the boundaries of a wild river established pursuant to KRS Chapter 146;

(c) The boundaries of any public park and locations of any cultural or historical resources listed in or eligible for listing in the National Register of Historic Places and known archaeological sites within the permit area and adjacent areas;

(d) The locations of water supply intakes for current users of surface waters within a hydrologic area defined by the cabinet, and those surface waters which will receive discharges from affected areas in the proposed permit area;

(e) All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area;

(f) The boundaries of land within the proposed permit area upon which, or under which, the applicant has the legal right to conduct underground mining activities. In addition, the map shall indicate the boundaries of that por-

tion of the permit area which the applicant has the legal right to enter upon the surface to conduct surface operations.

(g) The location of surface and subsurface manmade features within, passing through, or passing over the proposed permit area, including, but not limited to, major electric transmission lines, pipelines, and agricultural drainage tile fields;

(h) The location and boundaries of any proposed reference areas for determining the success of revegetation for the permit area;

(i) The location of all buildings in and within 1000 feet of the proposed permit area, with identification of the current use of the buildings;

(j) Each public road located in or within 100 feet of the proposed permit area;

(k) Each public or private cemetery or Indian burial ground located in or within 100 feet of the proposed permit area;

(l) Other relevant information required by the cabinet.

(2) The application shall include drawings, cross-sections, and maps showing:

(a) Elevations and locations of test borings and core samplings;

(b) Elevations and locations of monitoring stations or other sampling points in the permit area and adjacent areas used to gather data on water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the application or which will be used for such data gathering during the term of the permit;

(c) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;

(d) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit area and adjacent areas;

(e) Location and extent of subsurface water, if encountered, within the proposed permit area or adjacent areas;

(f) Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drainage patterns, and irrigation ditches within the proposed permit area and adjacent areas;

(g) Location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent areas;

(h) Location and dimensions of existing coal refuse disposal areas and dams, or other impoundments within the proposed permit area;

(i) Sufficient slope measurements to adequately represent the existing land surface configuration of the area to be affected by surface operations and facilities, measured and recorded according to the following:

1. Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed or, where this is impractical, at locations and in a manner as specified by the cabinet.

2. Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances, or any other distance determined by the cabinet to be representative of the premining configuration of the land.

3. Slope measurements shall take into account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.

(3) The permit application shall include the map information specified in Sections 22(1)(a), 24(3), 24(4)(c), 24(4)(h), 27(1), 28, 31, 32, 33, 34, 38 and 405 KAR 8:010, Section 5(6).

(4) Maps, drawings and cross-sections included in a permit application and required by this section shall be prepared by, or under the direction of and certified by a qualified registered professional engineer, and shall be updated as required by the cabinet. The qualified registered professional engineer shall not be required to certify the true ownership of property.

Section 24. Mining and Reclamation Plan; General Requirements. (1) Each application shall contain a detailed mining and reclamation plan (MRP) for the proposed permit area as set forth in this section through Section 38, showing how the applicant will comply with KRS Chapter 350 and Title 405, Chapters 16 through 20.

(2) Each application shall contain a description of the mining operations proposed to be conducted within the proposed permit area, including, at a minimum, the following:

(a) A narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations; and

(b) A narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of such facility is approved as necessary for postmining land use as specified in 405 KAR 18:220):

1. Dams, embankments, and other impoundments;
2. Overburden and topsoil handling and storage areas and structures;
3. Coal removal, handling, storage, cleaning, and transportation areas and structures;
4. Spoil, coal processing waste, mine development waste, and non-coal waste removal, handling, storage, transportation, and disposal areas and structures;
5. Mine facilities; and
6. Water pollution control facilites.

(3) Each application shall contain plans and maps of the proposed permit area and adjacent areas as follows:

(a) The plans, maps and drawings shall show the underground mining activities to be conducted, the lands to be affected throughout the operation, and any change in a facility or feature to be caused by the proposed operations, if the facility or feature was shown under Section 23.

(b) The following shall be shown for the proposed permit area:

1. Buildings, utility corridors, and facilities to be used;
2. The area of land to be affected within the proposed permit area, according to the sequence of mining and reclamation;
3. Each area of land for which a performance bond or other equivalent guarantee will be posted under Title 405, Chapter 10;
4. Each coal storage, cleaning and loading area;
5. Each topsoil, spoil, coal preparation waste, underground development waste, and non-coal waste storage area;
6. Each water diversion, collection, conveyance, treatment, storage and discharge facility to be used;
7. Each source of waste and each waste disposal facility relating to coal processing or pollution control;
8. Each facility to be used to protect and enhance fish and wildlife related environmental values;

9. Each explosive storage and handling facility;
10. Location of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, in accordance with Section 34, and disposal areas for underground development waste and excess spoil, in accordance with Section 28;
11. Cross-sections, at locations as required by the cabinet, of the anticipated final surface configuration to be achieved for the affected areas;
12. Location of each water and any subsidence monitoring point;
13. Location of each facility that will remain on the proposed permit area as a permanent feature, after the completion of underground mining activities.

(c) Plans, maps and drawings required under this section shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer.

(4) Each plan shall contain the following information for the proposed permit area:

(a) A projected timetable for the completion of each major step in the mining and reclamation plan;

(b) A detailed estimate of the cost of the reclamation of the proposed operations required to be covered by a performance bond under Title 405, Chapter 10, with supporting calculations for the estimates;

(c) A plan for backfilling, soil stabilization, compacting and grading, with contour maps or cross-sections that show the anticipated final surface configuration of the proposed permit area, in accordance with 405 KAR 18:190;

(d) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of 405 KAR 18:050;

(e) A plan for revegetation as required in 405 KAR 18:200, including, but not limited to, descriptions of the: schedule of revegetation; species and amounts per acre of seeds and seedlings to be used; methods to be used in planting and seeding; mulching techniques; irrigation, if appropriate, and pest and disease control measures, if any; measures proposed to be used to determine the success of revegetation as required in 405 KAR 18:200, Section 6; and a soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation;

(f) A description of the measures to be used to maximize the use and conservation of the coal resource as required in 405 KAR 18:010, Section 2;

(g) A description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with 405 KAR 18:150 and 405 KAR 18:190, Section 3 and a description of the contingency plans which have been developed to preclude sustained combustion of such materials;

(h) A description, including appropriate drawings and maps, of the measures to be used to seal or manage mine openings, and to plug, case or manage exploration holes, other bore holes, wells and other openings within the proposed permit area, in accordance with 405 KAR 18:040; and

(i) A description of steps to be taken to comply with the requirements of the Clean Air Act (42 USC Sec. 7401 et seq.), the Clean Water Act (33 USC Sec. 1251 et seq.), and other applicable air and water quality laws and regulations and health and safety standards. This description shall, at a minimum, consist of identification of the permits or approvals required by these laws and regulations which the applicant has obtained, has applied for, or intends to apply for.

Section 25. MRP; Existing Structures. (1) Each application shall contain a description of each existing structure proposed to be used in connection with or to facilitate the surface coal mining and reclamation operation. The description shall include:

(a) Location;

(b) Plans of the structure which describe its current condition;

(c) Approximate dates on which construction of the existing structure was begun and completed; and

(d) A showing, including relevant monitoring data or other evidence, whether the structure meets the performance standards of Title 405, Chapters 16 through 20, or if the structure does not meet those performance standards, a showing whether the structure meets the interim performance standards of Title 405, Chapter 3.

(2) Each application shall contain a compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate the surface coal mining and reclamation operation. The compliance plan shall include:

(a) Design specifications for the modification or reconstruction of the structure to meet the performance standards of Title 405, Chapters 16 through 20;

(b) A construction schedule which shows dates for beginning and completing interim steps and final reconstruction;

(c) Provisions for monitoring the structure as required by the cabinet to ensure that the performance standards of Title 405, Chapters 16 through 20 are met; and

(d) A showing that the risk of harm to the environment or to public health or safety is not significant during the period of modification or reconstruction.

Section 26. MRP; Subsidence Control. (1) The application shall include a survey which shall show whether structures or renewable resource lands exist within the proposed permit area and adjacent areas and whether subsidence, if it occurred could cause material damage or diminution of reasonably foreseeable use of such structures or renewable resource lands.

(2) If the survey shows that no such structures or renewable resource lands exist, or no such material damage or diminution could be caused in the event of mine subsidence, and if the cabinet agrees with such conclusion, no further information need be provided in the application under this section.

(3) In the event the survey shows such structures or renewable resource lands exist, or that subsidence could cause material damage or diminution of value or foreseeable use of the land, or if the cabinet determines that such damage or diminution could occur, the application shall include a subsidence control plan which shall contain the following information:

(a) A detailed description of the mining method and other measures to be taken which may affect subsidence, including:

1. The technique of coal removal, such as longwall mining, room and pillar with pillar removal, hydraulic mining or other methods; and
2. The extent, if any, to which planned and controlled subsidence is intended.

(b) A detailed description of the measures to be taken to prevent subsidence from causing material damage or

lessening the value of reasonably foreseeable use of the surface, including:

1. The anticipated effects of planned subsidence, if any;

2. Measures, if any, to be taken in the mine to reduce the likelihood of subsidence, including such measures as backstowing or backfilling of voids; leaving support pillars of coal; and areas in which no coal removal is planned, including a description of the overlying area to be protected by leaving coal in place.

3. Measures to be taken on the surface to prevent material damage or lessening of the value or reasonably foreseeable use of the surface including such measures as reinforcement of sensitive structures or features; installation of footers designed to reduce damage caused by movement; change of location of pipelines, utility lines or other features; relocation of movable improvements to sites outside the angle-of-draw; and monitoring, if any, to determine the commencement and degree of subsidence so that other appropriate measures can be taken to prevent or reduce material damage.

(c) A detailed description of the measures to be taken to mitigate the effects of any material damage or diminution of value or foreseeable use of lands which may occur, including one (1) or more of the following as required by 405 KAR 18:210, Section 3:

1. Restoration or rehabilitation of structures and features, including approximate land-surface contours, to premining condition;

2. Replacement of structures destroyed by subsidence;

3. Purchase of structures prior to mining and restoration of the land after subsidence to condition capable of supporting and suitable for the structures and foreseeable land uses;

4. Purchase of non-cancellable insurance policies payable to the surface owner in the full amount of the possible material damage or other comparable measures.

(d) A detailed description of measures to be taken to determine the degree of material damage or diminution of value or foreseeable use of the surface, including such measures as:

1. The results of pre-subsidence surveys of all structures and surface features which might be materially damaged by subsidence;

2. Monitoring, if any, proposed to measure deformations near specified structures or features or otherwise as appropriate for the operation.

Section 27. MRP; Return of Coal Processing Waste to Abandoned Underground Workings. (1) Each plan shall describe the design, operation and maintenance of any proposed use of abandoned underground workings for coal processing waste disposal, including flow diagrams and any other necessary drawings and maps, for the approval of the cabinet and MSHA under 405 KAR 18:140, Section 7.

(2) Each plan shall describe the source and quality of waste to be stowed, area to be backfilled, percent of the mine void to be filled, method of constructing underground retaining walls, influence of the backfilling operation on active underground mine operations, surface area to be supported by the backfill, and the anticipated occurrence of surface effects following backfilling.

(3) The applicant shall describe the source of the hydraulic transport mediums, method of dewatering the placed backfill, retainment of water underground, treatment of water if released to surface streams, and the effect on the hydrologic regime.

(4) The plan shall describe each permanent monitoring well to be located in the backfilled area, the stratum underlying the mined coal, and gradient from the backfilled area.

(5) The requirements of this section shall also apply to pneumatic backfilling operations, except where the operations are exempted by the cabinet from requirements specifying hydrologic monitoring.

Section 28. MRP; Underground Development Waste. Each plan shall contain descriptions, including appropriate maps and cross-section drawings of the proposed disposal methods and sites for placing underground development waste and excess spoil generated at surface areas affected by surface operations and facilities, according to 405 KAR 18:130. Each plan shall describe the geotechnical investigation, design, construction, operation, maintenance and removal, if appropriate, of the structures and be prepared according to 405 KAR 8:030, Section 27.

Section 29. MRP; Transportation Facilities. (1) Each application shall contain a description of each road, conveyor, and rail system to be constructed, used, or maintained within the proposed permit area. The description shall include a map, appropriate cross-sections, and the following:

(a) Specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure.

(b) A report of appropriate geotechnical analysis, where approval of the cabinet is required for alternative specifications or for steep cut slopes under 405 KAR 18:230.

(c) A description of each measure to be taken to obtain approval of the cabinet for alteration or relocation of a natural drainageway under 405 KAR 18:230.

(d) A description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for approval by the cabinet under 405 KAR 18:230.

(2) Each plan shall contain a general description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area.

Section 30. MRP; Protection of Public Parks and Historic Places. For any public parks or historic places that may be adversely affected by the proposed operation, each plan shall describe the measures to be used to minimize or prevent these impacts and to obtain approval of the cabinet and other agencies as required in 405 KAR 24:040, Section 2(4).

Section 31. MRP; Relocation or Use of Public Roads. Each application shall describe, with appropriate maps and drawings the measures to be used to ensure that the interests of the public and landowners affected are protected if, under 405 KAR 24:040, Section 2(6), the applicant seeks to have the cabinet approve:

(1) Conducting the proposed underground mining activities within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or

(2) Relocating a public road.

Section 32. MRP; Protection of Hydrologic Balance. (1) Each plan shall contain a description, with appropriate maps and drawings, of the measures to be taken during and after the proposed underground mining activities, in

accordance with Title 405, Chapter 18, to ensure the protection of:

(a) The quality of surface and ground water, both within the proposed permit area and adjacent areas, from adverse effects of the proposed underground mining activities;

(b) The rights of present users to surface and ground water;

(c) The quantity of surface and ground water both within the proposed permit area and adjacent area from adverse effects of the proposed underground mining activities;

(d) Water quality by locating openings for mines in accordance with 405 KAR 18:060, Section 5.

(2) The description shall include:

(a) A plan for the control, in accordance with Title 405, Chapter 18, of surface and ground water drainage into, through, and out of the proposed permit area;

(b) A plan for the treatment, where required under Title 405, Chapters 16 through 20, and surface and ground water drainage from the area to be affected by the proposed activities, and proposed quantitative limits on pollutants in discharges subject to 405 KAR 18:070, according to the more stringent of the following:

1. Title 405, Chapters 16 through 20; or
2. Other applicable state and federal laws.

(c) A plan for the collection, recording, and reporting of ground and surface water quality and quantity data, according to 405 KAR 18:110.

(3) The description shall include a determination of the probable hydrologic consequences of the proposed underground mining activities, on the proposed permit area and adjacent area, with respect to the hydrologic regime and the quantity and quality of water in surface and ground water systems under all seasonal conditions, including the contents of dissolved solids, suspended solids, total iron, pH, total manganese, acidity, alkalinity and other parameters required by the cabinet.

(4) Each plan shall contain a description, with appropriate drawings, of permanent entry seals and downslope barriers designed to ensure stability under anticipated hydraulic heads developed while promoting mine inundation after mine closure for the proposed permit area.

Section 33. MRP; Diversions. Each application shall contain descriptions, including maps and cross-sections, of stream channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with 405 KAR 18:080.

Section 34. MRP; Impoundments and Embankments. (1) General. Each application shall include detailed design plans for each proposed sedimentation pond, water impoundment, and coal processing waste bank, dam, or embankment within the proposed permit area. Each design plan shall:

(a) Be prepared by, or under the direction of, and certified by, a qualified registered professional engineer;

(b) Contain a description, map, and appropriate cross-sections and drawings of the structure and its location;

(c) Contain all hydrologic and geologic information and computations necessary to demonstrate compliance with the design and performance standards of Title 405, Chapter 18; and all information utilized by the applicant to determine the probable hydrologic consequences of the mining operation under Section 32(3);

(d) Contain an assessment of the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred;

(e) Include any geotechnical investigation, design, and construction requirements for the structure;

(f) Describe the operation and maintenance requirements for each structure; and

(g) Describe the timetable and plans to remove each structure, if appropriate.

(2) Sedimentation ponds.

(a) Sedimentation ponds, whether temporary or permanent, shall be designed in compliance with the requirements of 405 KAR 18:090. Any sedimentation pond or earthen structure which will remain on the proposed permit area as a permanent water impoundment shall also be designed to comply with the requirements of 405 KAR 18:100.

(b) Each plan shall, at a minimum, comply with the requirements of MSHA, 30 CFR 77.216-1 and 77.216-2.

(3) Permanent and temporary impoundments. Permanent and temporary impoundments shall be designed to comply with the requirements of 405 KAR 18:100. Each plan shall comply with the requirements of MSHA, 30 CFR 77.216-1 and 77.216-2.

(4) Coal processing waste banks. Coal processing waste banks shall be designed to comply with the requirements of 405 KAR 18:140.

(5) Coal processing waste dams and embankments. Coal processing waste dams and embankments shall be designed to comply with the requirements of 405 KAR 18:160. Each plan shall comply with the requirements of MSHA, 30 CFR 77.216-1 and 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:

(a) The number, location, and depth of borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions.

(b) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site shall be considered.

(c) All springs, seepage, and ground water flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan.

(d) Consideration shall be given to the possibility of mudflows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

(6) If the structure is twenty (20) feet or higher or impounds more than twenty (20) acre-feet, each plan under subsection (2), (3), and (5) of this section shall include a stability analysis of each structure. The stability analysis shall include, but not be limited to, strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

Section 35. MRP; Air Pollution Control. For all surface operations associated with underground mining activities, the application shall contain an air pollution control plan which includes the following:

(1) An air quality monitoring program, if required by the cabinet, to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices, under subsection (2) of this section to comply with applicable federal and state air quality standards; and

(2) A plan for fugitive dust control practices, as required under 405 KAR 18:170.

Section 36. MRP; Fish and Wildlife. Permit applications shall not be required under this section to contain a fish and wildlife plan unless and until federal regulations requiring such plan have been promulgated and this regulation has been amended as necessary to be consistent with the corresponding federal regulations.

Section 37. MRP; Postmining Land Use. (1) Each plan shall contain a description of the proposed use, following reclamation, of the land to be affected within the proposed permit area by surface operations or facilities, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land use policies and plans. This description shall explain:

(a) How the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use;

(b) Where a land use different from the premining land use is proposed, all supporting documentation submitted for approval of the proposed use under 405 KAR 18:220;

(c) The consideration given to making all of the proposed underground mining activities consistent with surface owner plans and applicable state and local land use plans and programs;

(d) Where grazing is the proposed postmining land use, the detailed management practices necessary to properly implement the postmining use for grazing.

(2) The description shall be accompanied by a copy of the comments concerning the proposed use from the legal or equitable owner of record of the surface areas to be affected by surface operations or facilities within the proposed permit area and the state and local government agencies, if any, which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

(3) Approval of the initial postmining land use plan pursuant to this section, shall not preclude subsequent consideration and approval of a revised postmining land use plan in accordance with the applicable requirements of this Title.

Section 38. MRP; Transportation on Public Roads. The application shall include or be accompanied by a transportation plan and map (at least the scale and detail of the separate county maps published by the Kentucky Transportation Cabinet) which shall set forth the portions of the public road system, if any, over which the applicant proposes to transport coal extracted in the underground mining activities.

(1) The plan shall specify the legal weight limits for each portion of any such road or bridge over which the applicant proposes to transport coal.

(2) The plan shall include any proposal by the applicant to obtain a special permit pursuant to the provisions of KRS 189.271 to exceed the weight limits on any road or bridge.

(3) The plan shall contain a certification by a duly authorized official of the Kentucky Transportation Cabinet attesting the accuracy of the plan in regard to the locations and identities of roads and bridges on the public road system and the accuracy of the specifications of weight limits on such roads and bridges.

JACKIE A. SWIGART, Secretary
ADOPTED: October 26, 1983
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: October 31, 1983 at 4:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Elmore C. Grim, Commissioner, Department for Surface Mining Reclamation and Enforcement, Natural Resources and Environmental Protection Cabinet, 3rd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

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

405 KAR 16:060. General hydrologic requirements.

RELATES TO: KRS 350.100, 350.410, 350.420, 350.421, 350.440, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.100, 350.420, 350.465
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during surface mining activities and for restoration and reclamation of surface areas affected by mining activities. This regulation sets forth general requirements for protection of the hydrologic balance, including general requirements for protection of surface and groundwater quantity and quality, control of erosion and sediment, protection of groundwater recharge capacity, protection of streams, and protection of water rights.

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

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

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

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

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

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

1. Stabilizing disturbed areas through land shaping;
2. Diverting runoff;

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

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

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

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

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

(c) Minimize erosion to the extent possible.

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

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

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

(c) Retaining sediment within disturbed areas;

(d) Diverting runoff away from disturbed areas;

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

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

(g) Treating with chemicals.

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

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

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

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

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

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

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

Section 6. Protection of Ground Water Recharge Capacity. *Groundwater quality shall be protected by handling earth materials and runoff in a manner that will restore the approximate premining recharge capacity of the reclaimed area as a whole, excluding coal processing waste and underground development waste disposal areas and fills, so as to allow the movement of water to the underground system.*

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

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

[(a) Supports the approved postmining land use;]

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

[(c) Approximates the premining conditions, except when otherwise approved by the department.]

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

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

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

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

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

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

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

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

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

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

(a) Coal processing waste;

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

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

(d) Flue gas desulfurization sludge;

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

(f) Underground mine development wastes.

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

(4) Minimizes disturbance to the hydrologic balance; and

(5) Meets with the approval of the MSHA.

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

Section 11. Stream Buffer Zones. (1) No land within 100 feet of an intermittent or perennial stream shall be disturbed by surface mining activities, unless the cabinet specifically authorizes surface mining activities closer to or through such a stream under the following conditions:

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

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

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

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

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

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

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

JACKIE A. SWIGART, Secretary
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Proposed Amendment)

405 KAR 16:090. Sedimentation ponds.

RELATES TO: KRS 350.020, 350.100, 350.420, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.100, 350.420, 350.465
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during surface mining activities and for restoration and reclamation of surface areas affected by mining activities. This regulation sets forth specific requirements for the location, design, construction, and removal or retention of sedimentation ponds.

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

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

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

(3) Meet all the criteria of this regulation;

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

Section 2. Sediment Storage Volume. Sedimentation ponds shall provide a sediment storage volume as approved on a case-by-case basis by the cabinet based upon the anticipated volume of sediment to be collected and a feasible time schedule for clean-out operations. The sediment storage volume shall be the anticipated volume of sediment that will be collected by the pond between scheduled clean-out operations. The proposed clean-out schedule shall be included in the design and will be approved if the cabinet determines that the proposed schedule is feasible.

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

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

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

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

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

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

(5) An appropriate combination of principal and emergency spillways shall be provided to safely discharge the runoff from a twenty-five (25) year, twenty-four (24) hour precipitation event, or larger event specified by the cabinet. The elevation of the crest of the emergency spillway shall be a minimum of 1.5 feet above the crest of the principal spillway. Emergency spillway grades and allowable velocities shall be approved by the cabinet. *Sedimentation ponds not meeting the size or other qualifying criteria of 30 CFR 77.216(a) may use a single spillway if the spillway:* [The cabinet may establish size and other criteria under which a pond design may be approved which provides for a single spillway.]

(a) Is an open channel of nonerodible construction and capable of maintaining sustained flows; and

(b) Is not earth or grass lined.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

JACKIE A. SWIGART, Secretary
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Proposed Amendment)

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

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

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

(a) In accordance with 405 KAR 16:130, Sections 1 and 2, and this regulation; and

(b) To prevent combustion.

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

(a) Adversely affect water quality, water flow, or vegetation;

(b) Create public health hazards; or

(c) Cause instability in the disposal areas.

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

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

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

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

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

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

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

(a) Intercept all ground water sources;

(b) Be protected by an adequate filter; and

(c) Be covered so as to protect against the entrance of surface water or leachate from the coal processing waste.

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

(3) Slope protection shall be provided to minimize sur-

face erosion at the site. All disturbed areas, including diversion ditches that are not riprapped, shall be vegetated upon completion of construction.

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

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

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

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

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

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

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

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

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

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

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

JACKIE A. SWIGART, Secretary
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Proposed Amendment)

405 KAR 16:190. Backfilling and grading.

RELATES TO: KRS 350.020, 350.093, 350.100, 350.405, 350.410, 360.450, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.100, 350.465
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during surface mining activities and for restoration and reclamation of surface areas affected by mining activities. This regulation sets forth requirements for backfilling and grading, including requirements for highwall elimination, return to approximate original contour, timing of backfilling and grading, use of terraces, thick and thin overburden conditions, covering coal and acid and toxic materials, and regrading or stabilizing rills and gullies.

Section 1. Timing of Backfilling and Grading. Backfilling and grading shall be conducted in accordance with the requirements for contemporaneous reclamation as set forth in 405 KAR 16:020.

Section 2. General Grading Requirements. (1) Method for backfilling and grading:

(a) Except as specifically exempted in Title 405, Chapters 16 through 20, all disturbed areas shall be returned to their approximate original contour. All spoil shall be transported, backfilled, compacted (where advisable to insure stability or to prevent leaching) and graded to eliminate all highwalls, spoil piles, and depressions, and to ensure a long-term static factor of safety of at least 1.3 for all portions of the reclaimed land.

(b) Backfilled material shall be placed to minimize adverse effects on ground water, minimize offsite effects, and to support the approved postmining land use.

(c) Cut-and-fill terraces may be used only in those situations expressly identified in subsection (3) of this section.

(2) The final graded slopes shall not exceed slopes approved by the cabinet based on consideration of soil, climate, or other characteristics of the surrounding area. Postmining final graded slopes need not be uniform but shall approximate the general nature of the premining topography. [The requirements of this section may be

modified by the cabinet where the surface mining activities are reaffecting previously mined lands that have not been restored to the standards of this chapter and sufficient spoil is not available to otherwise comply with this section. However, the permittee shall, at a minimum:]

[(a) Retain all overburden and spoil on the solid portion of existing or new benches; and]

[(b) Backfill and grade to the most moderate slope possible, to eliminate any newly created highwall and, except as provided in paragraph (c) of this subsection, those portions of existing highwalls that are adversely, physically impacted. The slope shall not exceed either the angle of repose or such lesser slope as is necessary to achieve a minimum static safety factor of 1.3.]

[(c) Where the permittee is conducting augering operations on previously mined lands under a permit issued under 405 KAR 8:050, Section 2(2), the permittee shall use all reasonably available spoil material to backfill the highwall to the extent practical and feasible; provided, however, that in all cases the permittee shall backfill the highwall to a minimum of four (4) feet above the coal seam being mined, seal all holes in accordance with 405 KAR 20:030, and stablize any adversely, physically impacted highwall.]

(3) On approval by the cabinet in order to conserve soil moisture, ensure stability, and control erosion on final graded slopes, cut-and-fill terraces may be allowed, if the terraces are compatible with the approved postmining land use and are appropriate substitutes for construction of lower grades on the reclaimed lands. The terraces shall meet the following requirements:

(a) The width of the individual terrace bench shall not exceed twenty (20) feet, unless specifically approved by the cabinet as necessary for stability, erosion control, or roads included in the approved postmining land use plan.

(b) The vertical distance between terraces shall be as specified by the cabinet, to prevent excessive erosion and to provide long-term stability.

(c) The slope of the terrace outslope shall not exceed 1v:2h (fifty (50) percent). Outslopes which exceed 1v:2h (fifty (50) percent) may be approved, if they have a minimum static safety factor of more than 1.3, provide adequate control over erosion, and closely resemble the surface configuration of the land prior to mining. In no case may highwalls be left as part of terraces.

(d) Culverts and underground rock drains shall be used on the terrace only when approved by the cabinet.

(4) Small depressions may be constructed, if they:

(a) Are approved by the cabinet to minimize erosion, conserve soil moisture, or promote vegetation;

(b) Do not restrict normal access; and

(c) Are not inappropriate substitutes for lower grades on the reclaimed lands.

(5) All surface mining activities on slopes above twenty (20) degrees, or on lesser slopes that the cabinet defines as steep slopes, shall meet the provisions of 405 KAR 20:060.

(6) All final grading, preparation of overburden before replacement of topsoil, and placement of topsoil, shall be done along the contour to minimize subsequent erosion and instability. If such grading, preparation, or placement along the contour is hazardous to equipment operators, then grading, preparation, or placement in a direction other than generally parallel to the contour may be used. In all cases, grading, preparation, or placement shall be conducted in a manner which minimizes erosion and provides a surface for replacement of topsoil which will minimize slippage.

Section 3. Covering Coal and Acid- and Toxic-forming Materials. (1) Cover.

(a) The permittee shall either cover, with a minimum of four (4) feet of the best available non-toxic and non-combustible material, or treat all exposed coal seams remaining after mining and all acid-forming, toxic-forming, combustible, or other materials identified by the cabinet as exposed, used or produced during mining. Cover or treatment shall be provided so as to neutralize toxicity, acidity and combustibility, in order to prevent water pollution and sustained combustion and to minimize adverse effects on plant growth and land uses.

(b) Where necessary to protect against upward migration of salts, exposure by erosion, formation of acid or toxic seeps, to provide an adequate depth for plant growth, or otherwise to meet local conditions, the cabinet shall specify thicker amounts of cover using non-toxic material, or special compaction and isolation from groundwater contact.

(c) Acid-forming or toxic-forming material shall not be buried or stored in proximity to a drainage course so as to cause or pose a threat of water pollution.

(2) Stabilization. Backfilled materials shall be selectively transported, placed in a controlled manner, and compacted, wherever necessary to prevent leaching of acid-forming and toxic-forming materials into surface or groundwaters and wherever necessary to ensure the stability of the backfilled materials. The method and design specifications of compacting material shall be approved by the cabinet before acid-forming or toxic-forming materials are covered.

Section 4. Thin Overburden. (1) The provisions of this section apply only where the final thickness is less than 0.8 of the initial thickness. Initial thickness is the sum of the overburden thickness and coal thickness prior to removal of coal. Final thickness is the product of the overburden thickness prior to removal of coal times the bulking factor to be determined for each permit area. The provisions of this section apply only when surface mining activities cannot be carried out to comply with Section 1 of this regulation to achieve the approximate original contour.

(2) In surface mining activities carried out continuously in the same limited pit area for more than one (1) year from the day coal removal operations begin and where the volume of all available spoil and suitable waste materials over the permit area is demonstated to be insufficient to achieve the approximate original contour of the lands disturbed, surface mining activities shall be conducted to meet, at a minimum, the following standards:

(a) Transport, backfill, and grade, using all available spoil and suitable waste materials from the entire mine area, to attain the lowest practicable stable grade, to achieve a static safety factor of 1.3, and to provide adequate drainage and long-term stability of the regraded areas and cover all acid-forming and toxic-forming materials;

(b) Eliminate highwalls by grading or backfilling to stable slopes not exceeding 1v:2h (fifty (50) percent), or such lesser slopes as the cabinet may specify to reduce erosion, maintain the hydrologic balance, or allow the approved postmining land use;

(c) Transport, backfill, grade, and revegetate in accordance with 405 KAR 16:200, to achieve an ecologically sound land use compatible with the prevailing use in unmined areas surrounding the permit area; and

(d) Transport, backfill, and grade, to ensure impoundments are constructed only where:

1. It has been demonstrated to the cabinet's satisfaction that all requirements of 405 KAR 16:060, 405 KAR 16:070, 405 KAR 16:080, 405 KAR 16:090, 405 KAR 16:100 and 405 KAR 16:110 have been met; and

2. The impoundments have been approved by the cabinet as suitable for the approved postmining land use and as meeting the requirements of this chapter and all other applicable federal and state laws and regulations.

Section 5. Thick Overburden. (1) The provisions of this section apply only where the final thickness is greater than 1.2 of the initial thickness. Initial thickness is the sum of the overburden thickness and coal thickness prior to removal of coal. Final thickness is the product of the overburden thickness prior to removal of coal times the bulking factor to be determined for each permit area. The provisions of this section apply only when surface mining activities cannot be carried out to comply with Section 1 of this regulation to achieve the approximate original contour.

(2) In surface mining activities where the volume of spoil over the permit area is demonstrated to be more than sufficient to achieve the approximate original contour, surface mining activities shall be conducted to meet, at a minimum, the following standards:

(a) Transport, backfill, and grade all spoil and wastes, not required to achieve the approximate original contour of the permit area, to the lowest practicable grade, to achieve a static factor of safety of 1.3 and cover all acid-forming and other toxic-forming materials;

(b) Transport, backfill and grade excess spoil and wastes only within the permit area and dispose of such materials in accordance with 405 KAR 16:130;

(c) Transport, backfill, and grade excess spoil and wastes to maintain the hydrologic balance, in accordance with 405 KAR 16:060, 405 KAR 16:070, 405 KAR 16:080, 405 KAR 16:090, 405 KAR 16:100 and 405 KAR 16:110 and to provide long-term stability by preventing slides, erosion and water pollution;

(d) Transport, backfill, grade, and revegetate wastes and excess spoil to achieve an ecologically sound land use approved by the cabinet as compatible with the prevailing land uses in unmined areas surrounding the permit area;

(e) Eliminate all highwalls and depressions by backfilling with spoil and suitable waste materials; and

(f) Meet the revegetation requirements of 405 KAR 16:200 for all disturbed areas.

Section 6. Regrading or Stabilizing Rills and Gullies. When rills or gullies deeper than nine (9) inches form in areas that have been regraded and topsoiled, the rills and gullies shall be filled, graded, or otherwise stabilized and the area reseeded or replanted according to 405 KAR 16:200. The cabinet may specify that rills or gullies of lesser size be stabilized and the area reseeded or replanted if the rills or gullies are disruptive to the approved postmining land use or may result in additional erosion and sedimentation.

Section 7. Remining Previously Mined Areas. (1) General requirements. Remining operations on previously mined areas, including steep slope areas, that contain a pre-existing highwall shall comply with Sections 1 through 6 of this regulation except as provided in this section.

(2) Definitions.

(a) "Adverse physical impact" means, with respect to a highwall created or impacted by remining, conditions such as sloughing of material, subsidence, instability, or increased erosion of highwalls, which occur or can reasonably be expected to occur as a result of remining and which pose threats to property, public health, safety, or the environment.

(b) "Modified highwall" means either:

1. The highwall resulting from remining where the pre-existing highwall face is removed; or

2. The highwall resulting from remining where the pre-existing highwall is vertically enlarged.

(c) "Highwall remnant" means that portion of highwall that remains after backfilling and grading of a remining permit area.

(d) "Previously mined area" means land disturbed or affected by earlier coal mining operations that was not reclaimed to the standards of this title, and there is no continuing responsibility to reclaim to such standards.

(e) "Reasonably available spoil" means spoil and suitable coal mine waste material generated by the remining operation and other spoil or suitable coal mine waste material located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to public safety or significant damage to the environment. For this purpose, the permit area shall include all such spoil in the immediate vicinity of the mining operation.

(f) "Remining" means conducting surface coal mining and reclamation operations which affect previously mined areas.

(3) Auger remining operations. The requirement within Section 2(1) of this regulation to completely eliminate the highwall shall not apply to auger remining operations where the volume of all reasonably available spoil is demonstrated in writing to the cabinet to be insufficient to completely backfill the pre-existing or modified highwall. The highwall shall be eliminated to the maximum extent technically practical in accordance with the following criteria:

(a) All reasonably available spoil shall be used to backfill the area, provided, however, that in all cases the coal seam mined shall be covered with a minimum of four (4) feet of noncombustible, non-acid, non-toxic forming material and all holes shall be sealed in accordance with 405 KAR 20:030.

(b) All spoil generated or handled by the remining operation shall be retained on the solid portion of existing or new benches.

(c) The backfill shall be graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability.

(d) Any highwall remnant shall be made stable and not pose a hazard to public health and safety or to the environment. The permittee shall demonstrate to the satisfaction of the cabinet that the highwall remnant is stable.

(e) Spoil placed on the outslope during previous mining operations shall not be disturbed if such disturbance will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment.

(4) Remining operations other than augering.

(a) The requirements within Section 2(1) of this regulation to completely eliminate the highwall shall not apply to remining operations that are not reasonably expected to cause an adverse physical impact on the pre-existing or modified highwall. Such remining operations shall comply with the following:

1. All spoil generated by the remining operation shall be

used to backfill and grade the area to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability, provided, however, that the coal seam mined shall be covered with a minimum of four (4) feet of noncombustible, non-acid, non-toxic forming material.

2. All spoil generated or handled by the remining operation shall be retained on the solid portion of existing or new benches.

3. Any highwall remnant shall be stable and not pose a hazard to the public health and safety or to the environment. The permittee shall demonstrate to the satisfaction of the cabinet that the highwall remnant is stable. If unexpected adverse physical impacts do occur, the permittee shall stablilize the highwall remnant.

4. Spoil placed on the outslope during previous mining operations shall not be disturbed if such disturbance will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment.

(b) Where the remining operation is reasonably expected to cause an adverse physical impact on the pre-existing or modified highwall, the requirement of Section 2(1) of this regulation to completely eliminate the highwall shall apply except where the volume of all reasonably available spoil is demonstrated in writing to the cabinet to be insufficient to completely backfill the highwall. In such case, the highwall shall be eliminated to the maximum extent technically practical in accordance with the following criteria:

1. All reasonably available spoil shall be used to backfill the area, provided, however, that the coal seam mined shall be covered with a minimum of four (4) feet of noncombustible, non-acid, non-toxic forming material.

2. All spoil generated or handled by the remining operation shall be retained on the solid portion of existing or new benches.

3. The backfill shall be graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability.

4. Any highwall remnant shall be made stable and not pose a hazard to public health and safety or to the environment. The permittee shall demonstrate to the satisfaction of the cabinet that the highwall remnant is stable.

5. Spoil placed on the outslope during previous mining operations shall not be disturbed if such disturbance will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment.

JACKIE A. SWIGART, Secretary
ADOPTED: October 26, 1983
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: October 31, 1983 at 4:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Elmore C. Grim, Commissioner, Department for Surface Mining Reclamation and Enforcement, Natural Resources and Environmental Protection Cabinet, 3rd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

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

405 KAR 18:090. Sedimentation ponds.

RELATES TO: KRS 350.020, 350.100, 350.151, 350.420, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.100, 350.151, 350.420, 350.465
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This regulation sets forth specific requirements for the location, design, construction, and removal or retention of sedimentation ponds used for treatment of discharges from areas affected by surface operations and discharges from underground workings.

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

(1) Be constructed and certified under Section 5(14) before any disturbance of the area to be drained into the pond and prior to any discharge of water to surface waters from underground mine workings;

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

(3) Meet all the criteria of this regulation;

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

Section 2. Sediment Storage Volume. Sedimentation ponds shall provide a sediment storage volume as approved on a case-by-case basis by the cabinet based upon the anticipated volume of sediment to be collected and a feasible time schedule for clean-out operations. The sediment storage volume shall be the anticipated volume of sediment that will be collected by the pond between scheduled clean-out operations. The proposed clean-out schedule shall be included in the design and will be approved if the cabinet determines that the proposed schedule is feasible.

Section 3. Detention Time. Sedimentation ponds shall provide detention time such that discharges from the pond shall meet the requirements of 405 KAR 18:070, Section 1(1)(g).

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

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

(2) The design, construction, and maintenance of a sedimentation pond or other sediment control measures in accordance with this regulation shall not relieve the permit-

tee from compliance with 405 KAR 18:070, Section 1(1)(g).

(3) There shall be no outflow through an emergency spillway during the passage through the sedimentation pond of the runoff resulting from the ten (10) year, twenty-four (24) hour precipitation events and lesser events. The design shall take into account the volume of water and sediment contributed by the underground mine discharge.

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

(5) An appropriate combination of principal and emergency spillways shall be provided to discharge safely the runoff from a twenty-five (25) year, twenty-four (24) hour precipitation event, or larger event specified by the cabinet plus any inflow from the underground mine. The elevation of the crest of the emergency spillway shall be a minimum of 1.5 feet above the crest of the principal spillway. Emergency spillway grades and allowable velocities shall be approved by the cabinet. *Sedimentation ponds not meeting the size or other qualifying criteria of 30 CFR 77.216(a) may use a single spillway if the spillway:* [The cabinet may establish size and other criteria under which a pond design may be approved which provides for a single spillway.]

(a) Is an open channel of nonerodible construction and capable of maintaining sustained flows; and

(b) Is not earth or grass lined.

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

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

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

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

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

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

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

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

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

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

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

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

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

(15) The entire embankment including the surrounding areas disturbed by construction shall be stabilized with respect to erosion by a vegetative cover or other means immediately after the embankment is completed. The active upstream face of the embankment where water is being impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated, in accordance with 405 KAR 18:190, Section 4.

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

(17) Sedimentation ponds shall be properly maintained and shall not be removed until the requirements of 405 KAR 18:070, Section 1(1)(b) have been met.

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

(19) If the cabinet approves retention of a sedimentation pond as a permanent impoundment, the sedimentation pond shall meet all the requirements for permanent impoundments under 405 KAR 18:060, Section 8 and 405 KAR 18:100.

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

JACKIE A. SWIGART, Secretary

ADOPTED: October 26, 1983

APPROVED: ELMORE C. GRIM, Commissioner

RECEIVED BY LRC: October 31, 1983 at 4:30 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Elmore C. Grim, Commissioner, Department for Surface Mining Reclamation and Enforcement, Natural Resources and Environmental Protection Cabinet, 3rd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

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

405 KAR 18:140. Disposal of coal processing waste.

RELATES TO: KRS 350.151, 350.410, 350.420, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.151, 350.465
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This regulation sets forth requirements for the disposal of coal processing waste, including design and construction requirements for coal processing waste banks, site inspection requirements, water control measures, provisions for extinguishing burning coal waste and utilization of burned coal waste, and the return of coal processing waste to underground mine workings.

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

(a) In accordance with this regulation and the criteria set forth in 405 KAR 18:130, Sections 1 and 2; and

(b) To prevent combustion.

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

(a) Adversely affect water quality, water flow, or vegetation;

(b) Create public health hazards; or

(c) Cause instability in the disposal areas.

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

(a) Inspections shall occur at least quarterly, beginning within seven (7) days after preparation of the disposal area begins. The cabinet may require more frequent inspections based upon an evaluation of the potential danger to the health or safety of the public and the potential harm to land, air and water resources. Inspections may terminate when the coal processing waste bank has been graded, covered in accordance with Section 4, topsoil has been distributed on the bank in accordance with 405 KAR 18:050, Section 4, or at such a later time as the cabinet may require.

(b) Inspections shall include such observations and tests as may be necessary to evaluate the potential hazard to human life and property, ensure that all organic material and topsoil have been removed and that proper construction and maintenance are occurring in accordance with the plan submitted under 405 KAR 8:040, Section 34, and approved by the cabinet.

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

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

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

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

(a) Intercept all ground water sources;

(b) Be protected by an adequate filter; and

(c) Be covered so as to protect against the entrance of surface water or leachate from the coal processing waste.

(2) *During and after* [Upon final] construction, all surface drainage from the area above the coal processing waste bank and from the crest and face of the waste disposal area shall be diverted, in accordance with 405 KAR 18:130, Section 2(4). [During construction, such drainage shall be diverted as approved by the cabinet.]

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

(4) Discharges of all water from a coal processing waste bank shall comply with 405 KAR 18:060, Sections 1, 2 and 7, 405 KAR 18:070, 405 KAR 18:090, and 405 KAR 18:110.

Section 4. Construction Requirements. (1) Coal processing waste banks shall be constructed in compliance with 405 KAR 18:130, Sections 1 and 2, except to the extent the requirements of those sections are specifically varied in this section.

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

(3) Compaction requirements during construction or modification of all coal processing waste banks shall meet the requirements of this subsection, instead of those specified in 405 KAR 18:130, Section 2(3). The coal processing waste shall be:

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

(b) Compacted to attain ninety (90) percent of the maximum dry density in order to prevent spontaneous combustion and to provide the strength required for stability of the coal processing waste bank. Dry densities shall be deter-

mined in accordance with the American Association of State Highway and Transportation Officials (AASHTO) Specification T99-74 (Twelfth Edition) (July 1978) or an equivalent method.

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

(4) Following grading of the coal processing waste bank, the site shall be covered with a minimum of four (4) feet of the best available non-toxic and non-combustible material, in accordance with 405 KAR 18:050, Section 2(5), and in a manner that does not impede flow from subdrainage systems. The coal processing waste bank shall be revegetated in accordance with 405 KAR 18:200. The cabinet may allow less than four (4) feet of cover material based on physical and chemical analyses which show that the requirements of 405 KAR 18:200 will be met.

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

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

Section 7. Return to Underground Workings. Coal processing waste may be returned to underground mine workings only in accordance with the waste disposal program approved by the cabinet and MSHA under 405 KAR 8:040, Sections 27 and 28.

JACKIE A. SWIGART, Secretary
ADOPTED: October 26, 1983
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Proposed Amendment)

405 KAR 18:190. Backfilling and grading.

RELATES TO: KRS 350.020, 350.093, 350.100, 350.151, 350.405, 350.410, 360.450, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.100, 350.151, 350.465

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This regulation sets forth requirements for backfilling and grading of areas affected by surface operations, including requirements for backfilling and grading of face-up areas and other cut slopes and limited exemptions, timing of backfilling and grading, covering coal and acid and toxic materials, and regrading or stabilizing rills and gullies.

Section 1. General Requirements. Surface areas disturbed incident to underground mining activities shall be backfilled and graded in accordance with this regulation and a time schedule approved by the cabinet as a condition of the permit.

Section 2. General Grading Requirements. (1) Method for backfilling and grading.

(a) Except as specifically exempted in Title 405, Chapters 16 through 20, all disturbed areas shall be returned to their approximate original contour. All spoil shall be transported, backfilled, compacted (where advisable to ensure stability or to prevent leaching), and graded to eliminate all highwalls, spoil piles, and depressions and to ensure a long-term static factor of safety of at least 1.3 for all portions of the reclaimed land.

(b) Backfilled material shall be placed to minimize adverse effects on ground water, minimize offsite effects, and to support the approved postmining land use.

(2) Postmining final graded slopes need not be uniform but shall approximate the general nature of the premining topography. Except when necessary for sealing openings under 405 KAR 18:040, face-up areas and similar cut slopes need not be completely backfilled and graded as required by subsection (1) of this section if the cabinet determines that:

(a) No significant adverse environmental impacts will result; and

(b) Sufficient backfill material is not available without redisturbance of settled fills that have become stabilized and successfully revegetated.

(3) In all cases, grading, preparation or placement shall be conducted in a manner which minimizes erosion and, when appropriate, provides a surface for replacement of topsoil which will minimize slippage.

Section 3. Covering Coal and Acid- and Toxic-forming Materials. (1) Cover.

(a) A permittee shall either cover, with a minimum of four (4) feet of the best available non-toxic and non-combustible material, or treat all exposed coal seams remaining after mining and all acid-forming, toxic-forming, combustible, and other materials identified by the cabinet as exposed, used or produced during mining. Cover or treatment shall be provided so as to neutralize toxicity, acidity and combustibility, in order to prevent water pollution and sustained combustion, and to minimize adverse effects on plant growth and land use.

(b) Where necessary to protect against upward migration of salts, exposure by erosion, to provide an adequate depth for plant growth, or to otherwise meet local conditions, the cabinet shall specify thicker amounts of cover using non-toxic material.

(c) Acid-forming or toxic-forming material shall not be buried or stored in proximity to a drainage course so as to cause or pose a threat of water pollution.

(2) Stabilization. Backfilled materials shall be selectively transported, placed in a controlled manner, and compacted, wherever necessary to prevent leaching of acid-forming and toxic-forming materials into surface or ground waters and wherever necessary to ensure the stability of backfilled materials. The method and design specifications of compacting material shall be approved by the cabinet before acid-forming and toxic-forming materials are covered.

Section 4. Regrading or Stabilizing Rills and Gullies. When rills or gullies deeper than nine (9) inches form in areas that have been regraded and topsoiled, the rills and gullies shall be filled, graded, or otherwise stabilized and the area reseeded or replanted according to 405 KAR 18:200. The cabinet may specify that rills or gullies of lesser size be stabilized and the area reseeded or replanted, if the rills or gullies are disruptive to the approved postmining land use or may result in additional erosion and sedimentation.

Section 5. Remining Previously Mined Areas. (1) General requirements. Remining operations on previously mined areas, including steep slope areas, that contain a pre-existing highwall shall comply with Sections 1 through 4 of this regulation except as provided in this section.

(2) Definitions.

(a) "Adverse physical impact" means, with respect to a highwall created or impacted by remining, conditions such as sloughing of material, subsidence, instability, or increased erosion of highwalls, which occur or can reasonably be expected to occur as a result of remining and which pose threats to property, public health, safety, or the environment.

(b) "Modified highwall" means either:

1. The highwall resulting from remining where the pre-existing highwall face is removed; or

2. The highwall resulting from remining where the pre-existing highwall is vertically enlarged.

(c) "Highwall remnant" means that portion of highwall that remains after backfilling and grading of a remining permit area.

(d) "Previously mined area" means land disturbed or affected by earlier coal mining operations that was not reclaimed to the standards of this title, and there is no continuing responsibility to reclaim to such standards.

(e) "Reasonably available spoil" means spoil and suitable coal mine waste material generated by the remining operation and other spoil or suitable coal mine waste material located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to public safety or significant damage to the environment. For this purpose, the permit area shall include all such spoil in the immediate vicinity of the mining operation.

(f) "Remining" means conducting surface coal mining and reclamation operations which affect previously mined areas.

(3) Auger remining operations. The requirements within Section 2(1) of this regulation to completely eliminate the highwall shall not apply to auger remining operations where the volume of all reasonably available spoil is demonstrated in writing to the cabinet to be insufficient to completely backfill the pre-existing or modified highwall. The highwall shall be eliminated to the maximum extent technically practical in accordance with the following criteria:

(a) All reasonably available spoil shall be used to backfill the area, provided however, that in all cases the coal seam mined shall be covered with a minimum of four (4) feet of noncombustible, non-acid, non-toxic forming material and all holes shall be sealed in accordance with 405 KAR 20:030.

(b) All spoil generated or handled by the remining operation shall be retained on the solid portion of existing or new benches.

(c) The backfill shall be graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability.

(d) Any highwall remnant shall be made stable and not pose a hazard to public health and safety or to the environment. The permittee shall demonstrate to the satisfaction of the cabinet that the highwall remnant is stable.

(e) Spoil placed on the outslope during previous mining operations shall not be disturbed if such disturbance will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment.

(4) Remining operations other than augering.

(a) The requirements within Section 2(1) of this regulation to completely eliminate the highwall shall not apply to remining operations that are not reasonably expected to cause an adverse physical impact on the pre-existing or modified highwall. Such remining operations shall comply with the following:

1. All spoil generated by the remining operation shall be used to backfill and grade the area to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability, provided however, that the coal seam mined shall be covered with a minimum of four (4) feet of noncombustible, non-acid, non-toxic forming material.

2. All spoil generated or handled by the remining operation shall be retained on the solid portion of existing or new benches.

3. Any highwall remnant shall be stable and not pose a hazard to the public health and safety or to the environment. The permittee shall demonstrate to the satisfaction of the cabinet that the highwall remnant is stable. If unexpected adverse physical impacts do occur, the permittee shall stabilize the highwall remnant.

4. Spoil placed on the outslope during previous mining operations shall not be disturbed if such disturbance will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment.

(b) Where the remining operation is reasonably expected to cause an adverse physical impact on the pre-existing or modified highwall, the requirement of Section 2(1) of this regulation to completely eliminate the highwall shall apply except where the volume of all reasonably available spoil is demonstrated in writing to the cabinet to be insufficient to completely backfill the highwall. In such case, the highwall shall be eliminated to the maximum extent technically practical in accordance with the following criteria:

1. All reasonably available spoil shall be used to backfill the area, provided however, that the coal seam mined shall be covered with a minimum of four (4) feet of noncombustible, non-acid, non-toxic forming material.

2. All spoil generated or handled by the remining operation shall be retained on the solid portion of existing or new benches.

3. The backfill shall be graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability.

4. Any highwall remnant shall be made stable and not pose a hazard to public health and safety or to the environment. The permittee shall demonstrate to the satisfaction of the cabinet, that the highwall remnant is stable.

5. Spoil placed on the outslope during previous mining operations shall not be disturbed if such disturbance will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment.

JACKIE A. SWIGART, Secretary
ADOPTED: October 26, 1983
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: October 31, 1983 at 4:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Elmore C. Grim, Commissioner, Department for Surface Mining Reclamation and Enforcement, Natural Resources and Environmental Protection Cabinet, 3rd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

TRANSPORTATION CABINET
Department of Financial and Legal Affairs
(Proposed Amendment)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) For double exit interchanges, the specific information panel shall consist of two (2) sections, one (1) for each exit, mounted on the same base. The top section shall display business signs for the first exit and the lower sec-

tion shall display business signs for the second exit. This panel shall accommodate a maximum of three (3) business signs for "GAS" and two (2) business signs for "FOOD," "LODGING," and "CAMPING" per exit. Where a type of motorist service is to be signed for only one (1) exit, one (1) section of the specific information sign may be omitted or a single exit interchange sign may be used.

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

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

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

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

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

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

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

(14) Only those businesses within a three (3) mile limit in any direction from a four (4) lane limited access road shall be eligible to place signs on information panels except that, if within that three (3) mile limit services of the type being considered are not available, the Commissioner of Highways may extend the limit in three (3) mile increments until services of the type being considered, or fifteen (15) miles are reached.

(15) In the absence of exit number guide signs, the words "Next Right/Left" shall be used.

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) The qualifying business shall be responsible for damages to business signs caused by acts of vandalism or natural causes requiring repair or replacement of business signs. No business sign shall be displayed which will misin-

form the traveling public or which is unsightly, badly faded, or in a state of delapidation. In such instances the business shall provide a new or renovated business sign.

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

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

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

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

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

JAMES F. RUNKE, Secretary
ADOPTED: October 14, 1983
RECEIVED BY LRC: October 17, 1983 at 10 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Stephen Reeder, Deputy Secretary for Legal Affairs, Transportation Cabinet, Frankfort, Kentucky 40622.

TRANSPORTATION CABINET
Department of Highways
(Proposed Amendment)

603 KAR 5:070. Truck dimension limits.

RELATES TO: KRS 189.222
PURSUANT TO: KRS 13.082, 189.222(1)
NECESSITY AND FUNCTION: KRS 189.222 authorizes the Secretary of Transportation to establish reasonable size limits for trucks using the State Primary Road System. This regulation is adopted to fix the maximum dimensions for all classes of highways.

Section 1. *Except as provided in Section 2 of this regulation,* the maximum dimensions for trucks using all class highways shall be as follows:

(1) Height: Including body and load, not to exceed thirteen (13) feet and six (6) inches.

(2) Width: Including body and load, not to exceed eight (8) feet.

(3) Length:

(a) Motor truck (single unit), including any part of the body or load, not to exceed thirty-five (35) feet.

(b) Truck tractors and semi-trailers, including any part of the body or load, not to exceed fifty-five (55) feet, except for truck tractors and semi-trailer units exclusively engaged in the transportation of motor vehicles the usual and ordinary bumper overhang of the transported vehicles is excluded in the measurement of the fifty-five (55) feet.

(4) A tolerance of not more than five (5) percent shall be permitted on length before a carrier is deemed to be in violation of this section.

Section 2. Motor vehicles with increased dimensions from that specified in Section 1 of this regulation may be operated on certain highways.

(1) Motor vehicles may not exceed the following width and length dimensions when operating on those highways listed in subsection (2) of this section:

(a) Width—102 inches including any part of the body or load.

(b) Length—semi-trailers forty-eight (48) feet when operated in tractor-semi-trailer combination; trailers twenty-eight (28) feet when operated in a tractor-semi-trailer combination. There shall be no overall length limitation on motor vehicles operating on the highways listed in subsection (2) of this section so long as the above requirements set forth in this subsection are met.

(2) The following highways are designated to permit the operation of motor vehicles with increased dimensions which do not exceed the limitations stated above in subsection (1) of this section:

(a) The Interstate and National Defense Highway System.

(b) In addition the below designated highways that have qualified as a part of the Federal Aid Primary System with respect to the increased dimensions stated in subsection (1) of this section:

JP 9003—From Tennessee state line west of Fulton to US 45 Bypass.
US 45B—From JP 9003 west of Mayfield to JP 9003 north of Mayfield.
JP 9003—From US 45 Bypass to I-24 in Marshall County.
WK 9001—From I-24 south of Eddyville to US 31W in Hardin County.
BG 9002—From I-65 to US 60 near Versailles.
GP 9007—From I-65 to US 60 Bypass in Owensboro.
MT 9000—From I-64 east of Winchester to KY 15 north of Campton.
KY 4—Entire circle of Lexington.
PENN 9004—From US 41A south city limits of Hopkinsville to US 41 south of Nortonville.
US 41—From PENN 9004 near WK 9001 to PENN 9004 at Madisonville.
PENN 9004—From US 41 near north city limits of Madisonville to US 41 in Henderson.
US 41—From PENN 9004 to Indiana state line.
AUD 9005—From PENN 9004 in Henderson to US 60 Bypass in Owensboro.
CUM 9008—From I-65 at Warren County line to US 27 west of Somerset.
I-471—From I-275 to Ohio state line.

KY 841—From I-64 to I-71.
KY 10—From new construction 4.21 miles east of Bracken County line (MP 4.21) to US 62-68 at Maysville (MP 10.12).
KY 11—From KY 3170 at Lewisburg to US 62 and 68 in Maysville.
KY 15—From Mountain Parkway at Campton to US 119 in Whitesburg.
KY 18—From KY 338 at Burlington to US 25 in Florence.
KY 21—From I-75 near Berea to US 25 in Berea (US 25 south).
US 23—From south end of US Grant Bridge at South Shore, Kentucky (Portsmouth, Ohio) to US 119 at Pikeville.
US 23—From US 119 near Jenkins to Virginia state line.
US 25—From US 421 south of Richmond to I-75 near Richmond (via KY 876).
US 25—From KY 418 to Nandino Blvd., in Lexington (via KY 4).
US 25—From US 42 in Florence to Ohio state line.
US 25E—From Virginia state line to I-75 north of Corbin.
US 27—From Tennessee state line to Ohio state line (via KY 4 in Lexington).
US 31W—Tennessee state line to KY 255 at Park City.
US 31W—US 31W Bypass in Elizabethtown to I-264.
US 31W Bypass—From WK 9001 to US 31W in Elizabethtown.
KY 32—From I-64 to US 60 at Morehead.
KY 35—From US 127 at Bromley to I-71.
KY 36—From I-64 to US 60 at Owingsville.
KY 36—From US 42 in Carrollton to KY 227.
US 41—From US 68 (Main Street) in Hopkinsville to US 68 (McLean Avenue) in Hopkinsville.
US 41A—Tennessee state line to Pennyrile Parkway south city limits of Hopkinsville.
KY 41A—From KY 112 in Earlington to KY 281 and KY 1751 in Madisonville.
US 42—From I-264 to Oldham County line.
US 42—From KY 55 at Carrollton to KY 47 at Ghent.
US 45—From US 45 Bypass north of Mayfield to I-24 south of Paducah.
KY 52—From Richmond to KY 499 at Irvine.
KY 55—From Cumberland Parkway in Columbia to US 68 in Lebanon.
KY 55—From US 68 in Lexington to US 150 at Springfield.
US 60—From US 60 Bypass east of Owensboro to KY 69 Hawesville.
US 60—From I-264 to KY 1531 at Eastwood.
US 60—From KY 676 near Frankfort to I-75 near Lexington (via Versailles and KY 4 in Lexington).
US 60—From junction of KY 180 near Cannonsburg to US 23 in Ashland.
US 60—From US 60 Bypass at Owensboro west city limits to junction US 60 Bypass at east city limits of Owensboro.
US 60 Bypass—From US 60 west of Owensboro to US 60 east of Owensboro.
US 62—From I-24 at Paducah to Western Kentucky Parkway.
US 62—From KY 353 to US 27 at Cynthiana.
US 62—From I-24 in Trigg County to Bowling Green.
US 68—From US 27 at Paris to junction US 62 in Washington (via Paris Bypass).
KY 79—From KY 1051 in Brandenburg to Indiana state line.
KY 80—From US 27 at Somerset to US 25 north of London.
KY 80—From KY 15 at Hazard to US 23 at Allen.
KY 90—From I-65 to Cumberland Parkway at Glasgow.
KY 90—From junction 92 in Monticello to US 27 at Burnside.
KY 114—From US 460 in Salyersville to US 23-460 at Prestonsburg.
KY 118—From Daniel Boone Parkway to US 421 and KY 80 northwest of Hyden.
US 119—From US 25E south of Pineville to US 421 at Harlan.
US 119—From KY 80 at Pikeville to KY 1441.
US 127—From Tennessee state line to I-64 near Frankfort (via Danville & Lawrenceburg Bypasses).
US 127—From I-64 to I-71.
US 127 Bypass—From US 127 south of Danville to US 127 north of Danville.
US 127 Bypass—From US 127 south of Lawrenceburg to US 127 north of Lawrenceburg.
US 150—From US 31E at Bardstown to US 27 north city limits of Stanford (via Danville Bypass).
US 79—From Tennessee state line to US 68 Russellville.
KY 151—From US 127 near Lawrenceburg to I-64 near Graefenburg.
KY 180—From I-64 Interchange near Cannonsburg (MP 0.63) to junction US 60 and KY 180 at Cannonsburg.
KY 192—From I-75 south of London to Daniel Boone Parkway east of London.
KY 205—From Mountain Parkway at Helechawa to US 460 west of Index.
KY 212—From KY 20 to Greater Cincinnati Airport.
KY 227—From KY 355 near Worthville to KY 36 at Carrollton.
US 231—From US 60 Bypass in Owensboro to Indiana state line.
US 231—From I-65 to US 31W Bypass at Bowling Green.
KY 236—From KY 212 to US 25 at Erlanger.
KY 237—From KY 18 to I-275 in Boone County.
KY 255—From US 31W at Park City to I-65.
KY 259—From Western Kentucky Parkway to US 62 in Leitchfield.
KY 341—From US 421 near Midway to I-64 near Midway.
KY 348 –From Jackson Purchase Parkway west of Benton to US 641 in Benton.
KY 418—From US 25 south of Lexington to I-75 south of Lexington.
US 421—From US 119 to 0.1 mile south of Harlan Appalachian Regional Hospital.
US 421 & KY 80—From Daniel Boone Parkway to 2nd Street in Manchester.
US 421—From KY 4 in Lexington to KY 341 near Midway.
US 421—From US 460 in Frankfort to Broadway at railroad bridge.
US 431—From US 60 Bypass in Owensboro to US 60 (4th Street) in Owensboro.
KY 446—From US 31W, northwest of Bowling Green, to I-65.
US 460—From I-64 to KY 686 north of Mt. Sterling.
US 460—From Mountain Parkway Extension to US 23 near Paintsville.
KY 555—From US 150 at Springfield to Bluegrass Parkway.
US 641—From Tennessee state line to KY 348 in Benton.
KY 676—From US 127 in Frankfort to US 60.

KY 686—KY 11 south of Mt. Sterling to US 460 north of Mt. Sterling.
KY 876—From I-75 at Richmond to KY 52 east of Richmond.
KY 922—From KY 4 in Lexington to I-75.
KY 1051—From KY 448 south of Brandenburg to KY 79.
KY 1682—From US 68 west of Hopkinsville to PENN 9004 north city limits of Hopkinsville.
KY 1958—From KY 627 south of Winchester to I-64 at Winchester.
KY 1998—From US 27 at Cold Springs to KY 9.
Daniel Boone Parkway—From US 25 north of London to KY 15 north of Hazard.
Mountain Parkway Extension—End of Mountain Parkway at Campton to US 460 at Salyersville.
US 62—From Ohio state line to KY 11 at Maysville.

(3) All dimensions specified in this section shall not be subject to any enforcement tolerances provided in any other section.
(4) It shall be lawful for a commercial motor vehicle to consist of a truck tractor and two (2) trailing units on those highways listed in subsection (2) of this section.
(5) Motor vehicles with the increased dimensions specified in subsection (1) of this section shall be allowed reasonable access to terminals, facilities for food, fuel, repairs and rest, and points of loading and unloading for household goods carriers.

[Section 2. Unless otherwise provided herein; truck tractors, semi-trailers and trailers, or motor trucks and trailers may be operated in combinations not exceeding sixty-five (65) feet over the following highways:]
[(1) The Toll Road System.]
[(2) The Interstate Highway System.]
[(3) All other four (4) lane highways not a part of subsections (1) and (2) of this section.]
[(4) The following sections of highways not listed in subsections (1), (2) and (3) of this section:]
[(a) KY 15 from Campton to Whitesburg;]
[(b) US 23 from Ohio River Bridge at Portsmouth to Pikeville;]
[(c) US 25E from Pineville to Virginia State Line;]
[(d) US 27 from Cynthiana to Burnside;]
[(e) US 31E from Glasgow to Tennessee State Line;]
[(f) KY 52 from Richmond to Irvine;]
[(g) KY 55 from Campbellsville to Columbia and from Lebanon to Springfield;]
[(h) US 62 from Eddyville to Paducah;]
[(i) US 68 from Bowling Green to Russellville;]
[(j) KY 90 from I-65 to Glasgow;]
[(k) KY 114 from Salyersville to Prestonsburg;]
[(l) US 119 from Pineville to Harlan;]
[(m) US 127 from I-71 near Glencoe to Owenton and from jct. KY 151 to Danville;]
[(n) US 150 from Bardstown to Springfield and from Danville to Stanford;]
[(o) KY 151 from I-64 to jct. with US 127;]
[(p) KY 245 from I-65 to US 62 at Bardstown;]
[(q) KY 555 from Springfield to Blue Grass Parkway.]
[(5) An operator will not be deemed to be in violation of this order if operating within ten (10) miles of the above roads, upon connector roads, provided the connector roads have a surface width of at least twenty (20) feet.]
[(6) Roads within fifteen (15) miles of the following border entry points: Ohio River Bridge, Cairo, Illinois; Ohio River Bridge, Paducah; Ohio River Bridge, Henderson; Ohio River Bridge, Owensboro; Ohio River Bridge, Milton; Ohio River Bridge, Maysville; Ohio River Bridge, South Portsmouth; Ohio River Bridge, Ashland.]

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 indentified as the Kentucky Standards for the Preparation-Certification of Professional School Personnel, revised *October* [July], 1983. 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: October 18, 1983
RECEIVED BY LRC: November 3, 1983 at 10:30 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: L. W. True, Secretary, Kentucky State Board of Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

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

807 KAR 5:001. Rules of procedure.

RELATES TO: KRS Chapter 278
PURSUANT TO: KRS 13.082, 278.310(2)
NECESSITY AND FUNCTION: KRS 278.310(2) provides that all hearings and investigations before the commission or any commissioner shall be governed by rules adopted by the commission. This regulation prescribes requirements with respect to formal and informal proceedings before the commission.

Section 1. General Offices and Hearings. (1) The commission will be in continuous session for the performance of administrative duties.

(2) Meetings of the commission for the consideration of all matters requiring formal hearings will be held on such days, at such hours and at such places as the commission may designate.

(3) Notice of hearing will be given by the secretary to parties to proceedings before the commission, except when a hearing is not concluded on the day appointed therefor and verbal announcement is made by the presiding commissioner or hearing examiner of an adjourned date. Verbal announcements so made shall be deemed due notice of continued hearing.

Section 2. Secretary to Furnish Information. (1) Upon request, the secretary will advise any party as to the form of a petition, complaint, answer, application or other paper desired to be filed; and he will make available from the commission's files, upon request, any document or record pertinent to any matter before the commission.

(2) The secretary may reject for filing any document which on its face does not comply with the rules and regulations of the commission.

Section 3. General Matters Pertaining to All Formal Proceedings. (1) Address of the commission. All communications should be addressed to "Public Service Commission, Frankfort, Kentucky."

(2) Case numbers and styles. Each matter coming formally before the commission will be known as a case and will receive a number and style, descriptive of the subject matter. Such number and style shall be placed on all subsequent papers in such case.

(3) Form of papers filed. All pleadings and applications filed with the commission in formal proceedings shall be printed or typewritten on one (1) side of the paper only, and typewriting shall be double spaced.

(4) Signing of pleadings. Every pleading of a party represented by an attorney shall be signed by at least one (1) attorney of record in his individual name and shall state his address. Except when otherwise specifically provided by statute, pleadings need not be verified or accompanied by affidavit.

(5) Amendment. At its discretion, the commission may allow any complaint, application, answer or other paper to be amended or corrected or any omission supplied therein.

(6) Witnesses and subpoenas:

(a) Upon the application of any party to a proceeding, subpoenas requiring the attendance of witnesses for the purpose of taking testimony may be signed and issued by a member of the commission.

(b) Subpoenas for the production of books, accounts, papers or records (unless directed to issue by the commission on its own authority) will be issued only at the discretion of the commission, or any commissioner, upon application in writing, stating as nearly as possible the books, accounts, papers or records desired to be produced.

(7) Service of process. When any party has appeared by attorney, service upon such attorney will be deemed proper service upon the party.

(8) Intervention and parties. In any formal proceeding, any person who wishes to become a party to a proceeding before the commission may by timely motion request that he be granted leave to intervene. Such motion shall include his name and address and the name and address of any party he represents and in what capacity he is employed by such party. Each person granted leave to intervene shall be considered as making a limited intervention unless he submits to the secretary a written request for full intervention. A person making only a limited intervention shall be entitled to the full rights of a party at the hearing in which he appears and shall be served with the commission's order, but he shall not be served with filed testimony, exhibits, pleadings, correspondence and all other documents submitted by parties. A person making a limited appearance will not be certified as a party for the purposes of receiving service of any petition for rehearing or petition for judicial review. If a person granted leave to intervene desires to be served with filed testimony, exhibits, pleadings, correspondence and all other documents submitted by parties, and to be certified as a party for the purposes of receiving service of any petition for rehearing or petition for judicial review, he shall submit in writing to the secretary a request for full intervention, which shall specify his interest in the proceeding. If the commission determines that a person has a special interest in the proceeding which is not otherwise adequately represented or that full intervention by party is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings, such person shall be granted full intervention.

[(8) Parties and intervention. In any formal proceeding, any corporation, association, body politic or person authorized by law to become a party to a proceeding before the commission, may by timely motion request that he or it be granted leave to intervene. The motion shall set forth the ground for the request, including the status and interest of the movant. If the commission, after opportunity has been given to the party or parties to such proceeding to be heard on such intervention, be of the opinion that the movant is entitled to be made a party, it shall so order. Leave thus granted will entitle the intervenor to have notice of and to appear at the taking of testimony, to produce and cross-examine witnesses and to be heard in person or by counsel in the proceeding.]

Section 4. Hearings and Rehearings. (1) When hearings will be granted. Except as otherwise determined in specific cases, the commission will grant a hearing in the following classes of cases:

(a) When an order to satisfy a complaint or to make answer thereto has been made and the corporation or person complained of has not satisfied the complaint to the satisfaction of the commission.

(b) When application has been made in a formal proceeding.

(2) Publication of notice. Upon the filing of any application the commission may, in its discretion, give all other

corporations or persons who may be affected thereby an opportunity to be heard by service upon them of a copy of the petition or by publication of the substance thereof, at the expense of the applicant, for such length of time and in such newspaper or newspapers as the commission may designate. In such cases the form of notice will be prepared by the secretary, and a proof of the publication thereof must be filed at or before the hearing.

(3) Investigation on commission's own motion. The commission may at any time, on its own motion, make investigations and order hearings into any act or thing done or omitted to be done by the public utility, which the commission may believe is in violation of any provision of law or of any order or regulation of the commission. It may also through its own experts or employees, or otherwise, obtain such evidence as it may consider necessary or desirable in any formal proceeding in addition to the evidence presented by the parties.

(4) Conferences with commission staff. In order to provide opportunity for settlement of a proceeding or any of the issues therein, an informal conference with the commission staff may be arranged through the secretary of the commission either prior to, or during the course of hearings in any proceeding, at the request of any party.

(5) Conduct of hearings. Hearings will be conducted before the commission or a commissioner or before a person designated by the commission to conduct a specific hearing.

(6) Stipulation of facts. By a stipulation in writing, filed with the secretary, the parties to any proceeding or investigation by the commission may agree upon the facts or any portion of the facts involved in the controversy, which stipulation shall be regarded and used as evidence at the hearing.

(7) Testimony. All testimony given before the commission will be given under oath or affirmation.

(8) Objections and exceptions. When objections are made to the admission or exclusion of evidence before the commission, the grounds relied upon shall be stated briefly. Formal exceptions are unnecessary and will not be taken to rulings therein.

(9) Transcript of evidence. The commission will cause to be made a stenographic record of all public hearings, and such copies of the transcript thereof as it requires for its own purposes. Participants desiring copies of such transcripts may obtain the same from the official reporter upon payment of the fees fixed therefor.

(10) Briefs and petitions for rehearing. All briefs and petitions for rehearing in any proceeding must be accompanied with notice, showing service upon all other parties or their attorneys, and, in addition to the filed original, ten (10) copies of each such document shall be furnished for the use of the commission.

(11) Filing of briefs. All briefs must be filed within the time fixed, and the commission may refuse to consider any brief filed thereafter. Applications for extensions of time to file briefs must be made to the commission in writing.

(12) Form of briefs. All briefs filed with the commission shall be in the form prescribed by the commission.

Section 5. Documentary Evidence. (1) If documentary evidence is offered, the commission, in lieu of requiring the originals to be filed may, in its discretion, accept certified, or otherwise authenticated, copies of such documents or such portions of the same as may be relevant, or may require such evidence to be transcribed as a part of the record.

(2) Where relevant and material matter offered in evidence by any party is embraced in a book, paper or document containing other matter not material or relevant the party must plainly designate the matter so offered. If such immaterial matter unnecessarily encumbers the record, such book, paper or document will not be received in evidence, but may be worded for identification, and if properly authenticated, the relevant and material matter may be read into the record, or if the commission, or commissioner conducting the hearing, so directs, a true copy of such matter in proper form shall be received as an exhibit, and like copies delivered by the parties offering same to opposing parties, or their attorneys, appearing at the hearing, who shall be offered opportunity to examine such book, paper or document, and to offer evidence in like manner other portions thereof if found to be material and relevant.

(3) Whenever practicable the sheets of each exhibit and the lines of each sheet shall be numbered and if the exhibit consists of two (2) or more sheets, the first sheet or title page shall contain a brief statement of what the exhibit purports to show, with reference by sheet and line to illustrative or typical examples contained in the exhibit. Wherever practicable, rate comparisons and other such evidence shall be condensed into tables.

(4) Except as may be expressly permitted in particular instances, the commission will not receive in evidence or consider as a part of the record any book, paper or other document for consideration in connection with the proceeding after the close of the testimony.

(5) Upon motion of any party to a proceeding, any case in the commission's files or any document on file with the commission, at the discretion of the commission may be made a part of the record by "reference only." By reference only, the case or document made a part of the record will not be physically incorporated into the record. Upon action in the Franklin Circuit Court, excerpts from any case or part only of any document may be made, at the instance of any party, a part of the record before such court.

Section 6. Financial Exhibit. Whenever in these rules it is provided that a financial exhibit shall be annexed to the application, the said exhibit shall cover operations for a twelve (12) month period, said period ending not more than ninety (90) days prior to the date the application is filed. The said exhibit shall disclose the following information in the order indicated below:

(1) Amount and kinds of stock authorized.

(2) Amount and kinds of stock issued and outstanding.

(3) Terms of preference of preferred stock whether cumulative or participating, or on dividends or assets or otherwise.

(4) Brief description of each mortgage on property of applicant, giving date of execution, name of mortgagor, name of mortgagee, or trustee, amount of indebtedness authorized to be secured thereby, and the amount of indebtedness actually secured, together with any sinking fund provisions.

(5) Amount of bonds authorized, and amount issued, giving the name of the public utility which issued the same, describing each class separately, and giving date of issue, face value, rate of interest, date of maturity and how secured, together with amount of interest paid thereon during the last fiscal year.

(6) Each note outstanding, giving date of issue, amount, date of maturity, rate of interest, in whose favor, together with amount of interest paid thereon during the last fiscal year.

(7) Other indebtedness, giving same by classes and describing security, if any, with a brief statement of the devolution or assumption of any portion of such indebtedness upon or by person or corporation if the original liability has been transferred, together with amount of interest paid thereon during the last fiscal year.

(8) Rate and amount of dividends paid during the five (5) previous fiscal years, and the amount of capital stock on which dividends were paid each year.

(9) Detailed income statement and balance sheet.

Section 7. Applications. (1) Contents of application. All applications must be by petition in writing. The petition must set forth the full name and post office address of the applicant, and must contain fully the facts on which the application is based, with a request for the order, authorization, permission or certificate desired and a reference to the particular provision of law requiring or providing for same.

(2) Number of copies. At the time the original application is filed, ten (10) additional copies must also be filed, and where parties interested in the subject matter of the application are named therein, there shall be filed an additional copy for each named party and such other additional copies as may be required by the secretary.

(3) Articles of incorporation. If the applicant is a corporation, a certified copy of its articles of incorporation, and all amendments thereto, if any, shall be annexed to the application. If applicant's articles of incorporation and amendments thereto, if any, have already been filed with the commission in some prior proceeding, it will be sufficient if this fact is stated in the application and reference is made to the style and case number of the prior proceeding.

Section 8. Applications for Certificates of Public Convenience and Necessity. (1) Application to bid on a franchise pursuant to KRS 278.020(3). Upon application to the commission by the utility for a certificate of convenience and necessity authorizing applicant to bid on a franchise, license or permit offered by any governmental agency, the applicant shall submit with its application, the following:

(a) A copy of its articles of incorporation. (See Section 7(3).)

(b) The name of the governmental agency offering the franchise.

(c) The type of franchise offered.

(d) A statement showing the need and demand for service. Should the applicant be successful in acquiring said franchise, license or permit, it shall file a copy thereof with the commission.

(2) New construction or extension. When application is made by the utility, person, firm, or corporation for a certificate that the present or future public convenience or necessity requires, or will require, the construction or extension of any plant, equipment, property or facility, the applicant, in addition to complying with Section 7 of this regulation, shall submit the following data, either in the application or as exhibits attached thereto:

(a) The facts relied upon to show that the proposed new construction is or will be required by public convenience or necessity.

(b) Copies of franchises or permits, if any, from the proper public authority for the proposed new construction or extension, if not previously filed with the commission.

(c) A full description of the proposed location, route, or routes of the new construction or extension, including a description of the manner in which same will be constructed, and also the names of all public utilities, corporations, or persons with whom the proposed new construction or extension is likely to compete.

(d) Three (3) maps to suitable scale (preferably not more than two (2) miles per inch) showing the location or route of the proposed new construction or extension, as well as the location to scale of any like facilities owned by others located anywhere within the map area with adequate identification as to the ownership of such other facilities.

(e) The manner in detail in which it is proposed to finance the new construction or extension.

(f) An estimated cost of operation after the proposed facilities are completed.

(g) All other information necessary to afford the commission a complete understanding of the situation.

(3) Extensions in the ordinary course of business. No certificate of public convenience and necessity will be required for extensions that do not create wasteful duplication of plant, equipment, property or facilities, or conflict with the existing certificates or service of other utilities operating in the same area and under the jurisdiction of the commission that are in the general area in which the utility renders service or contiguous thereto, and that do not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved, or will not result in increased charges to its customers.

(4) Renewal applications. Insofar as procedure is concerned, applications for a renewal of a certificate of convenience and necessity will be treated as an original application.

Section 9. Application or Notice for Authority to Adjust Rates. (1) When the utility seeks to adjust any rate, toll, charge, or rental, so as to alter any classification, contract, practice, rule or regulation as to result in any change in any rate, toll, charge, or rental, the applicant, in addition to complying with the provisions of Section 7 of this regulation, shall submit the following data either in the application or attached thereto as exhibits:

(a) Financial exhibit. (See Section 6.)

(b) A schedule of the present rates, tolls, charges, or rentals, in effect, and the changes which it is desired to make, shown in comparative form.

(c) A description of applicant's property, including a statement of the net original cost of the property (estimated if not known) and the cost thereof to applicant.

(d) A st tement in full of the reason why the adjustment is required.

(e) A statement setting forth estimates of the effect that the new rate or rates will have upon the revenues of the utility, the total amount of money resulting from the increase or decrease, the percentage of increase or decrease, and the effect upon average consumer bills.

(f) A statement certifying that the utility's annual reports, including the report for the most recent calendar year, are on file with the commission in accordance with 807 KAR 5:006, Section 3(1).

(2) In all cases involving a general increase in rates, in addition to the information required in subsection (1) above, complete financial data for the twelve (12) months corresponding to the test period used by the utility in its case shall be submitted at the hearing or prior thereto unless such information is contained in reports on file with the commission. Such data shall include:

(a) Total amount of interest charged to construction.

(b) An analysis of customer's bills in such detail that the revenues from the present and proposed rates can be readily determined.

(c) Details of any apportionment used.

(d) Monthly revenues and operating expenses.

Section 10. Application for Authority to Issue Securities, Notes, Bonds, Stocks or Other Evidences of Indebtedness. (1) When application is made by the utility for an order authorizing the issuance of securities, notes, bonds, stocks or other evidences of indebtedness payable at periods of more than two (2) years from the date thereof, under the provisions of KRS 278.300, said application, in addition to complying with the requirements of Section 7 of this regulation, shall contain:

(a) A general description of applicant's property and the field of its operation, together with a statement of the original cost of the same and the cost to the applicant, if it is impossible to state the original cost, the facts creating such impossibility shall be stated.

(b) The amount and kinds of stock, if any, which the utility desires to issue, and, if preferred, the nature and extent of the preference; the amount of notes, bonds or other evidences of indebtedness, if any, which the utility desires to issue, with terms, rate of interest and whether and how to be secured.

(c) The use to be made of the proceeds of the issue of such securities, notes, bonds, stocks or other evidence of indebtedness with a statement indicating how much is to be used for the acquisition of property, the construction, completion, extension or improvement of facilities, the improvement of service, the maintenance of service and the discharge or refunding of obligations.

(d) The property in detail which is to be acquired, constructed, improved or extended with its cost, a detailed description of the contemplated construction, completion, extension or improvement of facilities set forth in such a manner that an estimate of cost may be made, a statement of the character of the improvement of service proposed, and of the reasons why the service should be maintained from its capital. Whether any contracts have been made for the acquisition of such property, or for such construction, completion, extension or improvement of facilities, or for the disposition of any of the securities, notes, bonds, stocks or other evidence of indebtedness which it proposes to issue or the proceeds thereof and if any contracts have been made, copies thereof shall be annexed to the petition.

(e) If it is proposed to discharge or refund obligations, a statement of the nature and description of such obligations including their par value, the amount for which they were actually sold, the expenses associated therewith, and the application of the proceeds from such sales. If notes are to be refunded, the petition must show the date, amount, time, rate of interest, and payee of each and the purpose for which their proceeds were expended.

(f) Such other facts as may be pertinent to the application.

(2) The following exhibits must be filed with the application:

(a) Financial exhibit. (See Section 6.)

(b) Copies of trust deeds or mortgages, if any, unless they have already been filed with the commission, in which case reference should be made, by style and case number, to the proceeding in which the trust deeds or mortgages have been filed.

(c) Maps and plans of the proposed property and constructions together with detailed estimates in such form that they can be checked over by the commission's engineering division. Estimates must be arranged according to the uniform system of accounts prescribed by the commission for the various classes of utilities.

Section 11. Formal Complaints. (1) Contents of complaint. Each complaint shall be headed "Before the Public Service Commission," shall set out the names of the complainant and the name of the defendant, and shall state:

(a) The full name and post office address of the complainant.

(b) The full name and post office address of the defendant.

(c) Fully, clearly, and with reasonable certainty, the act or thing done or omitted to be done, of which complaint is made, with a reference, where practicable, to the law, order, or section, and subsections, of which a violation is claimed, and such other matters, or facts, if any, as may be necessary to acquaint the commission fully with the details of the alleged violation. The complainant shall set forth definitely the exact relief which is desired. (See Section 14(1).)

(2) Signature. The complaint shall be signed by the complainant or his attorney, if any, and if signed by such attorney, shall show his post office address. Complaints by corporations or associations, or any other organization having the right to file a complaint, must be signed by its attorney and show his post office address. No oral or unsigned complaints will be entertained or acted upon by the commission.

(3) Number of copies required. At the time the complainant files his original complaint, he must also file copies thereof equal in number to ten (10) more than the number of persons or corporations to be served.

(4) Procedure on filing of complaint:

(a) Upon the filing of such complaint, the commission will immediately examine the same to ascertain whether it establishes a prima facie case and conforms to this regulation. If the commission is of the opinion that the complaint does not establish a prima facie case or does not conform to this regulation, it will notify the complainant or his attorney to that effect, and opportunity may be given to amend the complaint within a specified time. If the complaint is not so amended within such time or such extension thereof as the commission, for good cause shown, may grant, it will be dismissed.

(b) If the commission is of the opinion that such complaint, either as originally filed or as amended, does establish a prima facie case and conforms to this regulation, the commission will serve an order upon such corporations or persons complained of under the hand of its secretary and attested by its seal, accompanied by a copy of said complaint, directed to such corporation or person and requiring that the matter complained of be satisfied, or that the complaint be answered in writing within ten (10) days from the date of service of such order, provided that the commission may, in particular cases, require the answer to be filed within a shorter time.

(5) Satisfaction of the complaint. If the defendant desires to satisfy the complaint, he shall submit to the commission, within the time allowed for satisfaction or answer, a statement of the relief which he is willing to give. Upon the acceptance of this offer by the complainant and the approval of the commission, no further proceedings need be taken.

(6) Answer to complaint. If satisfaction be not made as aforesaid, the corporation or persom complained of must file an answer to the complaint, with certificate of service on other parties endorsed thereon, within the time specified in the order or such extension thereof as the commission, for good cause shown, may grant. The answer must contain a specific denial of such material allegations of the complaint as controverted by the defendant and also

a statement of any new matter constituting a defense. If the answering party has no information or belief upon the subject sufficient to enable him to answer an allegation of the complaint, he may so state in his answer and place his denial upon that ground. (See Section 14(2).)

Section 12. Informal Complaints. (1) Informal complaints must be made in writing. Matters thus presented are, if their nature warrants, taken up by correspondence with the utility complained against in an endeavor to bring about satisfaction of the complaint without formal hearing.

(2) No form of informal complaint is prescribed, but in substance it must contain the essential elements of a complaint, including the name and address of complainant, the correct name and post office address of the utility against whom complaint is made, a clear and concise statement of the facts involved, and the relief requested.

(3) In the event of failure to bring about satisfaction of the complaint because of the inability of the parties to agree as to the facts involved, or from other causes, the proceeding is held to be without prejudice to the complainant's right to file and prosecute a formal complaint whereupon the informal proceedings will be discontinued.

Section 13. Deviations from Rules. In special cases, for good cause shown, the commission may permit deviations from these rules.

Section 14. Forms. (1) In all practice before the commission the following forms shall be followed insofar as practicable:

(a) Formal complaint.
(b) Answer.
(c) Application.
(d) Notice of adjustment of rates.

(2) Forms of formal complaint.

Before the Public Service Commission

(Insert name of complainant))
Complainant)
)
vs.)
)
(Insert name of each defendant))
Defendant)

No. _____
(To be inserted by the secretary)

COMPLAINT

The complaint of (here insert full name of each complainant) respectfully shows:

(a) That (here state name, occupation and post office address of each complainant).

(b) That (here insert full name, occupation and post office address of each defendant).

(c) That (here insert fully and clearly the specific act or thing complained of, such facts as are necessary to give a full understanding of the situation, and the law, order, or rule, and the section or sections thereof, of which a violation is claimed).

WHEREFORE, complainant asks (here state specifically the relief desired).

Dated at _____, Kentucky, this _____ day of _____, 19_____.

_____
(Name of each complainant)

_____
(Name and address of attorney, if any)

(3) Form of answer to formal complaint.

Before the Public Service Commission

(Insert name of complainant))
Complainant)
)
vs.)
)
(Insert name of each defendant))
Defendant)

No. _____
(To be inserted by the secretary)

ANSWER

The above-named defendant, for answer to the complaint in the proceeding, respectfully states:

(a) That (here follow specific denials of such material, allegations as are controverted by the defendant and also a statement of any new matter constituting a defense. Continue lettering each succeeding paragraph).

WHEREFORE, the defendant prays that the complaint be dismissed (or other appropriate prayer).

_____
(Name of defendant)

_____
(Name and address of attorney, if any)

(4) Form of application.

Before the Public Service Commission

In the matter of the application of)
(here insert name of each applicant))
for (here insert desired order,)
authorization, permission or cer-)
tificate, thus: "Order authorizing)
issue of stocks and bonds"))

No. _____
(To be inserted by the secretary)

APPLICATION

The petition of (here insert name of each applicant) respectfully shows:

(a) That applicant is engaged in the business of (here insert nature of business and territorial extent thereof).

(b) That the post office address of each applicant is _____.

(c) That (here state fully and clearly the facts required by these rules, and any additional facts which applicant desires to state).

WHEREFORE, applicant asks that the Public Service Commission of the Commonwealth of Kentucky make its order authorizing applicant to (here state specifically the action which the applicant desires the commission to take).

Dated at _____, Kentucky, this _____ day of _____, 19_____.

_____
(Name of applicant)

_____
(Name and address of attorney, if any)

(5) Form of notice to the commission of adjustment of rates.

Before the Public Service Commission

In the matter of adjustment of rates of the (state name of corporation).	)	No._____ (To be inserted by the secretary)

The (here insert name of company) informs the commission that it is engaged in the business of (set out character of business) in (set out place of operation) and does hereby propose to adjust its rates, effective the _____ day of _____, 19____, in conformity with the attached schedule.

(See Section 9 of this regulation for required information.)

_____
(Name and address of company)

_____
(Name and address of attorney)

LAURA MURRELL, Commissioner
ADOPTED: November 14, 1983
APPROVED: LEONARD MARSHALL, Secretary
RECEIVED BY LRC: November 14, 1983 at 2:50 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary, Public Service Commission, P.O. Box 615, 730 Schenkel Lane, Frankfort, Kentucky 40602.

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

815 KAR 7:020. Building code.

RELATES TO: KRS Chapter 198B
PURSUANT TO: KRS 198B.040(7), 198B.050
NECESSITY AND FUNCTION: The Kentucky Board of Housing, Buildings and Construction is required by KRS 198B.040(7) to adopt and promulgate a mandatory uniform state building code, which establishes standards for construction of buildings in the state. This regulation establishes the Kentucky Building Code basic provisions relating to new construction, including general building limitations, special use and occupancy, light, ventilation and sound transmission control, means of egress, structural and foundation loads and stresses, acceptable materials and tests, fire resistive construction and fire protection systems, safety during building operations, mechanical systems, energy conservation and electrical systems.

Section 1. The Kentucky Building Code shall include the National Electrical Code, 1984 [1] Edition, N.F.P.A. #70, published by and copies available from the National Fire Protection Association, *Batterymarch Park, Quincy,* [470 Atlantic Avenue, Boston,] Massachusetts 02269 [10]. The National Electrical Code is hereby adopted by reference.

Section 2. The Kentucky Building Code shall include the "BOCA Basic Building Code/1981," Eighth Edition, published by and copies available from Building Officials and Code Administrators International, 17926 South Halsted Street, Homewood, Illinois 60430. That code, including all standards listed in Appendices A through F are hereby adopted by reference with the following additions, exceptions and deletions:

(1) Delete Article 1 in its entirety.

(2) Change subsection 201.0 to include the following additional definitions:

(a) "Construction: The erection, fabrication, reconstruction, substantial alteration or conversion of a building, or the installation of equipment therein."

(b) "Equipment: Facilities or installations including but not limited to, heating, electrical, ventilating, air-conditioning, and refrigerating facilities or installations."

(c) "Reconstruction: The process of reproducing by new construction the exact form and detail of a vanished building, structure or object or a part thereof as it appeared at a specific period of time."

(d) "Rehabilitation: The process of returning a property to a state of utility through repair or alteration which makes possible an efficient contemporary use of while preserving those portions or features of the property which are significant to historical, architectural and cultural values."

(e) "Restoration: The process of accurately recovering the form and details of the property and its setting as it appeared at a particular period of time by means of the removal of later work or by the replacement of missing earlier work."

(f) "Stabilization: The process of applying measures designed to re-establish a weather-resistant enclosure and the structural stability of an unsafe or deteriorated property while maintaining the essential form as it exists."

(3) Change subsection 201.0 definitions to read as follows:

(a) "Basement: That portion of a building the average height of which is at least half below grade, which is ordinarily used for purposes such as storage, laundry facilities, household tool shops, and installation and operation of heating, cooling, ventilating facilities, but which is not ordinarily used for purposes of general household habitation."

(b) "Story: That part of the building comprised between a floor and the floor or roof next above which is not a basement or an attic."

(4) Change subsection 308.5 to read as follows: "308.5 Use group R-4 Structures: This use group shall include all detached one (1) or two (2) family dwellings not more than than three (3) stories in height, and their accessory structures as indicated in the Appendix A Standard, One- and Two-Family Dwelling Code. All such structures shall be designed and built in accordance with the requirements of this code for use group R-3 structures or shall be designed and built in accordance with all the requirements of the one (1) and two (2) family dwelling code as listed in Appendix B, except that the requirements of the state plumbing code (Article 22) shall supersede those conflicting requirements of the one (1) and two (2) family dwelling code. This choice shall be made by the builder at the time of plans submission."

(5) Change subsection 504.1 to read as follows: "504.1 Limitations: These provisions shall not be deemed to prohibit alterations within the limitations of Section 6 of 815 KAR 7:010 provided an unlawful change of use is not involved."

(6) Delete Sections 515.1 through 515.11 and substitute the following: "515.1 Requirements for accessibility of the handicapped: Please see 815 KAR *7:060* [40:010] for construction requirements providing accessibility to the han-

dicapped in public buildings and public accommodations."

(7) Change subsection 516.1 to read as follows: "516.1 Approval: The provisions of this code relating to the reconstruction, restoration, stabilization, rehabilitation, and moving of buildings or structures shall not be mandatory for existing buildings or structures, identified and classified on the National Register of Historic Places or otherwise classified as historic by the Kentucky Heritage Commission or the department when such buildings or structures are judged by the department to be safe and in the public interest of health, safety and welfare. The department may require submission of architectural and engineering plans and specifications prior to a determination.

(8) Change subsection 603.2 to read as follows: "603.2 Housekeeping: Periodic inspections of existing uses and occupancies shall be made by the appropriate fire and health officials to insure maintenance of good housekeeping conditions."

(9) Change Section 613.1 to read as follows: "Private garages located beneath a one- and two-family dwelling shall have walls, partitions, floors and ceilings separating the garage space from the dwelling constructed of not less than one (1) hour fireresistance rating. Private garages attached to a one- and two-family dwelling shall be completely separated from the dwelling and its attic area by means of one-half (½) inch gypsum board or equivalent applied to the garage side. In lieu of the required one and three quarter (1¾) inch solid core door, an approved automatic sprinkler head located directly above the door in the garage and properly connected to the domestic water system or an approved automatic smoke detector located directly above the door in the garage shall be acceptable."

(10) Delete Section 705 and Section 804 in their entirety.

(11) Change Section 900.0 by creating a new subsection which shall read as follows: "900.2 Certificate of Compliance: the provisions of this article may be deemed to have been satisfied when certification of an architect or engineer registered in Kentucky to that effect is placed on drawings submitted to the building official."

(12) Delete subsections 1404.4.2, 1404.4.3, 1404.4.4 in their entirety.

(13) Change subsection 1600.2 to read as follows: "1600.2 Boilers: All boilers and associated pressure piping shall meet the standards for construction, installation and inspection as set forth in Title 815, Chapter 15, Kentucky Administrative Regulations."

(14) Add two new subsections to Section 1600.0 which shall read as follows:

(a) "1600.3 Unfired Pressure Vessels. All unfired pressure vessels shall meet the standards set forth in Section VIII of the 1977 Edition of the ASME Boiler and Pressure Vessel Code, ANSI/ASME BPV-VIII-1."

(b) "1600.4 Mechanical Code: All mechanical equipment and systems not covered by 1600.2 or 1600.3 but which are required by other provisions of this code to be installed in accordance with the mechanical code listed in Appendix B, shall be constructed, installed and maintained in conformity with the BOCA Basic Mechanical Code/1981 including all applicable standards listed within Appendices B through E."

(15) Delete Article Nineteen (19) in its entirety.

(16) Delete subsections 2000.1 through 2005.3 and substitute the following:

(a) "2000.1 Installations and Repairs. All electrical wiring and equipment shall be installed in conformity with the National Electrical Code incorporated by reference in the Kentucky Building Code.

(b) "2000.2 Electrical Inspections. Inspections conducted to determine compliance with the National Electrical Code shall be conducted by a certified electrical inspector in accordance with 815 KAR 35:010.

(c) "2000.3 Certificate of Approval:"

1. After the Kentucky Building Code becomes effective pursuant to KRS 198B.110 and after a certified electrical inspector has been employed, contracted for or with, or otherwise provided for by the local government or the department, no utility shall initiate permanent electrical service to any new building until a final certificate of approval has been issued by a certified electrical inspector. Unless the department shall notify the utility in writing as to which buildings are subject to departmental approval, it shall be presumed by the utility that the building is subject to the jurisdiction of the local government.

2. Nothing in this section shall prohibit the supply or use of necessary electrical services during the construction and testing process.

(d) "Section 2000.4 Temporary use and Permission: The building official may in his discretion give temporary permission for a reasonable time to supply and use current in part of an electrical installation before such installation has been fully completed and the final certificate of approval has been issued; provided, that the part covered by the temporary certificate complies with all the requirements specified for lighting, heat or power in the National Electrical Code."

(17) Delete subsections 2200.1 through 2206.3.1 in their entirety and substitute the following: "2200.1 Scope: The design and installation of all plumbing systems, including sanitary and storm water sewage disposal in buildings shall comply with the requirements of the Kentucky State Plumbing Code as set out in Title 815, Chapter 20, Kentucky Administrative Regulations."

Section 3. Elevator Installation and Maintenance. The following subsections of Article 21 of the BOCA Basic Building Code are deleted or changed to read as follows:

(1) 2100.1 Scope: Except as may be otherwise provided by statute, the provisions of this article shall control the design, construction, installation, maintenance and operation of all elevators, escalators, moving stairways, moving walks, hereafter operated, installed, relocated or altered in all buildings and structures. The design, construction, installation, maintenance and operation of all miscellaneous hoisting and elevating equipment shall be subject to such special requirements as are deemed necessary by the building official to secure their safe operation. The provisions of this article shall not apply to portable elevating devices used to handle materials only, and located and operated entirely within one (1) story. All such equipment shall be constructed, operated and maintained in compliance with accepted engineering practice. The construction, alteration, maintenance, operation, inspection and tests of manlifts shall be in conformity to the Safety Standard for Manlifts listed in ANSI A17.1.

(2) 2101.3 Identification of equipment: All elevators which are subject to periodic inspections shall be identified by a serial number stamped on the crosshead of the elevator car and on the front of the car door sill; and on devices other than elevators, on truss or frame, in figures not less than three-eighths (3/8) inch high. After such devices have been so designated, their numbers shall not be changed except by permission of the building official, and

all correspondence in regard to such device shall refer to said number.

(3) 2102.3.2 Deleted.

(4) 2102.4.1 Periodic inspection intervals: Annual Inspection. Every passenger elevator and escalator shall be inspected once every twelve (12) months.

(5) 2107.4.2 Maintenance test intervals: Full load safety tests shall be made at intervals not exceeding the following:

(a) Power elevator car and counterweight safeties, governors and oil buffers, every five (5) years; and

(b) Hydraulic elevator shall have pressure relief test at no less than every twelve (12) months.

(6) 2102.5.2 Deleted.

(7) 2102.5.3 Manlifts: All equipment and machinery of manlifts shall be inspected and tested to insure reasonable safety of operation and shall include tests of the brake, terminal stopping device, cables and emergency stopping device. Acceptance tests shall also include a load capacity test as provided in the accepted standard listed in ANSI A17.1.

(8) 2102.5.4 Deleted.

(9) 2107.2.1 Buildings with elevator service: In all buildings and structures serviced by an elevator, all elevators shall be provided with a minimum clear distance between walls, or between wall and door excluding return panels, not less than sixty-eight (68) inches by fifty-four (54) inches (1727 mm by 1372 mm), and a minimum distance from wall to return panel not less than fifty-one (51) inches (1295 mm). The minimum clear width of the door shall be thirty-two (32) inches (813 mm).

(10) 2107.2.2 Elevators for fire department use: In all structures where elevator service is required for fire department use (see Section 629.8), all elevators shall be provided with a minimum distance between walls, or between wall and door excluding return panels, not less than eighty (80) inches by fifty-four (54) inches (2032 mm by 1372 mm) and a minimum distance from wall to return panel not less than fifty-one (51) inches (1295 mm), with a forty-two (42) inch (1067 mm) side slide door to allow for turning a wheelchair or accommodating an ambulance stretcher in its horizontal position.

(11) 2107.4 Use by handicapped persons: If interior access in multi-story buildings is provided by elevator(s), all passenger elevators shall meet the following requirements of Sections 2107.4.1 through 2107.4.11.

(a) 2107.4.4 Car call: The minimum acceptable time for doors to remain open shall not be less than five (5) seconds.

(b) 2107.4.6 Car controls: Elevator control panels shall have the following features:

1. Buttons. All control buttons shall be at least three-fourths (¾) inch (nineteen (19) mm) in their smallest dimensions. They may be raised, flush, or recessed.

2. Tactile and visual control indicators. All control buttons shall be designated by raised or indented standard alphabet characters for letters, arabic characters for numerals, or standard symbols, and as required in ANSI A17.1-1978 and A17.1a-1979. Raised and indented characters and the main entry floor shall be designated by a raised or indented star at the left of the floor designation. All raised or indented designations for control buttons shall be placed immediately to the left of the button to which they apply. Applied plates, permanently attached, are an acceptable means to provide raised or indented control designations. Floor buttons shall be provided with visual indicators to show when each call is registered. The visual indicators shall be extinguished when each call is answered.

3. Height. All floor buttons shall be no higher than fifty-four (54) inches (1370 mm) above the floor. Emergency controls, including the emergency alarm and emergency stop, shall be grouped at the bottom of the panel and shall have their centerlines no less than thirty-five (35) inches (890 mm) above the floor.

4. Location. Controls shall be located on a front wall if cars have center opening doors, and at the side wall or at the front wall next to the door if cars have side opening doors.

(c) 2107.4.7 Hall buttons: The centerline of the hall call buttons shall be a nominal forty-two (42) inches above the floor. Director buttons, exclusive of border, shall be a minimum of three-fourths (¾) inch (nineteen (19) mm) in size and raised, flush or recessed. Visual indication shall be provided to show each call registered, and extinguished when the call is answered. Depth of flush or recessed buttons when operated shall not exceed 3.8 inch (ten (10) mm). Button shall not be obstructed by chairs, ashtrays, or decorative ornaments, etc.

(d) 2107.4.10 Car position indicators: In elevator cars, a visual car position indicator shall be provided above the car control panel or over the door to show the position of the elevator in the hoistway. As the car passes or stops at a floor served by the elevators, the corresponding numeral shall illuminate. Numerals shall be a minimum of one-half (½) inch (thirteen (13) mm) high.

(e) 2107.4.11 Emergency communications: Emergency two (2) way communication systems between the elevator and a point outside the hoistway, shall comply with ANSI A17.1-1980. The highest operable part of a two (2) way communication system shall be a maximum of fifty-four (54) inches (1370 mm) from the floor of the car. It shall be identified by raised or recessed symbol and lettering complying with Section 30, and located adjacent to the device. If the system uses a handset, then the length of the cord from the panel to the handset, shall be at least twenty-nine (29) inches (735 mm).

(12) 2108.4 Vents shall be located:

(a) In the side of the hoistway enclosure directly below the floor or floors at the top of the hoistway, and shall open either directly to the outer air or through noncombustible ducts to the outer air; or

(b) In the wall or roof of the penthouse or overhead machinery space above the roof, provided that openings have a total of not less than the minimum specified in Section 2108.5 in lieu of the required vents.

(13) 2114.1 Restricted use: Special purpose personnel elevators shall be restricted to employees only. They shall comply with the applicable requirements of this Article and shall be installed only when permitted by the building official in feed, flour and cereal mills, grain elevators and in similar buildings of other use groups.

(14) 2114.2 Hoistways and hoistway enclosures: Where the hoistway is adjacent to areas permitting passage of people (e.g., passageways, stairwells, elevator landings), it shall be enclosed to a height of not less than seven (7) feet above the floor or stair treads. The enclosure shall be of sufficient strength to prevent contact between the enclosure material and the car or counterweight when the enclosure is subjected to a force of 250 pounds applied at right angles at any point over an area of four (4) inches by four (4) inches. Openwork enclosures may be used and shall reject a ball one (1) inch in diameter.

(15) 2114.2.1 Enclosure required: Except at the entrance, cars shall be fully enclosed with metal at sides and top. The enclosure at the sides shall be solid or of open-

work which will reject a ball of one (1) inch in diameter. The minimum clear height inside the car shall be seventy-eight (78) inches.

(16) 2114.3 Limitation of load, speed and platform area: The rated load shall not exceed 650 pounds. The inside net platform area shall not exceed nine (9) square feet. The minimum rated load shall not be less than that based on seventy (70) pounds per square foot of inside net platform area or 250 pounds, whichever is greater. The rated speed shall not exceed 100 feet per minute.

(17) 2114.4 Emergency signal and/or communication: Each elevator shall be equipped with an alarm button or switch in the car operating station and an alarm device mounted in a location which shall be readily available to a person who is normally situated in the vicinity when the elevator is in use, or a means of voice communication to a receiving station always attended when the installation is in use. If the alarm device or means of voice communication is normally activated by utility power supply, it shall be backed up by a manual or battery operated device.

(18) 2114.5 through 2117.5 Deleted.

Section 4. Elevators. Appendix A and B, of the BOCA Basic Building Code under "Elevators, Escalators and Moving Walks," shall be changed to read as follows:

(1) Change the standard citation for "Practice for the Inspection of" by changing to read "ANSI A17.2-1982."

(2) Change all citations relating to the "Safety Code for" and substitute "ANSI 17.1-1980."

Section 5. A new subsection of Article 3 of the Kentucky Building Code is hereby added to read as follows: "309.5 Tobacco auction warehouses: Warehouses, construction, may be constructed without a sprinkler system when all the following requirements have been met:

(1) The initial submission of plans to the Department of Housing, Buildings and Construction shall include a signed certificate by the owner that the warehouse will be used solely for the sale of tobacco on a seasonal basis or for the storage of non-combustibles.

(2) A manual fire alarm and smoke detection system with notification to the local fire service shall be provided with installation in accordance with Section 1707.0 of this code.

(3) An eighteen (18) foot paved and posted fire lane surrounding the entire perimeter of the building shall be provided and be accessible from a public street.

(4) A fifty (50) foot fire separation shall be maintained between the warehouse and the lot line and the warehouse and the nearest building."

CHARLES A. COTTON, Commissioner
ADOPTED: November 9, 1983
APPROVED: LEONARD MARSHALL, Secretary
RECEIVED BY LRC: November 10, 1983 at 1:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Judith G. Walden, Legal Counsel, Department of Housing, Buildings and Construction, The 127 Building, U.S. 127 South, Frankfort, Kentucky 40601.

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

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

RELATES TO: KRS 205.520
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with requirements of Title XIX of the Social Security Act. KRS 205.520(3) empowers the 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 resource and income standards by which eligibility of the medically needy is determined.

Section 1. Resource Limitations *and Exclusions* of the Medically Needy. *The following provisions are applicable with regard to computation of allowable resources:* [An applicant for or recipient of medical assistance is permitted to retain:]

(1) The upper limit for resources is $1,500 for family size of one (1), $3,000 for family size of two (2), and fifty dollars ($50) for each additional member.

(2) [(1)] A homestead, occupied or abandoned, household equipment, [motor vehicles] and farm equipment without limitation on value *are excluded from consideration.*

(3) [(2)] Equity of $6,000 in income-producing, non-homestead real property, *business or non-business, essential for self-support, is excluded from consideration.*

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

(4) *Equity of $4,500 in automobiles is excluded from consideration; however, if an automobile is used for employment, to obtain medical treatment of a specific or regular medical problem, or if specially equipped (e.g., as for use by the handicapped) the total value of such automobile is excluded.* [Savings, stocks, bonds, and other similar liquid assets totaling no more than $1,500 for family size of one (1); $3,000 for family size of two (2); and fifty dollars ($50) for each additional member.]

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

(6) Resources determined in accordance with subsections (3), (4), and (5) of this section to be in excess of excluded amounts must be considered countable resources when determining whether the individual or family group exceeds the upper limits specified in subsection (1) of this section. If resources exceed the upper limits, the individual or family group is ineligible.

(7) The following exclusions are also applicable as stated:

(a) Proceeds from the sale of a home are excluded from

consideration for three (3) months from date of receipt if used to purchase another home.

(b) Resources of a blind or disabled person necessary to fulfill an approved plan for achieving self-support are excluded from consideration.

(c) Payments or benefits from federal statutes, other than Title XVI (Supplemental Security Income), are excluded from consideration (as either a resource or income) if precluded from consideration in Title XVI determinations of eligibility by the specific terms of the statute.

(d) Disaster relief assistance is excluded from consideration.

(e) Cash or in-kind replacement for repair or replacement of an excluded resource is excluded from consideration if used to repair or replace the excluded resource within nine (9) months of the date of receipt.

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

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

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

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

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

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

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

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

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

(2) Income protected for basic maintenance is twenty-five dollars ($25) monthly in lieu of the figure shown in Section 3 of this regulation. All income in excess of twenty-five dollars ($25) is applied to the cost of care except as follows:

(a) Available income in excess of twenty-five dollars ($25) is first conserved as needed to provide for needs of the spouse and minor children up to the appropriate family size amount from the scale as shown in Section 3 of this regulation.

(b) Remaining available income is then applied to the incurred costs of medical and remedial care that are not subject to payment by a third party, including Medicare and health insurance premiums and medical care recognized under state law but not covered under the state's Medicaid plan.

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

(4) When an individual loses eligibility for a supplementary payment due to entrance into a participating long term care facility, and the supplementary payment is not discontinued on a timely basis, the amount of any overpayment is considered as available income to offset the cost of care (to the Medical Assistance Program) if actually available for payment to the provider.

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

Section 7. Consideration of State Supplementary Payments. For an individual receiving state supplementary payments, that portion of the individual's income which is in excess of the basic maintenance standard is applied to the special need which results in the supplementary payment.

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

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

Section 10. Relative Responsibility. For purposes of the medical assistance program, spouses are considered responsible for spouses and parents are considered responsible for dependent minor children. Stepparents are responsible for their stepchildren as shown in Section 10(7) and Section 11 of this regulation. This responsibility, with regard to income and resources, is determined as follows:

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

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

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

(4) In cases of an aged, blind, or disabled individual living apart from a spouse who is not a recipient of MA only, *eligibility is determined on a couple basis for the month of separation and the next six (6) months thereafter; however, if ineligibility results,* the applicant or recipient is considered as a single individual in the month after separation and only that individual's income and resources are considered.

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

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

(7) In cases of a blind or disabled child under eighteen (18) living with his parent(s) (including stepparent, if applicable), total resources and adjusted income of the parent(s) is related to limitations for family size, including the applicant or recipient child and other dependent children of parent using the adult scale. The income and resources of the parent(s) shall also be considered available to such child who is aged eighteen (18) through twenty-one (21), if in school, when to do so will work to the child's benefit and the individual was aged eighteen (18) through twenty-one (21) in September, 1980, and was MA eligible at that time.

(8) Income and resources of parent(s) are not considered available to a child living apart from the parent(s) for a period in excess of thirty (30) days, but any continuing contribution actually made is considered as income. Living apart may mean living in a medical institution, special school or in foster care and such status continues even if the child makes visits to the parent(s) home. For comparison with the resource and income limitations, the child's individual resources and/or income are considered in relation to family size of one (1).

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

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

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

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

(3) Any amount actually paid by the stepparent to in-

dividuals not living in the home who are claimed by him/her as dependents for purposes of determining his/her personal income tax liability.

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

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

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

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

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

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

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

Section 13. Treatment of Lump-Sum Income. Lump-sum income is *considered available in the month of receipt or the first administratively feasible month thereafter* [prorated over a three (3) month period].

Section 14. Full-Month Ineligibility Due to First-Day of Month Excess Resources. When an individual or family group related to the SSI assistance categories (i.e., aged, blind, or disabled) has excess resources on the first day of the month, the individual or group is ineligible throughout the month. The case shall be discontinued effective with the first administratively feasible month.

Section *15.* [14.] Transferred Resources. When an applicant or recipient transfers a nonexcluded resource(s) for the purpose of becoming eligible for medical assistance, the value of the transferred resource(s) will be considered a resource to the extent provided for by this section. The provisions of this section are applicable to both family related cases and medical assistance only cases based on age, blindness, or disability.

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

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

(3) If retention would result in ineligibility, the cabinet will consider the excess transferred resource available for up to twenty-four (24) months, subject to the following conditions:

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

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

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

(5) The uncompensated value may be excluded from consideration when good cause exists. A waiver of consideration of the uncompensated amount will be granted subject to the following criteria:

(a) "Good cause" means that an expense (or loss) was incurred by the individual or family group due to a natural disaster, fire, flood, storm or earthquake; or illness resulting from accident or disease; or hospitalization or death of a member of the immediate family; or civil disorder or other disruption resulting in vandalism, home explosions, or theft of essential household items.

(b) The exclusion may not exceed the amount of the incurred expense or loss.

(6) If the individual is in a long term care facility, the actual cost of long term care (rather than the $500) may be deducted from the uncompensated value excess on a monthly basis.

Section *16.* [15.] Special Provisions for AIS/MR Recipients. Effective April 1, 1983, medical assistance eligibility for participants in the program of alternative intermediate services for the mentally retarded (AIS/MR) shall be determined taking into consideration the special provisions contained in this section.

(1) The income and resources of the parent(s) and/or spouse shall not be considered available to the AIS/MR participant.

(2) Income protected for basic maintenance of the AIS/MR participant shall be the standard for the federal supplemental security income program.

(3) The attributed cost of care against which monthly available income of the AIS/MR participant shall be applied shall be the projected annual average cost of care of all participants divided by twelve (12) and rounded to the nearest dollar.

(4) Determinations of eligibility for medical assistance of the AIS/MR participant's parent(s), spouse, and/or dependent children shall be made on the same basis as if the participant was institutionalized.

Section 17. Implementation. The provisions of this

regulation, as amended, will be effective on February 1, 1984, applicable at the time of the next reinvestigation for each recipient.

JOHN CUBINE, Commissioner
ADOPTED: November 15, 1983
APPROVED: BUDDY H. ADAMS, Secretary
RECEIVED BY LRC: November 15, 1983 at 4:30 p.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 1:220. Terms and conditions of provider participation; provider appeals.

RELATES TO: KRS 205.510 to 205.990
PURSUANT TO: KRS 13.082, 194.050, 205.520
NECESSITY AND FUNCTION: Through KRS 205.520, the Secretary for Human Resources may establish regulations to comply with requirements imposed or opportunities presented by federal law to take advantage of funds available for medical assistance. Through an amendment to 42 U.S.C. 1395c and 1395j, Section 2175 of the Omnibus Budget Reconciliation Act of 1981 allows each state to restrict provider participation in its medical assistance program if it is determined the provider committed fraud or abused the program. To allow the state the ability to respond for good cause against a provider through an administrative action short of adjudication of criminal liability and thereby assuring the continued integrity of the Medical Assistance Program, this regulation is enacted. This provision reiterates the authority of the cabinet to determine the terms and conditions of vendor participation in the Kentucky Medical Assistance Program, and sets forth the procedure by which an aggrieved provider may appeal the termination, suspension, denial or nonrenewal of his or her provider agreement.

Section 1. The Cabinet for Human Resources may determine the terms and conditions for participation of vendors in the Kentucky Medical Assistance Program. The cabinet may suspend, terminate, deny or not renew a vendor's provider agreement for good cause. For purposes of this regulation, "good cause" is defined as:

(1) Misrepresenting or concealing facts in order to receive or to enable others to receive benefits;

(2) Furnishing or ordering services under Medicaid that are substantially in excess of the recipient's needs or that fail to meet professionally recognized health care standards;

(3) Misrepresenting factors concerning a facility's qualifications as a provider;

(4) Failure to comply with the terms and conditions for vendor participation in the program and to effectively render service to recipients;

(5) Submitting false or questionable charges to the agency.

Section 2. Upon notice of a decision to suspend, terminate, deny or not renew a provider agreement by the cabinet, any individual provider aggrieved thereby may file an appeal. The following procedure will govern the appeal of any such individual provider who has received said notice from the cabinet of termination, suspension, denial or nonrenewal of his or her provider agreement or of his or her suspension from the Kentucky Medical Assistance Program, except in the case of an adverse action taken under Title XVIII (Medicare), binding upon the Medical Assistance Program. Adverse action taken against an individual provider under *Medicare* [Medicaid] must be appealed through the mechanism set forth in 42 CFR, Part 405 Subpart O.

Section 3. Notification. The Kentucky Medical Assistance Program shall notify a provider in writing at least fifteen (15) days prior to the effective date of any decision to terminate, suspend, deny or not renew a provider agreement. The notice will state:

(1) The reasons for the decision;

(2) The effective date;

(3) The extent of its applicability to participation in the Medical Assistance Program;

(4) The earliest date on which the cabinet will accept a request for reinstatement;

(5) The requirements and procedures for reinstatement; and

(6) The appeal rights available to the excluded party.

Section 4. Evidentiary Hearing. Any provider aggrieved by a decision by the cabinet to suspend, terminate, deny or not renew a provider agreement pursuant to Section 1 of this regulation may, upon written request made within five (5) days from receipt of the written consideration decision, request an evidentiary hearing. Such hearing shall be held within thirty (30) days of receipt of the written request, and a decision shall be rendered within thirty (30) days from the date all evidence and testimony is submitted. Technical rules of evidence shall not apply. The hearing shall be held before an impartial decision-maker appointed by the Secretary for Human Resources. When an evidentiary hearing is held under this section, a provider shall be entitled to the following:

(1) Timely written notice as to the basis of the adverse decision and disclosure of the evidence upon which the decision was based;

(2) An opportunity to appear in person and introduce evidence to refute the basis of the adverse decision;

(3) A provider may be represented by counsel;

(4) A provider shall have an opportunity to be heard in person, to call witnesses, and to introduce documentary and other demonstrative evidence;

(5) A provider shall have an opportunity to cross-examine witnesses;

(6) The decision of the impartial hearing officer shall be in writing and shall set forth the reasons for the decision and the evidence upon which the determination is based.

Section 5. The decision of the hearing officer shall be the final decision of the Cabinet for Human Resources.

Section 6. The rights upon appeal by skilled nursing facilities (SNF's), intermediate care facilities (ICF's), and intermediate care facilities for the mentally retarded (ICF/MR's) shall be governed by the provisions of 42 CFR

§431.154 (informal reconsideration), and thereafter, 42 CFR §431.153 (evidentiary hearing).

JOHN CUBINE, Commissioner
ADOPTED: November 15, 1983
APPROVED: BUDDY H. ADAMS, Secretary
RECEIVED BY LRC: November 15, 1983 at 4:30 p.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 2:115. Eligibility, criteria for home energy assistance program.

RELATES TO: KRS 194.050
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility as prescribed by P.L. 97-35 (Title XXVI of the Omnibus Budget Reconciliation Act of 1981) to administer a program to provide assistance for eligible low income households within the Commonwealth of Kentucky to help meet the costs of home energy. KRS 194.050 provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This regulation sets forth the eligibility and benefits criteria for each of *two (2)* [five (5)] components of energy assistance, regular *and* crisis [, Project Warmup, emergency reconnection and emergency summer aid] under the Home Energy Assistance Program (HEAP).

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

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

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

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

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

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

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

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

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

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

[(9) "Emergency reconnection component" is that portion of benefits reserved as energy assistance for eligible households who use a utility service with a continuous billing cycle and whose service has been disconnected.]

[(10) "Emergency summer aid component" is that component administered by local organizations under contract with the cabinet to provide fans to eligible households in need due to extreme heat.]

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

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

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

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

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

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

[(3) Benefits to eligible households under the emergency summer aid component shall be in the form of fans, not to exceed forty dollars ($40) per fan, and not to exceed two (2) fans per household, unless special circumstances warrant a waiver of these provisions.]

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

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

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

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

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

[(2) Payment authorization under the emergency reconnection component shall be made by a two-party check made payable to the provider and the recipient, whenever feasible.]

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

[(4) For Project Warmup and emergency summer aid component, no direct cash payments shall be made to the recipient. Benefits shall be provided to eligible households by the contracting agency as necessary.]

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

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

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

(1) Applications for the regular component shall be accepted beginning *December 5* [January 3], 1983, and ending no later than *December 16* [January 14], 1983, at the close of business.

(2) Applications for the crisis component shall be accepted beginning January *16, 1984* [17, 1983].

[(3) Applications for the emergency reconnection component shall be accepted beginning February 14, 1983.]

(3) [(4)] Application shall be processed in the order taken until funds are expended. HEAP regular *and* crisis[, and emergency reconnection] components shall be terminated by the secretary when actual and projected component expenditures have resulted in utilization of available funds or March 31, *1984* [1983], whichever comes first.

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

[(6) Project Warmup may be implemented by contracting agencies on December 15, 1982. Benefits shall be provided until funds are exhausted or March 31, 1983, whichever comes first.]

[(7) Emergency summer aid component may be implemented by the contracting agency on July 25, 1983. Benefits shall be provided until funds are exhausted or September 15, 1983, whichever comes first.]

Income Scale

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

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

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

[(f) Under the emergency reconnection component, the utility service for the principal residence of the household must be disconnected.]

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

[(a) The household must be without adequate heat.]

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

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

(2) [(3)] Households are eligibile to receive benefits under either the regular *or* crisis *component.* [, or emergency reconnection component and Project Warmup. Receipt of assistance under other HEAP components does not affect eligibility under the emergency summer aid component.]

[(4) For the emergency summer aid component, a household must meet the same income and assets criteria contained in subsection (1)(b) through (d) of this section. Households with members who have health/medical problems or who are aged, blind, disabled, or who have children shall receive priority.]

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

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

Benefit Scales

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

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

Scale B.
Energy Sources: Natural Gas, Coal, *Wood*

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

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

(2) Up to *$250,000 shall be reserved for use if special circumstances develop related to winter heating or shelter needs. If a determination is made that special circumstances will not be present, the funds shall be utilized for benefits in the crisis component* [1.6 million shall be reserved for Project Warmup].

(3) Remaining benefit funds available under Public Law 97-35 shall be reserved for the regular and crisis components.

[(4) Of the approximately $2.57 million oil pricing settlement funds made available to Kentucky by the United States Department of Energy pursuant to the 1983 Further Continuing Appropriation Act, up to $1.0 million shall be reserved for the emergency reconnection component with the remainder made available for use in the crisis component.]

[(5) Up to $275,000 shall be reserved for administration and implementation of the emergency summer aid component.]

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

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

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

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

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

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

JOHN CUBINE, Commissioner
ADOPTED: November 15, 1983
APPROVED: BUDDY H. ADAMS, Secretary
RECEIVED BY LRC: November 15, 1983 at 3:30 p.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 3:020. Eligibility requirements.

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

Section 1. Eligibility Requirements. In accordance with regulations promulgated by the Food and Nutrition Service *(FNS)*, of the United States Department of Agriculture, national uniform standards of eligibility for the Food Stamp Program, composed of both financial and non-financial criteria, shall be utilized. Financial criteria shall consist of income and resource limitations. Non-financial criteria shall consist of certain technical factors. Participation in the program shall be limited to those households whose incomes are determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet. The income eligibility standards are derived from the Office of Management and Budget's (OMB) non-farm income poverty guidelines.

Section 2. Countable Income. All income from any source shall be counted, except income specifically excluded in Section 3, including but not limtied to:

(1) Wages earned by a household member, including all wages received by a striker the month prior to the month of the strike, or the month of application, in accordance with 7 CFR Part 273.1(g).

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

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

(4) Payments under Title I (Volunteers in Service to America, University Year for Action, etc.) of the Domestic Volunteer Service Act of 1973 shall be considered earned income unless specifically excluded in 7 CFR Part 273.9(c)(10)(iii).

(5) The earned or unearned income of excluded household members as set forth in 904 KAR 3:035, Section 5(3).

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

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

(8) Wages earned by a household member which are garnisheed or diverted by an employer and paid to a third party for a household expense.

(9) Support or alimony payments made directly to the household from nonhousehold members.

(10) Such portion of scholarships, educational grants, fellowships, deferred payment loans for education, veterans educational benefits and the like which are not excludable under Section 3(6) of this regulation.

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

(12) Monies withdrawn or dividends which are or could be received from a trust fund considered to be excludable under 7 CFR Part 273.8(e)(8) by a household, unless otherwise exempt under the provisions set forth in 7 CFR Part 273.9(c).

(13) That amount of monthly income of an alien's sponsor and the sponsor's spouse (if living with the sponsor) that has been deemed to be that of the alien in accordance with 7 CFR Part 273.11(h).

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

(1) Money withheld from an assistance payment, earned income or other income source, or moneys received from any income source which are voluntarily or involuntarily returned, to repay a prior overpayment received from that income source, provided the overpayment was not excludable in accordance with 7 CFR Part 273.9(c).

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

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

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

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

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

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

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

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

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

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

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

(13) Any income specifically excluded by any other federal statute from consideration as income for the purpose of determining eligibility for the Food Stamp Program.

(14) Any energy assistance payments made under federal [, state, or local] laws *or certified as excludable energy payments by FNS.*

Section 4. Income Eligibility Standards. Participation in the Food Stamp Program is limited to those households whose incomes fall at or below the applicable standards as established by FNS and which are set forth below:

(1) Households which contain a member who is elderly or disabled as defined in 904 KAR 3:010, Section 1(10) shall have their net income compared 100 percent of the federal income poverty guidelines.

(2) All other households shall have their gross income (total income after excluded income has been disregarded but before any deductions have been made) compared to 130 percent of the federal income poverty guidelines and their net income compared to 100 percent of the federal income poverty guidelines.

Section 5. Income Deductions. The following shall be allowable income deductions:

(1) A standard deduction per household per month. This standard shall be periodically adjusted by FNS to reflect changes in the cost of living for a prior period of time as determined by FNS.

(2) Eighteen (18) percent of gross earned income.

(3) Payments for the actual cost for the care of a child or other dependent when necessary for a household member to seek, accept or continue employment or attend training or pursue education preparatory to employment. This deduction shall not exceed the *excess shelter/child care maximum* [standard] established by FNS.

(4) Monthly shelter cost in excess of fifty (50) percent of the household's income after all other allowable deductions have been made. The shelter deduction alone or in combination with the dependent care deduction in subsection (3) of this section shall not exceed *the excess shelter/child care maximum* [a fixed monthly amount] established by FNS, except that households containing an elderly or disabled member shall not *be subject to said maximum* [have a fixed monthly amount] in regards to the shelter deduction. *The excess shelter/child care maximum* [This fixed monthly amount] shall be adjusted periodically by FNS to reflect changes in the cost of living for a prior period of time. Allowable monthly shelter expenses shall be those expenses outlined in 7 CFR Part 273.9(d). The cabinet shall develop a standard utility allowance for use in calculating shelter cost for those households which incur

heating/cooling costs separate and apart from their rent or mortgage payments in accordance with 7 CFR Part 273.9(d)(6). If the household is not entitled to the *utility* standard or does not choose to use the *utility* standard, it may claim actual utility expenses for any utility which it does pay separately. The standard utility allowance shall be adjusted at least annually to reflect changes in the cost of utilities.

(5) Allowable medical expenses, excluding special diets, in excess of thirty-five dollars ($35) per month incurred by any household member who meets the definition of elderly or disabled, as set forth in 7 CFR Part 271.2, are those meeting the criteria set forth in 7 CFR Part 273.9(d)(3) including, but not limited to:

(a) Medical and dental care;

(b) Hospitalization or outpatient treatment and nursing care;

(c) Medication and medical supplies;

(d) Health and hospitalization premiums; and

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

Section 6. Resources. Uniform national resource standards of eligibility shall be utilized. Eligibility shall be denied or terminated if the total value of a household's liquid and non-liquid resources, not exempt under Section 7 of this regulation and in accordance with 7 CFR Part 273.8, exceed:

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

(2) $1500: for all other households.

(3) [Effective June 1, 1983,] Households in which all members receive AFDC benefits and whose gross income does not exceed 130 percent of the federal income poverty guidelines shall be considered as having met the food stamp resource requirement.

Section 7. Exempt Resources. The following resources shall not be considered in determining eligibility:

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

(2) Household goods, personal effects including one (1) burial plot per household member, the cash value of life insurance policies and pension funds (except that Keogh plans which involve no contractual relationship with individuals who are not household members and Individual Retirement Accounts shall not be exempt), and prepaid burial plans if a contractual agreement for repayment must be signed in order to withdraw any funds.

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

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

(5) Property which is essential to the employment or self-employment of a household member, in accordance with 7 CFR Part 273.8(e)(5).

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

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

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

(9) Resources which have been prorated as income.

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

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

Section 8. Transfer of Resources. Households which have transferred resources knowingly for the purpose of qualifying or attempting to qualify for food stamps shall be disqualified from participation in the program for up to one (1) year from the date of the discovery of the transfer.

Section 9. Non-financial Criteria. Non-financial eligibility standards apply equally to all households and consist of:

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

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

(3) Citizenship and alien status. Program participation shall be limited to either citizens of the United States or eligible aliens, as outlined in 7 CFR Part 273.4. Individuals whose status is questionable shall be ineligible to participate until such status has been verified;

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

(5) Students. Persons aged eighteen (18) to sixty (60) who are physically and mentally fit and enrolled at least half-time in an instituion of higher education are ineligible to participate unless they meet criteria specified in 7 CFR Part 273.5.

(6) Mandatory monthly reporting (MMR). Households in counties in which MMR is being implemented shall be required to file monthly reports as a condition of eligibility, unless otherwise exempted by the appropriate federal agency.

(7) Social security number (SSN). Households applying for or participating in the Food Stamp Program must comply with SSN requirements [, specified in the Income Tax Reform Act of 1976,] by providing the SSN of each household member or applying for one (1) prior to certification. Failure to comply *without good cause* shall be determined for each household member *and shall result in such individual's disqualification from participation in the Food Stamp Program until this requirement is met* [in accordance with 7 CFR Part 273.6(c)].

(8) Work registration.

(a) All household members between the ages of eighteen (18) and sixty (60), except those exempt in 7 CFR Part 273.7(b), shall be required to register for work, accept suitable employment and be subject to other work registration requirements specified in 7 CFR Part 273.7. Strikers whose households are eligible in accordance with 904 KAR 3:035, Section 5(9), shall be subject to the work registration requirements unless exempt for reasons other than employment at the time of application.

(b) Household members participating in a county operating a Work Registration and Job Search Demonstration Project shall be subject to requirements and sanctions as specified in 7 CFR Part 282.13(c). Household members required to register shall be assigned to either a treatment group or a control group based on their social security number. Individuals in the treatment group shall be subject

to the ongoing job search requirements, in accordance with 7 CFR Part 273.7, and to the job finding club requirements specified in 7 CFR 282.13(f). Individuals assigned to the control group shall not be subject to work registration and job search requirements or sanctions during the operation of this demonstration project.

Section 10. Provisions contained in this regulation shall become effective January 1, 1984 unless otherwise specified within this regulation.

JOHN CUBINE, Commissioner
ADOPTED: November 14, 1983
APPROVED: BUDDY H. ADAMS, Secretary
RECEIVED BY LRC: November 15, 1983 at 3:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, CHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

Proposed Regulations

FINANCE AND ADMINISTRATION CABINET
Department of Personnel

101 KAR 1:051. Compensation and pay for performance plan.

RELATES TO: KRS 18A.030, 18A.075, 18A.110, 18A.165
PURSUANT TO: KRS 13.082, 18A.075, 18A.110
NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to prepare and submit to the board rules which provide for a pay plan for all employees in the classified service, taking into account such factors as the relative level of duties and responsibilities of various classes, rates paid for comparable positions elsewhere, and the state's financial resources. This rule is to assure uniformity and equity in administration of the pay plan in accordance with statutory requirements.

Section 1. Preparation, Approval, and Maintenance of the Plan. (1) After consultation with appointing authorities, the Secretary of the Finance and Administration Cabinet, and after conducting an annual wage and salary survey of relevant labor markets, the commissioner shall prepare a compensation plan for all classes of positions based on the concepts of internal job equity, external market competitiveness, and individual employee merit. The plan shall provide pay grades or specific salary rates as appropriate for the various classes. Each job class shall be assigned an appropriate pay grade or rate with consideration given to internal job evaluation data and external market conditions. All rates of pay for classes shall be consistent with the functions outlined in the classification plan. The compensation plan shall reward individual employee work performance in accordance with a performance increase chart to be developed by the commissioner.

(2) When the commissioner determines through relevant salary surveys that the state's overall compensation plan is inadequate in relation to that of other employers, he may authorize, upon certification of the State Budget Director and the Office for Policy and Management as to the availability of funds, a general adjustment of all pay grades in the pay structure to provide salary rates which are comparable to the external market. Additional surveys may be conducted as necessary to determine market conditions for specific classes.

(3) The commissioner shall submit the plan to the board for its approval. The board shall present the plan, through the Secretary of the Finance and Administration Cabinet, to the Governor for his final approval. The commissioner shall review the plan annually.

Section 2. Appointments. Initial appointments to state service shall be made at the minimum rate of the pay grade established for the class unless the commissioner authorizes appointment of a highly qualified applicant at a rate above the minimum, not to exceed the midpoint of the pay grade. Such exceptions shall be based on the outstanding and unusual nature of the applicant's education and/or experience over and above the minimum requirements set for the class. Such additional qualifications must be in the same or related area of the job duties of the class to which the appointment is to be made. Employees possessing similar qualifications employed in the same class, by the same agency, in the same locality shall have their salaries adjusted to the same rate granted in the in-range appointment if that rate is higher than their current salaries.

Section 3. Re-entrance to State Service. Appointing authorities, with the approval of the commissioner, may place re-employed, reinstated, and probationarily appointed former employees at a salary determined by one (1) of the following methods:

(1) Reinstatement to a class having the same or lower pay grade that is currently assigned to the employee's former class:

(a) Request the same salary that was paid at the time of separation from the classified service if such salary is within the current pay grade;

(b) Request a salary higher than that paid at the time of

separation from the classified service due to salary schedule or pay grade adjustments;

(c) Request a lower salary than that paid at the time of separation from the classified service if such a salary is within the current pay grade.

(d) Request a salary in accordance with the standards used for making new appointments.

(2) Re-employment or probationary appointment of former employees to the same, lower, or higher pay grade:

(a) Request the same salary that was paid at the time of separation from the classified service if such salary is within the current pay grade;

(b) Request a salary higher than that paid at the time of separation from the classified service due to salary schedule or pay grade adjustments;

(c) Request a lower salary than that paid at the time of separation from the classified service if such salary is within the current pay grade.

(d) Request a salary in accordance with the standards used for making new appointments.

(3) Former employees who were separated from state service by lay-off and who are reinstated or re-employed in the same or a similar class within one (1) year from the date of lay-off may receive the salary they were receiving at the time of lay-off, even if such salary is above the maximum of the new pay grade.

(4) Employees re-employed, reinstated or former employees probationarily appointed to a salary:

(a) Below the mid-point of the pay grade shall be considered for a performance increase in accordance with Section 5(1) of this regulation.

(b) Which equals or exceeds the midpoint of the pay grade at the time of completion of the probationary period may be considered for a performance increase in accordance with Section 5(1) of this regulation. If such employee is not considered for a performance increase in accordance with Section 5(1) of this regulation, he shall be considered for a performance increase at the beginning of the month following completion of twelve (12) months service from the date of re-employment, reinstatement or appointment.

Section 4. Salary Adjustments. (1) Promotion. An employee who is promoted shall receive a salary increase of five percent (5%) upon promotion; if an employee's salary is above the maximum of the pay grade for the class to which he is promoted, the employee shall receive a lump-sum payment of five percent (5%) of his annual base salary. An employee may receive a promotional increase of five percent (5%) on the first of the month following successful completion of the probationary period; if an employee's salary is above the maximum of the pay grade he may receive a lump-sum payment of five percent (5%) of his annual base salary. In no case shall the employee's salary be below the minimum of the higher grade following promotion. If the promotion is to a classification which constitutes an unusual increase in the level of responsibility, the appointing authority, with the prior written approval of the commissioner, may grant upon promotion a ten percent (10%) or fifteen percent (15%) salary increase over the employee's previous salary. If an employee's salary is above the maximum of the pay grade for the class to which he is promoted, the appointing authority, with the prior written approval of the commissioner, may grant upon promotion a lump-sum payment of ten percent (10%) or fifteen percent (15%) of the employee's annual base salary may be granted. A promotional increase shall not change the employee's regular performance increase date.

(2) Demotion. An employee who is demoted may have his salary reduced to a rate which is in the pay grade for the new class; this rate shall not exceed the rate which the employee was receiving prior to the demotion.

(3) Transfer. An employee who is transferred to a job class having the same pay grade shall be paid the same salary that he received prior to the transfer.

(4) Reclassification. An employee who is advanced to a higher pay grade through a reclassification of his position shall receive a salary increase of five percent (5%) except that in no case shall the employee's salary after such increase be below the minimum of the new pay grade. In those cases where the employee's salary is above the maximum of the pay grade for the new class, the employee shall receive a lump-sum payment of five percent (5%) of his annual base salary rate. An employee whose position is placed in a lower pay grade through reclassification shall receive the same salary he was receiving prior to reclassification, even if that salary is above the maximum of the new pay grade.

(5) Reallocation. An employee who is advanced to a higher pay grade through a reallocation of his position may receive a salary increase of five percent (5%) except that in no case shall the employee's salary after such increase be below the minimum of the higher pay grade. In those cases where the employee's salary is above the maximum of the pay grade for the new class, the employee may receive a lump-sum payment of five percent (5%) of his annual base salary. An employee whose current salary exceeds the pay grade maximum assigned to his class following reallocation of his position shall retain that current salary.

(6) Detail to special duty. An employee who is approved for detail to special duty as provided by 101 KAR 1:110, Section 4, may receive a five percent (5%) increase upon detail to a higher class except that in no case shall the employee's salary after such increase be below minimum of the higher grade.

(7) Reversion.

(a) An employee who is returned to his former class after failure to complete the probationary period following promotion or following detail assignment to a higher class shall have his salary reduced to a rate received prior to such promotion or detail assignment and is entitled to all salary advancements and adjustments he would have received had he not left the class even if these advancements place his salary above the maximum of the pay grade applicable to the class to which the employee is returning.

(b) An employee who is returned to a position in the classified service following transfer or promotion to the unclassified service shall have his salary reduced to the rate received prior to the promotion or transfer and is entitled to all salary advancements and adjustments he would have received had he not left the class even if these advancements place his salary above the maximum of the pay grade applicable to the class to which the employee is returning.

(c) The salary for employees who obtain merit status but later resign the classified position to accept appointment to an unclassified position shall have their salary determined, upon re-entry to the classified service, the same as employees who are reverted if there has been no break in service.

Section 5. Salary Advancements. (1) Probationary performance increases. The amount of an employee's proba-

tionary performance increase shall be based upon individual employee work performance conducted in accordance with 101 KAR 1:140, Section 10, and the pay plan. Full-time and part-time employees who complete their probationary period with at least a satisfactory performance level shall be granted a performance increase at the beginning of the month following such completion of the probationary period. The service may be provisional or probationary. Employees completing a probationary period following promotion shall not be eligible for a probationary performance increase under this section.

(2) Annual performance increases. The amount of an employee's annual performance increase shall be based upon individual employee work performance conducted in accordance with 101 KAR 1:140, Section 10, and the pay plan. Performance increases shall be limited to permanent full-time and part-time employees. Employees who are on educational leave with pay shall not receive performance increases. Employees in classes assigned flat rate salaries shall not be eligible to receive performance increases.

(a) Employees whose salaries are above the maximum of the pay grade shall be eligible to receive performance increases in a lump-sum amount on the employee's performance increase date.

(b) An employee having at least a satisfactory performance level shall receive a performance increase at the beginning of the month following completion of twelve (12) months service since last receiving a performance or probationary increase.

(c) An employee whose combined annual increment and performance increase payment places his salary above the maximum of the pay grade shall have his annual increment added to his annual base pay. Any or all of this performance pay increase which places his salary above the maximum of the pay grade shall be awarded as a lump-sum payment as of January 1, 1984.

(d)An employee whose performance level is below standard shall not receive a performance increase on his regularly scheduled increase date, but shall be considered for such increase twelve (12) months following his regularly scheduled date.

(3) Service computation. In computing service for the purpose of determining annual performance increase eligibility, in those cases where an employee is changed from part-time to full-time, part-time service shall be counted in determining increase eligibility for a full-time employee; in those cases where an employee is changed from full-time to part-time, full-time service shall be counted in determining increase eligibility for a part-time employee.

(4) Performance increase and annual increment dates will be established:

(a) Following completion of probation, except probation following promotion, with at least a satisfactory performance level, or following completion of twelve (12) months service from the date of appointment, reinstatement, or re-employment, pursuant to Section 3(4) of this regulation.

(b) When an employee returns from leave without pay pursuant to Section 7(2) of this regulation.

(5) Performance increase and annual increment dates will not change when an employee:

(a) Is in a position which is assigned a new or different salary grade.

(b) Receives a salary adjustment as a result of his position being reallocated or reclassified.

(c) Is transferred.

(d) Receives a demotion.

(e) Is approved for detail to special duty.

(f) Receives an educational achievement increase.

(g) Returns from military leave.

(h) Has his salary advanced above the maximum of the pay grade or has his salary returned to the pay grade due to a salary schedule change or pay grade adjustment.

(i) Is promoted or receives a promotional increase after completion of probation following promotion.

(6) Annual increment. All employees shall receive statutory annual increment of five (5) percent on the employee's regularly scheduled performance increase date. The commissioner shall assign increase dates to employees not having performance increase dates. For purposes of calculating the statutory annual increment of five percent (5%):

(a) Educational achievement increases, employee suggestion systems awards and overtime and/or compensatory leave payments shall not be included in "gross annual salary or wages."

(b) A lump-sum payment made to an employee pursuant to Sections 4(1), 4(4), 4(5), and 5(2)(a) of this regulation, and previous regulatory provision providing for a continuous service award shall be included in "gross annual salary or wages."

Section 6. Educational Achievement Increase. Subject to the approval of the commissioner, any permanent, full-time employee who, after completion of his initial probationary period, satisfactorily completes 260 classroom hours (or the equivalent as determined by the commissioner) of job related instruction or receives a high school diploma or GED is eligible for a lump-sum educational achievement increase of five percent (5%) of his annual base salary the first of the month following the approval of the increase.

Section 7. Return from Leave. (1) Leave with pay. The appointing authority shall grant an employee on leave with pay or returning to duty from leave with pay a performance increase on the employee's regularly scheduled increase date if such increase is warranted and the employee's performance level can be properly documented.

(2) Leave without pay. Employees returning to duty from leave without pay shall receive an annual increment and be considered for a performance increase when they have completed twelve (12) months service since the date they last received an annual increment pursuant to Section 5(3) of this regulation.

(3) Military Leave. An employee returning to duty from military leave without pay, or from military service in accordance with KRS 61.373, shall receive the same or similar pay (same salary plus grade changes) and all other increases he would have received. Satisfactory performance shall be assumed when computing the amount of performance increase(s) due.

Section 8. Salary Schedule Adjustment. When the commissioner authorizes an adjustment of all grades in the pay schedule, employees who are below the new minimum rates shall have their salaries adjusted at least to the minimum rates of their grades.

Section 9. Class Re-evaluation and Grade Adjustment. (1) Class re-evaluation is the assignment of a different pay grade to a class based upon a change in relation to other classes or to labor market conditions.

(2) Change in pay grade. Whenever it becomes necessary to assign a class a different pay grade due to changes defined in Section 9(1) of this regulation, the commissioner may make a new or different pay grade applicable to a class of positions. Persons employed in positions of that class at the effective date of the change in pay grade shall have their salary placed at least at the minimum salary of the higher grade. In no event shall an employee's salary be placed at a rate less than he received prior to the change in the pay grade. Employees whose salaries are already within the higher grade shall retain their current salaries following the adjustment. Employees in a class assigned to a lower pay grade through class re-evaluation shall retain their current salary even if that salary is above the maximum rate of the lower grade. The commissioner shall review the use of this provision for retaining employees' salaries above pay grade maximums and report to the Board July 1, 1984.

(3) Recruitment difficulties. Whenever the commissioner determines that it is not possible to recruit qualified employees at the established entrance salary in a specific area or for a specific class, he may at the request of the appointing authority, authorize the recruitment for a class of position at a higher rate in the pay grade, provided that all other employees in the same class of position in the same agency in the same locality are adjusted in salary to the same rate. When the commissioner determines that it is not possible to relieve salary inadequacies using this provision, Section 9(2) of this regulation shall apply.

(4) Increases resulting from this section shall not affect an employee's performance increase date.

Section 10. Paid Overtime. Overtime for which pay is authorized shall have the approval of the Commissioner of Personnel and the Secretary of the Finance and Administration Cabinet.

Section 11. Maintenance and Maintenance Allowance. In each case where an employee or the employee and his family are provided with full or part maintenance, consisting of one (1) or more meals per day, lodging or living quarters, and domestic or other personal services, such compensation shall be treated as part payment. The value of these services shall be deducted from the appropriate salary rate in accordance with a maintenance schedule developed by the commissioner after consultation with the appointing authority and the Secretary of the Finance and Administration Cabinet.

Section 12. Supplemental Shift Premium. Upon request of the appointing authority, the commissioner may authorize the payment of a supplemental shift premium for those employees directed to work an evening or night shift. However, no employee shall receive a supplemental shift premium subsequent to a transfer to a position that is ineligible for a shift differential premium payment. The employee's loss of shift differential pay shall not be a basis for an appeal to the Personnel Board.

Section 13. 101 KAR 1:055 and 101 KAR 1:055E, Compensation plan, pay for performance, are hereby repealed.

DEE MAYNARD, Commissioner
ADOPTED: October 14, 1983
RECEIVED BY LRC: November 15, 1983 at 4:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Department of Personnel, New Capitol Annex, Frankfort, Kentucky 40601.

FINANCE AND ADMINISTRATION CABINET
State Investment Commission

200 KAR 14:060. Public depositories, priority.

RELATES TO: KRS Chapter 42
PURSUANT TO: KRS 13.082, 42.520
NECESSITY AND FUNCTION: KRS 42.520 requires the State Investment Commission to assign priority to public depositories on the basis of compliance with regulations promulgated pursuant to KRS Chapter 13. This regulation repeals 200 KAR 14:040, and 200 KAR 14:050 is withdrawn.

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 (to include the need for credit services, as well as deposit services). 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, or that wish to remain a depository for state certificates of deposit, that they must submit a copy of their quarterly Report of Condition, including all accompanying schedules, to the commission. A photostatic copy of this report and schedules, as prepared for the Federal Deposit Insurance Corporation, the Comptroller of the Currency, or the appropriate Federal Reserve Bank will be sufficient to meet this reporting requirement.

(2) The 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 October 28, 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 ac-

cepted 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: November 7, 1983
RECEIVED BY LRC: November 9, 1983 at 11 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Dr. James Ramsey, Director, Office of Investment and Debt Management, 201 Capitol Annex Building, Frankfort, Kentucky 40601.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Office of the Secretary

400 KAR 1:030. Administrative rules of procedure, service of process.

RELATES TO: KRS 151.182, 151.297, 151.990, 224.033, 224.071, 224.073, 224.081, 224.083, 224.740, 224.866, 224.994, 224.995, 350.028, 350.070, 350.085, 350.093, 350.130, 350.465, 350.990
PURSUANT TO: KRS 13.082, 151.125, 224.033, 350.028, 350.255, 350.465
NECESSITY AND FUNCTION: KRS Chapter 151, 224, and 350 require the cabinet to conduct hearings and investigations concerning a wide variety of matters. This regulation establishes procedures for initiation of an administrative action and for service of process.

Section 1. Commencement of Action. An administrative action is commenced upon the filing of an initiating document with the cabinet. An initiating document is a complaint, petition, or notice of investigation under KRS 151.182 (1) and (2), 151.297, 224.033(11), 224.071, 224.073(2), 224.081(1) and (2), 224.750, 224.886(4), 350.028(2), 350.070, 350.085(6), 350.093(6)(b), 350.130(1) and 350.465(3)(i). These rules shall apply to formal hearings initiated pursuant to 405 KAR 7:090, Section 5, but shall not apply to preliminary hearings pursuant to 405 KAR 7:090, Sections 3 and 4.

Section 2. Process. (1) Summons issuance, by whom served.

(a) Upon the filing of the initiating document the docket coordinator shall issue an administrative summons and shall either:

1. Place a copy of the administrative summons and initiating document to be served in an envelope, address the envelope to the person to be served at the address set forth in the caption or at the address set forth in written instructions furnished by the initiating party. The docket coordinator shall affix adequate postage and place the sealed envelope in the United States mail as certified mail return receipt requested. The docket coordinator shall forthwith enter the fact of mailing in the record and make a similar entry when the return receipt is received. If the envelope is returned with an endorsement showing failure of delivery, the docket coorinator shall enter that fact in the record. The docket coordinator shall file the return receipt or returned envelope in the record. Service by certified mail is complete upon delivery of the envelope or as provided by Section 2(1)(b) of this regulation. The return receipt shall be proof of the time, place and manner of service. To the extent that the United States postal regulations permit authorized representatives of local, state, or federal governmental offices to accept and sign for "addressee only" mail, signature by such authorized representative shall constitute service on the officer; or

2. Cause the administrative summons and initiating document, with necessary copies, to be transferred for service to any person authorized by the Secretary or by any statute or rule, other than by paragraph (a)1 of this subsection, to deliver them, who shall serve the administrative summons and initiating documents, and the return endorsed thereon shall be proof of the time and manner of service.

(b) As an alternative to other methods of service specified by statute, regulation, or these rules, service of process upon a person issued a permit by the cabinet may be made by placing in the United States mail as certified mail, return receipt requested, a copy of the administrative summons and initiating document directed to the named permittee as specified on the face of the permit at the permanent address specified in the permit application or by the permittee. Service is effective upon acceptance of the administrative summons and initiating document by any person at the permanent address, or upon failure to claim the administrative summons and initiating document by any person at the permanent address, upon refusal to accept the administrative summons and initiating document prior to its return to the cabinet by the United States Postal Service. The return receipt shall be proof of the acceptance, refusal, or failure to claim the administrative summons and initiating document.

(c) The methods of service of process specified by these rules shall be supplemental to and shall be accepted as an alternative to any other method of service specified by other applicable statutes, rules or regulations.

(2) Administrative summons. The administrative summons shall be issued in the name of the cabinet, be dated and signed by the docket coordinator or other authorized individual, contain the name of the presiding hearing officer and the style and number of the action, and be directed to ach party, giving notice that a legal action has been filed and that failure to appear in person or by counsel as directed may result in a decision adverse to the party's position. The administrative summons shall be served with the initiating document and may include notices of hearing.

(3) Personal service. (a) Service shall be made upon an individual within this Commonwealth, other than an unmarried infant or person of unsound mind, by delivering a copy of the administrative summons and initiating document to such person or, if acceptance is refused, by offering personal delivery to such person, or by delivering a copy of the administrative summons and initiating document to an agent authorized by appointment or by law to receive service of process for such individuals.

(b) Service shall be made upon an unmarried infant or a person of unsound mind by serving the person's resident guardian or committee if there is one known to the initiating party or, if none, by serving either the person's father or mother within this state or, if none, by serving the person within this state having control of such individual. If there are no such persons enumerated above, application shall be made to the appropriate court to appoint a practic-

ing attorney as guardian ad litem who shall be served. If any of the persons directed by this section to be served is an initiating party, the person who stands first in the order named who is not an initiating party shall be served.

(c) Service shall be made upon a partnership or unincorporated association subject to suit under a common name by serving a partner or managing agent of the partnership or an officer or managing agent of the association, or an agent authorized by appointment or by law to receive service on its behalf.

(d) Service shall be made upon a corporation by serving an officer or managing agent thereof, or any other agent authorized by appointment or by law to receive service on its behalf.

(e) Service shall be made upon the Commonwealth or any agency other than the cabinet by serving the attorney-general or any assistant attorney-general. Service of a request for hearing shall be made upon the cabinet by serving the general counsel or any cabinet representative designated in any notice.

(f) Service shall be made upon a county by serving the county judge or, if said judge is absent from the county, the county attorney. Service shall be made upon a city by serving the chief executive officer thereof or an official attorney thereof. Service on any public board or other such body, except state agencies, shall be made by serving a member thereof.

(g) Service may be made upon an individual out of this state, other than an unmarried infant, a person of unsound mind or a prisoner, by certified mail in the manner prescribed in Section 2(1) of this regulation, by personal delivery of a copy of the administrative summons and initiating document by a person over eighteen (18) years of age, or by other methods allowed by law. Proof of service may be made either by the return receipt mentioned in Section 2(1) of this regulation or by affidavit of the person making such service, upon or appended to a copy of the initiating document, stating the time and place of service and the fact that the individual served was personally known to the person making service.

(h) Service may be made upon a nonresident individual who transacts business through an office or agency in this state, or a resident individual who transacts business through an office or agency in any action growing out of or connected with the business of such office or agency, by serving the person in charge thereof.

(4) Unknown party. In an action against a person whose name is unknown to the initiating party, the person shall be described in the initiating document and administrative summons as unknown party. If the person's name or place of residence be discovered pending the action, then the initiating document shall be amended accordingly.

Section 3. Service and Filing of Pleadings and Other Papers. (1) Service; when required. Every order required by its terms to be served, every pleading subsequent to the original initiating document unless the hearing officer otherwise orders because of numerous responding parties, every paper relating to discovery required to be served upon a party unless the hearing officer otherwise orders, every written motion other than one (1) which may be heard ex parte, and every written notice, appearance, demand, and similar papers shall be served upon each party except those in default for failure to appear. Parties so in default shall be given notice of pleadings asserting new or additional claims for relief against them by an initiating document issued thereon as provided in Section 2 of this regulation.

(2) Service; how made. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party is ordered by the hearing officer. Service upon the attorney or upon a party shall be made by delivering a copy to the attorney or party or by mailing it to the attorney's or party's last known address. Delivery of a copy within this rule means handing it to the attorney or to the party; or leaving it at the attorney's or party's office with the person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the attorney's or party's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

(3) Service; proof of. Whenever any pleading or other paper is served under subsections (1) or (2) of this section, proof of the time and manner of such service shall be filed before action is to be taken thereon by the hearing officer or the parties. Proof may be by certificate of a member of the bar or by affidavit of the person who served the papers, or by any other proof satisfactory to the hearing officer. Such certificate or affidavit shall identify by name the persons so served.

(4) Service; numerous responding parties. If the initiating or responding parties are numerous, the hearing officer upon motion or of the hearing officer's own initiative, may designate one (1) initiating or responding party for the service of the pleadings. The filing of any such pleading with the cabinet and service thereof upon the party constitutes due notice of it to the parties. The hearing officer upon motion or of the hearing officer's own initiative may order that any party not appearing at a pre-trial conference or preliminary hearing not be served with further pleadings. A copy of every such order shall be served upon the parties in such manner and form as the hearing officer directs.

(5) Filing. (a) All papers after the initiating document required to be served upon a party shall be filed with the cabinet either before service or within a reasonable time thereafter.

(b) The filing of pleadings and other papers with the cabinet as required by these rules shall be made by filing them with the docket coordinator.

(c) The docket coordinator shall endorse upon every pleading and other paper filed in an action the date of its filing. Such endorsement shall constitute the filing of the pleading or other paper and no order of the hearing officer shall be required.

Section 4. Time. (1) Computation. In computing any period of time prescribed or allowed by these rules, by order of the hearing officer, or by any applicable statute or regulation, the day of the act, event or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a legal holiday. Unless otherwise directed by the hearing officer, when the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

(2) Enlargement. When by statute, regulation, these rules or by order an act is required or allowed to be done at or within a specified time, the hearing officer for cause shown may, at any time in the hearing officer's discretion,

order the period enlarged with or without motion or notice if request therefor is made before the expiration of the period originally prescibed or as extended by a previous order or, upon motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect.

(3) For motions; affidavits. (a) A written motion, other than one (1) which may be heard ex parte, and notice of the hearing thereof shall be served not less than five (5) days before the time specified for the hearing, unless a specific period is fixed by statute, regulation, these rules or by order of the hearing officer. Such an order may for cause shown be made on ex parte application. All written motions shall be accompanied by a brief statement of the grounds and reasons for the motion.

(b) When a motion is supported by affidavit, the affidavit shall be served with the motion; and opposing affidavits may be served not later than one (1) day before the hearing, unless the hearing officer permits them to be served at some other time.

(4) Additional time after service by mail. Whenever a party has the right or is required to do some act or take some proceeding within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served by mail, three (3) days shall be added to the prescribed period. This provision shall not apply to the service of administrative summons and initiating documents by mail under Section 2(1) of this regulation.

JACKIE A. SWIGART, Secretary
ADOPTED: October 26, 1983
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: October 31, 1983 at 4:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Elmore C. Grim, Commissioner, Department for Surface Mining Reclamation and Enforcement, Natural Resources and Environmental Protection Cabinet, 3rd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Office of the Secretary

400 KAR 1:040. Administrative rules of procedure, discovery.

RELATES TO: KRS 151.182, 151.297, 151.990, 224.033, 224.071, 224.073, 224.081, 224.083, 224.750, 224.866, 224.994, 224.995, 350.028, 350.070, 350.085, 350.093, 350.130, 350.465, 350.990
PURSUANT TO: KRS 13.082, 151.125, 224.028, 350.033, 350.255, 350.465
NECESSITY AND FUNCTION: KRS Chapters 151, 224, and 350 require the cabinet to conduct hearings and investigations concerning a wide variety of matters. This regulation establishes procedures for discovery.

Section 1. General Provisions Governing Discovery. (1) Discovery methods. In all proceedings under these rules except preliminary hearings pursuant to 405 KAR 7:090, Sections 3 and 4, parties may obtain discovery by one (1) or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or, for parties other than the cabinet, permissions to enter upon land or other property, for inspection and other purposes; and requests for admission. Unless the hearing officer orders otherwise under subsection 1(3) of this regulation, the frequency of use of these methods is not limited.

(2) Scope of discovery.

(a) In general. Parties may obtain discovery regarding any matter, not privileged or confidential under KRS 61.870 et seq., 224.035, 224.036 or other law, whether it relates to a claim or defense of the party seeking discovery or to a claim or defense of any other party, which is relevant to the subject matter involved in the proceeding, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not grounds for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(b) Insurance agreements. A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.

(c) Hearing preparation: materials.

1. Subject to the provisions of paragraph (d) of this subsection, a party may obtain discovery of documents and tangible things otherwise discoverable under subsection (1) of this section and prepared in anticipation of the hearing by or for another party or by or for that other party's representative (including the party's attorney, consultant, surety, indemnitor, insurer, or agent) provided; however, that the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the proceeding may not be discovered.

2. A party may obtain a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for an order of the hearing officer. For purposes of this paragraph, a statement previously made is a written statement signed or otherwise adopted or approved by the person making it, or a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(d) Hearing preparations: experts. The parties shall exchange all information directed by the hearing officer, which may include facts known and opinions held by experts and acquired or developed in anticipation of a hearing. In addition, a party may, through interrogatories, require any other party to identify each person whom the other party expects to call as an expert witness at the hearing, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. Upon motion, the hearing officer may order further discovery by other means, subject to such restrictions as to scope as the hearing officer may deem appropriate, and such discovery shall be liberally allowed.

(3) Protective orders. (a) Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the hearing officer may make any order which justice requires to protect a party or person from an-

noyance, embarrassment, oppression, or undue burden or expense, including one (1) or more of the following: that the discovery not be had; that the discovery may be had only on specified terms and conditions, including a designation of the time or place; that the discovery may be had only by a method of discovery other than selected by the party seeking discovery; that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; that discovery be conducted with no one present except persons designated by the hearing officer; that a deposition after being sealed be opened only by order of the cabinet; that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way.

(b) If the motion for a protective order is denied in whole or in part, the hearing officer may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Section 10(1)(c) of this regulation apply to the award of expenses incurred in relation to the motion.

(4) Sequence and timing of discovery. Unless the hearing officer upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(5) Supplementation of responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement that response to include information thereafter acquired, except as follows:

(a) A party is under a duty seasonably to supplement a response with respect to any question directly addressed to the identity and location of persons having knowledge of discoverable matters, or the identity of each person expected to be called as an expert witness at the hearing, the subject matter on which the person is expected to testify, and the substance of the person's testimony.

(b) A party is under a duty seasonably to amend a prior response if the party obtains information upon the basis of which the party knows that the response was incorrect when made, or the party knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(c) A duty to supplement responses may be imposed by order of the hearing officer, agreement of the parties, or at any time prior to the hearing through new requests for supplementation of prior responses.

Section 2. Persons Before Whom Depositions May Be Taken. (1) Within the state. Depositions taken in this state shall be taken before an examiner; a judge, clerk, commissioner or official reporter of a court; a notary public; or before such other persons and under such other circumstances as shall be authorized by law. The term "officer" in Sections 4(3),(5), (6), 5(1), (2), and 6(4) of this regulation means any person before whom a deposition may be taken under this section.

(2) Without the state. Depositions may be taken out of this state before a commissioner appointed by the Governor of the state where taken or before any person empowered by a commission directed to the person by consent of the parties or by order of the hearing officer; or before a judge of a court, a justice of the peace, mayor of a city, or notary public; or before such other persons and under such circumstances as shall be authorized by the law of this state or the place where the deposition is taken.

Section 3. Stipulations Regarding Discovery Procedure. Unless the hearing officer orders otherwise, the parties may, by written stipulation, provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and modify the procedures provided by these rules for other methods of discovery, except that stipulations extending the time for responses to discovery may be made only with the approval of the hearing officer.

Section 4. Depositions Upon Oral Examination. (1) When depositons may be taken. After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examintion. The attendance of witnesses may be compelled by subpoena. The deposition of a person confined in prison may be taken only by leave of a court having appropriate jurisdiction and on such terms as the court prescribes.

(2) General requirements.

(a) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs, the matter upon which each person will be examined, and the name or descriptive title and address of the person before whom the deposition is to be taken. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(b) The hearing officer may for cause shown enlarge or shorten the time for taking the deposition.

(c) The hearing officer may upon motion order that the testimony at a deposition be recorded by other than stenographic means, in which event the order shall designate the manner of recording, preserving, and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. If the order is made, a party may nevertheless arrange to have a stenographic transcription made at the party's own expense.

(d) The notice to a party deponent may be accompanied by a request made in compliance with Section 8 of this regulation for the production of documents and tangible things at the taking of the deposition. The procedure of Section 8(2) of this regulation shall apply to the request.

(e) A party may in the notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one (1) or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. A subpoena shall advise a non-party organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This paragraph does not preclude taking a deposition by any other procedure authorized in these rules.

Section 3. Examination and Cross-Examination. (1) Examination and cross-examination of witnesses may proceed as permitted at the hearing. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with Section 4(2)(c) of this regulation. If requested by one (1) of the parties, the testimony shall be transcribed.

(b) All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and that party shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(4) Motion to terminate or limit examination. At any time during the taking of the deposition, or motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the hearing officer may order the person conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Section 1(3) of this regulation. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the hearing officer. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Section 10(1)(c) of this regulation apply to the award of expenses incurred in relation to the motion.

(5) Submission to witness. Any party to an action may make a written request before the officer taking a deposition therein that it be submitted to the witness. In such an event, when the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by the witness. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness unless the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness, the officer before whom the deposition is taken shall sign it and state on the record the fact of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress the hearing officer holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(6) Certification and filing by officer. (a) The officer before whom the deposition is taken shall certify on the deposition that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. The officer before whom the deposition is taken shall promptly deliver the deposition to the docket coordinator or send it by certified mail to the docket coordinator for filing.

(b) Documents and things produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that the person producing the materials may substitute copies to be marked for identification, if a fair opportunity is afforded all parites to verify the copies by comparison with the originals, and if the person producing the materials requests their return, the officer before whom the deposition is taken shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the hearing officer, pending final disposition of the case.

(c) Upon payment of reasonable charges therefor, not to exceed those fixed by statute, the officer shall furnish a copy of the deposition to any party or to the deponent.

(7) Failure to attend or to serve subpoena; expenses. (a) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the hearing officer may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by the party and the party's attorney in so attending, including reasonable attorney's fees.

(b) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon the witness and the witness because of such failure does not attend, and if another party attends in person or by attorney because the party expects the deposition of that witness to be taken, the hearing officer may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by the party and the party's attorney in so attending, including reasonable attorney's fees.

Section 5. Depositions Upon Written Questions. (1) Serving questions; notice. (a) After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoenas. The deposition of a person confined in prison may be ta' en only by leave of court of appropriate jurisdiction on such terms as that court prescribes.

(b) A party desiring to take a desposition upon written questions shall serve them upon every other party with a notice stating the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs, and the name or description title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Section 4(2)(e) of this regulation.

(c) The hearing officer may establish an expeditious schedule for the service of cross, redirect, and recross questions.

(2) The officer before whom the deposition is to be taken to take responses and prepare record. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Sections 4(3), (5) and (6) of this regulation, to

take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions which were received. Neither party agent, or attorney shall be present at the examination of the witness.

Section 6. Use of Depositions in Proceedings. (1) Use of depositions. At the hearing any part or all of a deposition so far as admissible may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(a) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

1. The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Section 4(2)(e) or 5(1)(b) of this regulation to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(c) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the hearing officer finds that: the witness is dead; or the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or the witness is at a greater distance than 100 miles from the place of the hearing or out of the state, unless it appears that the absence of the witness was procured by the party offering the deposition; or the witness is the Governor, Secretary, Auditor or Treasurer of the state; or the witness is a judge or clerk of a court; or the witness is a postmaster; or the witness is a president, cashier, teller or clerk of a bank; or the witness is a practicing physician, dentist or laywer; or the witness is a keeper, officer or guard of a penitentiary; or the witness is of unsound mind, having been of sound mind when his deposition was taken; or the witness is prevented from attending the trial by illness, infirmity, or imprisonment; or the witness is in the military service of the United States or of this state or if the hearing officer finds that such circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witness orally at the hearing, to allow the deposition to be used.

(d) If only a part of a deposition is offered in evidence by a party, an adverse party may require introduction of any other part which ought in fairness to be considered with the party introduced, and any party may introduce any other parts.

(e) Substitution of parties does not effect the right to use depositions previously taken.

(2) Objections to admissibility. Objection may be made at the hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(3) Effect of taking or using depositions. The taking of a deposition or the questioning of a deponent shall not make evidence admissible which is otherwise incompetent or constitute a waiver of objections to its admissibility.

(4) Effect of errors and irregularities. (a) As to notice. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(b) As to disqualification of person before whom deposition is to be taken. Objection to taking a deposition because of disqualification of the person before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(c) As to taking of deposition.

1. Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one (1) which might have been obviated or removed if presented at that time.

2. Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

3. Objections to the form of written questions are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within three (3) days after service of the last questions authorized.

(d) As to completion and return of deposition. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer before when the deposition was taken under Sections 5 and 6 of this regulation are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

Section 7. Interrogatories to Parties. (1) Availability; procedures for use. (a) Any party may serve upon any other party written interrogatories to be answered by the party served, or if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may be served upon any party at any time after the commencement of the action. A copy of the interrogatories, answers and all related pleadings shall be filed with the docket coordinator and, unless otherwise ordered, upon all parties.

(b) Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within thirty (30) days of service or within such other time as specified by the hearing officer. The party submitting the interrogatories may move for an order under Section 10(1) of this regulation with respect to any objection to or other failure to answer an interrogatory.

(2) Scope; use at trial.

(a) Interrogatories may relate to any matters which may be inquired into under Section 1(2) of this regulation, and the answers may be used to the extent permitted by the rules of evidence.

(b) An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the hearing of-

ficer may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pre-hearing conference or other later time.

(3) Option to produce business records. Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries.

Section 8. Production of Documents and Things. (1) Scope. Any party may serve on any other party a request to produce and permit the party making the request, or someone acting on the party's behalf, to inspect and copy any designated documents (including writings, drawings, graphs, charts, photographs, phonorecords, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Section 1(2) of this regulation and which are in the possession, custody or control of the party upon whom the request is served; provided, however, that nothing herein shall be construed so as to limit or impose additional requirements on the cabinet with respect to its authority to enter property or to conduct inspections authorized by law.

(2) Procedure. The request may be served on any party without leave of the hearing officer at any time after commencement of the action. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. The party upon whom the request is made shall serve written response within thirty (30) days or within such other time as specified by the hearing officer.

Section 9. Requests for Admission. (1) A party may serve upon any other party a written request for admission, for purposes of the pending action only, of the truth of any matters within the scope of Section 1(2) of this regulation set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. The request may be served at any time after the commencement of the action. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying.

(2) Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within thirty (30) days after service of the request, or within such shorter or longer time as the hearing officer may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify the answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that a reasonble inquiry has been made and that the information known or readily obtainable is insufficient to enable the party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for the hearing may not, on that ground alone, object to the request; the party may deny the matter or set forth reasons why the matter cannot be admitted or denied.

(3) The party who has requested the admissions may move to determine the sufficiency of the anwers or objections. Unless the objection is justified, the hearing officer shall order that an answer be served. If the hearing officer determines that an answer does not comply with the requirements of this section, the hearing officer may order either that the matter is admitted or that an amended answer be served. The hearing officer may, in lieu of these orders, determine that final disposition of the request be made at a pre-hearing conference or at a designated time prior to the hearing. The provisions of Section 10(3) of this regulation apply to the award of expenses incurred in relation to the motion.

(2) Effect of admission. Any matter admitted under Section 9 of this regulation is conclusively established unless the hearing officer on motion permits withdrawal or amendment of the admission. The hearing officer may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the hearing officer that withdrawal or amendment will prejudice the party in maintaining the action or defense on the merits. An admission made by a party under Section 9 of this regulation is for the purpose of the pending action only and is not an admission for any other purpose nor may it be used against the party in any other proceeding.

Section 10. Failure to Make Discovery: Sanctions. (1) Motion fc order compelling discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(a) Motion.

1. If a deponent fails to answer a question propounded or submitted under Section 4 or 5 of this regulation or a corporation or other entity fails to make a designation under Sections 4(2)(e) or 5(1)(b) of this regulation, or a party fails to answer an interrogatory submitted under Section 7 of this regulation, or a party fails to allow examination under Section 8 of this regulation, the discovering party may move for an order compelling an answer or a designation or an order compelling examination in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

2. If the motion is denied in whole or in part, the hearing officer may make such protective order as the hearing officer would have been empowered to make on a motion made pursuant to Section 1(3) of this regulation.

(b) Evasive or incomplete answer. For the purposes of

this rule an evasive or incomplete answer is to be treated as a failure to answer.

(c) Award of expenses of motion.

1. If the motion is granted the hearing officer shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the hearing officer finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

2. If the motion is denied, the hearing officer shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the hearing officer finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

3. If the motion is granted in part and denied in part, the hearing officer may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(2) Failure to comply with order.

(a) Sanctions by the hearing officer. If a party or an officer, director, or managing agent of a party or a person designated under Section 4(2)(e) or 5(1)(b) of this regulation to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under Section 10(1) of this regulation, the hearing officer may make such orders in regard to the failure as are just, and among others the following:

1. An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purpose of the action in accordance with the claim of the party obtaining the order;

2. An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the party from introducing designated matters in evidence;

3. An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.

(b) Expenses on failure to obey order. In lieu of any of the foregoing orders or in addition thereto, the hearing officer shall require the party failing to obey the order or the attorney advising the party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the hearing officer finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(3) Expenses on failure to admit. If a party fails to admit the genuineness of any document or the truth of any matter as requested under Section 9 of this regulation, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may apply to the hearing officer for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The hearing officer shall make the order unless it finds that the request was held objectionable pursuant to Section 9(1) of this regulation, or the admission sought was of no substantial importance, or the party failing to admit had reasonable ground to believe that the party might prevail on the matter, or there was other good reason for the failure to admit.

(4) Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection.

(a) If a party or an officer, director, or managing agent of a party or a person designated under Section 4(2)(e) or 5(1)(b) of this regulation to testify on behalf of a party fails to appear before the officer who is to take his deposition, after being served with a proper notice, or to serve answers or objections to interrogatories submitted under Section 7 of this regulation, after proper service of the interrogatories, or to serve a written response to a request for examination submitted under Section 8 of this regulation, after proper service of the request, the hearing officer on motion may make such orders in regard to the failure as are just, and among others, the hearing officer may take any action authorized under subparagraphs 1, 2, and 3 of Section 10(2)(a) of this regulation. In lieu of any order or in addition thereto, the hearing officer shall require the party failing to act to pay the reasonable expenses, including attorney's fees, caused by the failure unless the hearing officer finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(b) The failure to act described in this rule may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided in Section 1(3) of this regulation.

(5) Expenses against the Commonwealth. Expenses and attorney's fees are not to be imposed upon the Commonwealth under Section 10 of this regulation, except as otherwise provided in 405 KAR 7:090, Section 13.

JACKIE A. SWIGART, Secretary
ADOPTED: October 26, 1983
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: October 31, 1983 at 4:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Elmore C. Grim, Commissioner, Department for Surface Mining Reclamation and Enforcement, Natural Resources and Environmental Protection Cabinet, 3rd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Office of the Secretary

400 KAR 1:050. Administrative rules of procedure, burden of proof.

RELATES TO: KRS 151.182, 151.297, 151.990, 224.033, 224.071, 224.073, 224.081, 224.083, 224.750, 224.866, 224.994, 224.995, 350.028, 350.070, 350.085, 350.093, 350.130, 350.465, 350.990

PURSUANT TO: KRS 13.082, 151.125, 224.028, 350.033, 350.255, 350.465

NECESSITY AND FUNCTION: KRS Chapters 151, 224, and 350 require the cabinet to conduct hearings and investigations concerning a wide variety of matters. This regulation identifies burdens of proof.

Section 1. (1) In a hearing held pursuant to KRS 151.182(1), 151.297, 224.081(1), 405 KAR 7:090, Sections

5(1)(b) and (2), the cabinet shall have the burden of persuasion to establish a case for the requested relief.

(2) In a hearing held pursuant to KRS 151.182(2), 224.071, and 224.081(2), or 405 KAR 7:090, Section 5(1)(a), the petitioner shall have the burden of persuasion to establish a case for the requested relief.

(3) The respondent in any action shall have the burden of persuasion to establish any affirmative defense.

(4) Any person seeking an exemption shall have the burden of persuasion to establish that the person qualifies for the exemption.

JACKIE A. SWIGART, Secretary
ADOPTED: October 26, 1983
APPROVED: ELMORE C. GRIM, Commissioner
RECEIVED BY LRC: October 31, 1983 at 4:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Elmore C. Grim, Commissioner, Department for Surface Mining Reclamation and Enforcement, Natural Resources and Environmental Protection Cabinet, 3rd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

Reprint

COMPILER'S NOTE: This regulation is being reprinted by order of the Franklin Circuit Court in its determination that the sentence "A citation is not a statement of deficiency" in Section 1(5) was a non-technical amendment and this sentence is hereby stricken from the regulation.

900 KAR 2:040. Citations and violations; criteria and specific acts.

RELATES TO: KRS 216.550, 216.555, 216.557, 216.560, 216.563, 216.565, 216.577
PURSUANT TO: KRS 13.082, 194.050, 216.555, 216.557, 216.563, 216.577
NECESSITY AND FUNCTION: The Cabinet for Human Resources is required to publish, after consultation with industry, professional and consumer groups, regulations setting forth the criteria and, where feasible, the specific acts which constitute Type A and B violations. This regulation is designed to set forth the criteria and, where feasible, the specific acts.

Section 1. Definitions. (1) "Active treatment" means daily participation in accordance with an individual plan of care and services, in activities, experiences, or therapy which are part of a professionally developed and supervised program of health, social and/or habilitative services offered by or procured by contract or other written agreement by the institution for its residents.

(2) "Activities of daily living" means activities of self-help (example: being able to feed, bathe and/or dress oneself), communication (example: being able to place phone calls, write letters and understanding instructions) and socialization (example: being able to shop, being considerate of others, working with others and participating in activities).

(3) "Administrator" means the administrator of a long term care facility.

(4) "Cabinet" means Cabinet for Human Resources.

(5) "Citation" means a written notification of violation of regulations, standards and requirements as set forth by the cabinet pursuant to KRS 216.550 or the provisions of KRS 216.510 to 216.525, or applicable federal law and regulations governing the certification of a long term care facility under Title 18 or 19 of the Social Security Act which violation has been classified a "Type A" or "Type B" violation pursuant to this regulation. [A citation is not a statement of deficiency.]

(6) "Developmental nursing services" means treatment of a person's developmental needs by designing interventions to modify the rate and/or direction of the individual's development especially in the areas of self-help skills, personal hygiene and sex education while also meeting his physical and medical needs.

(7) "Licensee" in the case of a licensee who is an individual means the individual and in the case of a licensee who is a corporation, partnership, or association means the corporation, partnership or association.

(8) "Long term care facility" means those health care facilities in the Commonwealth which are defined by the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board to be family care homes, personal care homes, intermediate care facilities, skilled nursing facilities, nursing homes, and intermediate care facilities for the mentally retarded and developmentally disabled.

(9) "Nonambulatory" means unable to walk without assistance.

(10) "Nonmobile" means unable to move from place to place.

(11) "Protective device" means devices that are designed to protect a person from falling, to include side rails, safety vest or safety belt.

(12) "Restraint" means any pharmaceutical agent or physical or mechanical device used to restrict the movement of a patient or the movement of a portion of a pa-

tient's body, and when used in the context of an intermediate care facility for the mentally retarded or developmentally disabled, means any pharmaceutical agent or any physical or mechanical device used to restrict the movement of an individual or the movement or normal function of a portion of the individual's body, excluding only those devices used to provide support for the achievement of functional body position or proper balance (such as positioning chairs) and devices used for specific medical and surgical (as distinguished from behavorial) treatment.

(13) "Secretary" means Secretary for Human Resources.

(14) "Type A violation" means a violation by a long term care facility of the regulations, standards and requirements as set forth by the cabinet pursuant to KRS 216.550 and 216.563 or the provisions of KRS 216.510 to 216.525, or applicable federal laws and regulations governing the certification of a long term care facility under Title 18 or 19 of the Social Security Act which has been classified a "Type A" violation pursuant to this regulation. Said violation presents an imminent danger to any resident of a long term care facility and creates substantial risk that death or serious mental or physical harm will occur.

(15) "Type B violation" means a violation by a long term care facility of the regulations, standards and requirements as set forth by the cabinet pursuant to KRS 216.550 and 216.563 or the provisions of KRS 216.510 to 216.525, or applicable federal law and regulations governing the certification of a long term care facility under Title 18 or 19 of the Social Security Act which has been classified a "Type B" violation pursuant to this regulation. Such violation presents a direct or immediate relationship to the health, safety or security of any resident, but which does not create an imminent danger and which is categorized a "Type B" violation in this regulation.

Section 2. If, upon inspection of a long term care facility for quality of care rating or investigation of such facility, the cabinet finds that there exists a "Type A" or "Type B" violation at the facility, a citation shall be issued to the licensee. Said citation shall specify, in writing, the nature of the violation and specify statutory provisions or regulations alleged to have been violated.

Section 3. Type A Violations. (1) Upon the finding of a Type A violation, the cabinet shall advise the licensee, administrator or his designated representative, in writing, delivered as soon as practicable but no later than three (3) days, of the existence of said violation. Written notification may be delivered either by certified mail, return receipt requested, or by personal service of said notification upon the licensee, administrator or his designated representative. The time for correction of said violation shall begin upon the date written notification is received, or in the event the delivery is refused, upon the date of refusal.

(2) A "Type A" violation shall be abated or eliminated immediately upon written notification, unless a fixed period of time not to exceed ten (10) days, as determined by and within the discretion of the cabinet, is required for correction.

(3) A "Type A" violation is subject to a civil penalty in an amount not less than $1,000 nor more than $5,000 for each and every violation.

(4) Where a licensee has failed to correct a "Type A" violation within the time specified for correction, the cabinet shall assess the licensee a civil penalty in the amount of $500 for each day such deficiency continues beyond the date specified for correction.

(5) Application for an extension of time may be granted by the cabinet upon a showing by the licensee that adequate arrangements have been made to protect the health and safety of the residents. No extension of time so granted shall exceed ten (10) days.

Section 4. (1) The criteria for the conditions which constitute "Type A" and "Type B" violations are:

(a) The uniform criteria established for rating quality of care in accordance with KRS 216.550;

(b) The provisions of KRS 216.515 to 216.525; and

(c) Applicable federal laws and regulations governing the certification of long term care facilities under Titles 18 and 19 of the Social Security Act.

(2) Any violation of the criteria set forth in subsection (1)(a) through (c) of this section which constitutes an imminent danger and substantial risk of death or serious mental or physical harm to a resident is classified a "Type A" violation.

(3) Any violation of the criteria set forth in subsection (1)(a) through (c) of this section which presents a direct or immediate relationship to the health, safety or security of any resident, but which does not create an imminent danger, is classified a "Type B" violation.

(4) The criteria are to be reviewed at least quarterly for the purpose of more clearly defining the specific acts or circumstances which constitute "Type A" and "Type B" violations.

Section 5. (1) The following specific acts or circumstances in violation of the rating system developed pursuant to KRS 216.550, the provisions of KRS 216.510 to KRS 216.525, or the applicable federal laws and regulations governing certification of long term care facilities under Title 18 or 19 of the Social Security Act and which presents an imminent danger and substantial risk of death or serious physical or mental harm to a resident or patient of the long term care facility shall constitute "Type A" violations.

(a) In all long term care facilities.

1. Persons whose care needs exceed the capability of the facility to provide are knowingly admitted as residents or patients of the facility.

2. A physician is not available and not consulted in the case of serious accident or illness and such consultation and the response of the facility is not reflected within the resident's or patient's file.

3. Physical and pharmaceutical restraints are not used in accordance with the written instructions of the attending physician (and in cases of emergency, oral orders of the physician or nursing assessments made pursuant to KRS 314.011(5)(e) and 314.011(9)(e) are not subsequently reduced to writing), dated and placed within the resident's or patient's file.

4. Protective devices are not used in accordance with the written instructions of the attending physician, dated and within the patient's file.

5. Except in family care homes, the licensee has no evidence of a current inspection by the state fire marshal indicating the facility complies with the applicable provisions of the life safety code.

6. The licensee does not maintain a system of heating and cooling capable of attaining a minimum temperature of seventy-two (72) degrees which shall be provided in oc-

cupied areas in winter conditions and a maximum temperature of eighty-five (85) degrees which shall be provided in summer conditions, and in cases of emergency, the licensee does not take necessary precautions to protect the health of residents or patients.

7. In the event of an error in medication, the attending physician is not advised and the error is not recorded within the patient's or resident's file, and correction is not made within one (1) day of the date of discovery.

8. Prescription medication is not kept under lock.

9. The resident's or patient's daily diet provided by the facility does not comply with his medically prescribed special diet or dietary restriction (except for special days or celebrations medically approved), said special diet or dietary restriction is to appear in writing within the resident's or patient's file.

10. There is not at least three (3) days' supply of food in the facility at all times.

11. The care required by admitted residents retained within the facility exceeds the skill of the licensee to provide.

(b) Family care homes.

1. The licensee does not provide twenty-four (24) hour supervision and assistance to the residents.

2. The licensee is not that person directly responsible for the daily operation of the home and, when temporarily absent, the name of the individual to whom responsibility is delegated is not in writing and available to the cabinet.

3. When prescription medication is required to be administered by licensed personnel, arrangements are not made in writing to assure the use of said personnel.

4. Basements in which residents are housed are not constructed for sleeping quarters and have no outside door.

5. Residents are housed in rooms or detached buildings or enclosures which have not been inspected and approved by the cabinet.

6. The facility has admitted more than three (3) persons as residents.

(c) Personal care homes.

1. Residents of the facility are under the age of sixteen (16) years or are nonambulatory or nonmobile.

2. The number and classifications of personnel required at the facility are not based upon the number of patients and the amount and kind of personal care, nursing care, supervision and program needed to meet the needs of the patients as determined by medical orders and by services required by 902 KAR 20:036 as determined in accordance with 902 KAR 20:036, Section 3(7)(f)2.

3. One (1) attendant is not awake and on duty on each floor of the facility at all times.

(d) Intermediate care facilities.

1. Physician services for medical emergencies are not available on a twenty-four (24) hour, seven (7) day a week basis.

2. A responsible staff member is not on duty and awake at all times to assure prompt, appropriate action in cases of injury, illness, fire and other emergencies.

3. The facility does not have personnel to meet the needs of the patients on a twenty-four (24) hour basis, the number and classification of personnel are not based upon the number of patients and the amount and kind of personal care, nursing care, supervision and program needed to meet the needs of the patients as determined by medical orders and by services required by 902 KAR 20:051, in accordance with 902 KAR 20:051, Section 3(9)(c)2.

4. In the event the patient's condition exceeds the scope of services offered by the facility, the patient, upon written orders of a physician (except in cases of emergency) is not transferred promptly to a hospital or skilled nursing facility or services are not contracted for from other community services.

(e) Skilled nursing facilities.

1. The licensee does not provide the facility with a director of nursing servcies who is a registered nurse and who works full time during the day and who does devote full time to the nursing service of the facility.

2. There is not at least one (1) registered nurse or licensed practical nurse on duty at all times who is responsible for the nursing care of residents during her tour of duty; when a licensed practical nurse is on duty, no registered nurse is on call.

3. The licensee does not provide the personnel required to meet the needs of the patients on a twenty-four (24) hour a day basis, the number and classification of personnel so required are not based upon the number of patients, the amount and kind of personal care, nursing care, supervision and program needed to meet the needs of the patients as determined by medical orders and by services required by 902 KAR 20:026, in accordance with 902 KAR 20:026, Section 3(8)(d)2.

4. In the event the patient's condition exceeds the scope of services offered by the facility, the patient, upon written orders of a physician (except in cases of emergency) is not transferred promptly to a hospital or services are not contracted for from other community resources.

(f) Nursing homes.

1. In the event the patient's condition exceeds the scope of services offered by the facility, the patient, upon written orders of a physician (except in cases of emergency) is not transferred promptly to a hospital or skilled nursing facility or services are not contracted for from other community resources.

2. A responsible staff member is not on duty and awake at all times to assure prompt, appropriate action in cases of injury, illness, fire or other emergency.

3. The health care of each patient is not under the supervision of a physician and the patient's records do not reflect the frequency of the physician's contacts with the patient.

4. The licensee does not provide the personnel required to meet the needs of the patients on a twenty-four (24) hour a day basis, the number and classification of personnel so required are not based upon the number of patients, the amount and kind of personal care, nursing care, supervision and program needed to meet the needs of the patients as determined by medical orders and by services required by 902 KAR 20:048, in accordance with 902 KAR 20:048, Section 3(9)(c)2.

(g) Intermediate care facilities for the mentally retarded and developmentally disabled.

1. The facility does not maintain and does not follow a written procedure to specify in a step-by-step manner the actions which shall be taken by staff when a resident is determined to be lost, unaccounted for, or other unauthorized absence.

2. The facility admits as patients those persons who do not have a physicial or mental condition which requires developmental nursing services and an active treatment plan.

3. The licensee does not provide the personnel required to meet the needs of the patients on a twenty-four (24) hours a day basis. The number and classification required is not determined in a manner consistent with the requirements of 902 KAR 20:086, Section 3(11)(c) and in accordance with 902 KAR 20:086, Section 3(11)(f).

4. Physician services for medical emergencies are not available on a twenty-four (24) hour, seven (7) day a week basis.

5. A responsible staff member is not on duty and awake at all times to assure prompt, appropriate action in cases of injury, illness, fire and other emergencies.

6. In the event the patient's condition exceeds the scope of services offered by the facility, the patient, upon written orders of a physician (except in cases of emergency) is not transferred promptly to a hospital or skilled nursing facility or services are not contracted for from other community services.

(2) Pursuant to KRS 216.577, upon a finding that conditions within the facility which constitute the "Type A" violation have not been corrected within the time allowed by the cabinet for correction, the secretary shall take at least one (1) of the following actions with respect to the facility in addition to the issuance of a citation or the assessment of a civil penalty therefor.

(a) Institute proceedings to compel the facility's compliance with the requirement alleged to have been violated.

(b) Institute injunctive proceedings in circuit court to terminate the operation of the facility.

(c) Selectively transfer residents whose care needs are not being adequately met by the long term care facility.

Section 6. Type B Violations. (1) A "Type B" violation shall be corrected within a time determined and approved by the Cabinet.

(2) A "Type B" violation is subject to a civil penalty in an amount not less than $100 nor more than $500, provided, however, that if such violation is corrected within the time specified by the Cabinet, no civil penalty shall be imposed.

(3) Where a licensee has failed to correct a "Type B" violation within the time specified for correction by the cabinet, the cabinet shall assess the licensee a civil penalty in the amount of $200 for each day the deficiency continues beyond the date specified for correction.

Section 7. (1) Upon the finding of a "Type B" violation, the cabinet shall advise the licensee, administrator, or his designated representative in writing, delivered as soon as practicable, but no later than five (5) days, of the existence of said violation. Delivery shall be by certified mail, return receipt requested or by personal service to the licensee, administrator or his designated representative. The time within which the citation shall be corrected shall run from the date of receipt of written notification, or in the event said written notification is refused, from the date of refusal.

(2) The following specific acts or circumstances in violation of the rating system developed pursuant to KRS 216.550, the provisions of KRS 216.510 to 216.525, or the applicable federal laws and regulations governing certification of long term care facilities under Title 18 or 19 of the Social Security Act and which present a direct or immediate relationship to the health, safety or security or any resident but which do not create an imminent danger shall constitute "Type B" violations:

(a) In all long term care facilities.

1. The facility does not have a written fire control and evacuation plan with which those present and responsible for supervision are familiar.

2. The facility does not maintain an active program of pest control for all areas of its physical plant.

3. The facility does not serve at least three (3) meals per day with not more then fifteen (15) hours between the evening meal and breakfast and such meals do not meet the current recommended dietary allowances of the Food and Nutrition Board of the National Research Council adjusted for age, sex and activity, and in accordance with physician's orders. Between meal and bedtime snacks are not available, except where medically contraindicated.

4. The licensee knowingly violates the provision of KRS 216.515 and 216.520.

5. A complete medical record is not kept on each patient with all entries current, dated and signed.

6. Patients or residents requiring help in eating are not assisted.

7. Except for those facilities with an integrated heating, ventilation and air conditioning system (HVAC system) the licensee does not maintain the facility with screens on windows.

8. Except for family care homes, all food is not procured, stored, prepared, distributed, and served under sanitary conditions consistent with the Kentucky Food Service Code (902 KAR 45:005).

9. If a patient or resident refuses food served, nutritional substitutions are not offered; the consistency of the food is not prepared with reference to the ability of the individual patient to ingest.

10. The facility does not implement a regular program to prevent decubiti with emphasis on the following:

a. Procedures to maintain clean linen of the patient or resident. Clothes and linens are cleaned each time the bed or clothing is soiled. Rubber, plastic or other type of linen protectors are cleaned and completely covered to prevent direct contact with the patient.

b. Effort is made to assist the patient or resident in being up and out of bed as much as his condition permits, unless medically contraindicated. If the patient or resident cannot move himself, he has his position changed as often as necessary but not less than every two (2) hours.

11. The facility does not keep resident records and patient files confidential in a manner consistent with the requirements of the Kentucky Revised Statutes and administrative regulations.

12. Except in family care homes, cold water and hot water with a maximum temperature of 110 degrees Fahrenheit are not available for resident or patient use.

13. Meals do not correspond to the posted menus; menus are not planned and posted one (1) week in advance; when changes in the menu are necessary, substitutions do not provide equal nutritive value.

14. The facility does not have an administrator who is responsible for the operation of the facility and does not delegate such responsibility in his absence.

(b) Family care homes.

1. The facility does not have a written procedure for providing or obtaining emergency services.

2. Telephone service, if available in the area, is not accessible to the residents.

3. The facility does not have at least one (1) ABC rated fire extinguisher.

4. The facility does not have one (1) toilet for each six (6) persons in the home, which includes residents receiving care, the licensee and family.

5. Residents are not provided beds at least thirty-three (33) inches wide and six (6) feet long.

6. The facility does not comply with the provisions of 902 KAR 20:041, Section 4(4).

(c) Personal care homes.

1. The facility does not provide each resident with a bed

equipped with springs, a clean mattress, a mattress cover, two (2) sheets and a pillow, together with bed covering as required for the patient's comfort.

2. The facility uses special purpose areas for the protection or confinement of a resident which are not approved by the cabinet with specification for the use of the area.

3. The facility does not maintain and implement a schedule of activities for groups and individuals, both within and without the facility.

4. The facility does not maintain a program of orientation and in-service training which shall include at least the following component parts:

a. Policies of the facility with regard to the performance of staff duties;

b. Services provided by the facility;

c. Recordkeeping procedures;

d. Procedures for reporting adult and child abuse, neglect and exploitation to the cabinet pursuant to KRS Chapter 209 and KRS 199.335;

e. Patient rights;

f. Procedures for proper application of physical restraints;

g. The aging process;

h. The emotional problems of illness;

i. The use of medication;

j. Therapeutic diets;

k. Activities of daily living; and

l. Procedures for maintaining a clean healthful and pleasant environment. A record shall be maintained of each training session indicating topics discussed and staff attendance, by name.

5. The facility does not provide encouragement and assistance, as necessary, to residents in achieving and maintaining good personal hygiene, including such assistance with:

a. Washing and bathing the body;

b. Shaving;

c. Washing, grooming and cutting hair;

d. Cleaning the mouth and teeth; and

e. Cleaning of finger and toe nails.

6. If any food service personnel are assigned duties outside the dietary department, the duties interfere with the sanitation, safety or time required for regular dietary assignments.

(d) Intermediate care facilities.

1. Each facility does not maintain a program of rehabilitative nursing care on a twenty-four (24) hour a day, seven (7) day a week basis, which program to include at least the following measures:

a. Positioning and turning;

b. Exercises;

c. Bowel and bladder training, when appropriate; and

d. Ambulation.

2. The facility does not provide each patient with a standard size bed equipped with springs, a clean mattress, mattress cover, two (2) sheets and a pillow and such bed covering as required to keep the patient comfortable.

3. The facility does not maintain a program to provide encouragement and assistance to patients to achieve and maintain good personal hygiene, including, as necessary, the following:

a. Washing and bathing the body;

b. Shaving;

c. Cleaning of finger and toe nails;

d. Cleaning of mouth and teeth; and

e. Washing, grooming and cutting of hair.

4. If any food service personnel are assigned duties outside the dietary department, the duties interfere with the sanitation, safety or time required for regular dietary assignments.

5. All employees do not receive orientation and in-service training to correspond to their respective jobs; nursing personnel do not participate in in-service training or continuing education at least quarterly.

6. The facility does not maintain and implement a schedule of activities for groups and individuals, both within and without the facility.

(e) Nursing homes.

1. The facility does not include a program of rehabilitative nursing care on a twenty-four (24) hour a day, seven (7) day a week basis, which program to include at least the following measures:

a. Positioning and turning;

b. Exercises;

c. Bowel and bladder training, when appropriate; and

d. Ambulation.

2. Each patient shall be provided a standard size bed equipped with springs, a clean mattress, mattress cover, two (2) sheets and a pillow and such bed covering as required to keep the patient comfortable.

3. Each facility does not maintain a program to provide assistance to patients to achieve and maintain good personal hygiene, including, as necessary, the following:

a. Washing and bathing the body;

b. Shaving;

c. Cleaning of finger and toe nails;

d. Cleaning of mouth and teeth; and

e. Washing, grooming and cutting of hair.

4. If any food service personnel are assigned duties outside the dietary department, the duties interfere with the sanitation, safety or time required for regular dietary assignments.

5. The facility does not maintain and implement a schedule of activities for groups and individuals, both within and without the facility.

6. All employees do not receive orientation and in-service training to correspond to their respective jobs; nursing personnel do not participate in in-service training or continuing education at least quarterly.

(f) Skilled nursing facilities.

1. The facility does not maintain a program of rehabilitative nursing care on a twenty-four (24) hour a day, seven (7) day a week basis, which program to include at least the following measures:

a. Positioning and turning;

b. Exercises;

c. Bowel and bladder training, when appropriate; and

d. Ambulation.

2. The facility does not provide each patient with a standard size bed equipped with springs, a clean mattress, mattress cover, two (2) sheets and a pillow and such bed covering as required to keep the patient comfortable.

3. The facility does not maintain a program to provide assistance to patients to achieve and maintain good personal hygiene, including, as necessary, the following:

a. Washing and bathing the body;

b. Shaving;

c. Cleaning of finger and toe nails;

d. Cleaning of mouth and teeth; and

e. Washing, grooming and cutting of hair.

4. If any food service personnel are assigned duties outside the dietary department, the duties interfere with the sanitation, safety or time required for regular dietary assignments.

5. The facility does not maintain and implement a schedule of activities for groups and individuals, consistent with the requirements of 902 KAR 20:026, Section 4(9).

6. The licensee does not provide in-service training to its personnel in accordance with the requirements of 902 KAR 20:026, Section 3(8)(e).

(g) Intermediate care facilities for the mentally retarded and developmentally disabled.

1. Within one (1) month after the admission of each resident, the facility does not enter the following in the resident's record:

a. A report of the review and updating of the preadmission updating.

b. A prognosis that can be used in programming and placement;

c. A comprehensive evaluation and individual program plan designed by an interdisciplinary team.

2. The facility does not assure that:

a. Each resident who does not eliminate appropriately and independently must be in a regular systematic toilet training program and a record must be kept of his progress in the program; and

b. Any resident who is incontinent is bathed or cleaned immediately upon voiding or soiling unless specifically contraindicated by the training program, and all soiled items are changed.

3. The facility does not maintain and implement a schedule of activities for groups and individuals, consistent with requirements of 902 KAR 20:086, Section 4(9), (10).

4. The facility does not maintain an orientation and in-service training program which is consistent with the requirements of 902 KAR 20:086, Section 3(11)(n).

5. The facility does not provide each patient with a standard size bed equipped with springs, a clean mattress, mattress cover, two (2) sheets and a pillow and such bed covering as required to keep the patient comfortable. Rubber or other impervious sheets shall be placed over the mattress cover when necessary.

Section 8. Civil penalties assessed for "Type A" and "Type B" violations pursuant to KRS 216.557 shall be trebled when a licensee has received a citation for violating a requirement for which it has received a citation and paid a fine during the previous twelve (12) months.

Section 9. (1) In determining the amount of any penalty imposed for "Type A" and "Type B" violations, the cabinet shall consider at least the following factors:

(a) The gravity of the violation, including the probability that death or serious physical or mental harm to a resident will result or has resulted; the severity of the actual or potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;

(b) The reasonable diligence exercised by the licensee and efforts to correct violations;

(c) The number and type of previous violations committed by the licensee; and

(d) The amount of assessment necessary to insure immediate and continued compliance

(2) All fines collected by the cabinet shall be paid and administered in accordance with the requirements of KRS 216.560. (9 Ky.R. 756; Am. 1018; 1281; eff. 5-4-83.)

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the October 25-26, 1983 Meeting

(Subject to subcommittee approval at the November 29-30 meeting.)

The Administrative Regulation Review Subcommittee held its monthly meeting on Tuesday, October 25 at 1:00 p.m., and on Wednesday, October 26, at 10 a.m. in Room 105 of the Capitol Annex. Present were:

Members: Representative William T. Brinkley, Chairman; Senators Pat McCuiston, Bill Quinlan and Joe Lane Travis; Representatives Albert Robinson and Jim Bruce.

Guests: Terry Morrison, Greg Lawther, Ked Fitzpatrick and George Kent, Cabinet for Human Resources; Sara Bell, Commerce Cabinet; Edward Farris, Department of Alcoholic Beverage Control; Rebecca Games, Carl E. Kays and Don McCormick, Department of Fish and Wildlife Resources; Carl VanCleve and Judy Walden, Department of Housing, Buildings and Construction; Diane Morris, Department of Insurance; Anne Keating and Harold Newton, Department of Personnel; Arthur Hatterick, Jr., Personnel Board; Margaret LeBus, Energy Cabinet; Pam Johnson and Charles Bratton, Kentucky Retirement Systems; Steve Taylor, Dennis Conniff and Ron Mills, Natural Resources and Environmental Protection Cabinet; Andrew Cammack, Environmental Quality Commission; Bill Debord, Thomas Townes and Charles Moore, Transportation Cabinet; Clint Newman, Treasury Department; Scott Getsinger, Workers' Compensation Board; Hank Frentz, Gibbs and Hill, Inc.; Bill Caylor, Kentucky Coal Association; Marvin Gray, Kentucky Manufactured Housing Institute; Mack Morgan, Kentucky Retail Federation; Linda Sams and Vic Routenberg.

LRC Staff: Susan Harding, Joe Hood, Dan Risch, Carla Arnold, Brent Neiser and Shirley Hart.

Press: Herb Sparrow, Asssociated Press; Livingston Taylor, 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 September 27-28, 1983 meeting were approved.

The following regulations were recommended for deferral by the subcommittee until the November 29 meeting:

FINANCE AND ADMINISTRATION CABINET
Department of Administration
State Investment Commission

200 KAR 14:050. Purchasing policies.

Division of Occupations and Professions
Board of Accountancy

201 KAR 1:100. Continuing professional education requirements for renewal of the permit to practice.

COMMERCE CABINET
Department Of Economic Development
Economic Development
306 KAR 1:020. Application process.
306 KAR 1:030. Eligibility requirements.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Certificate of Need and Licensure Board
902 KAR 20:009. Facility specifications; hospitals.
902 KAR 20:016. Hospitals; operations and services.
902 KAR 20:170. Facility specifications; psychiatric hospitals.

The subcommittee took no action on the following emergency regulations:

FINANCE AND ADMINISTRATION CABINET
Kentucky Employes' Retirement System
General Rules
105 KAR 1:010E. Contributions and interest rates.

COMMERCE CABINET
Department of Fish and Wildlife Resources
Game
301 KAR 2:088E. Limits and seasons for taking migratory birds.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Alcoholic Beverage Control
Quotas
804 KAR 9:040E. Retail package liquor license quota.

CABINET FOR HUMAN RESOURCES
Administration
900 KAR 1:020E. State health plan development process.
Department for Health Services
Certificate of Need and Licensure Board
902 KAR 20:006E. Certificate of need process.
Department for Social Insurance
Medical Assistance
904 KAR 1:012E. Inpatient hospital services.

The subcommittee recommended that the following regulations be approved for filing:

FINANCE AND ADMINISTRATION CABINET
Department of Personnel
Personnel Rules
101 KAR 1:020. General provisions.
101 KAR 1:030. Personnel board procedures.
101 KAR 1:040. Classification plan.
101 KAR 1:060. Applications and examinations.
101 KAR 1:070. Registers.
101 KAR 1:080. Certification and selection of eligibles.
101 KAR 1:090. Types of appointments.
101 KAR 1:100. Probationary period.
101 KAR 1:110. Promotion, transfer, demotion and detail to special duty.
101 KAR 1:120. Separations and disciplinary actions.
101 KAR 1:130. Appeals.
101 KAR 1:140. Service regulations.
101 KAR 1:200. Rules for unclassified service.
101 KAR 1:220. Unclassified service, classification and compensation plans.
101 KAR 1:230. Unclassified service promotion, transfer and disciplinary actions.

Kentucky Employes' Retirement System
General Rules
105 KAR 1:010. Contributions and interest rates.

COMMERCE CABINET
Department of Fish and Wildlife Resources
Game
301 KAR 2:088. Limits and seasons for taking migratory birds.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
Oil Shale Operations
405 KAR 30:020. General provisions.
405 KAR 30:160. Data requirements. (As amended.)
405 KAR 30:360. Waste management provisions.

TRANSPORTATION CABINET
Department Of Highways
Traffic
603 KAR 5:110. Permits for moving mobile homes. (As amended.)

PUBLIC PROTECTION AND REGULATION CABINET
Department of Labor
Workers' Compensation Board
803 KAR 25:070. Charges for attorneys.
Department of Alcoholic Beverage Control
Quotas
804 KAR 9:040. Retail package liquor license quota.
Department of Insurance
Health Maintenance Organizations
806 KAR 38:080. Health maintenance organizations' reserve funds.
Department of Housing, Buildings and Construction
Plumbing
815 KAR 20:070. Plumbing fixtures.
815 KAR 20:180. Special connections. (As amended with technical correction.)
815 KAR 20:191. Minimum fixture requirements.
Local Fire Departments
815 KAR 45:050. Requirements for obtaining firefighters training facility grants. (As amended with technical correction.)

CABINET FOR HUMAN RESOURCES
Administration
900 KAR 1:020. State health plan development process. (As amended with technical correction.)
Department for Health Services
Certificate of Need and Licensure Board
902 KAR 20:006. Certificate of need process.
Department for Social Insurance
Medical Assistance
904 KAR 1:012. Inpatient hospital services.

The meeting was adjourned at 10:40 a.m. on October 26 until November 29-30, 1983.

Public Hearings Scheduled

DEPARTMENT OF EDUCATION

A public hearing has been scheduled on January 10, 1984 at 10 a.m. at the State Board Room, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky on the following regulation:

704 KAR 20:285. Deletion of certification information. [10 Ky.R. 699]

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET

A public hearing has been scheduled on January 24, 1984 at 7 p.m. at the auditorium, Capital Plaza Tower, Frankfort, Kentucky, on the following regulations:

Administration
400 KAR 1:030. Administrative rules of procedure, service of process. [10 Ky.R. 853]
400 KAR 1:040. Administrative rules of procedure, discovery. [10 Ky.R. 855]
400 KAR 1:050. Administrative rules of procedure, burden of proof. [10 Ky.R. 860]

Department for Surface Mining Reclamation and Enforcement

General Provisions
405 KAR 7:020. Definitions and abbreviations. [10 Ky.R. 781]
405 KAR 7:030. Applicability. [10 Ky.R. 788]
405 KAR 7:090. Hearings. [10 Ky.R. 789]

Permits
405 KAR 8:030. Surface coal mining permits. [10 Ky.R. 796]
405 KAR 8:040. Underground coal mining permits. [10 Ky.R. 804]

Performance Standards for Surface Mining Activities
405 KAR 16:060. General hydrologic requirements. [10 Ky.R. 813]
405 KAR 16:090. Sedimentation ponds. [10 Ky.R. 815]
405 KAR 16:140. Disposal of coal processing waste. [10 Ky.R. 817]
405 KAR 16:190. Backfilling and grading. [10 Ky.R. 818]

Performance Standards for Underground Mining Activities
405 KAR 18:090. Sedimentation ponds. [10 Ky.R. 821]
405 KAR 18:140. Disposal of coal processing waste. [10 Ky.R. 823]
405 KAR 18:190. Backfilling and grading. [10 Ky.R. 824]

Emergency Regulations Now In Effect

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

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 83-1040
November 18, 1983

EMERGENCY REGULATION
State Investment Commission

WHEREAS, the State Investment Commission is required by KRS 45.520 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 previous regulations submitted to the Legislative Research Commission, 200 KAR 14:040, 200 KAR 14:040E, and 200 KAR 14:050 have provisions that may be discriminatory and unfair to many banks located within Kentucky; 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 KRS 42.520, et seq.; and

WHEREAS, the State Investment Commission determined in a meeting held on October 28, 1983, that the administrative regulations as promulgated 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 KRS 13.088(1) of the Kentucky Revised Statutes do hereby adopt the finding 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 14:060E. Public depositories, priority.

RELATES TO: KRS Chapter 42
PURSUANT TO: KRS 13.082, 42.520
EFFECTIVE: November 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. This regulation repeals 200 KAR 14:040, and 200 KAR 14:050 is withdrawn.

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 (to include the need for credit services, as well as deposit services). 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, or that wish to remain a depository for state certificates of deposit, that they must submit a copy of their quarterly Report of Condition, including all accompanying schedules, to the commission. A photostatic copy of this report and schedules, as prepared for the Federal Deposit Insurance Corporation, the Comptroller of the Currency, or the appropriate Federal Reserve Bank will be sufficient to meet this reporting requirement.
(2) The 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 October 28, 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: November 7, 1983
RECEIVED BY LRC: November 21, 1983 at 11:30 a.m.

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 83-1070
November 29, 1983

EMERGENCY REGULATION
Public Protection and Regulation Cabinet
Department of Labor

WHEREAS, KRS 338.051(3) authorizes the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, regulations, and standards; and
WHEREAS, the Occupational Safety and Health Administration of the U.S. Department of Labor has issued an emergency temporary standard for occupational exposure to asbestos, which as published at 29 CFR 1910.1001; describes revised emergency temporary standards for asbestos exposure; and
WHEREAS, 29 CFR 1953.22(a1) requires those states, which have an approved state occupational safety and health plan to adopt, by regulation, emergency temporary standards enacted by the Occupational Safety and Health Administration of the U.S. Department of Labor within thirty (30) days of the effective date of the federal standard, the effective date in this instance being November 4, 1983; and
WHEREAS, pursuant to the authority granted to the Kentucky Occupational Safety and Health Standards Board by KRS 338.051, the Board met on November 22, 1983 and approved 803 KAR 2:020E, which is identical to the federal emergency temporary standard published at 29 CFR 1910.1001; and
WHEREAS, the Commissioner of Labor, serving in her capacity of Chairperson of the Kentucky Occupational Safety and Health Standards Board and the Secretary of the Public Protection and Regulation Cabinet have determined in writing that given the time constraints imposed by KRS 13.085, an emergency exists with respect to satisfying the provisions of 29 CFR 1953.22(a1), and that this regulation should pursuant to KRS 13.088 become effective upon being filed with the Legislative Research Commission:
NOW, THEREFORE, I, John Y. Brown, Jr., Governor of the Commonwealth of Kentucky, pursuant to the authority vested in me by KRS 13.088(1), hereby acknowledge the finding of the Kentucky Occupational Safety and Health Standards Board and the Secretary of the Public Protection and Regulation Cabinet that an

Administrative Register of kentucky

Cumulative Supplement

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NOTE: Emergency regulations expire on being repealed or replaced.

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