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UNLESS WRITTEN NOTIFICATION OF INTENT TO ATTEND A PUBLIC HEARING IS RECEIVED BY THE PROMULGATING AGENCY AT LEAST FIVE (5) DAYS BEFORE THE HEARING DATE, THE HEARING MAY BE CANCELLED.

MEETING NOTICE: The next meeting of the Administrative Regulation Review Subcommittee is August 12 and 13, 1985. For information, call 502-564-8100, ext. 535.

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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

The administrative body shall schedule a public hearing on proposed administrative regulations, proposed amendments to administrative regulations, and proposed repeal of administrative regulations to be held not less than twenty (20) nor more than thirty (30) days following publication of the administrative regulation. The time, date, and place of the hearing and the name and address of the agency contact person shall be included on the last page of the administrative regulation when filed with the Compiler's office.

This information shall be published in the "Administrative Register" at the same time as the initial publication of the administrative regulation. Any person interested in attending the hearing must submit written notification of such to the administrative body at least five (5) days before the scheduled hearing. If no written notice is received at least five (5) days before the hearing, the administrative body may cancel the hearing.

If the hearing is cancelled, the administrative body shall notify the Compiler immediately by telephone of the cancellation with a follow-up letter and the Compiler will note upon the face of the original administrative regulation that the hearing was cancelled.

No transcript of the hearing need be taken unless a written request for a transcript is made, and the person requesting the transcript shall have the responsibility of paying for same. A recording may be made in lieu of a transcript.

If an administrative body has several proposed administrative regulations published at the same time, the proposed administrative regulations may be grouped at the convenience of the administrative body for purposes of hearings.

EMERGENCY REGULATIONS NOW IN EFFECT

(NOTE: Emergency regulations expire 90 days from publication or upon replacement or repeal.)

STATEMENT OF EMERGENCY

302 KAR 1:030E relates to the conducting of a referendum for the Kentucky Beef Cattle Association pursuant to KRS 247.610 to 247.685. The referendum is to be held on July 12, 1985 and ordinary regulations will not be in effect soon enough for the upcoming referendum. Therefore, an emergency exists and emergency regulations are needed. This emergency regulation will be followed by an ordinary regulation.

MARTHA LAYNE COLLINS, Governor
DAVID E. BOSWELL, Commissioner

DEPARTMENT OF AGRICULTURE

302 KAR 1:030E. Bovine animals.

RELATES TO: KRS 247.610 to 247.685
PURSUANT TO: KRS 247.655
EFFECTIVE: July 2, 1985
NECESSITY AND FUNCTION: KRS 247.655 authorizes the commissioner to establish and determine the rules and regulations to conduct a referendum among producers of bovine animals for the purpose of promoting and stimulating by research, market development and education, the increased [production,] use and sale, domestic and foreign, of bovine animals and bovine animal products.

Section 1. Definitions. As used in these rules and regulations, unless the context otherwise requires:

(1) "Commissioner" means the Commissioner of the Department of Agriculture;
(2) "Board" means the State Board of Agriculture;
(3) "Producer" means every person who produces bovine animals and thereafter causes the same to be marketed;
(4) "New producer" means a producer who was not engaged in the business of producing bovine animals at the time a referendum was conducted in accordance with the provisions in these rules and regulations;
(5) "Person" means any individual, corporation, partnership, association, cooperative, or other business entity;
(6) "Referendum agent" means an employee of the Department of Agriculture under the direct control of the commissioner;
(7) "County referendum agent" means a person appointed by the commissioner, in a county where the bovine animal referendum is held, as his agent for the conduct of said referendum;
(8) "Kentucky Beef Cattle Association" means an existing association, representative of bovine animal producers of Kentucky.

Section 2. Counties in Which Referendum Will Be Conducted. The bovine animal referendum will be conducted in all of the 120 counties in Kentucky.

Section 3. Who May Vote. (1) Each person engaged in the production of bovine animals on a commercial basis, including the owners of farms on which bovine animals are produced, tenants and sharecroppers sharing in the proceeds of the

sale of bovine animals shall be entitled to cast one (1) vote in the referendum, provided the producer is eighteen (18) years of age or older.

(2) Without limiting subsection (1) of this section, each person whose name regularly appears on checks issued in payment for the sale of bovine animals is eligible to cast one (1) vote in the referendum regardless of the ownership of the farm upon which bovine animals were produced. No person who certifies to the county referendum agent that he is a producer of bovine animals shall be refused a ballot but such person shall be required to furnish the county referendum agent with information specific enough for the commissioner to verify the person's voting eligibility before such ballot is counted in the referendum.

Section 4. Voting Place. The commissioner shall establish a voting place in each county within the state where producers of bovine animals reside. Such voting place will be in the agricultural and stabilization conservation [county extension] service (ASCS) office in each county where the referendum is conducted. The voting place must provide an area where each voter can mark his ballot in privacy. Only one (1) voter shall be permitted in the voting area at any one time. One (1) or more county referendum agents shall be permitted in each voting place for the purpose of conducting the referendum. The county referendum agent shall be in charge of and be responsible for the voting area. Campaigning for or against said referendum will not be permitted in the agricultural and stabilization conservation [county extension] service (ASCS) offices during voting hours.

Section 5. Hours for Voting. The voting places will be open from 9:00 a.m. to 3:00 p.m. local time and eligible voters will be permitted to vote only during such period of time [or by absentee ballot as set forth in Section 6 of this regulation. Voters will be permitted to vote only in the county of their residence or in the case of a corporate producer in the county where its principal place of business is located].

Section 6. County for Voting. Voters will be permitted to vote only in the county of their residence. This means voters with cattle in one (1) county and their residence in another county will be permitted to vote only in the county of their residence. A corporate producer will be permitted to vote only in the county where its principal place of business is located. Eligible voters who reside outside the Commonwealth will be permitted to vote only in the county where their farm is located; or, in the case of farms in two (2) or more counties eligible voters who reside outside the Commonwealth may choose one (1) of the counties for voting purposes. [Absentee Voting. Voting by absentee ballot will be permissible; provided, the request for an absentee ballot is made in writing to the commissioner at least ten (10) days in advance of September 7, 1976. The absentee ballot must be signed and returned to the commissioner on or before September 7, 1976, before such ballot is counted in the referendum.]

Section 7. Referendum Voting Date. The bovine animal referendum voting date will be set by the commissioner [September 7, 1976]. This date will be published by the commissioner through the medium of the public press in the Commonwealth of Kentucky at least thirty (30) days before the holding of such referendum, and direct written notice thereof shall likewise be given to each county extension service agent in any county covered by such referendum.

Section 8. Supervision of Referendum and Duties of the County Referendum Agent. The commissioner shall provide the county referendum agent with a copy of these rules and regulations to conduct said referendum. Each county referendum agent shall have in his possession and under his control a ballot box and the official ballot forms, indelible marking pens, and other supplies sufficient to operate each voting place as established in Section 4 of this regulation. Each prospective voter must identify himself to the county referendum agent; and such person will be required to sign a registration book giving their name and complete mailing address. Upon signing the registration book, each prospective voter will receive an official ballot from the county referendum agent. The official ballot after it has been completed by each eligible voter shall be placed in the ballot box by said voter.

Section 9. Approved Ballot Forms. The commissioner shall furnish each county referendum agent with official ballots. Also, the approved ballot shall show that the bovine animal producer is voting on whether or not to have the ten (10) cents assessment increased by fifteen (15) cents to a total of twenty-five (25) cents [ten (10) cents] per bovine animal deducted by the purchaser at the time of sale to be sent to the Kentucky Beef Cattle Association to be used as provided in KRS 247.655.

Section 10. Custody of Ballot Box and Referendum Material. Each county referendum agent shall provide a ballot box large enough to enclose all ballots cast in the referendum and to protect the ballots to insure that the information on the ballots is held in confidence. The county referendum agent shall mail all marked ballots and registration book the day following the voting in the bovine animal referendum to the Department of Agriculture in a properly secured manila envelope or folder.

Section 11. Confidential Information. All ballots cast, the identity of any person who voted, or the manner in which any person voted, and all information furnished to, compiled by, or in the possession of the commissioner, the referendum agent, and the county referendum agents shall be regarded as confidential. The commissioner shall retain the records, the ballots, the result of the referendum, and all other information furnished to or compiled by the commissioner in regard to the referendum for a period of twelve (12) months.

Section 12. Counting of Votes. Within five (5) days after the referendum, the commissioner shall designate an area within the department's offices to be used for counting the votes cast

in the referendum. The vote count shall be conducted by employees of the department, but the Kentucky Beef Cattle Association and any organization actively engaged in the production of bovine animals in Kentucky may each have one (1) representative present during the counting of the votes. Such organization must establish, to the satisfaction of the commissioner, that its desire to observe the counting of the ballots is for a legitimate purpose.

Section 13. Announcement of the Referendum Results. Announcement of the results of the referendum will be made only by the commissioner. The referendum agent or others who assist in the referendum shall not disclose any information in regard to the referendum. The commissioner will announce the results within ten (10) days after the referendum.

DAVID E. BOSWELL, Commissioner
APPROVED BY AGENCY: June 5, 1985
FILED WITH LRC: July 2, 1985 at 4 p.m.

STATEMENT OF EMERGENCY

The amendment of 302 KAR 20:010 authorizes the use of certificates of veterinary examination for equine sales in the Commonwealth of Kentucky. The use of these certificates has been encouraged by the United States Department of Agriculture. The examination certificates allow the Kentucky Department of Agriculture and buyers and sellers of equine to keep track of health requirements for horses that are sold in the Commonwealth. This amended regulation needs to be in place for the September sales and an ordinary regulation will take too long to promulgate. Therefore an emergency exists and an emergency regulation is needed. This regulation will be followed by an ordinary regulation.

MARTHA LAYNE COLLINS, Governor
DAVID E. BOSWELL, Commissioner

DEPARTMENT OF AGRICULTURE

302 KAR 20:010E. Definitions.

RELATES TO: KRS Chapters 246, 257
PURSUANT TO: KRS Chapter 257, 257.030
EFFECTIVE: July 2, 1985
NECESSITY AND FUNCTION: Definitions and terms to clarify interpretation of regulations relating to the Division of Livestock Sanitation.

Section 1. Definitions and Terms. (1) "Commissioner" means the Commissioner of the Department of Agriculture.
(2) "Department" means the Department of Agriculture.
(3) "Board" means the State Board of Agriculture.
(4) "Persons" shall include any individual, firm, association, partnership or corporation.
(5) "Stockyards" means any livestock yard, concentration point, packing plant or any other public place where livestock is regularly assembled for sale or exchange and is bought, sold or exchanged at auction or upon a commission or other basis.
(6) "Posted stockyards" means stockyards regulated by the United States Secretary of Agriculture under the Packers and Stockyards Act, 1921 (42 Stat. 159).
(7) "Premises" means any portion of land or any structure erected on land or any vehicle or vessel used in the transportation of passengers, goods or livestock.
(8) "Communicable disease" includes hog cholera, coccidiosis, brucellosis, anaplasmosis, leptospirosis, encephalomelitis, anthrax, blackleg, salmonellosis, catarrhal influenza of cattle, contagious pleuropneumonia, foot and mount disease or apthous fever, glanders, hemorrhagic septicaemia maladie du coit or dourine, mange of cattle, necrobacillosis and foot rot in sheep, hydrophobia, rinderpest, scabies in cattle, Texas tick or souther cattle fever, tuberculosis, paratuberculosis or Johnes disease, pseudorabies, velogenic visceraltrophic Newcastle disease or any other disease proclaimed by the board to be of a transmissible character.
(9) "Garbage" means waste consisting entirely or in part of animal waste resulting from handling, preparing, cooking, and consuming of food including the offal from animal carcasses or parts thereof, but excluding such waste from ordinary household operations which is fed directly to swine on the same premises.
(10) "Interstate" means movement into or through any other state.
(11) "Intrastate" means movement solely within the boundaries of the Commonwealth of Kentucky.
(12) "Concentration" or "assembly point" means any place where livestock or animals are assembled, moved, gathered, combined, collected or brought together by any person using any method or vehicle for sale, resale or barter.
(13) "Recognized slaughtering center" means a slaughtering establishment approved in accordance with state and federal regulations where slaughtering facilities are provided and to which animals are regularly shipped and slaughtered.
(14) "Chief livestock sanitary official" means State Veterinarian of the Division of Livestock Sanitation, Department of Agriculture, or his authorized representative.
(15) "Livestock" means animals used or raised on a premises of the bovine, caprine, equine, porcine, avian, ovine and lapin species.
(16) "Feeder cattle" means steers of any breed, spayed heifers or open heifers of the beef breed only under twenty-four (24) months of age which are primarily intended for slaughter afater having reached the desired feeding stage.
(17) "Official brucellosis vaccinate" means a female bovine animal vaccinated against brucellosis with an approved Brucella vaccine against brucellosis with an approved Brucella vaccine with the vaccination protocol set forth by the State Veterinarian's office. Animals must be vaccinated by a licensed, accredited veterinarian or authorized representative of the department and permanently identified and tattooed as a vaccinate and reported at the time of vaccination to the appropriate state or federal agency on official forms as provided.
(18) "Health certificate" or "certificate of veterinary examination" means a legible record covering the requirements of the state of destination accomplished on an official form of a standard size from the state of origin or an

equivalent form of the Animal and Plant Health Inspection Service, Veterinary Services, United States Department of Agriculture, that is prepared and issued by a licensed, accredited veterinarian. For purposes of these regulations the term "certificate of veterinary examination" shall be the same as, equal to, and used interchangeably with the term "health certificate."

(19) "Approved health certificate" means an official health certificate approved by the chief livestock sanitary official of the state of origin.

(20) "Virulent hog cholera virus" means the living agent capable of causing hog cholera that is found in the clear serum, plasma, defibrinated blood, whole blood or other tissue derived from pigs sick of hog cholera; or in any material used as a vehicle for perpetuating such living agent.

(21) "Farm of origin" means a farm where livestock to be moved interstate were born and which has not been used in the past six (6) months to assemble, buy or sell livestock brought in from other sources.

(22) "Infectious" or "contagious disease" means any disease condition that can be transmitted from one animal to another either directly or indirectly.

(23) "Owner" or "operator" means a person, firm, corporation or company responsible for the operation of a stockyard, sale, public stockyard, farm or ranch.

(24) "State-federal approved stockyard" means a stockyard that has complied with state and federal requirements for specific movements of livestock and has been approved by the chief livestock sanitary official and federal area veterinarian in charge of the area where the stockyard does business.

(25) "Licensed, accredited veterinarian" means a graduate veterinarian who is qualified by a state examining board and is apparoved by the federal government and Commonwealth of Kentucky.

(26) "Area veterinarian in charge" means federal veterinarian in charge of the Animal and Plant Health Inspection Service, Veterinary Services, United States Deparatment of Agriculture in Kentucky.

(27) "Move" or "movement" means the act of moving, shipping or transporting livestock by any means, method or vehicle; delivering, receiving or collecting livestock by any means, method or vehicle by any person by land, water or air for sale, resale or barter.

(28) "Assembled cattle" are animals without a common owner, consignor or herd of origin brought together during transportation to market and commingled in a common enclosure.

DAVID E. BOSWELL, Commissioner
APPROVED BY AGENCY: June 14, 1985
FILED WITH LRC: July 2, 1985 at 4 p.m.

STATEMENT OF EMERGENCY

The amendment of 302 KAR 20:065 authorizes the use of certificates of veterinary examination for equine sales in the Commonwealth of Kentucky. The use of these certificates has been encouraged by the United States Department of Agriculture. The examination certificates allow the Kentucky Department of Agriculture and buyers and sellers of equine to keep track of health requirements for horses that are sold in the Commonwealth. This amended regulation needs to be in place for the September sales and an ordinary regulation will take too long to promulgate. Therefore an emergency exists and an emergency regulation is needed. This regulation will be followed by an ordinary regulation.

MARTHA LAYNE COLLINS, Governor
DAVID E. BOSWELL, Commissioner

DEPARTMENT OF AGRICULTURE

302 KAR 20:065E. Sale and exhibition of [for Kentucky] livestock in Kentucky [only].

RELATES TO: KRS Chapter 257
PURSUANT TO: KRS 257.030
EFFECTIVE: July 2, 1985
NECESSITY AND FUNCTION: To specify general sanitary and health requirements in relation to the sale and exhibition of Kentucky livestock in Kentucky.

Section 1. Cattle. (1) General requirements.

(a) All animals, except as noted, shall be accompanied by an approved health certificate. Health certificates shall be void 150 days after issuance for exhibition and thirty (30) days after issuance for sale.

(b) If animals are from accredited or certified herds, health certificate shall show accreditation and certification number with date of last herd test for tuberculosis and brucellosis.

(c) Blood tests for brucellosis must be conducted in a state-federal laboratory and be negative according to recommended procedures of the Uniform Methods and Rules published by APHIS, VS, USDA.

(d) Cattle changing ownership shall be vaccinated against brucellosis as required in 302 KAR 20:055.

(2) Brucellosis.

(a) Sale. All breeding cattle moving from one (1) premise to another premise on the change of ownership must be negative to the brucellosis test within thirty (30) days prior to movement.

(b) Exhibition. Animals six (6) months of age or over shall be negative to an official test for brucellosis within 150 days of date of exhibition, unless exempt by one (1) of the following:

1. Originate directly from a certified herd.
2. Official vaccinate under twenty (20) months of age for the dairy breeds and twenty-four (24) months of age for the beef breeds.
3. Steers. Must be accompanied by approved health certificate showing individual identification. No brucellosis test required.

(3) Tuberculosis.

(a) Sale. Animals six (6) months of age or older shall be negative to an official tuberculin test within sixty (60) days of date of sale, unless exempt by one (1) of the following:

1. Originate directly from an accredited herd.
2. Originate directly from a herd in which all animals six (6) months of age or older are negative to an official tuberculin test within last twelve (12) months of date of sale.

(b) Exhibition. No test required.

Section 2. Performance Bull Testing Program. (1) All animals shall be accompanied by approved health certificates.

(2) Brucellosis. Animals entered in this program shall, if six (6) months of age or older, be negative to an official brucellosis test within thirty (30) days of date of entry or originate directly and immediately from a certified herd.

(3) Tuberculosis. All animals six (6) months of age or older shall be negative to an official tuberculin test within sixty (60) days or originate directly and immediately from an accredited herd.

Section 3. Horses. (1) All horses entering Kentucky, except unweaned foals, and other equidae, for any purpose other than for immediate slaughter shall be accompanied by an official certificate of veterinary examination of state of origin issued by a state, federal or licensed accredited veterinarian and such certificate shall include:

(a) Veterinarian's statement that examination was made within the past thirty (30) days and revealed the animal to be free of symptoms of any infectious disease or exposure thereto; and

(b) Shall include any tests that have been conducted as well as all vaccinations including vaccination date and type of vaccine used; and

(c) Have attached thereto a copy of certificate of report from a laboratory approved by the USDA showing the animal(s) to be negative to AGID test for equine infectious anemia within the past six (6) months, if offered for sale.

(2) All horses being offered for sale in Kentucky shall be accompanied by a health certificate or official certificate of veterinary examination of the state of origin issued by a state, federal or licensed accredited veterinarian. This certificate shall remain as a record at the sale and will be presented to the new owner. Such certificate shall include all information required pursuant to Section 3(1) of this regulation. All horses past six (6) months of age and other equidae offered for public sale shall be negative to AGID test within the past six (6) months. Only horses offered for sale for slaughter shall be exempt from this requirement. [past six (6) months of age and other equidae offered for public sale shall be negative to AGID test within the past six (6) months. Only horses offered for sale for slaughter shall be exempt from the requirements.]

[(2) All horses and other equidae offered for entry into fairgrounds, livestock show grounds, public boarding stables and for trail rides or racing shall be negative to test AGID within twelve (12) months and shall be accompanied by certificate of report from a laboratory approved by the USDA.]

(3) All reactors to AGID test for equine infections anemia shall be officially, permanently identified using numbers and letter 61A with a brand on the left neck region.

(4) All reactors not slaughtered or euthanized shall be isolated and quarantined. This isolation shall include stabling in a stall that is screened to preclude entry and exit of mosquitoes, stable flies and horse flies during those seasons of the year when such insects are prevalent. These animals will also be kept at least 200 yards from all other horses.

(5) The movement of any quarantined reactor shall be done only on permission of representative of the Department of Agriculture.

(6) All horses in a herd in which a reactor is found shall be quarantined pending a negative test on all horses.

Section 4. Swine. (1) All swine for exhibition and sale must be accompanied by an approved health certificate which shall be void 150 days after issuance for exhibition and thirty (30) days after issuance of sale.

(2) Brucellosis.

(a) Sale. All swine except barrows six (6) months of age or older shall have a negative thirty (30) day test in accordance with the Uniform Methods and Rules published by APHIS, VS, USDA, or originate directly and immediately from a validated herd. Validation number and date of last herd test must be shown on the approved health certificate.

(b) Exhibition. All swine except barrows six (6) months of age or older shall have a negative 150 day test in accordance with the Uniform Methods and Rules published by APHIS, VS, USDA, or originate directly and immediately from a validated herd. Validation number and date of last herd test must be shown on the approved health certificate.

(3) Identification. All swine must have a permanent means of identification.

(4) Pseudorabies.

(a) Sale. All swine must be negative to the serum neutralization test within thirty (30) days or originate from a qualified pseudorabies negative herd.

(b) Exhibition. All swine must be negative to the serum neutralization test within 150 days of consignment for exhibition or originate from a qualified pseudorabies negative herd.

Section 5. Sheep. (1) Scrapie. No sheep or lambs shall be consigned that originated from or are known to be exposed to flocks under surveillance for scrapie.

(2) Scabies. All sheep or lambs for breeding and feeding purposes consigned from a farm, ranch or like premises shall be accompanied by an approved health certificate indicating such sheep and lambs originated directly and immediately from an official scabies-eradicated-free area.

(3) Sore mouth. Any sheep or lambs showing lesions of contagious exythma shall not be consigned.

(4) Sale. All sheep and lambs consigned shall be identified individually by ear tattoo or ear tag and entered on an approved health certificate which is good for thirty (30) days after issuance.

(5) Exhibition. All sheep and lambs consigned shall be identified individually by ear tattoo or ear tag and entered on an approved health certificate which is good for 150 days after issuance.

Section 6. Goats. (1) Scabies. All goats must originate from a scab-free area.

(2) Scrapie. No goats from a herd under surveillance for scrapie that are known to have

been exposed to or that are progeny shall be considered.

(3) Brucellosis.

(a) Sale. Animals six (6) months of age or older shall have a negative thirty (30) day test in accordance with the Uniform Methods and Rules published by APHIS, VS, USDA, as applies to the bovine test or originate directly from a certified herd and be accompanied by an approved health certificate which shall be void thirty (30) days after issuance.

(b) Exhibition. Goats six (6) months of age or older shall be negative to an official blood test for brucellosis within 150 days of exhibition or originate directly from a certified herd and be accompanied by an approved health certificate which shall be void 150 days after issuance.

(4) Tuberculosis.

(a) Sale. Animals six (6) months of age or older shall have negative tuberculin test in last sixty (60) days or originate directly and immediately from an accredited herd.

(b) Exhibition. No test required.

Section 7. Poultry. Negative pullorm agglutination test within thirty (30) days for sale and/or exhibition. Test record must accompany poultry.

Section 8. Dogs and Cats. (1) All dogs over four (4) months of age for sale or exhibition shall be accompanied by a health certificate signed by a licensed, accredited veterinarian stating that they are free from all infectious diseases, did not originate within an area under quarantine for rabies, or from an area where rabies is known to exist and has not been exposed to rabies. All dogs over four (4) months of age shall be vaccinated against rabies not less than fourteen (14) days nor more than twelve (12) months prior to date of consignment if killed virus vaccine is used. Any vaccine approved for a three (3) year immunity by the "Compendium of Animal Rabies Vaccines" prepared by the Association of State Public Health Veterinarians, (Inc.), qualifies a dog if it is one (1) year of age when vaccinated; provided, show or performing dogs to be within the state temporarily for a period of ten (10) days shall not be required to furnish an approved health certificate.

(2) All cats shall be in compliance to above requirements for dogs provided the animals are vaccinated for rabies if four (4) months of age or older not less than fourteen (14) days nor more than twelve (12) months prior to date of consignment with a vaccine approved by the state veterinarian and the Department for Health Services, Kentucky Cabinet for Human Resources.

DAVID E. BOSWELL, Commissioner
APPROVED BY AGENCY: June 14, 1985
FILED WITH LRC: July 2, 1985 at 4 p.m.

STATEMENT OF EMERGENCY

This administrative regulation currently allows certain overdimensional vehicles to have "reasonable access" to terminals; facilities for food, fuel, repairs and rest; and points of loading and unloading on roads which connect to highways on which the overdimensional vehicles are permitted to travel by the authority of KRS 189.222 and 603 KAR 5:070. There is no definition of "reasonable access" and this has led to many disputes between the trucking industry, the Department of Highways and enforcement agencies. Recently, the effected parties reached a consensus on what should be considered "reasonable access." The overdimensional vehicles should be permitted to travel five (5) miles on state maintained highways from the Interstates and other specifically designated highways in order to attain access to needed facilities. To implement this agreement and allow the enforcement agencies and truckers to proceed in a legal manner, the amendments to 603 KAR 5:070 should be promulgated on an emergency basis. An ordinary administrative regulation will be promulgated to replace this emergency regulation as soon as possible.

MARTHA LAYNE COLLINS, Governor
C. LESLIE DAWSON, Secretary

TRANSPORTATION CABINET
Department of Highways

603 KAR 5:070E. Truck dimension limits.

RELATES TO: KRS 189.222
PURSUANT TO: KRS 189.222(1)
EFFECTIVE: July 8, 1985
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 forty-five (45) [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. These specific highways will be referred to as the IDTT (increased dimension-twin trailer) system.

(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 - fifty-three (53) [forty-eight (48)] feet when operated in tractor-semi-trailer combination; trailers - twenty-eight (28) feet when operated in a tractor semi-trailer-trailer combination, not to exceed two (2) trailers per truck tractor. There shall be no overall length limitation on motor vehicles operating on 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) And the following [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]:

Jackson Purchase Parkway [JP 9003] - From Tennessee state line west of Fulton to US 45 Bypass.

US 45 Bypass [B] - From Jackson Purchase Parkway [JP 9003] west of Mayfield to Jackson Purchase Parkway [JP 9003] north of Mayfield.

Jackson Purchase Parkway [JP 9003] - From US 45 Bypass to I-24 in Marshall County.

Western Kentucky Parkway [WK 9001] - From I-24 south of Eddyville to US 31W in Hardin County.

Blue Grass Parkway [BG 9002] - From I-65 at Elizabethtown to US 60 near Versailles.

Green River Parkway [GP 9007] - From I-65 at Bowling Green to US 60 Bypass in Owensboro.

Mountain Parkway [MT 9000] - From I-64 east of Winchester to KY 15 north of Campton.

Mountain Parkway Extension - From end of Mountain Parkway at Campton to US 460 at Saylersville.

Daniel Boone Parkway - From US 25 north of London to KY 15 north of Hazard.

[KY 4 - Entire circle of Lexington.]

Pennyrile Parkway [PENN 9004] - From US 41A at south city limits of Hopkinsville to US 41 south of Nortonville.

US 41 - From Pennyrile Parkway [PENN 9004] near Western Kentucky Parkway [WK 9001] to Pennyrile Parkway [PENN 9004] at Madisonville.

Pennyrile Parkway [PENN 9004] - From US 41 near north city limits of Madisonville to US 41 in Henderson.

US 41 - From Pennyrile Parkway [PENN 9004] at Henderson to Indiana state line.

Audubon Parkway [AUD 9005] - From Pennyrile Parkway [PENN 9004] at [in] Henderson to US 60 Bypass in Owensboro.

Cumberland Parkway [CUM 9008] - From I-65 at Warren County line to US 27 west of Somerset.

[I-471 - From I-275 to Ohio state line.]

I-471 Connector - From US 27 in Campbell County to I-471.

KY 4 - From entire circle of Lexington.

[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 62-68 [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 Ohio state line [south end of US Grant Bridge at South Shore, Kentucky (Portsmouth, Ohio)] to US 119 north of [at] Pikeville.

US 23 - From US 119 near Jenkins to Virginia state line.

US 23 Spur - From Ohio River Bridge at Ashland.

US 25 - From US 421 south of Richmond to KY 876 in Richmond [I-75 near Richmond (via KY 876)].

US 25 - From KY 418 southwest of Lexington to Nandino Boulevard [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 - From Tennessee state line to KY 255 at Park City (via US 31W Bypass in Bowling Green).

US 31W - From US 31W Bypass in Elizabethtown to I-264.

US 31W Bypass - From Western Kentucky Parkway [WK 9001] to US 31W in Elizabethtown.

KY 32 - From I-64 west of Morehead to US 60 at Morehead.

KY 35 - From US 127 at Bromley to I-71 north of Sparta.

KY 36 - From I-64 south of Owingsville 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 - From Tennessee state line to Pennyrile Parkway at 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 northeast of Louisville 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 US 62 in [I-24 south of] Paducah.

US 51 - From KY 121 in Wicklifee to Illinois state line.

KY 52 - From KY 876 in Richmond to KY 499 at Irvine.

KY 55 - From Cumberland Parkway in Columbia to [US 68 in Lebanon] US 150 at Springfield.

[KY 55 - From US 68 in Lexington to US 150 at Springfield.]

US 60 - From US 60 Bypass west [east] of Owensboro to KY 69 Hawesville.

US 60 - From I-264 east of Louisville to KY 1531 at Eastwood.

US 60 - From US 421 at [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 - From KY 144 in Meade County to US 31W at Ft. Knox.

US 60 Bypass - From US 60 west of Owensboro to US 60 east of Owensboro.

US 61 - From Tennessee state line to KY 90 at Burkesville.

US 62 - From I-24 at Paducah to Western Kentucky Parkway.

US 62 - From KY 245 at Bardstown to US 150 at Bardstown.

US 62 - From KY 353 southwest of Cynthiana to US 27 at Cynthiana.

US 68 [US 62] - From I-24 in Trigg County to Green River Parkway at Bowling Green.

US 68 - From US 27 at Paris to Ohio state line at Maysville [junction US 62 in Washington] (via Paris Bypass).

KY 69 - From US 60 at Hawesville to Indiana state line.

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 at Cave City to Cumberland Parkway at Glasgow.

KY 90 - From KY 61 at Burkesville [junction 92 in Monticello] to US 27 at Burnside.

KY 114 - From US 460 east of [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 KY 15 at Whitesburg to US 23 at Jenkins.

US 119 - From US 25E south of Pineville to US 421 at Harlan.

US 119 - From US 23 [KY 80] at Pikeville to KY 1141 northeast of Pikeville.

KY 121 - From US 45 Bypass at Mayfield to US 51 in Wickliffe.

US 127 - From US 127 Bypass north of Danville to US 127 Bypass south of Lawrenceburg.

[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 - KY 151 north of Lawrenceburg.

US 127 - From KY 22 in Owenton to KY 35 at Bromley.

KY 144 - From KY 448 south of Brandenburg to US 60.

US 150 - From US 31E at Bardstown to US 27 at north city limits of Stanford (via 150 Bypass 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 (Boone County).

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 south of Bowling Green to US 31W Bypass in [at] Bowling Green.

KY 236 - From KY 212 near airport to US 25 at Erlanger.

KY 237 - From KY 18 east of Burlington to I-275 in Boone County.

KY 245 - From I-65 south of Shepherdsville to US 62 at Bardstown.

KY 255 - From US 31W at Park City to I-65.

KY 259 - From Western Kentucky Parkway to US 62 in Leitchfield.

KY 281 - From US 41A in Madisonville to US 41.

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 north of Harlan 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.

KY 448 - From KY 1051 at Brandenburg to KY 144.

US 460 - From I-64 north of Mt. Sterling 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 645 - From US 23 south of Ulysses to KY 40 west of Inez.

KY 676 - From US 127 in Frankfort to US 60.

KY 686 - From KY 11 south of Mt. Sterling to US 460 north of Mt. Sterling.

KY 841 - From KY 155 near Jeffersontown to US 42 northeast of Louisville.

KY 859/KY 57 - From I-64 east of Lexington to Lexington - Bluegrass Army Depot.

KY 876 - From I-75 at Richmond to KY 52 east of Richmond.

KY 922 - From KY 4 in Lexington to junction of I-64 and I-75.

KY 1051 - From KY 448 south of Brandenburg to KY 79.

KY 1682 - From US 68 west of Hopkinsville to Pennyrile Parkway [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 8 at Silver Grove [9].

[Daniel Boone Parkway - From US 25 north of London to KY 15 north of Hazard.]

[Mountain Parkway Extension - From 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.]

(4) [(5)] Motor vehicles with the increased dimensions specified in subsection (1) of this section shall be allowed five (5) driving miles on state maintained highways from the Interstate and the designated route network for the purpose of attaining reasonable access to terminals; facilities for food, fuel, repairs and rest; and points of loading and unloading for household goods carriers.

C. LESLIE DAWSON, Secretary
APPROVED BY AGENCY: July 2, 1985
FILED WITH LRC: July 8, 1985 at 1 p.m.

STATEMENT OF EMERGENCY

KRS 161.030 requires that, effective January 1, 1985, initial certification of all new teachers and of out-of-state teachers with less than five (5) years of teaching experience seeking initial certification in Kentucky shall require the taking and successful completion of appropriate written tests and a one (1) year internship. When 704 KAR 20:045 was originally promulgated last year, teachers who had previously held Kentucky teaching certificates which had lapsed for failure to meet renewal requirements were interpreted as "new" teachers, to the extent that they did not have five (5) or more years of full-time, acceptable teaching experience. Complaints from several individuals seeking recertifiction and teaching positions for the 1985-86 school year have precipitated a re-assessment of such position.

Based upon a re-evaluation of the relevant statutory language, it is felt that such is ambiguous, and reasonably susceptible of more than one interpretation, as to the status of persons with lapsed teaching certificates, but that the best interpretation is that such persons are not "new" teachers within the probable intent of such statutory language. This amendment, relieving all persons with lapsed certificates, regardless of actual teaching experience, from testing and internship requirements for recertification, is being promulgated on an emergency basis so that such persons and prospective employers for the 1985-86 school year will be aware of their status and certification in sufficient time to bargain for and award employment contracts. This emergency regulation will be replaced by an ordinary administrative regulation.

MARTHA LAYNE COLLINS, Governor
ALICE McDONALD, Superintendent

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction

704 KAR 20:045E. Testing prerequisites for teacher certification; certificate application; beginning teacher internship program.

RELATES TO: KRS 161.020, 161.025, 161.030
PURSUANT TO: KRS 156.070, 161.030
EFFECTIVE: June 26, 1985
NECESSITY AND FUNCTION: KRS 161.020, 161.025, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Kentucky Council on Teacher Education and Certification and approved by the State Board of Education; furthermore, the teacher education institutions are required to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures recommended by the Council and approved by the State Board, and KRS 161.030 sets up additional testing and internship requirements for certification. This regulation provides for the implementation of the testing prerequisites for teacher certification as prescribed in KRS 161.030 and for the beginning teacher internship program; and also provides for certificate renewal requirements and for filing certificate application forms.

Section 1. (1) Application for teacher certification shall be made on official forms prepared by the Department of Education.

(2) The application shall be supplemented by official transcripts showing all college credits necessary for the requested certification.

(3) The Superintendent of Public Instruction may authorize a teacher education institution to present certificates to applicants at the time the certification requirements are completed, provided the applications have been approved in advance by the Department of Education and provided the institution files the official transcripts of credits with the Department of Education within thirty (30) days.

Section 2. Effective January 1, 1985, teacher certification issued initially under the provisions of 704 KAR 20:065, 20:070, 20:080, 20:085, 29:090, 20:145, 20:150, 20:159, 20:222, 20:230, 20:235, 20:240, 20:245, 20:270, and 20:290 shall comply with the provisions of KRS 161.030 and with the following requirements and procedures:

(1) There shall be a recency of preparation prerequisite for the issuance of certificates covered by this section. The program of preparation shall have been completed within the five (5) year period next preceding the date of receipt of the certificate application form, or else the applicant shall have completed six (6) semester hours of additional graduate credit within this five (5) year period. For applicants who do not meet the recency of preparation prequisite, and who have not previously held a regular Kentucky teaching certificate, but who otherwise qualify for certification, the certificate shall be issued for a one (1) year

period ending June 30 of the next calendar year and with the condition that six (6) semester hours of credit applicable toward the usual renewal requirements be completed by September 1 of the year of expiration. Thereafter the further extension of the certificate shall be in compliance with the usual renewal requirements as specified in subsection (2) of this section.

(2) Teaching certificates described in this section shall be issued for a duration period of five (5) years and with provisions for subsequent five (5) year renewals, except that the initial certification for the beginning teacher internship shall be issued for a duration period of one (1) year and initial certification for applicants who do not meet the recency of preparation prerequisite shall be issued for a duration period of one (1) year. Upon successful completion of the beginning teacher internship as judged by majority vote of the beginning teacher committee, the one (1) year certificate shall be extended for the remainder of the five (5) year period. The certificate shall be renewed for subsequent five (5) year periods upon completion by September 1 of the year of expiration of three (3) years of successful teaching experience or upon completion by September 1 of the year of expiration of at least six (6) semester hours of credit or the equivalent in PSDU's or CEU's, as defined in 704 KAR 20:020, except that persons who have not yet completed the Planned Fifth-Year Program, as defined in 704 KAR 20:020, shall complete at least fifteen (15) semester hours of credit applicable to the program for the first renewal and the remainder of the program for the second renewal. Credits for certificate renewal shall be earned after the issuance of the certificate, and any credits earned in excess of the minimum requirements for any renewal period shall accumulate and be carried forward to apply toward subsequent renewals.

(3) Whenever there is a lapse in any certification identified in this section due to expiration for lack of meeting the renewal requirements, the certificate may be reissued at a later date for a one (1) year period by first completing at least six (6) semester hours of graduate credit applicable toward the Planned Fifth-Year Program. The applicant shall complete another nine (9) semester hours of credit applicable toward the Planned Fifth-Year Program by September 1 of the year of expiration in order to qualify for extending the certificate for the remaining four (4) years of the usual five (5) year duration period. At the end of this renewal period the applicant shall have completed the Planned Fifth-Year Program to qualify for the next five (5) year renewal. Thereafter, the regular renewal schedule of six (6) semester hours of additional credit or the equivalent in PSDU's or CEU's each five (5) year period shall apply. An applicant who has already completed the Planned Fifth-Year Program and whose certificate lapses may have the certificate reissued after first completing another six (6) semester hours of graduate credit. The certificate shall be issued for a five (5) year period and subject to the renewal schedule of six (6) semester hours of additional credit or the equivalent in PSDU's or CEU's for each five (5) year period.

(4) An applicant having completed five (5) or more years of full-time acceptable teaching experience outside of the Commonwealth of Kentucky, who otherwise qualifies for certification, shall not be required to take the written tests or to participate in the beginning teacher internship program. An applicant who has held a regular Kentucky teaching certificate which has lapsed for failure to meet renewal requirements [and who has completed five (5) or more years of full-time acceptable teaching experience], but who otherwise qualifies for the reissuance of a Kentucky teaching certificate shall not be required to take the written tests or to participate in the beginning teacher internship program. In calculating the minimum of five (5) years of acceptable experience, full-time teaching shall be defined as continuous employment for at least a half day or more; full-time teaching for a major portion of a semester shall be counted as one-half (1/2) year; and full-time experience for the major portion of an academic year shall be counted as one (1) year. At least three (3) of the five (5) years of experience shall be in a position directly corresponding to the type of teaching certificate for which the application is being made.

(5) Prerequisites for the issuance of a one (1) year certificate for the beginning teacher internship shall include:

(a) The completion of an approved program of preparation which corresponds to the certificate desired.

(b) The completion of the written tests designated by the State Board of Education for:

1. General knowledge;
2. Communications skills;
3. Professional education concepts; and
4. Knowledge in the specific teaching field of the applicant, with minimum scores in each test as set by the State Board of Education.

(c) Evidence of full-time employment in a Kentucky school as attested by the prospective employer.

(6) Upon successful completion of the approved program of preparation and upon completion of the designated tests with acceptable scores, the Department of Education shall issue a statement of eligibility for employment which shall serve as evidence of eligibility for the one (1) year certificate once a teaching position is secured. The statement of eligibility shall be valid for a four (4) year period beginning from the date of issuance from the Department of Education and ending on the same date four (4) years later.

(7) For persons who attain the statement of eligibility, but who are not employed on a full-time basis, the Certificate for Substitute Teaching may be issued as provided in 704 KAR 20:210, Section 1.

(8) The one (1) year certificate shall be issued effective from the date of employment and shall expire June 30 of the next calendar year. If the teacher's first year performance is judged to be less than satisfactory, the teacher shall be provided with an opportunity to repeat the internship one (1) time through the reissuance of another one (1) year certificate if the teacher is employed by a school district.

(9) The first year of employment as a beginning teacher shall serve as the internship as described in KRS 161.030. The Superintendent

of Public Instruction shall design, for State Board approval, the plan which provides for the beginning teacher committee, the support services for the beginning teacher, the evaluation of the performance of the beginning teacher, the development of criteria and procedures for the evaluation of the performance of the beginning teacher, and the training of the evaluators who make up the beginning teacher committee.

(10) The one (1) year internship shall include a minimum of 140 days of full-time teaching experience.

ALICE McDONALD, Superintendent
APPROVED BY AGENCY: June 18, 1985
FILED WITH LRC: June 26, 1985 at 9 a.m.

STATEMENT OF EMERGENCY

In order to provide immediate programmatic and fiscal requirements for the 14 Community Mental Health Centers to comply with DUI legislation the Department requests approval of these regulation amendments, which govern the contracting for 1986 fiscal year funding. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with House Bill 334.

MARTHA LAYNE COLLINS, Governor
E. AUSTIN, JR., Secretary

CABINET FOR HUMAN RESOURCES
Department for Mental Health and Mental Retardation Services

902 KAR 6:060E. MH/MR manuals for plan and budget instructions, billing instructions, and reimbursement guidelines.

RELATES TO: KRS 210.370 to 210.460
PURSUANT TO: KRS 210.440 to 210.450
EFFECTIVE: July 10, 1985
NECESSITY AND FUNCTION: The Cabinet for Human Resources is empowered and directed by KRS 210.370 to 210.460 to allocate available funds to Mental Health/Mental Retardation Boards in accordance with approved plans and budgets. KRS 210.440 and 210.450 authorize the Secretary for Human Resources to promulgate policies and regulations as to the operations, budgets and expenditures of community programs and to require reporting management and financial programs as necessary to carry out the purposes of KRS 210.370 to 210.460.

Section 1. Annual Plan and Budget Instructions. The Cabinet for Human Resources hereby adopts the "Annual Plan and Budget Instructions, July 1, 1984" by reference. Community Mental Health/Mental Retardation Boards [Centers] will follow these instructions when preparing and submitting the annual plan and budgets to the cabinet. The manual includes, but is not limited to, the following: rate and allocation sheets, client service definitions and descriptions, fiscal plan, waiver request, letter of assurance, addenda, and regional data packet. A copy of the manual is on file for inspection in the Office of the Commissioner for Mental Health and Mental Retardation [Health] Services, 275 East Main Street, Frankfort, Kentucky 40621.

Section 2. DMH/MRS, [DHS] Program, Policies and Billing Instructions Manual. The Cabinet for Human Resources hereby adopts the July 1, 1985 edition of the "DMH/MRS ["DHS] Program Policies and Billing Intructions Manual, [July 1984]" as administrative regulation by reference. The manual relates to, but is not limited to the following: billing and reimbursement instructions for mental health, mental retardation, and substance abuse client priorities, program service definitions, reporting requirements, monitoring procedures, and contract amendment procedures. The instructions contained shall be followed by those Community Mental Health/Mental Retardation Boards [Centers] contracting with the cabinet. A copy of the manual is on file for inspection in the Office of the Commissioner for Mental Health and Mental Retardation [Health] Services, 275 East Main Street, Frankfort, Kentucky 40621.

Section 3. Cabinet for Human Resources Title XIX and DHS Funding Community Mental Health/Mental Retardation Reimbursement Manual, July, 1984. The Cabinet for Human Resources hereby adopts this manual as administrative regulation by reference. This manual relates to, but is not limited to the following: scope of services, requirements and limitations of participation, method and principles of reimbursement. The manual shall be adhered to by those Community Mental Health/Mental Retardation Boards [Centers] contracting with the cabinet. A copy of the manual is on file for inspection in the Office of the Commissioner for Mental Health and Mental Retardation [Health] Services, 275 East Main Street, Frankfort, Kentucky 40621.

Section 4. Summary of Amendments. (1) In relation to Section 1 of this regulation pertaining to Annual Plan and Budget Instructions, the term "Centers" is changed to "Boards" and the term "Health" is changed to "Mental Health and Mental Retardation."

(2) In relation to Section 2 of this regulation pertaining to the DHS "Program Policies and Billing Instructions Manual," the manual is stricken in its entirety and a new manual entitled July 1, 1985 Edition of the "DMH/MRS Program Policies and Billing Instruction Manual" is substituted in lieu thereof. Provision is made in the new manual for the driving under the influence (DUI) program policies, procedures and billing instructions. Also included within the new edition are changes pertaining to definitions of services, references to Title XX have been deleted, Priorities Section changed, and Prevention Program Standards and Guidelines added.

(3) In relation to Section 3 of this regulation pertaining to "Cabinet for Human Resources Title XIX and DHS Funding Community Mental Health/Mental Retardation Reimbursement Manual, July 1984" the term "Centers" is changed to "Boards" and the term "Health" is changed to "Mental Health and Mental Retardation."

DENNIS BOYD, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 2, 1985
FILED WITH LRC: July 10, 1985 at 4 p.m.

STATEMENT OF EMERGENCY

The amendment to this regulation is necessary to be consistent with the regulations of the Corrections Cabinet addressing the transfer of mentally ill inmates from correctonal facilities to a forensic hospital as required by a decision of the U.S. Supreme Court in Vitek v. Jones, 445 U.S. 480, 100 S.Ct. 1254, 63 L.Ed.2d 552 (1980). An ordinary administrative regulation cannot suffice because agency policy will not be accurately reflected in a timely manner and there is an immediate need to be consistent with Corrections Cabinet procedures and regulations. This emergency regulation will be replaced by an ordinary adminisrative regulation.

MARTHA LAYNE COLLINS, Governor
E. AUSTIN, JR., Secretary

CABINET FOR HUMAN RESOURCES
Department for Mental Health and Mental Retardation Services

902 KAR 12:030E. Care and treatment of inmates of penal institutions.

RELATES TO: KRS 202A.201
PURSUANT TO: KRS Chapter 13A [13.082], 194.050, 202A.191, 202B.060
EFFECTIVE: June 27, 1985
NECESSITY AND FUNCTION: KRS Chapters 202A and 202B, relating to the hospitalization of mentally ill or mentally retarded persons, direct that the Secretary for the Cabinet for Human Resources shall adopt rules and regulations to effectuate the purposes of that chapter, including, but not limited to, the transfer of mental patients and alternate methods for involuntary hospitalization. The function of this regulation is to prescribe the procedure to be employed in the hospitalization, care and treatment of an inmate of a penal institution who has been transferred to a hospital, forensic psychiatric facility or residential treatment center.

Section 1. Care and Treatment of Inmates. In the event that an inmate of any penal or correctional institution is transferred to a hospital, forensic psychiatric facility or residential treatment center pursuant to KRS 202A.201, the following rules shall apply:
(1) If the inmate voluntarily agrees to receive treatment in accordance with the individual treatment plan, such treatment may be provided until such time as it is determined that treatment is no longer necessary or until the patient refuses continued treatment;
(2) If the inmate refuses to receive treatment, proceedings for involuntary hospitalization may be instituted in accordance with the provisions of KRS Chapters 202A and 202B and 501 KAR 6:010 addressing involuntary transfer proceedings prusuant to Vitek v. Jones, 445 U.S. 480, 100 S.Ct. 1254, 63 L.Ed.2d 552 (1980).
(3) Patients in a forensic psychiatric facility shall have the same rights as set forth in 902 KAR 12:020; provided, however, that locking patients in their cells for sleeping or census count purposes and restraints used for transportation or prevention of escape shall not be considered as seclusion or restraint as defined in the patient's bill of rights.

DENNIS D. BOYD, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: June 18, 1985
FILED WITH LRC: June 27, 1985 at 9 a.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have sufficient authority for the declaring of a maximum weekly benefit rate. Therefore, in order to continue to properly establish a maximum weekly unemployment insurance rate for the year beginning July 1, 1985, the Cabinet for Human Resources needs to implement this emergency regulation. An ordinary administrative regulation will not suffice because the correct weekly benefit amount would not be declared in a timely manner. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS 13A.100.

MARTHA LAYNE COLLINS, Governor
E. AUSTIN, JR., Secretary

CABINET FOR HUMAN RESOURCES
Department for Employment Services

903 KAR 5:270E. Maximum weekly benefit rates.

RELATES TO: KRS 341.380
PURSUANT TO: KRS 194.050, 341.380
EFFECTIVE: June 28, 1985
NECESSITY AND FUNCTION: KRS 341.380 requires the Secretary for Human Resources to determine the average weekly wage for insured employment. Fifty-five (55) percent of this amount adjusted to the nearest multiple of one (1) dollar constitutes the maximum weekly unemployment insurance benefit rate for those workers whose benefit year commences on or after July 1, 1985 [1984], and prior to July 1, 1986 [1985]. This regulation applies the mathematical computation required by statute and contains the determination of the maximum weekly benefit rate.

Section 1. The secretary finds the following to exist:
(1) The "total monthly employment" reported by subject employers for the calendar year of 1984 [1983] was 13,455,245 [12,791,694];
(2) The "average monthly employment," obtained by dividing the total monthly employment by twelve (12), was 1,121,070 [1,065,975];
(3) The "total wages" reported by subject employers for the calendar year of 1984 [1983] was $18,453,034,358 [$16,894,998,249];
(4) The "average weekly wage" for the calendar year of 1984 [1983] for insured employment, obtained by dividing the average montly employment into total wages for such year and dividing by fifty-two (52), was $316.54 [$304.80];
(5) Fifty-five (55) percent of the average weekly wage of $316.54 [$304.80] for the calendar year of 1984 [1983] was $174.10 [$167.64];
(6) However, the "trust fund balance" as of December 31, 1984 [1983], was zero [$40,000],

(the outstanding loan from the Federal Unemployment Trust Fund was $11,067,384 [$150,567,748]) and KRS 341.380 states that if the trust fund balance on December 31 is less than $120,000,000 the maximum weekly benefit rate shall not exceed the prior year's maximum weekly benefit rate; and

(7) The prior year's maximum weekly benefit rate was $140.

Section 2. On the basis of the above findings, and in accordance with KRS 341.380(3), the maximum weekly benefit rate for those workers whose benefit year commences on or after the first day of July, 1985 [1984], and prior to the first day of July, 1986 [1985], is determined to be $140.

JAMES P. DANIELS, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: June 25, 1985
FILED WITH LRC: June 28, 1985 at 4:30 p.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A, the administrative body is required to implement this regulation in order to have sufficient authority for the changing of Cabinet policy. Therefore, in order to properly and timely implement federal Weatherization Assistance regulations, the Cabinet for Human Resources needs to implement this emergency regulation. An ordinary administrative regulation would not suffice for ensuring that these changes be effective July 1, 1985, the start of the Program year. An ordinary regulation will replace this emergency regulation in accordance with KRS 13A.100.

MARTHA LAYNE COLLINS, Governor
E. AUSTIN, JR., Secretary

CABINET FOR HUMAN RESOURCES
Department for Employment Services
Division for Job Service and Special Programs

903 KAR 6:020E. Weatherization assistance for low income persons.

RELATES TO: KRS 194.030(9)
PURSUANT TO: KRS 13A.100, 194.050(1)
EFFECTIVE: June 28, 1985
NECESSITY AND FUNCTION: Chapter 42 USC 6861 authorizes the states to implement a weatherization program. The Cabinet for Human Resources is authorized by KRS 194.050 to adopt such rules and regulations as are necessary to implement programs mandated by federal law or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. The function of this regulation is to implement the weatherization program in accordance with applicable federal laws and regulations.

Section 1. In order to facilitate the administration of the weatherization program as authorized by 42 USC 6861 and as regulated in Title 10 CFR Part 440, the following CFR and operating manuals are adopted by reference:

(1) Title 10 Code of Federal Regulations (CFR), Part 440, as issued January 27, 1984, which authorizes states to carry out a program of weatherization assistance for low-income persons established by Chapter 42 United States Code (U.S.C.), 6861.

(2) 1985 [1983] Weatherization Manual Revised Edition issued June 1985 [September, 1983 and last revised May 11, 1984], which is provided to subgrantees administering the weatherization program throughout the state and includes an introduction and purpose of the Weatherization Manual, a list of subgrantees and areas served, program costs [a copy of 903 KAR 2:010] and implementation procedures for: subgrantee application and contracting; subgrantee contract modification; subgrantee private sector subcontracting; subgrantee financial management; subgrantee program operation; program monitoring and training and technical assistance; and completion and distribution of administrative reports and forms.

(3) Weatherization Assistance Program Specifications and Installations Standards Manual issued October, 1983 and last revised May 25, 1984, which is provided to subgrantees administering the weatherization program throughout the state to establish a common set of general requirements, material standards and installation standards and includes procedures for all measures used in weatherizing a dwelling, such as reducing air infiltration, attic, floor, wall, water heater and pipe and duct insulation, heating system tune-up and installation of storm windows.

Section 2. All documents incorporated by reference herein are on file for public inspection in the Office of the Commissioner for Employment Services, 275 East Main Street, Frankfort, Kentucky 40621, and in local Community Action Agency offices located throughout the state.

Section 3. 903 KAR 2:010 is hereby repealed.

Section 4. Summary of Amendment. (1) Chapters I through X as issued in 1983 and last revised May, 1984, strike all and insert new Chapters I through X revised June, 1985. These revisions grant service providers the opportunity to comment on future manual revisions, establishes a method for calculating program costs and incorporates recent changes in U.S. Department of Energy regulations.

(2) 903 KAR 2:010 is duplicative of requirements and procedures contained in this regulation and is repealed for the sake of simplicity and to make it easier for the public to comprehend the Weatherization Program's requirements.

JAMES P. DANIELS, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: June 28, 1985
FILED WITH LRC: June 28, 1985 at 4:30 p.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in

order to continue to operate the Cabinet for Human Resources in accordance with KRS Chapter 194, the Cabinet for Human Resources needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because agency policy will not be accurately reflected in a timely manner. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with House Bill 334.

MARTHA LAYNE COLLINS, Governor
E. AUSTIN, JR., Secretary

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development

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

RELATES TO: KRS 205.520
PURSUANT TO: KRS 194.050
EFFECTIVE: June 28, 1985
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the method for determining amounts payable by the cabinet for skilled nursing care facility services and intermediate care facility services.

Section 1. Reimbursement for Skilled Nursing and Intermediate Care Facilities. All skilled nursing or intermediate care facilities participating in the Title XIX program shall be reimbursed in accordance with this regulation. Payments made shall be in accordance with the requirements set forth in 42 CFR 447.250 through 42 CFR 447.280. A skilled nursing facility desiring to participate in Title XIX shall be required to participate in Title XVIII-A.

Section 2. Basic Principles of Reimbursement. (1) Payment shall be on the basis of rates which are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable state and federal laws, regulations, and quality and safety standards.

(2) Payment amounts shall be arrived at by application of the reimbursement principles developed by the cabinet (Kentucky Medical Assistance Program Intermediate Care/Skilled Nursing Facility Reimbursement Manual, revised July 1, 1985 [October 1, 1984], which is hereby incorporated by reference) and supplemented by the use of the Title XVIII-A reimbursement principles.

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

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

(2) The prospective rate shall not exceed, on a facility by facility basis, an administratively established maximum payment for that type of facility. The state will set a uniform rate year for SNFs and ICFs (July 1-June 30) by taking the latest audited cost data available as of May 16 of each year and trending the facility costs to July 1 of the rate year. (Unaudited, partial year, and/or budgeted cost data may be used if a full year's audited data is unavailable. Unaudited reports are subject to adjustment to the audited amount, and will be used when an audited cost report ending within twenty-four (24) months of the 30th of April preceding the rate year is not available. Facilities paid on the basis of partial year or budgeted cost reports shall have their reimbursement settled back to allowable cost, with usual upper limits applied. Facilities beginning program participation on or after July 1, 1984 whose rates are subject to settlement back to cost will not be included in the arrays until such time as the facilities are no longer subject to cost settlement.) Allowable costs will then be indexed for inflation for the rate year, and the maximum set at 102 [105] percent of the median for the class (SNF or ICF). In recognition of the higher costs of hospital based SNFs, their upper limit shall be set at 165 percent of 102 [105] percent of the median of allowable trended and indexed costs of all other SNFs. The maximum payment amounts will be adjusted each July 1, beginning with July 1, 1985 [1982], so that the maximum payment amount for the prospective uniform rate year will be at 102 [105] percent of the median per diem allowable costs for the class (SNF or ICF) on July 1 of that year. For purposes of administrative ease in computations normal rounding may be used in establishing the maximum payment amount, with the maximum payment amount

rounded to the nearest five (5) cents. Upon being set, the arrays and upper limits will not be altered due to revisions or corrections of data. For ICF-MRs, a prospective rate will be set in the same manner as for SNFs and basic ICFs, except that no maximum (upper limit) shall be imposed.

(3) The reasonable direct cost of ancillary services provided by the facility as a part of total care shall be compensated on a reimbursement cost basis as an addition to the prospective rate. Ancillary services reimbursement shall be subject to a year-end audit, retroactive adjustment and final settlement. Ancillary costs may be subject to maximum allowable cost limits under federal regulations. Any percentage reduction made in payment of current billed charges shall not exceed twenty-five (25) percent, except in the instance of individual facilities where the actual retroactive adjustment for a facility for the previous year reveals an overpayment by the cabinet exceeding twenty-five (25) percent of billed charges, or where an evaluation by the cabinet of an individual facility's current billed charges shows the charges to be in excess of average billed charges for other comparable facilities serving the same area by more than twenty-five (25) percent. A refund will be requested from a facility if the amount paid to the facility for legend drugs, covered legend devices and non-legend drugs, if applicable, exceeds the program's computed maximum allowable cost. The amount of refund will be determined by conducting a statistically accurate sample of the Medicaid patients for the facility's fiscal year. The percentage that a facility is over the computed maximum allowable cost will be multiplied by the amount paid by the program for drugs for the fiscal year under review.

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

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

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

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

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

(6) The allowable cost for services or goods purchased by the facility from related organizations shall be the cost to the related organization, except when it can be demonstrated that the related organization is in fact equivalent to any other second party supplier, i.e., a relationship for purposes of this payment system is not considered to exist. A relationship will be considered to exist when an individual or individuals possess twenty (20) percent or more of ownership or equity in the facility and the supplying business; however, an exception to the relationship will be determined to exist when fifty-one (51) percent or more of the supplier's business activity of the type carried on with the facility is transacted with persons and organizations other than the facility and its related organizations.

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

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

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

(b) Facilities participating in the Medicaid program prior to April 1, 1981, shall be classified as newly participating facilities (solely for purposes of this subsection) when either of the following occurs on or after April 1, 1981: first, when the facility expands its bed capacity by expansion of its currently existing plant or, second, when a multi-level facility (one providing more than one (1) type

of care) converts existing personal care beds in the facility to either skilled nursing or intermediate care beds, and the number of additional or converted personal care beds equals or exceeds (in the cumulative) twenty-five (25) percent of the Medicaid certified beds in the facility as of March 31, 1981. Facilities participating in the Medicaid program prior to April 1, 1981 shall not be classified as newly participating facilities solely because of changes of ownership.

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

(d) A facility may request that the Reimbursement Review Panel grant a waiver of its status as a newly participating facility based upon a presentation of facts showing that the provider had already incurred a substantial material financial obligation or binding commitment toward building or expanding a facility prior to April 1, 1981. The obtaining of a certificate of need shall not be construed, in itself, to be sufficient to justify approval of a waiver request, and a waiver, if granted, shall be applicable only with regard to that building or expansion for which the waiver was requested and approved.

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

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

(10) To determine the gain or loss on the sale of a facility for purposes of determining a purchaser's cost basis in relation to depreciation and interest costs, the following methods will be used for changes of ownership occurring before July 18, 1984:

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

(b) Add to the seller's depreciated basis two-thirds (2/3) of one (1) percent of the gain for each month of ownership since the date of acquisition of the facility by the seller to arrive at the purchaser's cost basis.

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

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

(e) If an enforceable agreement for a change of ownership was entered into prior to July 18, 1984, the purchaser's cost basis will be determined in the manner set forth in paragraphs (a) through (d) of this subsection.

(11) Notwithstanding the provisions contained in subsection (10) of this section, or in any other section or subsection of this regulation or the "Kentucky Medical Assistance Program Intermediate Care/Skilled Nursing Facility Reimbursement Manual," the cost basis for any facility changing ownership on or after July 18, 1984 (but not including changes of ownership pursuant to an enforceable agreement entered into prior to July 18, 1984 as specified in subsection (10)(e) of this section) shall be determined in accordance with the methodology set forth in the Social Security Act (as amended by the Deficit Reduction Act of 1984) and shown herein for the revaluation of assets of skilled nursing and intermediate care facilities.

(a) The Social Security Act, Section 1861(v)(1)(O) (as published in the Commerce Clearing House Medicare/Medicaid Guide) specifies the following:

"(i) In establishing an appropriate allowance for depreciation and for interest on capital indebtedness and (if applicable) a return on equity capital with respect to an asset of a hospital or skilled nursing facility which has undergone a change of ownership, such regulations shall provide that the valuation of the asset after such change of ownership shall be the lesser of the allowable acquisition cost of such asset to the owner of record as of the date of the enactment of this subparagraph, (or, in the case of an asset not in existence as of such date, the first owner of record of the asset after such date), or the acquisition cost of such asset to the new owner."

"(ii) Such regulations shall provide for recapture of depreciation in the same manner as provided under the regulations in effect on June 1, 1984."

"(iii) Such regulations shall not recognize, as reasonable in the provision of health care services, costs (including legal fees, accounting and administrative costs, travel costs, and the costs of feasibility studies) attributable to the negotiation or settlement of the sale or purchase of any capital asset (by acquisition or merger) for which any payment has previously been made under this title."

(b) The Social Security Act, Section 1902(a)(13) (as published in the Commerce Clearing House Medicare/Medicaid Guide) further specifies the following:

"(B) That the state shall provide assurances satisfactory to the Secretary that the payment methodology utilized by the State for payments to hospitals, skilled nursing facilities, and intermediate care facilities can reasonably be expected not to increase such payments, solely as a result of a change of ownership, in excess of the increase which would result from the application of section 1861(v)(1)(O)."

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

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

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

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

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

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

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

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

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

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

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

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

(18) Each facility shall submit the required data for determination of the prospective rate no later than sixty (60) days following the close of the facility's fiscal year. This time limit may be extended at the specific request of the facility (with the cabinet's concurrence).

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

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

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

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

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

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

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

(Effective 7-1-85 [7-1-84])

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$26.99 & below*	-	-
27.00 - 27.99	$1.38	$.87
28.00 - 28.99	$1.29	$.75
29.00 - 29.99	$1.18	$.62
30.00 - 30.99	$1.06	$.47
31.00 - 31.99	$ .92	$.31
32.00 - 32.99	$ .76	$.13
33.00 - 35.03 [35.05]	$ .53	-

Maximum Payment $35.03 [35.05]

*For a basic per diem of $26.99 and below, the investment amount will be equal to 7.5 percent, but not to exceed $1.38, and the incentive amount will be equal to 5.0 percent, but not to exceed $.87.

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

(Effective 7-1-84)

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$56.99 & below*	-	-
57.00 - 62.99	$1.38	$.87
63.00 - 68.99	$1.29	$.75
69.00 - 74.99	$1.18	$.62
75.00 - 80.99	$1.06	$.47
81.00 - 86.99	$ .92	$.31
87.00 - 92.99	$ .76	$.13
93.00 - 98.99	$ .53	-

*For a basic per diem of $56.99 and below, the investment amount will be equal to 7.5 percent, but not to exceed $1.38 and the incentive amount will be equal to 5.0 percent, but not to exceed $.87.

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

(Effective 7-1-85 [7-1-84])

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$36.99 & below*	-	-
37.00 - 38.99	$1.38	$.87
39.00 - 40.99	$1.29	$.75
41.00 - 42.99	$1.18	$.62
43.00 - 44.99	$1.06	$.47
45.00 - 46.99	$ .92	$.31
47.00 - 48.99	$ .76	$.13
49.00 - 51.13 [52.39]	$ .53	-

Maximum Payment $51.13 [52.39]**

*For a basic per diem of $36.99 and below, the investment amount will be equal to 7.5 percent, but not to exceed $1.38, and the incentive amount will be equal to 5.0 percent, but not to exceed $.87.

**The maximum payment for hospital based skilled nursing facilities is set at $83.01 [84.14].

(6) The prospective rate is then compared, as appropriate, with the maximum payment. If in excess of the program maximum, the prospective rate shall be reduced to the appropriate maximum payment amount. The maximum payment amounts have been set to be at or about 102 [105] percent of the median of adjusted basic per diem costs for the class, recognizing that hospital based skilled nursing facilities have special requirements that must be considered. The cabinet has determined that the maximum payment rates shall be reviewed annually against the criteria of 102 [105] percent of the median for the class and that adjustments to the payment maximums will be made effective July 1, 1985 [1982] and each July 1 thereafter. This policy shall allow, but does not require lowering of the maximum payments below the current levels if application of the criteria against available cost data should show that 102 [105] percent of the median is a lower dollar amount than has been currently set.

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

(1) First recourse shall be for the facility to request in writing to the Director, Division of Medical Assistance, a re-evaluation of the point at issue. This request must be received within forty-five (45) days following notification of the prospective rate or forwarding of the audited cost report by the program. The director shall review the matter and notify the facility of any action to be taken by the cabinet (including the retention of the original application of policy) within twenty (20) days of receipt of the request for review or the date of the program/vendor conference, if one is held, except that additional time may be taken as necessary to secure further information or clarification pertinent to the resolution of the issue.

(2) Second recourse shall be for the facility to request in writing to the Commissioner, Department for Social Insurance, a review by a standing review panel to be established by the commissioner. This request must be postmarked within fifteen (15) days following notification of the decision of the Director, Division of Medical Assistance. Such panel shall consist of three (3) members: one (1) member from the Division of Medical Assistance, one (1) member from the Kentucky Association of Health Care Facilities, and one (1) member from the Division of Management and Development, Department for Social Insurance. A date for the reimbursement review panel to convene will be established within twenty (20) days after receipt of the written request. The panel shall issue a binding decision on the issue within thirty (30) days of the hearing of the issue, except that additional time may be taken as necessary to secure further information or clarification pertinent to the resolution of the issue. In carrying out the

intent and purposes of the program the panel may take into consideration extenuating circumstances which must be considered in order to provide for equitable treatment and reimbursement of the provider. The attendance of the representative of the Kentucky Association of Health Care Facilities at review panel meetings shall be at the cabinet's expense.

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

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

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

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

(b) Physical, occupational and speech therapy.

(c) Laboratory procedures.

(d) X-ray.

(e) Oxygen and other related oxygen supplies and inhalation therapy.

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

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

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

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

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

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

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

(9) "Maximum payment" means the maximum amount the cabinet will reimburse, on a facility by facility basis, for routine services.

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

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

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

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

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

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

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

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

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

Section 7. Implementation Date. The provisions of this regulation, as amended, shall be effective with regard to services provided on or after July 1, 1985 [October 1, 1984].

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: June 28, 1985
FILED WITH LRC: June 28, 1985 at 2 p.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Cabinet for Human Resources in accordance with KRS Chapter 194, the Cabinet for Human Resources needs to implement this emergency regulation. An ordinary

administrative regulation cannot suffice because agency policy will not be accurately reflected in a timely manner. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with House Bill 334.

MARTHA LAYNE COLLINS, Governor
E. AUSTIN, JR., Secretary

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development

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

RELATES TO: KRS 205.520
PURSUANT TO:KRS 194.050
EFFECTIVE: June 28, 1985
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed, or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the method for determining amounts payable by the cabinet for mental health center services.

Section 1. Mental Health Centers. In accordance with 42 CFR 447.325, the cabinet shall make payment to Kentucky based (in-state) providers who are appropriately licensed and have met the conditions for participation (including the signing of such contractural arrangements as the cabinet may require of this class of provider) set by the cabinet, on the following basis:

(1) Payment shall be on a prospective basis based on reasonable allowable prior year costs (utilizing the latest audited annual cost report or unaudited report if an audited report is not available) not to exceed usual and customary charges or the upper limits on payments. Allowable costs shall be trended to the beginning of the rate year and indexed for the rate year, so as to more accurately approximate actual costs which will be incurred during the year. (If an unaudited report is used, cost will not be adjusted based on audit.)

(2) Payment amounts shall be determined by application of the "Community Mental Health Center General Policies and Guidelines and Principles of Reimbursement," (revised July 1, 1985 [1984]) developed and issued by the cabinet, (incorporated by reference to the extent that such policies, guidelines and principles are applicable to Title XIX services and reimbursement, and filed herein), supplemented by the use of Title XVIII reimbursement principles.

(3) Allowable costs shall not exceed customary charges which are reasonable. Allowable costs shall not include the costs associated with political contributions, membership dues, travel and related costs for trips outside the state (for purposes of conventions, meetings, assemblies, conferences, or any related activities), and legal fees for unsuccessful lawsuits against the cabinet. However, costs (excluding transportation costs) for training or educational purposes outside the state are allowable costs.

(4) The prospective rate shall not exceed 105 [110] percent of the median of the reasonable allowable cost for each reimbursable departmental cost center (i.e., inpatient, outpatient, partial hospitalization and personal care) for all participating facilities.

Section 2. Implementation of Payment System. (1) Payments may be based on units of service such as fifteen (15) minute or hourly increments, or at a daily rate, depending on the type of service.

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

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

(4) Each community mental health center provider shall make available to the cabinet at the end of each fiscal reporting period, and at such intervals as the cabinet may require, all patient and fiscal records of the provider, subject to reasonable prior notice by the cabinet. Notwithstanding this general requirement, the provider need not make available (for purposes of determining Medicaid payment amounts) staff notes or treatment records which show treatment details for non-Medicaid covered services; for such services, the information required shall be limited to a case summary sheet or listing which shows, at a minimum, the type of service provided, the staff member who provided the service, the date of the service, and appropriate identifying information relating to the patient.

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

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

Section 4. Reimbursement of Out-of-State Providers. The cabinet shall make payment to out-of-state mental health center providers who are appropriately licensed, participate with their state's Title XIX Medicaid Program, and have met the Kentucky Medical Assistance Program conditions of participation. The payment rate will be the lower of charges, or the facility's rate as set by the state Medicaid Program in the other state, or the upper limit for that type of service in effect for Kentucky providers.

JACK F. WADDELL, Commissioner

E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: June 28, 1985
FILED WITH LRC: June 28, 1985 at 2 p.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Cabinet for Human Resources in accordance with KRS Chapter 194, the Cabinet for Human Resources needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because agency policy will not be accurately reflected in a timely manner. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with House Bill 334.

MARTHA LAYNE COLLINS, Governor
E. AUSTIN, JR., Secretary

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development

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

RELATES TO: KRS 205.520
PURSUANT TO: KRS 194.050
EFFECTIVE: June 28, 1985
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the method for determining amounts payable by the cabinet for primary care center services.

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

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

(2) Payment amounts shall be determined by application of the "Primary Care Center General Policies and Guidelines and Principles of Reimbursement" (revised July 1, 1985 [November 1, 1984], and hereby incorporated by reference) developed and issued by the cabinet, supplemented by the use of title XVIII-A reimbursement principles.

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

(4) For services provided prior to July 1, 1985, reimbursement for medical and nursing cost center costs shall be subject to adjustment for a growth allowance. The growth allowance shall be computed for the year beginning each July, and shall be based on a projection of the change in the medical component of the Consumer Price Index over the previous year as applied to the median service cost of medical and nursing services, on a per visit basis, for all participating providers. Increases in medical and nursing center costs in excess of the growth allowance shall be disallowed. For those facilities with medical and nursing cost increases which are less than the growth allowance, the difference between the two (2) shall be reimbursable as a cost containment incentive payment at the time of the usual cost settlement.

(5) For services provided on or after July 1, 1985, the average allowable cost per visit for the medical and nursing services cost center shall not exceed the lesser of actual allowable costs, or charges, or the actual allowable average cost per visit for medical and nursing center services for the facility fiscal year ending prior to July 1, 1985 (not adjusted to the lower of cost or charges) plus an additional growth allowance of twenty (20) cents per visit per month (if such cost is incurred) for each month after the facility's fiscal year end but prior to July 1985. Primary care centers beginning participation on or after July 1, 1985 shall be reimbursed on the basis of the lower of reasonable allowable costs or charges (as shown in subsection (1) through (3) of this section) for the first two (2) years of participation in the program. For the third and subsequent years, the average allowable cost per visit may not exceed the lower of the facility's actual allowable costs, or charges, or the facility's actual allowable costs (not adjusted to the lower of cost or charges) for the second year of participation.

(6) [(5)] During the first six (6) months after the implementation of the policy contained in Section 1(4) of this regulation, centers with fiscal year endings occurring in the six (6) month period shall not have medical and nursing center costs disallowed as a result of imposition of the growth allowance upper limit, but shall be entitled to receive any applicable incentive payment.

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

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

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

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

recipients.

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

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

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

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

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: June 28, 1985
FILED WITH LRC: June 28, 1985 at 2 p.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Cabinet for Human Resources in accordance with KRS Chapter 194, the Cabinet for Human Resources needs to implement this emergency regulation. An ordinary administrative regulation cannot because agency policy will not be accurately reflected in a timely manner. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

MARTHA LAYNE COLLINS, Governor
E. AUSTIN, JR., Secretary

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development

904 KAR 1:250E. Incorporation by reference of materials relating to the Medical Assistance Program.

RELATES TO: KRS 194.030(6), 205.520
PURSUANT TO: KRS 194.050
EFFECTIVE: July 10, 1985
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the Medical Assistance Program and is applicable for both the categorically and medically needy.

Section 1. Incorporation by Reference. The cabinet shall incorporate by reference materials used in the implementation of the Medical Assistance Program, subject to the provisions contained in 904 KAR 2:140, Section 1, Supplementary policies for programs administered by the Department for Social Insurance.

Section 2. Listing of Incorporated Material. The following listed materials are hereby incorporated by reference, effective on the date shown:

(1) Federal Medicaid regulations at 42 CFR Parts 430-456, and interim final regulations at 42 CFR Parts 430-456, effective July [April] 1, 1985. The regulations contain federal supplementary policies, interpretations and implementing instructions for the Medical Assistance Program as authorized by Title XIX of the Social Security Act.

(2) Federal "State Medicaid Manual," effective July [April] 1, 1985. The "State Medicaid Manual" contains federal interpretations and clarifications of policy relating to implementation of the Medical Assistance Program.

(3) Federal action transmittals and program memoranda issued by the Health Care Financing Administration as follows: HCFA-AT-79-63, 79-72, 79-98, 80-9, 80-59, 81-23, 81-33, 81-35, 82-1, 82-2, 82-20, 83-1, 83-4, 83-7, 83-8, 83-11, 84-1, 84-2, 84-4, 84-5, 84-10, 84-16, and 85-1, and HCFA PM-85-4, effective July 1, 1985 [effective April 1, 1985]. Action transmittals and program memoranda contain federal instructions relating to implementation of the Medical Assistance Program.

(4) Federal transmittal notices issued by the Health Care Financing Administration as follows: DQC-1-82, 10-82; DPO-76-81, 77-81, 78-81; MCD-46-81, 48-81, 55-81, 61-81, 62-81, 64-81, 67-81, 82-81, 86-81, 87-81, 89-81, 92-81, 1-82, 2-82, 6-82, 7-82, 10-82, 14-82, 16-82, 17-82, 18-82, 19-82, 25-82, 26-82, 28-82, 30-82, 33-82, 34-82, 35-82, 38-82, 41-82, 42-82, 50-82, 52-82, 2-83, 5-83, 9-83, 11-83, 12-83, 13-83, 14-83, 15-83, 19-83, 20-83, 26-83, 28-83, 29-83, 30-83, 35-83, 39-83, 40-83, 42-83, 1-84, 6-84, 7-84,

8-84, 9-84, 11-84, 13-84, 14-84, 15-84, 16-84, 18-84, 20-84, 23-84, 24-84, 25-84, 26-84, 27-84, 29-84, 34-84, 35-84, 36-84, 39-84, 48-84, 50-84, 51-84, 55-84, 2-85, 4-85, 5-85, 6-85, [and] 8-85, 10-85, 11-85, 14-85, 18-85, 19-85, 21-85, 22-85, 23-85, 24-85, and 25-85, effective July [April] 1, 1985. Transmittal notices contain federal clarifications of policy relating to implementation of the Medical Assistance Program.

(5) Medicare and Medicaid Guide, Volumes I, II, III, and IV, as published by the Commerce Clearing House, Inc., with the following related new developments transfer binders: 1981-1, 1981-2, 1982, 1983-1, 1983-2, and 1984-1, effective July [April] 1, 1985. The Medicare and Medicaid Guide contains reprints of federal laws and regulations relating to the Medicare and Medicaid programs; reprints of Medicare/Medicaid related court decisions; Medicare principles of reimbursement; summaries of state plan characteristics; and other items of general information relating to the Medicare and Medicaid programs. Although the cabinet is bound by federal Medicaid law and regulations in the implementation of the Medical Assistance Program, the Guide is used principally as supplementary material for reimbursement issues in situations where the cabinet's vendor reimbursement system uses the Medicare cost principles in unaddressed areas.

(6) State Medicaid Program policies and procedures manuals and letters issued by the cabinet, and which contain benefit descriptions and operating instructions used by agency staff and participating vendors in the provision of, and billing for, Medical Assistance benefits provided eligible program recipients, as follows:

(a) Home and Community Based Services Waiver Project Adult Day Health Care Services, effective July 1, 1985 [May 16, 1984];

(b) Alternative Intermediate Services/Mental Retardation Project, effective July 1, 1985 [October 1, 1984];

(c) Birthing Center Services, effective January 1, 1985;

(d) Community Mental Health Benefits, effective July 1, 1985 [May 16, 1984];

(e) Dental Benefits, effective July 1, 1985 [May 16, 1984];

(f) Early and Periodic Screening, Diagnosis and Treatment Benefits, effective July 1, 1985 [May 16, 1984];

(g) Family Planning Benefits, effective July 1, 1985 [May 16, 1984];

(h) Hearing Services Benefits, effective July [January] 1, 1985;

(i) Home and Community Based Services Waiver Project, effective July 1, 1985 [May 16, 1984];

(j) Home Health Benefits, effective July 1, 1985 [May 16, 1984];

(k) Hospital Services Benefits, effective July [April] 1, 1985;

(l) Independent Laboratory Services Benefits, effective July [January] 1, 1985;

(m) Intermediate Care Facility Benefits, effective January 1, 1985;

(n) Mental Hospital Services Benefits, effective July 1, 1985 [May 16, 1984];

(o) Nurse Anesthetist Services, effective July 1, 1985 [May 16, 1984];

(p) Nurse Midwife, effective July 1, 1985 [May 16, 1984];

(q) Pharmacy Services, effective July [April] 1, 1985;

(r) Physician Services Benefits, effective July [April] 1, 1985;

(s) Primary Care Benefits, effective July 1, 1985 [May 16, 1984];

(t) Rural Health Clinic Benefits, effective July 1, 1985 [May 16, 1984];

(u) Skilled Nursing Facility Benefits, effective January 1, 1985;

(v) Ambulance Transportation Benefits, effective May 16, 1984, as revised;

(w) Vision Services Benefits, effective July 1, 1985 [May 16, 1984];

[(x) Pharmacy letters, effective April 1, 1985;]

[(y) Podiatry Letter #A-3, effective January 1, 1985; and]

(x) [(z)] Podiatry Services, effective July [April] 1, 1985.

(y) Ambulatory Surgical Center Benefits, effective July 1, 1985;

(z) Renal Dialysis Center Benefits, effective July 1,1 985;

(aa) General Provider Letter A-8, effective July 1, 1985;

(bb) Medical Director's Letter dated April 26, 1985, effective July 1,1 985; and

(cc) EDS Federal Hospital Letter (as fiscal agent for the Medicaid Program) dated April 1, 1985, effective July 1, 1985.

Section 3. All documents incorporated by reference herein may be reviewed during regular working hours in the Division of Management and Development, Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky.

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 2, 1985
FILED WITH LRC: July 10, 1985 at 4 p.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Cabinet for Human Resources in accordance with KRS Chapter 194, the Cabinet for Human Resources needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because agency policy will not be accurately reflected in a timely manner. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

MARTHA LAYNE COLLINS, Governor
E. AUSTIN, JR., Secretary

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development

904 KAR 2:140E. Supplementary policies for programs administered by the Department for Social Insurance.

RELATES TO: KRS 194.030(6), Chapter 205
PURSUANT TO: KRS 194.050
EFFECTIVE: July 10, 1985
NECESSITY AND FUNCTION: KRS 194.010 designates the Cabinet for Human Resources as

the primary state agency responsible for the development and operation of assistance programs, and KRS 194.050 empowers the secretary of the Cabinet for Human Resources to adopt, administer and enforce regulations sufficient to operate the programs and fulfill the responsibilities vested in the cabinet. This regulation states the general policy of the cabinet with regard to program materials incorporated into regulatory form by reference for use by the Department for Social Insurance, and incorporates by reference materials related to the programs of aid to families with dependent children, medical assistance, home energy assistance, refugee assistance, food stamps, child support enforcement, state supplemental payments for the aged, blind or disabled, disability determination, and collections which are essential for the implementation of those programs.

Section 1. General Policy Relating to Program Materials Incorporated by Reference. (1) Kentucky administrative regulations relating to program matters reflect the policy of the cabinet with regard to the issues addressed in the regulation.

(2) Materials incorporated by reference shall be construed and interpreted in such a manner as to be consistent with the intent of agency policy as reflected in Kentucky administrative regulations, and shall be considered the agency statement of policy with regard to issues not otherwise addressed in Kentucky administrative regulations.

Section 2. Incorporation by Reference. The following listed materials are hereby incorporated by reference, effective on the date shown.

(1) Department for Social Insurance Manual of Operations, effective July [April] 1, 1985. The Manual of Operations provides operating instructions, procedural detail, and technical clarification for use of the department's field staff in implementing programs, under the authority of the department, including: aid to families with dependent children; refugee assistance; home energy assistance; child support enforcement; state supplementary payments; and medical assistance.

(2) Department for Social Insurance Manual of Forms, effective July [April] 1, 1985. The Manual of Forms provides forms with instructions for completion, usage, distribution and files maintenance for use of the department's field staff in implementing programs under the authority of the department, including: aid to families with dependent children; refugee assistance; home energy assistance; child support enforcement; state supplementary payments; medical assistance; and the food stamp program.

(3) Federal regulations at 45 CFR Parts 16, 74, and 95, effective May 16, 1984. Part 16, Procedures of the Departmental Grant Appeals Board, provides requirements and procedures applicable to resolution of certain disputes arising under several assistance programs funded by the United States Department of Health and Human Services. Part 74, Administration of Grants, establishes uniform requirements for the administration of grants provided under the authority of the United States Department of Health and Human Services, and principles for determining costs applicable to activities assisted by Department of Health and Human Services grants. Part 95, General Administration - Grant Programs (Public Assistance and Medical Assistance), establishes requirements of the United States Department of Health and Human Services for various administrative matters relating to grant programs, including time limits for states to file claims, cost allocation plans, and conditions for federal financial participation for automatic data processing equipment and services.

Section 3. All documents incorporated by reference herein may be reviewed during regular working hours in the Division of Management and Development, Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky.

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 2, 1985
FILED WITH LRC: July 10, 1985 at 4 p.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Cabinet for Human Resources in accordance with KRS Chapter 194, the Cabinet for Human Resources needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because agency policy will not be accurately reflected in a timely manner. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

MARTHA LAYNE COLLINS, Governor
E. AUSTIN, JR., Secretary

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development

904 KAR 2:150E. Incorporation by reference of materials relating to the Aid to Families with Dependent Children Program.

RELATES TO: KRS 194.030(6), 205.200, 205.220, 205.231
PURSUANT TO: KRS 194.050
EFFECTIVE: July 10, 1985
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility under the provisions of KRS Chapter 205 to administer public assistance programs under Title IV-A of the Social Security Act, namely Aid to Families with Dependent Children, herein referred to as AFDC. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the AFDC program.

Section 1. Incorporation by Reference. The cabinet shall incorporate by reference materials used in the implementation of the Aid to Families with Dependent Children Program, subject to the provisions contained in 904 KAR

2:140, Section 1, Supplementary policies for programs administered by the Department for Social Insurance.

Section 2. Listing of Incorporated Materials. The following listed materials are hereby incorporated by reference, effective on the date shown:

(1) Federal regulations at 45 CFR Parts 200-299, which set forth the federal requirements and guidelines for the administration of the Aid to Families with Dependent Children Program, effective July [April] 1, 1985; and

(2) Federal action transmittals, which provide operating instructions, procedural detail and technical clarification for use by the department's staff in administering the Aid to Families with Dependent Children Program, as follows: SSA-AT-77-44, 78-13, 78-14, 78-16, 78-21, 78-27, 78-28, 78-38, 79-2, 79-4, 79-5, 79-7, 79-11, 79-14, 79-18, 79-22, 79-26, 79-29, 79-31, 79-32, 79-33, 79-35, 79-42, 79-44, 80-2, 80-3, 80-9, 80-11, 80-19, 80-22, 80-24, 80-29, 80-30, 80-36, 80-38, 80-42, 80-44, 80-45, 80-50, 81-2, 81-7, 81-8, 81-10, 81-11, 81-12, 81-15, 81-16, 81-17, 81-18, 81-23, 81-29, 81-31, 81-33, 81-34, 81-35, 81-36, 81-37, 82-1, 82-5, 82-6, 82-9, 82-11, 82-13, 82-15, 82-16, 82-17, 82-18, 82-19, 82-20, 82-28, 82-33, 82-34, 83-6, 83-7, 83-10, 83-11, 83-13, 83-14, 83-17, 83-18, 83-21, 83-22, 83-23, 83-25, 83-27, 84-2, 84-3, 84-5, 84-6, 84-7, 84-8, 84-9, 84-13, 84-16, [and] 84-25, and 85-10, effective July 1, 1985 [January 1, 1985].

Section 3. All documents incorporated by reference herein may be reviewed during regular working hours in the Division of Management and Development, Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky.

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 2, 1985
FILED WITH LRC: July 10, 1985 at 4 p.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Cabinet for Human Resources in accordance with KRS Chapter 194, the Cabinet for Human Resources needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because agency policy will not be accurately reflected in a timely manner. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

MARTHA LAYNE COLLINS, Governor
E. AUSTIN, JR., Secretary

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development

904 KAR 2:170E. Incorporation by reference of materials relating to the Child Support Program.

RELATES TO: KRS 205.795
PURSUANT TO: KRS 194.050
EFFECTIVE: July 10, 1985
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility for administering the Child Support Program in accordance with Title IV-D of the Social Security Act and KRS 205.710 to 205.800 and 205.992. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the Child Support Program.

Section 1. Incorporation by Reference. The cabinet shall incorporate by reference materials used in the implementation of the Child Support Program, subject to the provisions contained in 904 KAR 2:140, Section 1, Supplementary Policies for Programs Administered by the Department for Social Insurance.

Section 2. Listing of Incorporated Materials. The following listed materials are hereby incorporated by reference, effective on the date shown:

(1) Federal child support regulations at 45 CFR Parts 300-399, which set forth the requirements and guidelines for the administration of the Child Support Program, effective July 1, 1985 [October 1, 1984];

(2) Federal Office of Child Support Enforcement Action Transmittals, which provide federal program instructions for the implementation of the child support enforcement program in accordance with federal laws and regulations, as follows: OCSE-AT-75-5, 75-6, 76-1, 76-2, 76-5, 76-7, 76-8, 76-9, 76-14, 76-21, 76-22, 76-23, 77-3, 77-14, 78-2, 78-5, 78-6, 78-8, 78-16, 78-18, 79-2, 79-3, 79-6, 79-7, 79-8, 80-5, 80-9, 80-11, 80-17, 81-7, 81-12, 81-26, 82-17, 83-15, 83-18, and 84-05, effective October 1, 1984;

(3) Department for Social Insurance Child Support Manual of Procedures, which provides operational instructions and procedural detail for the implementation of the child support enforcement program, effective July [April] 1, 1985;

(4) Department for Social Insurance Child Support System Handbook, which provides systems and data processing instructions for the implementation of the child support enforcement program, effective July 1, 1985 [May 16, 1984]; and

(5) Department for Social Insurance Child Support Action Memorandums, which provide program clarifications, instructions, and procedural detail for the implementation of the child support enforcement program, as follows: DCSE-AM-82-07, 82-36, 83-16, 83-21, 83-30, 83-31, 83-38, 83-39, 83-48, 84-10, 84-16, 84-18, 84-19, 84-20, 84-29, 84-34, 84-36, 84-41, [and] 85-10, and 85-15 effective July [April] 1, 1985.

Section 3. All documents incorporated by reference herein may be reviewed during regular working hours in the Division of Management and

Development, Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky.

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 2, 1985
FILED WITH LRC: July 10, 1985 at 4 p.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Cabinet for Human Resources in accordance with KRS Chapter 194, the Cabinet for Human Resources needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because agency policy will not be accurately reflected in a timely manner. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

MARTHA LAYNE COLLINS, Governor
E. AUSTIN, JR., Secretary

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development

904 KAR 3:090E. Incorporation by reference of materials relating to the Food Stamp Program.

RELATES TO: KRS 194.030(6)
PURSUANT TO: KRS 194.050
EFFECTIVE: July 10, 1985
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 Parts 251-282. KRS 194.050 authorizes the Secretary, Cabinet for Human Resources, to issue regulations necessary for the operation of the cabinet's programs. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the Food Stamp Program.

Section 1. Incorporation by Reference. The cabinet shall incorporate by reference materials used in the implementation of the Food Stamp Program, subject to the provisions contained in 904 KAR 2:140, Section 1, Supplementary Policies for Programs Administered by the Department for Social Insurance.

Section 2. Listing of Incorporated Materials. The following materials are hereby incorporated by reference, effective on the date shown:

(1) Federal food stamp regulations at 7 CFR Parts 250, 251 and 271-282, which set forth the federal requirements and guidelines for the administration of the Food Stamp Program and federal food stamp general notices published through the Federal Register, effective July [April] 1, 1985;

(2) Department for Social Insurance Food Stamp Handbook, which provides operating instructions, procedural detail and technical clarification for use by the department's field staff in administering the Food Stamp Program, effective July [April] 1, 1985; and

(3) Federal food stamp regional letters, which set forth federal clarification of federal food stamp regulations, as follows: 80-5, 80-5.1, 80-6, 80-7, 80-8, 80-9, 80-10, 80-11, 80-13, 80-15, 80-16, 80-17, 80-19, 80-21, 80-22.1, 80-23, 80-30, 80-31, 80-32, 80-33, 80-34, 80-36, 80-38, 80-39, 80-41.1, 80-42, 80-43, 80-44, 80-47, 80-48, 80-49, 80-50, 80-51, 80-52, 80-53, 80-54, 80-58, 80-58.1, 80-58.2, 80-59, 80-62, 80-67, 80-71, 80-72, 80-73, 80-76.1, 80-77, 80-78, 80-79, 80-80, 80-81, 80-82, 80-83, 80-85, 80-86, 80-87, 80-88, 80-89, 80-91, 80-92, 80-93, 80-96, 80-98, 80-99, 80-100, 80-101, 80-102, 80-103, 80-105, 80-106, 81-3, 81-3.1, 81-3.2, 81-4, 81-4.1, 81-4.2, 81-4.3, 81-5, 81-6, 81-8, 81-9, 81-10, 81-10.1, 81-10.2, 81-11, 81-12, 81-13, 81-14, 81-15, 81-16, 81-17, 81-18, 81-19, 81-20, 81-20.1, 81-20.2, 81-21, 81-22, 81-23, 81-24, 81-25, 81-26, 81-27, 81-28, 81-29, 81-30, 81-30.1, 81-33, 81-34, 81-34.1, 81-36, 81-37, 81-38, 81-39, 81-40, 81-41, 81-42, 81-43, 81-44, 81-45, 81-46, 81-46.1, 81-47, 81-48, 81-49, 81-50, 81-51, 81-52, 81-53, 81-54, 81-55, 81-57, 81-57.1, 81-58, 81-59, 81-60, 81-62, 81-64, 81-65, 81-66, 81-67, 81-68, 82-2, 82-3, 82-4, 82-5, 82-6, 82-7, 82-8, 82-9, 82-10, 82-11, 82-12, 82-13, 82-14, 82-15, 82-16, 82-17, 82-18, 82-18.1, 82-19, 82-20, 82-21, 82-23, 82-25, 82-25.1, 82-26, 82-27, 82-29, 82-29.1, 82-30, 82-31, 82-32, 82-35, 82-36, 82-37, 82-38, 82-39, 82-40, 83-1, 83-1.1, 83-1.2, 83-2, 83-2.1, 83-3, 83-4, 83-5, 83-6, 83-7, 83-9, 83-12, 83-14, 83-15, 83-17, 83-18, 83-19, 83-21, 83-22, 83-24, 83-25, 83-26, 83-27, 83-28, 83-30, 83-31, 83-33, 83-36, 84-1, 84-2, 84-3, 84-4, 84-5, 84-6, 84-7, 84-8, 84-9, 84-10, 84-11, 84-12, 84-13, 84-14, 84-15, 84-16, 84-17, 84-18, 84-19, 84-20, 84-21, 84-22, 84-23, 84-24, 84-26, 84-27, 84-28, 84-29, 84-30, 84-31, 84-32, 84-33, 84-34, 84-35, 84-36, 84-37, 84-38, 84-39, 84-40, 84-41, 84-42, 84-43, 84-45, 84-46, 84-47, 84-48, and 84-49, effective January 1, 1985.

(4) Federal Food and Nutrition Service South East Regional Office (SERO) regulations supplement which sets forth federal policy clearances of federal regulations specified in subsection (1) of this section, effective July [April] 1, 1985.

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 2, 1985
FILED WITH LRC: July 10, 1985 at 4 p.m.

AS AMENDED

CABINET FOR PUBLIC PROTECTION AND REGULATION
Department of Insurance
As Amended

806 KAR 39:070. Proof of motor vehicle insurance.

RELATES TO: KRS 186.021, 186A.040, 304.12-020, 304.39-080, 304.39-085
PURSUANT TO: KRS 186.021, 304.2-110, 304.39-300
NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.39-300 provides that the Commissioner of Insurance may make regulations to provide for the effective administration of the Kentucky Motor Vehicle Reparations Act. KRS 186.021 requires the Commissioner of Insurance to adopt regulations prescribing the manner in which proof of compliance with KRS 304.39-080 is presented to county clerks when renewing the registrations of motor vehicles.

Section 1. Definitions. As used in this regulation: (1) "Commissioner" means the Commissioner of the Kentucky Department of Insurance.

(2) "Insurer" means all insurers providing security covering a motor vehicle pursuant to KRS 304.39 and self-insurers pursuant to KRS 304.39-080 and 806 KAR 39:050.

(3) "Motor vehicle insurance policy" means an insurance contract purporting to provide security covering a motor vehicle pursuant to KRS 304.39.

(4) "Person" has the meaning set forth in KRS 304.1-020.

(5) "Written proof of motor vehicle insurance" means the document prescribed by Section 2 of this regulation.

Section 2. Written Proof of Motor Vehicle Insurance to be Provided by Insurers. (1) Each insurer issuing an insurance contract which provides security covering a motor vehicle shall provide to the named insured on or before January 1, 1985, written proof that the insurer has in effect an insurance contract providing security in conformity with KRS 304.39. Generally, the written proof of motor vehicle insurance should be mailed to the named insured at the latest address of record with the insurer. However, the written proof of motor vehicle insurance may be distributed to the named insured in any manner reasonably calculated to put the written proof of motor vehicle insurance in the possession of the named insured on or before January 1, 1985.

(2) Provision of written proof of motor vehicle insurance for new and renewal motor vehicle insurance policies.

(a) Written proof of motor vehicle insurance shall be provided annually upon renewal of motor vehicle insurance policies.

(b) Each new policy of motor vehicle insurance issued after the effective date of this regulation shall be accompanied by written proof of motor vehicle insurance. Insurers should be aware that new policies of motor vehicle insurance issued shortly before January 1, 1985, should be accompanied by written proof of motor vehicle insurance because of the need to have proof of motor vehicle insurance available for registration renewal following January 1, 1985.

(c) All motor vehicle insurance policies issued after insurers make the initial delivery of written proof of motor vehicle insurance shall be accompanied by written proof of motor vehicle insurance.

(3) Copies of the written proof of motor vehicle insurance.

(a) If the motor vehicle insurance policy covers four (4) or less vehicles, a single written proof of motor vehicle insurance shall be provided for each motor vehicle. Two (2) copies of the written proof of motor vehicle insurance shall be provided for each motor vehicle insured under a motor vehicle insurance policy.

(b) If the motor vehicle insurance policy covers five (5) or more vehicles, copies of the written proof of motor vehicle insurance need not be provided for each vehicle covered by the policy. However, at least one (1) set of duplicates as specified in paragraph (a) of this subsection shall be provided. Insurers shall cooperate with policyholders who have fleet coverage as described in paragraph (b) of this subsection who wish to obtain proof of insurance to be kept in all covered motor vehicles. Proof of insurance provided under these circumstances need not meet all the formal requirements of written proof of motor vehicle insurance as set forth in this regulation.

(4) Guidelines for size and format of the written proof of motor vehicle insurance. The written proof of motor vehicle insurance shall be of a size that allows it to be carried in a billfold or with the motor vehicle registration.

(a) The written proof of motor vehicle insurance shall take one of the following forms:

1. A two and one-fourth (2 1/4) inch by three and one-half (3 1/2) inch card;

2. A two and one-fourth (2 1/4) inch by seven (7) inch card with a vertical fold resulting in a two and one-fourth (2 1/4) inch by three and one-half (3 1/2) inch card; or

3. A four and one-half (4 1/2) inch by three and one-half (3 1/2) inch card with a horizontal fold resulting in a two and one-fourth (2 1/4) inch by three and one-half (3 1/2) inch card.

(b) Slight variations from the sizes listed in paragraph (a) of this subsection shall be permitted.

(c) The written proof of motor vehicle insurance shall be on white paper with black or blue ink.

(5) Mandatory contents of the written proof of motor vehicle insurance. The written proof of motor vehicle insurance shall prominently display on its face the following information, to appear in approximately the order listed:

(a) Title of the document: "COMMONWEALTH OF KENTUCKY PROOF OF INSURANCE."

(b) The name of the insurance company and its three (3) digit code number assigned by the Department of Insurance.
(c) The name of the named insured.
(d) The effective date of coverage.
(e) The policy number.
(f) The motor vehicle identification: year, make or model, and vehicle identification number of the motor vehicle. If the insurance contract covers five (5) or more motor vehicles, it will state "Fleet."
(6) Optional contents of the written proof of motor vehicle insurance.
(a) At the option of the insurer, the written proof of motor vehicle insurance may include the following information:
1. The insurer's logo.
2. A statement as to how to contact the insurer concerning claims.
3. The insurer's address.
4. The named insured's address.
(b) At the option of the insurer, the information listed in paragraph (a) of this subsection may also be contained on material separate from the written proof of motor vehicle insurance and mailed along with it.
(c) The optional information listed in paragraph (a) of his subsection shall not obscure the mandatory information listed in subsection (5) of this section.
(7) Instructions for use of the written proof of motor vehicle insurance. Insurers shall furnish with the written proof of motor vehicle insurance instructions to the effect that one (1) copy of the written proof of motor vehicle insurance must be given to the county clerk for registration renewal and that the other copy should be kept in the vehicle it relates to or, in the case of a motor vehicle insurance policy covering five (5) or more motor vehicles, in the insurance records of the named insured. The instructions shall state that if the VIN on the motor vehicle registration and the VIN on the motor vehicle do not match, the policyholder must contact the county clerk to have the VIN on the motor vehicle registration corrected. The instructions shall state that if the VIN on the written proof of motor vehicle insurance and the motor vehicle do not match, the policyholder must contact the insurance company to have the VIN on the written proof of motor vehicle insurance corrected. [The instructions shall further direct the insured to compare the vehicle identification number on the written proof of motor vehicle insurance with the vehicle identification number on the motor vehicle registration and the motor vehicle's VIN plate behind the windshield. The instructions shall state that if the numbers differ, the insured should contact the county clerk to determine which number is correct, and that if the number used by the insurer is incorrect, to contact the insurer to have the number corrected] [to contact the insurer if the numbers differ]. The insurer shall provide the name, address, and telephone number (preferably a toll-free number) of an insurer representative to contact concerning the discrepancy in numbers. The latter requirement is met if the insurer directs the insured to contact a local agent of the insurer.
(8) Optional filing and approval of the written proof of motor vehicle insurance with the commissioner; disapproval of the written proof of motor vehicle insurance by the commissioner.
(a) At the option of the insurer, the written proof of motor vehicle insurance may be filed with the commissioner for approval. No insurer shall be subject to disciplinary action by the commissioner as long as the approval provided for by this paragraph remains in effect.
(b) The commissioner may disapprove an insurer's written proof of motor vehicle insurance or its use if he finds that it violates this regulation, any provision of the Kentucky insurance code or regulations, or that the insurer's written proof of motor vehicle insurance or its use is unfair or deceptive.
(9) In light of the provisions of KRS 186A.040 and 304.39-085 requiring information on motor vehicle insurance cancellations and nonrenewals to be reported to the Transportation Cabinet and placed on the automated vehicle information system and further requiring the Transportation Cabinet to notify the named insured to obtain replacement motor vehicle insurance following cancellation or nonrenewal of a motor vehicle insurance contract, the fact that a person has in his or her possession a written proof of motor vehicle insurance for an insurance contract which has been terminated shall not be construed as meaning that the insurance contract is in effect.

Section 3. Alternative Methods of Proving Motor Vehicle Insurance. A person may use the following alternative methods to prove that motor vehicle insurance is in effect when registering a motor vehicle:
(1) A certificate of insurance issued by a general lines insurance agent licensed by Kentucky. The certificate shall be on a form prescribed by the commissioner.
(2) The county clerk's review of the records contained in the automated vehicle information system.
(3) An insurance contract with a declaration page attached showing that the policy is in effect at the time the motor vehicle is being registered.
(4) A letter from the Kentucky Automobile Insurance Plan serving as prima facie evidence of insurance in force.
(5) [(4)] When the owner of the motor vehicle is serving in the armed forces outside Kentucky, an affidavit by the provost marshal of the base where such person is stationed stating that the motor vehicle in question is covered by an automobile liability insurance policy.

Section 4. Information to be Submitted by Insurers on Cancellation and Nonrenewal of Motor Vehicle Insurance Policies. (1) Insurers shall submit information on motor vehicle insurance policy cancellations and nonrenewals on computer tape unless:
(a) The insurer submits notices on less than fifty (50) policies per accounting month;
(b) The use of computer tape will be an unreasonable burden on the insurer; or
(c) Other good cause not to use computer tape is shown.
(2) Any such information on computer tape shall be on computer tape compatible with standards prescribed by the Department of

Vehicle Regulation and the Department of Information Systems.

(3) Any such information in writing shall be in the form prescribed by the Department of Vehicle Regulation.

(4) Information required upon cancellation and nonrenewal.

(a) If the motor vehicle insurance policy covers four (4) or less motor vehicles, insurers shall provide the following information:

1. Vehicle identification number(s).
2. Year(s) and make(s) or model(s) of the motor vehicle(s).
3. Name of the named insured.
4. Policy number.
5. Company code.
6. Effective date of the termination of the motor vehicle insurance policy.

(b) If the motor vehicle insurance policy covers five (5) or more motor vehicles, insurers shall provide the information required by paragraph (a) of this subsection, except that the vehicle identification numbers, years, and makes or models of the covered motor vehicles need not be given. In place of this information, the notice will state "Fleet."

(5) Insurers shall attempt to edit their lists of cancellations and nonrenewals prior to submitting them to the Department of Vehicle Regulation in order to eliminate policyholders whose policies were terminated and then reinstated or terminated and replaced by a policy issued by the same insurer. Both the Department of Insurance and the Department of Vehicle Regulation understand that the technology to accomplish this may not be available to all insurers, but an attempt should be made in order to determine the feasibility of such editing.

Section 5. Severability. If any provision of this regulation or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of this regulation and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 6. Effective Date. (1) This regulation shall become effective January 1, 1985.

(2) However, insurers should be aware that the requirements of this regulation contemplate considerable preparatory activities on their part prior to January 1, 1985, in order to comply by that date.

GIL McCARTY, Commissioner
M. H. WILSON, Secretary
APPROVED BY AGENCY: May 31, 1985
FILED WITH LRC: June 4, 1985 at 10 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission
As Amended

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.

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. Confidential Information not Publicly Available. All material and information that is filed with, served upon, or otherwise made available to the Commission shall be available for examination by the public unless a written request has been made to designate material or information as proprietary, confidential or otherwise privileged, according to the procedure set forth in subsection (2) of this section.

(2) Procedure for petition for confidentiality.

(a) Any person wishing to protect material or information filed with, served upon or otherwise made available to the commission shall file with the commission a formal written petition identifying the material or information sought to be protected and setting forth the specific facts, reasons, or other grounds upon which the commission should classify that material or information as proprietary, confidential or otherwise privileged, with particular attention to the appropriate factors listed in subsection (7) of this section. Material for which confidential treatment is sought shall be identified by underscoring or by highlighting with transparent ink, **or other reasonable means**, only those words, numbers, lines of text and data elements on magnetic files which, unless deleted, would cause the disclosure of confidential information. Text, pages or portions thereof which do not contain confidential information are not to be included in this identification.

(b) The person requesting confidential treatment of material or information shall also serve a copy of its petition upon all parties, if the material or information is being filed in the record of a formal proceeding.

(c) Any person may respond to the petition for confidential treatment within ten (10) days after service thereof.

(d) Pending commission action on a written petition, the material or information specifically identified shall be temporarily accorded confidential treatment.

(e) In the event material or information which has been accorded confidential treatment by the commission later becomes publicly available or is treated or viewed by the source

of the material or information as no longer warranting confidential treatment, the source of the information shall so advise the commission in writing. The commission will then make this material a part of the public record of the case.

(3) Burden of proof and standard of review.

(a) The burden of proof to show by a preponderance of the evidence that any or all of the contents of material or information require confidential treatment shall rest upon the source of the material or information.

(b) Upon a ruling that portions of material or information contain confidential information, the source of the information shall file an edited copy with confidential material obscured for inclusion in the public record with copies to all parties of record.

(4) Discovery.

(a) The fact that the object of discovery may contain confidential information does not preclude discovery per se, but it may justify such limitations as are deemed necessary under the circumstances to protect the confidentiality of the material or information.

(b) All parties to formal proceedings are urged to seek mutual agreement regarding discovery of such material before raising the controversy with the commission.

(c) A utility may not object to discovery by the commission or its staff on the grounds of confidentiality; rather it shall file full and timely responses to discovery requests. Parties to the formal proceeding shall receive timely responses to discovery with only those portions for which confidential treatment is sought deleted in accordance with Section 2 of this regulation. Confidential material or information in the possession of the commission, its staff or consultants is not discoverable by a request to the commission, but may be the subject of a request for access pursuant to Section 5 of this regulation.

(5) Procedure for request for access.

(a) **Any person requesting access to information deemed confidential by the commission may obtain this information only upon order of a court of competent jurisdiction as provided in KRS 61.878.** [Any person may file a written request with the commission for access to confidential material or information in the possession of the commission. Such a request shall specify the material or information for which access is sought and shall fairly address any earlier finding of confidentiality and state why it should be overturned.]

(b) The sources of the confidential material or information shall be served with a copy of the request for access by the commission secretary, and the source shall file any response to the request within ten (10) days after service. Thereafter, the commission will rule forthwith on whether access shall be granted to the moving party.

(c) Notwithstanding any prior determination of confidentiality, a source may consent, in writing, to grant access to any person. Such consent shall not constitute waiver of confidentiality and only those persons specified in the consent may have access.

(6) Use of confidential material or information during formal proceedings. The commission may rely upon confidential material during a formal proceeding and such material, if otherwise admissible, will be received in evidence. In such event, reasonable precautions will be taken to segregate confidential material in the record and otherwise protect its integrity.

(7) Guidelines for evaluating petitions for confidential treatment.

(a) In the instance where a petition is filed seeking confidential treatment of material or information claimed to be a trade secret, the commission may consider the following factors **in determining whether the material for which confidentiality is requested meets the criteria set forth in KRS 61.878(1):** [in addition to relevant statutes and case law in reaching its decision:]

1. The extent to which the information is known outside of the claimant's business.
2. The extent to which it is known by employees and others involved in the claimant's business.
3. The extent of measures taken by the claimant to guard the secrecy of the information.
4. The value of the information to the claimant and to competitors.
5. The amount of effort or money expended by the claimant in developing the information.
6. The ease or difficulty with which the information could be properly acquired and duplicated by others.

(b) In the instance where a petition is filed seeking confidential treatment of material or information claimed to be confidential commercial information, the commission may consider the following factors **in determining whether the material for which confidentiality is requested meets the criteria set forth in KRS 61.878(1):** [in addition to relevant statutes and case law, in reaching its decision:]

1. Evidence revealing actual competition and the likelihood of substantial competitive injury.
2. The extent to which data of the sort in dispute is customarily disclosed to the public.
3. A balancing of the private competitive interests versus the public interest in disclosure.

(c) If the commission denies the request for confidential treatment of material submitted to it, the material will not be placed in the public record for five (5) working days in order to allow source of the information time to seek court action on the matter or request the return of the information in its entirety.

(8) Return or retention of confidential material or information. Within sixty (60) days following the entry of a final order in a formal proceeding in which no court appeal is taken, the commission shall return confidential material or information to its source, unless the commission determines in its discretion that the confidential material or information should be retained. If retained, the commission shall continue to accord confidential treatment to the material or information.

Section 8. [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 9. [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 10. [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 statement 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 11. [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 12. [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 person 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 13. [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 14. [13.] Deviations from Rules. In special cases, for good cause shown, the commission may permit deviations from these rules.

Section 15. [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 _____ ay 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 certificate, 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)

RICHARD D. HEMAN, JR., Commissioner
M. H. WILSON, Secretary
APPROVED BY AGENCY: February 15, 1985
FILED WITH LRC: February 15, 1985 at 10:30 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
As Amended

815 KAR 7:010. Administration and enforcement.

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, and parts thereof, which shall establish standards for construction of all buildings in the state. This regulation establishes the administration and enforcement sections of the Kentucky Building Code.

Section 1. Definitions used in Title 815, Chapter 7. (1) "Board of Housing" or "Board" means the Kentucky Board of Housing, Buildings and Construction.

(2) "BOCA" means Building Officials and Code Administrators International, Inc.

(3) [(2)] "Building" means any combination of materials, whether portable or fixed, which comprises a structure affording facilities or shelter for any human occupancy, whether infrequent or regular. The word "building" shall be construed wherever used herein as if followed by the words "or part or parts thereof and all equipment therein" unless the context clearly requires a different meaning. "Building" shall also mean swimming pools constructed below grade on site, but not swimming pools assembled above grade on site. "Building" shall not mean a mobile home, or a farm dwelling or other farm buildings and structures incident to the operation and maintenance of the farm if such farm structures are located outside the boundary of a municipality and are not used in the business of retail trade or used as a place of regular employment for ten (10) or more people or structures used in the storage or processing of timber products.

(4) [(3)] "Commissioner" means the Commissioner of the Department of Housing, Buildings and Construction.

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

(6) "Fire Official" means the chief of the fire department or of the fire prevention bureau, or if there is not a jurisdiction fire department of fire prevention bureau, such officer as shall be designated by the appointing authority of the jurisdiction, or his duly appointed representative, to enforce the

provisions of KRS 227.300 and 815 KAR 10:020.

(7) [(5)] "Industrialized building system" or "building system" means a structure or component thereof which is wholly or in substantial part fabricated in an off-site manufacturing facility for installation or assembly on a permanent foundation at a building site in Kentucky. "Industrialized building system" includes: a building of any size or for any use all or any component part of which is of closed construction made from precast concrete panels, or precut wood sections fabricated to individual specifications in an off-site manufacturing facility and assembled in accordance with the manufacturer's instructions.

(8) "KAR" means Kentucky Administrative Regulations.

(9) [(6)] "KBC" means the Kentucky Building Code as established in this chapter.

(10) "KRS" means Kentucky Revised Statutes.

(11) [(7)] "Major structural change" means structural alterations and structural repairs made within any twelve (12) month period costing in excess of fifty (50) percent of the physical value of the structure, as determined by comparison of the extent/value of the alterations involved and the replacement value of the structure at the time the plans for the alterations are approved, using the BOCA Chart for Construction Cost.

(12) [(8)] "Person" means a person, partnership, corporation or other legal entity.

(13) [(9)] "Single family dwelling" means one (1) unit providing complete independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation, and which is not connected to any other unit or building.

(14) [(10)] "Trade or brand name house" means any single structure made of precut or prefabricated panels, sections or individual pieces that are sold or prefabricated under a name that identifies both the manufacturer and a particular type of structure he makes, and that are assembled on a permanent foundation by conventional homebuilding and electrical and plumbing installation techniques.

[(11) "Fire official" means the chief of the fire department or of the fire prevention bureau, or if there is not a jurisdiction fire department or fire prevention bureau, such officer as shall be designated by the appointing authority of the jurisdiction, or his duly appointed representative, to enforce the provisions of KRS 227.300 and 815 KAR 10:020.]

Section 2. Scope. This regulation shall supersede any and all other conflicting administration and enforcement provisions which may be incorporated by reference within the KBC.

(1) The KBC shall control all matters concerning the construction, alteration, addition, remodeling, use and occupancy classifications of all buildings in the state.

(2) Trade or brand name houses shall be constructed in accordance with the applicable provisions of the KBC.

(3) The provisions of the KBC relating to single family dwellings, that are not trade or brand name houses or industrialized building systems, shall be mandatory only after a local government, by ordinance, extends the application of the KBC to those units. However, the state plumbing code and the national electrical code shall be applicable to these units, whether or not the local government passes an ordinance. A local government may not enforce any building code other than the KBC on such units.

(4) Unless otherwise specifically provided within the KBC, all references to article or section numbers, or to provisions not specifically identified by number, shall be construed to refer to such article, section or provision of the KBC.

(5) The provisions of this code relating to the construction, repair, alteration, enlargement, restoration and moving of buildings or structures shall not be mandatory for existing buildings or structures identified and classified by the state or local government authority as historic buildings, subject to the approval of the board of appeals when such buildings are judged by the building official to be safe and in the interest of public health, safety and welfare regarding any proposed construction, alternation, repair, enlargement, restoration and relocation. The building official may require submission of architectural and engineering plans and specifications bearing the professional seal of the designer prior to a determination. [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.] [The provisions of this code relating to the construction, repair, alteration, enlargement, restoration and moving of buildings or structures shall not be mandatory for existing buildings or structures identified and classified by the state or local government authority as historic buildings, subject to the approval of the board of appeals, when such buildings are judged by the building official to be safe and in the interest of public health, safety and welfare regarding any proposed construction, alteration, repair, enlargement, relocation, and location within the fire limits. All such approvals must be based on the applicant's complete submission of professional architectural and engineering plans and specifications bearing the professional seal of the designer.]

(6) The KBC shall be construed to secure its expressed intent which is to secure public safety, health and welfare insofar as they are affected by building construction quality, electrical systems, plumbing, energy, boiler safety, handicapped accessibility, life safety from hazards of fire and explosion and other disasters. It is the further expressed intent of this code to avoid duplicative plan review and inspection of new construction and to gather together in one (1) set of regulations all the requirements relating to the construction of buildings in the state to enable builders,

owners and building officials to be adequately informed.

Section 3. Applicability. (1) The provisions of the KBC shall cover all matters affecting or relating to buildings, and structures, as set forth in Section 2 of this regulation.

(2) No person shall construct a building or structure, extend, repair, remove or alter in violation of these provisions, except for ordinary repairs as defined in Section 4 of this regulation, and except further that the raising, lowering or moving of a building or structure as a unit necessitated by a change in legal grade or widening of a street shall be permitted provided the building or structure is not otherwise altered or its use or occupancy changed.

(3) Any requirement essential for structural, fire or sanitary safety of a building essential for the safety of the occupants thereof, and which is not specifically covered by this code, shall be determined by other regulations of the department or other applicable law.

(4) Any person who violates any provision of the article or any other provision of the Kentucky Building Code shall be subject to the penalties provided in Section 19 of this regulation.

Section 4. Ordinary Repairs. Ordinary repairs to structures may be made without application or notice to the building official. Ordinary repair means any non-structural reconstruction or renewal of any part of an existing building for the purpose of its maintenance or decoration, and shall include, but not be limited to, the replacement or installation of non-structural components of the building such as roofing, siding, windows, storm windows, insulation, drywall or lath and plaster, or any other replacement, in kind, that does not alter the structural integrity, alter the occupancy or use of the building, or affect, by rearrangement, exitways and means of egress; but shall not include additions to or alteration of, or relocation of any standpipe, water supply, sewer, drainage, gas, soil, waste, vent or similar piping, electric wiring or mechanical equipment including furnaces and hot water heaters or other work affecting public health or safety. [Ordinary Repairs. Ordinary repairs to structures may be made without application or notice to the building official; but such repairs shall not include the cutting away of any wall, partition or portion thereof, or the removal or cutting of any structural beam or bearing support, or the removal or change of any required means of egress, or rearrangement or relocation of any standpipe, water supply, sewer or drainage, drain leader, gas, soil, waste, vent or similar piping, electric wiring or mechanical or other work affecting public health and general safety.]

Section 5. Installation of Service Equipment. When the installation, extension, alteration or repair of an elevator, moving stairway, mechanical equipment, refrigeration, air conditioning or ventilating apparatus, plumbing, gas piping, electrical wiring, heating system or other equipment is specifically controlled by the provisions of this code, it shall be unlawful to use such equipment until a certificate of approval has been issued therefor by the building official or other agency having jurisdiction.

Section 6. Existing Structures. (1) Continuation of existing use: The legal use and occupancy of any structure existing on the date of adoption of this code or for which it has been heretofore approved may be continued without change, except as may be specifically covered in this code, the existing structures or fire prevention codes set forth in 815 KAR 10:020 or as may be deemed necessary by the building official for the general safety and welfare of the occupants and the public.

(2) Change in use: It shall be unlawful to make any change in the use or occupancy of any structure or portion thereof which would subject it to any special provisions of this code without approval of the building official; such approval shall be granted if the building official finds that such structure meets the intent of the provisions of law governing building construction for the proposed new use and occupancy, and that such change does not result in any greater hazard to public safety or welfare. In making his decision, the building official may require a written opinion from a design professional.

(3) Additions, alterations or repairs: Additions, alterations or repairs may be made to any structure without requiring the existing structure to comply with all the requirements of this code, provided such work conforms to that required of a new structure. Additions, alterations or repairs shall not cause an existing structure to become unsafe or adversely affect the performance of the building. Any building plus new additions shall not exceed the height, number of stories and area specified for new buildings.

(4) Alterations or repairs to an existing structure which are nonstructural and do not adversely affect any structural member of any part of the structure having a required fire resistance rating may be made with the same materials of which the structure is constructed.

Section 7. Departments of Building Inspection. (1) Each local government singularly or by association with other local governments shall employ a building official or inspector and other code enforcement personnel as necessary to enforce this code within its jurisdiction. The department shall be responsible for the enforcement of this code as it pertains to the buildings assigned by law to it.

(2) All building officials shall be appointed by the chief appointing authority for the respective jurisdictions and shall meet the qualifications for the position which may be established by the appointing authority, in addition to the requirements for certification of Kentucky building code inspectors as detailed in 815 KAR 7:070.

(3) Official records shall be kept of all business and activities of the various local building departments or state building departments specified in provisions of the KBC, and all such records shall be open to the public inspection at all appropriate times under the terms and conditions of KRS Chapter 61.

Section 8. Duties and Powers of the Building Official. The local governments shall designate the persons to be charged with the responsibility of enforcing the KBC within its community and it shall neither adopt nor enforce any ordinance regulating buildings which conflicts with the KBC. The local building official shall be responsible for the examination and approval of plans and specifications for the following buildings:

(1) All buildings classified as storage, residential, miscellaneous or utility [temporary] occupancies so long as they do not exceed three (3) stories in height or 20,000 square feet of floor area.

(2) All buildings classified as assembly business or mercantile occupancies having a capacity which does not exceed 100 persons[, including buildings used for assembly type purposes but having a capacity of less than fifty (50)].

(3) All churches having a capacity of 400 or less persons and 6,000 or less square feet of total floor area.

(4) [(3)] All buildings classified as factory or industrial occupancies having a capacity which does not exceed 100 persons.

Section 9. Duties and Powers of the Department. (1) It shall be the responsibility of the department to review plans and specifications, issue permits and to determine compliance with the KBC for the following buildings:

(a) All buildings classified as assembly occupancies having a capacity in excess of 100 persons, except churches having a capacity of 400 or less persons and 6,000 or less square feet of total floor area;

(b) All buildings classified as educational occupancies;

(c) All buildings classified as institutional occupancies;

(d) All buildings classified as business and mercantile occupancies having a capacity in excess of 100 persons;

(e) All buildings classified as industrial and factory occupancies having a capacity in excess of 100 persons;

(f) All frozen food locker plants;

(g) All buildings classified as high hazard occupancies;

(h) All other buildings containing in excess of three (3) stories or 20,000 square feet of floor area;

(i) All industrialized building systems regardless of occupancy classification.

(2) Any local government may petition to the department for additional plan review responsibility. Such petition shall include the evidence of the local governments capability to perform those functions, as required by regulations of the board. Denials of such petitions are appealable to the board.

(3) The appropriate official shall make all the required inspections, or he may accept reports of inspection by authoritative and recognized services or individuals; and all reports of such inspections shall be in writing and certified by a responsible officer of such authoritative service or by the responsible individual.

(4) The building official or his authorized representative should carry proper credentials of his respective office for the purpose of inspecting buildings and premises and the performance of his duty under this code.

(5) The board shall have the powers as may be necessary in the interest of public safety, health and general welfare, to adopt and promulgate amendments to the code and other rules and regulations which are necessary to implement this code and by means of the appeals board procedures to issue interpretations which shall be binding upon the appellee and the building officials. The building official shall implement the provisions of this code to secure the intent thereof.

(6) In the absence of provisions not specifically contained in this code or approved rules and orders, the regulation, specifications and standards listed in Appendix A "Referenced Standards" [B, "Accepted Engineering Practice," and Appendix C, "Accredited Materials Standards"] of the 1984 [1978] Edition of BOCA Basic National Building Code [, Inc.,] filed herein by reference, shall be deemed to represent accepted engineering practice with respect of materials, equipment, system or method construction therein specified, and shall therefore be acceptable.

Section 10. New Materials and Modifications. (1) It is the purpose of the KBC to set forth performance objections so as to facilitate new technologies, techniques and materials; therefore, alternate materials and equipment may be used provided such an alternative has been tested and listed by nationally recognized testing and research laboratories approved by the board.

(2) The building official may accept supporting data to assist him in his determinations: duly authenticated research reports from BOCA[, Inc.,] or from other approved authenticated sources for all materials or assemblies proposed for use which are not specifically provided for in the KBC.

(3) Used materials, equipment and devices may be used provided they have been retested and placed in good and proper working condition and approved by the building official.

(4) When there are practical difficulties involved in carrying out structural or mechanical provisions of this code or of an approved rule, the building official having plan review responsibility may vary or modify such provision upon application of the owner or his representative only if the spirit and intent of the law shall be observed and equivalent safeguards provided. The application for modification and the final decision of the building official shall be in writing. When a modification is granted by a local building official, a copy of the application and the decision shall be forwarded to the department and the local fire official.

(5) The board may withdraw authority for plan review from a local building department where it finds, upon petition of the department, that the local inspection agency is not adequately performing any portion of its program and, thereafter, allow the department to preempt that portion of a local program.

Section 11. Inspections. (1) Before issuing a

permit the appropriate building officials may examine or cause to be examined all buildings, structures and sites for which an application has been filed for a permit required by this code. No construction shall begin on buildings covered by this regulation until a local building official has issued a permit for such construction and an official representing the department has issued a letter releasing the plans for construction [permit] (if it has plan review responsibility).

(2) After issuing a building permit for a building over which he has plan review responsibility the building official shall conduct inspections from time to time during and upon completion of work and he shall maintain a record of all such examinations and inspections and of all violations of the KBC.

(3) The building official may accept reports of approved inspection services which satisfy the requirements of the appropriate governmental entity.

(4) Inspections for KBC compliance of trade or brand name homes shall be the responsibility of the local building official.

(5) In-plant inspections in production and manufacturing facilities for industrialized building systems as well as on-site inspection shall be conducted by the department or its authorized agent pursuant to 815 KAR 7:020. The local building official shall be responsible to inspect such system only for location under applicable local ordinances.

(6) Upon completion of the building, the owner or agent of the facility shall request a final inspection; the building official shall set a time for said inspection and notify the owner or agent. If compliance with the approved plans and permit has been achieved, a certificate of occupancy shall be issued, as described in Section 17 of this regulation. If compliance has not been achieved, any violations shall be noted and immediately communicated to the owner or agent and the fire official.

(7) The building official shall cooperate with the fire official by allowing the fire official to inspect all buildings during construction. Any recommendations made by the fire official relating to fire safety in construction of a building shall be considered by the building official and if a certificate of occupancy is issued contrary to said written recommendations the building official shall give written notification of his decision to the fire official and the department at once.

Section 12. Right of Entry. Applicants for building permits shall be deemed to consent to inspection during construction and upon completion of construction for the purpose of determining that such building is constructed in compliance with the Kentucky Building Code, and the inspector may enter upon the premises during any reasonable hour.

Section 13. Application for Permit Required. (1) It shall be unlawful to construct, enlarge, or alter a structure; or change the type of occupancy of a building requiring greater strength, exiting or sanitary provisions; or to change to another use; or to install or alter any equipment for which provision is made or the installation of which is required by KBC, without first filing an application with the appropriate building officials in writing and obtaining the required permit therefor; except that ordinary repairs, as defined in Section 4 of this regulation, which do not involve any violation of KBC shall be exempt from this provision.

(2) The application for a permit shall be submitted in writing and in such form as the department may prescribe and shall be accompanied by the required fee.

(3) The application shall contain a general description of the proposed work, its location, the use and occupancy of all parts of the building or structure and of all portions of the site or lot not covered by the building or structure, and such additional information as may be required by the building official.

(4) Application for permit shall be made by the owner or lessee of the building or structure, or agent of either, or by the licensed engineer or architect employed in connection with the proposed work. If the application is made by a person other than the owner in fee, it shall be accompanied by a duly verified affidavit of the owner or the qualified person making the application that the proposed work is authorized by the owner in fee and that the applicant is authorized to make such application. The full names and addresses of the owner, lessee, applicant and of the responsible officers, if the owner or lessee is a corporate body, shall be stated in the application.

(5) The application for the permit shall be accompanied by [not less than two (2) copies of] specifications and [of] plans drawn to scale, with sufficient clarity and detail dimensions to show the nature and character of the work to be performed. The building official shall cooperate with the fire official by allowing the fire official to review all plans. Any recommendations made by the fire official relating to fire safety in construction of a building shall be considered by the building official and he shall report his decision to the fire official at once. When quality of materials is essential for conformity to the KBC, specific information shall be given to establish such quality; and the KBC shall not be cited, or the term "legal" or its equivalent be used, as a substitute for specific information. The building official may waive the requirement for filing plans when the work involved is of a minor nature.

(6) Site plan: There shall also be a site plan showing to scale the size and location of all the new construction and all existing structures on the site, distances from lot lines, the established street grades and the proposed finished grades; and it shall be drawn in accordance with an accurate boundary line survey.

(7) Engineering details: The building official may require adequate details of structural, mechanical and electrical work including computations, stress diagrams and other essential technical data to be filed. All engineering plans and computations shall bear the signature of the responsible design professional. Plans for buildings more than two (2) stories in height shall indicate how required structural and fire resistance rating integrity will be maintained, and where a penetration will be made for electrical,

mechanical, plumbing and communication conduits, pipes and systems.

(8) An application for permit for any proposed work should be deemed to have been abandoned six (6) months after date of filing, unless such application has been diligently prosecuted or a permit shall have been issued; except that for reasonable cause, the building official may grant one (1) or more extensions of time for additional periods not exceeding ninety (90) days each.

(9) Subject to the limitations of Section 13 of this regulation, amendments to a plan, application or other records accompanying the same may be filed at any time before completion of the work for which the permit is sought or issued; and such amendments shall be deemed a part of the original application and shall be filed therewith.

(10) The building official may revoke a permit or approval issued under the KBC in case of any false statements or misrepresentation in the application or on the plans.

Section 14. Permits Required. (1) The building official shall examine or cause to be examined all applications for permits and amendments thereto within a reasonable time after filing. If the application or the plans do not conform to the requirements of all pertinent laws, he shall reject such application in writing, stating the reasons therefor. If he finds that the proposed work conforms to the requirements of this code and all laws and ordinances applicable thereto, he shall issue a permit therefor as soon as practicable.

(2) Any permit issued shall become invalid if the authorized work is not commenced within one (1) year after issuance of the permit, or if the authorized work is suspended or abandoned for a period of six (6) months after the time of commencing the work.

(3) The KBC shall not require changes in the plans, construction or designated use of a building for which a lawful permit has been theretofore issued or otherwise lawfully authorized by approved plans, so long as the substantial construction on the project has commenced within one (1) year from the date the permit was issued.

(4) The building official shall attach his signature to every permit, or he may authorize a subordinate to affix such signature thereto.

(5) The building official shall record and communicate to the owner or agent, the terms and conditions related to his approval to commence construction.

(6) The building official may issue a permit for the construction of foundations or any other part of a building or structure before the entire plans and specifications for the whole building or structure have been submitted, provided adequate information and detailed statements have been filed complying with all the pertinent requirements of this code. The holder of such permit for the foundations or other part of a building or structure shall proceed at his own risk with the building operation and without assurance that a permit for the entire structure will be granted.

(7) Approved plans: The building official shall stamp or endorse in writing <u>the</u> [both sets of] corrected plans approved, <u>and that</u> [and one (1) set of such approved plans shall be retained by him and the other] set shall be available at the building site, open to inspection of the building official or his authorized representative at all reasonable times.

(8) A true copy of the building permit shall be available on the site of operation open to public inspection during the entire time of prosecution of the work and until the completion of the same.

Section 15. Conditions of Permit. (1) A permit shall not be issued until the fees prescribed by the department or the local government have been paid. The permit shall be a license to proceed with the work and shall not be construed as authority to violate, cancel or set aside any of the provisions of the KBC, except as specifically stipulated by modification or legally granted variation as described in the permit.

(2) All work shall conform to the appropriate application and plans for which the permit has been issued and any approved amendments thereto and shall be located strictly in accordance with the approved plot plan and any local ordinances governing the location of the building.

(3) A lot shall not be changed, increased or diminished in area from that shown on the official plot site plan, unless a revised plan showing such changes accompanied by the necessary affidavit of owner or applicant shall have been filed and approved, except that such revised plan will not be required if the change is caused by reason of an official street opening, street widening or other public improvement.

Section 16. Fees. (1) A permit to begin work for new construction, alteration, removal, or other building operations shall not be issued until the fees prescribed by law shall have been paid to the department or local building department, nor shall an amendment to a permit necessitating an additional fee because of an increase in the estimated cost of the work involved be approved until the additional fee shall have been paid.

(2) The payment of the fee for construction, alteration, and for all work done in connection with or concurrently with the work contemplated by a building permit shall not relieve the applicant or holder of the permit from the payment of other fees that may be prescribed by law or ordinance for water taps, sewer connections, electrical permits, erection of signs and display structures, marquees or other appurtenant structures, or fees of inspections, certificates of use and occupancy or other privileges or requirements, both within and without the jurisdiction of building inspection.

(3) The fee for building permits and other functions performed pursuant to KRS Chapter 198B may be designed to fully cover the cost of the service performed; and the department and each local government is authorized to establish by approved rules or ordinances a schedule of unit rates for buildings and structures of all use groups and type of construction as classified and defined in the KBC.

Section 17. Certificate of Use and Occupancy. (1) No building on which site preparation and

assembly were begun, after the Kentucky Building Code becomes effective as to that building, shall be occupied until the appropriate building official issues a certificate of occupancy certifying that the building was constructed in conformance with the standards of the Kentucky Building Code, or assembled or installed in conformance with applicable instructions; except that:

(a) A building for which a permit was legally granted prior to the effective date of the KBC may be constructed and occupied under the provisions of relevant regulations in force at the time the permit was issued provided that substantial construction has commenced within one (1) year from the date the permit was issued.

(b) A building for which plans were prepared at least three (3) months prior to the effective date of the KBC and upon which construction was begun prior to the effective date of the KBC in a locality not then requiring a building permit may be completed and occupied without a building permit.

(2) A building or structure hereafter enlarged, extended or altered to change from one (1) use group to another or to a different use within the same use group, in whole or part, and a building or structure hereafter altered for which a certificate of use and occupancy has not been heretofore issued, shall not be occupied or used until the certificate shall have been issued by the building official, certifying that the work has been completed in accordance with the provisions of the approved permit; except that any use or occupancy, which was not discontinued during the work alteration, shall be discontinued within thirty (30) days after the completion of the alteration unless the required certificate is secured from the building official.

(3) After a change of use has been made in a building or structure, the reestablishment of a prior use that would not have been legal in a new building of the same type of construction is prohibited unless the building complies with all applicable provisions of this code. A change from one (1) prohibited use, for which a permit has been granted to another prohibited use shall be deemed a violation of this code.

(4) Upon the request of the holder of a permit, the building official may issue a temporary certificate of occupancy for a building or structure, or part thereof, before the entire work covered by the permit shall have been completed, provided such portion or portions may be occupied safely prior to full completion of the building or structure without endangering life or public welfare.

(5) When a building or structure is entitled thereto, the building official shall issue a certificate of use and occupancy within ten (10) days after written application. The certificate shall certify compliance with the provisions of this code and the purpose for which the building may be used in its several parts. The certificate of use and occupancy <u>may</u> [shall] specify the following information from the <u>1984</u> [1978] edition of the BOCA Basic <u>National</u> Building Code: the use group, in accordance with the provisions of Article 2; the fire grading as defined in Article 2 and Table 902; the maximum live load on all floors as prescribed in Article 7; the occupancy load in the building and all parts thereof as defined in Article 2 and Article 6; and any special stipulations and conditions of the building permit.

Section 18. Posting Structures. (1) Every building and structure and part thereof designed for business, factory and industrial, high hazard, mercantile, or storage use (use groups B, F, H, M, and S) as defined by the KBC shall be posted on all floors by the owner with a suitably designed placard in a form designated by the department, which shall be securely fastened to the structure in a readily visible place, stating: the use group, [the fire grading, the live load] and the occupancy load.

(2) Every room constituting a place of assembly shall have the occupancy load of the room posted in a conspicuous place, near the main exit from the room. Approved signs shall be maintained in a legible manner by the owner or his authorized agent. Signs shall be durable and shall indicate the number of occupants permitted for each room use.

(3) All posting signs shall be furnished by the owner and shall be of permanent design; they shall not be removed, or defaced and, if lost, removed or defaced, shall be immediately replaced.

Section 19. Violations and Remedies. (1) It shall be unlawful for any person, firm or corporation to erect, construct, alter, extend, repair, remove, use or occupy any building or structure or equipment regulated by the KBC, or cause same to be done, contrary to or in conflict with or in violation of any of the provisions of this code.

(2) The building official shall serve a notice of violation or order on the person responsible for erection, construction, alteration, extension, repair, removal, demolition, use or occupancy of a building or structure in violation of this code or in violation of a detail statement or a plan approval thereunder, or in violation of a permit or certificate issued under the provisions of this code; and such order shall direct the discontinuance of the illegal action or condition and the abatement of the violation.

(3) If the notice of violation is not complied with promptly, the building official shall request the legal counsel of the jurisdiction to institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation or to require the removal or termination of the unlawful use of the building or of the order or direction made pursuant thereto.

(4) [Violation of] Penalties: Any person who shall violate a provision of the KBC or shall fail to comply with any of the requirements thereof or who shall erect, construct, alter or repair a building or structure in violation of an approved plan or proper direction of the building official, or of a permit or certificate issued under the provisions of the KBC, shall be subject to such penalties as may be provided by KRS 198B.990 and other applicable law.

(5) Injunctive relief: The department or any local agency enforcing the uniform state building code may obtain injunctive relief from any court of competent jurisdiction to enjoin the offering for sale, delivery, use, occupancy

or construction of any building on which construction was begun after the effective date of said code, upon an affidavit of the department or the local government agency specifying the manner in which the construction, or if a building existing prior to the effective date of said code, the reconstruction, alteration, repair or conversion does not conform to the requirements of the KBC.

(6) No person shall hinder an inspector enforcing any of the provisions of this code in the performance of his lawful duties under this chapter.

Section 20. Notice to Owner. (1) Upon notice from the building official that work on any building or structure is being prosecuted contrary to the provisions of this code or in an unsafe and dangerous manner, such work shall be immediately stopped. The stop-work order shall be in writing and shall be given to the owner of the property involved, or to the owner's agent, or to the person doing the work; and shall state the conditions under which work may be resumed.

(2) Unlawful continuance: Any person who shall continue any work in or about the structure after having been served with a stop-work order, except such work as he is directed to perform to remove a violation or unsafe conditions, shall be liable to the restraints provided in Section 19 of this regulation.

Section 21. Authority for Existing Buildings. (1) Upon the issuance of a final approval of a facility and the issuance of a lawful certificate of occupancy with respect to a particular facility, the building official's authority and responsibility as to that facility is ended so far as the KBC is concerned, unless the facility later becomes subjected to the KBC by virtue of Section 6 of this regulation.

(2) Other local or state law must be consulted to determine the existence of other powers given to the building official, such as those related to demolition or authority over unsafe structures, which are not specifically awarded him or her in the KBC.

(3) The State Fire Marshal's Office and the local fire official designated by the local government shall continue to be the persons responsible for enforcement of the standards of safety for existing buildings and shall also inspect for fire safety maintenance after a building has been given a final certificate by the building official, under KRS Chapter 227, and 815 KAR 10:020 [15].

Section 22. Local Board of Appeals. (1) The mayor, chairman of the board of trustees, or county judge executive of a local government which is enforcing the Kentucky Building Code, may, upon approval of the local legislative body, appoint a local appeals board, consisting of at least five (5) [three (3)] technically qualified persons with professional experience related to the building industry, three (3) of which must not be employees of the local government, to hear appeals of the decisions of the local building official.

(2) Local governments which are enforcing the Kentucky Building Code may cooperate with each other and provide a local appeals board and shall adhere to the provision of KRS Chapter 65 when entering into such cooperative agreements.

(3) No local building official or employee of a local inspection department may sit on a local appeals board if such board is hearing an appeal to a decision rendered by his department. No member of a local appeals board shall hear an appeal in a case in which he has financial interest.

(4) Any party to a decision by the local building official may appeal that decision to the local appeals board. Upon receipt of an appeal from a qualified party, the local appeals board shall convene a hearing to consider the appeal within fifteen (15) days of receipt.

(5) All parties to the appeal shall be notified of the time and place of the hearing by letter mailed by certified [registered] mail no later than ten (10) days prior to the date of the hearing.

(6) The local appeals board shall render a decision within five (5) working days after the hearing. The board may uphold, amend or reverse the decision of a local building official, and there shall be no appeal from the decision of the local appeals board other than by appeal to the board.

Section 23. Appeals Procedures. (1) Where a local appeals board exists, a party including the local fire official must first appeal to the local board when aggrieved by a decision of the local building official.

(2) A party, including the local fire official, aggrieved by a decision of a local building official where no local appeals board exists may appeal directly to the board. The board shall further hear appeals directly from a party aggrieved by the decision of an agent of the department or the State Fire Marshal.

(3) Application for appeal may be made when it is claimed in writing that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or an equally good or better form of construction can be used, or that the building official has refused to grant a modification to the provisions of this code covering the manner of construction of materials to be used in the erection, alteration or repair of a building or structure.

(4) The board may appoint five (5) or more of its members, excluding the chairman of the board, to consider the recommendations of the commissioner or to conduct hearings, and those appointed shall act in all matters concerning the appeal for the entire board.

(5) The board may adopt such rules, regulations and bylaws as are necessary to conduct said appeals; and no member of the board or committee may vote on any matter which will result in his direct or indirect financial gain.

(6) Appeals to the board shall be in writing and shall be addressed to the Commissioner of Housing, Buildings and Construction, The 127 Building, U.S. 127 South, Frankfort, Kentucky 40601; Attention: Appeals Board. Such appeals shall include citations of those provisions of the Kentucky Building Code which are at issue, an explanation as stated in subsection (3) of why the decision of the state building official or local building official relative to those provisions is being contested and a copy of the

decision rendered by the local appeals board, if any.

(7) The commissioner shall immediately notify the board when an appeal is received. The commissioner or a designated employee of the department shall then investigate the evidence pertaining to such an appeal, based upon the results of such investigation, make recommendations to the board or committee on the disposition of the case in question.

(8) No employee of the department shall investigate or make recommendation on an appeal to his own decision, but shall defer in such cases to employees who are not party to the decision which lead to the appeals.

(9) In conducting such investigation, the commissioner or the designated representatives, acting for the department shall have the authority to administer oaths and affirmations, issue subpoenas authorized by law, rule upon offers of proof and receive relevant evidence, take or cause disposition to be taken, regulate the course of any hearings they may schedule, and hold conferences for the settlement or simplification of the issue by consent of the parties.

(10) The commissioner shall cause such investigation to be completed and forwarded with written recommendations to the board within thirty (30) days after receiving such an appeal.

Section 24. Action of the Board. (1) Upon receiving the written recommendations of the commissioner, the board may decide to accept such recommendations, or it may decide to convene a hearing to consider the question further. Upon receipt of the recommendations of the commissioner, the board shall render a decision on each appeal at its regularly scheduled meeting but no later than thirty (30) days after receipt of such recommendations.

(2) If the board has authorized an appeals committee to hear an appeal, the committee shall act for the board in all matters related to the appeal.

(3) Should the board's decision be to schedule a hearing on the appeal, such hearing shall occur within thirty (30) days of such decision, and all parties to such hearing shall be immediately notified in writing of the time and place of such hearing by the commissioner. The board may further exercise the same powers of investigation as granted to the commissioner in Section 23 of this regulation. The board shall render a decision within ten (10) days of any appeals hearing it may conduct.

(4) The board may uphold, amend or reverse the decision of a local appeals board, a local building official or the state building official; and the decision of the board or the appeals committee shall be final.

(5) The chairman of the board shall notify the appropriate building official and he or she shall take immediate action in accordance with the decision of the board.

(6) There shall be no appeal from the board's decision except to the circuit court within whose jurisdiction the property in question is located. Application for review shall be made to the proper court within thirty (30) days following that decision.

Section 25. Construction Control and Responsibilities. (1) The provisions of this section shall define the responsibility of the building official in relation to design professionals and the circumstances under which the department or the local building official shall be authorized to accept design professionals affirmation in their plans and specifications as to compliance with various provisions of this code.

(2) All new, alteration, repair, expansion, addition or modification work involving the practice of professional architecture and engineering as defined by KRS Chapters 322 and 323 shall be prepared by registered professional architects or engineers as certified by the state; and all plans, computations and specifications required for a building permit application for such work must be prepared by or under the direct supervision of the registered architect or engineer and bear his seal and signature in accordance with those statutes.

Section 26. Validity. (1) In the event any part or provision of this code is held to be illegal or void, this shall not have the effect of making void or illegal any of the other parts or provisions thereof, which may or shall be determined to be legal; and it shall be presumed that this code would have been passed without such illegal or invalid parts or provisions.

(2) Any invalid part of this code shall be segregated from the remainder of this code by the court holding such part invalid, and the remainder shall remain effective.

(3) The invalidity of any provision in any section of the KBC as applied to existing buildings and structures shall not be held to affect the validity of such section in its application to buildings and structures hereafter erected.

Section 27. Effective Dates for KBC Application. (1) Any building required by Section 9(1) of this regulation to be submitted to the Department of Housing, Buildings and Construction and which has not been submitted and accepted for construction prior to February 15, 1980, must be constructed in compliance with the applicable provisions of the KBC.

(2) Any building required by Section 8 of this regulation to be submitted to a local government for plan review and which has not been lawfully approved for construction prior to the following timetables shall be constructed in compliance with the applicable provisions of the KBC:

(a) In all local governments in a county containing a first or second class city or urban county government, no later than February 15, 1980.

(b) In all local governments in a county where the largest city is of the third or fourth class, no later than August 15, 1981.

(c) In all local governments in a county containing no city larger than fifth or sixth class, no later than August 15, 1982.

(3) Any local government may adopt the KBC voluntarily before the mandatory date stated in subsection (2) of this section.

Section 28. Whenever the department has entered into a contractual obligation requiring enforcement of applicable federally approved

codes, the department shall approve plans and make inspections; using those federal codes as an alternative to other applicable provisions of the KBC, so long as equivalent safety is maintained. Any facility of an occupancy type subject to review by the federal codes may use this section.

Section 29. Day Care Centers. Family child day care homes, group day care homes, day nurseries and child day care centers which comply with the provisions of the Life Safety Code, N.F.P.A. Phamplet #101, shall be deemed to have satisfied all the life safety requirements of the Kentucky Building Code.

Section 30. Until November 30, 1985, the department shall accept plans in conformity with the requirements of either the 1981 Edition BOCA Code or the 1984 Edition, together with any Kentucky amendments thereto. After November 30, 1985, all plans shall be designed to conform with the 1984 Edition of the BOCA Code as set forth in this regulation.

CHARLES A. COTTON, Commissioner
MELVIN WILSON, Secretary
APPROVED BY AGENCY: January 17, 1985
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AMENDED AFTER HEARING

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Amended After Hearing)

401 KAR 6:300. Water well drillers certification; examination; fees.

RELATES TO: KRS 223.400 through 223.460, 223.991
PURSUANT TO: KRS 223.420
NECESSITY AND FUNCTION: This regulation contains provisions for the general practice of water well drilling, including application requirements, conduct of examinations and a schedule of fees. The schedule of fees included herein will partially reimburse the cabinet's expenses for this program and implementation of this fee schedule is required by law.

Section 1. Examinations. (1) The water well drillers certification examination shall consist of two (2) parts. The first part shall be the National Water Well Drillers standardized examination. All examinees shall take both the general examination and the speciality examination in their area of practice. This part shall constitute seventy (70) percent of the total value of the examination. The second portion of the examination shall consist of questions relating to applicable laws and regulations and other issues as the cabinet deems necessary.

(2) A passing grade for the examination shall be seventy (70) percent correct answers on the composite examination. Any person who does not obtain a passing grade on the total examination, but scores higher than seventy (70) percent on the first part of the examination, need only take the second portion as defined in subsection (1) of this section and score at least seventy (70) percent thereon for certification.

(3) The examination will be offered only to those persons who have verified to the cabinet that they have two (2) years of water well drilling experience under a certified water well driller.

(4) The cabinet will schedule water well drillers examinations at least twice a year.

(5) Drillers who have passed all applicable portions of the National Water Well Drillers examination previously or who have passed this examination when administered by someone other than the cabinet shall be required to take only the second portion of the examination as defined in subsection (1) of this section. A seventy (70) percent score shall be required for passing.

Section 2. Fees. (1) A non-refundable fee of twenty-five (25) dollars shall be submitted with each application.

(2) The cabinet will require an advance payment of twenty-five (25) dollars for each examination administered.

(3) An applicant, upon notification that all requirements have been met for certification, shall remit a certification fee of $100 for initial certification.

(4) The fee for certificate renewal shall be $100 per year.

(5) All fees shall be in the form of a check or money order payable to the Kentucky State Treasurer.

Section 3. Issuance, Expiration, and Reinstatement of Certificates. (1) All certificates will be valid from the date of issuance until the next June 30th. Renewed certificates will bear as their date of issue July 1 of the appropriate year. Newly issued certificates will bear as date of issuance the date that all certification requirements are deemed fulfilled.

(2) Any certificate for which the renewal fee is not paid within ninety (90) days of the beginning of the certification year, which shall be July 1, shall be considered expired. Such expired certificates may be reinstated without examination within two (2) years of the beginning of the certification year in which they expire by the driller's paying the current year's renewal fee. After two (2) years the certificate is invalid and the driller shall be required to meet all requirements for certification established in this regulation.

Section 4. Wallet Cards. (1) The cabinet will provide upon certificate issuance and again upon each annual renewal a card of suitable size to be carried in a wallet and bearing at least the name and certificate number of the driller and indicating the period for which the card is issued. This wallet card shall be carried by the driller at all times while on a job site.

(2) The cabinet will also provide wallet

cards which shall be used by the driller's employees who will at any time be in charge of well construction in the drillers absence. This card shall bear the driller's certification number and signature and shall be carried by such employees at all times on the construction site.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: July 5, 1985
FILED WITH LRC: July 5, 1985 at noon

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department of Environmental Protection
Division of Water
(Amended After Hearing)

401 KAR 6:310. Water well construction practices and standards.

RELATES TO: KRS 223.400 through 223.460, 223.991
PURSUANT TO: KRS 223.420, 223.435
NECESSITY AND FUNCTION: This regulation provides standards and requirements for the commercial practice of water well drilling. These requirements are necessary to ensure that the complete well provides an appropriate quality of product to the consumer while protecting the ground water resources of the Commonwealth. This regulation furthermore fulfills a requirement of law.

Section 1. Definitions. (1) "Annular space" means the opening between a well-bore or excavation and the well casing or between a casing pipe and a liner pipe.
(2) "Aquifer" means a water-bearing formation that transmits water in sufficient quantity to supply a well.
(3) "Cabinet" means the Natural Resources and Environmental Protection Cabinet.
(4) "Consolidated formation" means a geological formation which is firm, such as rock.
(5) "Construction" means all acts necessary for obtaining ground water by wells, including drilling or excavation of the well, but excluding the installation of permanent pumps and pumping equipment.
(6) "Driller" means water well driller as defined in KRS 223.400.
(7) "Established ground surface" means the elevation of the ground surface at the site of the well.
(8) "Finished ground surface" means the final or permanent elevation of the ground surface at the site of the well.
(9) "Modification" means any change, replacement, or other alteration of the water well. This includes, but is not limited to deepening of a well, replacing or repairing a casing, repair or replacement of well screen, installation of a pitless adapter and any other changes of a well structure.
(10) "Pumping water level" means the elevation of the water surface in a well when water is discharged during pumping.
(11) "Static water level" means the level of which water stands in a well when no water is being taken from the aquifer either by pumping or by free flow.
(12) "Unconsolidated formation" means a geological formation above bedrock, such as sand or gravel, which has a tendency to cave in under natural conditions.

Section 2. Scope. This regulation provides minimum standards for location, construction and modification of water wells as defined in Kentucky Revised Statues, Chapter 223. After the effective date of this regulation, no water well as defined above shall be constructed or modified contrary to the provisions contained herein.

Section 3. General Requirements. (1) Certified driller required. All water wells subject to this regulation shall be constructed only by persons having a valid certificate under Kentucky Revised Statutes, Chapter 223, Sections 223.400 through 223.460 or by persons in the employ of such certificate holders.
(2) Reports. Within thirty (30) days after a water well has been constructed or modified, the driller shall submit a report of construction to the cabinet on such forms as are prescribed and furnished by the cabinet.
(3) Variance.
(a) If conditions are believed to exist of a proposed installation site which preclude compliance with the requirements of this regulation, the driller may request a variance by submitting to the cabinet a written request outlining a specific proposal to be used in lieu of compliance with this regulation. The request shall include a thorough description of the site (lot size, the location of sewers, septic tanks, buildings, seepage fields, and other sources of contamination on the property and adjacent property with distances shown to the proposed well), the section number and brief summary of the provisions for which a variance is requested, and a complete justification as to why the cabinet should approve the variance. Special emphasis should be given to ensuring the protection of the public's health and safety. A description of geological and soil conditions shall also be included. The cabinet will notify the applicant in writing of its decision either to grant or deny the variance. A variance shall be requested and approved before well construction begins. In case of an emergency, where the delay incurred due to the above-described variance procedure would cause undue hardship or loss of life to the intended user, the driller may obtain an oral variance, provided the above-listed information is provided to the cabinet within fifteen (15) days of the date such oral variance is issued.
(b) After any variance is issued regarding the location of a well with respect to various contamination sources in Section 6 of this regulation, the driller for which a variance has been issued, the driller shall take two (2) water samples from the well and have them analyzed for fecal coliform at a cabinet-approved laboratory. (A listing of these laboratories is available on request. Other laboratories may be approved by the cabinet on a case-by-case basis.) The cabinet may require analysis for other parameters which might reasonably be expected to exist in conjunction with the source of potential pollution if necessary to protect the health or safety of potential users. At the time the variance is approved, the cabinet will notify the driller as

to what these parameters will be. One (1) sample shall be taken within thirty (30) days and the second sample shall be taken within sixty (60) days, but not less than thirty (30) days, after completion of the well.

(c) Examples of location problems which could preclude compliance with this regulation would be the proposed location of a well too close to septic tanks, buildings, sewer lines, or barnyards.

(d) Examples of public health and engineering principles that will be considered in issuing a variance are ground surface conditions, depth of the water table, the location of sources of contamination, the ability of the existing soil to remove bacteria, and the geologic conditions at the site.

(4) Water sampling. All samples pursuant to KRS 223.400 et seq. or this regulation shall be delivered to the laboratory within six (6) hours of the time they are taken and shall be kept at four (4) degrees centigrade (or forty (40) degrees Fahrenheit) during that time, but shall not be frozen. Containers for the samples shall be sterile glass or plastic. However, drillers may obtain approval from the cabinet to perform fecal coliform analyses (except those required for variance approval) provided they can demonstrate to the cabinet that they are capable of providing an accurate analysis. The cabinet will approve the variance if the proposal is in accord with accepted public health and sanitary engineering principles and practices, and if the resulting water well pump installation can be expected to provide a continuously safe and sanitary water supply.

(5) Display of certificate number. Drillers shall have their certificate numbers permanently affixed and prominently displayed on all equipment used at construction sites. Numbers shall be at least three (3) inches in height and of a color that is easily distinguishable from that of the equipment. This number shall be removed if equipment is scrapped, sold, or otherwise changes ownership or if the driller's certificate becomes invalid.

Section 4. Design Factors. The design of each well shall include the following:

(1) Natural protection. Location of the well shall include use of every natural protection available to promote sanitary conditions.

(2) Geological formations. The well construction shall be adapted to the geologic formations and ground water conditions at the site.

(3) Undesirable geological formations. Water bearing formations shall be excluded by installing casing or a liner and properly sealing when such formations contain undesirable water or when the primary purpose for the well is to withdraw water from a deeper formation.

(4) Capacity. Capability of the well to produce as much of the desired water quantity as the aquifer or aquifers can safely furnish.

(5) Durability. Construction methods and materials shall provide a durable well capable of maintaining safe water and protecting the aquifer.

(6) Pitless well adapters. No well casing shall be cut off or cut into below ground surface except by a driller to install a pitless well adapter. Pitless well adapters shall comply with the requirements of the National Sanitation Foundation (NSF) Standard Number C-8, entitled Pitless Well Adapters, May 1970 edition and shall bear the NSF seal.

Section 5. Location. (1) General. In establishing the location of a well, the driller shall give the consideration to sources of contamination which exist on or adjacent to the premises where the well is to be located. As far as possible, the well shall be located on ground which is higher than sources of contamination and shall have ready access for repairs, maintenance, treatment and inspection.

(2) Relation to sources of contamination. Determination of minimum lateral distances to locate a well from potential sources of contamination involves evaluation of the character and location of the sources of contamination, types of geologic formations present, depth to the aquifer, direction of ground water flow, effect on the ground water movement by well pumping and possibilities of flooding of the site by surface waters. Sources of contamination such as streams, refuse disposal sites, excavations, waste treatment facilities, buried oil and gasoline storage tanks, improperly constructed wells and cisterns shall be evaluated and a distance determined based on the pertinent facts.

(a) The minimum lateral distances shown in Table A shall apply for the sources of contamination listed therein.

(b) When the upper formations are more pervious than clay or loam, the lateral distances in Table A shall be increased (i.e. double the distance for highly pervious gravel formation).

(3) Flood water. Locations subject to flooding should be avoided. If no reasonable alternate site exists, wells may be constructed in flood zones provided special protective construction is included. The casing of the well should terminate not less than two (2) feet above the maximum known flood elevation. In all instances, the casing shall terminate sufficiently above grade or above any known conditions of flooding by drainage or runoff from surrounding land.

(4) Relation to building. With respect to buildings, pits, and basements, the location of a well shall be as follows:

(a) Adjacent to building. When a well must be located adjacent to a building, it shall be so located that the center line of the well extended vertically will clear any projection from the building by not less than two (2) feet.

(b) Pits and basements. New wells shall not be constructed in pits or basements.

Section 6. Drilled Wells in Unconsolidated Formations. (1) General. Unconsolidated formations such as sand and gravel may extend to or near the ground surface. Generally, however, they lie below the ground surface at varying depths and are covered by an overburden of earth. The kind, nature and depth of the overburden are factors in determining how a well shall be constructed.

(2) Unconsolidated formations with non-stable overburden. Wells constructed in unconsolidated formations which extend the full depth of the well shall have a permanent casing installed governed by the pumping level in the finished well. For pumping levels greater than twenty (20) feet below the ground surface, the casing

shall extend five (5) feet below the pumping level. For pumping levels twenty (20) feet or less below the ground surface, the casing shall extend ten (10) feet below the pumping level. Under no conditions shall there be less than twenty (20) feet of permanent casing installed. (See Illustration A.)

(3) Unconsolidated formations with stable overburden. Wells constructed in geological formations such as sand and gravel which lie below clay, glacial till or other relatively stable soil shall have a casing installed governed by the pumping level. For pumping levels greater than twenty (20) feet, the casing shall extend five (5) feet below the pumping level. For pumping levels twenty (20) feet or less, the casing shall extend ten (10) feet below the pumping level. Under no conditions shall there be less than twenty (20) feet of permanent casing installed. Since the stable overburden cannot be expected to form a continuous contact seal with the casing, sealing of the annular opening between the casing and the drill hole must be effected. This can be accomplished by constructing an upper drill hole having a diameter four (4) inches greater than the inner diameter of the casing to be installed and extending to a depth of at least twenty (20) feet. The upper drill hole shall be sealed with drill cuttings, clay slurry or cement grout after the casing is in place. (See Illustration B.)

(4) Gravel pack construction. When an over-sized drill hole (i.e., more than four (4) inches greater than nominal diameter) is constructed to permit the placement of a gravel pack around the well screen, the annular opening between the casing and drill hole shall be sealed in the top twenty (20) feet or twenty (20) feet below the point of pitless adapter attachment with concrete or neat cement grout or bentonite. If a permanent outer casing is installed, it shall extend to a depth of at least twenty (20) feet and, depending on the formations present, the annular opening between the drill hole and the outer casing shall be sealed with drill cuttings, clay slurry, bentonite, or cement grout. The annular opening between inner and outer casings shall be sealed to prevent contamination from the surface. (See Illustration C.)

(a) All gravel placed in the well shall be clean, washed and disinfected prior to placement or provisions made for disinfection in place.

(b) Gravel refill pipes may be installed if they terminate above ground surface and are provided with watertight caps.

(c) Wells designed for placement of an artificial gravel pack shall be provided with an adequate screen having openings sized on the basis of the grain size of the gravel. The well shall be developed to ensure free entry of water without sediment.

Section 7. Drilled Well Construction in Consolidated Formations. (1) Where the soil overburden is less than thirty (30) feet in thickness, the well casing shall extend to a depth of at least twenty (20) feet below ground level and at least ten (10) feet into firm rock. The diameter of the drill hole shall be a minimum of two (2) inches greater than the inner diameter of the casing. The annular space shall be sealed with cement grout, bentonite clay, cuttings, or mechanical packer.

(2) Where the soil overburden is greater than thirty (30) feet in thickness, the casing shall be fitted with a drive shoe, when driven, and shall be driven to a firm seat in the limestone or dolomite and the annular space around the casing through the soil overburden sealed with drill cuttings, clay slurry, bentonite or cement grout. (See Illustration E.) Plastic casing shall be installed as required in subsection (5) of this section.

(3) Where the well is drilled to obtain water from a lower formation the casing shall extend at least through any creviced formation encountered and be seated in form rock. The diameter of the drill hole through the creviced formation shall be a minimum of two (2) inches greater than the inner diameter of the casing. The annular space shall be sealed with cement grout, bentonite clay, cuttings, or mechanical packer. Where an outer casing is left in place, the annular space between the casings shall be cement grouted or the annular opening around the outer casing shall be sealed with drill cuttings, clay slurry, bentonite, cement grout, or mechanical packer. In instances where voids are encountered at depth, an effective seal must be installed below the lowermost void. (See Illustration D.)

(4) Flowing artesian well. The casing shall be installed to eliminate flow in the annular space and the annular opening between drill hole and casing sealed with cement grout, bentonite clay, cuttings, or mechanical packer.

(5) Plastic casing installations. When plastic well casing is installed, the drill hole shall be a minimum of two (2) inches greater than the inner diameter of the casing. The pipe spigot and socket shall be cleaned and treated with a cleaner-primer. Joints shall be solvent cemented with a quick-setting cement, or threaded and coupled. Other types of joints may be evaluated and approved by the cabinet. A coupling shall be cemented on the bottom of the casing to stabilize it in the hole or centralizers used. A steel nipple five (5) to ten (10) feet long may be used on the bottom of the casing in lieu of the coupling. In rock wells, the casing shall be set into the rock a minimum of <u>ten (10) feet where the overburden is less than thirty (30)</u> [three (3)] feet to prevent leaking around the end of the casing. In areas where the water is obtained at the rock surface, the casing shall be set at or just above the rock. A formation packer shall be installed just above the bottom of the casing. The annular opening between the casing and wall of the drill hole shall be sealed with bentonite slurry or neat cement grout.

Section 8. Special Type Wells. (1) General. Wells in this classification are dug, bored, driven, and radial collector. The choice of any one (1) of these as opposed to a drilled well is largely dictated by the characteristics of the water-bearing formations or aquifers in the local areas.

(2) Bored or dug well - well not finished with buried slab. Bored or dug wells that are not finished as buried slab wells shall comply with the following (see Illustration F):

(a) Annular opening. The open space between the excavation and the installed casing shall be grouted with concrete. The concrete shall be a

minimum of six (6) inches thick and be poured without construction joints from the ground surface to a minimum of ten (10) feet below ground level. The contractor shall be responsible for the installation of the concrete grout. The diameter of the well bore below the grouting shall be a minimum of four (4) inches greater than the outside diameter of the well casing and shall be filled with pea gravel to the well bottom.

(b) Upper terminal. The casing shall extend at least eight (8) inches above finished ground surface. A cover slab at least four (4) inches thick, adequately reinforced and having a diameter sufficient to extend to the outer edge of the casing shall be provided. The slab shall be constructed without joints. The top of the slab shall be sloped to drain to all sides and a watertight joint made where the slab rests on the well casing. A manhole, if installed, shall consist of a curb cast in the slab and extending four (4) inches above the slab. The manhole shall have a watertight cover having sides which overhang the curb at least two (2) inches.

1. If a vent is installed, it shall consist of pipe extending above the slab with the open end turned down and not less than six (6) inches above the slab. The open end shall be covered with twenty-four (24) mesh or finer screen of durable material. Venting is recommended.

2. Adequate sized pipe sleeve or sleeves shall be cast in place in the slab to accommodate the type of pump or pump piping proposed for the well.

(3) Bored or dug well - buried slab construction. The well casing shall be terminated at a depth of ten (10) feet or more below the ground surface. Well casing shall meet the requirements in Section 9 of this regulation. This casing shall be firmly imbedded in or connected to a pipe cast in a reinforced buried concrete slab. The casing shall be a minimum of four (4) inches in diameter and extend from the concrete slab to at least eight (8) inches above finished ground surface. The annular opening between the casing pipe and the well bore shall be filled with clean earth thoroughly tamped to minimize settling. The diameter of the well bore below the buried slab shall be a minimum of four (4) inches greater than the outer diameter of the well casing and shall be filled with pea gravel to the well bottom. (See Illustration G.)

(4) Driven well. The well point, drive pipe and joints shall be structurally suitable to prevent rupture during the driving of the well. If aids to driving are used, such as an augered starting hole or water jetting, the annular space around the drive pipe shall be sealed with cement grout or puddled clay. The type of pump proposed for the well will determine how the top ten (10) feet or more of the well shall be completed. If the working barrel of a hand pump is to be located below ground surface, the upper portion of the well shall be enclosed in steel or iron casing pipe to a point below the barrel. So called "frost pits" curbed with stone, brick, tile, etc., are prohibited.

(5) Radial collector well. Approved of plans for the well shall be obtained from the cabinet before construction. Factors that will be considered for approval of a radial collector well will include depth of well, types of soil formations, location of well and sources of potential contamination in the surrounding area.

Section 9. Construction Materials and Other Requirements. (1) Casing and liner pipe. In selection of casing and liner pipe, consideration shall be given to the stress to which the pipe will be subjected during construction and the corrosiveness of the water with which it comes in contact. Used or reject pipe shall not be used.

(a) Steel well casing shall meet one (1) of the following standards: American Society For Testing Materials (ASTM) A-53-81A, A-120-82, A-589-81A, or American Petroleum Institute 5L, March, 1982 Edition and conform to the minimum standards given in Table B.

(b) Plastic well casing and liners shall meet the requirements of ASTM Standard F-480-81 and the National Sanitation Foundation Standard Number (NSF) 14-1980, Plastic Piping System Components and Related Materials. Evidence of compliance shall be inclusion in the current NSF listing and display of the NSF seal on each section of casing, and marking the casing in accordance with the requirements of ASTM Standard F-480-81.

(c) Plastic well casing and liners must be Standard Dimension Ratio (SDR) rated, have an Impact Classification of IC-1 in accordance with ASTM Standard F-480-81 as a minimum, and conform to the minimum requirements given in Table C.

(2) Outer casing. Casing intended for construction purposes only shall be of weight and design as necessary to be watertight and permit installation without distortion or rupture to the specified depth, and shall be removed upon completion of the well.

(3) Joints. All casing and liner pipe joints shall be watertight.

(4) Screens. Screen openings shall provide the maximum amount of open area consistent with strength of screen and the grading of the water-bearing formation or gravel pack. The openings shall permit maximum transmitting ability without clogging or jamming. Screens shall be made of non-corrosive material.

(5) Drive shoe. Pipe that is to be driven shall be equipped with a drive shoe.

(6) Grouting guides. Protective casing that is to be grouted in the drill hole or annular opening shall be provided with a centering shoe and shall have sufficient guides or centralizers to permit the unobstructed flow and deposition of the thickness of grout specified.

(7) Cement grout. Procedures and materials for preparing and placing cement grout shall be as follows:

(a) Concrete grout. The mixture shall consist of cement, sand, and water in the proportion of one (1) bag of cement (ninety-four (94) pounds) and an equal volume of dry sand to not more than six (6) gallons of clean water.

(b) Neat cement grout. The mixture shall consist of one (1) bag of cement (ninety-four (94) pounds) to not more than six (6) gallons of clean water. Additives such as bentonite or aquajel or similar materials may be added up to six (6) percent by weight to increase fluidity and to control shrinkage.

(c) Application. All cement grouting shall be performed by adding the mixture from the bottom of the annular opening upward in one (1) continuous operation until the annular opening is filled or to the point of pitless adapter

attachment. Bentonite, aquajel, or similar materials may be added to the annular opening in the manner indicated for grouting, prior to the cement grouting, to seal any small crevices or fissures and assure that the annular space is open.

(d) Setting time. Drilling operations shall not be resumed until the cement grout has set and hardened for at least forty-eight (48) hours when high-early-strength cement is used and at least seventy-two (72) hours when regular cement is used. Setting time may be reduced from forty-eight (48) hours with high-early-strength cement and seventy-two (72) hours with regular cement by addition of manufacturers' approved chemicals and following manufacturers' recommendations for setting time.

(8) Plumbness and alignment. The bore of the hole shall be sufficiently plumb and straight to receive the casing without binding. The casing shall be sufficiently plumb and straight that it will not interfere with installation and operation of the pump.

(9) Construction water. Water used in the drilling process shall be obtained from a source which will not result in contamination of the well.

(10) For air rotary drilling, water shall be injected into the air stream at the rate of approximately three (3) gallons per minute.

Section 10. Finishing and Testing. (1) Upper terminal. The casing or riser pipe shall be terminated at a height above ground surface consistent with proposed plans for a pump house and pump installation, but not less than four (4) inches above ground surface or above any known conditions of flooding by drainage or runoff from the surrounding land. The well shall be capped watertight until pump installation is made.

(2) Disinfection. The well driller shall be responsible for properly disinfecting the well upon completion. Sufficient chlorine shall be introduced to give a dosage of 100 parts per million to the water in the well. (CAUTION: When working with chlorine, persons should be in well ventilated place. The powder or strong liquid should not come in contact with skin or clothing. Solutions are best handled in wood, plastic or crockery containers because metals are corroded by strong chlorine solutions.)

(a) Drilled wells. The disinfection of drilled wells shall be accomplished in accordance with the following:

1. Determine the amount of water in the well by multiplying the gallons per foot (from Table D) by the number of feet of water in the well.

2. For each 100 gallons of water in the well, use the amount of chlorine liquid or compound given in Table D. Mix this total amount in about ten (10) gallons of water. If dry granules or tablets are used, they may be added directly to drilled wells.

3. The total amount of this solution shall be poured into the top of the well before the seal is installed and splashed around the lining, or wall, of the well. Ensure that the solution has contacted all parts of the well.

4. Connect one (1) or more hoses from faucets on the discharge side of the pressure tank to the top of the well casing and start the pump, recirculating the water back into the well for at least fifteen (15) minutes. Then open each faucet in the system until a chlorine smell appears. Close all faucets. Seal the top of the well.

5. Let stand for several hours, preferably overnight.

6. After standing, operate the pump, discharging water from all outlets until all chlorine odor disappears. Faucets on fixtures discharging to septic tank systems should be throttled to a low flow to avoid overloading the disposal system.

(b) Dug wells. The disinfection of dug wells shall be accomplished in accordance with the following:

Diameter of well (in feet)	3	4	5	6	7	8	10
Amount of 5.25% laundry bleach to use per foot of water (in cups)	1.5	3	4.5	6	9	12	18
Amount of 70% Hypochlorite granules to use per foot of water (in ounces)	1	2	3	4	6	8	12

1. The amount of disinfectant required is determined primarily by the amount of water in the well. The table above shows the amount of chlorine to use for each foot of water in the well, according to its diameter.

2. To determine the exact amount of bleach to use, multiply the amount of disinfectant indicated as determined by the well's diameter times the number of feet of water.

3. This total amount of bleach shall be added to approximately ten (10) gallons of water, and splashed around the lining, or wall of the well. Be certain that the solution has contacted all parts of the well, using the entire amount of disinfectant. Seal the top of the well.

4. When this is done, pump enough water so the strong chlorine odor is evident. When the odor is detected, stop the pumping and allow the solution to remain in the well overnight.

5. After standing, operate the pump, discharging water from all outlets until all chlorine odor disappears. Faucets on fixtures discharging to septic tank systems shall be throttled to a low flow to avoid overloading the disposal system.

(c) Water samples. Upon completion of a new well or modification of an existing well, the driller shall give the owner information prepared by the cabinet explaining the importance of water well sampling, procedures for sampling, and how the water can be tested to assure a safe supply of water.

Section 11. Modification of Wells. (1) General. Wells constructed prior to the adoption of this regulation need not meet the criteria established. However, when a well is modified, reconstructed, or repaired, the work shall include those changes necessary to make the well conform to this section.

(2) Well pits.

(a) No new well pits shall be allowed. Existing well pits shall not be altered or changed.

(b) Existing pits will be accepted if the following conditions exist:

1. The pit shall be structurally sound and watertight. The casing shall extend at least twelve (12) inches above the pit or basement floor and have a well seal to prevent contaminants from entering the well.

2. A watertight manhole and cover must be provided for the pit.

(c) No existing well pit shall be modified to comply with subsection (2)(b) of this section. Existing pits which are not in compliance with subsection (2)(b) of this section shall be eliminated and the floor or one (1) wall of the pit shall be broken or removed and the pit shall be filled with compacted earth.

(3) Notification. Within thirty (30) days after modification of a well, the driller shall provide written notification of the modification on forms provided by the cabinet.

Section 12. Abandonment of Wells. (1) Abandoned wells. In cases where a constructed water well is not suitable for its intended purpose and is to be abandoned, or where a land owner employs a driller to close a previously constructed and abandoned well, these abandoned water wells shall be completely filled with disinfected, dimensionally stable materals, compacted mechanically, if necessary, to avoid later settlement. Cement grouts and concrete do not require disinfection. Disinfection of fill materials shall be accomplished by using chlorine compounds such as sodium hypochlorite or calcium hypochlorite. Fill materials shall be clean (relatively free of clays and organic materials) before placement in the well. Disinfection shall be accomplished by dissolving sufficient chlorine compound to produce a calculated concentration of at least 100 parts per million (100 ppm) available chlorine in double the volume of water in the well. The fill material shall be placed in the well after the water in the well has been so treated.

(2) Permanent bridges. Permanent bridges (Illustration H) may be used to avoid having to fill very deep holes below the deepest point at which a permanent seal is required. Permanent bridges shall be composed only of cement or cement-bearing minerals. The cement shall be allowed to harden for at least twenty-four (24) hours, if Type I cement is used, or for at least twelve (12) hours if Type III (high early strength) cement is used, before backfilling is continued. Temporary bridges used to provide a base for the permanent bridge shall consist only of inorganic materials - except that patented devices containing expandable neoprene, plastic, and other elastomers, and specifically designed for use in well construction are acceptable.

(3) Placement of grout. Concrete or cement grout used as a sealing material in abandonment operations shall be introduced at the bottom of the well or interval to be sealed (or filled) and placed progressively upward to the top of the well. All such sealing materials shall be placed by the use of grout pipe, tremie, cement bucket or dump bailer, in such a way as to avoid segregation or dilution of the sealing materials. Dumping grout material from the top shall not be permitted. Seals intended to prevent vertical movement of water in the well or bore hole shall be composed of cement grout or concrete, except that where such seals must be placed within casing or liners, only neat cement grout may be used. Cement grout seals shall be placed by means of pumping through drop pipe or by use of a dump bailer, with placement beginning at the bottom and continuing upward. The minimum cement seal length, wherever dimensions permit, shall be ten (10) feet.

(4) Intermediate seals. Intermediate seals (Illustration I) of cement grout or concrete shall be placed in impermeable strata between aquifers which are identifiable as, or are suspected of being, hydraulically separated under natural, undisturbed conditions. Once the required cement seal has been installed, the remainder of the impermeable zone or non-producing zone between aquifers shall be filled with sand, sand and gravel, or cement-bearing mineral material.

(5) Seal at uppermost aquifer. A cement grout or concrete seal shall be installed in the least permeable zone immediately above the uppermost water-producing zone. Such seals shall be placed only in quiescent (non-flowing) water. Prior to sealing for closure of flowing wells, the driller shall provide the cabinet a closure plan and shall obtain cabinet approval for that plan. The cabinet may provide assistance, if necessary, in developing this plan. (See Illustration J.)

[(6) Seals placed within casing, liners, filters, etc. Seal which must be placed in casing, liners, or filters require special attention. The material between the well and the face of the bore hole shall be thoroughly perforated, ripped, or otherwise disintegrated as the necessary first step. Neat cement only, or neat cement with a maximum of five (5) percent by weight of commercially processed bentonite clay, shall be used as the seal. Either of the following two (2) methods may be used.]

[(a) The calculated amount of grout required to fill the well interval plus the annular space outside the lining shall be placed within the space to be cemented, running the cement through a special cementing packer manufactured for this purpose and installed immediately above the perforated or ripped zone. The cement shall be injected at a pressure calculated to be at least fifty (50) pounds per square inch psi greater than the normal hydrostatic pressure within the well at the point of injection.]

[(b) The calculated amount of cement grout required to fill the casing interval plus the annular space outside the lining, plus sufficient cement grout to fill an additional ten (10) feet of the lining, shall be introduced at the bottom of the interval to be cemented.]

(6) [(7)] Non-producing zones. Non-producing zones above the aquifer shall be filled with stable materials such as sand, sand and gravel, cement grout, or concrete. Non-producing zones above the uppermost aquifer seal shall be filled with materials less permeable than the surrounding undisturbed formations. The uppermost five (5) feet of the bore hole (at established ground surface) shall be filled with a material appropriate to the intended use of the land.

(7) [(8)] Pre-existing contamination. An abandoned well which has been affected by salt water intrusion or any other contaminants shall be considered a special case, and the method of filling and sealing such wells shall be subject to individual review and written approval by the cabinet. In the sealing of a double or multiple

cased well, the driller shall submit a drawing thereof with a description of the proposed procedure and materials to be used, for prior approval by the cabinet.

(8) [(9)] Well abandonment records. Before equipment is removed from the site, the exact location of the abandoned well or drill hole shall be determined and recorded, tying in the location with permanent reference points. All information relative to the abandonment procedures and the location of the abandoned well shall be recorded on drillers log sheets provided by the cabinet with copies supplied to the cabinet and the owner of the land within thirty (30) days.

TABLE A

Lateral Sources of Contamination	Minimum Distances for Clay and Loam Soils
Cess Pools	150 feet
Leaching Pit	100 feet
Pit Privy	75 feet
Subsurface Seepage Tile	75 feet
Lateral Fields	70 feet
Manure Piles	75 feet
Septic Tank	50 feet
Barnyard	50 feet
Sewers (non-cast iron) (non-perforated)	50 feet
Sewers (cast-iron with watertight leaded or mechanical joints)	15 feet
Sewers (Schedule 40 or heavier plastic pipe with solvent cemented or elastomeric seal joints.) Pipe is solid pipe not perforated.	15 feet
Footing Drains (no connection to a sewer or a sump handling sewage)	10 feet
Pump House Floor Drain	2 feet

TABLE B

Casing and Liner Pipe Weights and Dimensions

Size (inches)	External Diameter (inches)	Thickness (inches)	Weight (pounds per foot)
1	1.315	0.120	-
1 1/4	1.660	0.120	-
1 1/2	1.900	0.120	-
2	2.375	0.120	2.89
2 1/2	2.875	0.120	3.53
3	3.500	0.120	4.33
3 1/2	4.000	0.120	4.97
4	4.500	0.188	8.66
5	5.563	0.188	10.79
6	6.625	0.188	12.92
8	8.625	0.277	24.70
10	10.750	0.307	34.24
12	12.750	0.330	43.77
14	14.000	0.375	54.57
16	16.000	0.375	62.58
18	18.000	0.375	70.59
20	20.000	0.375	78.60

Pipe sizes not listed that are less than eight (8) inches in diameter shall match listed values as closely as possible.

Pipe sizes not listed that are eight (8) inches in diameter or greater shall be Schedule 30 pipe as a minimum.

TABLE C

Plastic Casing and Liner Pipe Specifications

Size (inches)	SDR	External Diameter (inches)	Minimum Wall (inches)
4	26	4.500	0.173
5	26	5.563	0.214
6	26	6.625	0.255
8	26	8.625	0.332
10	26	10.750	0.413
12	26	12.750	0.490
14	26	14.000	0.539
16	26	16.000	0.616

TABLE D

Diameter of Well in Inches	Volume of Water in Gallons Per Foot of Depth	Disinfectant Required for Each 100 Gallons of Water
3	0.37	Laundry Bleach (5.25% chlorine) = 3 cups
4	0.65	
5	1.0	Hypochlorite Granules (70% chlorine) = 2 ounces
6	1.5	
8	2.6	
10	4.1	
12	6.0	

1 cup = 8 ounces measuring cup
(2 cups = 1 pint; 4 cups = 1 quart)

1 ounce = 1 heaping tablespoon granules
(16 ounces = 1 pound)

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: July 5, 1985
FILED WITH LRC: July 5, 1985 at noon

(See Illustrations on following pages)

ILLUSTRATION A

Unconsolidated Formations with Non-Stable Overburden

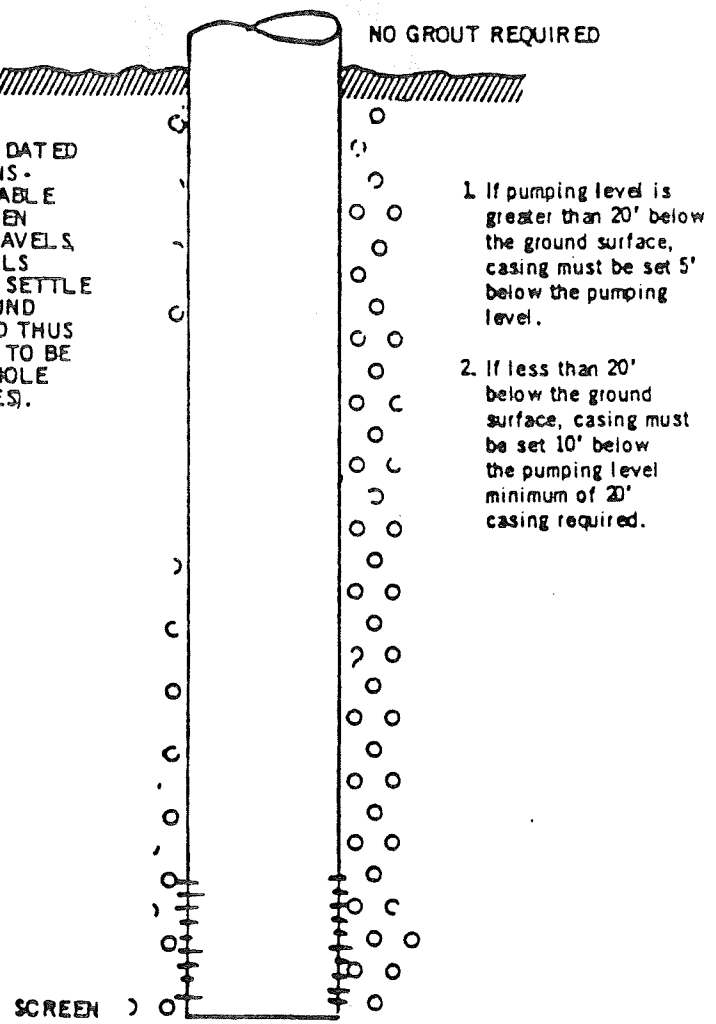


ILLUSTRATION B

Unconsolidated Formations with Stable Overburden

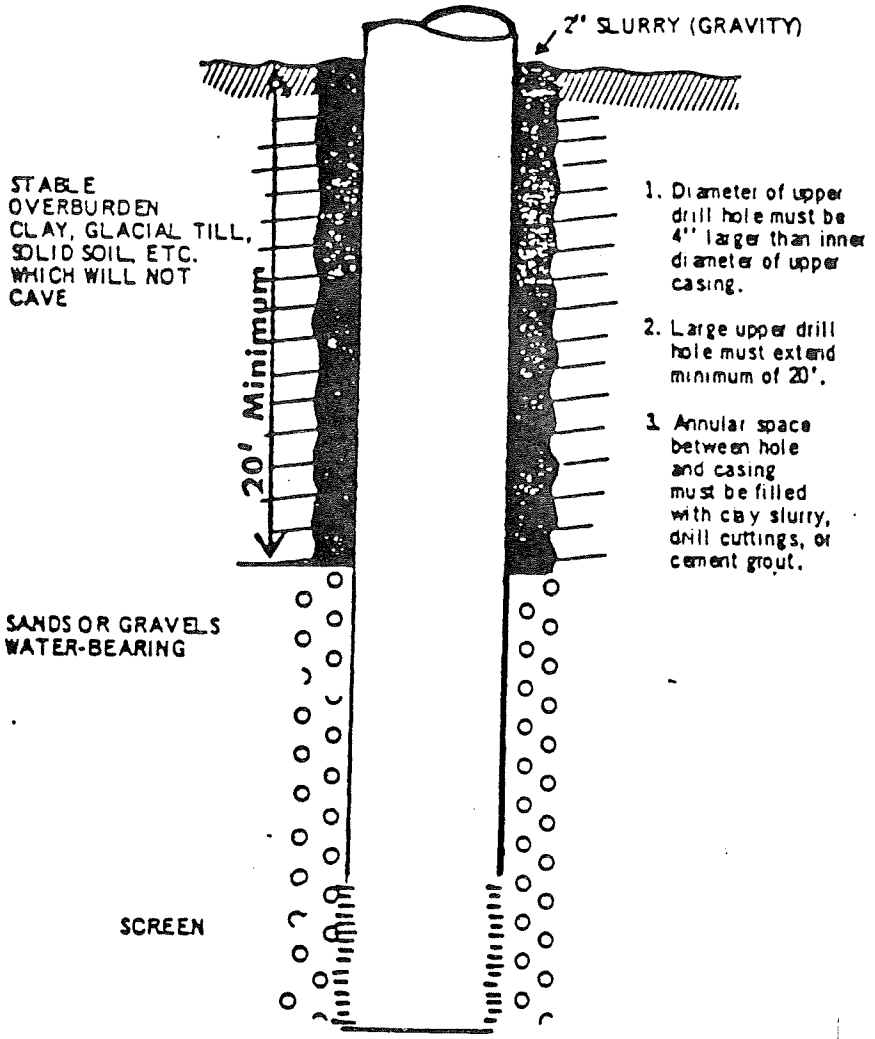
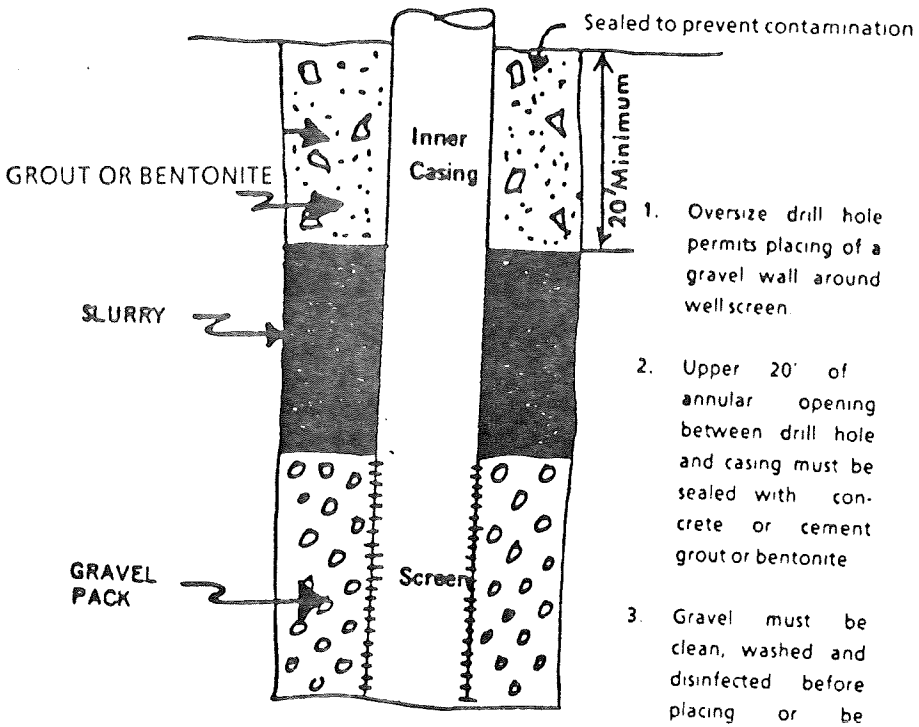


ILLUSTRATION C

Gravel Wall Construction

(No Outer Casing)

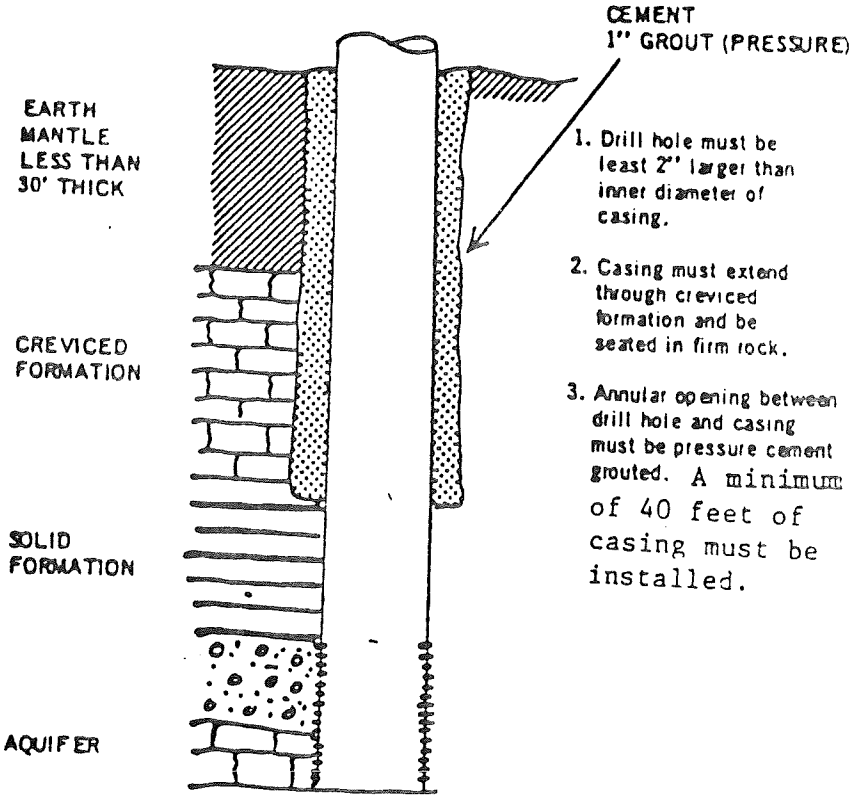


1. Oversize drill hole permits placing of a gravel wall around well screen.
2. Upper 20' of annular opening between drill hole and casing must be sealed with concrete or cement grout or bentonite
3. Gravel must be clean, washed and disinfected before placing or be disinfected in place

ILLUSTRATION D

Aquifer Below Creviced Formations

Earth Mantle Less Than 30 Feet Thick



1. Drill hole must be least 2" larger than inner diameter of casing.
2. Casing must extend through creviced formation and be seated in firm rock.
3. Annular opening between drill hole and casing must be pressure cement grouted. A minimum of 40 feet of casing must be installed.

ILLUSTRATION E

Creviced Formations

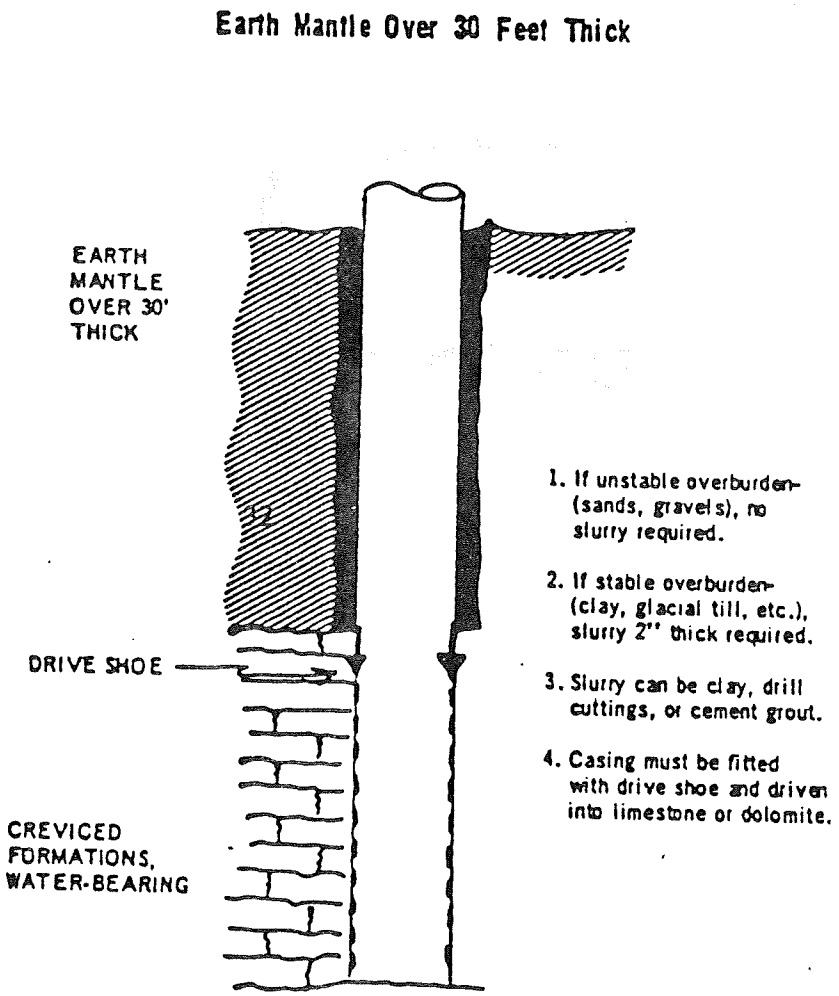


ILLUSTRATION F

Bored or Dug Well - Well Not Finished With Buried Slab

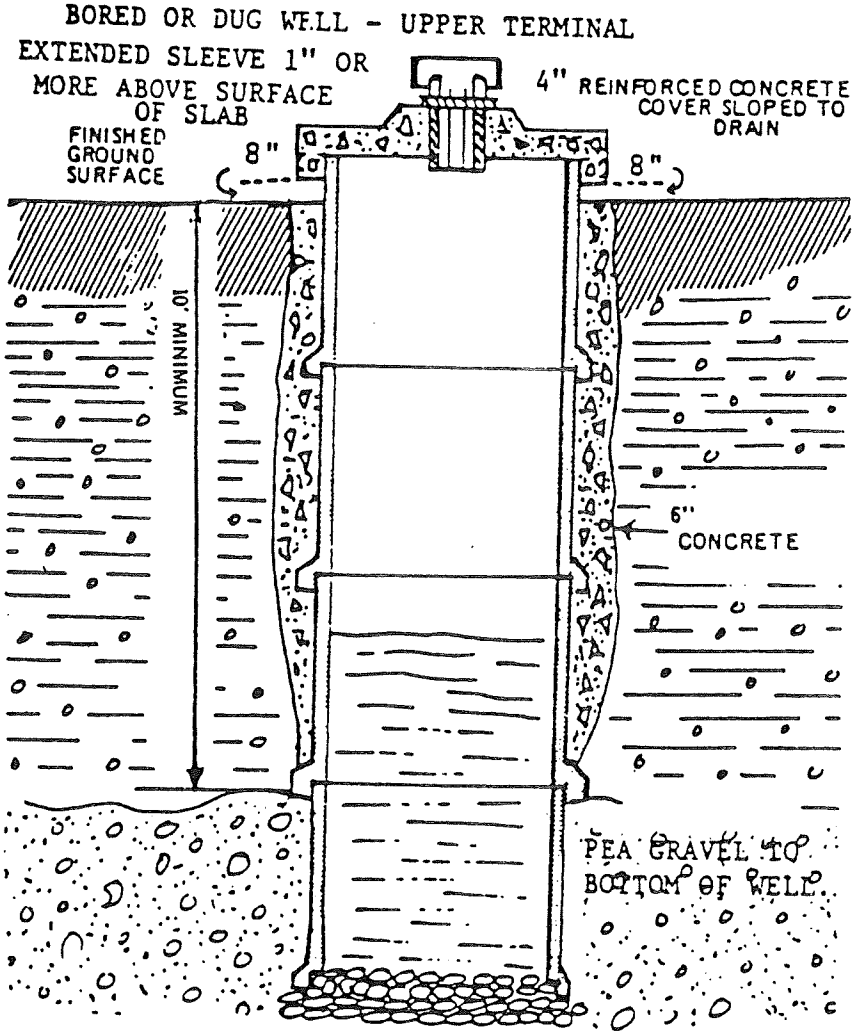


ILLUSTRATION G

Bored or Dug Well - Buried Slab Construction

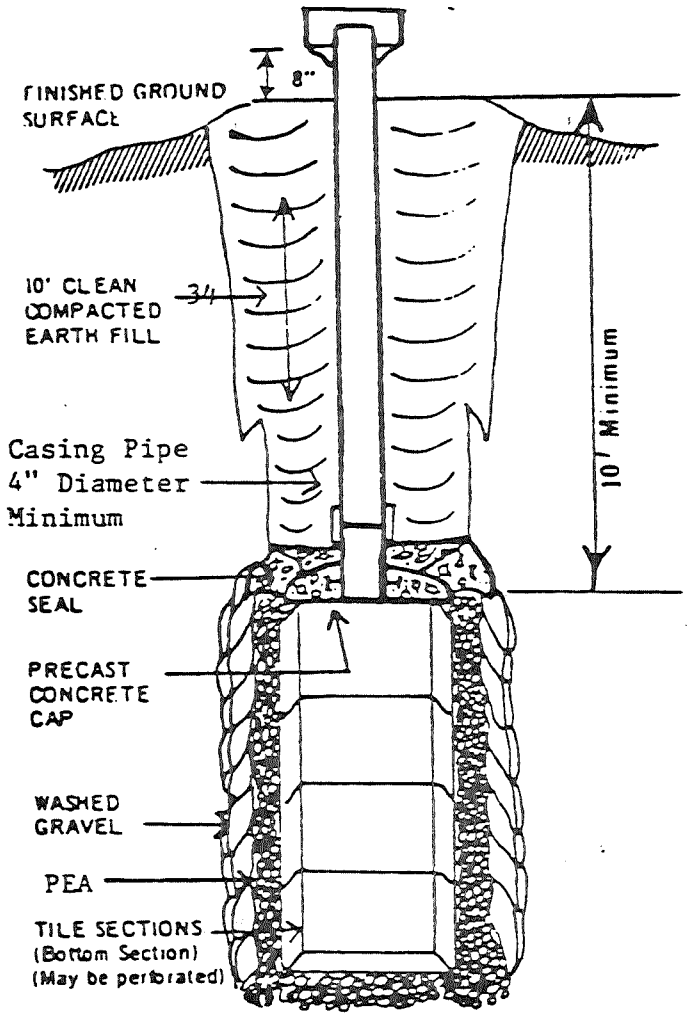


ILLUSTRATION H
Permanent Bridge Seals

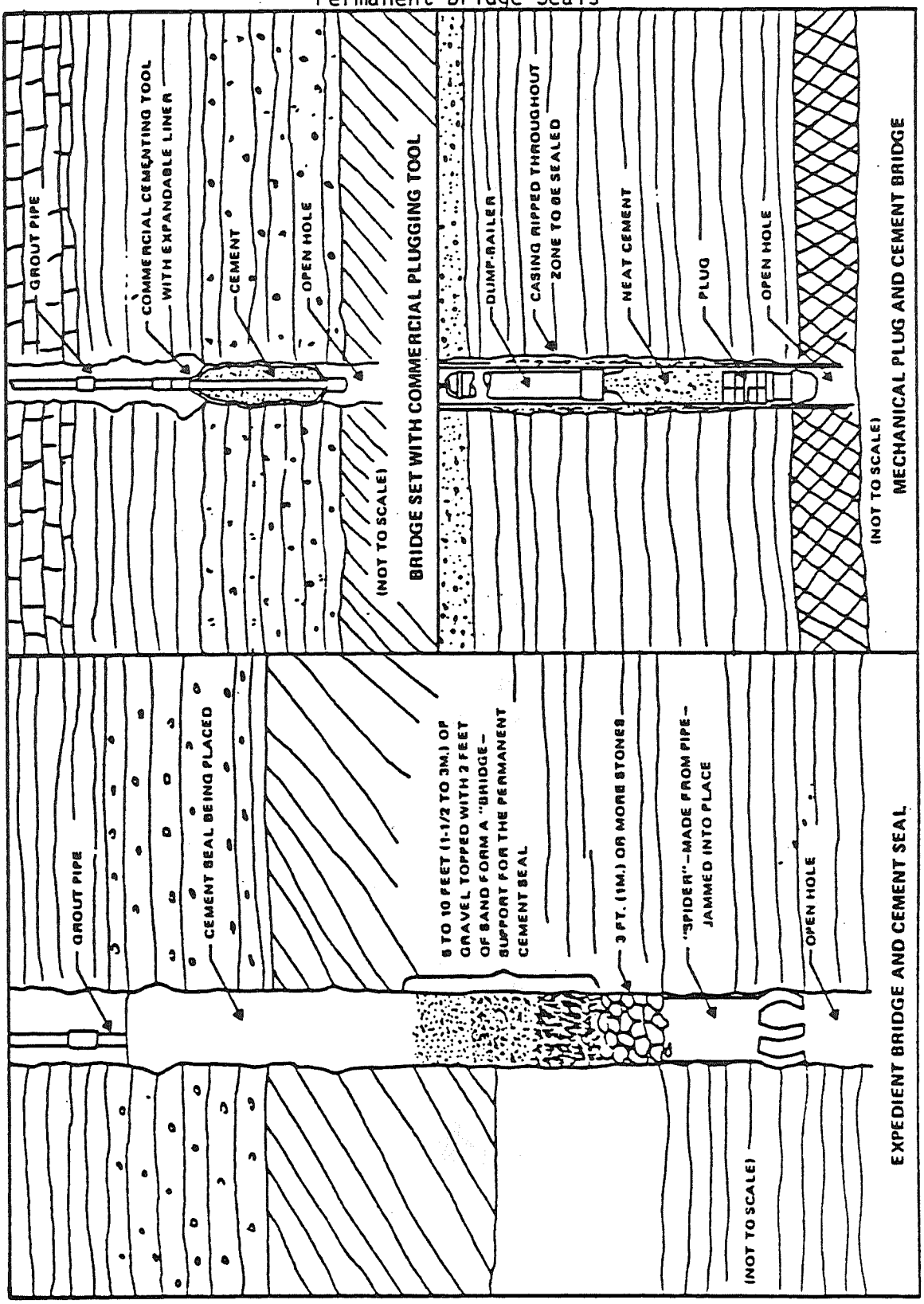


ILLUSTRATION I
Intermediate Seals

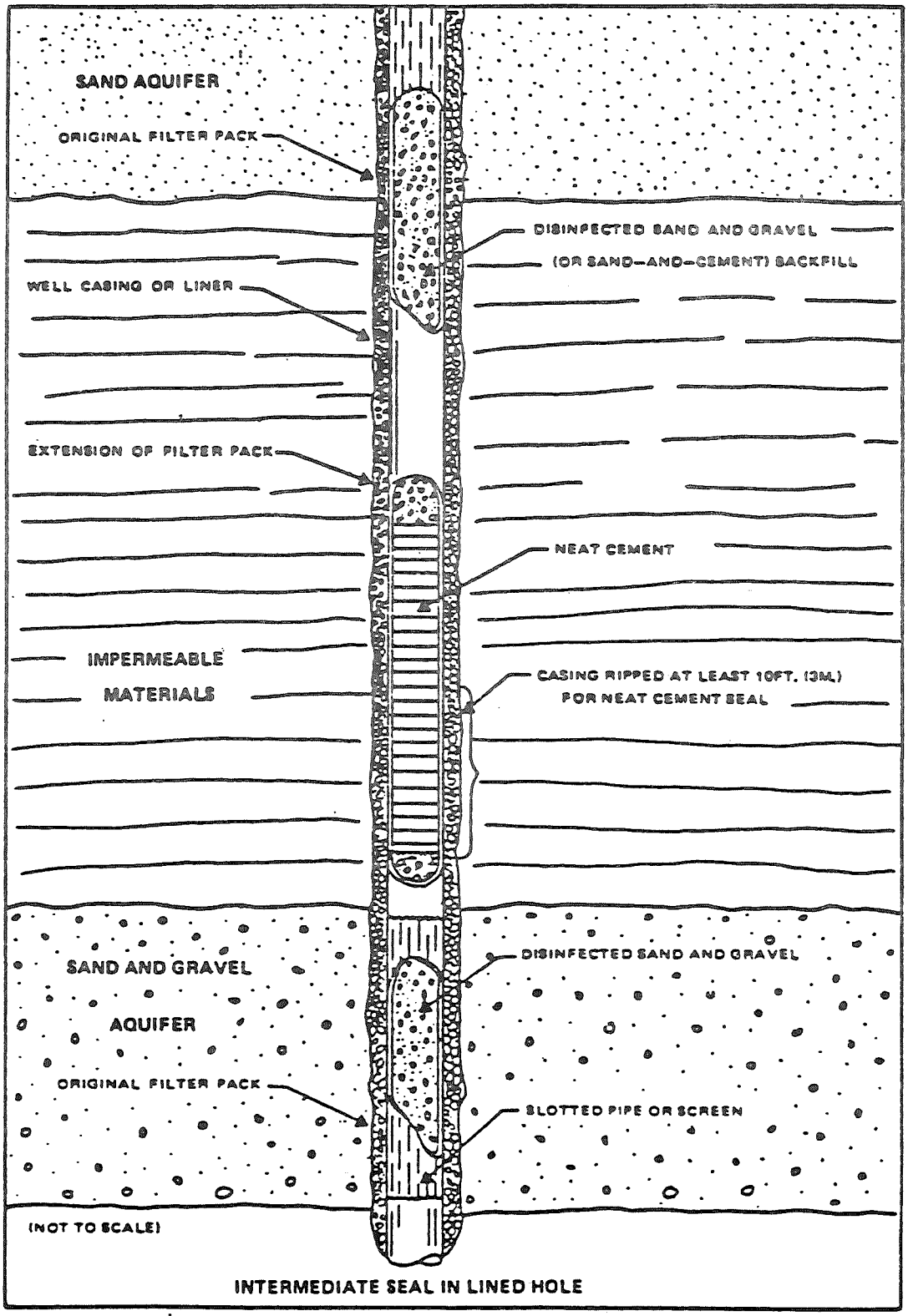
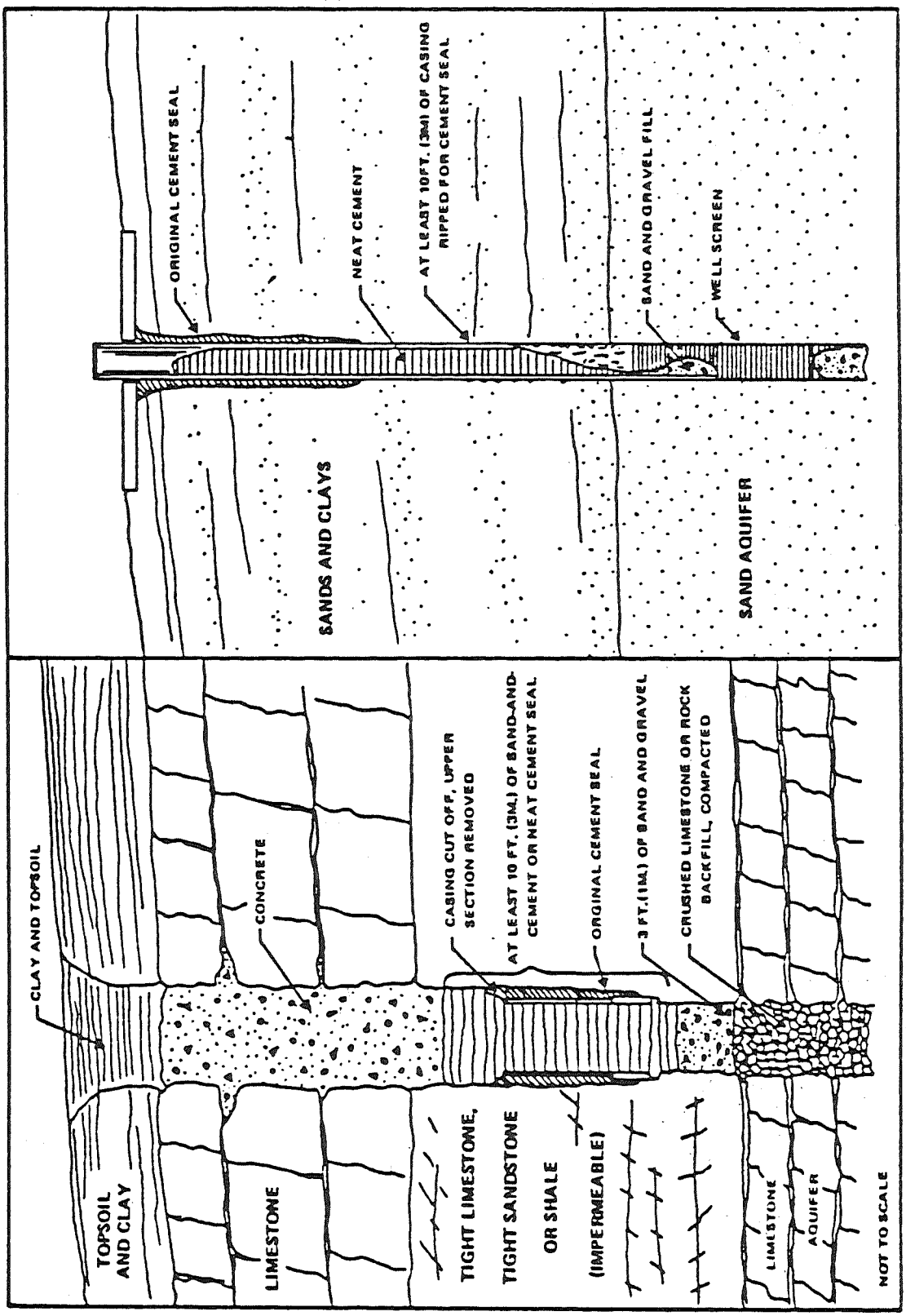


ILLUSTRATION J
Uppermost Aquifer



UPPERMOST AQUIFER SEALS IN WELL ABANDONMENT

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

405 KAR 8:030. Surface coal mining permits.

RELATES TO: KRS 350.060, 350.465
PURSUANT TO: KRS Chapter 13A [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 (P.L. 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 of this regulation. 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 **Baseline** [Premining] Geologic and Hydrologic Information [Geology and Hydrology]. (1) The application shall contain **baseline** [premining] geologic and hydrologic information which has been collected, analyzed, and submitted in the detail and manner acceptable to the cabinet, and which shall be sufficient to:

(a) Identify and describe protective measures pursuant to Section 32(1) of this regulation which will be implemented during the mining and reclamation process to assure protection of the hydrologic balance, or to demonstrate that protection of the hydrologic balance can be assured without the design and installation of protective measures; and to design necessary protective measures pursuant to Section 32(2) of this regulation;

(b) Determine the probable hydrologic consequences of the mining and reclamation operations upon the hydrologic balance in the permit area and adjacent area pursuant to Section 32(3) of this regulation so that an assessment can be made by the cabinet pursuant to 405 KAR 8:010, Section 14(3) of the probable cumulative impacts of all anticipated mining on the hydrologic balance in the cumulative impact area;

(c) Determine pursuant to 405 KAR 8:010, Section 14(2) and (3) whether reclamation as required by KAR Title 405 can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance; and

(d) Design surface and ground water monitoring systems pursuant to Section 32(4) of this regulation for the during-mining and postmining time period which, together with the **baseline** [premining] data collected under Sections 14(1) and 15(1) of this regulation, will demonstrate whether the mining operation is meeting applicable effluent limitations and stream standards and protecting the hydrologic balance.

(2)(a) Geologic and hydrologic information pertaining to the area outside the permit and adjacent area but within the cumulative impact assessment area shall be provided to the applicant by the cabinet:

1. If this information is needed in preparing the cumulative impact assessment; and

2. If this information is available from an appropriate federal or state agency.

(b) If this information is needed by the cabinet for conducting the cumulative impact assessment and is not available from a federal or state agency, the applicant may gather and submit this information to the cabinet as part of the permit application.

(3) Interpolation, modeling, correlation or other statistical methods, and other data extrapolation techniques may be used if the applicant can demonstrate to the satisfaction of the cabinet that such data extrapolation techniques are valid and that information obtained through such techniques meets the requirements of subsection (1) of this section.

(4) All water quality analyses performed to meet the requirements of this chapter shall be conducted according to the methodology in the fourteenth edition of "Standard Methods for the Examination of Water and Wastewater," or the methodology in 40 CFR Parts 136 [146] and 434. All water quality sampling shall be conducted according to either methodology listed above when feasible.

[(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 of this regulation.]

[(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. **Baseline** [Premining] Geologic [Geology] Information. (1) The application shall contain **baseline** [premining] geologic information collected from the permit area which shall meet the requirements of Section 12(1) of this regulation and shall include at a minimum:

(a) The results of samples obtained from continuous cores; drill cuttings; channel cuttings from fresh, unweathered, rock outcrops; or other rock or soil material which has been collected using acceptable sampling techniques.

1. The vertical extent of sampling shall include those strata from the surface down to and including the stratum immediately below the lowest coal seam to be mined; and

2. Where aquifers which are located within the permit area underlie the lowest coal seam to be mined and such aquifers may be adversely affected by the mining operation, the vertical

extent of sampling shall also include those strata from the lowest coal seam to be mined down to and including such aquifers.

3. The areal and vertical density of sampling shall, at a minimum, be sufficient to determine the distribution of strata which have a potential to produce acid drainage and to determine the areal and vertical extent of aquifers which may be adversely affected.

4. If the vertical extent, and the areal and vertical density of sampling specified in subparagraphs 1 through 3 of this paragraph are not sufficient to locate suitable strata for use as a topsoil substitute, or for other required design or analysis, additional sampling shall be conducted as necessary to furnish adequate geologic information.

(b) Chemical analyses **including, but not limited to, maximum potential acidity and neutralization potential** of each overburden stratum and the stratum immediately below the lowest coal seam to be mined, to identify those strata which have a potential to produce acid or toxic drainage.

(c) Chemical analyses of the coal seam to be mined to determine the potential to produce acid or toxic drainage, including the parameters of total sulfur and pyritic sulfur; except that the cabinet will not require an analysis for pyritic sulfur if the applicant can demonstrate to the satisfaction of the cabinet that an analysis for total sulfur provides adequate information to assure protection of the hydrologic balance.

(d) Collection of geologic information from the permit area as required in this subsection may be waived in whole or in part if:

1. The applicant can demonstrate to the satisfaction of the cabinet through geologic correlation or other procedures that information collected from outside the permit area is representative of the permit area and is sufficient to meet the requirements of Section 12(1) of this regulation; or

2. Other information equivalent to that required by this subsection is available to the cabinet in a satisfactory form and is made a part of the permit application; and

3. The cabinet provides a written statement granting a waiver.

(2) The application shall contain a description of the geology of the proposed permit area and adjacent area which shall meet the requirements of Section 12(1) of this regulation and be based on the information required in subsection (1) of this section or other appropriate geologic information. The description shall include, at a minimum, geologic logs, cross-sections, fence diagrams, or other appropriate illustrations and written descriptions depicting:

(a) Within the permit area:

1. The structural geology and lithology of overburden strata and the stratum immediately below the lowest coal seam to be mined;

2. The thickness and chemical characteristics of each overburden stratum and the stratum immediately below the lowest coal seam to be mined; and

3. Where aquifers may be adversely affected by the mining operation, the structural geology, lithology, thickness, and areal extent of such aquifers; and structural geology and lithology of strata, and thickness of each stratum, from the surface down to such aquifers.

(b) Within the adjacent area, the approximate areal extent and approximate thickness of aquifers which may be adversely affected by the mining operation.

(3) If determined by the cabinet to be necessary to assure adequate reclamation and protection of the hydrologic balance, the cabinet may require geologic information and description in addition to that required by subsections (1) and (2) of this section including, but not limited to, leaching tests of material from strata which may be disturbed by the operation to determine the potential for the operation to produce drainage with elevated levels of acidity, sulfate, and total dissolved solids, and the collection of information to greater depths within the proposed permit area or the collection of information for areas outside the proposed permit area.

[(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. **Baseline** [Premining] Ground Water Information. (1) The application shall contain **baseline** [premining] ground water information for the permit area and adjacent area which shall be collected and submitted in a manner acceptable to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this regulation.

(2) Ground water information shall include an

inventory of wells, springs, underground mines, or other similar ground water supply facilities which are currently being used, have been used in the past, or have a potential to be used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the location, ownership, type of usage, and where possible, other relevant information such as the depth and diameter of wells and approximate rate of usage, pumpage or discharge from wells, springs, and other ground water supply facilities.

(3) Ground water information shall include seasonal ground water quantity and quality data collected from monitoring wells, springs, underground mines, or other appropriate ground water monitoring facilities, at a sufficient number of monitoring locations with adequate areal distribution to meet the requirements of Section 12(1) of this regulation. Seasonal ground water quantity and quality data shall be provided for each water transmitting zone above, and potentially impacted water transmitting zone below, the lowest coal seam to be mined including at a minimum:

(a) Ground water levels; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; pH; dissolved iron; dissolved manganese; acidity; alkalinity; and sulfate. For data collected prior to the effective date of these amendments, total iron and total manganese may be substituted for dissolved iron and dissolved manganese.

(4) The ground water information described in subsection (3) of this section will be required in whole or in part for coal seams in those cases where coal seams to be mined are serving as water supply sources or are otherwise significant in protecting the hydrologic balance.

[(5) Monitoring wells constructed by the applicant shall be constructed according to the May, 1985 edition of the department's manual entitled "Monitoring Well Construction Specifications" which is incorporated herein by reference (copies of which may be obtained from the department). Wells which are currently being used for domestic or other purposes may be used for the collection of seasonal ground water quantity and quality data provided that:]

[(a) The wells are located such that they meet the requirements of subsection (3) of this section; and]

[(b) The wells can reasonably be expected to provide monitoring data equivalent to wells meeting the "Monitoring Well Construction Specifications."]

(5) [(6)] If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet may require ground water information in addition to that described in subsections (2), (3), and (4) of this section including, but not limited to, information pertaining to aquifer storage, yield, discharge, recharge capacity, and additional water quality parameters.

[(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. Baseline [Premining] Surface Water Information. (1) The application shall contain baseline [premining] surface water information for the permit area and adjacent area which shall be collected and submitted in a manner acceptable to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this regulation.

(2) Surface water information shall include an inventory of all streams, lakes, impoundments or other surface water bodies in the permit and adjacent area which are currently being used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the name of the surface water body which is being used as a water supply source; the location, drainage area, ownership, and type of usage for the withdrawal; and where possible other relevant information such as the rate of withdrawal and seasonal variation.

[(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.]

(3) [(2)] Surface water information shall include:

(a) The name, location, and ownership where appropriate, of all streams, lakes, impoundments, and other surface water bodies which receive runoff from watersheds which will be disturbed by the operation; and

(b) The location and description of any existing facilities located in watersheds which will be disturbed by the mining operation which may contribute to surface water pollution, such as existing or abandoned mining operations, oil wells, logging operations, or other similar facilities, including the location of any discharges which may be flowing from such facilities.

(4) Surface water information shall include seasonal quantity and quality data collected from a sufficient number of watersheds which will be disturbed by the operation with adequate areal distribution to meet the requirements of Section 12(1) of this regulation and include at a minimum:

(a) Flow rates; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; total suspended solids; pH; total

iron; total manganese; acidity; alkalinity; and sulfate.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet may require surface water information in addition to that described in subsections (2), (3), and (4) of this section including, but not limited to, information pertaining to flood flows and additional water quality parameters.

[(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 parameters as appropriate to ensure collection of information which the cabinet determines is relevant.]

[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 iron in milligrams per liter;]

[7. Total 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 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 area which is used for domestic, agricultural, industrial, or other beneficial [legitimate] use.

(2) If contamination, diminution, or interruption of a surface or ground water source may result, then the application [description] shall identify and describe the adequacy and suitability of the alternative sources of water supply that could be developed for existing premining uses and approved postmining land uses [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.

(4) The application shall contain a description identifying the extent to which cities, towns, and municipalities, or parts thereof, are located within the proposed permit area.

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, and 38 of this regulation, 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 of this regulation.

(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 of this regulation, and fill area for the disposal of excess spoil in accordance with Section 27 of this regulation.

(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 including a demonstration of suitability of any proposed topsoil substitutes or supplements;

(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. This plan shall include, at a minimum, information setting forth the limitations the permittee will meet with regard to ground vibration and airblast, the bases for the ground vibration and airblast limitations, and the methods to be applied in controlling the adverse effects of blasting operations.

(2) Each application shall contain a description of the systems to be used to monitor compliance with the standards for ground vibration and airblast including identification of the types, capabilities, and sensitivities of blast monitoring equipment and identification of the monitoring procedures and locations.

(3) Blasting operations within 500 feet of active underground mines require approval of the cabinet, MSHA, and the Kentucky Department of Mines and Minerals.

[(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 application shall contain a description, as set forth in this subsection, of the measures to be taken to minimize disturbances to the hydrologic balance within the permit area and adjacent area and to prevent material damage to the hydrologic balance outside the permit area.

(a) The description shall be based upon the baseline [premining] geologic, hydrologic, and other information required by Sections 12 through 16 of this regulation and other appropriate information, **shall be specific to local hydrologic conditions,** and shall be prepared in a manner and detail acceptable to the cabinet.

(b) The description shall identify the protective measures to be taken to enable the operation to meet, at a minimum, each of the hydrologic requirements referenced in this paragraph, or shall demonstrate to the satisfaction of the cabinet that protective measures are not necessary in order to enable the operation to meet such requirements:

1. Meet applicable water quality statutes, regulations, standards, and effluent limitations as required by 405 KAR 16:060, Section 1(3);

2. Avoid acid or toxic drainage as required by 405 KAR 16:060, Sections 4 and 5;

3. Control the discharge of sediment to streams located outside the permit area as

required by 405 KAR 16:060, Section 2;

4. Control the drainage and discharge of water within the permit area as required by 405 KAR 16:060, Sections 1(4), 3, 9, and 12, and 405 KAR 16:080;

5. Restore the approximate premining recharge capacity of the permit area as required by 405 KAR 16:060, Section 6; and

6. Protect or replace the water supply of present users as required by 405 KAR 16:060, Section 8.

(c) The cabinet may require that the description include protective measures in addition to those identified under paragraph (b) of this subsection, if the cabinet determines that additional measures are needed to protect the hydrologic balance in accordance with 405 KAR 16:060.

(2) Each application shall include the design of any necessary protective measures identified under subsection (1) of this section. The design shall be prepared in a manner and detail acceptable to the cabinet including, as appropriate, calculations, maps, drawings, and written explanations as necessary to document the design.

(3) Each application shall include a determination of the probable hydrologic consequences of the mining and reclamation operations for the permit area and adjacent area.

(a) The determination shall be based upon the **baseline** [premining] geologic, hydrologic, and other information required by Sections 12 through 16 of this regulation and other appropriate information, and may include information statistically representative of the site.

(b) The determination shall be completed according to the parameters and in the detail required by the cabinet to enable the cabinet to prepare a cumulative impact assessment, and shall take into account the anticipated effects of protective measures required by this chapter.

(c) For surface water systems, the determination shall, at a minimum, include probable impacts on:

1. Peak discharge rates, emphasizing the potential for flooding;

2. Settleable solids at peak discharge;

3. Low-flow discharge rates, emphasizing the potential for water supply diminution;

4. Suspended solids at low flow;

5. pH, at low flow, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(d) For ground water systems, the determination shall, at a minimum, include probable impacts on:

1. Water quantity, emphasizing water levels and the potential for water supply diminution for existing users, and dewatering of aquifers which are not currently being used for water supply but have the potential to be developed as a water supply source.

2. pH, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(e) An application for a major revision to a permit shall be reviewed by the cabinet to determine whether a new or updated determination of the probable hydrologic consequences shall be required.

(4) (a) The application shall include a plan for the collection, recording, and reporting of ground water and surface water quantity and quality data to monitor the effects of the mining and reclamation operations on the hydrologic balance, according to 405 KAR 16:110.

(b) The monitoring plan shall be based on the geologic and hydrologic **baseline** [premining] information, the mining and reclamation plan, and the determination of probable hydrologic consequences; and shall:

1. Identify the quantity and quality parameters to be monitored, sampling frequency, and monitoring site locations; and

2. Describe how the data may be used to determine the impacts of the operation on the hydrologic balance.

(5) An application for a major revision to a permit shall be reviewed by the cabinet to determine whether a new or updated cumulative hydrologic impact assessment shall be made.

[(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.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: July 10, 1985
FILED WITH LRC: July 12, 1985 at noon.

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

405 KAR 8:040. Underground coal mining permits.

RELATES TO: KRS 350.060, 350.151
PURSUANT TO: KRS Chapter 13A [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 of this regulation. 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 **Baseline** [Premining] Geologic and Hydrologic Information [Geology and Hydrology]. (1) The application shall contain **baseline** [premining] geologic and hydrologic information which has been collected, analyzed, and submitted in the detail and manner acceptable to the cabinet, and which shall be sufficient to:

(a) Identify and describe protective measures pursuant to Section 32(1) of this regulation which will be implemented during the mining and reclamation process to assure protection of the hydrologic balance, or to demonstrate that protection of the hydrologic balance can be assured without the design and installation of protective measures; and to design necessary protective measures pursuant to Section 32(2) of this regulation.

(b) Determine the probable hydrologic consequences of the mining and reclamation operations upon the hydrologic balance in the permit area and adjacent area pursuant to Section 32(3) of this regulation so that an assessment can be made by the cabinet pursuant to 405 KAR 8:010, Section 14(3) of the probable cumulative impacts of all anticipated mining on the hydrologic balance in the cumulative impact area;

(c) Determine pursuant to 405 KAR 8:010, Section 14(2) and (3) whether reclamation as

required by KAR Title 405 can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance; and

(d) Design surface and ground water monitoring systems pursuant to Section 32(4) of this regulation for the during-mining and postmining time period which, together with the baseline [premining] data collected under Sections 14(1) and 15(1) of this regulation, will demonstrate whether the mining operation is meeting applicable effluent limitations and stream standards and protecting the hydrologic balance.

(2)(a) Geologic and hydrologic information pertaining to the area outside the permit and adjacent area but within the cumulative impact assessment area shall be provided to the applicant by the cabinet:

1. If this information is needed in preparing the cumulative impact assessment; and

2. If this information is available from an appropriate federal or state agency.

(b) If this information is needed by the cabinet for conducting the cumulative impact assessment and is not available from a federal or state agency, the applicant may gather and submit this information to the cabinet as part of the permit application.

(3) Interpolation, modeling, correlation or other statistical methods, and other data extrapolation techniques may be used if the applicant can demonstrate to the satisfaction of the cabinet that such data extrapolation techniques are valid and that information obtained through such techniques meets the requirements of subsection (1) of this section.

(4) All water quality analyses performed to meet the requirements of this chapter shall be conducted according to the methodology in the fourteenth edition of "Standard Methods for the Examination of Water and Wastewater," or the methodology in 40 CFR Parts 136 [146] and 434. All water quality sampling shall be conducted according to either methodology listed above when feasible.

[(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 of this regulation.]

[(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. Baseline [Premining] Geologic [Geology] Information. (1) The application shall contain baseline [premining] geologic information collected from the permit area which shall meet the requirements of Section 12(1) of this regulation and shall include at a minimum:

(a) The results of samples obtained from continuous cores; drill cuttings; channel cuttings from fresh, unweathered, rock outcrops; or other rock or soil material which has been collected using acceptable sampling techniques.

1. For those areas where overburden will be removed, the vertical extent of sampling shall include those strata from the surface down to and including the stratum immediately below the lowest coal seam to be mined; and

2. For those areas overlying underground workings where overburden will not be removed, the vertical extent of sampling shall include those strata above and below the coal seam to be mined which may be impacted [fracture, incur subsidence, or otherwise be disturbed] by the mining operation.

3. Where aquifers within the permit area are located above or below the coal seam to be mined and such aquifers may be adversely affected by the mining operation, the vertical extent of sampling shall also include the aquifer and those strata which lie between the coal seam and the aquifer.

4. The areal and vertical density of sampling shall, at a minimum, be sufficient to determine the distribution of strata which have a potential to produce acid drainage and to determine the areal and vertical extent of aquifers which may be adversely affected.

5. If the vertical extent, and the areal and vertical density of sampling specified in subparagraphs 1 through 4 of this paragraph are not sufficient to locate suitable strata for use as a topsoil substitute, to determine the potential for subsidence, or for other required design or analysis, additional sampling shall be conducted as necessary to furnish adequate geologic information.

(b)1. To identify strata which have a potential to produce acid or toxic drainage for areas where overburden will be removed, chemical analyses including, but not limited to, maximum potential acidity and neutralization potential of each overburden stratum and the stratum immediately below the lowest coal seam to be mined; and

2. To identify strata which have a potential to produce acid or toxic drainage for areas overlying underground workings where overburden will not be removed, chemical analyses including, but not limited to, maximum potential acidity and neutralization potential of the strata immediately above and below the coal seam to be mined. [(b) Chemical analyses of each overburden stratum and the stratum immediately below the lowest coal seam to be mined for those areas where overburden will be removed, and chemical analysis of each stratum which may be fractured or otherwise disturbed by the mining operation for those areas overlying underground workings where overburden will not be removed, to identify those strata which have a potential to produce acid or toxic drainage.]

(c) Chemical analyses of the coal seam to be mined to determine the potential to produce acid

or toxic drainage, including the parameters of total sulfur and pyritic sulfur; except that the cabinet will not require an analysis for pyritic sulfur if the applicant can demonstrate to the satisfaction of the cabinet that an analysis for total sulfur provides adequate information to assure protection of the hydrologic balance.

(d) For standard room and pillar mining operations, the engineering properties of clays or soft rock such as clay shale, if any, located immediately above and below each coal seam to be mined.

(e) Collection of geologic information from the permit area as required in this subsection may be waived in whole or in part if:

1. The applicant can demonstrate to the satisfaction of the cabinet through geologic correlation or other procedures that information collected from outside the permit area is representative of the permit area and is sufficient to meet the requirements of Section 12(1) of this regulation; or

2. Other information equivalent to that required by this subsection is available to the cabinet in a satisfactory form and is made a part of the permit application; and

3. The cabinet provides a written statement granting a waiver.

(2) The application shall contain a description of the geology of the proposed permit area and adjacent area which shall meet the requirements of Section 12(1) of this regulation and be based on the information required in subsection (1) of this section or other appropriate geologic information. The description shall include, at a minimum, geologic logs, cross-sections, fence diagrams, or other appropriate illustrations and written descriptions depicting:

(a) Within the permit area:

1. The structural geology and lithology of overburden strata and the stratum immediately below the lowest coal seam to be mined for those areas where overburden will be removed; and the structural geology and lithology of strata which may be impacted [fracture, incur subsidence, or otherwise be disturbed] by the mining operation for those areas overlying underground workings where overburden will not be removed.

2. The thickness and chemical characteristics of each overburden stratum and the stratum immediately below the lowest coal seam to be mined for those areas where overburden will be removed; or the thickness and chemical characteristics of each stratum which may be impacted [fracture, or otherwise be disturbed] by the mining operation for those areas overlying underground workings where overburden will not be removed.

3. Where aquifers may be adversely affected by the mining operation, the structural geology, lithology, thickness, and areal extent of such aquifers; and structural geology and lithology of strata, and thickness of each stratum, whether located above or below the coal seam to be mined, which lie between the coal seam and such aquifers.

4. For standard room and pillar mining operations, the thickness and engineering properties of clays or soft rock such as clay shale, if any, located immediately above and below each coal seam to be mined.

(b) Within the adjacent area, the approximate areal extent and approximate thickness of aquifers which may be adversely affected by the mining operation.

(3) If determined by the cabinet to be necessary to assure adequate reclamation and protection of the hydrologic balance, the cabinet may require geologic information and description in addition to that required by subsections (1) and (2) of this section including, but not limited to, leaching tests of material from strata which may be disturbed by the operation to determine the potential for the operation to produce drainage with elevated levels of acidity, sulfate, and total dissolved solids, and the collection of information to greater depths within the proposed permit area or the collection of information for areas outside the proposed permit area.

[(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. **Baseline** [Premining] Ground Water Information. (1) The application shall contain **baseline** [premining] ground water information for the permit area and adjacent area which shall be collected and submitted in a manner acceptable to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this regulation.

(2) Ground water information shall include an inventory of wells, springs, underground mines, or other similar ground water supply facilities which are currently being used, have been used in the past, or have a potential to be used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the location, ownership, type of usage, and where possible, other relevant information such as the depth and diameter of wells and approximate rate of usage, pumpage or discharge from wells, springs, and other ground water supply facilities.

(3) Ground water information shall include seasonal ground water quantity and quality data collected from monitoring wells, springs, underground mines, or other appropriate ground water monitoring facilities, at a sufficient number of monitoring locations with adequate areal distribution to meet the requirements of Section 12(1) of this regulation. Seasonal ground water quantity and quality data shall be provided for each water transmitting zone above, and potentially impacted water transmitting zone below, the lowest coal seam to be mined including at a minimum:

(a) Ground water levels; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; pH; dissolved iron; dissolved manganese; acidity; alkalinity; and sulfate.**For data collectd prior to the effective date of these amendments, total iron and total manganese may be substituted for dissolved iron and dissolved manganese.**

(4) The ground water information described in subsection (3) of this section will be required in whole or in part for coal seams in those cases where coal seams to be mined are serving as water supply sources or are otherwise significant in protecting the hydrologic balance.

[(5) Monitoring wells constructed by the applicant shall be constructed according to the May, 1985 edition of the department's manual entitled "Monitoring Well Construction Specifications." Wells which are currently being used for domestic or other purposes may be used for the collection of seasonal ground water quantity and quality data provided that:]

[(a) The wells are located such that they meet the requirements of subsection (3) of this section; and]

[(b) The wells can reasonably be expected to provide monitoring data equivalent to wells meeting the "Monitoring Well Construction Specifications."]

(5) [(6)] If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet may require ground water information in addition to that described in subsections (2), (3), and (4) of this section including, but not limited to, information pertaining to aquifer storage, yield, discharge, recharge capacity, and additional water quality parameters.

[(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. **Baseline** [Premining] Surface Water Information. (1) The application shall contain **baseline** [premining] surface water information for the permit area and adjacent area which shall be collected and submitted in a manner acceptable to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this regulation.

(2) Surface water information shall include an inventory of all streams, lakes, impoundments or other surface water bodies in the permit and adjacent area which are currently being used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the name of the surface water body which is being used as a water supply source; the location, drainage area, ownership, and type of usage for the withdrawal; and where possible other relevant information such as the rate of withdrawal and seasonal variation.

[(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.]

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

(a) The name, location, and ownership where appropriate, of all streams, lakes, impoundments, and other surface water bodies which receive runoff from watersheds which will be disturbed by the operation; and

(b) The location and description of any existing facilities located in watersheds which will be disturbed by the mining operation which may contribute to surface water pollution, such as existing or abandoned mining operations, oil

wells, logging operations, or other similar facilities, including the location of any discharges which may be flowing from such facilities.

(4) Surface water information shall include seasonal quantity and quality data collected from a sufficient number of watersheds which will be disturbed by the operation with adequate areal distribution to meet the requirements of Section 12(1) of this regulation and include at a minimum:

(a) Flow rates; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; total suspended solids; pH; total iron; total manganese; acidity; alkalinity; and sulfate.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet may require surface water information in addition to that described in subsections (2), (3), and (4) of this section including, but not limited to, information pertaining to flood flows and additional water quality parameters.

[(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 parameters as appropriate to ensure collection of information which the cabinet determines is relevant.]

[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 iron in milligrams per liter;]

[7. Total 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) of this regulation.

(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.

(4) The application shall contain a description identifying the extent to which cities, towns, and municipalities, or parts thereof, are located within the proposed permit area.

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 of this regulation 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 of this regulation, 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 facilities.
(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 of this regulation.
(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 of

this regulation, and each disposal area for underground development waste and excess spoil, in accordance with Section 28 of this regulation;

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 including a demonstration of suitability of any proposed topsoil substitutes or supplements;

(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 and Excess Spoil. 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, 405 KAR 18:140, and 405 KAR 18:160 as applicable. 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 and the applicable requirements of this regulation.

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 application shall contain a description, as set forth in this subsection, of the measures to be taken to minimize disturbances to the hydrologic balance within the permit area and adjacent area and to prevent material damage to the hydrologic balance outside the permit area.

(a) The description shall be based upon the **baseline** [premining] geologic, hydrologic, and other information required by Sections 12 through 16 of this regulation and other appropriate information, **shall be specific to local hydrologic conditions**, and shall be prepared in a manner and detail acceptable to the cabinet.

(b) The description shall identify the protective measures to be taken to enable the operation to meet, at a minimum, each of the hydrologic requirements referenced in this paragraph, or shall demonstrate to the satisfaction of the cabinet that protective measures are not necessary in order to enable the operation to meet such requirements:

1. Meet applicable water quality statutes, regulations, standards, and effluent limitations as required by 405 KAR 18:060, Section 1(3);

2. Avoid acid or toxic drainage as required by 405 KAR 18:060, Section 4;

3. Control the discharge of sediment to streams located outside the permit area as required by 405 KAR 18:060, Section 2; and

4. Control the drainage and discharge of water within the permit area as required by 405 KAR 18:060, Sections 1(4), 3, 5, and 7, and 405 KAR 18:080.

(c) The cabinet may require that the description include protective measures in addition to those identified under paragraph (b) of this subsection, if the cabinet determines that additional measures are needed to protect the hydrologic balance in accordance with 405 KAR 18:060.

(2) Each application shall include the design of any necessary protective measures identified under subsection (1) of this section. The design shall be prepared in a manner and detail acceptable to the cabinet including, as appropriate, calculations, maps, drawings, and written explanations as necessary to document the design.

(3) Each application shall include a determination of the probable hydrologic consequences of the mining and reclamation operations for the permit area and adjacent area.

(a) The determination shall be based upon the **baseline** [premining] geologic, hydrologic, and other information required by Sections 12 through 16 of this regulation and other appropriate information, and may include information statistically representative of the site.

(b) The determination shall be completed according to the parameters and in the detail required by the cabinet to enable the cabinet to prepare a cumulative impact assessment, and shall take into account the anticipated effects of protective measures required by this chapter.

(c) For surface water systems, the determination shall, at a minimum, include probable impacts on:

1. Peak discharge rates, emphasizing the potential for flooding;

2. Settleable solids at peak discharge;

3. Low-flow discharge rates, emphasizing the potential for water supply diminution;

4. Suspended solids at low flow;

5. pH, at low flow, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(d) For ground water systems, the determination shall, at a minimum, include probable impacts on:

1. Water quantity, emphasizing water levels and the potential for water supply diminution for existing users, and dewatering of aquifers which are not currently being used for water supply but have the potential to be developed as a water supply source.

2. pH, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(e) An application for a major revision to a permit shall be reviewed by the cabinet to determine whether a new or updated determination of the probable hydrologic consequences shall be required.

(4)(a) The application shall include a plan for the collection, recording, and reporting of ground water and surface water quantity and quality data to monitor the effects of the mining and reclamation operations on the hydrologic balance, according to 405 KAR 18:110.

(b) The monitoring plan shall be based on the geologic and hydrologic **baseline** [premining] information, the mining and reclamation plan, and the determination of probable hydrologic consequences; and shall:

1. Identify the quantity and quality parameters to be monitored, sampling frequency, and monitoring site locations; and

2. Describe how the data may be used to determine the impacts of the operation on the hydrologic balance.

(5) An application for a major revision to a permit shall be reviewed by the cabinet to determine whether a new or updated cumulative hydrologic impact assessment shall be made.

[(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) of this regulation;

(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.

Section 39. 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 18:120. This plan shall include, at a minimum, information setting forth the limitations the permittee will meet with regard to ground vibration and airblast, the bases for the ground vibration and airblast limitations, and the methods to be applied in controlling the adverse effects of blasting operations.

(2) Each application shall contain a description of the systems to be used to monitor compliance with the standards for ground vibration and airblast including the types, capabilities, and sensitivities of blast monitoring equipment and identification of the monitoring procedures and locations.

(3) Blasting operations within 500 feet of active underground mines require approval of the cabinet, MSHA, and the Kentucky Department of Mines and Minerals.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: July 10, 1985
FILED WITH LRC: July 12, 1985 at noon

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

405 KAR 12:020. Enforcement.

RELATES TO: KRS 350.020, 350.028, 350.050, 350.085, 350.113, 350.130, 350.151, 350.465, 350.990

PURSUANT TO: KRS Chapter 13A [13.082], 350.020, 350.028, 350.050, 350.130, 350.465

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part directs the cabinet to rigidly enforce regulations promulgated to control the injurious effects of surface coal mining and reclamation operations. This regulation sets forth various kinds of notices and orders to be issued by authorized representatives of the cabinet. The regulation directs that there be issued a notice of noncompliance and order for remedial measures. The regulation requires that an order for cessation and immediate compliance be issued for failure to abate a violation during a specified abatement period or for situations of imminent harm. The regulation sets forth the general form of the notices and orders and authority to vacate, modify, or terminate such orders or notices. The regulation sets forth procedures for suspension or revocation of a permit and for a determination of whether a pattern of violations exists.

Section 1. General. (1) The secretary of the cabinet may from time to time or for a definite period designate, by written order or by other means appropriate under the circumstances, authorized representatives to perform duties pursuant to the regulations contained in Title 405, Chapters 7 through 24.

(2) Unless otherwise provided to the contrary in Title 405, Chapters 7 through 24 or unless the secretary has made a written order contrary to the terms of this subsection, personnel authorized by the Commissioner of the Department of Surface Mining Reclamation and Enforcement are deemed the authorized representatives of the cabinet [secretary] for the purposes of Sections 2, 3, and 4 of this regulation.

Section 2. Notice of Noncompliance and Order for Remedial Measures. (1) Issuance. An authorized representative of the cabinet [secretary] shall issue a notice of noncompliance and order for remedial measures if, on the basis of inspection, he or she finds a violation of KRS Chapter 350; Title 405, Chapters 7 through 24; any term or condition of a permit; any term or condition of approval (for coal exploration and reclamation operations requiring cabinet approval); or any other applicable requirement.

(2) Form and content. A notice of noncompliance and order for remedial measures issued pursuant to this section shall be in writing and shall be signed by the authorized representative of the cabinet who issued it. The notice shall set forth with reasonable specificity:

(a) The nature of the violation;

(b) The remedial action required, if any, which may include accomplishment of interim steps if appropriate;

(c) A reasonable time for remedial action, if any, which may include time for accomplishment of interim steps if appropriate; and

(d) A reasonable description of the portions of the surface coal mining and reclamation operations or coal exploration and reclamation operations to which the notice applies.

(3) Service. Service of a notice of noncompliance and order for remedial measures shall be in the manner set forth in Section 5 of this regulation.

(4) Extension. An authorized representative of the cabinet [secretary] may, by written notice, extend the time set for remedial action or for accomplishment of an interim step, if the failure to meet the time previously set was not caused by lack of diligence on the part of the person to whom the notice of noncompliance and order for remedial measures was issued.

(a) The total time for remedial action under such notice, including all extensions, shall not exceed ninety (90) days from the date of issuance of the notice except upon a showing by the permittee or the person conducting the coal exploration and reclamation operations that it is not feasible to abate the violation within ninety (90) calendar days due to one (1) or more of the circumstances set forth in paragraph (b) of this subsection. An abatement period exceeding [date beyond] ninety (90) days pursuant to this subsection shall not be granted for situations in which [when] the permittee's failure or the failure of the person conducting the coal exploration and reclamation operations to abate within ninety (90) days has been caused by a lack of diligence or intentional delay by the permittee or the person conducting the coal exploration and reclamation operations in completing the remedial action required.

(b) Circumstances which may qualify [a] surface coal mining and reclamation operations or coal exploration and reclamation operations for an abatement period of more than ninety (90) days are situations in which:

1. [Where] The permittee of the [an] ongoing [permitted] surface coal mining and reclamation operations or the person conducting the coal exploration and reclamation operations has timely applied for and diligently pursued a permit renewal or other necessary approval of designs or plans, but such permit or approval, for reasons not within the control of the permittee or the person conducting the coal exploration and reclamation operations, has not been and [or] will not be issued prior to [within] ninety (90) days after the [a] valid permit or approval expires or is required[, for reasons not within the control of the permittee];

2. [Where] There is a valid judicial order precluding abatement within ninety (90) days [as] to which the permittee or the person conducting the coal exploration and reclamation operations has diligently pursued all rights of appeal and [as] to which he or she has no other effective legal remedy;

3. [Where] The permittee or the person conducting the coal exploration and reclamation operations cannot abate within ninety (90) days due to a labor strike; or [and]

4. [Where] Weather conditions preclude abatement within ninety (90) days; [, or where,] due to weather conditions abatement within

ninety (90) days would clearly [would] cause more environmental harm than it would prevent; or abatement within ninety (90) days requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act.

(c) Whenever an abatement period [time] in excess of ninety (90) days is approved by the cabinet [permitted], interim abatement measures shall be imposed to the extent necessary to minimize harm to the public and [or] the environment.

(d) If any of the conditions in paragraph (b) of this subsection exist, the permittee or the person conducting the coal exploration and reclamation operations may request the authorized representative of the cabinet to grant an abatement period exceeding ninety (90) days. The authorized representative of the cabinet shall not grant such an abatement period without the approval [concurrence] of the Director of the Division of Field Services [Operations and Enforcement] or his or her designee, and the abatement period granted shall not exceed the shortest possible time necessary to abate the violation. The permittee or the person conducting the coal exploration and reclamation operations shall have the burden of establishing by clear and convincing proof that he or she is entitled to an extension under the provisions of this subsection. In determining whether or not to grant an abatement period exceeding ninety (90) days, the authorized representative of the cabinet may consider any relevant written or oral information from the permittee, the person conducting the coal exploration and reclamation operations, and [or] any other sources. The authorized representative of the cabinet shall promptly and full document in the applicable file his or her recommendation [reasons] for granting or denying the request and the reasons therefor. The authorized representative's immediate supervisor shall review this document before approving [concurring in] or disapproving the extended abatement period [date] and shall promptly and fully document the reasons for his or her approval [concurrence] or disapproval in the applicable file.

(e) Any determination made under paragraph (d) of this subsection shall be in writing and shall be subject to administrative and judicial review pursuant to 405 KAR 7:090.

(f) No extension granted under this subsection may exceed ninety (90) days in length. In situations in which [Where] the condition or circumstance that [which] prevented abatement within ninety (90) days exists at the expiration of the [any such] extension, the permittee or the person conducting the coal exploration and reclamation operations may request a further extension in accordance with the procedures of this subsection.

(5) Modification. An authorized representative of the cabinet [secretary] may, by written notice, modify an order for remedial measures for good cause.

(6) Termination. An authorized representative of the cabinet [secretary] shall, by issuance of a notice of inspection of noncompliance, provide written notice to the person to whom a notice of noncompliance and order for remedial measures has been [was] issued that such notice is terminated when the authorized representative of the cabinet determines that all [a] violations listed therein have [has] been corrected. Such termination shall not affect the right of the cabinet to assess civil penalties for those violations pursuant to 405 KAR 7:090 or to impose any other applicable sanctions as authorized by law.

(7) Vacation. Based upon the written recommendation of the regional administrator and the authorized representative of the cabinet [secretary] who issued the notice of noncompliance and order for remedial measures, the Director of the Division of Field Services [operations and enforcement] may vacate a notice of noncompliance and order for remedial measures determined to have been issued in error.

Section 3. Order for Cessation and Immediate Compliance. (1) Issuance.

(a) If the [a] person to whom [issued] a notice of noncompliance and order for remedial measures has been issued fails to comply with the terms of such notice within the time for remedial action established therein or as subsequently extended, an authorized representative of the cabinet [secretary] shall immediately issue to the person an order for cessation and immediate compliance.

(b) An authorized representative of the cabinet [secretary] shall immediately issue an order for cessation and immediate compliance if he or she finds, on the basis of an inspection, any condition or practice; [or] any violation of KRS Chapter 350; any violation of Title 405, Chapters 7 through 24; or any violation of a term or condition of the applicable [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.

(c) An authorized representative of the cabinet shall immediately issue an order for a cessation and immediate compliance if he or she finds, on the basis of an inspection, that surface coal mining and reclamation operations are being conducted by a person without a valid surface coal mining and reclamation operations permit for the activities or that coal exploration and reclamation operations are being conducted without proper notice of intention to explore or approval for such operations, as applicable, in accordance with 405 KAR 8:020.

(2) Form and content.

(a) An order for cessation and immediate compliance shall be in writing and shall be signed by the authorized representative of the cabinet who issued it. The order shall set forth with reasonable specificity:

1. The nature of the violation;

2. A reasonable description of the portions of the operations in which it applies;

3. The remedial measures, if any, necessary[, if any,] to abate the violation in the most expeditious manner possible; and

4. The time established for abatement, if appropriate, including the time for complying with [meeting] any interim steps.

(b) At the same time that the authorized representative of the cabinet [secretary] issues an order for cessation and immediate compliance

pursuant to [under] subsection (1)(b) or (c) of this section, he or she shall also issue a notice of noncompliance and order for remedial measures.

(3) Service. Service of an order for cessation and immediate compliance shall be in the manner set forth in Section 5 of this regulation.

(4) Effect.

(a) The order for cessation and immediate compliance shall require the cessation of all surface coal mining and reclamation operations, all coal exploration and reclamation operations, or the portions or operations thereof relevant to the condition, practice, or violation covered by the order. The order shall require the person to whom it is issued to take any affirmative steps which the authorized representative of the cabinet [secretary] deems necessary to abate the condition, practice, or violation in the most expeditious manner possible. The order may require the use of existing or additional personnel and equipment.

(b) The order shall remain in effect until the condition, practice, or violation has been abated; [or] until the order is vacated, modified, or terminated in writing pursuant to subsection (5) of this section; [by an authorized representative of the secretary; or] until it is vacated, modified, or terminated by a hearing officer pursuant to 405 KAR 7:090; or until the order expires pursuant to Section 6 of this regulation.

(c) Reclamation operations and other activities intended to protect public health and safety and the environment shall continue during the period of any order unless otherwise provided in the order.

(5) Modification, extension, vacation, and termination.

(a) An authorized representative of the cabinet [secretary] may, by written notice, modify or terminate an order for cessation and immediate compliance issued pursuant to this section for good cause and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the person to whom it was issued.

(b) The secretary or his or her authorized representative shall terminate an [the] order for cessation and immediate compliance, by written notice to the person to whom the order was issued, when he or she determines that all conditions, practices, and [or] violations listed in the order have been abated. Termination shall not affect the right of the cabinet to assess civil penalties for those violations under 405 KAR 7:090 or to impose any other applicable sanctions as authorized by law.

(c) Based upon the written recommendations of the regional administrator and the authorized representative of the cabinet [secretary] who issued the order for cessation and immediate compliance, the Director of the Division of Field Services [operations and enforcement] may vacate an order for cessation and immediate compliance determined to have been issued in error.

Section 4. Notice of Inspection and Noncompliance. (1) Issuance. If an authorized representative of the cabinet [secretary] issues a notice of noncompliance and order for remedial measures or an order for cessation and immediate compliance, he or she shall re-inspect the areas affected by the surface coal mining and reclamation operations or the coal exploration and reclamation operations [permit area] on or soon after the date given in the notice or order for completion of remedial measures. At the time of re-inspection, the authorized representative of the cabinet shall issue a notice of inspection of noncompliance.

(2) Form and content. The notice of inspection of noncompliance shall set forth whether:

(a) The remedial measures have been completed, and the notice or order is therefore terminated;

(b) The remedial measures have not been completed, but the notice or order is modified or extended for good cause; or

(c) The remedial measures have not been completed. Following such a determination, the cabinet shall:

1. For the situations in which the inspection was a re-inspection of a notice of noncompliance and order for remedial measures, issue an order for cessation and immediate compliance; and

2. For situations in which the inspection was a re-inspection of an order for cessation and immediate compliance and if the order for cessation and immediate compliance has not been abated following the preliminary hearing, initiate a formal hearing for suspension or revocation of the permit or approval, initiate a formal hearing for bond forfeiture, or initiate administrative proceedings for other appropriate relief [or an order to show cause why the permittee's permit should not be suspended or revoked and bond forfeited].

(3) Service. Service of a notice of inspection for noncompliance shall be in the manner set forth in Section 5 of this regulation.

Section 5. Service of Notices and Orders. (1) Any notice of noncompliance and order for remedial measures, order for cessation and immediate compliance, or notice of inspection of noncompliance shall be served on the person to whom it is issued or the person's designated agent promptly after issuance.

(2) Each notice of noncompliance and order for remedial measures, order for cessation and immediate compliance, and notice of inspection of noncompliance [Such notices and orders] shall be served by hand, [or] by certified mail (return receipt requested), or by registered mail to the person to whom the notice or order has been [is] issued or to his or her designated agent for service. The notice or order shall also be served by hand to the individual who, based upon reasonable inquiry by the authorized representative, appears to be in charge at the site of the surface coal mining and reclamation operations or coal exploration and reclamation operations referred to in the notice or order. If no such individual can be located at the site, a copy of the notice or order may be tendered to any individual at the site who appears to be an employee or agent of the person to whom the notice or order has been [is] issued. Service, whether by hand or by mail, shall be complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept. For surface coal mining and reclamation operations, service by mail shall be addressed to the designated agent for

service; [or] to the permanent address of the permittee as identified [shown] on the permit or in the [and] application; or, if no address is identified for the permittee in [shown on] the application, to such other address as is known to the cabinet. For coal exploration and reclamation operations, service by mail shall be addressed to the designated agent for service; to the permanent address of the person conducting the coal exploration and reclamation operations as identified in the notice of intention to explore or in the application for coal exploration and reclamation approval submitted pursuant to 405 KAR 8:020; or, if no address is identified for the person conducting the coal exploration and reclamation operations in the notice or the application submitted pursuant to 405 KAR 8:020, to such other address as is known to the cabinet. If no person is present at the site of the surface coal mining and reclamation operations or the coal exploration and reclamation operations, service by mail shall by itself be sufficient notice.

(3) Designation by any person of an agent for service of notices and orders issued pursuant to this regulation and notices of hearing issued pursuant to 405 KAR 7:090 shall be made a part of the applicable permit application, notice of intention to explore, or application for coal exploration and reclamation approval. Such person shall continue as agent for service of process until such time as written revision of the permit, a notice of intention to explore, or coal exploration and reclamation approval is made which designates another person as agent.

(4) The cabinet may furnish copies of notices and orders to any person having an interest which is or may be adversely affected by [, in] the coal exploration and reclamation operations or by the surface coal mining and reclamation operations and [, or] any person having an interest in the permit or exploration area.

Section 6. Expiration. When a notice of noncompliance and order for remedial measures or an order for cessation and immediate compliance requires cessation of coal removal expressly or by implication, such notice or order shall expire thirty (30) days after it is served unless a hearing pursuant to 405 KAR 7:090 is held at or near the mine site or the exploration site within that time except that such notices and orders shall not expire if the condition, practice, or violation in question has been abated or if the person to whom the notice or order has been issued has waived the preliminary hearing or has agreed to its postponement [has been waived]. Expiration of the order shall not affect the rights of the cabinet to assess appropriate penalties and to impose applicable sanctions with respect to the time period during which the order was in effect for the violations for which the order was issued.

Section 7. Suspension and [or] Revocation of Permits and Exploration Approvals. The cabinet may initiate formal hearings for suspension or revocation of permits and coal exploration and reclamation approvals, may initiate formal hearings for bond forfeitures, and may initiate formal hearings or judicial proceedings for other appropriate relief measures [issue an order to a permittee requiring that permittee to show cause why his or her permit or coal exploration approval should not be suspended or revoked pursuant to 405 KAR 7:090].

Section 8. Inability to Comply. (1) No notice or order issued pursuant to the regulations of this Title may be vacated because of inability to comply.

(2) Inability to comply may not be considered in determining whether a pattern of violations exists.

(3) Rapid compliance, good faith, diligence, and inability to comply may be considered in mitigation of proposed penalty assessments under 405 KAR 7:090.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: July 10, 1985
FILED WITH LRC: July 12, 1985 at noon

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

405 KAR 16:110. Surface and ground water monitoring.

RELATES TO: KRS 350.100, 350.405, 350.420, 350.465,
PURSUANT TO: KRS Chapter 13A [13.082], 350.028, 350.420, 350.465
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during surface mining activities and for restoration and reclamation of surface areas affected by mining activities. This regulation sets forth requirements for the monitoring and reporting of surface water quality and quantity, and ground water levels and quality and aquifer conditions, and the required duration of such monitoring.

Section 1. General Requirements [Groundwater]. (1) Surface and ground water monitoring shall be conducted in a manner acceptable to the cabinet and utilize, at a minimum, a sufficient number of appropriately located ground water monitoring wells, surface water monitoring stations, and quantity and quality parameters to demonstrate that:

(a) The mining and reclamation operations are conducted in such a manner as to minimize disturbances to the hydrologic balance within the permit area and adjacent area pursuant to 405 KAR 16:060;

(b) The mining operation is meeting applicable effluent limitations and stream standards as required by 405 KAR 16:060, Section 1(3);

(c) Reclamation as required by KAR Title 405 is being accomplished and the operation is preventing material damage to the hydrologic balance in the cumulative impact area pursuant to 405 KAR 8:010, Section 14(2) and (3);

(d) The mining operation, pursuant to 405 KAR 16:060, Section 8, has not proximately resulted in the contamination diminution, or interruption of a ground or surface water supply which is

used for domestic, agricultural, industrial or other beneficial purpose; and

(e) The mining operation meets water quality criteria for bond release pursuant to 405 KAR 10:040.

(2) Surface and ground water monitoring shall be coordinated with **baseline** [premining] data collection by conducting surface and ground water monitoring at locations where **baseline** [premining] data was collected, or by other appropriate data collection and analysis procedures which will allow a comparison of **baseline** [premining] conditions with during-mining and postmining conditions.

(3) Equipment, structures, monitoring wells, or other facilities used to monitor surface and ground water quantity and quality shall be properly installed, maintained, and operated, and shall be removed or otherwise properly disposed of, including sealing of monitoring wells, when no longer needed; except that monitoring wells may be transferred to the surface owner of lands where the well is located, pursuant to 405 KAR 16:060, Section 7.

(4)(a) Surface and ground water monitoring data collection shall begin at the time of initial disturbance and continue during mining and reclamation until final bond release.

(b) Surface and ground water monitoring data shall be collected quarterly and the results submitted to the cabinet within one (1) month after data collection.

(5) If the results of any data collection indicate noncompliance with a permit condition, the permittee shall promptly notify the cabinet in writing and shall take immediate corrective actions to return the operations to compliance with all permit conditions.

(6) The cabinet may require the installation of additional ground water monitoring wells and surface water monitoring stations, the collection of additional quantity and quality parameters, and more frequent data collection and submittal if additional information is needed to meet the requirements of subsection (1) of this section.

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

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

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

Section 2. Ground Water Monitoring [Surface Water]. (1) Ground water monitoring shall be conducted according to the requirements of Section 1 of this regulation and the monitoring plan required by 405 KAR 8:030, Section 32(4).

(2) At a minimum, ground water monitoring shall include the parameters of:

(a) Water levels; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; pH; dissolved iron; dissolved manganese; acidity; alkalinity; and sulfate.

[(3) Ground water monitoring wells shall meet the requirements of 405 KAR 8:030, Section 14(5).]

(3) [(4)] If the applicant can demonstrate to the satisfaction of the cabinet by use of the **baseline** [premining] geologic or hydrologic information, the mining and reclamation plan, and the determination of probable hydrologic consequences that a particular water transmitting zone in the proposed permit and adjacent area is not one which serves as an aquifer which significantly ensures the hydrologic balance within the cumulative impact area, then monitoring of that water transmitting zone may be waived by the cabinet.

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

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

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

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

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

[(2) Surface water flow and quality shall continue to be monitored as long as the water

quality standards and effluent limitations of 405 KAR 16:070, Section 1(1)(g) are applicable.]

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

Section 3. Surface Water Monitoring. (1) Surface water monitoring shall be conducted according to the requirements of Section 1 of this regulation and the monitoring plan required by 405 KAR 8:030, Section 32(4).

(2) At a minimum, surface water monitoring shall include the parameters of:

(a) Discharge; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; total suspended solids; pH; total iron; total manganese; acidity; alkalinity; and sulfate.

(3) Surface water monitoring for KPDES.

(a) Monitoring of point source discharges under a KPDES permit shall be conducted in accordance with 40 CFR Parts 122, 123 and 434 and in accordance with the requirements of the KPDES permit. The permittee shall submit a copy of the KPDES monitoring results to the cabinet on the time schedule and in the format required by the KPDES permit. The permittee shall report all noncompliances with the KPDES permit to the cabinet in the manner required by the KPDES permit.

(b) Compliance with KPDES monitoring requirements shall not relieve the permittee of the obligation to comply with other surface and ground water monitoring requirements of this regulation.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: July 10, 1985
FILED WITH LRC: July 12, 1985 at noon

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

405 KAR 16:130. Disposal of excess spoil.

RELATES TO: KRS 350.090, 350.410, 350.440, 350.465

PURSUANT TO: KRS Chapter 13A [13.082], 350.028, 350.465

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

Section 1. General Requirements. (1) General. Excess spoil shall be placed in designated disposal areas, within a permit area, in a controlled manner to:

(a) Minimize the adverse effects of leachate and surface water runoff from the fill on surface and ground water;

(b) Ensure mass stability and prevent mass movement during and after construction; and

(c) Ensure that the final fill is suitable for reclamation and revegetation compatible with the natural surroundings and the approved postmining land use.

(2) Design certification.

(a) The fill and appurtenant structures shall be designed using current, prudent engineering practices by a qualified, registered professional engineer experienced in the design of earth and rock fills who shall certify the design of the fill and appurtenant structures.

(b) The fill shall be designed and constructed to attain a minimum long-term static safety factor of 1.5. The foundation and abutments of the fill and all other features shall be sufficient to ensure stability of the fill and appurtenant structures under all stages and conditions of construction.

(3) Location. The disposal area shall be located on the most moderately sloping and naturally stable area available among those upon which, in the judgment of the cabinet, spoil could be placed in compliance with all applicable requirements of Title 405, Chapters 7 through 24, and shall be placed, where possible, upon or above a natural terrace, bench, or berm if such placement provides additional stability and prevents mass movement.

(4) Stability.

(a) Stability analyses shall be performed by a qualified, registered professional engineer. Parameters used in the stability analyses shall be based upon adequate investigations of foundation and fill material, as approved by the cabinet, including field reconnaissance; subsurface investigations; and data obtained from laboratory analyses of such materials or, if approved by the cabinet, data obtained from other sources that yield results which ensure compliance with the applicable stability requirements of this regulation. The analyses of foundation conditions shall take into consideration the effect of underground mine workings, if any exist in the area, upon the stability of the fill and appurtenant structures.

(b) If the toe of the fill rests on an area which has a natural land slope in excess of 2.8h:1v (thirty-six (36) percent) or such a lesser slope as may be designated by the cabinet based on local conditions, keyway cuts (excavations to stable bedrock) and/or rock toe buttresses shall be constructed to ensure stability of the fill. Stability analyses shall be performed in accordance with 405 KAR 8:030, Section 27(3) to determine the sizes of the rock toe buttresses and/or keyway cuts.

(5) Placement of excess spoil.

(a) Vegetative and organic materials shall be removed, either progressively or in a single set of operations, from the disposal area prior to placement of the excess spoil. Topsoil shall be removed, segregated, and stored and/or redistributed in accordance with 405 KAR 16:050. If approved by the cabinet, vegetative material may be used as mulch or may be included in the topsoil to control erosion, promote growth of

vegetation, or increase the moisture retention of the soil.

(b) Excess spoil shall be transported and placed in a controlled manner in horizontal lifts not exceeding four (4) feet in thickness (or less if required by the cabinet to achieve the density necessary to ensure mass stability and to prevent mass movement, to avoid adverse impacts on the rock underdrain or rock core, or to minimize the formation of voids); concurrently compacted as necessary to ensure mass stability and to prevent mass movement during and after construction; graded so that surface and subsurface drainage is compatible with the natural surroundings; and covered with topsoil or substitute material in accordance with 405 KAR 16:050. The cabinet may approve designs which incorporate placement of excess spoil in lifts greater than four (4) feet in thickness if it is demonstrated to the cabinet's satisfaction in the application and certified by a qualified, registered professional engineer that the design ensures the stability of the fill in accordance with all applicable stability requirements of this regulation and that the design complies with all other requirements of this regulation.

(c)1. The final configuration of the fill shall be suitable for the approved postmining land use.

2. The top of the fill shall be graded no steeper than 20h:1v (five (5) percent) toward properly designed drainage channels in natural ground along the periphery of the fill. Surface runoff from the top surface of the fill shall not be allowed to flow over the outslope of the fill. The outslope of the fill shall not exceed 2h:1v (fifty (50) percent) or such a lesser slope as may be required by the cabinet to ensure stability or minimize erosion.

3. Terraces may be constructed on the outslope of the fill if required for stability, for control of erosion, to conserve soil moisture, or to facilitate the approved postmining land use. Terrace benches shall be graded with a three (3) to ten (10) percent slope toward the fill. the outslope between terrace benches shall not exceed 2h:1v (fifty (50) percent) or such a lesser slope as may be required by the cabinet to ensure stability or minimize erosion. Runoff shall be collected by a ditch along the intersection of each terrace bench and the outslope. This ditch shall route runoff to stabilized diversion channels and shall have a maximum slope that is no greater than 20h:1v (five (5) percent) unless a steeper slope is necessary for permanent roads in conjunction with an approved postmining land use and a steeper slope will not adversely affect the stability of the fill or result in excessive erosion.

(d) Impoundments shall not be allowed on the completed fill.

(e) Excess spoil that is acid-forming, toxic-forming, or combustible may be placed in excess spoil fills provided that it is disposed of in accordance with 405 KAR 16:060 and 405 KAR 16:190, Section 3 and provided further that the disposal plan to be used is approved by the cabinet as part of the permit application.

(6) Drainage control.

(a) The fill design shall include diversions and underdrains as necessary to control erosion, minimize water infiltration into the fill, and ensure stability except the cabinet may waive underdrain requirements if it is demonstrated to the cabinet's satisfaction in the application that underdrains are not necessary because the disposal area does not contain any springs, manmade or natural drainageways, or wet-weather seeps and because seepage of water due to precipitation will not adversely affect the stability of the fill. In no case, except for head-of-hollow fills with rock-core chimney drains approved pursuant to Section 3 of this regulation, shall surface runoff from above the fill be diverted through or under the fill.

(b) Diversions associated with excess spoil fills and appurtenant structures shall comply with the applicable requirements of 405 KAR 16:080 and shall be designed and maintained to safely pass the peak runoff from a ten (10) year, twenty-four (24) hour precipitation event, except as provided in Sections 2, 3, and 4 of this regulation and where flow from an intermittent or perennial stream is diverted the design event shall be the 100 year, twenty-four (24) hour precipitation event.

(c) Underdrains shall be constructed of durable, nonacid-forming, and nontoxic-forming rock; shall be free of coal, clay, and nondurable material; and shall be designed and constructed using current, prudent engineering practices. The underdrain system shall be designed and constructed to carry, away from the fill, the maximum anticipated seepage of water due to precipitation and the maximum anticipated seepage and discharge from seeps and springs in the foundation of the disposal area and shall be protected from piping and contamination by a filter system designed and constructed to ensure proper long-term functioning of the underdrain using current, prudent engineering practices.

1. The minimum cross-sectional dimensions of the underdrain shall be as specified in Appendix of A of this regulation unless the applicant demonstrates in the application, through detailed analyses to the satisfaction of the cabinet, that alternative cross-sectional dimensions will provide adequate long-term capacity for drainage at the site. In constructing the underdrain, no more than ten (10) percent of the rock shall be less than twelve (12) inches in size and no single rock shall be larger than twenty-five (25) percent of the width of the segment of the underdrain in which the rock is located.

2. Underdrains shall be constructed of durable rock that meets the durability requirements of Section 4(2)(a)2 of this regulation with the exception that, for shale material, the minimum SDI value necessary to demonstrate sufficient durability for underdrain material shall be 95.

3. Adequate samples shall be collected at sufficient geographic and stratigraphic locations and shall be tested and analyzed pursuant to this paragraph to determine, to the satisfaction of the cabinet, the characteristics of all variations of materials to be used in the underdrains. The results of such tests and analyses shall be provided in the permit application.

4. Upon the request of the cabinet, the permittee shall, under the direction of a qualified, registered professional engineer, obtain adequate samples from the underdrain or

other locations as necessary to demonstrate, to the satisfaction of the cabinet, compliance with this paragraph. Such samples shall be tested by a qualified laboratory and the results of such testing shall be analyzed by the qualified, registered professional engineer. The obtaining of samples, the testing, and the analyses shall be in the detail, scope, and time frame required by the cabinet to demonstrate, to the satisfaction of the cabinet, compliance with this paragraph. The results of such analyses shall be certified by the qualified, registered professional engineer under whose direction the samples were obtained and tested, and the results of the testing and the results of the analyses shall be submitted immediately to the department's appropriate regional office. The results of the testing and the results of analyses, or copies thereof, shall be reviewed by the qualified, registered professional engineer or specialist performing the inspections pursuant to Section 1(8) of this regulation and shall be included in the certified report immediately following the analyses.

(d) In lieu of the rock underdrain requirements of paragraph (c) of this subsection, perforated pipe underdrains may be approved by the cabinet on a case-by-case basis; however, perforated pipe underdrains shall not be approved for fills of greater than 250,000 cubic yards volume nor where failure of the fill could result in blockage of a stream or significant damage to the health or safety of the public. Perforated pipe underdrains shall be corrosion resistant; shall have characteristics consistent with the long-term life of the fill; shall be designed and constructed using current, prudent engineering practices; shall be designed and constructed to carry, away from the fill, the maximum anticipated seepage of water due to precipitation and the maximum anticipated seepage and discharge from seeps and springs in the foundation of the disposal area; and shall be protected from clogging and contamination by a filter system designed and constructed to ensure long-term functioning of the perforated pipe underdrain using current, prudent engineering practices.

(7) Surface area stabilization. During and after construction of the fill and appurtenant structures, slope protection shall be provided to minimize surface erosion at the site of excess spoil disposal and at the locations of appurtenant structures. All disturbed areas, including diversion channels that are not riprapped or otherwise protected, shall be revegetated upon completion of construction.

(8) Inspections. A qualified, registered professional engineer, or other qualified professional specialist under the direction of a professional engineer, shall periodically inspect the fill during construction. The professional engineer or specialist shall be experienced in the construction of earth and rock fills.

(a) Inspections of the fill site shall be made during critical construction periods as necessary to ensure compliance with this regulation. Critical construction periods shall include at a minimum: foundation preparation including the removal of all organic material and topsoil; placement of underdrains and protective filter systems; installation of final surface drainage systems; completion of the final grading; and completion of the initial revegetating of the completed fill. In addition to the above, inspections of the fill site shall be made, beginning at the initial site-preparation phase of construction, at least once every three (3) months throughout construction of the fill, including during placement and compaction of fill materials.

(b) The qualified, registered professional engineer shall provide a certified report to the department's appropriate regional office within two (2) weeks after each inspection that the fill has been or is being constructed and maintained as designed and in accordance with the approved plan and this regulation. The report shall address appearances of instability, structural weakness, and other hazardous conditions.

(c)1. The certified reports on the drainage system and protective filter shall include color photographs taken during and after construction of the underdrain and protective filter but before the drainage system is covered with excess spoil. If the underdrain system is constructed in phases, each phase shall be certified separately.

2. For situations in which excess durable rock spoil is placed in single or multiple lifts such that the underdrain system is constructed simultaneously with excess spoil placement by the natural segregation of dumped materials in accordance with Section 4 of this regulation, color photographs shall be taken of the underdrain as the underdrain system is being formed.

3. The photographs accompanying each certified report shall be taken in adequate size and number and with enough terrain or other physical features of the site shown to provide a relative scale to the photographs and to specifically and clearly identify the site.

(d) A copy of each inspection report shall be retained at or near the mine site.

(9) Underground disposal. Excess spoil may be disposed of in underground mine workings but only in accordance with a plan approved by the cabinet and MSHA in accordance with the requirements for underground disposal of coal processing waste under 405 KAR 8:040, Section 27.

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

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

[(b) Stability of the fill.]

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

[(3) Vegetative and organic materials shall, either progressively or in a single operation, be removed from the disposal area and the topsoil shall be removed, segregated, and stored or replaced under 405 KAR 16:050. If approved by the cabinet, organic material may be used as

mulch or may be included in the topsoil to control erosion, promote growth of vegetation, or increase the moisture retention of the soil.]

[(4) Slope protection shall be provided to minimize surface-erosion at the site. Diversion design shall conform with the requirements of 405 KAR 16:080, Section 1. All disturbed areas, including diversion ditches that are not riprapped, shall be vegetated upon completion of construction.]

[(5) The disposal areas shall be located on the most moderately sloping and naturally stable areas available as approved by the cabinet. If such placement provides additional stability and prevents mass movement, fill materials suitable for disposal shall be placed upon or above a natural terrace, bench, or berm.]

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

[(7) The final configuration of the fill must be suitable for reclamation and revegetation compatible with the natural surroundings and suitable for the proposed postmining land uses approved in accordance with 405 KAR 16:210, except that no impoundments shall be allowed on the completed fill, and no depressions shall be allowed on the completed fill unless they are determined by the cabinet to have no potential adverse effect on the stability of the fill and to have no potential for interference with the approved postmining land use.]

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

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

[(10) The fill shall be inspected for stability by a qualified registered professional engineer or other qualified person under the direct supervision of the responsible registered professional engineer experienced in the construction of earth and rockfill embankments at least quarterly throughout construction and during the following critical construction periods: removal of all organic material and topsoil; placement of underdrainage systems; installation of surface drainage systems; placement and compaction of fill materials; and revegetation. The responsible registered professional engineer shall certify to the cabinet within two (2) weeks after each inspection that the fill has been constructed as specified in the design approved by the cabinet. A copy of the report shall be retained at the minesite.]

(10)(a) [(11)] If approved by the cabinet, based on a demonstration to the satisfaction of the cabinet in the application that such disposal will have no adverse effect upon the stability of the fill, and if included as a condition of the permit, excess spoil [and underground development waste] may be disposed of in coal mine waste refuse piles [processing waste banks] in accordance with 405 KAR 16:140E or 405 KAR 18:140E.

(b) Coal processing waste [However, coal processing wastes] shall not be disposed of in [head-of-hollow or valley] fills designed and approved for excess spoil. [or underground development waste, and may only be disposed of in other fills designed and approved for underground development waste or excess spoil if such coal processing waste is] Underground development waste may be disposed of in excess spoil fills if such disposal is specifically approved by the cabinet and is made a condition of the permit and if such underground development waste is:

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

2. [(b)] Demonstrated to be nontoxic-forming [non-toxic] and nonacid-forming; and

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

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

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

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

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

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

(1) [(2)] A subdrainage system for the fill shall be constructed in accordance with Section 1(6)(c) or (d) of this regulation and with the following:

[(a) A system of underdrains constructed of durable rock shall meet the requirements of

paragraph (d) of this subsection and:]

(a) [1.] Be installed along the natural drainageways [system];

(b) [2.] Extend from the toe to the head of the fill; and

(c) [3.] Contain lateral drains to each area of potential drainage or seepage.

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

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

[(d) Underdrains shall consist of nondegradable, non-acid or toxic-forming rock such as natural sand and gravel, sandstone, limestone, or other durable rock that will not slake in water and will be free of coal, clay, or shale. However, alternative materials may be used if the applicant demonstrates through detailed engineering analysis to the satisfaction of the cabinet that the alternative materials will provide adequate long-term capacity for drainage at the site. Such alternative materials shall be nondegradable, and non-acid or toxic-forming.]

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

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

[1. Achieve the densities designed to ensure mass stability;]

[2. Prevent mass movement;]

[3. Avoid contamination of the rock underdrain or rock core; and]

[4. Prevent formation of voids.]

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

(2) [(4)] Surface water runoff from the area above the fill shall be diverted away from the fill and into stabilized diversion channels designed to pass safely the runoff from a 100-year, twenty-four (24) hour precipitation event or larger event specified by the cabinet. Surface runoff from the fill surface shall be diverted to stabilized channels off the fill which will safely pass the runoff from a 100-year, twenty-four (24) hour precipitation event. Diversion designs shall comply with the applicable requirements of 405 KAR 16:080[, Section 1(6)].

[(5) The tops of the fill and any terrace constructed to stabilize the face shall be graded no steeper than 1v:20h (five (5) percent). The vertical distance between terraces shall not exceed fifty (50) feet.]

[(6) Drainage shall not be directed over the outslope of the fill.]

[(7) The outslope of the fill shall not exceed 1v:2h (fifty (50) percent). The cabinet may require a flatter slope.]

Section 3. Rock-Core Chimney Drains. (1) A rock core chimney drain may be used in a head-of-hollow fill [utilized as provided in this section] instead of the subdrain and surface runoff diversion system normally required, as long as the fill is not located in an area containing an intermittent or perennial stream. A rock-core chimney drain may be used in a valley fill if the fill volume does not exceed 250,000 cubic yards of material and if upstream drainage is diverted around the fill. [under Section 2(2) and (4) of this regulation for:]

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

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

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

(a) The fill shall have, along the vertical projection of the main buried stream channel or rill, a vertical core of durable rock at least sixteen (16) feet thick which shall extend from the toe of the fill to the head of the fill and from the base of the fill to the surface of the fill. A system of lateral rock underdrains shall connect this rock core to each area of potential drainage or seepage in the disposal area. The underdrain system and the rock core shall be designed and constructed to carry, away from the fill, the maximum anticipated seepage of water due to precipitation and the maximum anticipated seepage and discharge from seeps and springs in the foundation of the disposal area. Rocks used in the rock core and underdrains shall meet the requirements of Section 1(6)(c) [2(2)] of this regulation.

(b) A filter system to ensure the proper long-term functioning of the rock core shall be designed and constructed using current, prudent engineering practices [standard geotechnical engineering methods].

(c)1. The grading of the fill surface shall [may] drain runoff [from the fill surface] away from the outslope of the fill and may drain runoff toward the rock core. In no case, however, shall intermittent or perennial streams be diverted into the rock core. The maximum slope of the top of the fill shall be 33h:1v [1v:33h] (three (3) percent). Terraces on the fill shall be graded with a three (3) to five (5) percent slope toward the fill and a one (1) percent slope toward the rock core.

2. [Notwithstanding the requirement of Section 1(7) prohibiting depressions and impoundments,] A drainage pocket may be maintained at the head of the fill during and after construction to intercept and collect surface runoff [from the fill surface] and to discharge the runoff through or over the rock drain, if it is demonstrated to the satisfaction of the cabinet in the application and certified by a qualified, registered professional engineer that the stability of the fill will [is] not be impaired.

[The drainage pocket and rock core shall not be used to intercept and discharge runoff from the drainage area upstream from the fill.] In no case shall this drainage pocket have a potential for impounding more than 10,000 cubic feet of water. [Terraces on the fill shall be graded with a three (3) to five (5) percent grade toward the fill and a one (1) percent slope toward the rock core.]

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

Section 4. End-dumped fills [Hard Rock Spoil]. The cabinet may approve the alternative method of disposal of excess durable rock spoil by gravity placement in single or multiple lifts provided the following conditions are met:

(1) Except as provided in this section, the requirements of Sections 1 and 2 of this regulation are met.

(2)(a)1. The excess spoil is nontoxic-forming and nonacid-forming and consists of at least eight (80) percent, by volume, of durable rock that is free of coal, clay, and nondurable material.

2. Durable rock means rock that does not slake in water and that is not reasonably expected to degrade to such a size or condition as to block, cause failure of, or otherwise impair or restrict the effectiveness of the internal drainage system. The cabinet shall consider rock to be durable if it is demonstrated, to the satisfaction of the cabinet in the application, that the rock has an SDI value of ninety (90) or greater as determined by the Kentucky Department of Transportation "Method for Determination of Slake Durability Index" (Kentucky Method 64-513-79) incorporated herein by reference (copies of which may be obtained from the department; the Kentucky Transportation Cabinet, Division of Materials, Wilkinson Boulevard, Frankfort, KY 40601; or the Kentucky Transportation Cabinet, Division of Management Services, State Office Building, Frankfort, Kentucky 40601). The cabinet may accept other test methods of demonstrating that rock is durable if it is demonstrated to the satisfaction of the cabinet that the alternative test methods yield equivalent measure of durability based upon correlation of results with Kentucky Method 64-513-79.

3. Adequate samples shall be collected at sufficient geographic and stratigraphic locations and shall be tested and analyzed pursuant to this subsection to determine, to the satisfaction of the cabinet, the characteristics of all variations of materials to be placed in the end-dumped fill. The results of such tests and analyses shall be provided in the permit application.

(b) All noncemented and poorly cemented shale, clay, soil, and nondurable excess spoil materials disposed of in the fill shall be distributed, to the satisfaction of the cabinet, within the fill by selective dumping or other adequate methods of placement to avoid localized concentrations of nondurable materials which would adversely affect the stability or internal drainage of the fill.

(3) The fill shall be designed and constructed to attain a minimum long-term static safety factor of 1.5 and a minimum earthquake safety factor of 1.1

(4) The underdrain system may be constructed simultaneously with excess spoil placement by the natural segregation of dumped materials provided that the resulting underdrain system is capable of carrying, away from the fill, the maximum anticipated seepage of water due to precipitation and the maximum anticipated seepage and discharge from seeps and springs in the foundation of the disposal area and provided that the other requirements for drainage control are met. For situations (such as the dumping of fill material from an insufficient height or on an insufficient slope) in which, in the judgment of the cabinet, the natural segregation of dumped materials will not form an adequate underdrain system, the underdrain system shall be separately constructed in accordance with Section 1(6) of this regulation.

(5) Upon the request of the cabinet, the permittee shall, under the direction of a qualified, registered professional engineer, obtain adequate samples from the fill or other locations as necessary to demonstrate, to the satisfaction of the cabinet, compliance with this section. Such samples shall be tested by a qualified laboratory and the results of such testing shall be analyzed by the qualified, registered professional engineer. The obtaining of samples, the testing, and the analyses shall be in the detail, scope, and time frame required by the cabinet to demonstrate, to the satisfaction of the cabinet, compliance with this section. The results of such analyses shall be certified by the qualified, registered professional engineer under whose direction the samples were obtained and tested, and the results of the testing and the results of the analyses shall be submitted immediately to the department's appropriate regional office. The results of the testing and the results of analyses, or copies thereof, shall be reviewed by the qualified, registered professional engineer or specialist performing the inspections pursuant to Section 1(8) of this regulation and shall be included in the certified report immediately following the analyses.

(6) The surface drainage control system shall be designed and constructed in accordance with Sections 1 and 2 of this regulation except that in all situations surface water runoff from areas adjacent to and above the fill and any appurtenant structures shall not flow onto the fill and shall be diverted into stabilized diversion channels designed to meet the applicable requirements of 405 KAR 16:080 and to safely pass the runoff from a 100 year, twenty-four (24) hour precipitation event.

[(1) In lieu of the requirements of Section 2 of this regulation and of the requirement in Section 1(6) of this regulation to place spoil in horizontal lifts in a controlled manner and for concurrent compaction, the cabinet may approve alternate methods for disposal of hard rock spoil, which may include fill placement by dumping in a single lift, on a site specific basis, provided the services of a registered professional engineer experienced in the design and construction of earth and rockfill embankments are utilized, and provided the

requirements of this section and all other requirements of Section 1 of this regulation, including the factor of safety, are met. For this section, hard rock spoil shall be defined as rockfill consisting of at least eighty (80) percent by volume of sandstone, limestone, or other rocks that do not slake in water. Resistance of the hard rock spoil to slaking shall be determined by using the slake index and slake durability tests in accordance with guidelines and criteria established by the cabinet.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 5. Disposal on Existing Benches. (1) If [When] approved by the cabinet, excess spoil may be disposed of on pre-existing benches that have not been reclaimed to the standards of this Title and for which there is no continuing responsibility to reclaim to such standards, provided that all of the requirements set forth in Section 1(1), 2(a), (4) through (8), and (10) of this regulation and the requirements of this section are met. [created by surface coal mining operations conducted prior to May 3, 1978.]

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

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

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

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

(c) The pre-existing bench shall be backfilled and graded to:

1. Achieve the most moderate slope possible which does not exceed the angle of repose; and

2. Eliminate the highwall to the maximum extent technically practicable.

(2) Gravity transport of excess spoil.

(a) Disposal of excess spoil from an upper actively mined bench to a lower pre-existing

bench by means of gravity transport may be approved by the cabinet if the applicant identifies the gravity transport courses on a map in the permit application and the applicant demonstrates, to the satisfaction of the cabinet, that the plan for gravity transport will minimize hazards to the environment and to the health and safety of the public and that the plan ensures that damage between benches and downslope of the pre-existing bench will be minimized if spoil moves in an unapproved manner during activities related to the disposal of the spoil or after placement of the spoil on the pre-existing bench. [When approved by the cabinet, excess spoil may be moved by controlled gravity transport from an actively mined upper bench to an existing lower bench, if the highwall of the lower bench intersects the upper bench with no natural slope between them other than the natural slope of the undisturbed natural barrier required by 405 KAR 16:010.]

(b) The disposal of material in accordance with this subsection shall comply with the following: [The gravity transport points shall be determined by the applicant on a site specific basis and approved by the cabinet to minimize hazards to health and safety and to ensure that damage will be minimized if the spoil should accidentally move off the existing bench to the downslope.]

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

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

3. Excess spoil shall not be allowed on the downslope below the upper bench and above the highwall of the pre-existing bench except on designated gravity transport courses properly prepared according to 405 KAR 16:050. Upon completion of the fill, no excess spoil shall be allowed to remain on the designated gravity transport courses between the two (2) benches and each transport course shall be reclaimed in accordance with the applicable requirements of this chapter.

Section 6. Applicability of Amendments to this Regulation. (1) Any excess spoil fill on which the final grading is conducted prior to the effective date of amendments to this regulation shall, in lieu of the requirements of the amendments, comply with the requirements which preceded the amendments, the approved permit application, and the conditions of permit issuance.

(2) Any excess spoil fill in a construction phase beyond initial site preparation prior to ninety (90) days following the effective date of amendments to this regulation shall, beginning on the effective date of these amendments, comply with all provisions of this regulation as amended, except that for situations in which any requirement of an amendment to this regulation would affect the design and construction of the fill to the extent that the design plans previously approved in the permit would have to be revised, such requirement shall not apply and the fill may be constructed in accordance with the previously approved design plans. However, the permittee may, if desired, apply for a permit revision in accordance with 405 KAR 8:010, Section 20 to modify the design of the fill to comply with the amendments to this regulation.

(3) Any excess spoil fill for which construction begins on or after the 90th day following the effective date of amendments to this regulation shall comply with all provisions of this regulation as amended. **If necessary in to order to comply with this requirement, the permittee shall obtain a permit revision in accordance with 405 KAR 8:010, Section 20 prior to inititial preparation of the fill site.**

(4) With regard to any excess spoil fill approved in a permit issued prior to the effective date of these amendments, the permittee shall not be required to have slake durability index tests conducted solely for the purpose of including the results of such tests in the permit application; however, the permittee shall have such tests performed if required by the cabinet under Section 1(6)(c)4 or Section 4(5) of this regulation. This exemption shall not apply to **any such** excess spoil **fill approved in a permit issued prior to the effective date of these amendments** [fills] for which construction begins on or after one (1) year following the effective date of these amendments.

Appendix A of 405 KAR 16:130

Minimum Drain Segment Cross-Sectional Dimensions [Size]

Total cumulative volume [amount] of fill material to be drained by segment	Predominant type of fill material	Minimum size of drain segment in feet	
		Width	Height
Less than 1,000,000 yd^3			
[yd^3.....]	Sandstone	10	4
[Do.....]	Shale	16	8
More than 1,000,000 yd^3			
[yd^3.....]	Sandstone	16	8
[Do.....]	Shale	16	16

The underdrain may be divided into segments for purposes of determining required dimensions of the individual drain segments. Each segment will drain the volume of fill overlying the segment plus carry the water drained to the segment from areas of the fill located upstream of the segment. Where the cumulative volume of

the fill material to be drained by a segment is less than 1,000,000 yd^3, the smaller dimension may be used.

[Appendix B of 405 KAR 16:130

Safety Factors

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

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: July 10, 1985
FILED WITH LRC: July 12, 1985 at noon

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

405 KAR 18:110. Surface and ground water monitoring.

RELATES TO: KRS 350.100, 350.151, 350.405, 350.420, 350.465,
PURSUANT TO: KRS Chapter 13A [13.082], 350.028, 350.151, 350.420, 350.465
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This regulation sets forth requirements for the monitoring and reporting of surface water quality and quantity, and ground water levels and quality and aquifer conditions, and the required duration of such monitoring.

Section 1. General Requirements [Groundwater].
(1) Surface and ground water monitoring shall be conducted in a manner acceptable to the cabinet and utilize, at a minimum, a sufficient number of appropriately located ground water monitoring wells, surface water monitoring stations, and quantity and quality parameters to demonstrate whether:
(a) The mining and reclamation operations are conducted in such a manner as to minimize disturbances to the hydrologic balance within the permit area and adjacent area pursuant to 405 KAR 18:060;
(b) The mining operation is meeting applicable effluent limitations and stream standards as required by 405 KAR 18:060, Section 1(3);
(c) Reclamation as required by KAR Title 405 is being accomplished and the operation is preventing material damage to the hydrologic balance in the cumulative impact area pursuant to 405 KAR 8:010, Section 14(2) and (3);
(d) The mining operation meets water quality criteria for bond release pursuant to 405 KAR 10:040.
(2) Surface and ground water monitoring shall be coordinated with **baseline** [premining] data collection by conducting surface and ground water monitoring at locations where **baseline** [premining] data was collected, or by other appropriate data collection and analysis procedures which will allow a comparison of **baseline** [premining] conditions with during-mining and postmining conditions.
(3) Equipment, structures, monitoring wells, or other facilities used to monitor surface and ground water quantity and quality shall be properly installed, maintained, and operated, and shall be removed or otherwise properly disposed of, including sealing of monitoring wells, when no longer needed; except that monitoring wells may be transferred to the surface owner of lands where the well is located, pursuant to 405 KAR 18:060, Section 6.
(4)(a) Surface and ground water monitoring data collection shall begin at the time of initial disturbance and continue during mining and reclamation until final bond release.
(b) Surface and ground water monitoring data shall be collected quarterly and the results submitted to the cabinet within one (1) month after data collection.
(5) If the results of any data collection indicate noncompliance with a permit condition, the permittee shall promptly notify the cabinet in writing and shall take immediate corrective actions to return the operations to compliance with all permit conditions.
(6) The cabinet may require the installation of additional ground water monitoring wells and surface water monitoring stations, the collection of additional quantity and quality parameters, and more frequent data collection and submittal if additional information is needed to meet the requirements of subsection (1) of this section.
[(1) Ground water levels, infiltration rates, subsurface flow and storage characteristics, and the quality of ground water shall be monitored in a manner approved by the cabinet, to determine the effects of underground mining activities on the quantity and quality of water in ground water systems in the permit area and adjacent areas.]
[(2) When underground mining activities may affect ground water systems which serve as aquifers which significantly ensure the hydrologic balance or water use either on or off the permit area, ground water levels and ground water quality shall be periodically monitored. Monitoring shall include measurements from a sufficient number of wells, or springs where appropriate, that are adequate to reflect changes in ground water quantity and quality resulting from those activities. Monitoring shall be adequate to plan for modification of the underground mining activities if necessary to minimize disturbance to the prevailing hydrologic balance.]
[(3) As specified and approved by the cabinet, the permittee shall conduct additional hydrologic tests, including drilling, infiltration tests and aquifer tests, and the results shall be submitted to the cabinet to demonstrate compliance with this section.]

Section 2. Ground Water Monitoring [Surface Water]. (1) Ground water monitoring shall be conducted according to the requirements of

Section 1 of this regulation and the monitoring plan required by 405 KAR 8:040, Section 32(4).

(2) At a minimum, ground water monitoring shall include the parameters of:

(a) Water levels; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; pH; dissolved iron; dissolved manganese; acidity; alkalinity; and sulfate.

[(3) Ground water monitoring wells shall meet the requirements of 405 KAR 8:040, Section 14(5).]

(3) [(4)] If the applicant can demonstrate to the satisfaction of the cabinet by use of the baseline [premining] geologic or hydrologic information, the mining and reclamation plan, and the determination of probable hydrologic consequences that a particular water transmitting zone in the proposed permit and adjacent area is not one which serves as an aquifer which significantly ensures the hydrologic balance within the cumulative impact area, then monitoring of that water transmitting zone may be waived by the cabinet.

[(1) Surface water monitoring and reporting shall be conducted in accordance with the monitoring program submitted under 405 KAR 8:040, Section 32(2)(c) and approved by the cabinet. The cabinet shall determine the nature of data, frequency of collection, and reporting requirements. Monitoring shall:]

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

[(b) Include, but not be limited to, monitoring and reporting of all water quality parameters for which effluent limitations must be met under 405 KAR 18:070, Section 1(1)(g);]

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

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

[(2) Surface water flow and quality shall continue to be monitored as long as the water quality standards and effluent limitations of 405 KAR 18:070, Section 1(1)(g) are applicable.]

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

Section 3. Surface Water Monitoring. (1) Surface water monitoring shall be conducted according to the requirements of Section 1 of this regulation and the monitoring plan required by 405 KAR 8:040, Section 32(4).

(2) At a minimum, surface water monitoring shall include the parameters of:

(a) Discharge; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; total suspended solids; pH; total iron; total manganese; acidity; alkalinity; and sulfate.

(3) Surface water monitoring for KPDES.

(a) Monitoring of point source discharges under a KPDES permit shall be conducted in accordance with 40 CFR Parts 122, 123, and 434 and in accordance with the requirements of the KPDES permit. The permittee shall submit a copy of the KPDES monitoring results to the cabinet on the time schedule and in the format required by the KPDES permit. The permittee shall report all noncompliances with the KPDES permit to the cabinet in the manner required by the KPDES permit.

(b) Compliance with KPDES monitoring requirements shall not relieve the permittee of the obligation to comply with other surface and ground water monitoring requirements of this regulation.

CHARLOTTE E. BALDWIN, Secretary
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FILED WITH LRC: July 12, 1985 at noon

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

405 KAR 18:130. Disposal of [underground development waste and] excess spoil.

RELATES TO: KRS 350.090, 350.151, 350.410, 350.440, 350.465

PURSUANT TO: KRS Chapter 13A [13.082], 350.028, 350.151, 350.465

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

Section 1. General Requirements. (1) General. Excess spoil shall be placed in designated disposal areas, within a permit area, in a controlled manner to:

(a) Minimize the adverse effects of leachate and surface water runoff from the fill on surface and ground water;

(b) Ensure mass stability and prevent mass movement during and after construction; and

(c) Ensure that the final fill is suitable for reclamation and revegetation compatible with the natural surroundings and the approved postmining land use.

(2) Design certification.

(a) The fill and appurtenant structures shall be designed using current, prudent engineering practices by a qualified, registered professional engineer experienced in the design of earth and rock fills who shall certify the design of the fill and appurtenant structures.

(b) The fill shall be designed and constructed to attain a minimum long-term static safety factor of 1.5. The foundation and abutments of the fill and all other features shall be sufficient to ensure stability of the fill and appurtenant structures under all stages and conditions of construction.

(3) Location. The disposal area shall be located on the most moderately sloping and naturally stable area available among those upon which, in the judgment of the cabinet, spoil could be placed in compliance with all applicable requirements of Title 405, Chapters 7 through 24, and shall be placed, where possible, upon or above a natural terrace, bench, or berm if such placement provides additional stability and prevents mass movement.

(4) Stability.

(a) Stability analyses shall be performed by a qualified, registered professional engineer. Parameters used in the stability analyses shall be based upon adequate investigations of foundation and fill material, as approved by the cabinet, including field reconnaissance; subsurface investigations; and data obtained from laboratory analyses of such materials or, if approved by the cabinet, data obtained from other sources that yield results which ensure compliance with the applicable stability requirements of this regulation. The analyses of foundation conditions shall take into consideration the effect of underground mine workings, if any exist in the area, upon the stability of the fill and appurtenant structures.

(b) If the toe of the fill rests on an area which has a natural land slope in excess of 2.8h:1v (thirty-six (36) percent) or such a lesser slope as may be designated by the cabinet based on local conditions, keyway cuts (excavations to stable bedrock) and/or rock toe buttresses shall be constructed to ensure stability of the fill. Stability analyses shall be performed in accordance with 405 KAR 8:040, Section 28 to determine the sizes of the rock toe buttresses and/or keyway cuts.

(5) Placement of excess spoil.

(a) Vegetative and organic materials shall be removed, either progressively or in a single set of operations, from the disposal area prior to placement of the excess spoil. Topsoil shall be removed, segregated, and stored and/or redistributed in accordance with 405 KAR 18:050. If approved by the cabinet, vegetative material may be used as mulch or may be included in the topsoil to control erosion, promote growth of vegetation, or increase the moisture retention of the soil.

(b) Excess spoil shall be transported and placed in a controlled manner in horizontal lifts not exceeding four (4) feet in thickness (or less if required by the cabinet to achieve the density necessary to ensure mass stability and to prevent mass movement, to avoid adverse impacts on the rock underdrain or rock-core, or to minimize the formation of voids); concurrently compacted as necessary to ensure mass stability and to prevent mass movement during and after construction; graded so that surface and subsurface drainage is compatible with the natural surroundings; and covered with topsoil or substitute material in accordance with 405 KAR 18:050. The cabinet may approve designs which incorporate placement of excess spoil in lifts greater than four (4) feet in thickness if it is demonstrated to the cabinet's satisfaction in the application and certified by a qualified, registered professional engineer that the design ensures the stability of the fill in accordance with all applicable stability requirements of this regulation and that the design complies with all other requirements of this regulation.

(c)1. The final configuration of the fill shall be suitable for the approved postmining land use.

2. The top of the fill shall be graded no steeper than 20h:1v (five (5) percent) toward properly designed drainage channels in natural ground along the periphery of the fill. Surface runoff from the top surface of the fill shall not be allowed to flow over the outslope of the fill. The outslope of the fill shall not exceed 2H:1v (fifty (50) percent) or such a lesser slope as may be required by the cabinet to ensure stability or minimize erosion.

3. Terraces may be constructed on the outslope of the fill if required for stability, for control of erosion, to conserve soil moisture, or to facilitate the approved postmining land use. Terrace benches shall be graded with a three (3) to ten (10) percent slope toward the fill. the outslope between terrace benches shall not exceed 2h:1v (fifty (50) percent) or such a lesser slope as may be required by the cabinet to ensure stability or minimize erosion. Runoff shall be collected by a ditch along the intersection of each terrace bench and the outslope. This ditch shall route runoff to stabilized diversion channels and shall have a maximum slope that is no greater than 20h:1v (five (5) percent) unless a steeper slope is necessary for permanent roads in conjunction with an approved postmining land use and a steeper slope will not adversely affect the stability of the fill or result in excessive erosion.

(d) Impoundments shall not be allowed on the completed fill.

(e) Excess spoil that is acid-forming, toxic-forming, or combustible may be placed in excess spoil fills provided that it is disposed of in accordance with 405 KAR 18:060 and 405 KAR 18:190, Section 3 and provided further that the disposal plan to be used is approved by the cabinet as part of the permit application.

(6) Drainage control.

(a) The fill design shall include diversions and underdrains as necessary to control erosion, minimize water infiltration into the fill, and ensure stability except the cabinet may waive

underdrain requirements if it is demonstrated to the cabinet's satisfaction in the application that underdrains are not necessary because the disposal area does not contain any springs, manmade or natural drainageways, or wet-weather seeps and because seepage of water due to precipitation will not adversely affect the stability of the fill. In no case, except for head-of-hollow fills with rock-core chimney drains approved pursuant to Section 3 of this regulation, shall surface runoff from above the fill be diverted through or under the fill.

(b) Diversions associated with excess spoil fills and appurtenant structures shall comply with the applicable requirements of 405 KAR 18:080 and shall be designed and maintained to safely pass the peak runoff from a ten (10) year, twenty-four (24) hour precipitation event, except as provided in Sections 2, 3, and 4 of this regulation and where flow from an intermittent or perennial stream is diverted the design event shall be the 100 year, twenty-four (24) hour precipitation event.

(c) Underdrains shall be constructed of durable, nonacid-forming, and nontoxic-forming rock; shall be free of coal, clay, and nondurable material; and shall be designed and constructed using current, prudent engineering practices. The underdrain system shall be designed and constructed to carry, away from the fill, the maximum anticipated seepage of water due to precipitation and the maximum anticipated seepage and discharge from seeps and springs in the foundation of the disposal area and shall be protected from piping and contamination by a filter system designed and constructed to ensure proper long-term functioning of the underdrain using current, prudent engineering practices.

1. The minimum cross-sectional dimensions of the underdrain shall be as specified in Appendix A of this regulation unless the applicant demonstrates in the application, through detailed analyses to the satisfaction of the cabinet, that alternative cross-sectional dimensions will provide adequate long-term capacity for drainage at the site. In constructing the underdrain, no more than ten (10) percent of the rock shall be less than twelve (12) inches in size and no single rock shall be larger than twenty-five (25) percent of the width of the segment of the underdrain in which the rock is located.

2. Underdrains shall be constructed of durable rock that meets the durability requirements of Section 4(2)(a)2 of this regulation with the exception that, for shale material, the minimum SDI value necessary to demonstrate sufficient durability for underdrain material shall be ninety-five (95).

3. Adequate samples shall be collected at sufficient geographic and stratigraphic locations and shall be tested and analyzed pursuant to this paragraph to determine, to the satisfaction of the cabinet, the characteristics of all variations of materials to be used in the underdrains. The results of such tests and analyses shall be provided in the permit application.

4. Upon the request of the cabinet, the permittee shall, under the direction of a qualified, registered professional engineer, obtain adequate samples from the underdrain or other locations as necessary to demonstrate, to the satisfaction of the cabinet, compliance with this paragraph. Such samples shall be tested by a qualified laboratory and the results of such testing shall be analyzed by the qualified, registered professional engineer. The obtaining of samples, the testing, and the analyses shall be in the detail, scope, and time frame required by the cabinet to demonstrate, to the satisfaction of the cabinet, compliance with this paragraph. The results of such analyses shall be certified by the qualified, registered professional engineer under whose direction the samples were obtained and tested, and the results of the testing and the results of the analyses shall be submitted immediately to the department's appropriate regional office. The results of the testing and the results of analyses, or copies thereof, shall be reviewed by the qualified, registered professional engineer or specialist performing the inspections pursuant to Section 1(8) of this regulation and shall be included in the certified report immediately following the analyses.

(d) In lieu of the rock underdrain requirements of paragraph (c) of this subsection, perforated pipe underdrains may be approved by the cabinet on a case-by-case basis; however, perforated pipe underdrains shall not be approved for fills of greater than 250,000 cubic yards volume nor where failure of the fill could result in blockage of a stream or significant damage to the health or safety of the public. Perforated pipe underdrains shall be corrosion resistant; shall have characteristics consistent with the long-term life of the fill; shall be designed and constructed using current, prudent engineering practices; shall be designed and constructed to carry, away from th fill, the maximum anticipated seepage of water due to precipitation and the maximum anticipated seepage and discharge from seeps and springs in the foundation of the disposal area; and shall be protected from clogging and contamination by a filter system designed and constructed to ensure long-term functioning of the perforated pipe underdrain using current, prudent engineering practices.

(7) Surface area stabilization. During and after construction of the fill and appurtenant structures, slope protection shall be provided to minimize surface erosion at the site of excess spoil disposal and at the locations of appurtenant structures. All disturbed areas, including diversion channels that are not riprapped or otherwise protected, shall be revegetated upon completion of construction.

(8) Inspections. A qualified, registered professional engineer, or other qualified professional specialist under the direction of a professional engineer, shall periodically inspect the fill during construction. The professional engineer or specialist shall be experienced in the construction of earth and rock fills.

(a) Inspections of the fill site shall be made during critical construction periods as necessary to ensure compliance with this regulation. Critical construction periods shall include at a minimum: foundation preparation including the removal of all organic material and topsoil; placement of underdrains and protective filter systems; installation of final

surface drainage systems; completion of the final grading; and completion of the initial revegetating of the completed fill. In addition to the above, inspections of the fill site shall be made, beginning at the initial site-preparation phase of construction, at least once every three (3) months throughout construction of the fill, including during placement and compaction of fill materials.

(b) The qualified, registered professional engineer shall provide a certified report to the department's appropriate regional office within two (2) weeks after each inspection that the fill has been or is being constructed and maintained as designed and in accordance with the approved plan and this regulation. The report shall address appearances of instability, structural weakness, and other hazardous conditions.

(c)1. The certified reports on the drainage system and protective filter shall include color photographs taken during and after construction of the underdrain and protective filter but before the drainage system is covered with excess spoil. If the underdrain system is constructed in phases, each phase shall be certified separately.

2. For situations in which excess durable rock spoil is placed in single or multiple lifts such that the underdrain system is constructed simultaneously with excess spoil placement by the natural segregation of dumped materials in accordance with Section 4 of this regulation, color photographs shall be taken of the underdrain as the underdrain system is being formed.

3. The photographs accompanying each certified report shall be taken in adequate size and number and with enough terrain or other physical features of the site shown to provide a relative scale to the photographs and to specifically and clearly identify the site.

(d) A copy of each inspection report shall be retained at or near the mine site.

(9) Underground disposal. Excess spoil may be disposed of in underground mine workings but only in accordance with a plan approved by the cabinet and MSHA in accordance with the requirements for underground disposal of coal processing waste under 405 KAR 8:040, Section 27.

[(1) Underground development waste and spoil not required for compliance with 405 KAR 18:190 shall be transported to and placed in designated disposal areas within a permit area in a manner approved by the cabinet. The material shall be placed in a controlled manner to ensure:]

[(a) That leachate and surface runoff from the fill will not degrade surface or ground waters or exceed the requirements of 405 KAR 18:070; and]

[(b) Stability of the fill.]

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

[(3) Vegetative and organic materials shall, either progressively or in a single operation, be removed from the disposal area and the topsoil shall be removed, segregated and stored or replaced in accordance with 405 KAR 18:050. If approved by the cabinet, organic material may be used as mulch or may be included in the topsoil to control erosion, promote growth of vegetation, or increase the moisture retention of the soil.]

[(4) Slope protection shall be provided to minimize surface erosion at the site. Diversion design shall conform with the requirements of 405 KAR 18:080, Section 1. All disturbed areas, including diversion ditches that are not riprapped, shall be vegetated upon completion of construction.]

[(5) The disposal areas shall be located on the most moderately sloping and naturally stable areas available as approved by the cabinet. If such placement provides additional stability and prevents mass movement, fill materials suitable for disposal shall be placed upon or above a natural terrace, bench, or berm.]

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

[(7) The final configuration of the fill must be suitable for reclamation and revegetation compatible with the natural surroundings and suitable for the proposed postmining land uses approved in accordance with 405 KAR 18:220; except that no impoundments shall be allowed on the completed fill, and no depressions shall be allowed on the completed fill unless they are determined by the cabinet to have no potential adverse effect on the stability of the fill and to have no potential for interference with the approved postmining land use.]

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

[(9) Where the toe of the spoil rests on a downslope or other area, where the natural land slope exceeds 1v:2.8h (thirty-six (36) percent) or such lesser slope as may be designated by the cabinet based on local conditions, keyway cuts (excavations to stable bedrock) or rock toe buttresses shall be constructed to stabilize the fill. Stability analyses shall be performed in accordance with 405 KAR 8:040, Section 28 to determine the size of the rock toe buttresses or keyway cuts.]

[(10) The fill shall be inspected for stability by a qualified registered professional engineer or other qualified person under the direct supervision of the responsible registered professional engineer experienced in the construction of earth and rockfill embankments at least quarterly throughout construction, and during the following critical construction periods: removal of organic material and topsoil; placement of underdrainage systems; installation of surface drainage systems; placement and compaction of fill materials, and revegetation. The responsible registered professional engineer shall certify to the cabinet within two (2) weeks after each inspection that the fill has been constructed as specified in the design approved by the cabinet. A copy of the report shall be retained at the mine site.]

(10)(a) [(11)] If approved by the cabinet, based on a demonstration to the satisfaction of

the cabinet in the application that such disposal will have no adverse effect upon the stability of the fill, and if included as a condition of the permit, excess spoil [and underground development waste] may be disposed of in coal mine waste refuse piles [processing waste banks] in accordance with 405 KAR 16:140 or 405 KAR 18:140.

(b) Coal processing waste [However, coal processing wastes] shall not be disposed of in [head-of-hollow or valley] fills designed and approved for excess spoil. [or underground development waste, and may only be disposed of in other fills designed and approved for underground development waste or excess spoil if such coal processing waste is;] Underground development waste may be disposed of in excess spoil fills if such disposal is specifically approved by the cabinet and is made a condition of the permit and if such underground development waste is:

1. [(a)] Placed in accordance with 405 KAR 18:140, Section 4;

2. [(b)] Demonstrated to be nontoxic-forming [non-toxic] and nonacid-forming; and

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

(11) Spoil resulting from face-up operations for underground coal mine development may be placed in steep slope areas on the downslope at the drift entry as part of a cut and fill structure if the structure is less than 400 feet in length (as measured generally parallel to the mine bench) and if the fill is designed and constructed in accordance with the requirements of this section.

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

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

[(14) Underground development waste and excess spoil may be returned to underground workings only in accordance with the disposal plans submitted under 405 KAR 8:040, Section 27 and approved by the cabinet and MSHA.]

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

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

(1) [(2)] A subdrainage system for the fill shall be constructed in accordance with Section 1(6)(c) or (d) of this regulation and with the following:

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

(a) [1.] Be installed along the natural drainageways [system];

(b) [2.] Extend from the toe to the head of the fill; and

(c) [3.] Contain lateral drains to each area of potential drainage or seepage.

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

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

[(d) Underdrains shall consist of nondegradable, non-acid or toxic-forming rock such as natural sand and gravel, sandstone, limestone, or other durable rock that will not slake in water and will be free of coal, clay, or shale. However, alternative materials may be used if the applicant demonstrates through detailed engineering analysis to the satisfaction of the cabinet that the alternative materials will provide adequate long-term capacity for drainage at the site. Such alternative materials shall be nondegradable, and non-acid or toxic-forming.]

[(3) Underground development waste and excess spoil shall be transported and placed in a controlled manner and concurrently compacted as specified by the cabinet, in lifts no greater than four (4) feet.]

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

[1. Achieve the densities designed to ensure mass stability;]

[2. Prevent mass movement;]

[3. Avoid contamination of the rock underdrain or rock-core; and]

[4. Prevent formation of voids.]

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

(2) [(4)] Surface water runoff from the area above the fill shall be diverted away from the fill and into stabilized diversion channels designed to pass safely the runoff from a [the] 100 year, twenty-four (24) hour precipitation event or larger event specified by the cabinet. Surface runoff from the fill surface shall be diverted to stabilized channels off the fill

which will safely pass the runoff from a 100 year, twenty-four (24) hour precipitation event. Diversion designs shall comply with the applicable requirements of 405 KAR 18:080[, Section 1(6)].

[(5) The tops of the fill and any terrace constructed to stabilize the face shall be graded no steeper than 1v:20h (five (5) percent). The vertical distance between terraces shall not exceed fifty (50) feet.]

[(6) Drainage shall not be directed over the outslope of the fill.]

[(7) The outslope of the fill shall not exceed 1v:2h (fifty (50) percent). The cabinet may require a flatter slope.]

Section 3. Rock-Core Chimney Drains. (1) A rock-core chimney drain may be used in a head-of-hollow fill [utilized as provided in this section] instead of the subdrain and surface runoff diversion system normally required, as long as the fill is not located in an area containing an intermittent or perennial stream. A rock-core chimney drain may be used in a valley fill if the fill volume does not exceed 250,000 cubic yards of material and if upstream drainage is diverted around the fill. [under Section 2(2) and (4), for:]

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

[(b) All valley fills placed near the elevation of the face-up area which do not exceed 250,000 cubic yards in volume.]

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

(a) The fill shall have, along the vertical projection of the main buried stream channel or rill, a vertical core of durable rock at least sixteen (16) feet thick which shall extend from the toe of the fill to the head of the fill and from the base of the fill to the surface of the fill. A system of lateral rock underdrains shall connect this rock-core to each area of potential drainage or seepage in the disposal area. The underdrain system and the rock-core shall be designed and constructed to carry, away from the fill, the maximum anticipated seepage of water due to precipitation and the maximum anticipated seepage and discharge from seeps and springs in the foundation of the disposal area. Rocks used in the rock-core and underdrains shall meet the requirements of Section 1(6)(c) [2(2)] of this regulation.

(b) A filter system to ensure the proper long-term functioning of the rock-core shall be designed and constructed using current, prudent engineering practices [standard geotechnical engineering methods].

(c)1. The grading of the fill surface shall [may] drain runoff [from the fill surface] away from the outslope of the fill and may drain runoff toward the rock-core. In no case, however, shall intermittent or perennial streams be diverted into the rock-core. The maximum slope of the top of the fill shall be 33h:1v [1v:33h] (three (3) percent). Terraces on the fill shall be graded with a three (3) to five (5) percent slope toward the fill and a one (1) percent slope toward the rock-core.

2. [Notwithstanding the requirement of Section 1(7), prohibiting depressions and impoundments,] A drainage pocket may be maintained at the head of the fill during and after construction to intercept and collect surface runoff [from the fill surface] and to discharge the runoff through or over the rock drain, if it is demonstrated to the satisfaction of the cabinet in the application and certified by a qualified, registered professional engineer that the stability of the fill will [is] not be impaired. [The drainage pocket and rock-core shall not be used to intercept and discharge runoff from the drainage area upstream from the fill.] In no case shall this drainage pocket have a potential for impounding more than 10,000 cubic feet of water. [Terraces on the fill shall be graded with a three (3) to five (5) percent grade toward the fill and a one (1) percent slope toward the rock-core.]

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

Section 4. End-dumped Fills [Hard Rock Spoil]. The cabinet may approve the alternative method of disposal of excess durable rock spoil by gravity placement in single or multiple lifts provided the following conditions are met:

(1) Except as provided in this section, the requirements of Sections 1 and 2 of this regulation are met.

(2)(a)1. The excess spoil is nontoxic-forming and nonacid-forming and consists of at least eighty (80) percent, by volume, of durable rock that is free of coal, clay, and nondurable material.

2. Durable rock means rock that does not slake in water and that is not reasonably expected to degrade to such a size or condition as to block, cause failure of, or otherwise impair or restrict the effectiveness of the internal drainage system. The cabinet shall consider rock to be durable if it is demonstrated, to the satisfaction of the cabinet in the application, that the rock has an SDI value of ninety (90) or greater as determined by the Kentucky Department of Transportation "Method for Determination of Slake Durability Index" (Kentucky Method 64-513-79). The cabinet may accept other test methods of demonstrating that rock is durable if it is demonstrated to the satisfaction of the cabinet that the alternative test methods yield equivalent measure of durability based upon correlation of results with Kentucky Method 64-513-79.

3. Adequate samples shall be collected at sufficient geographic and stratigraphic locations and shall be tested and analyzed pursuant to this subsection to determine, to the satisfaction of the cabinet, the characteristics of all variations of materials to be placed in the end-dumped fill. The results of such tests and analyses shall be provided in the permit application.

(b) All noncemented and poorly cemented shale, clay, soil, and nondurable excess spoil materials disposed of in the fill shall be distributed, to the satisfaction of the cabinet, within the fill by selective dumping or other adequate methods of placement to avoid localized concentrations of nondurable materials which would adversely affect the stability or internal drainage of the fill.

(3) The fill shall be designed and constructed to attain a minimum long-term static safety factor of 1.5 and a minimum earthquake safety

factor of 1.1.

(4) The underdrain system may be constructed simultaneously with excess spoil placement by the natural segregation of dumped materials provided that the resulting underdrain system is capable of carrying, away from the fill, the maximum anticipated seepage of water due to precipitation and the maximum anticipated seepage and discharge from seeps and springs in the foundation of the disposal area and provided that the other requirements for drainage control are met. For situations (such as the dumping of fill material from an insufficient height or on an insufficient slope) in which, in the judgment of the cabinet, the natural segregation of dumped materials will not form an adequate underdrain system, the underdrain system shall be separately constructed in accordance with Section 1(6) of this regulation.

(5) Upon the request of the cabinet, the permittee shall, under the direction of a qualified, registered professional engineer, obtain adequate samples from the fill or other locations as necessary to demonstrate, to the satisfaction of the cabinet, compliance with this section. Such samples shall be tested by a qualified laboratory and the results of such testing shall be analyzed by the qualified, registered professional engineer. The obtaining of samples, the testing, and the analyses shall be in the detail, scope, and time frame required by the cabinet to demonstrate, to the satisfaction of the cabinet, compliance with this section. The results of such analyses shall be certified by the qualified, registered professional engineer under whose direction the samples were obtained and tested, and the results of the testing and the results of analyses shall be submitted immediately to the department's appropriate regional office. The results of the testing and the results of analyses, or copies thereof, shall be reviewed by the qualified, registered professional engineer or specialist performing the inspections pursuant to Section 1(8) of this regulation and shall be included in the certified report immediately following the analyses.

(6) The surface drainage control system shall be designed and constructed in accordance with Sections 1 and 2 of this regulation except that in all situations surface water runoff from areas adjacent to and above the fill and any appurtenant structures shall not flow onto the fill and shall be diverted into stabilized diversion channels designed to meet the applicable requirements of 405 KAR 18:080 and to safely pass the runoff from a 100 year, twenty-four (24) hour precipitation event.

[(1) In lieu of the requirements of Section 2 of this regulation and of the requirement in Section 1(6) of this regulation to place spoil in horizontal lifts in a controlled manner and for concurrent compaction, the cabinet may approve alternate methods for disposal of hard rock spoil, which may include fill placement by dumping in a single lift, on a site specific basis, provided the services of a registered professional engineer experienced in the design and construction of earth and rockfill embankments are utilized and provided the requirements of this section and all other requirements of Section 1 of this regulation, including the factor of safety, are met. For this section, hard rock spoil shall be defined as rockfill consisting of at least eighty (80) percent by volume of sandstone, limestone, or other rocks that do not slake in water. Resistance of the hard rock waste or spoil to slaking shall be determined by using the slake index and slake durability tests in accordance with guidelines and criteria established by the cabinet.]

[(2) Waste or spoil is to be transported and placed in a specified and controlled manner which will ensure stability of the fill.]

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

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

[(3) Stability analyses shall be made by the registered professional engineer.]

[(a) Parameters used in the stability analyses shall be based on adequate field reconnaissance, subsurface investigations, including necessary borings, and laboratory tests.]

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

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

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

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

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

[(5) Surface water runoff from the areas adjacent to and above the fill shall not be allowed to flow onto the fill and shall be diverted into stabilized channels which are designed to safely pass the runoff from a 100-year, twenty-four (24) hour precipitation event. Diversion design shall comply with the requirements of 405 KAR 18:080, Section 1(6).]

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

[(7) Surface runoff from the outslope of the

fill shall be diverted off the fill to properly designed channels which will safely pass a 100-year, twenty-four (24) hour precipitation event. Diversion design shall comply with the requirements of 405 KAR 18:080, Section 1(6).]

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

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

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

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

Section 5. Disposal on Existing Benches. (1) If [When] approved by the cabinet, [underground development waste and] excess spoil may be disposed of on pre-existing benches that have not been reclaimed to the standards of this Title and for which there is no continuing responsibility to reclaim to such standards, provided that all of the requirements set forth in Sections 1(1), (2)(a), (4) through (8) and (10) of this regulation and the requirements of this section are met [created by surface coal mining operations conducted prior to May 3, 1978].

(a) Excess spoil shall be placed only on the solid portion of the pre-existing bench. [The applicant shall demonstrate to the satisfaction of the cabinet that the underground development waste and excess spoil to be placed on the existing benches is in excess of the underground development waste and spoil necessary to eliminate the highwall and return to approximate original contour on the active mining bench.]

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

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

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

(c) The pre-existing bench shall be backfilled and graded to:

1. Achieve the most moderate slope possible which does not exceed the angle of repose; and

2. Eliminate the highwall to the maximum extent technically practicable.

(2) Gravity transport of [underground development waste and] excess spoil.

(a) Disposal of excess spoil from an upper actively mined bench to a lower pre-existing bench by means of gravity transport may be approved by the cabinet if the applicant identifies the gravity transport courses on a map in the permit application and the applicant demonstrates, to the satisfaction of the cabinet, that the plan for gravity transport will minimize hazards to the environment and to the health and safety of the public and that the plan ensures that damage between benches and downslope of the pre-existing bench will be minimized if spoil moves in an unapproved manner during activities related to the disposal of the spoil or after placement of the spoil on the pre-existing bench. [When approved by the cabinet, excess spoil may be moved by controlled gravity transport from an actively mined upper bench to an existing lower bench, if the highwall of the lower bench intersects the upper bench with no natural slope between them other than the natural slope of the undisturbed natural barrier required by 405 KAR 18:010.]

(b) The disposal of material in accordance with this subsection shall comply with the following: [The gravity transport points shall be determined by the applicant on a site specific basis and approved by the cabinet to minimize hazards to health and safety and to ensure that damage will be minimized if the underground development waste and excess spoil should accidentally move off the existing bench to the downslope.]

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

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

3. Excess spoil shall not be allowed on the downslope below the upper bench and above the highwall of the pre-existing bench except on designated gravity transport courses properly prepared according to 405 KAR 18:050. Upon completion of the fill, no excess spoil shall be allowed to remain on the designated gravity transport courses between the two (2) benches and each transport course shall be reclaimed in accordance with the applicable requirements of

this chapter.

Section 6. Disposal of Underground Development Waste. Underground development waste shall be disposed of in accordance with the coal mine waste requirements of 405 KAR 18:140 and 405 KAR 18:160 as applicable.

Section 7. Applicability of Amendments to this Regulation. (1) Any excess spoil fill on which the final grading is conducted prior to the effective date of amendments to this regulation shall, in lieu of the requirements of the amendments, comply with the requirements which preceded the amendments, the approved permit application, and the conditions of permit issuance.

(2) Any excess spoil fill in a construction phase beyond initial site preparation prior to ninety (90) days following the effective date of amendments to this regulation shall, beginning on the effective date of these amendments, comply with all provisions of this regulation as amended, except that for situations in which any requirement of an amendment to this regulation would affect the design and construction of the fill to the extent that the design plans previously approved in the permit would have to be revised, such requirement shall not apply and the fill may be constructed in accordance with the previously approved design plans. However, the permittee may, if desired, apply for a permit revision in accordance with 405 KAR 8:010, Section 20 to modify the design of the fill to comply with the amendments to this regulation.

(3) Any excess spoil fill for which construction begins on or after the ninetieth day following the effective date of amendments to this regulation shall comply with all provisions of this regulation as amended. **If necessary in order to comply with this requirement, the permittee shall obtain a permit revision in accordance with 405 KAR 8:010, Section 20 prior to initial preparation of the fill site.**

(4) With regard to any excess spoil fill approved in a permit issued prior to the effective date of these amendments, the permittee shall not be required to have slake durability index tests conducted solely for the purpose of including the results of such tests in the permit application; however, the permittee shall have such tests performed if required by the cabinet under Section 1(6)(c)4 or Section 4(5) of this regulation. This exemption shall not apply to **any such** excess spoil **fill approved in a permit issued prior to the effective date of these amendments** [fills] for which construction begins on or after one (1) year following the effective date of these amendments.

Appendix A of 405 KAR 18:130

Minimum Drain Segment Cross-Sectional Dimensions [Size]

Total cumulative volume [amount] of fill material to be drained by segment	Predominant type of fill material	Minimum size of drain segment in feet Width	Height
Less than 1,000,000 yd^3			
[yd^3.....]	Sandstone	10	4
[Do.....]	Shale	16	8
More than 1,000,000 yd^3			
[yd^3.....]	Sandstone	16	8
[Do.....]	Shale	16	16

The underdrain may be divided into segments for purposes of determining required dimensions of the individual drain segments. Each segment will drain the volume of fill overlying the segment plus carry the water drained to the segment from areas of the fill located upstream of the segment. Where the cumulative volume of the fill material to be drained by a segment is less than 1,000,000 yd^3, the smaller dimension may be used.

[Appendix B of 405 KAR 18:130

Safety Factors

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

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: July 10, 1985
FILED WITH LRC: July 12, 1985 at noon

TRANSPORTATION CABINET
Department of Highways
(Amended After Hearing)

603 KAR 5:096. Highway classifications.

RELATES TO: KRS 189.222
PURSUANT TO: KRS 174.080 [175.080] [13.082, 174.050], 189.222
NECESSITY AND FUNCTION: KRS 189.222 authorizes the Secretary of Transportation to establish reasonable weight and dimension limits on all highways included in the State Primary Road System. This regulation is adopted to identify each road in the highway system and indicate their classification.

Section 1. The weight and dimension limits set forth in 603 KAR 5:066 and 603 KAR 5:070 for truckway classifications shall apply on all highways in the State Primary Road System as indicated herewithin, unless bridge postings prohibit such weights on any particular segment.

Section 2. The maximum weight limits for the three (3) classifications of highways are as follows: "AAA" System, 80,000 pounds gross

weight; "AA" System, 62,000 pounds gross weight; "A" System, 44,000 pounds gross weight. There shall be no tolerances allowed on gross weight, axle weight, or combinations of axle weights on highways which are a part of the Interstate System [only].

Section 3. The classifications for each highway in the State Primary Road System are as follows:

*COMPILER'S NOTE: Only those particular highways affected by the proposed amendment are shown here. 603 KAR 5:096 is printed in full in Volume 3, "Kentucky Administrative Regulations Service."

I-24 -1
AAA--From the Illinois state line [to jct. US 60, w of Paducah; and from jct. US 68, e of Cadiz in Trigg Co.] to the Tennessee state line.

US 25 -2
AAA--From jct. US 25E & US 25W [I-75], nw of Corbin in Laurel Co. to the Ohio River bridge in Covington [jct. I-75, approximately 4.0 miles n of Lexington; and from Fayette-Scott Co. line to jct. KY 22 at Dry Ridge].
[AAA--From jct. KY 14 at Bracht in Kenton Co. to the Ohio state line at the Clay Wade Bailey Bridge in Covington.]
[AA--From jct. I-75 n of Lexington to Scott-Fayette Co. line and from jct. KY 22 at Dry Ridge to jct. KY 14 at Bracht.]

KY 85 -3
AAA--From jct. KY 70, e of Madisonville [to] extending ne 3.4 [1.8] miles to Green River Coal Co. mine haul road [Anton].
AA--From Green River Coal Co. mine haul road [Anton] to jct. KY 81, s of Sacramento.
A--From jct. US 62, 1.9 miles ne of Rockport in Ohio Co. to jct. KY 81, s of Calhoun in McClean Co.

KY 93 -4
AAA--From jct. KY 293, s of Eddyville to jct. Frontage Road No. 9 near n side of I-24 [US 62 and 641 at Eddyville].
AA--From jct. KY 139 at the Trigg-Caldwell Co. line to jct. KY 293, s of Eddyville.
A--From jct. Frontage Road No. 9 near [US 62 at] Kuttawa to jct. KY 453, 3.8 miles w of Iuka in Livingston Co.

KY 112
AAA--From US 41A in Earlington extending sw to Copper Creek Road, a distance of 4.74 miles.
A--From US 62, e of Dawson Springs to jct. Copper Creek Rd. [US 41 in Earlington.]

KY 117
AAA--From US 41A, s of I-24 interchange, extending west 0.047 miles (Christian Co.).
A--From [jct. US 41A, near s side of I-24 Interchange in Christian Co. to] jct. US 68 at Gracey near Trigg Co. line to a point 0.047 miles w of US 41A.

KY 120
AAA--From the Crittenden-Webster Co. line [jct. KY 109 in Providence] to jct. US 41A in Providence (Webster Co.).
A--From jct. US 60 in Marion to the Crittenden-Webster Co. line; and from jct. US 41A in Providence to jct. US 41 at Slaughters [jct. KY 109 in Providence].
[A--From jct. US 41A in Providence to jct. US 41 at Slaughters.]

KY 122
AAA--From jct. KY 610, 1.7 miles n of Virgie, to jct. US 23 at Robinson Creek (Pike Co.).
A--From jct. KY 114, sw of Prestonsburg to jct. KY 610, 1.7 [US 23, 1.0] miles n of Virgie (Floyd-Pike Cos.) [in Pike Co.].

KY 152
AAA--From jct. US 68 in Harrodsburg, extending e 1.4 miles to entrance to rock quarry (Mercer Co.).
AA--From jct. KY 49 n of Loretto in Marion Co. to jct. US 150 nw of Springfield; and from Mercer-Washington Co. line to US 68 in [via] Harrodsburg; and from rock quarry entrance, 1.4 miles e of Harrodsburg [Burgin] to jct. US 27 near Bryantsville in Garrard Co.
A--From jct. US 150 in Springfield to Washington-Mercer Co. line.

KY 155
AAA--From jct. KY 55 at Elk Creek in Spencer [148 near Fisherville in Jefferson] Co. to jct. US 31E in Louisville.
[A--From jct. KY 55 at Elk Creek in Spencer Co. to jct. KY 148 near Fisherville.]

KY 189
AAA--From jct. US 62 w of Greenville to jct. US 62, ne of Powderly (Muhlenberg Co.).
A--From jct. KY 507 w of Allegre in Todd Co. to jct. US 62, 0.7 mile w of Greenville.

KY 192
AAA--From jct. KY 80 near Somerset, via Mt. Victory to Rockcastle River Bridge; and from [jct. I-75 near London to] Boggs Road, 1.2 miles w of I-75, to Daniel Boone Parkway, e of London.
AA [A]--From Rockcastle River Bridge at the Laurel-Pulaski Co. line to Boggs Road, [a point] 1.2 miles sw of I-75 near London[; and from jct. I-75 near London to jct. US 25 in London].

US [KY] 421
AAA--From Indiana state line at Milton to [jct. Ky 2004 at Sand Gap in Jackson Co.; and from the n city limits of Manchester to jct. KY 80 s of Manchester; and from jct. US 119 at Baxter to jct. KY 38 in Harlan; and from jct. KY 987 at Cawood] the to Virginia state line. Excluding: KY River Bridge at Frankfort - posted Type 1, 19 tons; Type 2, 22 tons; Type 3, 26 tons. Red Bird River Bridge in Clay Co. - posted Type 3, 30 tons.
[AA--From jct. KY 2004 at Sand Gap to NCL of Manchester; and from jct. KY 80 s of Manchester via Hyden to jct. US 119 at Baxter; and from jct. KY 38 in Harlan to jct. KY 987 at Cawood.]

KY 451
AAA--From jct. KY 15 near Glomawr, s of Hazard to jct. KY 15 in Hazard; and from se limits of D.B. Parkway interchange to KY 80.
A--From jct. KY 15 in Hazard to se limits of D.B. Parkway interchange; and from jct. KY 80 to jct. KY 28 near Chavies.

I-471
AAA--From jct. US 27 at Highland Heights to the Ohio State line in Newport (Campbell Co.).

KY 610
AAA [A]--From jct. US 23 at Dorton in Pike Co. to jct. KY 122, 1.7 miles n of Virgie [611 near Upper Caney School].

KY 611
A--From jct. KY 195 at Lookout in Pike Co. to jct. US 23, 1.0 miles w of Stewart [at Robinson Creek].

KY 645
AAA--From US 23 south of Ulysses to KY 40 west of Inez.

KY 814
AAA [A]--From jct. KY 109 in Hopkins Co. to jct. US 41A in Providence.

KY 841
AAA--From jct. KY 155, nw of Jeffersontown to jct. US [60, e of Middletown; and from jct. KY 1447 at Anchorage to jct. US] 42, ne of Louisville.

KY 1006
A--From entrance [jct. KY 192, 0.6 mile sw of London] to Levi Jackson State Park via Sublimity City Rd. and 5th St. in London to jct. US 25 at 5th and Main Sts. in London; includes 0.053 mile spur near jct. KY 1006 and US 25, se of London (Laurel Co.).

KY 1035
A--From jct. [KY 80, 1.4 miles w of London to end of state maintenance at] County Farm Spur Road near Pinetop to jct. KY 1956, w of London (Laurel Co.).

KY 1727
AAA--From Greenwood Road (KY 1931) along Terry Road, sw of Louisville, to Cane Run Road (KY 1934).
A--From Johnsontown Road via Terry Road to Greenwood Road.

KY 1931
AAA--From jct. Greenbelt Highway [Terry Road] (KY 1934) sw of Louisville to jct. Algonquin Parkway (KY 2054) in Louisville.
A--From jct. Cane Run [Lower River] Road (KY 1230) at Greenwood to jct. KY 1934 [Terry Road].

KY 1934
AAA--From jct. KY 1931 at Greenwood Road sw of Louisville, via Greenbelt Highway, to jct. US 31W at South 22nd St. in Louisville.
[A--From jct. Johnsontown Road to jct. KY 1931 at Greenwood Road.]

C. LESLIE DAWSON, Secretary
APPROVED BY AGENCY: July 3, 1985
FILED WITH LRC: July 8, 1985 at 1 p.m.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Local Services
(Amended After Hearing)

702 KAR 7:090. Requirements for coaches and other personnel staffing interscholastic athletic programs.

RELATES TO: KRS 156.070
PURSUANT TO: KRS 156.070
NECESSITY AND FUNCTION: KRS 156.070 gives the State Board of Education the management and control of all programs, including interscholastic athletics, operated in the common schools, and further requires that the rules, regulations, and bylaws of any organization or agency designated by the state board to manage interscholastic athletics be approved by the state board. This regulation sets forth requirements for coaches and other personnel staffing interscholastic athletic programs.

Section 1. Head coaches and assistant coaches of interscholastic athletic teams representing the common schools shall be certified teachers and members of their regular school faculties. They shall be duly employed by their respective boards of education, and their entire salaries shall be paid by such board. They shall be employed a minimum of three(3) regular periods for teaching classes, including physical education; for supervision of study halls; and/or for exercising responsibilities in other activity assignments within the school schedule.

Section 2. (1) In the event a local board of education is unable to staff assistant coaching positions under the provision of Section 1 of the regulation, the superintendent of the local school district may request the Superintendent of Public Instruction to approve the qualifications of persons holding a provisional or standard teaching certificate or having completed a minimum of sixty-four (64) semester hours of college credit as nonteaching assistant coaches under the following provisions:

(a) The local board of education shall declare that no qualified and certified member of the regular school faculty has applied for the posititon, pursuant to Section 1 of this regulation;

(b) The position shall be filled by the best qualified person available, giving preference to the factors of academic preparation, prior teaching experiences or related educational work, and personal attributes compatible with the demands of the coaching profession;

(c) The applicant shall have at least sixty-four (64) semester hours of credit from an accredited college or university;

(d) The applicant shall provide documentation of successful completion of a first aid course, including CPR, as approved by a college or university, the American Red Cross, or the American Heart Association;

(e) The local board of education must submit an application, including a job description and a current college transcript to the Department of Eduation on an annual basis;

(f) Nonteaching assistant coaches shall be employed and act under the direct supervision of

a head coach and under the authority of the principal;

(g) The entire salary for the position shall be paid by the local board of education.

(2) As long as a noncertified paraprofessional is acting within the scope and authority set forth in 704 KAR 15:080 and KRS 161.010 and 161.044, he or she may be employed by a local board of education to carry out assigned responsibilities upon approval by the Superintendent of Public Instruction of a job description limited to the followig duties:

(a) Assists the coaches in daily and long-range athletic activities;

(b) Assists the coaches in planning the program;

(c) Conducts learning experiences, under the direction of the coaches, with small groups of student athletes;

(d) Assists the coaches in guiding participants toward a harmonious team spirit;

(e) Alerts the head coach to the special need of individual athletes;

(f) Provides escort, assistance, and supervision to athletes during periods of team travel;

(g) Recommends to the head coach the puchase of equipment, supplies, and uniforms as appropriate for the health, safety, and welfare of student athletes;

(h) Performs other noncoaching duties assigned by the principal, athletic director, or head coach. [If a school district cannot fill assistant coaching positions under the provisions of Section 1 of this regulation, paraprofessionals holding teaching certificates or having completed at least sixty-four (64) semester hours of college credit, and acting under the direct supervision of a head coach and under the authority of the principal, may be annually employed by the local board of education as assistant coaches, but their entire salaries shall be paid by the employing board. The job description required by 704 KAR 15:080 shall be prepared, maintained, and followed.]

[(2) As long as a noncertified paraprofessional is acting within the scope and authority set forth in 704 KAR 15:080 and KRS 161.010 and 161.044, he or she may be employed by a local board of education to carry out noncoaching responsibilities in routine, noncoaching assignments, upon approval by the board of a job description setting forth such assignments.]

Section 3. The requirements of this regulation shall be made a part of the rules, regulations, and bylaws of any organization or agency designated by the state board to manage interscholastic athletics, and shall be made to apply by said organization or agency to all its member schools.

ALICE McDONALD, Superintendent
APPROVED BY AGENCY: July 5, 1985
FILED WITH LRC: July 5, 1985 at noon

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(Amended After Hearing)

704 KAR 3:304. Required program of studies.

RELATES TO: KRS 156.160
PURSUANT TO: KRS 156.070, 156.160
NECESSITY AND FUNCTION: KRS 156.160 requires the State Board of Education to establish minimum courses of study and the scope of instruction that may be offered in the different classes of common schools, and to establish the minimum requirements for graduation from the courses offered. This regulation implements that duty.

Section 1. Pursuant to the authority vested in the State Board of Education by KRS 156.070 and 156.160, the "Program of Studies for Kentucky Schools, Grades K-12," as amended on July 2 [May 7], 1985, [September 12, 1984] is hereby promulgated and filed with the Legislative Research Commission and incorporated herein by reference. Copies may be obtained from the Office of Instruction, Department of Education.

ALICE McDONALD, Superintendent
ADOPTED BY AGENCY: July 2, 1985
FILED WITH LRC: July 5, 1985 at noon

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(Amended After Hearing)

704 KAR 15:080. Paraprofessional employees and volunteer personnel.

RELATES TO: KRS 161.010, 161.030, 161.044
PURSUANT TO: KRS [13.082,] 156.070, 161.044
NECESSITY AND FUNCTION: KRS 161.010 defines a paraprofessional, KRS 161.030 vests the certification of all teachers and other school personnel with the State Board of Education, and KRS 161.044 directs the State Board to establish a plan for the qualification and utilization of adult paraprofessional employees and adult volunteer personnel in the schools. This regulation prescribes the guidelines by which local school districts may utilize and supervise adult paraprofessional employees and adult volunteer personnel.

Section 1. Local boards of education may utilize adult volunteer and adult paraprofessional employees in accordance with KRS 161.044 and 161.010(4), (5) and subject to the following provisions:

(1) For each paraprofessional employee the local school district shall prepare and maintain an up-to-date job description which outlines the duties that the individual is authorized to perform and which further describes the formal preparation or professional judgments of competency that corroborate the qualifications of the individual to perform those duties. The professional administrative and teaching staff may establish formal evaluation procedures to arrive at the professional judgments of competency that are to be entered into the

written job description.
(2) The professional administrative and teaching staff, as well as the paraprofessional employees, shall have copies of the job descriptions of the paraprofessional personnel under their direction and shall limit the work assignment of the paraprofessional personnel to the duties outlined in the job descriptions.
(3) Paraprofessional employees and volunteer personnel may be assigned within the limitations of their competency to assist with classroom instruction as personally supervised by the professional administrative and teaching staff. Such assistance shall not include the continuing day-to-day responsibility for teaching a particular academic subject or group of pupils in the role ordinarily ascribed to a teacher.

Section 2. In the event a local board of education is unable to fully staff an athletic program with qualified [certified] personnel under 702 KAR 7:090 Sections 1 and 2, the local district superintendent may request annual approval from the Superintendent of Public Instruction for an alternative staffing arrangement for noncertified paraprofessionals performing routine, [noncoaching] assignments, pursuant to 702 KAR 7:090, Section 2(2). Appropriate justification shall be submitted in writing on forms provided by the head of the Office [Bureau] of Instruction. [As long as a paraprofessional is acting within the scope of authority as set forth in this regulation and KRS 161.010 and 161.044, he/she may assist coaches.]

ALICE McDONALD, Superintendent
ADOPTED BY AGENCY: July 2, 1985
FILED WITH LRC: July 5, 1985 at noon

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Vocational Rehabilitation
(Amended After Hearing)

706 KAR 1:020. Independent living plan.

RELATES TO: KRS 156.010, 156.035, 163.140, [163.110, 163.120, 163.130,] 163.160
PURSUANT TO: KRS 156.035, 156.070, [13.082, 156.112, 156.116,] 163.140
NECESSITY AND FUNCTION: Title VII, Part A, P.L. 93-112, as amended, requires the submission of a [an Interim] Three (3) Year State Plan for Independent Living Rehabilitation Services, to the Secretary, Department of [Health,] Education [and Welfare]. The plan must be approved in order for a state to be eligible for grants from the allotment of funds under Title VII, Part A, of the Rehabilitation Act of 1973, P.L. 93-112, as amended by P. L. 93-516, P. L. 95-602 and P. L. 98-221. This regulation adopts such a plan, and thereby implements statutory responsibility of the Department of Education and the State Board of Education under KRS 156.010, 156.035, 163.140, and 163.160.

Section 1. Pursuant to the authority vested in the Kentucky State Board of [for Occupational] Education by KRS 156.035 and 163.140, [156.116] the Kentucky State Plan for Independent Living Rehabilitation Services [incorporated in P.L. 93-112, as amended,] for the period October 1, 1984 [1979] through September 30, 1987 [1982] is presented herewith for filing with the Legislative Research Commission, and incorporated by reference, as amended July 2, 1985. This plan describes how federal funds will be utilized to provide services for independent living to individuals with disabilities so severe that they presently do not have potential for employment, and a copy of said plan can be obtained from the Office of Vocational Rehabilitation, Department of Education.

ALICE McDONALD, Superintendent
ADOPTED BY AGENCY: July 2, 1985
FILED WITH LRC: July 5, 1985 at noon

PUBLIC PROTECTION AND REGULATION CABINET
Department of Mines and Minerals
(Amended After Hearing)

805 KAR 7:030. Annual retraining program.

RELATES TO: KRS 351.105
PURSUANT TO: KRS 13A.100 [13.082], 351.106
NECESSITY AND FUNCTION: KRS 351.106 empowers the Commissioner of the Department of Mines and Minerals to promulgate such reasonable regulations as are necessary to establish a program for miner training and examination according to the criteria and standards established by the Board of Miner Training, Education and Certification. This regulation effects the provisions of that statute [law].

Section 1. Annual Retraining Program. (1) All certified persons shall receive a minimum of sixteen (16) hours of annual retraining.
(2) The annual retraining program set forth in this regulation shall be administered to each certified person during the first full calendar year subsequent to the date on which the certified person received his certification and during every calendar year thereafter.
(3) The annual retraining program shall include but not be limited to the following courses of instruction:
(a) Transportation controls and communications systems: the course shall include instruction in procedures for riding on and in mine conveyances, the controls in effect for the transportation of miners and material, and the use of the mine communication system, warning signals and directional signs.
(b) Barricading: the course shall include instruction and review of the methods of barricading and locations of barricading materials.
(c) Roof control and ventilation plans: the course shall include instruction and review of the roof control plan in effect at the mine and the procedures for roof and rib control, and instruction and review of the ventilation plan in effect at the mine and the procedures for maintaining ventilation and control of ventilation.
(d) First-aid: the course shall include instruction and review of first-aid methods.
(e) Electrical hazards, moving equipment: the course shall include instruction on recognition and avoidance of electrical hazards and

procedures for working on and near moving equipment throughout the mine.

(f) Accident prevention: the course shall include instruction and review of the prevention of accidents, both electrical and mechanical.

(g) Self-rescue devices: the course shall include instruction in the use, care and maintenance of self-rescue devices.

(h) Explosives: the course shall include review and instruction on the hazards related to explosives and instruction in procedures for the safe handling and use of explosives.

(i) Health and safety standards: instruction shall be given on health and safety standard requirements contained in KRS Chapters 351 and 352 and in the Federal Mine Safety and Health Act of 1977 (P.L. 95-165) as such requirements [Part 75 of the Federal Coal Mine Health and Safety Act of 1969 which] are related to the tasks and work assignments of each miner.

Section 2. Annual retraining programs for certified persons may be conducted at various times throughout the calendar year, but no session shall be less than thirty (30) minutes of actual instruction time and the persons to be instructed shall be notified that the session is part of the annual retraining.

[[]Section 3. The operator shall annually verify in the form of an affidavit to the department that each certified person in his employ has received the minimum sixteen (16) hours of annual retraining as required by this regulation. Such affidavit shall state the dates on which the annual training sessions were conducted and the names and corresponding social security numbers of those persons, including persons no longer in the employ of the operator, receiving the annual retraining; provided, however, that no person shall be required to disclose his social security number for purposes of this affidavit. In the event that a person who has received the annual retraining refuses to disclose his social security number, the operator shall make a notation to that effect in the affidavit in lieu of stating that person's social security number.[]]

Section [3. []4[]]. Willful failure of a certified person to attend a minimum of sixteen (16) hours of annual retraining shall constitute grounds for revocation, suspension, or probation of the certificate, in accordance with KRS 352.370.

WILLARD STANLEY, Commissioner
APPROVED BY AGENCY: July 10, 1985
FILED WITH LRC: July 11, 1985 at 10 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Mines and Minerals
(Amended After Hearing)

805 KAR 7:040. Training of newly hired miners.

RELATES TO: KRS 351.105
PURSUANT TO: KRS 13A.100 [13.082], 351,106
NECESSITY AND FUNCTION: KRS 351.106 provides that the Commissioner of the Department of Mines and Minerals shall promulgate such reasonable regulations as are necessary to establish and implement a program of miner training and examination according to the criteria and standards established by the Board of Miner Training, Education, and Certification pursuant to KRS Chapter 351. This regulation effects the provisions of that statute [law].

Section 1. Training of Newly Hired Miners. (1) Each newly hired miner, whether experienced or inexperienced, shall receive a minimum of eight (8) hours training provided by the mine operator in mine specifics as applied to the particular mine wherein the miner is to be employed.

(2) Such training shall include instruction in the courses set forth in 805 KAR 7:020, Section 2 (2), (3), (4), (5), (6), (7), and (9), and shall be completed before the newly hired miner can be assigned any work duties.

[[](3) The operator shall verify in the form of an affidavit to the Department that the newly hired miner has received the eight (8) hours training in mine specifics required by this regulation.[]]

[(3) [](4)[]] Upon proof by an operator that a rehired experienced miner has received the training set forth in this regulation within twelve (12) months preceding re-employment at the mine, such miner need not repeat the training set forth in this regulation.

WILLARD STANLEY, Commissioner
APPROVED BY AGENCY: July 10, 1985
FILED WITH LRC: July 11, 1985 at 10 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Mines and Minerals
(Amended After Hearing)

805 KAR 7:050. Training of miners for new work assignments.

RELATES TO: KRS 351.105
PURSUANT TO: KRS 13A.100 [13.082], 351.106
NECESSITY AND FUNCTION: KRS 351.106 empowers the Commissioner of the Department of Mines and Minerals to promulgate such reasonable regulations as are necessary to establish a program for miner training and examination according to the criteria and standards established by the Board of Miner Training, Education and Certification. This regulation effects the provisions of that statute [law].

Section 1. Training of Miners for New Work Assignments. (1) Each miner receiving new work assignments requiring the direct operation of mechanical or electrical machinery or equipment in connection with mobile equipment operations, blasting and drilling operations, rail haulage and conveyor system operations, and roof control shall not perform such work duties until he/she has [they have] completed a program of training as provided in this regulation of a minimum of twenty (20) hours as specified in KRS 351.105.

(2) Such [This] minimum [total] of twenty (20) hours training shall be provided as follows: [distributed into a minimum of] eight (8) hours of observing the operation in which the new work assignment is to be made, eight (8) hours of a combination of instruction and practice in such new work assignment, and four (4) hours in production under supervision.

(3) The training program shall include, but not be limited to, the following:

(a) Safe operation procedures for existing, modified, or new equipment or machines: this training shall include instruction in the safe operating procedures related to the equipment or machine. Instruction shall be given by the immediate supervisor or experienced person in an on-the-job environment, and shall be taught from a safe operating procedures checklist developed specifically for the equipment or machine. A copy of the checklist shall be given to each equipment or machine operator at the time of instruction.

(b) Supervised practice during non-production: this training shall include supervised practice in operating equipment or a machine and performing work duties at mines or places where production is not the primary objective. The equipment or machine operator shall practice the operation of the equipment or machine under direct supervision of the immediate supervisor or experienced person until such time as sufficient practice has taken place to ensure the operation of the equipment or machine in a safe manner.

(c) Supervised practice during production: this training shall include supervised operation of the machine or equipment and performing work duties under the direct and immediate supervision of an experienced foreman or experienced equipment or machine operator while production is in progress. An equipment or machine operator shall not operate equipment or a machine without direction and immediate supervision until such operator has demonstrated [knowledge of the safe operating procedures for the equipment or machine] to the satisfaction of the operator of the mine or to the mine foreman that the trainee possesses knowledge of the safe operating procedures for such equipment or machine.

(d) Any person who controls or directs rail haulage operations at a mine shall, before assignment to such duties, receive and complete training in safe haulage procedures related to the haulage system, ventilation system, firefighting procedures, and the emergency evacuation procedures in effect at the mine. This training may be received as part of the training program provided for in paragraphs (a), (b), and (c) of this subsection.

[Section 2. A miner shall not be required to undergo training for a new work assignment for the job to which he is regularly assigned on the effective date of the miner training program as determined by the board pursuant to KRS 351.104(1).]

Section 2. [3.] At such time as a miner becomes qualified under the provisions of this regulation to perform any work assignment, he/she [shall remain so qualified for the duration of the calendar year wherein the miner became so qualified, and] shall continue to be so qualified during any calendar year thereafter wherein the miner demonstrated safe operating procedures in performance of the work assignment during the preceding calendar year.

[Section 4. Any miner who has acquired a total of six (6) months' experience in performance of particular work duties shall not be required to undergo training for a new assignment to perform those duties; provided, however, that this exemption from training shall not apply to work experience acquired on or before June 1, 1975.]

[[]Section 3. [5.] Each operator shall annually submit to the department, in the form prescribed by the commissioner, a current list of the miners in his employ, the job assignments for which each miner is qualified and the basis for such qualification. This list shall be submitted to the department [within thirty (30) days of the effective date of the miner training program as established by the board pursuant to KRS 351.104(1) and shall thereafter be submitted to the department] during the month of January in each [succeeding] calendar year. A copy of said list shall be posted in a conspicuous place upon the premises of the mine and shall be updated to reflect changes as they occur.[]]

Section 4. [3.] [6.] The provisions of this regulation shall not be construed to alter or deprive any person of any right or duty accruing to that person by virtue of any labor-management contract.

WILLARD STANLEY, Commissioner
APPROVED BY AGENCY: July 10, 1985
FILED WITH LRC: July 11, 1985 at 10 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Mines and Minerals
(Amended After Hearing)

805 KAR 7:070. [Monthly] Reporting procedures and record maintenance.

RELATES TO: KRS 351.102, 351.105
PURSUANT TO: KRS 13A.100, 351.105, 351.106
NECESSITY AND FUNCTION: KRS 351.102 requires the Board of Miner Training, Education and Certification to establish criteria and standards for a program of training and education for underground coal miners. [KRS 351.106 empowers the Commissioner of the Department of Mines and Minerals to promulgate regulations, necessary to implement the program of education and training.] This regulation sets forth the reporting procedures and record maintenance necessary to implement and administer such program.

Section 1. Reporting Requirements. (1) The operator of each underground coal mine [shall][[]may, at his option,[]] make a monthly report to the department on forms prescribed by the commissioner.

[[](2) In the event that an operator makes monthly reports to the department in accordance with the provisions of this regulation, then that operator need not make the reports required by 805 KAR 7:030(3), 805 KAR 7:040(3), and 805 KAR 7:050(5).[]]

[(2) [](3)[]] Each such monthly report shall be mailed to the department no later than fifteen (15) days subsequent to the last day of each month.

[(3) [](4)[]] A copy of the last monthly report submitted to the department shall

be posted in a conspicuous place on the mine premises.

[[](5) Any operator wishing to make monthly reports to the department in lieu of the reports required by 805 KAR 7:030(3), 805 KAR 7:040(3), and 805 KAR 7:050(5) may do so by giving written notification to the department of his intent to submit monthly reports.[]]

Section 2. Information to be Reported Monthly. (1) Each monthly report shall contain the following information:

(a) Identification of each person who [that] accumulated a total of sixteen (16) hours of annual retraining [since the first day of the prevailing calendar year,] during that month;

(b) Identification of each newly-hired miner who received eight (8) hours of mine specific training in accordance with 805 KAR 7:040 during that month;

(c) Identification of each experienced miner re-hired by the operator during that month who had received the mine specific training set forth in 805 KAR 7:040 within the twelve (12) preceding months;

(d) Identification of each miner who has completed twenty (20) hours of training for a new work assignment during that month as set forth in 805 KAR 7:050, and the particular work assignment for which the training was received; and

(e) Identification of each miner qualified in the preceding calendar year who [has] demonstrated safe operating procedures in the performance of a particular work assignment during that month.

(2) The operator shall report the information required by this regulation as it pertains to each person employed by the operator during the reported month regardless of whether that person is so employed at the time of submission of the monthly report.

(3) If, during any month, none of the events required to be reported occur, [then] the operator need not submit any report for that month.

Section 3. Record Maintenance. (1) The operator shall maintain upon the mine premises current and accurate records of the following:

(a) The dates on which annual retraining sessions were conducted by the operator, the persons receiving the annual retraining on those dates, and the subjects covered by each annual retraining session;

(b) The name of each miner newly-hired during the prevailing calendar year, the date on which he/she was hired, and the date on which he/she received eight (8) hours of mine specific training; and

(c) The particular work assignments [for] which each miner is qualified to perform pursuant to 805 KAR 7:050, and the basis for such qualification[s].

(2) The operator shall maintain upon the mine premises a copy of all monthly reports submitted to the department during the preceding twelve (12) months.

WILLARD STANLEY, Commissioner
APPROVED BY AGENCY: July 10, 1985
FILED WITH LRC: July 11, 1985 at 10 a.m.

PERSONNEL BOARD
(Proposed Amendment)

101 KAR 1:120. Separations and disciplinary actions.

RELATES TO: KRS 18A.005, 18A.075, 18A.095, 18A.110, 18A.165

PURSUANT TO: KRS 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 layoff 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.

(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 seasonal, federally funded time limited, provisional, temporary, emergency, or probationary employees serving in the agency in the same class in the same locality. "Probationary" as used in this subsection does not include employees serving a probationary period as a result of a promotion.

(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 effected.

(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. 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. 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.

ARTHUR HATTERICK, JR., Executive Director
APPROVED BY AGENCY: June 21, 1985
FILED WITH LRC: July 5, 1985 at 3 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation is scheduled for August 23, 1985, at 9:30 a.m. in Room 360 of the Capitol Annex Building. Those interested in attending please contact: Commonwealth of Kentucky, Personnel Board, Room 372, Capitol Annex Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Arthur Hatterick, Jr.

(1) Type and number of entities affected: All state agencies utilizing classified employees. Also those state employees having been laid off.

(a) Direct and indirect costs or savings to those affected:

1. First year: Direct and indirect costs or savings will depend on the number of employees who may be given notice of layoff during any period of time. Those costs related to the agency and the Department of Personnel in reviewing the status of unclassified employees prior to approving layoff plans.

2. Continuing costs or savings: See 1 above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Will reduce competition for state positions with preferential consideration being given to laid off employees.

(b) Reporting and paperwork requirements: Routine review of classified employees in the same class for the agency needing to consider layoff plans.

(2) Effects on the promulgating administrative body: The effects on this agency will be in proportion to the number of appeals which may be filed with it related to employees having been given notice of layoff.

(a) Direct and indirect costs or savings: See answer to (1)(a)1, 2, and 3 above.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Directly in proportion to the number of layoff plans under consideration by an agency.
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: This was consistent with classified employees receiving preferential consideration over unclassified employees.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: See (5)(b).
(a) Necessity of proposed regulation if in conflict: See (5)(b).
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: It appeared that the absence of those two types of unclassified positions should be given the same consideration as other unclassified positions which were currently identified as such in the current regulations.
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. Not applicable.

GENERAL GOVERNMENT 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. [Beginning October 6, 1984 and thereafter,] The fee for application for licensure by examination received by the executive secretary of the board during the first year of the biennial licensure term shall be $205. This application could result in a temporary permit and license which would be valid for more than one (1) year. The fee for application received by the executive secretary in the second year of a biennial licensure term shall be $165. This application could result in a temporary permit and license which would be valid for one (1) year or less. All application fees shall be paid by cashier's or certified check or money order payable to the Kentucky State Treasurer. Upon approval as a candidate by the board, the candidate for licensure by examination will be notified of the date, place and time of the examination by the board. Examinations 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 <u>forty-five (45) days</u> [the fifth day of the month] preceding the <u>date</u> [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 permit shall be issued to be in force until sixty (60) days after the examination held six (6) months later, until the results of that examination are received and processed, or until the regularly scheduled renewal date of all licenses to practice, March 31 of each uneven numbered year, whichever comes first. A temporary permit requires that the physical therpist 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 person granted a temporary permit at all times during the working hours of the person with a temporary permit and be responsible for the direction of the actions of the person supervised when services are performed by the person with a temporary permit. The board shall issue a temporary permit only to:
(1) Graduates who have applied for licensure by examination, have met all requirements and are sitting for the next examination or who have taken that examination and have not yet been notified of the results.
(2) Applicants for licensure by endorsement who have met all other requirements but must take one (1) or more parts of the examination again.
(3) Foreign-trained physical therapist applicants who have met all requirements for licensure application and paid all fees provided for in KRS 327.060(2), except that the applicant has not yet taken and successfully completed the PES examination and/or has not yet begun a one (1) year board approved employment as a physical therapist.
(4) Graduates who have applied for licensure by PES examination in another state and who have met all requirements for Kentucky application but who have not yet taken and/or been notified of successful completion of that examination.

Section 3. The applicant shall have three (3) attempts to pass the examination except that no applicant may work with a temporary permit longer than twenty-one (21) months. The original application fee covers the first attempt. The cost of the examination to the board plus an administrative fee of forty-seven (47) dollars and fifty (50) cents must be assumed by the applicant for the second and third attempts. The temporary permit will be issued after request for re-examination on the second and third attempts and payment of the required fee at the discretion of the board. If the applicant fails on the third attempt, the temporary permit 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 permit 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 by the Interstate Reporting Service 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 proper for the period within the biennial licensure term in which he is applying. [Beginning December 15, 1984 and thereafter,] The fee submitted for application received by the executive secretary of the board in the first year of a biennial licensure term shall be $140. This application could result in a license valid for more than one (1) year. An application fee received by the executive secretary of the board in the second year of a biennial licensure term shall be $100. This application could result in a license valid for one (1) year or less. Application fees shall be paid by money order, cashier's or certified check payable to the Kentucky State Treasurer. 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 one and five tenths (1.5) standards 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 physical therapy work addresses and telephone numbers, payment of the renewal fee of eighty (80) dollars plus reinstatement fee of twenty-five (25) dollars. The fee for reinstatement received which will grant licensure for a period of one (1) year or less shall be forty (40) dollars plus a reinstatement fee of twenty-five (25) dollars. Reinstatement fees shall be paid by money order, cashier's or certified check made payable to the Kentucky State Treasurer and should be sent 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. [Beginning December 15, 1984,] A license, which shall be in effect until [March 31, 1987 and thereafter,] March 31st of the next uneven numbered year 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 one and five tenths (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 foreign trained candidates have met all requirements.

Section 8. The executive secretary of the board may function admininstratively to review, process and interpret all applications received by the board and correspond with the applicants accordingly.

JANET RODGERS, Chairman
APPROVED BY AGENCY: June 7, 1985
FILED WITH LRC: July 8, 1985 at 10 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 21, 1985 at 10 a.m. in Room 107 of the Capitol Annex. Anyone interested in attending this hearing shall contact in writing by August 16, 1985: Nancy Brinly, Executive Secretary, Kentucky State Board of Physical Therapy, 1614 Dunbarton Wynde, Louisville, Kentucky 40205.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nancy Brinly
(1) Type and number of entities affected: Fifty physical therapist exam applicants.
(a) Direct and indirect costs or savings to those affected:
1. First year: No cost factors.
2. Continuing costs or savings: No cost factors.
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: N/A
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: No cost factors.
2. Continuing costs or savings: No cost factors.
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: No change.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: A change in the deadline for filing for the licensure examination was necessitated by a change to National Examination Dates. This board has usually offered the exam toward the end of the month. Common exam dates are near the first of the month. Extra time is therefore required to order/receive examinations and notify examinees of eligibility.

Tiering:
Was tiering applied? No. All physical therapists and physical therapist's assistants are treated uniformly under the law.

GENERAL GOVERNMENT CABINET
Board of Physical Therapy
(Proposed Amendment)

201 KAR 22:052. Refusal, revocation, suspension or probation of license or certificate; administrative warning to licensee or certificant.

RELATES TO: KRS 327.070, 327.090
PURSUANT TO: KRS 327.040
NECESSITY AND FUNCTION: The board has the responsibility of enforcing the definitive procedures of refusal, revocation, suspension, or placing on probation, the license of any physical therapist and the certificate of any physical therapist's assistant or issuing an administrative warning to any licensee or certificant. Often questions concerning the law or possible violations can be resolved by mutual discussions; however, these guidelines are to be followed when the board receives, or initiates, a written and signed explicit complaint. All aspects of an investigation of a complaint shall be held strictly confidential until after enforcement action is completed or a decision is made to take no action.

Section 1. (1) Complaint. A complaint that a person (hereinafter called respondent) has failed to or refused to obey the requirements of KRS Chapter 327, the rules and regulations of the board or its "Standards of Practice Guidelines" shall be made in writing to or by the Kentucky State Board of Physical Therapy. The complaint must be a clear and concise statement of violation and it must be signed by the complainant. The complainant need not be a physical therapist or assistant. Within ten (10) days the chairman of the board shall acknowledge to the complainant receipt of the complaint by registered or certified mail.

(2) Notice to respondent. Within ten (10) days after receipt of the written complaint, the chairman of the board shall notify the respondent of the complaint by registered or certified mail, return receipt requested. This notice shall require the respondent to reply to the complaint by registered or certified mail to the board within ten (10) days after receipt of notice.

(3) Investigation of complaint. The investigation shall be a thorough, objective review of the circumstances under which the alleged violation took place. Two (2) members of the board or its official representative may wish to discuss the complaint with the respondent or complainant to collect and organize more information, but not make a decision. An investigative file shall be formed to include all information and documents acquired during the investigation.

(4) Arrangement for a hearing. After receiving respondent's written reply and after possible discussion between the board and respondent, the board shall determine if a hearing will be necessary to further investigate the complaint. If no hearing is necessary or all parties come to an agreement, the board shall advise all parties that the matter is determined to be settled or closed. If a hearing is necessary, the board shall give all involved parties thirty (30) days notice of the date, time and place the hearing will be held. The board shall call a hearing if it may revoke, refuse, or suspend a license or certificate or place a licensee or certificant on probation or issue an administrative warning to a licensee or certificant so that the licensee or certificant can show evidence why his/her license or certificate should not be revoked, refused, or suspended or that the licensee or certificant should not be placed on probation or receive an administrative warning.

(5) Hearing. At the hearing the respondent has the right to be present and to be represented by counsel. The board may or may not wish to follow formal rules of evidence, but the board may exclude irrelevant or repetitious evidence. The hearing may be conducted to bring out pertinent facts, including the calling of witnesses and the production of pertinent documents. Testimony shall be under oath or affirmation. The hearing shall be recorded. All documents accepted by the board, including the investigative file, shall be made part of the record of the hearing.

(6) Findings and decisions. After the hearing the board shall make findings as to all questions of fact and all questions of interpretation of KRS Chapter 327, board rules and regulations and the "Standards of Practice Guideline." The board may close the matter or settle, and notify all persons involved, or it may take appropriate disciplinary action after conferring with the Attorney General to assure that all guidelines have been followed correctly.

Section 2. Any person aggrieved by an order of the board denying, suspending or revoking his/her license or certificate may appeal to the Franklin Circuit Court within thirty (30) days after entry of said order for appropriate relief. Examination of the record of the board's action will be done for the purpose of determining whether the board abused its discretion.

Section 3. The Kentucky State Board of Physical Therapy hereby adopts a "Standards of Practice Guidelines" for evaluating the performance of a physical therapist or physical therapist's assistant. These guidelines being one and the same as adopted by the Kentucky State Board of Physical Therapy at its meeting on June 7, 1985 [May 11, 1984] and filed with the board minutes.

JANET RODGERS, Chairman
APPROVED BY AGENCY: June 7, 1985
FILED WITH LRC: July 8, 1985 at 10 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 21, 1985 at 10 a.m. in Room 107 of the Capitol Annex. Anyone interested in attending this hearing shall contact in writing by August 16, 1985: Nancy Brinly, Executive Secretary, Kentucky State Board of Physical Therapy, 1614 Dunbarton Wynde, Louisville, Kentucky 40205.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nancy Brinly
(1) Type and number of entities affected: 650 physical therapist, 160 assistants.
(a) Direct and indirect costs or savings to those affected:
1. First year: No cost factors.
2. Continuing costs or savings: No cost factors.
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: N/A
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: No cost factors.
2. Continuing costs or savings: No cost factors.
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: No change.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: In initial adoption of the standards relating to supervision and recordkeeping the permissive word "should" was used to permit leeway for unusual circumstances. The board has been advised that as long as a permissive word is used in the standards that they are non enforceable. However, leeway still exists in that the board is not required to revoke or suspend a license or certificate or put on probation or issue an administrative warning to a licensee or certificant any time the standards are broken.

Tiering:
Was tiering applied? No. All physical therapists and physical therapist's assistants are treated uniformly under the law.

GENERAL GOVERNMENT 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. [Beginning October 6, 1984 and thereafter,] The fee for application for certification by examination received by the executive secretary of the board during the first year of the biennial licensure term shall be $200. This application could result in a temporary permit and certificate which would be valid for more than one (1) year. The fee for application received by the executive secretary in the second year of a biennial licensure term shall be $160. This application could result in a temporary permit and certificate which would be valid for one (1) year or less. All application fees shall be paid by cashier's or certified check or money order payable to the Kentucky State Treasurer. Upon approval as a candidate by the board, the candidate for certification by 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 <u>forty-five (45) days</u> [after the 5th day of the month] preceding the <u>date</u> [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 permit shall be isued to be in force until sixty (60) days after the examination held six (6) months later, until the results of that examination are received and processed, or until the regularly scheduled renewal date of all licenses to practice, March 31 of each uneven numbered year, whichever comes first. A temporary permit requires that the physical therapist's assistant candidate work only with on-site supervision of a physical therapist licensed in Kentucky. The board shall issue a temporary permit to:
(1) Graduates who have applied for certification by examination, have met all requirements and are sitting for the next examination or who have taken that examination and have not yet been notified of the results.
(2) Applicants for certification by endorsement who have met all other requirements but must take the examination again.
Graduates who have applied for certification by PES examination in another state and who have met all requirements for Kentucky application but who have not yet taken and been notified of successful completion of that examination.

Section 3. The applicant shall have three (3) attempts to pass the examination except that no applicant may work with a temporary permit longer than twenty-one (21) months. The original fee covers the first attempt. The cost of the examination to the board plus an administrative fee of forty-seven (47) dollars and fifty (50) cents must be assumed by the applicant for the second and third attempts. If the applicant fails on the first and second attempts and requests re-examination and pays the required fee, at the discretion of the board, a temporary permit shall be issued to allow the applicant to practice. If the applicant fails on the third

attempt, the temporary permit 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 permit 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 by the Interstate Reporting Service to this board for consideration of certification.

Section 5. The candidate for certification by endorsement shall use the regular application form. The Kentucky State Board of Physical Therapy will endorse a candidate who has paid an application fee proper for the period within the biennial licensure term in which he is applying, been examined by the Professional Examination Service, meets the Kentucky board's requirements of the national raw average score minus one and five-tenths (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. [Beginning December 15, 1984 and thereafter,] The fee submitted for application received by the executive secretary of the board in the first year of a biennial licensure term shall be $140. This application could result in a certificate which would be valid for more than one (1) year. An application fee received by the executive secretary of the board in the second year of a biennial licensure term shall be $100. This application could result in a license valid for one (1) year or less. Application fees shall be paid by money order, cashier's or certified check payable to the Kentucky State Treasurer.

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 eighty (80) dollars plus reinstatement fee of twenty-five (25) dollars by money order, cashier's or certified check made payable to the Kentucky State Treasurer, furnish current complete home and all physical therapy business addresses and telephone numbers and mailing these to the executive secretary of the board. The fee for renewal received which will grant certification for a period of one (1) year or less shall be forty (40) dollars plus a reinstatement fee of twenty-five (25) dollars. 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 evaulation of each instance be required to be re-examined.

Section 7. Physical therapist candidates who fail to pass the physical therapists' licensure examination on three (3) attempts and foreign trained physical therapist candidates who fail to complete general education requirements within the designated twenty-one (21) [eighteen (18)] months 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 sixty-five (65) on each part of their physical therapist examination with a passing set equal to the national average raw score minus one and five-tenths (1.5) standard deviation set equal to a converted seventy-five (75) on each part of the physical therapist examination.

Section 8. [Beginning December 15, 1984,] Certification, which shall be in effect until [March 31, 1987 and thereafter,] March 31 of the next uneven numbered year 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 one and five-tenths (1.5) standard deviation set equal to a converted score of seventy-five (75).

JANET RODGERS, Chairman
APPROVED BY AGENCY: June 7, 1985
FILED WITH LRC: July 8, 1985 at 10 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 21, 1985 at 10 a.m. in Room 107 of the Capitol Annex. Anyone interested in attending this hearing shall contact in writing by August 16, 1985: Nancy Brinly, Executive Secretary, Kentucky State Board of Physical Therapy, 1614 Dunbarton Wynde, Louisville, Kentucky 40205.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nancy Brinly
(1) Type and number of entities affected: 20 assistant exam applicants.
(a) Direct and indirect costs or savings to those affected:
1. First year: No cost factors.
2. Continuing costs or savings: No cost factors.
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: N/A
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: No cost factors.
2. Continuing costs or savings: No cost factors.
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: No change.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to

harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: A change in the deadline for filing for the licensure examination was necessitated by a change to National Examination Dates. This board has usually offered the exam toward the end of the month. Common exam dates are near the first of the month. Extra time is therefore required to order/receive examinations and notify examinees of eligibility.

Tiering:
Was tiering applied? No. All physical therapists and physical therapist's assistants are treated uniformly under the law.

DEPARTMENT OF AGRICULTURE
(Proposed Amendment)

302 KAR 20:010. Definitions.

RELATES TO: KRS Chapters 246, 257
PURSUANT TO: KRS Chapter 257, 257.030
NECESSITY AND FUNCTION: Definitions and terms to clarify interpretation of regulations relating to the Division of Livestock Sanitation.

Section 1. Definitions and Terms. (1) "Commissioner" means the Commissioner of the Department of Agriculture.

(2) "Department" means the Department of Agriculture.

(3) "Board" means the State Board of Agriculture.

(4) "Persons" shall include any individual, firm, association, partnership or corporation.

(5) "Stockyards" means any livestock yard, concentration point, packing plant or any other public place where livestock is regularly assembled for sale or exchange and is bought, sold or exchanged at auction or upon a commission or other basis.

(6) "Posted stockyards" means stockyards regulated by the United States Secretary of Agriculture under the Packers and Stockyards Act, 1921 (42 Stat. 159).

(7) "Premises" means any portion of land or any structure erected on land or any vehicle or vessel used in the transportation of passengers, goods or livestock.

(8) "Communicable disease" includes hog cholera, coccidiosis, brucellosis, anaplasmosis, leptospirosis, encephalomelitis, anthrax, blackleg, salmonellosis, catarrhal influenza of cattle, contagious pleuropneumonia, foot and mount disease or apthous fever, glanders, hemorrhagic septicaemia maladie du coit or dourine, mange of cattle, necrobacillosis and foot rot in sheep, hydrophobia, rinderpest, scabies in cattle, Texas tick or souther cattle fever, tuberculosis, paratuberculosis or Johnes disease, pseudorabies, velogenic visceraltrophic Newcastle disease or any other disease proclaimed by the board to be of a transmissible character.

(9) "Garbage" means waste consisting entirely or in part of animal waste resulting from handling, preparing, cooking, and consuming of food including the offal from animal carcasses or parts thereof, but excluding such waste from ordinary household operations which is fed directly to swine on the same premises.

(10) "Interstate" means movement into or through any other state.

(11) "Intrastate" means movement solely within the boundaries of the Commonwealth of Kentucky.

(12) "Concentration" or "assembly point" means any place where livestock or animals are assembled, moved, gathered, combined, collected or brought together by any person using any method or vehicle for sale, resale or barter.

(13) "Recognized slaughtering center" means a slaughtering establishment approved in accordance with state and federal regulations where slaughtering facilities are provided and to which animals are regularly shipped and slaughtered.

(14) "Chief livestock sanitary official" means State Veterinarian of the Division of Livestock Sanitation, Department of Agriculture, or his authorized representative.

(15) "Livestock" means animals used or raised on a premises of the bovine, caprine, equine, porcine, avian, ovine and lapin species.

(16) "Feeder cattle" means steers of any breed, spayed heifers or open heifers of the beef breed only under twenty-four (24) months of age which are primarily intended for slaughter afater having reached the desired feeding stage.

(17) "Official brucellosis vaccinate" means a female bovine animal vaccinated against brucellosis with an approved Brucella vaccine against brucellosis with an approved Brucella vaccine with the vaccination protocol set forth by the State Veterinarian's office. Animals must be vaccinated by a licensed, accredited veterinarian or authorized representative of the department and permanently identified and tattooed as a vaccinate and reported at the time of vaccination to the appropriate state or federal agency on official forms as provided.

(18) "Health certificate" or "certificate of veterinary examination" means a legible record covering the requirements of the state of destination accomplished on an official form of a standard size from the state of origin or an equivalent form of the Animal and Plant Health Inspection Service, Veterinary Services, United States Department of Agriculture, that is prepared and issued by a licensed, accredited veterinarian. For purposes of these regulations the term "certificate of veterinary examination" shall be the same as, equal to, and used interchangeably with the term "health certificate."

(19) "Approved health certificate" means an official health certificate approved by the chief livestock sanitary official of the state of origin.

(20) "Virulent hog cholera virus" means the living agent capable of causing hog cholera that is found in the clear serum, plasma, defibrinated blood, whole blood or other tissue derived from pigs sick of hog cholera; or in any material used as a vehicle for perpetuating such living agent.

(21) "Farm of origin" means a farm where livestock to be moved interstate were born and which has not been used in the past six (6) months to assemble, buy or sell livestock brought in from other sources.

(22) "Infectious" or "contagious disease" means any disease condition that can be transmitted from one animal to another either

directly or indirectly.
(23) "Owner" or "operator" means a person, firm, corporation or company responsible for the operation of a stockyard, sale, public stockyard, farm or ranch.
(24) "State-federal approved stockyard" means a stockyard that has complied with state and federal requirements for specific movements of livestock and has been approved by the chief livestock sanitary official and federal area veterinarian in charge of the area where the stockyard does business.
(25) "Licensed, accredited veterinarian" means a graduate veterinarian who is qualified by a state examining board and is apparoved by the federal government and Commonwealth of Kentucky.
(26) "Area veterinarian in charge" means federal veterinarian in charge of the Animal and Plant Health Inspection Service, Veterinary Services, United States Deparatment of Agriculture in Kentucky.
(27) "Move" or "movement" means the act of moving, shipping or transporting livestock by any means, method or vehicle; delivering, receiving or collecting livestock by any means, method or vehicle by any person by land, water or air for sale, resale or barter.
(28) "Assembled cattle" are animals without a common owner, consignor or herd of origin brought together during transportation to market and commingled in a common enclosure.

DAVID E. BOSWELL, Commissioner
APPROVED BY AGENCY: June 14, 1985
FILED WITH LRC: June 27, 1985 at 2 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 22, 1985 at 10 a.m. in Room 713 of the Capital Plaza Tower, Frankfort, Kentucky. Those interested in attending this hearing shall contact: Thomas M. Troth, General Counsel, Department of Agriculture, Room 705, Capital Plaza Tower, Frankfort, Kentucky 40601. Unless written notification of intent to attend a public hearing is received by the promulgating agency at least five (5) days before the hearing date, the hearing date may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: J. D. Wolf
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected: None
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: N/A
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: N/A
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives not the most effective method.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. Change in definition must apply to all livestock in Kentucky.

DEPARTMENT OF AGRICULTURE
(Proposed Amendment)

302 KAR 20:065. Sale and exhibition <u>of</u> [for Kentucky] livestock <u>in Kentucky</u> [only].

RELATES TO: KRS Chapter 257
PURSUANT TO: KRS 257.030
NECESSITY AND FUNCTION: To specify general sanitary and health requirements in relation to the sale and exhibition of Kentucky livestock in Kentucky.

Section 1. Cattle. (1) General requirements.
(a) All animals, except as noted, shall be accompanied by an approved health certificate. Health certificates shall be void 150 days after issuance for exhibition and thirty (30) days after issuance for sale.
(b) If animals are from accredited or certified herds, health certificate shall show accreditation and certification number with date of last herd test for tuberculosis and brucellosis.
(c) Blood tests for brucellosis must be conducted in a state-federal laboratory and be negative according to recommended procedures of the Uniform Methods and Rules published by APHIS, VS, USDA.
(d) Cattle changing ownership shall be vaccinated against brucellosis as required in 302 KAR 20:055.
(2) Brucellosis.
(a) Sale. All breeding cattle moving from one (1) premise to another premise on the change of ownership must be negative to the brucellosis test within thirty (30) days prior to movement.
(b) Exhibition. Animals six (6) months of age or over shall be negative to an official test for brucellosis within 150 days of date of exhibition, unless exempt by one (1) of the following:
1. Originate directly from a certified herd.
2. Official vaccinate under twenty (20) months of age for the dairy breeds and twenty-four (24) months of age for the beef breeds.
3. Steers. Must be accompanied by approved health certificate showing individual identification. No brucellosis test required.
(3) Tuberculosis.
(a) Sale. Animals six (6) months of age or older shall be negative to an official tuberculin test within sixty (60) days of date of sale, unless exempt by one (1) of the following:
1. Originate directly from an accredited herd.
2. Originate directly from a herd in which all animals six (6) months of age or older are

negative to an official tuberculin test within last twelve (12) months of date of sale.
(b) Exhibition. No test required.

Section 2. Performance Bull Testing Program. (1) All animals shall be accompanied by approved health certificates.
(2) Brucellosis. Animals entered in this program shall, if six (6) months of age or older, be negative to an official brucellosis test within thirty (30) days of date of entry or originate directly and immediately from a certified herd.
(3) Tuberculosis. All animals six (6) months of age or older shall be negative to an official tuberculin test within sixty (60) days or originate directly and immediately from an accredited herd.

Section 3. Horses. (1) All horses entering Kentucky, except unweaned foals, and other equidae, for any purpose other than for immediate slaughter shall be accompanied by an official certificate of veterinary examination of state of origin issued by a state, federal or licensed accredited veterinarian and such certificate shall include:
(a) Veterinarian's statement that examination was made within the past thirty (30) days and revealed the animal to be free of symptoms of any infectious disease or exposure thereto; and
(b) Shall include any tests that have been conducted as well as all vaccinations including vaccination date and type of vaccine used; and
(c) Have attached thereto a copy of certificate of report from a laboratory approved by the USDA showing the animal(s) to be negative to AGID test for equine infectious anemia within the past six (6) months, if offered for sale.
(2) All horses being offered for sale in Kentucky shall be accompanied by a health certificate or official certificate of veterinary examination of the state of origin issued by a state, federal or licensed accredited veterinarian. This certificate shall remain as a record at the sale and will be presented to the new owner. Such certificate shall include all information required pursuant to subsection (1) of this regulation. All horses past six (6) months of age and other equidae offered for public sale shall be negative to AGID test within the past six (6) months. Only horses offered for sale for slaughter shall be exempt from this requirement. [past six (6) months of age and other equidae offered for public sale shall be negative to AGID test within the past six (6) months. Only horses offered for sale for slaughter shall be exempt from the requirements.]
[(2) All horses and other equidae offered for entry into fairgrounds, livestock show grounds, public boarding stables and for trail rides or racing shall be negative to test AGID within twelve (12) months and shall be accompanied by certificate of report from a laboratory approved by the USDA.]
(3) All reactors to AGID test for equine infections anemia shall be officially, permanently identified using numbers and letter 61A with a brand on the left neck region.
(4) All reactors not slaughtered or euthanized shall be isolated and quarantined. This isolation shall include stabling in a stall that is screened to preclude entry and exit of mosquitoes, stable flies and horse flies during those seasons of the year when such insects are prevalent. These animals will also be kept at least 200 yards from all other horses.
(5) The movement of any quarantined reactor shall be done only on permission of representative of the Department of Agriculture.
(6) All horses in a herd in which a reactor is found shall be quarantined pending a negative test on all horses.

Section 4. Swine. (1) All swine for exhibition and sale must be accompanied by an approved health certificate which shall be void 150 days after issuance for exhibition and thirty (30) days after issuance of sale.
(2) Brucellosis.
(a) Sale. All swine except barrows six (6) months of age or older shall have a negative thirty (30) day test in accordance with the Uniform Methods and Rules published by APHIS, VS, USDA, or originate directly and immediately from a validated herd. Validation number and date of last herd test must be shown on the approved health certificate.
(b) Exhibition. All swine except barrows six (6) months of age or older shall have a negative 150 day test in accordance with the Uniform Methods and Rules published by APHIS, VS, USDA, or originate directly and immediately from a validated herd. Validation number and date of last herd test must be shown on the approved health certificate.
(3) Identification. All swine must have a permanent means of identification.
(4) Pseudorabies.
(a) Sale. All swine must be negative to the serum neutralization test within thirty (30) days or originate from a qualified pseudorabies negative herd.
(b) Exhibition. All swine must be negative to the serum neutralization test within 150 days of consignment for exhibition or originate from a qualified pseudorabies negative herd.

Section 5. Sheep. (1) Scrapie. No sheep or lambs shall be consigned that originated from or are known to be exposed to flocks under surveillance for scrapie.
(2) Scabies. All sheep or lambs for breeding and feeding purposes consigned from a farm, ranch or like premises shall be accompanied by an approved health certificate indicating such sheep and lambs originated directly and immediately from an official scabies-eradicated-free area.
(3) Sore mouth. Any sheep or lambs showing lesions of contagious exythma shall not be consigned.
(4) Sale. All sheep and lambs consigned shall be identified individually by ear tattoo or ear tag and entered on an approved health certificate which is good for thirty (30) days after issuance.
(5) Exhibition. All sheep and lambs consigned shall be identified individually by ear tattoo or ear tag and entered on an approved health certificate which is good for 150 days after issuance.

Section 6. Goats. (1) Scabies. All goats must originate from a scab-free area.

(2) Scrapie. No goats from a herd under surveillance for scrapie that are known to have been exposed to or that are progeny shall be considered.

(3) Brucellosis.

(a) Sale. Animals six (6) months of age or older shall have a negative thirty (30) day test in accordance with the Uniform Methods and Rules published by APHIS, VS, USDA, as applies to the bovine test or originate directly from a certified herd and be accompanied by an approved health certificate which shall be void thirty (30) days after issuance.

(b) Exhibition. Goats six (6) months of age or older shall be negative to an official blood test for brucellosis within 150 days of exhibition or originate directly from a certified herd and be accompanied by an approved health certificate which shall be void 150 days after issuance.

(4) Tuberculosis.

(a) Sale. Animals six (6) months of age or older shall have negative tuberculin test in last sixty (60) days or originate directly and immediately from an accredited herd.

(b) Exhibition. No test required.

Section 7. Poultry. Negative pullorm agglutination test within thirty (30) days for sale and/or exhibition. Test record must accompany poultry.

Section 8. Dogs and Cats. (1) All dogs over four (4) months of age for sale or exhibition shall be accompanied by a health certificate signed by a licensed, accredited veterinarian stating that they are free from all infectious diseases, did not originate within an area under quarantine for rabies, or from an area where rabies is known to exist and has not been exposed to rabies. All dogs over four (4) months of age shall be vaccinated against rabies not less than fourteen (14) days nor more than twelve (12) months prior to date of consignment if killed virus vaccine is used. Any vaccine approved for a three (3) year immunity by the "Compendium of Animal Rabies Vaccines" prepared by the Association of State Public Health Veterinarians, (Inc.), qualifies a dog if it is one (1) year of age when vaccinated; provided, show or performing dogs to be within the state temporarily for a period of ten (10) days shall not be required to furnish an approved health certificate.

(2) All cats shall be in compliance to above requirements for dogs provided the animals are vaccinated for rabies if four (4) months of age or older not less than fourteen (14) days nor more than twelve (12) months prior to date of consignment with a vaccine approved by the state veterinarian and the Department for Health Services, Kentucky Cabinet for Human Resources.

DAVID E. BOSWELL, COMMISSIONER

APPROVED BY AGENCY: June 15, 1985

FILED WITH LRC: June 27, 1985 at 2 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 22, 1985 at 10 a.m. in Room 713 of the Capital Plaza Tower, Frankfort, Kentucky. Those interested in attending this hearing shall contact: Thomas M. Troth, General Counsel, Department of Agriculture, Room 705, Capital Plaza Tower, Frankfort, Kentucky 40601. Unless written notification of intent to attend a public hearing is received by the promulgating agency at least five days before the hearing date, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: J.D. Wolf

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected: None

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: Horses must be accompanied by certificate of veterinary examination.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Method chosen is more effective than alternatives.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None

Tiering:

Was tiering applied? No. Requirement for veterinary certification must be required of all horses in Kentucky.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:010. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

PURSUANT TO: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures are incorporated by reference on June [May] 14, 1984 and hereinafter should be referred to as Corrections Policies and Procedures or institutional policies and procedures. Copies of the procedures may be

obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601.

(1) The corrections policies and procedures:

1.1 Legal Assistance for Corrections Staff (Amended 12/7/84)
1.2 News Media
1.6 Extraordinary Occurrence Reports
1.11 Population Counts and Reporting Procedures (Added 2/8/85)
2.1 Inmate Canteen
3.1 Code of Ethics
3.2 Inclement Weather and Emergency Conditions (Added 2/8/85) (Amended 3/15/85)
3.3 Holding of Second Jobs by Bureau Employees
3.7 Employment of Relatives (Added 3/15/85)
3.10 Staff Clothing and Personal Appearance
3.12 Institutional Staff Housing (Amended 5/17/85)
3.14 Corrections Cabinet Payroll Deduction Policy and Procedure
4.1 Attendance at Professional Meetings (Amended 11/20/84)
4.2 Staff Training and Development
4.3 Firearms and Chemical Agents Training (Amended 2/8/85) (Amended 7/12/85)
4.4 Educational Assistance Program
6.1 Open Records Law
8.4 Emergency Preparedness
9.1 Use of Force
9.3 Transportation of Convicted Offenders
9.4 Transportation of Inmates to Funerals or for Reasons of Illness to Immediate Family (Amended 1/11/85) (Amended 6/28/85)
9.5 Return of Escapees by Automobile
9.6 Contraband (Amended 3/29/85)
9.7 Storage, Issue and Use of Weapons Including Chemical Agents
9.8 Search Policy
9.9 Transportation of Inmates
9.10 Security Inspections (Added 5/17/85)
9.15 Institutional Entry and Exit Policy and Procedures
9.18 Informants
10.1 Inmates Serving a Sentence of Death
10.2 Special Management Inmates
10.3 Safekeepers
10.4 Special Needs Inmates
11.2 Nutritional Adequacy of the Diet for Inmates (Amended 5/31/85)
11.3 Special Diet Procedures (Amended 3/29/85) (Amended 6/21/85)
12.1 Resident Clothing
13.1 Pharmacy Policy and Formulary
13.2 Health Maintenance Services (Amended 10/17/84) (Amended 11/2/84) (Amended 1/11/85)
13.3 Medical Alert System (Added 10/26/84) (Amended 7/5/85)
13.4 Health Program Audits (Added 5/17/85)
14.2 Personal Hygiene Items
14.3 Marriage of Inmates (Amended 5/31/85)
14.4 Legal Services Program (Amended 5/31/85)
15.1 Hair and Grooming Standards
15.2 Offenses and Penalties
15.3 Meritorious Good Time (Amended 4/1/85) (Amended 5/31/85)
15.4 Governor's Meritorious Good Time Award
15.5 Restoration of Forfeited Good Time
15.6 Adjustment Procedures and Programs (Amended 12/7/84)
16.1 General Inmate Visiting Procedure
16.2 Inmate Correspondence
16.3 Telephone Calls (Amended 11/2/84)
17.1 Inmate Personal Property
17.2 Assessment Center Operations
17.3 Controlled Intake of Inmates (Amended 5/31/85)
18.4 Classification of the Inmate
18.5 Custody/Security Guidelines (Amended 3/29/85)
18.6 Classification Document
18.7 Transfers (Amended 7/12/85)
18.8 Guidelines for Transfers Between Institutions
18.9 Out-of-State Transfers (Amended 3/15/85)
18.10 Pre-Parole Progress Reports
18.11 Kentucky Correctional Psychiatric Center Transfer Procedures (Amended 6/13/85)
18.12 Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill
18.13 Population Categories
19.1 Government Services Projects
19.2 Community Services Projects
20.1 Study Release
20.6 Vocational Study Release
22.1 Privilege Trips (Amended 5/31/85)
25.1 Gratuities
25.2 Public Official Notification of Release of an Inmate
25.3 Pre-Release
25.4 Inmate Furloughs (Amended 5/17/85)
25.6 Community Center Program (Amended 6/28/85)
25.7 Expedient/Expanded Expedient Release
25.8 Extended Furloughs (Amended 5/31/85)
27.1 Supervision: Case Classification
27.2 Risk/Needs Administration
27.4 Supervision Plan: Genera8
27.8 Travel Restrictions
27.9 Conditions of Supervision
27.10 Preliminary Revocation Procedures
27.11 Apprehension and Transportation of Violators of Probation, Parole and Conditional Release
27.12 Fugitive Section/Probation and Parole
27.13 Supervision Fee (Amended 5/6/85)
27.18 Absconder procedures (Added 6/28/85)
27.19 Technical Violators (Added 7/5/85)
28.2 Investigations: General
28.3 Pre-Sentence Investigations (To the Court)
28.4 Pre-Parole (Pre-Sentence) Investigation (To the Institution and State Parole Board)
28.5 Special Report to the Parole Board
28.7 Out-of-State Investigations

(2) The Kentucky State Reformatory Procedures Memorandum:

KSR 01-00-09 Public Information and News Media Relations
KSR 01-00-10 Entry Authorization for All Cameras and Tape Recorders Brought into the Institution
KSR 01-00-14 Extraordinary Occurrence Report (Amended 2/15/85)
KSR 01-00-15 Cooperation and Coordination with Oldham County Court (Amended 2/15/85)
KSR 01-00-18 Assistant Duty Officers (Added 6/6/85)
KSR 02-00-01 Inmate Canteen
KSR 02-00-03 Screening of Checks and Money Transfers from Inmate Personal Accounts

KSR 02-00-11 Inmate Personal Accounts
KSR 02-00-12 Institutional Funds and Issuance of Checks
KSR 03-00-01 Shift Assignment/Reassignment (Amended 6/17/85)
KSR 03-00-02 Employee Dress and Personal Appearance (Amended 6/6/85)
KSR 03-00-05 Intra-Agency Promotional Opportunity Announcements
KSR 03-00-06 Employee Time and Attendance (Amended 1/8/85) (Amended 6/6/85)
KSR 03-00-07 Travel Expense Reimbursement
KSR 03-00-08 Employee Tuition Reimbursement
KSR 03-00-10 Workers' Compensation
KSR 03-00-11 Equal Employment Opportunity Complaints
KSR 03-00-12 Employee Greivance Procedure (Amended 1/8/85)
KSR 03-00-14 Prohibited Employee Conduct, Disciplinary Actions, and Appeals Process
KSR 03-00-15 Affirmative Action Program
KSR 03-00-16 Confidentiality of Personnel Records
KSR 03-00-19 Establishment of Personnel Records and Employee Right to Challenge Information Contained Therein
KSR 03-00-20 Personnel Selection, Retention and Promotion
KSR 03-00-21 Equal Employment Opportunities for Institutional Job Assignments and Job Classification Promotions (Amended 6/17/85)
KSR 03-00-23 Work Planning and Performance Review (WPPR)
KSR 03-00-24 Inclement Weather and Employee Work Attendance
KSR 05-00-02 Research Activities
KSR 05-00-03 Management Information Systems
KSR 06-00-02 Inmate Master File
KSR 06-00-02 Records Audit
KSR 06-00-03 Security of Inmate Records
KSR 07-00-02 Institutional Tower Room Regulations
KSR 07-00-03 Guidelines for Contractors
KSR 08-00-07 Inmate Family Emergency - Life Threatening Illness or Death in Inmate's Immediate Family
KSR 08-00-08 Notification of Inmate Family in Case of Serious Injury, Critical Medical Emergency, Major Surgery, or Death of an Inmate
KSR 08-00-09 Emergency Preparedness Training
KSR 09-00-04 Horizontal Gates/Box 1 Enter and Exit Procedure
KSR 09-00-05 Gate I Entrance and Exit Procedure
KSR 09-00-14 Use of Force
KSR 09-00-21 Crime Scene Camera
KSR 09-00-22 Collection, Preservation, and Identification of Physical Evidence
KSR 09-00-23 Drug Abuse Testing
KSR 09-00-25 Inmate Motor Vehicle Operator's License (Added 6/6/85)
KSR 10-00-02 Special Management Inmates - Operations, Rules and Regulations for Unit D (Amended 6/17/85)
KSR 10-00-03 Special Needs Unit
KRS 10-00-04 Unit D Admission/Release Ticket
KSR 11-00-01 Meal Planning for General Population
KSR 11-00-02 Special Diets
KSR 11-00-03 Food Service Inspections
KSR 11-00-04 Dining Room Dress Code for Inmates
KSR 11-00-06 Health Standards/Regulations for Food Service Employees
KSR 11-00-07 Early Chow Line Passes for Medically Designated Inmates (Added 1/8/85)
KSR 12-00-01 Inmate Summer Dress Regulations
KSR 12-00-02 Sanitation and General Living Conditions
KSR 12-00-03 State Items Issued to Inmates
KSR 13-00-01 Identification of Mentally Retarded Inmates
KSR 13-00-02 Regulations for Hospital Patients
KSR 13-00-03 Medication for Inmates Leaving Institution Grounds
KSR 13-00-04 Dental Care for Inmates
KSR 13-00-05 Medical and Dental Sick Call
KSR 13-00-06 Services for Mentally Retarded Inmates
KSR 13-00-07 Referral of Inmates Considered to Have Severe Emotional Disturbances
KSR 13-00-08 Institutional Laboratory Procedures
KSR 13-00-09 Institutional Pharmacy Procedures (Amended 6/6/85)
KSR 13-00-10 Requirements for Medical Personnel
KSR 13-00-11 Preliminary Health Evaluation and Establishment of Inmate Medical Record
KSR 13-00-12 Vision Care/Optometry Services
KSR 13-00-14 Periodic Health Examinations for Inmates (Added 1/8/85)
KSR 13-00-15 Medical Alert System (Added 2/4/85)
KSR 14-00-01 Inmate Rights
KSR 14-00-02 A/C Center and Unit D Inmate Access to Legal Aide Services (Amended 1/8/85)
KSR 14-00-04 Inmate Grievance Procedure
KSR 15-00-01 Operational Procedures and Rules and Regulations for Unit A, B, C (Amended 3/26/85)
KSR 15-00-02 Regulations Prohibiting Immate Control or Authority Over Other Inmate(s)
KSR 15-00-03 Governor's Meritorious Good Time Award
KSR 15-00-04 Restoration of Forfeited Good Time
KSR 15-00-05 Differential Status for SU (QUIT) Inmates (Amended 6/17/85)
KSR 15-00-06 Inmate I.D. Cards
KSR 15-00-07 Inmate Rules and Discipline
KSR 16-00-01 Visiting Regulations
KSR 16-00-02 Inmate Correspondence and Mailroom Operations
KSR 16-00-03 Inmate Access to Telephones (Amended 1/8/85)
KSR 17-00-01 Housing Unit Assignment
KSR 17-00-03 Notifying Inmates' Families of Admission and Procedures for Mail and Visiting
KSR 17-00-04 Assessment/Classification Center Operations, Rules and Regulations
KSR 17-00-05 Dormitory 10 Operations (Amended 2/4/85)
KSR 17-00-06 Identification Department Admissions and Discharges (Amended 2/4/85) (Amended 6/6/85)
KSR 17-00-07 Inmate Personal Property (Amended 1/8/85) (Amended 2/15/85)
KSR 18-00-01 Special Management Inmates - Unit D Classification (Amended 2/4/85)
KSR 18-00-04 Returns from Other Institutions
KSR 18-00-05 Transfer of Residents to Kentucky Correctional Psychiatric Center
KSR 19-00-01 Inmate Work Incentives
KSR 19-00-02 On-the-Job Training (Amended 1/8/85)
KSR 19-00-03 Safety Inspection of Inmate Work Assignment Locations (Added 1-8-85)

KSR 20-00-01 Vocational School Referral and Release Process
KSR 20-00-03 Academic School Programs
KSR 20-00-04 Criteria for Participation in Jefferson Community College Program
KSR 21-00-01 Legal Aide Office and Law Library Services
KSR 21-00-02 Inmate Library Services
KSR 21-00-03 Library Services for Unit D
KSR 22-00-03 Inmate Organizations (Amended 6/6/85)
KSR 23-00-02 Chaplain's Responsibility and Inmate Access to Religious Representatives
KSR 23-00-03 Religious Programming
KSR 25-00-01 Discharge of Residents to Hospital or Nursing Home
KSR 25-00-02 Violations of Law or Code of Conduct by Inmates on Parole Furlough
KSR 25-00-03 Pre-Parole Progress Report

(3) The Kentucky State Penitentiary Operations Memorandum:

KSP 000000-06 Administrative Regulations (Amended 2/25/85)
KSP 010000-04 Public Information and Media Communication (Amended 4/16/85)
KSP 020000-01 General Guidelines for KSP Employees (Amended 11/9/84) (Amended 1/28/85) (Amended 3/1/85) (Amended 4/15/85)
KSP 020000-02 Service Regulations, Attendance, Hours of Work, Accumulation and Use of Leave (Amended 3/8/85) (Amended 4/12/85) (Amended 5/3/85)
KSP 020000-03 Work Planning and Performance Review (Amended 2/20/85)
KSP 020000-04 Employee Disciplinary Procedures (Amended 4/17/84) (Amended 2/8/85)
KSP 020000-05 Proper Dress for Uniformed and Non-Uniformed Personnel (Amended 12/10/84) (Amended 4/15/85)
KSP 020000-06 Employee Grievance Procedure
KSP 020000-07 Personnel Registers and Advertisements (Amended 5/3/85)
KSP 020000-09 Maintenance, Confidentiality, and Informational Challenge of Material Contained in Personnel Files (Amended 5/3/85)
KSP 020000-10 Overtime Policy (Amended 10/19/84)
KSP 020000-15 Legal Assistance (Amended 4/15/85)
KSP 020000-20 Equal Employment Opportunity Complaints (Amended 2/22/85)
KSP 020000-23 Recruitment and Employment of Ex-Offenders (Amended 4/15/85)
KSP 020000-24 Educational Assistance Program
KSP 020000-25 Mediation and Appeal Procedure for WPPR
KSP 020000-29 Promotional Opportunity Announcement Program (Added 12-10-84) (Amended 2/20/85)
KSP 030000-01 Inventory Records and Control (Amended 4/23/85)
KSP 030000-04 Requisition and Purchase of Supplies and Equipment (Amended 3/8/85) (Amended 6/3/85) (Amended 6/4/85) (Amended 6/7/85)
KSP 030000-05 Inmate Personal Funds (Amended 3/8/85) (Amended 4/5/85) (Amended 5/10/85) (Amended 6/21/85)
KSP 030000-06 Inmate Commissary Program (Amended 3/8/85)
KSP 040000-02 Inmate Records Section (Amended 3/22/85) (Amended 4/23/85)
KSP 040000-08 Inmate Equal Opportunity Policy (Amended 4/23/85)
KSP 050000-14 Searches of Inmates, Visitors, Staff, Vehicles, Cells and Area Shakedown and Preservation of Evidence
KSP 060000-01 Telephones
KSP 060000-02 General Operational Procedures for Special Management Unit (Amended 2/4/85) (Amended 2/8/85) (Amended 3/1/85) (Amended 3/8/85) (Amended 3/22/85) (Amended 4/12/85)
KSP 060000-03 Operational Procedures for Special Management Inmates Assigned to Disciplinary Segregation, Administrative Segregation, Administrative Control Unit and Special Security Unit (Amended 11/30/84) (Amended 1/30/85) (Amended 2/8/85) (Amended 3/1/85)
KSP 060000-04 Operational Procedures for Special Management Inmates Assigned to Protective Custody (Amended 1/25/85) (Amended 3/8/85)
KSP 060000-09 Protective Custody Unit - Attorney Telephone Calls
KSP 060000-11 Criteria for Disciplinary Segregation and Incentive Time Reduction Program
KSP 060000-12 Administrative Control Protective Custody
KSP 060000-13 Special Management - Outdoor Exercise
KSP 070000-02 Sick Call (Amended 12/10/84) (Amended 4/23/85) (Amended 5/3/85)
KSP 070000-03 Health Evaluations (Amended 3/22/85) (Amended 5/3/85)
KSP 070000-04 Consultations
KSP 070000-05 Emergency Medical Procedure (Added 5/31/85)
KSP 070000-11 Medical and Dental Services for Western Kentucky Farm Center (Amended 3/22/85)
KSP 070000-13 Pharmacy Procedures (Amended 1/28/85)
KSP 070000-14 Medical Records (Amended 3/22/85)
KSP 070000-16 Psychiatric and Psychological Services (Amended 3/22/85)
KSP 070000-17 Dental Services for Special Management Units
KSP 070000-19 Optometric Services
KSP 070000-20 Menu Preparation and Planning
KSP 070000-24 General Sanitation and Safety, and Protection Standards and Requirements
KSP 070000-25 Food Service Inspections
KSP 070000-30 Therapeutic Diets
KSP 090000-01 Inmate Work Programs (Amended 4/15/85)
KSP 090000-06 Utilization of Legal Postage and Copy Privileges by Indigents
KSP 090000-07 Access to the Inmate Legal Aide Office
KSP 090000-08 Inmate Legal Aide Office
KSP 090000-12 WKFC Residents - Access to Kentucky State Penitentiary Legal Library

KSP 100000-02 Visiting Program (Amended 10/19/84) (Amended 1/18/85) (Amended 1/30/85)
KSP 100000-03 Disposition of Unauthorized Property (Amended 1/25/85) (Amended 4/16/85)
KSP 100000-04 Inmate Grooming and Dress Code
KSP 100000-05 Procedures for Providing Clothing, Linens and Other Personal Items (Amended 11/16/84) (Amended 4/16/85)
KSP 100000-06 Mail (Amended 2/21/84) (Amended 1/25/85) (Amended 3/8/85) (Amended 4/12/85) (Amended 6/21/85)
KSP 100000-07 Long Distance Telephone Service
KSP 100000-08 Behavioral Counseling Record
KSP 100000-09 Due Process/Disciplinary Procedures (Amended 11/2/84) (Amended 1/30/85) (Amended 5/3/85)
KSP 100000-11 Authorized and Unauthorized Property for Inmates (Amended 1/25/85) (Amended 2/8/85) (Amended 3/8/85) (Amended 4/12/85) (Amended 6/7/85)
KSP 100000-14 Property Room and Inventory Procedures (Amended 6/21/85)
KSP 100000-15 Uniform Standards for Fire Safety, Sanitation and Security of all Cells (Amended 5/31/85)
KSP 100000-18 Inmate Grievance Committee Hearings (Amended 5/10/85)
KSP 100000-20 Legal Services Program (Amended 11/9/84) (Amended 1/25/85) (Amended 2/22/85)
KSP 100000-21 Photocopies for Non-Indigent Inmates with Special Court Deadlines (Amended 11/9/84)
KSP 100000-22 Special Management Unit Legal Services Program (Amended 11/9/84) (Amended 2/22/85) (Amended 2/25/85)
KSP 100000-24 Resident Legal Services Office Library (Amended 11/9/84) (Amended 6/21/85)
KSP 110000-02 PFO I Transfers to Medium Security Institutions
KSP 110000-03 Governor's Meritorious Good Time Award Committee
KSP 110000-04 Pre-Parole Report
KSP 110000-06 General Guidelines of the Classification Committee (Amended 5/31/85) (Amended 6/21/85)
KSP 110000-07 Statutory Good Time Restoration
KSP 110000-08 Award of Meritorious Good Time (Amended 4/16/85) (Amended 6/21/85)
KSP 110000-10 Special Needs Inmates
KSP 110000-11 Classification Committee - Transfer Requests
KSP 110000-12 Classification Committee - Inmate Work Assignments (Amended 4/16/85)
KSP 110000-13 Classification Document
KSP 110000-14 Vocational School Placement
KSP 110000-15 Transfers to Kentucky Correctional Psychiatric Center
KSP 110000-16 Consideration of Further Treatment Requirements for Inmates Prior to Release
KSP 110000-17 Detention Cells
KSP 110000-19 Custody/Security Guidelines (Added 6/7/85)
KSP 120000-04 Academic Education (Amended 5/3/85)
KSP 120000-07 Community Center Program
KSP 120000-08 Inmate Furloughs (Amended 6/21/85)
KSP 120000-11 Religious Services - Staffing (Amended 1/28/85)
KSP 120000-18 Religious Services - Religious Programming (Amended 12/10/84)
KSP 120000-20 Marriage of Inmates (Amended 6/21/85)
KSP 120000-24 Muslim Services
KSP 120000-31 Extended Furloughs
KSP 120000-32 Discharge of Inmates by Shock Probation
KSP 130000-10 Execution Plan (Added 6/10/85)

(4) The Luther Luckett Correctional Complex Policies and Procedures:

LLCC 01-08-01 Institutional Legal Assistance
LLCC 01-09-01 Public Information and News Media Access
LLCC 01-12-01 Duty Officer Responsibilities (Added 4/30/85)
LLCC 02-01-02 Fiscal Management: Accounting Procedures
LLCC 02-01-03 Fiscal Management: Checks
LLCC 02-01-04 Fiscal Management: Insurance
LLCC 02-03-01 Fiscal Management: Audits (Amended 2/15/85)
LLCC 02-06-01 Property Inventory
LLCC 03-01-01 General Guidelines for LLCC Employees (Amended 2/15/85)
LLCC 03-01-02 Service Regulations, Attendance Accumulation and use of Leave (Amended 4/30/85) (Amended 7/2/85)
LLCC 03-02-01 Proper Dress for Uniformed Personnel
LLCC 03-03-01 Employee Grievance Mechanism (Amended 2/15/85)
LLCC 03-04-01 Employee Records (Amended 2/15/85)
LLCC 03-05-01 Personnel Registers (Amended 2/15/85)
LLCC 03-06-01 Work Planning: Employee Evaluations and Evaluation Control (Amended 2/15/85)
LLCC 03-08-01 Shift Transfers
LLCC 03-08-02 Rotation of Correctional Officers Between Central Security and Unit Management Staff
LLCC 03-09-01 Promotion Board (Amended 2/15/85)
LLCC 03-10-01 Affirmative Action: EEO (Amended 2/15/85)
LLCC 03-12-01 Confidentiality of Information by Consultants, Contract Personnel and Volunteers
LLCC 08-01-01 Offender Records (Amended 2/15/85)
LLCC 08-04-01 Storage of Expunged Records (Added 7/2/85)
LLCC 11-02-01 General Population Status
LLCC 11-03-01 LLCC Population Categories
LLCC 11-07-01 Adjustment Procedure for Minor Rule Violation
LLCC 11-09-01 Rules and Regulations of the Unit (Amended 11/28/84)
LLCC 11-13-01 Yard, Walkway and Recreation Field Dress Code and Conduct (Amended 11/28/84)
LLCC 11-15-01 Post-Parole Furloughs
LLCC 11-16-01 Restoration of Forfeited Good Time
LLCC 11-18-02 Use of Monitor Telephone (Added 7/2/85)
LLCC 11-19-01 Unit Shakedowns/Control of Excess Property
LLCC 11-20-01 Program Services for "Special Needs" Inmates

LLCC 12-01-01	Special Management Inmates
LLCC 12-04-01	Guidelines for (7E) PC Unit/General Living Conditions (Added 11/28/84) (Amended 4/30/85)
LLCC 13-04-01	Food Service: Meals (Amended 2/15/85)
LLCC 13-04-02	Food Service: Menu, Nutrition and Special Diets (Amended 2/15/85)
LLCC 13-05-02	Medical Screening of Food Handlers (Amended 2/15/85)
LLCC 13-06-01	Food Service: Inspections and Sanitation (Amended 2/15/85)
LLCC 13-07-01	Food Service: Purchasing, Storage and Farm Products (Amended 2/15/85)
LLCC 14-01-01	Procedures for Providing Clothing, Linens and Other Personal Items (Amended 2/15/85)
LLCC 14-05-01	Institutional Inspections (Amended 2/15/85)
LLCC 15-01-01	Sick Call and Pill Call
LLCC 15-02-01	Psychological Services
LLCC 15-03-01	Pharmacy (Amended 2/15/85)
LLCC 15-04-01	Dental Services (Amended 2/15/85)
LLCC 15-05-02	Licensure and Training Standards (Amended 2/15/85)
LLCC 15-06-02	Emergency and Specialized Health Services
LLCC 15-06-03	Emergency Medical Care Plan (Amended 2/15/85)
LLCC 15-07-01	Medical and Dental Records
LLCC 15-08-01	Special Diets
LLCC 15-11-01	Provision of Psychiatric Services from the KCPC/Responsibilities of the Department of Corrections
LLCC 15-12-01	Disabled and Infirm Inmates
LLCC 15-13-01	Specialized Health Services (Added 2/15/85)
LLCC 15-14-01	Informed Consent (Added 2/15/85)
LLCC 15-15-01	Medical Restraints (Added 2/15/85)
LLCC 15-16-01	Health Education/Special Health Programs (Added 2/15/85)
LLCC 15-17-01	Health Records (Added 2/15/85)
LLCC 16-01-01	Inmate Rights and Responsibilities (Amended 2/15/85)
LLCC 16-02-01	Inmate Grievance Procedure (Amended 2/15/85)
LLCC 16-03-01	Inmate Law Library (Amended 4/30/85) (Amended 7/2/85)
LLCC 17-01-01	Due Process/Disciplinary Procedure (Amended 2/15/85) (Amended 4/30/85)
LLCC 18-01-01	Inmate Correspondence
LLCC 18-02-01	Inmate Visiting
LLCC 20-01-01	Personal Property Control
LLCC 20-02-01	Authorized Inmate Personal Property
LLCC 20-03-01	Unauthorized Items
LLCC 20-04-02	Inmate Canteen
LLCC 20-05-01	Inmate Control of Personal Funds (Amended 2/15/85)
LLCC 20-06-01	Procedure for Sending Appliances to Outside Dealers for Repair (Added 2/15/85)
LLCC 21-02-01	Classification/Security Levels
LLCC 21-03-01	Classification Process
LLCC 22-01-01	OJT/Job Assignments
LLCC 23-01-01	Academic School (Amended 2/15/85)
LLCC 26-01-01	Religious Services (Amended 2/15/85)
LLCC 28-01-01	Privilege Trips
LLCC 28-03-01	Temporary Release/Community Center Release
LLCC 28-04-01	Pre-Parole Progress Report
LLCC 28-04-02	Parole Eligibility Dates

(5) The Northpoint Training Center Policies and Procedures:

NTC 01-05-01	Extraordinary Occurrence Reports (Amended 1/11/85)
NTC 01-10-01	Institutional Legal Assistance (Amended 2/1/85)
NTC 01-11-01	Political Activities of Merit Employees
NTC 01-15-01	Establishment of Warden as Chief Executive Officer
NTC 01-17-01	Relationships with Public, Media and Other Agencies
NTC 02-01-02	Fiscal Management: Accounting Procedures
NTC 02-01-03	Fiscal Management: Checks
NTC 02-01-04	Fiscal Management: Insurance
NTC 02-03-01	Fiscal Management: Audits (Amended 1/25/85)
NTC 02-08-01	Inmate Canteen
NTC 03-01-01	Employee Dress Code
NTC 03-02-01	General Guidelines for NTC Employees
NTC 03-03-01	Staff Members Suspected of Being Under the Influence of Intoxicants
NTC 03-04-01	Shift Transfers
NTC 03-05-01	Work Planning and Performance Review (Amended 1/11/85)
NTC 03-06-01	Workers' Compensation
NTC 03-07-01	Merit System Registers and Placement of Advertisements
NTC 03-09-01	Maintenance Confidentiality and Challenge of Information Contained in Employee Personnel File
NTC 03-10-01	Employment of Ex-Offenders
NTC 03-13-01	Travel Reimbursement for Official Business and Professional Meetings (Amended 4/16/85)
NTC 03-14-01	Selection Retention, Promotion, and Lateral Transfer of Merit System Employees
NTC 03-14-02	Promotional Opportunities (Added 5/3/85)
NTC 03-15-01	Time and Attendance; Accumulation and Use of Accrued Time (Added 3/8/85)
NTC 03-15-02	Sick Leave Abuse (Added 3/8/85)
NTC 03-15-03	Inclement Weather and Emergency Conditions (Added 4/16/85)
NTC 03-16-01	EEO - Affirmative Action (Amended 12/12/84)
NTC 03-17-01	Employee Grievance Procedure (Added 1/11/85)
NTC 03-17-02	Review Committee (Added 3/15/85)
NTC 03-18-01	Educational Assistance Program (Added 2/13/85)
NTC 03-19-01	Holding of Second Jobs by Employees (Added 3/15/85)
NTC 04-01-01	Training and Staff Development (Amended 11/1/84) (Amended 1/11/85)
NTC 06-01-01	Offender Records (Amended 3/15/85)
NTC 06-01-02	Records - Release of Information
NTC 08-05-01	Duties of Fire Safety Officer (Added 5/15/85)
NTC 08-05-02	Fire Procedures (Added 5/15/85)
NTC 08-05-03	Fire Prevention (Added 5/15/85)
NTC 10-01-01	Special Management Inmates (Amended 4/23/85)

NTC 10-01-02	Legal Aide Visits for Special Management Inmates (Added 4/23/85)
NTC 11-03-01	Food Service: General Guidelines
NTC 11-04-01	Food Service: Meals
NTC 11-04-02	Menu, Nutrition and Special Diets
NTC 11-05-02	Medical Screening of Food Handlers
NTC 11-06-01	Inspections and Sanitation
NTC 11-07-01	Purchasing, Storage and Farm Products
NTC 12-01-01	Institutional Inspections
NTC 12-02-01	Personal Hygiene for Inmates (Clothing and Linens)
NTC 12-02-02	Personal Hygiene Items
NTC 13-01-01	Emergency Medical Care Plan (Amended 12/12/84)
NTC 13-01-02	Emergency and Specialized Health Services
NTC 13-03-01	Sick Call and Pill Call
NTC 13-04-01	Pharmacy (Amended 1/25/85)
NTC 13-05-01	Dental Services
NTC 13-06-01	Licensure and Training Standards
NTC 13-08-01	Medical and Dental Records
NTC 13-09-01	Special Diets
NTC 13-11-01	Inmate Health Evaluation
NTC 13-12-01	Disabled and Infirm Inmates
NTC 14-01-01	Legal Services Program
NTC 14-03-01	Inmate Rights and Responsibilities
NTC 15-01-01	Restoration of Forfeited Good Time
NTC 15-02-01	Due Process/Disciplinary Procedures (Amended 2/1/85)
NTC 15-02-02	Extra Duty Assignments
NTC 15-03-01	Rules for Inmates Assigned to Minimum Security Living Area
NTC 15-03-02	Rules and Regulations for Dormitories
NTC 16-01-01	Mail Regulations (Amended 12/12/84)
NTC 16-02-01	Visiting Policy (Amended 3/27/85)
NTC 16-02-02	Extended and Special Visits
NTC 16-02-03	Honor Dorm Visiting (Added 2/13/85)
NTC 16-02-04	Visiting Policy for Inmates Residing in the Minimum Security Living Area (Amended 5/15/85)
NTC 16-03-01	Inmate Furloughs
NTC 17-01-01	Personal Property Control
NTC 17-01-02	Authorized Inmate Personal Property (Amended 2/1/85) (Amended 3/15/85)
NTC 17-01-03	Unauthorized Inmate Property
NTC 17-01-04	Disposition of Unauthorized Property (Added 5/15/85)
NTC 17-03-01	Assessment/Orientation (Amended 12/12/84)
NTC 18-01-01	Pre-Parole Progress Report
NTC 18-01-02	Parole Eligibility Dates
NTC 18-02-01	Instructions for Scheduling 6 Month Classification Reviews
NTC 18-03-01	Classification Process
NTC 18-04-01	Classification Committee
NTC 18-05-01	Transfers to Other Institutions
NTC 19-01-01	Inmate Work Program (Added 4/23/85)
NTC 20-01-01	Academic School Program (Amended 12/12/84)
NTC 21-01-01	Library Services
NTC 22-01-01	Privilege Trips
NTC 22-03-01	Conducting Inmate Organizational Meetings and Programs
NTC 23-01-01	Religious Services
NTC 23-03-01	Marriage in Inmates
NTC 24-04-01	Honor Status (Added 11/14/84)
NTC 24-05-01	Unit Management (Added 11/30/84)
NTC 25-01-01	Release Preparation Program
NTC 25-01-02	Temporary Release/Community Center Release
NTC 25-02-01	Funeral Trips and Bedside Visits (Amended 5/3/85)

(6) The Kentucky Correctional Institution for Women Policies and Procedures:

KCIW 01-06-01	Legal Assistance for Corrections Staff
KCIW 01-08-01	Public Information and News Media Access
KCIW 02-01-01	Comprehensive Insurance (Amended 12/20/84)
KCIW 02-02-01	Fiscal Management: Audits (Amended 12/17/84)
KCIW 02-02-03	Fiscal Management/Checks (Amended 12/18/84)
KCIW 02-03-03	Criteria for Selection of Bidders and Vendors (Added 1/24/85)
KCIW 02-04-01	Accounting Procedures (Amended 12/31/84)
KCIW 02-05-01	Inmate Canteen (Amended 12/31/84)
KCIW 02-07-01	Release of C.E.T.A. Money Earned (Added 10/12/84)
KCIW 03-01-01	Travel Expense Reimbursement (Amended 12/31/84)
KCIW 03-02-01	General Orders for all Staff (Amended 12/27/84)
KCIW 03-03-01	Employee Grievance Procedure (Amended 12/31/84) (Amended 1/22/85)
KCIW 03-05-01	Employee Personnel File (Amended 12/18/84)
KCIW 03-06-01	Affirmative Action EEO (Amended 12/28/84)
KCIW 03-08-01	Employee Performance Evaluations (Amended 1/24/85)
KCIW 03-09-01	Payroll and Personnel Manning Records (Amended 12/31/84)
KCIW 03-10-01	Promotion Committee
KCIW 03-11-01	Personnel Registers (Amended 5/27/85)
KCIW 03-12-01	Criminal History Checks on all Personnel and the Recruitment and Employment of Ex-Offenders (Amended 5/27/85)
KCIW 06-01-01	Inmate Records (Amended 12/17/84)
KCIW 06-01-02	Transfers to Community Centers and the Minimum Security Unit (Added 12/27/84)
KCIW 10-01-01	Special Management Unit: General Operation and Regulations (Added 12/31/84)
KCIW 10-01-02	Special Management Unit Programs, Placement and Review (Amended 12/31/84)
KCIW 11-01-01	Food Service Operation Inspections (Amended 10/12/84)
KCIW 11-01-02	Budgeting, Accounting, Purchasing Procedures for Food Products (Amended 10/12/84)
KCIW 11-02-01	Menu Preparation, Special Diets
KCIW 11-03-01	General Guidelines for Food Service Manager (Amended 1/24/85)
KCIW 11-03-02	General Guidelines for Food Service Workers (Added 11/9/84) (Amended 12/27/84)
KCIW 11-04-01	Health Standards, Regulations for Food Service Employees (Amended 12/18/84)
KCIW 12-01-01	Control of Pests and Vermin (Amended 11/9/84)

KCIW 12-02-01	Laundry Facilities and Clothing Issuance (Amended 11/9/84) (Amended 5/27/85
KCIW 12-02-03	Donated Items (Added 5/27/85)
KCIW 12-04-01	Sanitation and General Living Conditions (Amended 12/27/84)
KCIW 13-01-01	Medical and Dental Care (Amended 1/22/85)
KCIW 13-01-02	Preliminary Health Evaluation
KCIW 13-01-03	Drug Distribution
KCIW 13-03-01	Emergency Care (Amended 1/24/85)
KCIW 13-03-02	Infirmary Care and Outside Services (Amended 12/17/84)
KCIW 13-03-03	Outside Hospital Security (Amended 1/24/85)
KCIW 13-04-01	Medical Alert System (Added 1/24/85)
KCIW 13-04-02	Psychiatric/Psychological Services (Amended 12/17/84)
KCIW 14-01-02	Inmate Rights and Responsibilities (Amended 12/18/84)
KCIW 14-02-01	Access to Attorneys and Designated Counsel Substitutes (Amended 12/31/84)
KCIW 14-03-01	Inmates Not Subject to Discrimination (Amended 12/18/84)
KCIW 14-04-01	Inmate Grievance Procedure (Amended 12/18/84)
KCIW 15-01-01	Offenses and Penalties (Added 12/31/84)
KCIW 15-01-02	Adjustment Committee Procedures (Added 1/24/85)
KCIW 15-03-01	Inmate Rule Book (Added 5/27/85)
KCIW 15-04-01	Incentive Levels System (Added 12/31/84)
KCIW 16-01-01	Inmate Correspondence (Amended 1/24/85) (Amended 5/27/85)
KCIW 16-01-02	Inmate Mail Distribution (Amended 1/24/85)
KCIW 16-01-03	Staff Mail (Added 12/28/84)
KCIW 16-02-01	Inmate Access to Telephone
KCIW 16-02-02	Intra-Institution Phone Calls
KCIW 16-03-01	Inmate Visiting
KCIW 16-03-02	Unauthorized Items for Picnic Lunches, Food Packages and Regular Packages
KCIW 16-04-01	Inmate Indigent Fund (Added 9/10/84)
KCIW 17-01-01	Assessment/Classification Unit Operation and Reception Programs (Amended 12/27/84)
KCIW 17-01-02	Assessment/Classification Unit Rules and Regulations (Amended 12/17/84) (Amended 1/24/85)
KCIW 17-02-01	Identification Department, Admissions and Discharges (Amended 12/27/84)
KCIW 17-03-01	Notifying Inmates Families of Admission and Procedures for Mail and Visiting (Amended 12/18/84)
KCIW 18-01-02	Institution Housing Assignments (Added 12/28/84)
KCIW 18-02-01	Classification Procedures (Amended 12/31/84)
KCIW 18-05-01	Special Needs Inmates (Amended 1/22/85)
KCIW 18-06-01	Status Codes (Added 12/17/84)
KCIW 19-01-01	Inmate Work Programs (Amended 12/20/84) (Amended 12/28/84)
KCIW 19-03-01	Landscape and Maintenance Work Details (Added 12/27/84)
KCIW 20-01-01	Education Programs (Amended 1/22/85)
KCIW 20-01-03	Vocational Education: Curriculum Flexible Schedule, up-grade programs and release preparation program (Added 1/24/85)
KCIW 20-01-04	Entry - Exit Vocational School (Added 1/24/85)
KCIW 20-01-05	Vocational Programs: Approved assessed and contain guidelines for vocational school records (Added 1/24/85)
KCIW 20-01-06	Vocational Education: Staffing patterns and requirements (Added 1/24/85)
KCIW 20-01-07	Vocational Counselor (Added 1/24/85)
KCIW 20-01-08	Vocational Education: Community Resources and the integration with academic progress (Added 1/24/85)
KCIW 20-01-09	Vocational Education: Support Equipment (Added 1/24/85)
KCIW 20-01-10	Control of Flammable, Hazardous, Toxic and Caustic Materials and Chemicals in the Vocational Area (Added 1/24/85)
KCIW 22-01-04	Inmate Club Activities (Added 12/20/84)
KCIW 23-01-01	Religious Services (Amended 11/9/84)
KCIW 25-01-01	Pre-Parole Progress Report (Amended 12/31/84)
KCIW 25-02-01	Temporary Release/Community Center Release and Code of Conduct (Amended 12/28/84)
KCIW 25-02-02	Furloughs (Amended 12/31/84)
KCIW 25-03-01	Escorted Leaves into the Community (Amended 12/17/84)
KCIW 27-02-01	Inmate Money and Property Control

(7) The Food Service Manual, Offender Records Manual and the Classification Manual are hereby approved by the Secretary of the Corrections Cabinet as authorized by KRS 196.035, 197.020, 439.470, 439.590 and 439.640.

Offender Records Manual (Amended 11/9/84, 5/20/84 and 4/2/85)

Food Services Manual (None)

Classification Manual (Amended 10/29/84)

GEORGE W. WILSON, Secretary
APPROVED BY AGENCY: July 15, 1985
FILED WITH LRC: July 15, 1985 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for August 22, 1985, at 9 a.m. at the auditorium in the State Office Building. Those interested in attending this hearing shall notify in writing: Barbara Jones, Office of General Counsel, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Barbara W. Jones
(1) Type and number of entities affected: 1927 employees of the Corrections Cabinet, 4618 inmates, 3436 parolees, 5124 probationers, and all visitors to state correctional institutions.
(a) Direct and indirect costs or savings to those affected:

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None - All of the costs involved with the implementation of the regulation are included in the operational budget.
2. Continuing costs or savings: Same as 2(a)1.
3. Additional factors increasing or decreasing costs: Same as 2(a)1.
(b) Reporting and paperwork requirements: Weekly submission of policy revisions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. All policies are administered in a uniform manner.

TRANSPORTATION CABINET
Department of Highways
(Proposed Amendment)

603 KAR 5:070. Truck dimension limits.

RELATES TO: KRS 189.222
PURSUANT TO: KRS 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 forty-five (45) [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. These specific highways will be referred to as the IDIT (increased dimension-twin trailer) system.
(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 - fifty-three (53) [forty-eight (48)] feet when operated in tractor semi-trailer combination; trailers - twenty-eight (28) feet when operated in a tractor-semi-trailer-trailer combination, not to exceed two (2) trailers per truck tractor. There shall be no overall length limitation on motor vehicles operating on 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) And the following [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]:

Jackson Purchase Parkway [JP 9003] - From Tennessee state line west of Fulton to US 45 Bypass.
US 45 Bypass [B] - From Jackson Purchase Parkway [JP 9003] west of Mayfield to Jackson Purchase Parkway [JP 9003] north of Mayfield.
Jackson Purchase Parkway [JP 9003] - From US 45 Bypass to I-24 in Marshall County.
Western Kentucky Parkway [WK 9001] - From I-24 south of Eddyville to US 31W in Hardin County.
Blue Grass Parkway [BG 9002] - From I-65 at Elizabethtown to US 60 near Versailles.
Green River Parkway [GP 9007] - From I-65 at Bowling Green to US 60 Bypass in Owensboro.
Mountain Parkway [MT 9000] - From I-64 east of Winchester to KY 15 north of Campton.
Mountain Parkway Extension - From end of Mountain Parkway at Campton to US 460 at Saylersville.
Daniel Boone Parkway - From US 25 north of London to KY 15 north of Hazard.
[KY 4 - Entire circle of Lexington.]
Pennyrile Parkway [PENN 9004] - From US 41A at south city limits of Hopkinsville to US 41 south of Nortonville.
US 41 - From Pennyrile Parkway [PENN 9004] near Western Kentucky Parkway [WK 9001] to Pennyrile Parkway [PENN 9004] at Madisonville.
Pennyrile Parkway [PENN 9004] - From US 41 near north city limits of Madisonville to US 41 in Henderson.
US 41 - From Pennyrile Parkway [PENN 9004] at Henderson to Indiana state line.

Audubon Parkway [AUD 9005] - From Pennyrile Parkway [PENN 9004] at [in] Henderson to US 60 Bypass in Owensboro.

Cumberland Parkway [CUM 9008] - From I-65 at Warren County line to US 27 west of Somerset.

[I-471 - From I-275 to Ohio state line.]

I-471 Connector - From US 27 in Campbell County to I-471.

KY 4 - From entire circle of Lexington.

[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 62-68 [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 Ohio state line [south end of US Grant Bridge at South Shore, Kentucky (Portsmouth, Ohio)] to US 119 north of [at] Pikeville.

US 23 - From US 119 near Jenkins to Virginia state line.

US 23 Spur - From Ohio River Bridge at Ashland.

US 25 - From US 421 south of Richmond to KY 876 in Richmond [I-75 near Richmond (via KY 876)].

US 25 - From KY 418 southwest of Lexington to Nandino Boulevard [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 - From Tennessee state line to KY 255 at Park City (via US 31W Bypass in Bowling Green).

US 31W - From US 31W Bypass in Elizabethtown to I-264.

US 31W Bypass - From Western Kentucky Parkway [WK 9001] to US 31W in Elizabethtown.

KY 32 - From I-64 west of Morehead to US 60 at Morehead.

KY 35 - From US 127 at Bromley to I-71 north of Sparta.

KY 36 - From I-64 south of Owingsville 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 - From Tennessee state line to Pennyrile Parkway at 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 northeast of Louisville 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 US 62 in [I-24 south of] Paducah.

US 51 - From KY 121 in Wicklifee to Illinois state line.

KY 52 - From KY 876 in Richmond to KY 499 at Irvine.

KY 55 - From Cumberland Parkway in Columbia to [US 68 in Lebanon] US 150 at Springfield.

[KY 55 - From US 68 in Lexington to US 150 at Springfield.]

US 60 - From US 60 Bypass west [east] of Owensboro to KY 69 Hawesville.

US 60 - From I-264 east of Louisville to KY 1531 at Eastwood.

US 60 - From US 421 at [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 - From KY 144 in Meade County to US 31W at Ft. Knox.

US 60 Bypass - From US 60 west of Owensboro to US 60 east of Owensboro.

US 61 - From Tennessee state line to KY 90 at Burkesville.

US 62 - From I-24 at Paducah to Western Kentucky Parkway.

US 62 - From KY 245 at Bardstown to US 150 at Bardstown.

US 62 - From KY 353 southwest of Cynthiana to US 27 at Cynthiana.

US 68 [US 62] - From I-24 in Trigg County to Green River Parkway at Bowling Green.

US 68 - From US 27 at Paris to Ohio state line at Maysville [junction US 62 in Washington] (via Paris Bypass).

KY 69 - From US 60 at Hawesville to Indiana state line.

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 at Cave City to Cumberland Parkway at Glasgow.

KY 90 - From KY 61 at Burkesville [junction 92 in Monticello] to US 27 at Burnside.

KY 114 - From US 460 east of [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 KY 15 at Whitesburg to US 23 at Jenkins.

US 119 - From US 25E south of Pineville to US 421 at Harlan.

US 119 - From US 23 [KY 80] at Pikeville to KY 1141 northeast of Pikeville.

KY 121 - From US 45 Bypass at Mayfield to US 51 in Wickliffe.

US 127 - From US 127 Bypass north of Danville to US 127 Bypass south of Lawrenceburg.

[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 - KY 151 north of Lawrenceburg.

US 127 - From KY 22 in Owenton to KY 35 at Bromley.

KY 144 - From KY 448 south of Brandenburg to US 60.

US 150 - From US 31E at Bardstown to US 27 at north city limits of Stanford (via 150 Bypass 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 (Boone County).

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 south of Bowling Green to US 31W Bypass in [at] Bowling Green.

KY 236 - From KY 212 near airport to US 25 at Erlanger.

KY 237 - From KY 18 east of Burlington to I-275 in Boone County.

KY 245 - From I-65 south of Shepherdsville to US 62 at Bardstown.

KY 255 - From US 31W at Park City to I-65.

KY 259 - From Western Kentucky Parkway to US 62 in Leitchfield.

KY 281 - From US 41A in Madisonville to US 41.

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 north of Harlan 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.

KY 448 - From KY 1051 at Brandenburg to KY 144.

US 460 - From I-64 north of Mt. Sterling 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 645 - From US 23 south of Ulysses to KY 40 west of Inez.

KY 676 - From US 127 in Frankfort to US 60.

KY 686 - From KY 11 south of Mt. Sterling to US 460 north of Mt. Sterling.

KY 841 - From KY 155 near Jeffersontown to US 42 northeast of Louisville.

KY 859/KY 57 - From I-64 east of Lexington to Lexington - Bluegrass Army Depot.

KY 876 - From I-75 at Richmond to KY 52 east of Richmond.

KY 922 - From KY 4 in Lexington to junction of I-64 and I-75.

KY 1051 - From KY 448 south of Brandenburg to KY 79.

KY 1682 - From US 68 west of Hopkinsville to Pennyrile Parkway [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 8 at Silver Grove [9].

[Daniel Boone Parkway - From US 25 north of London to KY 15 north of Hazard.]

[Mountain Parkway Extension - From 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.]

(4) [(5)] Motor vehicles with the increased dimensions specified in subsection (1) of this section shall be allowed five (5) driving miles on state maintained highways from the Interstate and the designated route network for the purpose of attaining reasonable access to terminals; facilities for food, fuel, repairs and rest; and points of loading and unloading for household goods carriers.

C. LESLIE DAWSON, Secretary

APPROVED BY AGENCY: July 2, 1985

FILED WITH LRC: July 2, 1985 at noon

PUBLIC HEARING SCHEDULED: A public comment hearing will be held on this proposed amended administrative regulation on August 27, 1985 at 9 a.m., local prevailing time, in the fourth floor hearing room of the State Office Building. The State Office Building is located on the corner of High and Clinton Streets in Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by August 22, 1985 so notify: Rusty Cheuvront, Assistant to the Secretary, Transportation Cabinet, State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Rusty Cheuvront

(1) Type and number of entities affected: All motor carrier operators in Kentucky.

(a) Direct and indirect costs or savings to those affected: An uncalculable savings to motor carriers because they will have more direct routes available to them in many parts of the state.

1. First year: Same

2. Continuing costs or savings: Same

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Do not permit trucks to use these additional highways or to use twin trailers or to operate larger vehicles. Rejected because these highways are capable of accepting larger vehicles and twin trailers and larger vehicles are now permitted by state law.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? Yes

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

704 KAR 3:025. Classroom units.

RELATES TO: KRS 157.320, 157.360
PURSUANT TO: KRS [13.082,] 156.070, 157.320 [157.360]
NECESSITY AND FUNCTION: KRS 157.360 specifies that the Superintendent of Public Instruction shall allot classroom units for administrative and special instructional services in determining the cost of the foundation program for each district; and KRS 157.320(9) requires the State Board of Education to adopt necessary regulations for carrying out the purposes of the Foundation Program. [Each unit shall meet the criteria established by the State Board of Education.] This regulation implements the duty of prescribing the criteria for acceptable responsibilities and duties of, and programs to be provided by, specific ASIS units.

Section 1. Classroom units for administrative and special instructional services shall be based on the following program of services:
(1) An art education teacher shall provide an accepted program in art education as described in the "Program of Studies for Kentucky Schools, Grades K-12," as adopted in 704 KAR 3:304.
(2) An assistant principal shall have such duties as may be assigned including administrative duties and supervision of instruction. The assistant principal shall serve all grades within the school or schools to which assigned. The assistant principal shall devote at least fifty (50) percent of his/her time to the duties of the assistant principalship. Classroom teaching shall not be considered a part of this unit. An assistant principal shall not be assigned to a school which does not have the services of principal.
(3) An assistant superintendent shall have such duties as assigned by the superintendent. The duties shall be designed to exclusively assist and aid the superintendent in performance of the duties of superintendent as provided in KRS 160.370. The salary for this position may be generated from more than one (1) source.
(4) A director, coordinator, or manager of district-wide services may qualify for these positions on the basis of certification either as school superintendent, supervisor of instruction, school business administrator, elementary principal, secondary principal, twelve (12) grade principal or certification for administration, supervision, and coordination of vocational education. This regulation does not apply to any position for which a specific certificate is available, such as director of pupil personnel.
(5) Consultants shall work in cooperation with the existing supervisory program in the school district; help plan, coordinate, and develop programs in their subject or area specialty in individual schools or system wide; serve as a consultant to classroom teachers, do demonstration teaching and help individual teachers improve the quality of the program at the classroom level; work to improve the facilities, equipment and utilization of materials; and seek to improve the relationship of program to the total school program.
(6) A driver education teacher shall provide a comprehensive program of learning experiences for the purpose of teaching students knowledge, skills, and attitudes to promote traffic efficiency and safety. The program shall follow the description of the driver and traffic safety education section in the "Program of Studies for Kentucky Schools, Grades K-12".
(7) Teachers assigned to the curriculum areas of industrial arts or [and] industrial education level I and level II shall provide an accepted program in the area(s) assigned as described in "The Program of Studies for Kentucky Schools, Grades K-12."
(8) An instructional coordinator shall have such duties as supervision of instruction and staff development which shall include the following types of activities:
(a) Provide staff development services to participating teachers in the area of instructional methodology, instructional strategies, classroom management, and communication skills.
(b) Assist professional school employes in the implementation of the Kentucky Plan for Improving the Professional Performance of School Personnel.
(c) Conduct classroom visitations and follow-up conferences with teachers and other professional school personnel.
(d) Serve as liaison in instructional matters between teachers and administrators within the school and with central office personnel.
(e) Serve as instructional and staff development consultant within the school to teachers, department chairmen, committees, and administrators.
(f) Work under the immediate direction of the school principal.
(9) An instructional television coordinator shall provide service to teachers in the area of instructional methodology and instructional strategies; assist in planning, coordinating, and developing an effective instructional television program for the school district; serve as a resource person to classroom teachers, do demonstration teaching and help to improve the quality of instruction; work to improve facilities, equipment, and utilization of material; and maintain records on all

instructional television equipment. An instructional television coordinator shall hold a certificate valid for teaching in Kentucky schools.

(10) A local director of vocational education shall coordinate and direct the development of the annual and long-range plan for vocational education for the local school districts in cooperation with educational agencies, advisory committees, and other planning agencies. The duties shall include:

(a) Improving vocational facilities, equipment and utilization of vocational materials;

(b) Planning for teacher and community participation in development of curriculum;

(c) Planning for professional improvement of vocational staff; and

(d) Evaluation vocational programs.

(11) A media librarian shall provide a functional program which has a systematic plan for the selection and acquisition of books and other materials plus a loan system for student use. Provisions shall be made for every child to have access to the library. The media librarian shall devote at least fifty (50) percent of his/her time to the duties of media librarian.

(12) A music education teacher shall provide an accepted program in music education as described in the music education section of the "Program of Studies for Kentucky Schools, Grades K-12."

(13) A physical education teacher shall provide an accepted program in physical education as described in the "Program of Studies for Kentucky Schools, Grades K-12."

(14) A principal shall be assigned administrative and supervision duties. A significant portion of his/her time shall be devoted to supervision and he/she shall be a cooperating participant in the various activities which are designed to improve instruction. The principal shall devote at least fifty (50) percent of his/her time to the duties of principalship. Classroom teaching shall not be considered a part of this unit. A principal shall supervise at least eight (8) teachers in one (1) or more schools. A principal shall serve all grades within the school or schools to which assigned or each organization unit designated as elementary, middle, junior high or high school.

(15) A school business administrator and/or finance officer shall supervise, under the direction of the superintendent, the financial affairs of the school district including establishment and maintenance of accounting procedures, and shall be responsible for financial reports required by the superintendent, the board of education, and the State Department of Education. The salary for this position may be generated from more than one (1) source. A school business administrator and/or finance officer shall devote full time to the position.

(16) A school health coordinator shall work with other school personnel in providing a school health service program which meets the health needs of individual pupils. The program shall consist of the following services:

(a) Coordinate all comprehensive health assessment procedures.

(b) Supervise appropriate follow-up of health assessment programs and direct appropriate services for each child requiring services.

(c) Secure and obtain appropriate consultation for communicable diseases.

(d) Supervise and assess the completeness of periodic health examinations of children.

(e) Establish and supervise first aid facilities for each school.

(f) Assist with parent health education program.

(g) Periodically check with teacher for classroom observation, teacher evaluation, and follow-up in such areas as psychological, speech, and neurological.

(h) Follow-up of prolonged illness with the pupil's physician and interpret physician's recommendations to teacher.

(i) Assist with medical aspects of sports.

(j) Maintain a dental health program.

(k) Assist local school officials in meeting the requirements of school health regulations pertaining to school employee medical examinations.

(17) A school lunch director shall work with others to plan, develop, administer and supervise the school food service program for all schools in the district.

(18) A school psychometrist shall recommend and direct the application of those measuring instruments which will provide most accurately the information about pupils desired by other staff members. The school psychometrist discharges these responsibilities by:

(a) Selecting and recommending the measuring devices that are the most valid and reliable indicators of the pupil characteristics to be considered.

(b) Planning, organizing and directing the administration of the tests or other devices chosen by the school staff member or members.

(c) Planning, organizing and directing the scoring of the measures administered.

(d) Converting the raw scores into such terms as are desired by the staff.

(e) Making such statistical calculations as are needed by the staff.

(f) Preparing charts, graphs and other interpretative materials for the use of the staff.

(g) Keeping and filing for later reference the important data obtained.

(h) Selecting, training and supervising clerical workers employed to score tests, collect data, and carry out statistical tasks in his/her office.

(i) Conducting minor research studies of groups of school pupils for administrative, supervisory or guidance counselors.

(j) Assisting guidance counselors in obtaining and organizing pertinent data needed regarding individual students.

(k) Making diagnostic studies of the individual child. The purpose of the services rendered by the school psychometrist to other individuals and groups is to conserve the time of the school's teachers, guidance counselors(s) and administrative and supervisory personnel in supplying recorded data regarding students to agencies or individuals not directly involved in the school's educational programs. A school psychometrist is recognized as a qualified examiner for the purpose of administering, scoring and interpreting individual intellectual assessments of students in the public schools of the Commonwealth, as such intellectual

assessments may be necessary pursuant to 707 KAR 1:051 or other statutory or regulatory requirements, or as such assessments may be deemed advisable by local school districts.

(19) A school social worker and/or visiting teacher shall work with individual pupils who need help with problems of social adjustment promoting positive adjustment to school experience, and helping pupils find opportunities to continue their educational progress toward realization of their potential. The finding shall be coordinated with the respective teachers.

(20) A special education work-study program coordinator's duties shall include on the job placement and supervision in working situations of exceptional children between the ages of fourteen (14) and twenty-one (21). The on-the-job training shall be a cooperative arrangement between the school system and employers coordinated by the special education work-study program coordinator.

(21) A supervisor of instruction shall devote the allotted time for supervision to providing leadership services in the improvement of instruction in the school program by working with administrators, teachers, other supervisors, and the lay public. In districts entitled to a fractional unit or one (1) unit for a supervisor, this unit or fraction shall be for a general supervisor. Districts entitled to more than one (1) unit for a supervisor shall employ a general supervisor for the first unit. The program of supervision shall make provisions for:

(a) Cooperative curriculum revision and development involving the total staff.

(b) Assistance in the selection and use of good instructional materials.

(c) Preparation of study guides, courses of study, handbooks, and other materials adapted to local needs.

(d) Cooperative efforts with principals and classroom teachers to improve the learning environment in schools and to meet pupil needs.

(e) Adequate evaluation of the supervisory program in terms of improved instructional services.

(22) The school based educational diagnostician is a person who conducts educational assessments for all pupils (those in regular program who don't qualify for special education with remedial needs; those who refer and are placed in special education; and those pupils currently in special education); who exhibits a knowledge of educational programming (regular and special education); who works with teachers in monitoring the progress of pupils; who participates in the development of Individual Education Plans (IEP's) for special education pupils; who serves and conducts Admissions and Release committee meetings; and who is knowledgeable of regulations and laws governing due process and handicapped pupils. Further specific responsibilities include:

(a) Assessment of children's academic functioning, including: global achievement, measures; diagnostic tests in reading, mathematics, spelling, writing, language, and specific content areas; and criterion-referenced, curriculum based assessment strategies.

(b) Development of instructional remediation plans based on the assessment (and incorporating the findings and recommendations of other professionals).

(c) Consultation with regular special education teachers and administration regarding instructional methods and materials.

(d) Development and case management of Individual Education Plans and Individual Instruction Programs, as required by federal and state guidelines.

(e) Participation on the multidisciplinary assessment and decision-making team.

(f) Development and implementation of curriculum in regular and special education classrooms for children with learning problems.

ALICE McDONALD, Superintendent
APPROVED BY AGENCY: July 2, 1985
FILED WITH LRC: July 5, 1985 at noon
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on August 30, 1985, at 9 a.m., E.D.T., in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky, to review the regulations adopted by the State Board of Education at its July meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 25, 1985. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Laurel True
(1) Type and number of entities affected: Positions for elementary and secondary principals, school district business administrators, school psychometrists, and educational diagnostician.
(a) Direct and indirect costs or savings to those affected: If additional costs occur, it will be at the discretion of local boards of education.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: No additional reporting and paperwork required.
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: The only anticipated cost will be to those school districts that wish to employ a school based educational diagnostician.
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: Relates to KRS 157.360, Establishing Administrative Special Instructional Service Units.

Tiering:
Was tiering applied? No. Tiering was not applied because the decision to staff specific ASIS units is with local boards of education.

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

704 KAR 3:175. Criteria for the unit of school psychologist.

RELATES TO: KRS 157.320, 157.360
PURSUANT TO: KRS [13.082, 156.030,] 156.070, 157.320 [156.160]
NECESSITY AND FUNCTION: KRS 157.360 requires [permits] the Superintendent of Public Instruction to allot units for administrative and special instructional services; and KRS 175.320(9) requires the State Board of Education to adopt necessary regulations for carrying out the purposes of the Foundation Program. 704 KAR 3:010 specifies school psychologist as a position to be allotted as an eligible ASIS unit, and the [school psychologist. The] purpose of these criteria is to furnish superintendents and boards of education with the basic requirements for approval of units for school psychologist.

Section 1. (1) The unit for the position of school psychologist shall be defined as the school phsychological services provided by a certified school psychologist and described as follows. The school psychologist is a person with a unique combination of skills in psychology and education. The school psychologist is trained in the usual area of psychological study including human development, learning theory, human exceptionalities, group social processes, psychodiagnostics, intervention strategies, and research. In addition, this professional is particularly cognizant of educational theory, school curriculum, school administration, mental health education, and procedures in special education. Furthermore, the school psychologist is trained in applying the principles of this broad background in school settings. Specifically, this practitioner of behavioral science possesses consultative skills which enables combining of the principles of psychology and education. The school psychologist works cooperatively with other members of the pupil personnel team, teachers, children, and other school staff. He/she is also capable of utilizing parents and community resources as a means of enhancing the effectiveness of the school program.

(2) School psychological services include, but are not necessarily limited to, the following:

(a) Preventing educational and behavioral problems through early identification and consultation;

(b) Identifying special needs of children through consultation, observation, and other psychological and educational assessments;

(c) Analyzing, integrating and reporting psychological and educational information about child behavior and conditions related to learning;

(d) Consulting with teachers and other staff members in planning, implementing and evaluating school programs and interventions to meet the identified psychological and educational needs of individuals and groups of children; and

(e) Planning and managing a program of psychological services including:

1. Pre-referral, referral and assessment services;
2. Early identification services;
3. Intervention and counseling for children;
4. Parent counseling and training; and
5. Program evaluation and applied educational research.

Section 2. [(1)] A person qualified to serve in an approved unit for school psychologist shall hold either the provisional or standard certificate for school psychologist.

[(2) A school psychologist legally certified or licensed for the position of school psychologist and employed within a local school district for the position during the 1978-79 school term shall have continuing approval for serving in the position of school psychologist so long as such legal certification or licensure is kept valid.]

Section 3. A school psychologist is recognized as a qualified examiner for the purpose of administering, scoring and interpreting individual intellectual assessments of students in the public schools of the Commonwealth, as such intellectual assessments may be necessary pursuant to 707 KAR 1:051 or other statutory or regulatory requirements, or as such assessments may be deemed advisable by local school districts.

ALICE McDONALD, Superintendent
APPROVED BY AGENCY: July 2, 1985
FILED WITH LRC: July 5, 1985 at noon
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on August 30, 1985, at 9 a.m., E.D.T., in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky, to review the regulations adopted by the State Board of Education at its July meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 25, 1985. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Margaret McClain
(1) Type and number of entities affected: School districts providing school psychological services.
(a) Direct and indirect costs or savings to those affected:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing

costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: N/A
(2) Effects on the promulgating administrative body: N/A
(a) Direct and indirect costs or savings: N/A
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: N/A
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: N/A

Tiering:
Was tiering applied? No. Not applied in interest of uniformity.

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

704 KAR 7:020. Counselor; criteria and duties.

RELATES TO: KRS 157.360 [156.130]
PURSUANT TO: KRS 156.070, 157.320 [13.082]
NECESSITY AND FUNCTION: KRS 157.360 requires the Superintendent of Public Instruction to allot to local school districts as part of the Foundation Program, classroom units for administrative and special instructional services; and 704 KAR 3:010 allows guidance counselor units as a form of ASIS units. This regulation is necessary to determine criteria for employment of counselor personnel in local schools and directions for appropriate functions.

Section 1. Accreditation standards shall be the criterion for employment of counselors. Counselor units shall be considered on the basis of a minimum ratio of one (1) counselor unit for each 300 pupils in a school or schools served by the counselor. The required ratio shall be in accordance with accreditation standards.

Section 2. (1) The counselor's duties shall be determined by the guidance plan of the school in which the counselor is to function.

(2) Effective until September 1, 1987, persons certified and employed as school guidance counselors are recognized as qualified examiners for the purpose of administering, scoring, and interpreting individual intellectual assessments of students in the public schools of the Commonwealth, as such intellectual assessments may be deemed necessary or advisable by local school districts, provided the local superintendent of schools appropriately determines a guidance counselor performing such duties meets the following requirements:

(a) The counselor has a minimum of three (3) hours of graduate course work in individual intellectual assessment;

(b) The counselor has had experiences in test administration, interpretation, and report writing under supervision and administers only those tests which were a part of the instruction;

(c) The counselor has had experiences in the identification and placement process for exceptional children; and

(d) The counselor has a job description and guidance plan which clearly state the assignment of individual intellectual assessment responsibilities on file with the Division of Student Services, Department of Education.

(3) A letter from the local superintendent must be submitted to the Division of Student Services prior to December 31, 1985, verifying that the above requirements relative to administering, scoring, and interpreting individual intellectual assessments of students have been met.

(4) From January 1, 1986, to September 1, 1987, no counselor may administer, score or interpret individual intellectual assessments, unless a letter of verification is on file with the Department of Education.

Section 3. On and after September 1, 1987, in order to be qualified to administer, score, or interpret individual intellectual assessments of students in the public schools of the Commonwealth, counselors must hold a certificate endorsement for the Administration and Interpretation of Intellectual Assessments. This endorsement shall require the completion of an approved nine (9) hour program as prescribed by the Council on Teacher Education and certification, recommended by the Superintendent of Public Instruction and approved by the State Board of Education, to include preparation for administering, scoring, and interpreting the intellectual assessments most commonly used in the Kentucky schools.

ALICE McDONALD, Superintendent
APPROVED BY AGENCY: July 2, 1985
FILED WITH LRC: July 5, 1985 at noon
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on August 30, 1985, at 9 a.m., E.D.T., in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky, to review the regulations adopted by the State Board of Education at its July meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 25, 1985. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Margaret McClain
(1) Type and number of entities affected: School districts using counselors to administer individual assessments.
(a) Direct and indirect costs or savings to those affected:
1. First year: Cost to counselors of obtaining necessary coursework.
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing

costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: Superintendent must verify in writing to the Department of Education that counselors meet the requirements. After July 1, 1987, transcript to be submitted to the Division of Teacher Education and Certification for endorsement.
(2) Effects on the promulgating administrative body: N/A
(a) Direct and indirect costs or savings: N/A
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: N/A
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: To allow only psychologists and/or psychometrists to administer tests would create hardships to many school districts: additional staffing, unusual delays in testing and retesting; additional costs for psychological consulting services.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: This regulation, while meeting temporary needs, is a first step toward increasing requirements to administer, score and interpret individual intellectual assessments.

Tiering:
Was tiering applied? No. Not applicable in state-wide system of certification.

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

704 KAR 20:045. Testing prerequisites for teacher certification; certificate application; beginning teacher internship program.

RELATES TO: KRS 161.020, 161.025, 161.030
PURSUANT TO: KRS 156.070, 161.030
NECESSITY AND FUNCTION: KRS 161.020, 161.025, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Kentucky Council on Teacher Education and Certification and approved by the State Board of Education; furthermore, the teacher education institutions are required to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures recommended by the Council and approved by the State Board, and KRS 161.030 sets up additional testing and internship requirements for certification. This regulation provides for the implementation of the testing prerequisites for teacher certification as prescribed in KRS 161.030 and for the beginning teacher internship program; and also provides for certificate renewal requirements and for filing certificate application forms.

Section 1. (1) Application for teacher certification shall be made on official forms prepared by the Department of Education.
(2) The application shall be supplemented by official transcripts showing all college credits necessary for the requested certification.
(3) The Superintendent of Public Instruction may authorize a teacher education institution to present certificates to applicants at the time the certification requirements are completed, provided the applications have been approved in advance by the Department of Education and provided the institution files the official transcripts of credits with the Department of Education within thirty (30) days.

Section 2. Effective January 1, 1985, teacher certification issued initially under the provisions of 704 KAR 20:065, 20:070, 20:080, 20:085, 29:090, 20:145, 20:150, 20:159, 20:222, 20:230, 20:235, 20:240, 20:245, 20:270, and 20:290 shall comply with the provisions of KRS 161.030 and with the following requirements and procedures:
(1) There shall be a recency of preparation prerequisite for the issuance of certificates covered by this section. The program of preparation shall have been completed within the five (5) year period next preceding the date of receipt of the certificate application form, or else the applicant shall have completed six (6) semester hours of additional graduate credit within this five (5) year period. For applicants who do not meet the recency of preparation prerequisite, and who have not previously held a regular Kentucky teaching certificate, but who otherwise qualify for certification, the certificate shall be issued for a one (1) year period ending June 30 of the next calendar year and with the condition that six (6) semester hours of credit applicable toward the usual renewal requirements be completed by September 1 of the year of expiration. Thereafter the further extension of the certificate shall be in compliance with the usual renewal requirements as specified in subsection (2) of this section.
(2) Teaching certificates described in this section shall be issued for a duration period of five (5) years and with provisions for subsequent five (5) year renewals, except that the initial certification for the beginning teacher internship shall be issued for a duration period of one (1) year and initial certification for applicants who do not meet the recency of preparation prerequisite shall be issued for a duration period of one (1) year. Upon successful completion of the beginning teacher internship as judged by majority vote of the beginning teacher committee, the one (1) year certificate shall be extended for the remainder of the five (5) year period. The certificate shall be renewed for subsequent five (5) year periods upon completion by September 1 of the year of expiration of three (3) years of successful teaching experience or upon completion by September 1 of the year of expiration of at least six (6) semester hours of credit or the equivalent in PSDU's or CEU's, as

defined in 704 KAR 20:020, except that persons who have not yet completed the Planned Fifth-Year Program, as defined in 704 KAR 20:020, shall complete at least fifteen (15) semester hours of credit applicable to the program for the first renewal and the remainder of the program for the second renewal. Credits for certificate renewal shall be earned after the issuance of the certificate, and any credits earned in excess of the minimum requirements for any renewal period shall accumulate and be carried forward to apply toward subsequent renewals.

(3) Whenever there is a lapse in any certification identified in this section due to expiration for lack of meeting the renewal requirements, the certificate may be reissued at a later date for a one (1) year period by first completing at least six (6) semester hours of graduate credit applicable toward the Planned Fifth-Year Program. The applicant shall complete another nine (9) semester hours of credit applicable toward the Planned Fifth-Year Program by September 1 of the year of expiration in order to qualify for extending the certificate for the remaining four (4) years of the usual five (5) year duration period. At the end of this renewal period the applicant shall have completed the Planned Fifth-Year Program to qualify for the next five (5) year renewal. Thereafter, the regular renewal schedule of six (6) semester hours of additional credit or the equivalent in PSDU's or CEU's each five (5) year period shall apply. An applicant who has already completed the Planned Fifth-Year Program and whose certificate lapses may have the certificate reissued after first completing another six (6) semester hours of graduate credit. The certificate shall be issued for a five (5) year period and subject to the renewal schedule of six (6) semester hours of additional credit or the equivalent in PSDU's or CEU's for each five (5) year period.

(4) An applicant having completed five (5) or more years of full-time acceptable teaching experience outside of the Commonwealth of Kentucky, who otherwise qualifies for certification, shall not be required to take the written tests or to participate in the beginning teacher internship program. An applicant who has held a regular Kentucky teaching certificate which has lapsed for failure to meet renewal requirements [and who has completed five (5) or more years of full-time acceptable teaching experience], but who otherwise qualifies for the reissuance of a Kentucky teaching certificate shall not be required to take the written tests or to participate in the beginning teacher internship program. In calculating the minimum of five (5) years of acceptable experience, full-time teaching shall be defined as continuous employment for at least a half day or more; full-time teaching for a major portion of a semester shall be counted as one-half (1/2) year; and full-time experience for the major portion of an academic year shall be counted as one (1) year. At least three (3) of the five (5) years of experience shall be in a position directly corresponding to the type of teaching certificate for which the application is being made.

(5) Prerequisites for the issuance of a one (1) year certificate for the beginning teacher internship shall include:

(a) The completion of an approved program of preparation which corresponds to the certificate desired.

(b) The completion of the written tests designated by the State Board of Education for:

1. General knowledge;
2. Communications skills;
3. Professional education concepts; and
4. Knowledge in the specific teaching field of the applicant, with minimum scores in each test as set by the State Board of Education.

(c) Evidence of full-time employment in a Kentucky school as attested by the prospective employer.

(6) Upon successful completion of the approved program of preparation and upon completion of the designated tests with acceptable scores, the Department of Education shall issue a statement of eligibility for employment which shall serve as evidence of eligibility for the one (1) year certificate once a teaching position is secured. The statement of eligibility shall be valid for a four (4) year period beginning from the date of issuance from the Department of Education and ending on the same date four (4) years later.

(7) For persons who attain the statement of eligibility, but who are not employed on a full-time basis, the Certificate for Substitute Teaching may be issued as provided in 704 KAR 20:210, Section 1.

(8) The one (1) year certificate shall be issued effective from the date of employment and shall expire June 30 of the next calendar year. If the teacher's first year performance is judged to be less than satisfactory, the teacher shall be provided with an opportunity to repeat the internship one (1) time through the reissuance of another one (1) year certificate if the teacher is employed by a school district.

(9) The first year of employment as a beginning teacher shall serve as the internship as described in KRS 161.030. The Superintendent of Public Instruction shall design, for State Board approval, the plan which provides for the beginning teacher committee, the support services for the beginning teacher, the evaluation of the performance of the beginning teacher, the development of criteria and procedures for the evaluation of the performance of the beginning teacher, and the training of the evaluators who make up the beginning teacher committee.

(10) The one (1) year internship shall include a minimum of 140 days of full-time teaching experience.

ALICE McDONALD, Superintendent
APPROVED BY AGENCY: July 2, 1985
FILED WITH LRC: July 9, 1985 at 3 p.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on August 30, 1985, at 9 a.m., E.D.T., in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky, to review the regulations adopted by the State Board of Education at its July meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 25, 1985. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James Fouche
(1) Type and number of entities affected: Previously certified Kentucky teachers whose certificates have expired and who are applying for recertification on the basis of additional collegiate preparation--the number will range upward from 100 per year.
(a) Direct and indirect costs or savings to those affected: Would save the individuals the costs of teacher testing which is approximately $80.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: No appreciable change.
(2) Effects on the promulgating administrative body: Would save from $700-$1,000 for each of these persons who obtain employment by eliminating the need for paying a resource teacher another $400 by eliminating the need for the expenses of a teacher educator on an internship committee.
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: No appreciable change.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: This amendment is an alternative to an existing regulation.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: It has been determined that the phrase in the regulation to be deleted through this amendment may be contrary to the intent of Senate Bill 19.

Tiering:
Was tiering applied? No. Regulation ultimately applies to individual teacher candidates who must satisfy the same curriculum, testing, and internship requirements for certification.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Vocational Rehabilitation
(Proposed Amendment)

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

RELATES TO: KRS 156.010, 156.031, 163.140, 163.160
PURSUANT TO: KRS 163.140
NECESSITY AND FUNCTION: Section 101, Title I, P.L. 93-112, as amended, requires the submission of an Interim Three-Year State Plan for Vocational Rehabilitation Services to the Secretary, United States Department of Education. The plan must be approved in order for a state to be eligible for grants from the allotments of funds under Title I, P.L. 93-112, as amended by P.L. 93-516 and P.L. 95-602, and P.L. 98-221, and this regulation adopts the pertinent state plan developed and approved by the Department of Education and sets [setting] forth rules governing the services, personnel, and administration of the Office of Vocational Rehabilitation.

Section 1. Pursuant to the authority vested in the Kentucky State Board of Education by KRS 163.140, the revised Kentucky State Plan for Vocational Rehabilitation Services for the period October 1, 1985 [1982] through September 30, 1988, [1985, effective October 9, 1984 as revised September 12, 1984] is presented herewith for filing with the Legislative Research Commission, and incorporated by reference. A copy of said plan can be obtained from the Office of Vocational Rehabilitation, Department of Education.

ALICE McDONALD, Superintendent
ADOPTED BY AGENCY: July 2, 1985
FILED WITH LRC: July 5, 1985 at noon
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on August 30, 1985, at 9 a.m., E.D.T., in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky, to review the regulations adopted by the State Board of Education at its July meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 25, 1985. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Kathy Williams
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected: Regulations pertain to vocational rehabilitation to 28,976 disabled Kentuckians served by this program annually.
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements.
(2) Effects on the promulgating administrative body: Monies for this program are based on 80/20 match with the United States Department of Education, Rehabilitation Services Administration. The Kentucky legislature has appropriated funding through state fiscal year 1986.
(a) Direct and indirect costs or savings:
1. First year: No additional costs.
2. Continuing costs or savings: Expenditures will remain stable.
3. Additional factors increasing or decreasing costs: No additional reporting or paperwork requirements.
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Office policies filed as regulation to enhance consistency in statewide application as pertains to disabled applicants for the program.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None identified.
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. This regulation concerns eligible disabled population of the Commonwealth. Tiering is not applicable when regulations pertain to individuals.

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

707 KAR 1:051. Exceptional children's programs.

RELATES TO: KRS 157.200 to 157.290, 157.360
PURSUANT TO: KRS 156.070, 157.220, 157.221, 157.250, 157.360
NECESSITY AND FUNCTION: KRS 157.200 to 157.290 set forth the state statutory framework for special education programs for exceptional children; and KRS 157.360 provides the mechanism for state financial support of local school district programs for exceptional children. This regulation establishes requirements for special education programs and is necessary to assure uniformity in providing special education and related services to exceptional children and to conform with Public Law 94-142.

Section 1. General Provisions. Local school boards of education shall operate programs for exceptional children of school attendance age pursuant to KRS 157.200 to 157.290 inclusive, and the criteria listed in this chapter.
(1) Classroom units. Local school districts shall request classroom units for the education of exceptional children from the State Department of Education by filling out the appropriate application(s) as provided by the Office [Bureau] of Education for Exceptional Children, and in accordance with KRS 157.360(6). Application(s) shall be made pursuant to schedules established by the Office [Bureau] of Education for Exceptional Children.
(a) In order to receive tentative allotment of minimum foundation classroom units local school districts shall assure that the following criteria are met:
1. Approved teacher;
2. Approved housing;
3. Approved program plan; and
4. Minimum number of children for type of unit requested.
(b) Pursuant to KRS 157.360(6)(c) and (d), local school districts may choose between two (2) options for reimbursement for exceptional child units to provide home or hospital instruction. The two (2) options are as follows:
1. One (1) unit may be allocated for each ten (10) children in average daily attendance for the current school year, as provided by KRS 157.360(6)(c); or
2. The district may provide home or hospital instruction on an hourly basis, as provided by KRS 157.350(6)(d). The hourly reimbursement rate per child for districts utilizing this option shall be calculated as follows:

State Average Teacher's Salary (185 Day School Term X 6 Instructional Hours) + Current Operating Expense (175 Day Instructional Term X 6 Instructional Hours) = Hourly Reimbursement Rate

A maximum average of three (3) instructional hours per child per week will be reimbursed. The total reimbursement amount must be spent on teacher salary, travel expenses and teaching supplies for the home/hospital program. A minimum of seventy-five (75) percent of the total reimbursement amount must be allocated for teacher salary. An amount not to exceed twenty-five (25) percent of the total reimbursement amount shall be allocated for travel expenses and teaching supplies and equipment.

(c) Local school districts shall receive final allotment of minimum foundation classroom units provided the above criteria are met and the local school district validates to the State Department of Education that said unit(s) is operating pursuant to criteria listed in this chapter. Validation shall be made by filling out appropriate record(s) as provided by the Office [Bureau] of Education for Exceptional Children and shall be made pursuant to established schedules. Final allotment of funds due each district for reimbursement of home and hospital instruction programs shall not be distributed until all monthly attendance reports due for a given school district are received by the Department of Education.
(2) Fractional classroom unit. A fractional classroom unit is a unit having fewer pupils than the prescribed pupil-teacher ratio as indicated in regulations pertaining to the specific categorical program or if the program is in operation for less than a full day or full school year. Such units shall be allotted and certified on a basis proportionate to the pupil-teacher ratio and/or the proportionate length of the school day or the school year.
(3) Qualifications for assignments of special education personnel. Teachers employed for a teaching assignment in a classroom unit for exceptional pupils shall hold appropriate state certification in the area(s) of assignment as required in Title 704 KAR Chapter 20, except as hereinafter provided:
(a) Teachers of classes for severely profoundly handicapped. Teachers assigned to classes established to serve pupils classified as severely/profoundly handicapped (S/PH) shall possess a certificate valid for teaching trainable mentally handicapped or severely/profoundly handicapped.
(b) Teachers of classes for multiple handicapped. Teachers assigned to classes

established to serve multiple handicapped (MH) pupils shall meet the following requirements:

1. The assigned teacher shall possess a certificate valid for teaching:

a. Trainable mentally handicapped or severely/profoundly handicapped for assignment to classes for multiple handicapped pupils whose intellectual functioning is trainable mentally handicapped; or

b. Educable mentally handicapped, learning disabilities, physically/orthopedically handicapped or learning and behavior disorders for assignment to classes for multiple handicapped (MH) pupils whose intellectual functioning is educable mentally handicapped or above. Severely/profoundly handicapped pupils shall not be assigned to classes taught by teachers with the certification specified in this section.

2. Except as hereinafter provided, the assigned teacher shall have special skills, experience or training related to the concomitant conditions (such as vision, hearing, orthopedic) of the multiple handicapped pupils assigned to the class. The district shall maintain on file a description of the teacher's special skills, experience or training in the concomitant conditions. This description shall be based on results of teacher evaluation, continuing education activities, and previous teaching experiences.

3. Personnel development activities shall be provided by the local school district for those teachers who do not have special skills, training or experience in the concomitant conditions. The activities shall be conducted according to a written plan for personnel development. Such plan shall be developed jointly by the teacher, the supervisor of special education programs and the teacher's principal. Activities may include consultation from appropriately trained and/or certified persons, college courses, workshops, seminars, or inservice programs. Topics shall be related to methods, materials and educational assessment in the concomitant areas. A survey course shall not meet this requirement. Expenses for such activities, excluding college courses, shall be provided by the local school district. Activities shall continue until objectives of the personnel development plan have been met or until additional certification(s) is obtained. Documentation describing the activities completed shall be maintained in the local school district with the assigned teacher's Kentucky teaching certificate. Documentation must include but not be limited to the date, time, location, name and title/position of person(s) who provided the activity, and the objectives of the activity. Such records shall be made available upon request to representatives of the Kentucky Department of Education.

(c) Teachers of cross-categorical classes. Teachers assigned to special education classes serving more than one (1) category of exceptional pupils (cross-categorical programs) shall possess a certificate valid for teaching pupils of each of the specific areas of exceptionality to be enrolled, except as follows:

1. Local school districts may serve pupils classified as educable mentally handicapped (EMH), learning disabled (LD) and emotionally disturbed (ED) within the same classroom, provided teachers assigned to such classes are certified in at least two (2) of the categories of exceptionality or have certification in the area of learning and behavior disorders (LBD). Teachers employed as of September 1, 1985, with assignments to such classes and who are certified in only one (1) of the areas of exceptionality served may continue to be assigned to such classes until September 1, 1988, by which time appropriate certification must be obtained. Or, teachers employed as of September 1, 1985, and assigned to classes which include pupils of an exceptionality not covered by their certification may continue to be assigned to such classes, provided the teacher has had class assignments which included such exceptional pupils for each of the preceding three (3) years, and the Kentucky Department of Education approved the assignment for each of the years involved.

2. Local school districts may serve pupils classified as trainable mentally handicapped, severely/profoundly handicapped and multiple handicapped whose intellectual functioning is trainable mentally handicapped within the same classroom, provided teachers assigned to such classes are certified in trainable mentally handicapped or severely/profoundly handicapped.

(d) Local school districts which need to assign teachers to teach classes or pupils not consistent with the above criteria and which do not correspond with the certification of the assigned teachers shall request approval for the teacher assignment from the Kentucky Department of Education, Office of Education for Exceptional Children.

1. The Kentucky Department of Education shall give consideration for such approval based on information provided by the local school district as follows:

a. Request shall be made prior to September 15 or within ten (10) school days of the need for assignment if it occurs after September 15 and shall include the teacher's name, school assignment, social security number and class plan assignment;

b. Teacher's current certification(s) and a listing of pupils by category of exceptionality to be served demonstrating that the teacher meets qualifications for assignment to teach at least sixty (60) percent of the exceptional pupils enrolled and that only one (1) additional category of exceptional pupils shall be included in the classroom;

c. Verification that the pupils in the added category of exceptionality pupils to be served cannot be assigned to a teacher who is qualified for assignment to a class serving such pupils either within the local school district or in a program in contiguous local school district;

d. Verification of provision of classroom support services (i.e. aides, volunteers, peer tutors) to assist with the pupils assigned to the class; and

e. Description of consultation and training related to the additional category of pupils, including topics and dates, to be provided the assigned teacher by appropriately trained categorical specialists; or, description of special skills, experience, or training the teacher possesses which would enable the teacher to adequately meet the needs of the additional

pupils assigned.

2. The assignment shall not exceed the length of the school year during which it was initiated.

3. Approval to continue such assignment beyond the initial year shall be made contingent upon verification that the teacher is pursuing an approved course of study leading to full certification requirements in the area of additional assignment.

4. A local school district which fails to meet the above criteria for assignment shall be subject to reduction in allocation of minimum foundation classroom unit funding.

(e) Assignments as teachers for home and hospital programs. Teachers providing instruction to exceptional pupils in home and hospital program shall be provided with the skills needed to meet the individual needs as set forth in the pupil's individual education program. The local school district shall provide on-going consultation by appropriately certified categorical specialists.

(f) Replacement teacher for special education classes. When a local school district loses the services of the approved special education teacher after September 15, a replacement teacher may be used for a classroom unit for exceptional children under the following conditions:

1. The teacher qualifies for assignment to the class as specified in paragraphs (a) through (d) of this subsection.

2. If a teacher with appropriate certification in special education is not available for the vacated position, the local school district may assign a teacher to the class, with the exception of speech and communication disorders, pursuant to the following:

a. The superintendent and the local board of education shall submit an application to the Kentucky Department of Education, Office of Education for Exceptional Children, for each replacement teacher. The application shall be made on forms provided by the Kentucky Department of Education. Information which validates all attempts to employ an appropriately certified teacher shall accompany the application and shall document the following:

(i) Teachers with certification in special education are not available within the local school district for the position.

(ii) Efforts have been made to recruit a teacher certified in special education for the vacant position. This vacancy has been publicized by appropriate means, including advertisement of the vacant position.

(iii) The local school district has been unsuccessful in recruiting a certified special education teacher for the vacant position either from the listings of teachers supplied by the State Department of Education or by means of the placement services of teacher education institutions.

(iv) The position will be filled by the best certified person available giving preference to the factors of academic preparation, successful prior teaching experience or related educational work.

b. The replacement teacher must qualify as a basic classroom teacher and hold, at minimum, a provisional elementary, middle or secondary certificate valid for the grade level of the assignment.

c. The replacement teacher may not be employed for the same teaching assignment for the following year without obtaining appropriate certification in special education.

d. If the Kentucky Department of Education, Office of Education for Exceptional Children, approves the replacement teacher, the effective employment date for the replacement teacher shall be the date the application an accompanying documentation are received and stamped in by the Office of Education for Exceptional Children. [Approved teacher, personnel. Appropriate state certification shall be as required and provided in Title 704, KAR Chapter 20. Teachers providing instruction to exceptional children in home and hospital programs shall be provided with the skills needed to meet the individual needs as set forth in the individual education program.]

(4) Program plan. The appropriate program plan for exceptional pupils in the local school district shall be determined by the needs of the pupils. Consideration shall be given to the least restrictive environment concept in the placement of pupils. Programs shall be organized and operated under one or more, or a combination of the following:

(a) Classroom units plans:

1. A resource plan shall be a program which serves exceptional pupils who shall be entered on the class roll of a regular class teacher and shall do part of their classwork in the regular class. The pupils shall receive special instruction from the resource teacher as specified on their individual education programs. The number of pupils served by the resource teacher and the number of pupils in the resource room for instructional purposes at any one (1) time shall be determined by the appropriate categorical regulations. The resource plan shall utilize a classroom-based teacher or an itinerant teacher.

2. A special class plan shall be a classroom-based program which serves exceptional pupils who shall be entered on the class roll of the special class teacher. The pupils shall participate in the regular class program to the maximum extent appropriate as specified on the pupils' individual education programs. The number of pupils and the chronological age range for pupils enrolled in the special class shall be determined by the appropriate categorical regulations. A classroom-based teacher shall be utilized for this plan.

3. A hospital instructional plan shall be a program which provides educational services on a regularly scheduled basis to pupils in a hospital setting. The itinerant teacher providing educational services in the hospital shall keep a regular Kentucky attendance register. A pupil receiving services in a hospital setting shall have a minimum of two (2) one (1) hour visits per week in order to be counted as being in attendance five (5) days. Special education and related services for the identified exceptional pupil in a hospital setting shall be provided as specified on the pupil's individual education program (IEP). The hospital instructional plan shall utilize a classroom-based teacher an itinerant teacher, or a visiting teacher.

4. A home instruction plan shall be a program which provides educational services to pupils at

the home on a regularly scheduled basis. The teacher providing educational services at the home shall keep a regular Kentucky attendance register. A pupil receiving educational services under this plan shall have a minimum of two (2) one (1) hour visits per week in order to be counted in attendance five (5) days. Special education and related services for the identified exceptional pupil served under this plan shall be provided as specified on the pupil's individual education program (IEP). The home instruction plan shall utilize an itinerant teacher or a visiting teacher.

(b) Teacher and housing. Each classroom unit plan shall be housed as specified and shall operate utilizing one (1) of the following types of teachers:

1. A classroom-based teacher shall be an approved teacher who shall provide educational services to exceptional students in a classroom provided for such services. The classroom-based teacher providing services through the resource plan or special class plan shall be housed in an elementary or secondary school dependent upon the age range of the pupils or in an approved special school or facility. Classroom location shall be made consistent with the least restrictive environment concept. Classrooms shall meet the standards for regular classrooms pursuant to 702 KAR 4:060. The classroom-based teacher providing services in a hospital setting shall be housed in facilities and/or rooms appropriate and adequate for instructing pupils in small groups or individually.

2. An itinerant teacher shall be an approved teacher who travels to exceptional pupils' school(s), class(es), homes, or hospital setting(s) on a regularly scheduled basis to work with pupils either individually or in small groups. Those pupils being served in a school facility shall be entered on the class roll of a regular class teacher and shall receive the majority of their instruction through the regular program. The itinerant teacher shall work with the pupils in an area in the regular classroom or in a room provided for such services. Housing for the itinerant teacher providing services in a school shall be in facilities and/or rooms appropriate for instructing pupils in small groups or individually and shall be housed in an elementary or secondary school dependent upon the age range of the pupils or in an approved special school or facility. The itinerant teacher shall be provided permanent work space. For the itinerant teacher who travels to the pupils' school(s), class(es), homes, or hospital setting(s) the board of education shall defray travel expenses incurred by personnel in the execution of duties related to the program pursuant to 702 KAR 3:120.

(3) A visiting teacher shall be an approved teacher in a home and/or hospital program who travels to the necessary setting to provide appropriate instruction to pupils on an hourly basis. Teacher salary, travel expenses, and teaching supplies for the visiting teacher will be provided through the funding mechanism set forth in 707 KAR 1:051, Section 1(b).

(c) A variation plan shall be an alternative to the above plans. The local school district shall submit a written request to and receive approval from the Office [Bureau] of Education for Exceptional Children prior to implementation of a variation plan. Written requests for such plan shall be made pursuant to provisions established by the Office [Bureau] of Education for Exceptional Children. In granting approval the Office [Bureau] of Education for Exceptional Children shall assure that approved requests for such plan shall contain but not be limited to the following components:

1. Rationale for need of the variation plan;
2. Detailed description of the plan;
3. Verification of teacher's certification in the categorical area of the majority of the students to be served; and
4. Method of evaluation to be used to determine effectiveness of the plan.

(5) Length of school day. The length of school day shall be the same as for non-handicapped children except as specified in KRS 157.270 and 158.060. Requests for and approval of changes in length of school day shall be made in writing pursuant to provisions established by the Office [Bureau] of Education for Exceptional Children.

(6) Instructional materials and equipment. Instructional materials and equipment appropriate to the educational needs of the identified exceptional child shall be provided as required under 704 KAR 2:020.

Section 2. Identification of Exceptional Children. Each local school district shall have in operation policies and procedures to insure that all exceptional children are identified, located and evaluated. As used here, this requirement refers to all exceptional children who are in need of special education and related services and are residing within the jurisdiction of the local school district, including those exceptional children who are out of school; in local school district programs; and, being served by other public and private agencies and institutions within the local school district's jurisdiction. Local school district policies and procedures shall include the development, implementation, monitoring and evaluation of a practical method of determining:

(1) Which children are currently receiving needed special education and related services; and

(2) Which children need special education and related services but are not currently receiving these services.

Section 3. Admissions and Release Committees. Local school district personnel shall establish one (1) district-wide administrative admissions and release committee and a school-based admissions and release committee in each school with appropriate membership and functions as listed below. In addition, for those school districts with a school census figure of 15,000 or over, sub-district admissions and release committees may be established pursuant to approval by the Office [Bureau] of Education for Exceptional Children.

(1) Administrative admissions and release committee. The membership of the Administrative Admissions and Release Committee (AARC) shall consist of:

(a) Director, local school district's program for exceptional children or person having such responsibility, chairperson (permanent member);

(b) Local school district superintendent or

designee (permanent member);
(c) Referred pupil's principal and teacher (if the child is enrolled in public or private school);
(d) Involved instructional supervisor depending on the age and level of the child;
(e) The parent(s) of the referred child;
(f) The referred child, where appropriate;
(g) Personnel responsible for providing evaluation information, where appropriate; and
(h) Other persons as requested by any member of the AARC.
(2) The functions of the AARC shall include the following:
(a) Receive referrals of the following nature:
1. Written information on identified children not currently enrolled in the local school district, including those children enrolled in non-public schools, who are thought to need special education and related services.
2. Cases where the school-based admissions and release committee is not able to determine an appropriate educational placement for a referred pupil and make recommendations as to appropriate educational placement.
3. Cases from school-based admissions and release committee where appropriate services are not available within the school.
(b) Follow due process procedures to insure that exceptional children and their parent(s) are guaranteed procedural safeguards in decisions regarding identification, evaluation, and educational placement.
(c) Assure that appropriate evaluations on referred children are obtained or conducted.
(d) Review written results of the formal and informal evaluation to determine if the referred child meets eligibility criteria for a category of exceptionality.
(e) Determine if the identified child needs special education and related services.
(f) Develop an individual education program (IEP) for the identified child needing special education and related services to make recommendations as to appropriate services and/or programs for the identified child. The AARC shall determine if the local school district can provide appropriate services, if local programs must be changed to accommodate the identified child, if additional services or programs will be developed, or if the child must receive services outside the local school district. For those pupils who shall receive services within the local school district, the appropriate school-based admissions and release committee shall assume responsibility for the implementation, monitoring, evaluation and annual review of the IEP as well as annual review of placement. In those cases where the local school district has determined that appropriate special education and related services cannot be provided through existing programs in the local school district, services shall be provided to the identified child pursuant to the following:
1. Local school district referral of an exceptional child to a public or private agency. The Administrative Admissions and Release Committee shall:
a. Contact a public agency or approved private agency/organization, as provided in 707 KAR 1:070, which provides the type of services specified on the child's IEP regarding the possible referral of the child to the agency.
b. Insure that a representative(s) of the receiving agency shall participate in a meeting(s) with the AARC regarding the possible referral. Participation may be provided through attendance at meetings, written communications, and/or individual or conference calls. Receiving agency means an approved agency/organization which has indicated a willingness to provide the services requested by the local school district.
c. In collaboration with representative(s) of the receiving agency, review and revise, where appropriate, the child's IEP.
d. In collaboration with representative(s) of the receiving agency, determine if such agency is the appropriate agency to provide the specified services. If the agency is an appropriate one, such agency assumes responsibility for implementing the provisions of the special education and related services specified on the IEP.
e. The local school district shall be responsible for providing continued educational services to the child until such time as the child enters the programs provided by the receiving agency.
2. Placement of an exceptional child in a public or private agency:
a. Public agency (another local school district, Kentucky School for the Blind, Kentucky School for the Deaf). Upon admission of the referred child to the agency's program, the agency shall: Assume responsibility for providing special education and related services to the exceptional child as specified on the IEP; and, insure that the child and parent(s) are afforded all rights and protections as required and provided in 707 KAR 1:051, Sections 9 and 10, and 707 KAR 1:060.
b. An admissions and release committee of the receiving public agency shall: Conduct meetings for the purposes of reviewing and where appropriate revising the IEP, assure that the IEP shall be reviewed on at least an annual basis and revised where appropriate; insure that any review (including annual review) and revision of the IEP shall be done with the input and approval of the parent(s); and, insure that any review and revisions of the IEP shall include input and approval of the local school district placing the child in the program. The participation of the parent(s) and the local school district placing the child may take place through attendance at meetings, written communications and/or individual or conference calls.
c. Monitoring and evaluation of the IEP shall be done by specific members of the receiving public agency's admissions and release committee at intervals specified on the IEP. This shall be done to document progress and mastery of objectives specified in the IEP. Written results of such monitoring and evaluation shall be forwarded to the parent(s) and the Administrative Admissions and Release Committee of the local school district placing the child in the agency's program.
d. Responsibilities of the Administrative Admissions and Release Committee of the local school district placing the child in another public agency shall be: participation in meetings called by the receiving agency for the purpose of review and revision of the IEP; and,

at least annually, review the exceptional child's IEP and review the placement of each exceptional child receiving services outside the local school district in relation to his educational progress in that setting.

e. Private agency/organization (as defined in 707 KAR 1:070) the private agency shall provide those special education and related services specified on the child's IEP. At the discretion of the local school district, the private agency may initiate and conduct meetings for the purposes of reviewing and revising the child's IEP. When circumstances warrant, the private agency shall be responsible for notifying the local school district of the need to initiate and conduct a meeting for such purposes. The local school district shall insure that the parent(s) and a local school district representative(s) are involved in any decision regarding review and revisions of the child's IEP; and, agree to any placement changes before such changes are implemented.

f. Responsibilities for the Administrative Admissions and Release Committee of the local school district placing the child in a private agency shall be: participation in meetings called by the receiving agency regarding review and revision of the IEP; at least annually, review the exceptional child's IEP and review the placement of each exceptional child receiving services outside the local school district in relation to the educational progress in that setting; and, insuring that the child and parent(s) are afforded all rights and protections as required and provided in Sections 9 and 10 of this regulation and 707 KAR 1:060.

(g) For those referred pupils who are determined by the AARC not to need special education and related services, the AARC shall provide the referring person and the parents with written explanation of why the child is not to receive special education and related services, shall provide in writing recommended remedial action, and shall provide written notice pursuant to 707 KAR 1:060.

(3) School-based admissions and release committee (SBARC): The membership of the school-based admissions and release committee shall consist of:

(a) Chairperson, building principal or designee. The designee shall be recommended by the building principal and approved by the local school superintendent. This person shall not be a regular or special education teacher, (permanent member).

(b) Referring person(s) or the referred child's regular teacher(s);

(c) Teacher(s) of exceptional children;

(d) Parent(s) of the referred pupil;

(e) The referred child, where appropriate;

(f) Other persons providing input into the referred pupil's educational program as requested by any member of the SBARC; and

(g) Personnel responsible for providing evaluation information, as appropriate. For a child who has been evaluated for the first time, the chairperson shall assure that a member of the evaluation team participates in the meeting; or that a representative of the school district is present who is knowledgeable about the evaluation procedures used with the child and is familiar with the results.

(4) The functions of the SBARC shall include the following:

(a) Receive written referrals on pupils currently enrolled in the school and thought to need special education and related services.

(b) Follow due process procedures to insure that exceptional children and their parents are guaranteed procedural safeguards in decisions regarding identification, evaluation and educational placement.

(c) Assure that appropriate evaluations on referred children are obtained or conducted.

(d) Review written results of the formal and informal evaluations to determine if the referred child meets eligibility criteria for a category of exceptionality.

(e) Determine if the identified child needs special education and related services.

(f) Develop an individual education program (IEP) for the identified child needing special education and related services to make recommendations as to appropriate services and/or programs for the identified child.

(g) At least annually, review the pupil's IEP and review the placement of each exceptional child in the school in relation to his or her educational progress in that setting to determine;

1. Continuation of current educational placement;

2. Change in educational placement; or

3. That special education and related services are no longer needed.

(h) For those referred pupils who are determined by the SBARC not to need special education and related services the SBARC shall provide the referring person and the parents with written explanation why the child is not to receive special education and related services, shall provide in writing recommended remedial actions, and shall provide written notice pursuant to 707 KAR 1:060.

(i) Refer cases where appropriate services are not available within the school to the AARC.

(5) If at any time during the school year, the child's IEP or educational placement appears to be inappropriate to the parent(s), the principal, the teacher(s) or specialist(s) providing services to the child, any one of such persons may request a review of placement. The appropriate admissions and release committee shall conduct the review. The child, parent(s) and local school district shall be afforded all due process rights as described in 707 KAR 1:060. When a review is requested for the purpose of securing a more restrictive or less restrictive environment, the appropriate admissions and release committee shall determine that the child's needs can appropriately be met in the proposed setting and the child's placement and educational program shall be changed and support services provided as necessary.

(6) At any time, during the three (3) years following an individual evaluation utilized for initial placement purposes, or for re-evaluation purposes, the parent(s), principal, teacher(s), or specialist(s) providing services to the child may request a re-evaluation. The appropriate admissions and release committee shall be responsible for assuring that such evaluation(s) are obtained or conducted, and shall follow the procedures outlined in Section 3(2) and (4) of this regulation, functions of the AARC and SBARC.

(7) Sub-district admissions and release committees: For those school districts with a school census figure of 15,000 or over, sub-district admissions and release committees (ARCs) may be established within the local school district to facilitate school to school placements. The sub-district ARCs shall not supplant administrative and school-based admissions and release committees and their respective functions. Sub-district ARCs shall be established to conform with district-specified school groupings. Those local school districts wishing to establish sub-district ARCs shall submit a written request to and receive approval from the Office [Bureau] of Education for Exceptional Children prior to implementation of the plan and pursuant to provisions specified by the Office [Bureau] of Education for Exceptional Children. The membership and functions of sub-district committees shall be similar to the membership and the functions of the administrative admissions and release committee.

Section 4. Child Evaluation. Child evaluation refers to the sum total of information needed to make educational decisions about the child, including information obtained from such sources as informal and formal testing, aptitude and achievement tests, behavior observation, teacher/parent interviews, work samples, social/developmental history, medical history, school records and anecdotal records. The appropriate admissions and release committee shall be responsible for assuring that child evaluation information is obtained from all available sources, documented and carefully considered in making placement decisions pursuant to the following:

(1) All due process procedures related to evaluation as required and provided in Section 9 of this regulation and 707 KAR 1:060 shall be followed.

(2) Appropriate evaluations shall be conducted by a multidisciplinary team. Evaluation personnel shall be determined by the appropriate admissions and release committee and shall include at least one (1) teacher or other specialist with knowledge in the suspected area of exceptionality.

(3) Areas for evaluation shall be determined by the appropriate admissions and release committee and as specified by regulations related to the suspected area of exceptionality, including where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

(4) Evaluation procedures: To the maximum extent possible, child evaluation procedures, shall be non-discriminatory in that:

(a) Techniques and/or materials used are non-biased relative to race, culture, socio-economic status or impaired sensory, manual, or speaking skills, in order to insure that tests results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure.

(b) Qualified personnel provide the evaluation services. Qualified personnel refers to those certified special education personnel and others who have met, approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area of child evaluation. Such personnel shall be trained in specific areas of child evaluation and shall assure that they:

1. Have the expertise to conduct the evaluation;

2. Understand the use of the different evaluation procedures; and

3. Properly administer and interpret the evaluation results.

4. Such personnel may include but are not limited to: educational diagnosticians, assessment specialists, classroom teachers, speech and language therapists, psychologists, psychometrists, counselors.

(c) Tests and materials are provided and administered in the child's native language or primary mode of communication, unless it is clearly not feasible to do so.

(d) Tests and materials have been validated for the specific purpose for which they are used.

(e) Tests and materials are administered by trained personnel in conformance with the instructions provided by the producer.

(f) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient.

(5) No single evaluation procedure shall be used to determine an appropriate program for a child.

(6) Each child placed in a program for exceptional children shall be re-evaluated every three years or more frequently as warranted.

(7) Any evaluation conducted within one year prior to the current referral may be accepted by the appropriate admissions and release committee as a legitimate substitute for another evaluation of the same type provided the information obtained meets the criteria specified in subsection (1) to (5) of this section.

Section 5. Individual Education Programs (IEP). The appropriate admissions and release committee shall be responsible for the development, implementation, and monitoring/evaluation of each exceptional child's individual education program.

(1) Development. The individual education program shall include but not be limited to the following components:

(a) Present level of educational/behavioral performance including a written summary of strengths and weaknesses.

(b) Annual goals based on child's current level of functioning.

(c) Short term instructional objectives for each of the annual goals. Short term instructional objectives refer to measurable intermediate steps between the present level of educational/behavioral performance and the specified annual goals. These objectives are identified for the purpose of periodically reviewing and evaluating pupil progress toward meeting the annual goal(s) specified on the IEP.

(d) Specific special education and related services needed to meet the specified goals and objectives.

(e) Extent to which the child will participate in the regular education program.

(f) Projected dates for initiation of

specified educational and related services.
(g) Anticipated duration of the specified special education and related services.
(h) Appropriate objective criteria and evaluation procedures; and
(i) Schedule for determining, at least on an annual basis, whether the goals and objectives are being achieved.
(2) Implementation and evaluation. The appropriate admissions and release committee shall be responsible for assuring that strategies and activities designed to meet short-term objectives are implemented, and that the child's progress toward and mastery of the short-term objectives is evaluated at least annually.
(a) For each short-term objective specified on the IEP the appropriate admissions and release committee shall assign a specific person(s) who shall be responsible for determining and implementing appropriate strategies and activities that will assist the child in achieving the specified objectives and goals.
(b) The implementer(s) shall maintain records of student progress in achieving short term objectives.
(c) The above records shall be utilized by the implementer and the appropriate admissions and release committee for on-going evaluation of the IEP to determine the effectiveness and appropriateness of the IEP and to document implementation of the IEP.

Section 6. Placement. Placement shall mean the special education and related services provided an exceptional child and shall not refer solely to enrollment in a minimum foundation program classroom unit for exceptional children.
(1) All exceptional children as defined in KRS 157.200 are eligible for placement. The appropriate admissions and release committee shall identify the specific handicapping condition of the child. The specific area of exceptionality (handicapping condition) of the child shall be that category for which the child meets eligibility criteria following evaluation procedures as specified in the appropriate categorical regulations.
(2) All due process procedures related to placement as required and provided in Section 9 of this regulation and 707 KAR 1:060 shall be followed.
(3) For each identified exceptional child needing special education and related services, the appropriate admissions and release committee shall:
(a) Determine placement;
(b) Base placement on the child's IEP;
(c) Determine placement at least annually; and
(d) Make placement consistent with the least restrictive environment concept as required in Section 7 of this regulation.
(4) Temporary placement. Temporary placement may occur for thirty (30) school days, upon written request from the parent(s), for those exceptional pupils who are new enrollees to the local school district and who have been provided special education and related services by another local school or agency in the school days preceding the request. Documentation shall be on record that special education and related services were provided to the pupil by the other school district or agency. The pupil shall be placed in the same type program as previously provided and in accordance with the IEP. Within the thirty (30) school days the admissions and release committee shall convene to carry out its functions as specified in Section 3(4) of this regulation.
(5) Trial placement. Trial placement shall be a temporary placement for students not new to the school or school system and may be considered pursuant to the following conditions:
(a) The placement shall be for no longer than four (4) school months and shall not be continued beyond this time as a trial placement.
(b) Written rationale justifying the trial placement shall be provided by the admissions and release committee recommending such placement and shall be maintained with the IEP.
(c) The pupil shall have an IEP specifying trial placement and the starting and ending dates of such placement.
(d) A trial placement shall not serve as a substitution for a more appropriate placement.
(e) The appropriate admissions and release committee shall review the trial placement no later than four (4) school months after initiation of services to determine the effectiveness of such services, and to make recommendations for continuation in that program or a change in program.
(f) All due process procedures as required and provided in Sections 9 and 10 of this regulation and 707 KAR 1:060 shall be afforded the parent, child, and school, including written parental permission for trial placement.
(6) Change in placement. Change in placement refers to those actions that cause a significant alteration in programming for a child who is currently receiving special education and related services.
(a) Change in placement shall mean, but not be limited to, a change from:
1. Special education and related services to regular education, including regular education with support services;
2. One (1) categorical program to another (e.g., TMH to EMH);
3. Or to a more or less restrictive environment (e.g., special class to resource room).
(b) Any change in placement shall follow due process procedures to insure that exceptional children and their parents are guaranteed procedural safeguards in decisions regarding identification, evaluation, and placement, including the written prior notice requirements as specified in 707 KAR 1:060.
(c) Any change in placement shall be subject to established admissions and release committee procedures and consideration of the least restrictive environment concept.

Section 7. Least Restrictive Environment. Least restrictive environment refers to that educational setting or program in which he identified child can function most effectively based upon his/her unique needs and capabilities.
(1) To the maximum extent appropriate exceptional children as defined in KRS 157.200 including those children in public or private institutions or other care facilities shall be educated with children who are not identified as exceptional.
(2) Self-contained classes, separate schooling

or other removal of exceptional children from the regular educational environment shall occur only when the nature or severity of the exceptionality is such that education in the regular class with the use of supplementary aids and services cannot be achieved satisfactorily.

(3) Unless an exceptional child's individual education program requires some other arrangement, the child shall be educated in the school in which he or she would attend if not identified as exceptional.

(4) Each agency providing educational services shall insure that a continuum of placement alternatives is available to meet the needs of exceptional children for special education and related services. The alternatives shall include but not be limited to instruction in the regular classroom, special classes, special schools and home and hospital instruction. The alternatives shall also make provision for supplemental services such as resource room or itinerant instruction to be provided in conjunction with regular class placement.

(5) The identified child shall be returned to the most normal setting possible when specified goals and objectives have been achieved, consistent with the child's capabilities and educational needs and as determined by the appropriate admissions and release committee.

Section 8. Program Completion. An exceptional pupil shall be granted a high school diploma pursuant to meeting criteria and standards as provided in the "Program of Studies for Kentucky Schools." These pupils should be considered a part of the graduating class and no distinction shall be made in the ceremonies.

Section 9. Procedural Safeguards. (1) Each local school district shall establish and implement reasonable timelines in order for the identification, evaluation, and placement of referred pupils to occur without delay and pursuant to the specifications of this section and 707 KAR 1:060.

(2) Each child and his or her parent(s) and the local school district shall be guaranteed procedural safeguards in decisions regarding identification, location, evaluation and educational placement of the child in programs for exceptional children as provided in 707 KAR 1:060, the "Due Process Policy and Procedure Manual." These safeguards shall include the following:

(a) The child shall be represented by his or her parent(s) at all decision making points in the identification, evaluation and placement process. "Parent" refers to a natural mother or father, adoptive mother or father, a legally appointed guardian, a person acting as a parent of a child, (grandparent, stepparent, etc.) or a surrogate parent appointed to act in this capacity.

(b) The parent(s) shall receive written notification from the local school district that their child has been referred as a possible candidate for programs for exceptional children and that the child has the right to receive a free, appropriate public education.

(c) Parent(s) shall receive written notification in English and the primary language of the home regarding identification, evaluation and placement procedures.

(d) The local school district shall obtain written parental permission prior to initial individual evaluation and initial placement in a program for exceptional children.

(e) The local school district shall provide the parent(s) with written notification of continuation of placement.

(f) The parent(s) shall have the right to obtain an independent educational evaluation conducted by a qualified examiner. The results of this evaluation must be considered in decisions regarding the provision of a free appropriate public education to the child.

(g) In accordance with procedures outlined in 707 KAR 1:060, the "Due Process Policy and Procedure Manual," either the parent(s) or the local school district may request an impartial due process hearing to resolve disagreements regarding proposed or refused actions related to the identification, evaluation and educational placement of exceptional children. Appeals related to the due process hearing decision shall be conducted pursuant to 707 KAR 1:080.

(h) Where a child's parent(s) or guardian(s) are not known, are unavailable or the child is a ward of the State, such child shall be assigned a surrogate parent to represent him/her in all matters relating to the provision of a free, appropriate public education.

1. The State Department of Education and local school districts, in cooperation with other public and private agencies, shall recruit persons who can and will serve as surrogate parents. The State Department of Education, Office [Bureau] of Education for Exceptional Children, shall maintain a registry of such persons to act in this capacity. Persons selected as surrogate parents shall:

a. Have no other vested interest that would conflict with their primary allegiance to the child they would represent;

b. Be committed to personally and thoroughly acquainting themselves with the child and the child's educational needs;

c. Be familiar with the educational system within the state; and

d. Be readily accessible to the children they represent.

2. Assignment of a surrogate to a particular child shall be made according to the following procedures:

a. Any person may file a request for the assignment of a surrogate to a child with the child's local school district with a copy of the request to the State Department of Education, Office [Bureau] of Education for Exceptional Children.

b. The local school district shall send a notice of the request for a surrogate to the adult in charge of the child's place of residence and to the parent(s) or guardian(s) at their last known address in an effort to determine the need for a surrogate parent.

c. f the local school district determines need for a surrogate as provided in subsection (2)(a) of this section, the State Department of Education, Office [Bureau] of Education for Exceptional Children, shall be notified in writing of such need. The Office [Bureau] of Education for Exceptional Children shall assign a surrogate within seven (7) calendar days of the notification.

d. The assigned surrogate shall represent the

child in all matters relating to identification, evaluation and placement, and the provision of a free appropriate public education.

e. Surrogates shall not be assigned to children who have reached the age of majority.

f. An individual assigned as a surrogate shall not be an employee of a public agency involved in the education or care of the child.

(i) Testing and evaluation materials utilized for the purpose of evaluation and placement of exceptional children must be selected and administered so as not to be racially or culturally discriminatory.

(j) Decisions regarding the placement of exceptional children shall be made with regard to educating these pupils to the maximum extent appropriate with their non-handicapped peers in the least restrictive environment.

Section 10. Confidentiality of Personally Identifiable Information. The public agency shall develop and adopt policies and procedures consistent with the provisions of the Family Educational Rights and Privacy Act and confidentiality requirements of PL 94-142 for all exceptional children. These shall include the following:

(1) Parent(s) shall be notified annually of all requirements concerning personally identifiable information.

(2) Educational records collected, maintained, and used by the agency are open for inspection and review by the child's parent(s) and a representative of the parent(s).

(3) The agency shall comply with a parental request to inspect and review records without unnecessary delay, before any meeting of the admissions and release committee, before an impartial due process hearing, and in no case more than forty-five (45) days after the request has been made.

(4) Upon request of the parent(s) the public agency must provide an explanation and interpretation of such records.

(5) Copies of the records must be provided if failure to do so would prevent the parent(s) from exercising their right to review and inspect the records. A nominal fee may be charged unless it would prevent such access rights. A fee may not be charged for record search or retrieval.

(6) An agency may presume that the parent(s) has the authority to inspect and review records relating to his/her child unless the agency has been advised that the parent(s) does not have the authority under applicable state law governing such matters as guardianship, separation, and divorce.

(7) A record of access shall be maintained for those individuals obtaining access to such records, except the parent(s) and authorized parties of the agency, including the name of the party, the date of access, and the purpose for which the party was authorized to use the records.

(8) Information from records containing data on more than one (1) child shall be provided in such a way as to preserve the confidentiality of the other pupils.

(9) A list of the location and types of education records collected, maintained and used by the agency shall be provided by the agency to parent(s) on request.

(10) The parent(s) have the right to request an amendment of information in the education records pursuant to the following:

(a) The agency shall decide whether to amend the information within a reasonable period of time of receipt of the request and shall notify the parent(s) of this effect.

(b) If the agency refuses to amend the records, it shall inform the parent(s) of their right to a record amendment hearing.

(c) If the result of the hearing does not require such amendment, the parent(s) has the right to place a statement outlining the points of dissent in the education records. This statement must accompany the information each time it is released.

(d) If the agency amends the records as a result of the hearing, it shall so inform the parent(s) in writing.

(11) Parental consent must be obtained before disclosing personally identifiable information to individuals or agencies unless otherwise authorized to do so as delineated in the Family Educational Rights and Privacy Act and PL 94-142.

(12) Each agency shall protect the confidentiality of records at collection, storage, disclosure and destruction stages and shall insure that all persons collecting or using records receive training in confidentiality requirements.

(13) One (1) agency official shall assume responsibility for insuring the confidentiality of personally identifiable information.

(14) A current listing of the names and titles of individuals in the public agency who have access to education records must be maintained for public inspection.

(15) Public agencies must inform the parent(s) when education records are no longer needed for educational services and destroy that information upon request of the parent(s). The agency must inform the parent(s) that such information could be needed later for social security benefits or other purposes. A permanent record of the pupil's name, address, phone, grades, attendance record, classes attended, grade level completed and year completed may be maintained without time limitation.

ALICE McDONALD, Superintendent
ADOPTED BY AGENCY: July 2, 1985
FILED WITH LRC: July 5, 1985 at noon
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on August 30, 1985, at 9 a.m., E.D.T., in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky, to review the regulations adopted by the State Board of Education at its July meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 25, 1985. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Lois C. Adams
(1) Type and number of entities affected: 180 local school districts.
(a) Direct and indirect costs or savings to those affected: None

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None, similar paperwork requirements were in effect previous to their inclusion in this regulation.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None, similar paperwork requirements were in effect previous to their inclusion in this regulation.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: The Department's Office of Legal Services advised that pursuant to KRS Chapter 13A, this information could no longer be contained in administrative policy and must be incorporated into regulation.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. The provisions must apply equally to all 180 local school districts.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:015. General industry standards.

RELATES TO: KRS Chapter 338
PURSUANT TO: KRS Chapter 13A
NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, regulations, and standards. Consistent with this authority the following regulations contain those standards to be enforced by the Division of Occupational Safety and Health Compliance. The Occupational Safety and Health Standards Board hereby adopts the following regulations applicable to general industry. Necessary for effective enforcement of the purposes and policies of the Occupational Safety and Health Act which is to insure so far as is possible, safe and healthful working conditions of Kentucky workers (KRS 338.011).

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

(1) Facilities shall be provided for flushing electrolyte from the eyes and skin with water when changing or charging storage batteries. An adequate water supply shall be within the work area.
(2) No battery shall be charged or discharged within a closed or unvented container. The batteries shall be charged:
(a) In the open; or
(b) In a mechanically-ventilated space; or
(c) In a space providing at least twenty (20) cubic feet per ampere of charging capacity.
(3) A face shield or goggles shall be provided and available at each charging unit. The use of the face shield or goggles shall be required for connection and disconnection of vehicle or charger leads to the battery terminals and for the addition or pouring of electrolyte.
(4) Employees shall wear face shields or goggles during installation and removal of batteries from vehicles, while connecting and disconnecting battery charger or jumper cable leads, and while handling electrolyte.
(5) Employees shall be instructed to:
(a) Turn off the battery charger to connect or disconnect the battery;
(b) Wash acid spills immediately; and
(c) Flush electrolyte from eyes and skin with water for ten (10) minutes.

Section 2. Safety and Testing of Supply Lines in Excess of 600 Volts. (1) Definitions:
(a) Disconnected means disconnected from any electrical source of supply;
(b) Guarded: Protected by personnel, covered, fenced, or enclosed by means of suitable castings, barrier, rails, screens, mats, platforms, or other suitable devices in accordance with standard barricading techniques designed to prevent dangerous approach or contact by persons or objects. (Note: Wires, which are insulated but not otherwise protected, are not considered as guarded);
(c) Hold cards (also called "hold tags"): A card or tagtype device, usually having a predominant color of white or red which warns against or which cautions against the operation of a particular switch, device, circuit, tool, machine, etc.;
(d) Near: A distance no closer than that shown in the table in subsection (3)(c) of this section;
(e) Qualified person: A person who, because of experience and training is familiar with the construction and operation of the apparatus or equipment and the hazards involved in the performance of the job.
(2) Purpose:
(a) The intent and purpose of this regulation is to provide and establish safety procedures for testing equipment to protect electrical workers from hazards resulting from exposure to high voltage;
(b) This regulation shall apply to non-utility electrical workers who are engaged in electrical construction and/or maintenance of electrical conductors and equipment rated at 600 volts and above.
(3) Energized conductors and equipment:
(a) Only qualified employees shall work on or near high voltage conductors or equipment;
(b) Personal protective equipment shall be provided by the employer and used by the

employee when working on or near energized, ungrounded high voltage conductors or equipment;

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

Minimum Clear Distance From Live Parts

Voltage Phase to Phase (Kilovolts)	Distance Phase to Employee
0.6 to 34.5	2'
34.5 to 46	2 1/2'
46 to 69	3'
69 to 115	3' 4"
115 to 138	3' 6"
138 to 169	3' 8"

(4) De-energized conductor or equipment:

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 4. Off-Highway Equipment Vehicles, and Material Handling Equipment. (1) 29 CFR 1926.600 "Equipment" as published in the 1981 Title 29 Code of Federal Regulations, Part 1926, is adopted by reference.

(2) 29 CFR 1926.601 "Motor Vehicles" as published in the 1981 Title 29 Code of Federal Regulations, Part 1926, is adopted by reference.

(3) 29 CFR 1926.602 "Material Handling Equipment" as published in the 1981 Title 29 Code of Federal Regulations, Part 1926, is adopted by reference.

JOHN CALHOUN WELLS, Chairman

APPROVED BY AGENCY: July 2, 1985

FILED WITH LRC: July 3, 1985 at 4 p.m.

PUBLIC HEARING SCHEDULED: A public hearing concerning these regulations has been scheduled for August 22, 1985 at 1 p.m. (EST), to be held at the Kentucky Labor Cabinet, U.S. 127 Building South, Bay 2 Conference Room, Frankfort, Kentucky. Those interested in attending must provide by August 17, 1985 written notice to Mr. Guy Schoolfield, Kentucy Labor Cabinet, Division of Education and Training, OSH Technical Support Branch, U.S. 127 Building South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Guy B. Schoolfield

(1) Type and number of entities affected: This regulation will affect those general industry workplaces which use off-road vehicles such as front-end loaders, scrapers, bulldozers,

off-highway trucks, graders, and similar equipment in non-costruction related activities.

(a) Direct and indirect costs or savings to those affected: No costs or savings will be incurred by the affected establishments as a result of this amendment as these types of vehicles are manufactured complying with these regulations.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No additional reports or records are required by these amendments.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No costs or savings to the Kentucky OSH Program will occur as a result of these amendments.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No additional reports or records are required by this amendment.

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No regulations, rules, or policies conflict, overlap, or duplicate this regulation.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. The Occupational Safety and Health Program targets its scheduled inspections toward those industries or firms that pose higher risks to worker health and safety or from which the OSH Program has received worker complaints.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(Proposed Amendment)

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

RELATES TO: KRS Chapter 338
PURSUANT TO: KRS Chapter 338
NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to adopt by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1910 of the Code of Federal Regulations revised as of July 1, 1984, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby adopted by reference with the following additions, exceptions, and deletions.

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

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

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

(a) "Act" means KRS Chapter 338.

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

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

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

(e) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule."

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

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

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

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

(a) 29 CFR 1910.20(e)(1)(i) is amended to read "Whenever an employee or designated representative requests access to an exposure or medical record, the employer shall assure that access is provided in a reasonable time, place, and manner, but no longer than fifteen (15) days after the request for access is made unless sufficient reason is given why such a time is unreasonable or impractical."

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

(c) 29 CFR 1910.20(e)(1)(v) is added and shall read "Original x-ray film will be made available

to the employee and/or designated representative for inspection, review, and duplication under the supervision of the employer or his representative. The employer is not required to bear the cost of duplication of x-ray film."

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

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

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

(5) 29 CFR 1910.95 "Hearing Conservation Program" is amended as follows:

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

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

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

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

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

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

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

This Appendix is Mandatory.

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

1. Sound Pressure Output Check.

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

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

c. Measure the sound pressure level of the tones that each test frequency from 500 Hz through 8,000 Hz (6,000 Hz until January 15, 1985 for audiometers without 8,000 Hz capability) for each earphone.

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

2. Linearity check.

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

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

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

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

3. Tolerances.

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

TABLE E-1 - REFERENCE THRESHOLD LEVELS FOR TELEPHONICS-TDH-39 EARPHONES

Frequency, Hz	Reference threshold level for TDH-39 earphones, dB	Sound level meter reading dB
500.....	11.5	81.5
1000.....	7	77
2000.....	9	79
3000.....	10	80
4000.....	9.5	79.5
6000.....	15.5	85.5
8000.....	13.0	83.0

TABLE E-1 - REFERENCE THRESHOLD LEVELS FOR TELEPHONICS-TDH-39 EARPHONES

Frequency, Hz	Reference threshold level for TDH-49 earphones, dB	Sound level meter reading dB
500.....	13.5	83.5
1000.....	7.5	77.5
2000.....	11	81.0
3000.....	9.5	79.5
4000.....	10.5	80.5
6000.....	13.5	83.5
8000.....	13.0	83.0

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

(7) 29 CFR 1910.106 "Flammable and combustible liquids" is amended as follows: 29 CFR 1910.106(a)(3) shall read: "The term automotive service station, or service stations, shall mean that portion of property where flammable or combustible liquids used as motor fuel are stored and dispensed from fixed equipment and into the fuel tanks of motor vehicles and shall include any facilities available for the sale and servicing of tires, batteries, accessories and for minor automotive maintenance work and shall also include private stations not accessible or open to the public such as those used by commercial, industrial or governmental establishments. This section shall not apply to agriculture."

(8) 29 CFR 1910.134 is amended as follows:

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

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

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

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

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

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

CANISTER FOR _____
(Name of atmospheric contaminant)

or

CARTRIDGE FOR _____
(Name of atmospheric contaminant)

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

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

_____
(Name of atmospheric contaminant)

(b) For respiratory protection in atmospheres containing

_____
(Type of particulate contaminant)

(c) Do not use in atmospheres containing less than nineteen and five-tenths (19.5) percent oxygen by volume at sea level.

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

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

TABLE I-1
Color Assigned to Canister or Cartridge

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

NOTES:

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

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

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

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

(9) 29 CFR 1910.141(c)(2)(i) shall read as follows: "(1) Each water closet shall occupy a separate compartment with walls or partitions between fixtures sufficiently high to assure privacy."

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

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

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

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

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

(11) 29 CFR 1910.156(a)(2) "Application" is amended to read: "The requirements of this section apply to fire brigades; industrial fire departments; private fire departments; and municipal public fire departments and fire protection districts. Personal protective equipment requirements apply to members of fire brigades and fire departments performing interior structural fire fighting. The requirements of this section do not apply to airport crash rescue, forest fire fighting operations, or volunteer fire fighters."

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

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

(13) Amendments to 29 CFR 1910.243, "Guarding of Portable Powered Tools" as published in the Federal Register, Volume 50, Number 22, February 1, 1985 are adopted by reference.

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

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

(15) [(14)] 29 CFR 1910.1001 "Asbestos" is amended as follows:

(a) 29 CFR 1910.1001(d)(2)(iv)(a) is amended to read:

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

(16) [(15)] 29 CFR 1910.1005 4,4'-methylene bis (2-chloroaniline) and 29 CFR 1910.1003 through .1016 paragraphs (c)(6), Laboratory Activities, printed in the Federal Register, Volume 39, Number 125, June 27, 1974, are in effect.

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

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

(18) [(17)] 29 CFR 1910.1025 "Occupational Exposure to Lead" shall be amended as follows:

(a) "Table 1 - Implementation Schedule" is amended to read:

(19) Amendments to 29 CFR 1910.1047, "Ethylene Oxide" as published in the Federal Register, Volume 50, Number 48, March 12, 1985 are adopted by reference.

TABLE 1 - Implementation Schedule

INDUSTRY[1]	COMPLIANCE DATES 200 ug/m³	100 ug/m³	50
Primary Lead Production	(2)	June 29, 1984	June 29, 1991
Secondary Lead Production	(2)	June 29, 1984	June 29, 1986
Lead Acid Battery Manufacture	(2)	June 29, 1983	June 29, 1986
Automobile/Manufacture/Solder Grinding	(2)	N/A	June 29, 1988
Electronics, Gray Iron Foundries, Ink Manufacture, Paints and Coatings Manufacture, Wall Paper Manufacture, Can Manufactures, and Printing	(2)	N/A	June 29, 1982
Lead Pigment Manufacture, NonFerrous Foundries, Leaded Steel Manufacture, Lead Chemical Manufacture, Ship Building and Ship Repair, Battery Breaking in the Collection and Processing of Scrap (excluding collection and processing of scrap which is part of a secondary smelting operation), Secondary Smelting of Copper, and Lead Casting	(2)	N/A	N/A
All Other Industries	(2)	N/A	June 11, 1984

[1] Includes ancillary activities located on the same worksite.

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

JOHN CALHOUN WELLS, Chairman
APPROVED BY AGENCY: July 2, 1985
FILED WITH LRC: July 3, 1985 at 4 p.m.
PUBLIC HEARING SCHEDULED: A public hearing concerning these regulations has been scheduled for August 22, 1985 at 1 p.m. (EST), to be held at the Kentucky Labor Cabinet, U.S. 127 Building South, Bay 2 Conference Room, Frankfort, Kentucky. Those interested in attending must provide by August 17, 1985 written notice to Mr. Guy Schoolfield, Kentucy Labor Cabinet, Division of Education and Training, OSH Technical Support Branch, U.S. 127 Building South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Guy B. Schoolfield
(1) Type and number of entities affected: This regulation applies to all general industry workplaces throughout the Commonwealth using Power Lawnmowers and applies to approximately 105 hospitals utilizing ethylene oxide as a sterilant.
(a) Direct and indirect costs or savings to those affected: No costs or savings will be incurred by the affected establishments as a result of these amendments.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: No additional reports or records are required by these amendments.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: No costs or savings to the Kentucky OSH Program will occur as a result of these amendments.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No additional reports or records are required by this amendment.
(3) Assessment of anticipated effect on state and local revenues:
(4) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No regulations, rules, or policies conflict, overlap, or duplicate this regulation.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. The Occupational Safety and Health Program targets its scheduled inspections toward those industries or firms that pose higher risks to worker health and safety or from which the OSH Program has received worker complaints.

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

902 KAR 6:060. MH/MR manuals for plan and budget instructions, billing instructions, and reimbursement guidelines.

RELATES TO: KRS 210.370 to 210.460
PURSUANT TO: KRS 210.440 to 210.450
NECESSITY AND FUNCTION: The Cabinet for Human Resources is empowered and directed by KRS

210.370 to 210.460 to allocate available funds to Mental Health/Mental Retardation Boards in accordance with approved plans and budgets. KRS 210.440 and 210.450 authorize the Secretary for Human Resources to promulgate policies and regulations as to the operations, budgets and expenditures of community programs and to require reporting management and financial programs as necessary to carry out the purposes of KRS 210.370 to 210.460.

Section 1. Annual Plan and Budget Instructions. The Cabinet for Human Resources hereby adopts the "Annual Plan and Budget Instructions, July 1, 1984" by reference. Community Mental Health/Mental Retardation Boards [Centers] will follow these instructions when preparing and submitting the annual plan and budgets to the cabinet. The manual includes, but is not limited to, the following: rate and allocation sheets, client service definitions and descriptions, fiscal plan, waiver request, letter of assurance, addenda, and regional data packet. A copy of the manual is on file for inspection in the Office of the Commissioner for Mental Health and Mental Retardation [Health] Services, 275 East Main Street, Frankfort, Kentucky 40621.

Section 2. DMH/MRS, [DHS] Program, Policies and Billing Instructions Manual. The Cabinet for Human Resources hereby adopts the July 1, 1985 edition of the "DMH/MRS ["DHS] Program Policies and Billing Intructions Manual, [July 1984]" as administrative regulation by reference. The manual relates to, but is not limited to the following: billing and reimbursement instructions for mental health, mental retardation, and substance abuse client priorities, program service definitions, reporting requirements, monitoring procedures, and contract amendment procedures. The instructions contained shall be followed by those Community Mental Health/Mental Retardation Boards [Centers] contracting with the cabinet. A copy of the manual is on file for inspection in the Office of the Commissioner for Mental Health and Mental Retardation [Health] Services, 275 East Main Street, Frankfort, Kentucky 40621.

Section 3. Cabinet for Human Resources Title XIX and DHS Funding Community Mental Health/Mental Retardation Reimbursement Manual, July, 1984. The Cabinet for Human Resources hereby adopts this manual as administrative regulation by reference. This manual relates to, but is not limited to the following: scope of services, requirements and limitations of participation, method and principles of reimbursement. The manual shall be adhered to by those Community Mental Health/Mental Retardation Boards [Centers] contracting with the cabinet. A copy of the manual is on file for inspection in the Office of the Commissioner for Mental Health and Mental Retardation [Health] Services, 275 East Main Street, Frankfort, Kentucky 40621.

Section 4. Summary of Amendments. (1) In relation to Section 1 of this regulation pertaining to Annual Plan and Budget Instructions, the term "Centers" is changed to "Boards" and the term "Health" is changed to "Mental Health and Mental Retardation."

(2) In relation to Section 2 of this regulation pertaining to the DHS "Program Policies and Billing Instructions Manual," the manual is stricken in its entirety and a new manual entitled July 1, 1985 Edition of the "DMH/MRS Program Policies and Billing Instruction Manual" is substituted in lieu thereof. Provision is made in the new manual for the driving under the influence (DUI) program policies, procedures and billing instructions. Also included within the new edition are changes pertaining to definitions of services, references to Title XX have been deleted, Priorities Section changed, and Prevention Program Standards and Guidelines added.

(3) In relation to Section 3 of this regulation pertaining to "Cabinet for Human Resources Title XIX and DHS Funding Community Mental Health/Mental Retardation Reimbursement Manual, July 1984" the term "Centers" is changed to "Boards" and the term "Health" is changed to "Mental Health and Mental Retardation."

DENNIS BOYD, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 2, 1985
FILED WITH LRC: July 3, 1985 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 21, 1985, at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 16, 1984 of their desire to appear and testify at the hearing: R. Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Fred James
(1) Type and number of entities affected: 14 MH/MR Boards who contract with the Department for program funds.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: Billing and data reporting forms generated by the Boards will be modified as to the new instructions for DUI and some mental retardation services.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: 11,000 (approx. staff time for regulation paperwork).
2. Continuing costs or savings: 10,000/yr. (monitoring & evaluation of program).
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Computer reports of service and demographics will be integrated into the Department's computer capability. Several new reports will be generated from data reported for DUI.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons

why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: This regulation amends an existing manual that is cited in regulation 902 KAR 6:060 by reference.

Tiering:
Was tiering applied? No. The regulation applies to all 14 Regional Boards on an equal basis.

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

902 KAR 12:030. Care and treatment of inmates of penal institutions.

RELATES TO: KRS 202A.201
PURSUANT TO: KRS Chapter 13A [13.082], 194.050, 202A.191, 202B.060
NECESSITY AND FUNCTION: KRS Chapters 202A and 202B, relating to the hospitalization of mentally ill or mentally retarded persons, direct that the Secretary for the Cabinet for Human Resources shall adopt rules and regulations to effectuate the purposes of that chapter, including, but not limited to, the transfer of mental patients and alternate methods for involuntary hospitalization. The function of this regulation is to prescribe the procedure to be employed in the hospitalization, care and treatment of an inmate of a penal institution who has been transferred to a hospital, forensic psychiatric facility or residential treatment center.

Section 1. Care and Treatment of Inmates. In the event that an inmate of any penal or correctional institution is transferred to a hospital, forensic psychiatric facility or residential treatment center pursuant to KRS 202A.201, the following rules shall apply:
(1) If the inmate voluntarily agrees to receive treatment in accordance with the individual treatment plan, such treatment may be provided until such time as it is determined that treatment is no longer necessary or until the patient refuses continued treatment;
(2) If the inmate refuses to receive treatment, proceedings for involuntary hospitalization may be instituted in accordance with the provisions of KRS Chapters 202A and 202B and 501 KAR 6:010 addressing involuntary transfer proceedings prusuant to Vitek v. Jones, 445 U.S. 480, 100 S.Ct. 1254, 63 L.Ed.2d 552 (1980).
(3) Patients in a forensic psychiatric facility shall have the same rights as set forth in 902 KAR 12:020; provided, however, that locking patients in their cells for sleeping or census count purposes and restraints used for transportation or prevention of escape shall not be considered as seclusion or restraint as defined in the patient's bill of rights.

DENNIS D. BOYD, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: June 18, 1985
FILED WITH LRC: June 21, 1985 at 3 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for August 21, 1985, at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following in writing by August 16, 1985, of their desire to appear and testify at the hearing: R. Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Verna Fairchild
(1) Type and number of entities affected: Mentally ill inmates to be transferred to the Kentucky Correctional Psychiatric Center for treatment.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body: Revision of regulation to be consistent with 501 KAR 6:010.
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. Regulation will be consistently applied to mentally ill inmates.

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

902 KAR 12:080. Policies and procedures for mental health/mental retardation facilities.

RELATES TO: KRS Chapter 210
PURSUANT TO: KRS 210.010
NECESSITY AND FUNCTION: KRS 210.010 directs the Secretary of the Cabinet for Human Resources to prescribe regulations for the institutions

under the control of the cabinet. The function of this regulation is to adopt policies and procedures for such institutions.

Section 1. Oakwood Policy Manual. The policies set forth in the July [June] 1, 1985, edition of the "Oakwood Policy Manual" consisting of three (3) volumes relating to the operation of Oakwood ICF-MR Facility are hereby adopted by reference.

Section 2. Hazelwood Policy Manual. The policies and procedures set forth in the May 1, 1985, edition of the "Hazelwood Policy Manual" consisting of two (2) volumes relating to the operation of Hazelwood ICF-MR Facility are hereby adopted by reference.

Section 3. Central State Hospital ICF-MR Policy Manual. The policies and procedures set forth in the May 1, 1985, edition of the "Central State Hospital ICF-MR Policy Manual" consisting of two (2) volumes relating to the operation of Central State Hospital ICF-MR Facility are hereby adopted by reference.

Section 4. Eastern State Hospital Policy Manual. The policies and procedures set forth in the July [May] 1, 1985, edition of the "Eastern State Hospital Policy Manual" consisting of twenty-one (21) volumes relating to the operation of Eastern State Hospital Facility are hereby adopted by reference.

Section 5. Central State Hospital Policy Manual. The policies and procedures set forth in the July [June] 1, 1985, edition of the "Central State Hospital Policy Manual" consisting of nineteen (19) volumes relating to the operation of Central State Hospital Facility are hereby adopted by reference.

Section 6. Western State Hospital Policy Manual. The policies and procedures set forth in the June 1, 1985, edition of the "Western State Hospital Policy Manual" consisting of thirty-two (32) volumes relating to the operation of Western State Hospital Facility are hereby adopted by reference.

Section 7. Glasgow ICF Policy Manual. The policies and procedures set forth in the May 1, 1985, edition of the "Glasgow ICF Policy Manual" consisting of twelve (12) volumes relating to the operation of Glasgow ICF Facility are hereby adopted by reference.

Section 8. Western State Hospital ICF Policy Manual. The policies and procedures set forth in the May 1, 1985, edition of the "Western State Hospital ICF Policy Manual" consisting of nine (9) volumes relating to the operation of Western State Hospital ICF Facility are hereby adopted by reference.

Section 9. Volta Policy Manual. The policies and procedures set forth in the May 1, 1985, edition of the "Volta Policy Manual" consisting of one (1) volume relating to the operation of Volta Facility are hereby adopted by reference.

Section 10. Kentucky Correctional Psychiatric Center Policy Manual. The policies and procedures set forth in the May 1, 1985, edition of the "Kentucky Correctional Psychiatric Center Policy Manual" consisting of thirteen (13) volumes relating to the operation of Kentucky Correctional Psychiatric Center Facility are hereby adopted by reference.

Section 11. Location of Manuals Referenced in This Regulation. A copy of each manual referenced in this regulation is on file in the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky, and is open to public inspection.

Section 12. Summary of Amendment.

Section 1 is revised as follows:

OAKWOOD POLICY MANUAL

DST-0-7 12A	Revised form replaces the attachment to Policy and Procedure, Advice of Outside Employment.

Section 4 is revised as follows:

EASTERN STATE HOSPITAL POLICY MANUAL - D8

Table of Contents - Re-type to reflect revisions in policy and procedures to include page numbers.

Page 1:	Revise current (11-7-84) ESH Organizational Chart.
Page 2:	Revise Dietetics Organizational Chart to reflect the relationship that the Dietetics Advisory Committee has to the department.
Page 3:	Second paragraph insert '... and a member of' the American Dietetic Association.
Page 4:	Procedure 2 ... the individual needs of the patient as determined by - Delete '... each nutritional assessment' physicians orders...
Page 6:	The policy "Nutritional Deficiencies in Special Diets" (page 7) be combined with "Nutritional Assessments" to reduce duplication and clarify the assessment process. Additionally to add Procedure 7 to reflect a reporting system which advises that assessments have been completed.
Old Page 7:	Delete due to combining with "Nutritional Assessments" (page 6).
New Page 7 & 7A	Insert "Quality Assurance Program for Dietetic Service Department." This policy has been completely revised to comply with JCAH consolidated Standards, 1985.
Page 10:	Special Diet Consultation Policy statement to reflect the purpose of a special diet consultation, i.e... aids the discharged patient in his adjustment...

	Procedure 2 revise to show that a patient's family shall (rather than may) be included in these consultations whenever possible. Procedure 6 to reflect a reporting system which advises that consultations have been completed.
Page 11:	Special Diets Procedure No. #1 - delete 'and and put in the Dietetic Order Box located on each ward.' Procedure No. #2 - add 'and place in the Dietetic Order Box located on each ward.'
Page 13:	Staffing of Patients on Special Diets Add Procedure 3 to reflect need for Dietetician to document in patient's chart if a change in a special diet is indicated. Add Procedure 4 to reflect a reporting system which advises that staffings have been completed of patients on special diets.
Page 15:	Re-type to correct typographical errors.
Page 16:	Procedure 3 - change from RH-2 to RH-1.
Page 17:	Procedure 3 revised to read that Dietetics shall supply 'unprepared food items' rather than cold items.
Page 22:	Policy statement should include "and supply" as purchases which originate in Dietetics Department.
Page 25:	Procedure 1 - revise to show that a request for "special dietary services" must be submitted at least two (2) weeks...
Page 27:	Procedure 8 to include reference to what procedures the R.M. from the Allen Building must follow to secure a carry-out tray.
Page 34:	Delete Procedure No. #4 which was a duplicate of Procedure No. 3.
Page 36:	Remove Revised and Reviewed Notations to page 36A.
Page 40:	Procedure 1, delete "which is valid for three years."
Page 43:	Proceudre No. 4 revised to reflect "Director or Assistant Director" may be invited to committee... rather than the wording "Dietitions."
Page 45:	Procedure 9, omit last sentence which states that employee paychecks may be deleted if an employee fails to comply with the policy.
Old Page 46:	Delete Policy "Handling of Cash for Evening, Holiday and Weekend Meals." This policy has been retitled "Cash Receipts for Meals" and has been revised to clarify how monies are secured and receipted.
Page 48:	Policy statement was added.
Old Page 49 & 49A:	Delete: This policy is now page number 7 and 7A.
Old Page 50 is New Page 49:	Safety: This policy's page number has been changed from 50 to 49.
Old Page 51 is New Page 50:	This policy be revised to reflect a name (Inservice) and the page number has been changed from 51 to 50.
Old Page 52 is New Page 51:	No change
Old Pages 53, 53A and 53B are New Pages 52, 52A, 52B:	A policy statement be added to this policy.

EASTERN STATE HOSPITAL POLICY MANUAL - D12

Pages 8 & 9	Policies on Off-Hours Emergency Transportation of patients to other facilities and Off-Hours Non-Emergency Transportation of Patients to Other Facilities have been changed to agree with our General Hospital Policy
Page 11	Policy on Paging was revised to stipulate when routine announcements could be made over our paging system.
Page 20	New policy added on Infections Control.
Page 21	New policy added on Monitoring Burglar Alarm.

EASTERN STATE HOSPITAL POLICY MANUAL - D15

Policy & Procedures Manual for Community Relations

Throughout the entire set of policies and procedures, the term, 'Volunteer Services' needs to be deleted and the term, 'Community Relations' inserted. Because there are so many of the above changes, each one will not be included for each page.

Table of Contents - Add "Hospital Press Releases" and page number 33.

Consolidated Standards Manual (page 28) - 6.5.3 - needs to state who is responsible for recording volunteer observations of patients (supervisor).

Page 1 - line 2 - "... Volunteer Services, Community Education, and Information Services."

Page 1 - I. delete #2.

Page 1 - I.B. delete #6 and #7.

Page 1 - II. add "Community Education and Information Services."

A. Goals

1. To act as a liaison between the community and this facility.

B. Objectives

1. Will conduct tours and presentations for community groups.

2. Will release routine information to the public through the media.

Page 1 - Change II. to III.

Page 2 - Change Library Technician to Librarian on the staffing pattern.

Page 3 - Under Policy - 2nd paragraph - "The Director of Community Relations shall be ... to coordinate the department."

Page 4 - Under Procedure #3 - should read, "At least one member will be a person..."

Page 4 - #4 - should read - "The Volunteer Advisory Committee will meet quarterly or as..."

Page 8 - Under Procedures - #2.c. - delete "The Volunteer Director" to read "The Director...".

Page 10 - Under Procedures - #4 - typo "temporary".

Page 17 - Under Procedures - #6 - typo "or" instead of "of".

Page 23 - Under Procedures - #4 - typo "indicating".

Page 25 - Under Procedures - #1.a. - change Nurse to Ward Clerk
#1.b. - change Nurse to Ward Clerk
#1.c. - change sentence to read, "Gifts are selected..."

Page 27 - Under Procedures - #A. change to "Scheduling and Conducting of Tours".

Page 28 - Under Procedures - #13 change to, "The Patient Librarian should...".

Page 30 - Under Procedures - #3 change "Volunteer Services Department Staff" to "Patient Librarian".

Page 33 - add policy of "Hospital Press Releases" using General Hospital Policy as guideline.

Need to add Infection Control Policy and method of reporting.

Section 5 is revised as follows:

CENTRAL STATE HOSPITAL POLICY MANUAL - E-1

Section HH - Treatment Program

No. 9.20 This policy revised as a result of the following issues: (Remove old policy and replace with revised one.)
1. There has been uncertainty regarding the necessary frequency of Community Life Meetings.
2. There has been concern that the use of parliamentary procedure and the election of offices is not appropriate or prcatical in all unit situations.
3. Variations among the units in how these meetings are being conducted.

The goal of the revision is to provide clarification and flexibility relative to the above points, while maintaining the original purpose of the function.

This policy does not result in any additional expenditures or financial savings.

[OAKWOOD POLICY MANUAL - A-1 - Volume I

DST-0-2	#26	Designates areas of responsibility to maintain a program monitoring and evaluation system to assure quality control.
DST-0-3	#1A	Revised to include right to legal counsel and/or P & A services.
	#15D	More clearly identifies procedures for behavior management programs involving time-out or aversive stimuli.
	#20	Identifies procedures for development of behavior management programs.
DST-0-4	#3A	More clearly defines role of Behavior Management Committee.

OAKWOOD POLICY MANUAL - A-2 - Volume II

DST-08A	#5B	Updates listing of information to be provided resident's family or guardian prior to admission.
DST-08D	#1B	Revised to include social worker's responsibility for providing parent or guardian with quarterly fiscal statement.

OAKWOOD POLICY MANUAL - A-3 - Volume III

DST-2-2	#42	Sets forth mission of Nursing Department.
DST-2-5	#2B	Deletes policy regarding Pharmacy Hours of Operation. (Deleted)

Section 5 is revised as follows:

CENTRAL STATE HOSPITAL POLICY MANUAL - E-1

Section B - Management Section

No. 8 This policy revised to add first procedure and attachment relating to adult abuse. A requirement by the Joint Commission. (Remove old policy and attachments and add the revised policy.)

Section G - Nursing Section

No. 2 This policy was rewritten to meet a minimum RN coverage because of 30-40% increase in patient census. Wording was changed because the organizational structure had been changed. (Remove old policy and add revised one.)

No. 3 Wording needed to be changed because of the organizational structure change. (Remove old policy and add revised one.)

No. 6 New Policy. Policy was written for the possibility of confirmed diagnosis of AIDS. (Add new policy.)

Section FF - Utilization Review

No. 2 Needs to be added back into the manual. No changes were made on this policy.

Section I - Pastoral Services

No. 1 This policy revised as the old policy failed to adequately describe and include the full range of services available through the Pastoral Department. (Remove old policy and add revised one.)

No. 1.1 This new policy was added to further clarify pastoral responsibilities. (Add directly behind No. 1.)

CENTRAL STATE HOSPITAL POLICY MANUAL - E-2 - NURSING MANUAL

Section 3.2 and 3.12

Infection control committee requested these two policies be revised and expanded. The policies were not clearly stated. Hopefully the new policies would decrease urinary tract infections.

None of the policy changes will result in any additional expenditures or in any financial savings. Also, no changes in staff will be required to implement these changes.

Section 6 is revised as follows:

WESTERN STATE HOSPITAL POLICY MANUAL - F-2

Nursing Procedures Manual

NOTE: Change in Table of Contents. Section I, Procedure #11 - Collection of Timed Urine Specimen now #10. Deleted Procedure #10 - Lumbar Puncture.

Section I

Procedure No. 7 To obtain a smear: Change in procedure to designation of staff responsible for procedure.

Procedure No. 8 Cultures: Change and update procedure to designation of staff responsible for procedure and to comply with current accepted practice.

Procedure No. 9 Sputum Cultures: Change to designation of staff responsible update to comply with current supplies used. Updated charting and references.

Procedure No. 10 Lumbar puncture - delete - no longer performed within facility.

Procedure No. 11 Collection of timed urine specimen change to No. 10.

Procedure No. 11 Urine glucose and ketone determination: New procedure - due to change in supplies used to determine urine glucose and ketone levels.

Procedure No. 12 Blood glucose testing used a glucometer: New procedure to be used when a blood glucose is needed quickly and lab services are not available within the facility.

Section II - No change

Section III - Emergencies and Special Problems

Procedure No. 1 Artificial respiration - updated procedure for method of observing for air movement.

Procedure No. 3 Cardiopulmonary resuscitation: Update procedure for air movement and changed procedure to read in same sequence for one man CPR as in two man CPR.

Procedure No. 4 Suturing - Changed procedure to include designation of staff responsible for procedure. Those staff persons trained in sterile technique.

Section III

Procedure No. 2 Ketoacidotic coma and insulin shock - Page 2 - Designation of the head nurse to be notified of symptoms found. Registered nurse only level of staff designated to notify physician.

Section IV

Procedure No. 1 Procedure for bedpan and/or urinal - Updated procedure to current practices, updated charting necessary and updated reference sources.

Procedure No. 2 Tub bath - Updated procedure to address privacy of patient and checking water temperature. Updated reference sources.

Procedure No. 5 Shaving - Changed/updated procedure to comply with equipment presently used. Psychiatric safety razors not used in this facility.

Section V

Procedure No. 1 Handwashing: Routine and antiseptic - Updated procedure to comply with current CDC (Center for Disease Control, Atlanta, Georgia) guidelines - updated references.

Procedure No. 2 Enteric precautions: Updated to comply with current CDC guidelines. Updated reference.

Procedure No. 4 Tuberculosis (AFB) isolation: Updated procedure to comply with current CDC guidelines. Updated references.

Procedure No. 5 Respiratory isolation: Updated procedure to comply with current CDC guidelnes. Updated references.

Procedure No. 6 Drainage/secretion precautions: Updated procedure to comply with current CDC guidelines. Updated references.

Procedure No. 7 Strict isolation - Pages 2 and 3. Updated procedure to comply with current CDC guidelines. Updated references.

Procedure No. 8 Contact isolation: Updated procedure to comply with current CDC guidelines. Updated references.

Section VI

Procedure No. 2 Lavage - Stomach irrigations: Change procedure to include designations of staff with higher assessment skills and trained in procedure. Updated to include equipment now available for use and to comply with current accepted practices and updated references.

Procedure No. 3 Gavage (tube feeding) - Changed procedure to designate level of staff responsible for procedure. Staff trained in procedure and higher levels assessment skills.

Procedure No. 4 Intermittent suction: Changed procedure to designate staff specifically trained to perform procedure.

Procedure No. 5 Fecal impaction: Changed procedure to designate staff trained to perform procedure.

Procedure No. 6 Retention enema: Changed procedure to designate staff responsible for procedure to those specifically trained to perform procedure.

Procedure No. 7 Cleansing enema: Changed procedure to designate staff responsible for procedure to those specifically trained to perform procedure.

Procedure No. 8 Colostomy irrigation: Changed procedure to designate responsible staff to those staff persons specifically trained in procedure.

Procedure No. 10 Changing dressings - Changed procedure to designate staff responsible for procedure to those trained in sterile technique.

Procedure No. 11 Tracheostomy care and suction: Updated procedure to comply with current accepted practice, current equipment available. Designated staff responsible to those specifically trained. Updated references.

Procedure No. 18 Blood transfusion: Changed procedure to designate staff responsible for procedure due to possible critical repercussions to patient.

Procedure No. 20 Catheterization: Changed procedure to designate staff responsible for procedure to be those trained in sterile technique.

Procedure No. 21 External catheterization: Changed procedure to designate staff responsible to those trained to avoid problems in blood circulation of glans penis.

Procedure No. 22 Page 2 - Foley catheter insertion and intermittent irrigation: Changed procedure to designate staff responsible to be those trained in sterile technique.

Procedure No. 24 Postural drainage: Changed procedure to designate staff responsible to be those trained in the procedure and a warning of areas to avoid during cupping.

Procedure No. 25 Colostomy care - Change procedure to designate staff responsible for procedure to be those with a higher level of assessment skills to assess stoma and skin condition.

Procedure No. 26 Continuous feeding with external feeding pump - New procedure to be used when continuous feedings are prescribed and include equipment now available for use.

Section VII - Unclassified

Procedure No. 1 Postmortem care - Page 2 - Changed procedure from padding and tying wrist to placing arms at side. Previous method caused bruising of the skin.

WESTERN STATE HOSPITAL POLICY MANUAL - F-2 - NURSING PROCEDURE MANUAL

Cover sheet revised to indicate current review and revision.

Other revisions as listed on attached sheet.

WESTERN STATE HOSPITAL POLICY MANUAL - F-3 - NURSING SERVICES POLICIES AND PROCEDURES

Revision: Section IV - Medication and Treatment Policies

Policy No. 1 Specifications of persons administering medications - revised to allow only licensed nurses to administer medications in compliance with state licensure standards.]

DENNIS D. BOYD, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 10, 1985
FILED WITH LRC: July 12, 1985 at 9 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for August 21, 1985, at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 16, 1985, of their desire to appear and testify at the hearing: Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Verna Fairchild
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected: This regulation with the attached reference material is the on-going policy and procedure manual of the state facilities for the treatment of patients with mental illness and mental retardation. These facilities function with 2,880 staff members serving 6,525 residents.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: This regulation usually does not affect the fiscal operation of these state facilities significantly. It affects the care and treatment of patients, compliance with JCAH standards, and Kentucky licensure regulations. The work environment of the staff is frequently the subject of this regulation also, along with the orderly management of the various programs.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Present procedure not previously adopted by regulation.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None

Tiering:
Was tiering applied? Yes

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Consumer Health Protection
(Proposed Amendment)

902 KAR 55:015. Schedule I substances.

RELATES TO: KRS Chapter 218A
PURSUANT TO: KRS 194.050, 218A.020, 218A.040, 218A.250
NECESSITY AND FUNCTION: KRS 218A.020 authorizes the Cabinet for Human Resources to add substances to or delete or reschedule substances enumerated in KRS Chapter 218A. After considering the criteria set forth in KRS 218A.020 and 218A.040 and applicable federal regulations, the Cabinet for Human Resources designates the substances set forth in this regulation as Schedule I controlled substances.

Section 1. Opiates. The Cabinet for Human Resouces hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any of the following opiates, including their isomers, esters, ethers, salts, salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:
(1) Alfentanil;
(2) Alpha-Methylfentanyl;
(3) 3-Methylfentanyl, or N-(3-methyl-1-(2-phenylethyl)-4-piperidyl)-N-phenylpropanamide;
(4) [(3)] Difenoxin; and
(5) [(4)] Tilidine.

Section 2. Opium Derivatives. The Cabinet for Human Resources hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation: Drotebanol.

Section 3. Hallucinogenic Substances. The Cabinet for Human Resouces hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts

of isomers is possible within the specific chemical designation (for purpose of this paragraph only, the term "isomer" includes the optical position and geometric isomers):
(1) 4-bromo-2, 5-dimethoxy-amphetamine;
(2) 2, 5-dimethoxyamphetamine (2, 5 DMA);
(3) Ethylamine analog of phencyclidine (N-ethyl-1-phenylcyclohexylamine, cyclohexamine, PCE);
(4) 4-methoxyamphetamine (PMA);
(5) Parahexyl (Synhexyl);
(6) Pyrrolidine analog of phencyclidine (1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP); and
(7) Thiophene analog of phencyclidine (1-(1-(2-thienyl) cyclohexyl) piperidine, TCP, TPCP).

Section 4. Depressants. The Cabinet for Human Resources hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
(1) Mecloqualone; and
(2) Methaqualone (2-methyl-3-o-tolyl-4(3H)-quinazolinone).

Section 5. Stimulants. The Cabinet for Human Resources herby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
(1) Fenethylline; [and]
(2) N-ethylamphentamine; and
(3) 3,4-methylenedioxymethamphetamine (MDMA).

C. HERNANDEZ, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 11, 1985
FILED WITH LRC: July 15, 1985 at noon
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for August 21, 1985, at 9 a.m. in the Department for Health Services Auditorium, 175 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 16, 1985, of their desire to appear and testify at the hearing: R. Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Irving Bell
(1) Type and number of entities affected: All citizens of the Commonwealth.
(a) Direct and indirect costs or savings to those affected: N/A
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: N/A
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. Not applicable for controlled substances regulations.

CABINET FOR HUMAN RESOURCES
Department for Employment Services
Division of Unemployment Insurance
(Proposed Amendment)

903 KAR 5:130. Appeals.

RELATES TO: KRS 341.440, 341.450(2)
PURUSANT TO: KRS 13A.100, 194.050, 341.115
NECESSITY AND FUNCTION: This regulation sets up the appeals process and general rules for the conduct of hearings.

Section 1. Appeals to Referee. (1) The presentation of an appeal to a referee.
(a) Any interested party wishing to appeal to a referee from a notice of determination may do so by filing with the Division of Unemployment Insurance or its authorized representative a written statement clearly indicating the party's intention to appeal.
(b) An appeal to a referee shall be considered filed at the time it is delivered to a representative of the division or deposited in the mail as indicated by the postmark thereon.
(2) Notification of hearings. All hearings shall be scheduled promptly and notices thereof shall be mailed to all interested parties at least seven (7) days before the date of hearing specifying the time and place of hearing, except that, the referee may, when the exigencies of the situation in his judgment require, set a case for hearing before the expiration of seven (7) days, only then, however, upon agreement of all interested parties.
(3) Disqualification of referees. No referee shall participate in the hearing of an appeal in which he has an interest. Challenges to the interest of any referee shall be heard and decided by the commission.
(4) Hearing of appeals.
(a) The claimant and any other party to the appeal may present such evidence as may be

pertinent and may question the opposite party and his witnesses. The referee shall, if he deems it necessary to secure full information on the issues, examine each party who appears and his witnesses. The referee may take any additional evidence which he deems necessary; but, if additional evidence is taken, all interested parties shall be afforded an apportunity of examining and refuting the same.

(b) The parties to an appeal, with the consent of the referee, may stipulate the facts involved, in writing. The referee may decide the appeal on the basis of such stipulation or may schedule a hearing and take such further evidence as he deems necessary.

(c) The hearing shall be scheduled and held at a place where the claimant can attend without undue expense or inconvenience, giving conisderation to the claimant's place of employment.

(d) The hearing may be conducted via teleconference if the residence of the claimant and his former employer's place of business are not in close geographic proximity, or if other circumstances warrant.

(e) The referee may in his discretion grant a continuance of a hearing in order to secure necessary evidence.

(f) Parties to a teleconference hearing who wish to introduce documents or written materials into the record at the referee hearing, must immediately mail copies of such documents to the referee, and to the opposing party. Failure to provide both the referee and the opposing party with copies of such evidence may result in its being excluded from the record.

(5) Decisions.

(a) After the hearing is concluded the referee shall promptly set forth in writing his finding of facts on the issues involved, his decision and the reasons therefor; provided, however, that if the appellant fails to appear and prosecute his appeal, the referee may summarily affirm the determination.

(b) Copies of the decision shall be mailed to the claimant and other parties to the appeal, and a copy shall be retained in the division's files.

(c) The mechanical recording of the hearing shall be retained in the divisions files pending further appeal. If no such appeal is initiated, the recording shall be destroyed sixty (60) days from the date the final administrative decision is mailed.

(d) Any referee decision may be superseded and amended after being released in order to correct obvious technical errors or omissions. Such corrected decision shall have the same appeal rights as the decision which it amends or corrects.

(e) If the decision is such that previously awarded benefits are to be denied either retroactively or forthwith, then a stop payment directive shall be issued to the division by the referee on the date the decision is mailed to the claimant.

Section 2. Appeals to the Commission. (1) Presentation of an appeal to the commission:

(a) Any interested party wishing to appeal to the commission from a decision of a referee may make written application with the commission, the division or its authorized representative for leave to appeal in any form which clearly indicates the party's intention to appeal. A notice of such application for leave to appeal shall be mailed by the division to other interested parties.

(b) An application for leave to appeal shall be considered initiated and filed at the time it is delivered to an authorized representative of the commission or the division or deposited in the mail, as indicated by the postmark thereon.

(c) The commission may grant or deny the application for leave to appeal without a hearing or may notify the parties to appear at a specified place and time for argument on the application.

(2) Hearing of appeals:

(a) Except in instances where the commission orders cases removed to it from a referee, all appeals to the commission may be heard upon the records of the division and the evidence and exhibits introduced before the referee. In the hearing of an appeal on the record, the parties may, if they desire, present written arguments and, at the commission's discretion be allowed to present oral arguments. The party presenting an appeal to the commission, (appellant) shall have ten (10) days from the date of mailing of the Commission's notification of appeal receipt within which to file written argument. The appellee shall have seven (7) days thereafter within which to file response. [When copies of tape recorded testimony are requested, the requesting party shall have a period of ten (10) days from the date of mailing of the requested tapes by the commission within which to file written argument. Opposing party's response shall be due seven (7) days thereafter.] Written argument shall be considered filed when delivered to a representative of the commission or division, or deposited in the mail, as indicated by the postmark thereon. The commission may extend the time for filing written argument upon a showing of good cause by either party to the appeal. [Written argument shall be considered filed when delivered to a representative of the commission, or deposited in the mail, as indicated by the postmark thereon.]

(b) The commission may, however, direct the taking of additional evidence before it, if needed, in order to determine the appeal. If, in the discretion of the commission, additional evidence is necessary to determine the appeal, the parties shall be notified of the time and place such evidence shall be taken at least seven (7) days prior to the date on which the evidence will be taken.

(c) The commission, at its discretion, may return any case or issue to a referee for the taking of such additional evidence as it desires. The referee shall take the testimony in the manner prescribed for the hearing of appeals before referees and shall thereupon return the record to the commission for its decision thereon.

(3) The hearing of appeals by the commission on cases ordered removed to it from any referee: The procedure on any case before a referee, ordered by the commission to be removed to it, shall be presented, heard and decided by the entire commission in the manner as prescribed for the hearing of other cases before the referee.

(4) The determination of appeals before the commission:

(a) Following the conclusion of a hearing the commission shall promptly announce its decision, which may be either an affirmation of the decision of the referee, or a separate finding of facts, decision and reasons therefor. The decision shall be in writing and shall be signed by the members of the commission who heard the appeal. At the discretion of the commission, its decisions may be designated as representing precedent for future cases of similar circumstance. Decisions designated as precedent shall be binding on all lower levels of determination.

(b) If a decision of the commission is not unanimous, the decision of the majority shall control. The minority may file a dissent from such decision of the majority setting forth the reasons why it fails to agree with the majority.

(c) Copies of the decision shall be mailed to all interested parties.

(5) Reconsideration.

(a) A party adversely affected by a decision of the Kentucky Unemployment Insurance Commission may, within twenty (20) days of the mailing date of such decision, file application for reconsideration of the commission's decision. The commission may grant or deny the application for reconsideration. An application for reconsideration shall be considered initiated and filed at the time it is delivered to an authorized representative of the commission or division, or deposited in the mail as indicated by the postmark thereon. The commission shall respond to such requests for reconsideration by mail within three (3) working days after receipt.

(b) An application for reconsideration of a decision of the commission shall not stay the running of time for appeal to the circuit court, if such application is denied.

(6) Precedent decision process and digest. The Kentucky Unemployment Insurance Commission shall develop, distribute, and maintain a manual or digest containing all precedent decisions currently valid. Such manual shall be available, on request, at a fee established by the commission. Individual decisions shall be available on request without charge.

Section 3. General Rules for Both Appeal Stages. (1) Issuance of subpoenas: Subpoenas requested by a claimant or an employer to compel the attendance of witnesses and/or the production of records for any hearing of an appeal shall be issued only on a sworn statement by the party applying for the issuance thereof setting forth the substance of the anticipated proof to be obtained and the need therefor.

(2) Appeal record: All reports, forms, letters, transcripts, communications, statements, determinations, decisions, orders, and other matters, written or oral, from the worker, employer, or personnel or representative of the division which have been written, sent, or made in connection with an appealed claim shall constitute the record with respect to such claim.

(3) Supplying information from the records of the Division of Unemployment Insurance: Information from the records of the division shall be furnished to an interested party or his representative to the extent necessary for the proper presentation of the party's case, only upon written request therefor. All requests for such information shall state, as clearly as possible, the nature of the information desired. Nothing in this regulation shall prevent an interested party or his representative from examining a record in the hands of a referee at a hearing.

(4) Conduct of hearings: All hearings shall be conducted informally without regard to common law, statutory or technical rules or procedure and in such manner as to determine the substantial rights of the parties. The parties and their witnesses shall testify under oath or affirmation. All issues relevant to the claim shall be considered and passed upon.

(5) Reopening hearings: Any party to an appeal who fails to appear at the scheduled hearing may, within seven (7) days from the date thereof, request a rehearing. The request shall be granted if such party has shown good cause for his failure to appear. The request shall be in writing and shall set forth the reasons for his failure to attend the scheduled hearing. The request shall be mailed or delivered to the office where the appeal was filed or the Appeals Branch, the Division of Unemployment Insurance, Frankfort, Kentucky. Upon the rehearing being granted, notice of the time and place of the reopened hearing shall be given to the parties or to their representatives.

(6) Providing of testimony (tapes) to interested parties.

(a) Parties or their authorized representatives may secure a duplicate of the recording of testimony made at the referee hearing by contacting the Kentucky Unemployment Insurance Commission at the address listed on the referee decision.

(b) There shall be no charge for this service, however, parties should forward blank cassette tapes with their request in numbers sufficient to record the requested testimony.

[(c) All requests under this subsection must be filed within ten (10) days of the mailing date of the notice of appeal receipt.]

Section 7. Service of Process. The Branch Manager, Kentucky Unemployment Insurance Commission, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, is hereby designated, by the Kentucky Unemployment Insurance Commission, as the person for receipt of Service of Process (Summons) in Civil Actions filed under the Provisions of KRS 341.450(2).

JAMES P. DANIELS, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 10, 1985
FILED WITH LRC: July 12, 1985 at 9 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for August 21, 1985, at 9 a.m., in the Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 16, 1985, of their desire to appear and testify at the hearing: Hughes Walker, General Counsel, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James P. Daniels
(1) Type and number of entities affected: Appellants and appellees to disrupted unemployment insurance claims; thousands per year.
(a) Direct and indirect costs or savings to those affected: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: Will enable the agency to more easily satisfy federal timeliness standards for the completion of appeals.

Tiering:
Was tiering applied? No. All parties to appeals treated equally.

CABINET FOR HUMAN RESOURCES
Department for Employment Services
Division of Unemployment Insurance
(Proposed Amendment)

903 KAR 5:260. Unemployment insurance procedures.

RELATES TO: KRS 341.005 through 341.990
PURSUANT TO: KRS 13A.100, 194.050(1), 341.115
NECESSITY AND FUNCTION: Title III of the Social Security Act authorizes the states to implement an unemployment insurance program. The Cabinet for Human Resources is authorized by KRS 194.050 to adopt such rules and regulations as are necessary to implement programs mandated by federal law or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. The function of this regulation is to implement the procedures required to administer the unemployment insurance program in accordance with applicable state and federal laws and regulations.

Section 1. In order to facilitate the administration of the unemployment insurance program as authorized by Title III of the Social Security Act and KRS Chapter 341, the following operating manuals are adopted by reference:
(1) Unemployment Insurance Local Office Manual as issued February 1984 and last revised June 4, 1985 [April 25, 1985]. This manual includes procedures: for requiring proper identification of persons filing claims for benefits; for taking and processing initial, additional, reactivated and continued claims for benefits; for assigning claimants to the appropriate group for the eligibility review program; for conducting benefit rights interviews; for processing payorder cards for payment; for correcting and changing benefit data; for registering claimants for work; for conducting the eligibility review program; for stopping and releasing payment of benefits; for entering claim history and benefit payment information into the data base; for taking and processing interstate claims, combined wage claims, claims by former federal employees and ex-service-members, and claims for extended benefits and federal supplemental compensation benefits; for conducting investigations and issuing determinations regarding a claimant's separation, ability to work, availability for work, active search for work, benefit entitlement, and deductions from benefits; for processing employers' protests to claims; for taking requests for reconsideration of monetary eligibility; for establishing benefit overpayments and initiating recovery or recoupment by processing partial payment agreements or issuing liens; for initiating action on lost or returned checks; for detecting and initiating recovery of fraudulent overpayments; for filing appeals to eligibility determinations; for reporting workload time spent; for compiling claims and nonmonetary determination statistics; and for ranking of local offices based on performance criteria.
(2) Unemployment Insurance Benefit Branch Procedures Manual issued May, 1982 and last revised December 12, 1984. This manual includes procedures for administering the payment of unemployment insurance benefits; for maintaining accounts for all benefit income and expenditures; for detecting, establishing and initiating recovery of benefit overpayments; for assigning benefit charges to employer accounts; for conducting a quality review of nonmonetary determinations affecting the payment of benefits; for processing unemployment claims for former federal employees, ex-service-members, combined wage claimants, interstate claims, claims for Disaster Unemployment Assistance, claims under the Trade Readjustment Act and claims under the Work Incentive Program; for reconsidering monetary rate determinations; for processing payment for lost or returned benefit checks; and for investigating potential fraud and recommendation of recovery action or criminal prosecution.
(3) Unemployment Insurance Tax Collection and Accounting Branch Manual issued November, 1982 and last revised January 15, 1985. This manual includes procedures: for setting up, transferring and cancelling employer contribution and reimbursement accounts; for collecting quarterly taxes from contributory employers and for billing reimbursing employers for benefits paid; for auditing quarterly wage and tax reports by making adjustments, assessing additional payment and penalties and crediting

tax overpayments; for maintaining records of employer accounts and tax payments; for adjusting wages if required when a reconsideration of monetary benefit eligibility is filed; and for collecting delinquent taxes by filing tax liens, recommending suits and temporary restraining orders, garnishing wages, filing claims in bankruptcy or against monies due to delinquent employers from state agencies.

(4) Unemployment Insurance Administrative Support Branch Manual issued December, 1983 and last revised November 9, 1984. This manual includes procedures: for maintaining files of benefit claims, employer records, appeals, and unemployment insurance commission orders; for maintaining mail security operations for all checks received by the division; for gathering statistics and conducting statistical studies; for verifying workload items for the budget process; for publishing statistical reports for the division and for general publication; for maintaining and distributing federal and state-released procedures; for maintaining all procedures manuals; for conducting the unemployment insurance quality appraisal; for training division personnel; for retaining and disposing of records; for providing data processing liaison services; for preparing state and federal budgets; for operating the Cost Model Management System; for maintaining the Cost Information System; for controlling forms control: and for monitoring purchases, expenditures and repairs.

(5) Unemployment Insurance Field Audit Manual issued February 1984 and last revised January 11, 1985. This manual includes procedures for handling matters which cannot be handled directly or expediently by the central office tax branch, such as procedures: for locating employers; for conducting investigations of employers, and their payrolls and employment records; for determining an employer's status under the law; for assessing contributions and collecting delinquent contributions; for serving legal papers; for conducting property investigations; for auditing employer records; and for furnishing technical assistance to employers.

(6) Unemployment Insurance Director's Office Manual issued November 18, 1983, and last revised December 12, 1984. This manual includes procedures for operating the Fraud Investigations and Internal Security Unit such as procedures for: administering the unit; detecting fraud; prosecuting fraud cases; closing out fraud cases; preventing fraud; maintaining internal security; and conducting other investigations.

Section 2. [3.] All documents incorporated by reference herein are on file for public inspection in the Office of the Commissioner for Employment Services, 275 East Main Street, Frankfort, Kentucky 40621 and in local unemployment insurance offices located throughout the state.

Section 3. [2.] Summary of Amendment. Unemployment Insurance Local Office Manual. (1) Chapter 6000, Claims Investigation, strike contents pages 1 and 2 dated 1-15-85, and substitute in lieu thereof pages 1 and 2 dated 5-1-85. Strike pages 30, 31A dated 1-11-85, and 32-35 dated 10-17-84, and substitute in lieu thereof pages 30-35A dated 5-1-85, which renumbers sections 6034, 6035, 6036 and which adds a new employer to the list of employers which have an approved SUB plan. Section 6097, strike pages 64 and 65 dated 10-17-84, and substitute in lieu thereof pages 64-65A dated 6-4-85, which updates procedures for the recording and filing of forms. [Chapter 1000, Introduction, Sections 1050 and 1060, strike entire chapter, dated 1-14-85, and substitute in lieu thereof entire chapter, dated 3-29-85, which updates procedures for protecting the confidentiality of claim information and processing requests for information from public officials.]

(2) Chapter 12000, Personnel Time Distribution, Section 12250, strike pages 37 and 38 dated 12-14-83, and substitute in lieu thereof pages 37 and 38 dated 5-24-85, which removes "election official leave" from the category of absences covered by other paid leave. [Chapter 2000, Initial Claims, Sections 2040 and 2060, strike pages 9, 10, 17 and 18, dated 8-16-83, and substitute in lieu thereof pages 9, 10, 17 and 18, dated 3-1-85, which update procedures for backdating effective dates of claims. Section 2010, strike pages 3 and 4, dated 10-19-84, and pages 4A and 4B, dated 11-9-84, and substitute in lieu thereof pages 3 through 4B, dated 4-3-85, which update procedures for processing claimants who provide no identification.]

(3) Chapter 13000, Statistical Reports, strike pages 11-14 dated 8-13-84, and substitute in lieu thereof pages 11-14 dated 6-4-85, which updates procedures for the completion of forms. [Chapter 3000, Continued Claims, Sections 3040 and 3045, strike pages 1 and 2, dated 2-10-84; pages 5 and 6, dated 10-2-84; pages 7 and 8, dated 6-4-84; pages 9 and 10, dated 10-1-84; and pages 37 and 38, dated 1-19-84, and substitute in lieu thereof pages 1 and 2 and 5 through 10, dated 3-1-85; and pages 37 and 38, dated 3-22-85, which update procedures for conducting nonmonetary investigations for claimants who report late to claim benefits and for changing a claimant's telephone number, when appropriate. Section 3270, strike pages 37 and 38, dated 3-22-85, and substitute in lieu thereof page 37, dated 3-29-85, which deletes procedures for processing requests for information from public officials.]

[(4) Chapter 4000, Video Operations, Sections 4000 through 4230, strike entire chapter, pages 1 through 40, various dates, and substitute in lieu thereof, entire chapter, pages 4000-4020 through 4220-4230, dated 3-1-85, which update procedures to reflect organizational changes and to reflect revisions in data entry programs.]

[(5) Chapter 5000, Interstate and Combined Wage Claims, Section 5670, strike page 90, dated 1-25-85, and substitute in lieu thereof pages 90 and 91, dated 3-13-85, which update procedures for video entry and forms disposition of combined wage claims.]

[(6) Chapter 6000, Claims Investigation, Sections 6092 and 6207 strike pages 62 and 63, dated 10-17-84; pages 90 and 91, dated 2-11-85; page 91A, dated 12-11-84; and pages 91A and 91B, dated 3-8-85, and substitute in lieu thereof pages 62 and 63, dated 3-4-85; pages 90 through 91B, dated 3-8-85; and pages 91A and 91B, dated

3-22-85, which update procedures for preserving the confidentiality of claimants involved in blanket fact-finding reports, for accepting cash repayments of benefit overpayments and for completing local office receipts for benefit overpayment repayments. Section 6050 and 6300 through 6310, strike pages 5 and 6, dated 1-15-85; pages 42 and 43, dated 10-17-84 and pages 100 through 105, dated 10-17-84, and substitute in lieu thereof pages 5 and 6 and 100 through 105, dated 4-2-85, and pages 42 and 43, dated 4-25-85, which update procedures for verifying legal alien status with the Immigration and Naturalization Service (INS), notifying INS of benefit denials based on alien status and issuing chargeability determinations as required.]

[(7) Chapter 8000, Appeals, Section 8006, strike pages 2 and 3, dated 4-19-84, and substitute in lieu thereof pages 2 and 3, dated 3-22-85, which update procedures for including the claimant's telephone number on requests for appeal.]

JAMES P. DANIELS, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 10, 1985
FILED WITH LRC: July 12, 1985 at 9 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for August 21, 1985 at 9 a.m. in the Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 16, 1985 of their desire to appear and testify at the hearing: R. Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Commissioner James P. Daniels
(1) Type and number of entities affected: Unemployment insurance benefit claimants; thousands per year.
(a) Direct and indirect costs or savings to those affected: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: The amendment merely incorporates operational procedures by reference as required by KRS Chapter 13A.

Tiering:
Was tiering applied? No. (1) Procedures already in effect. (2) All claimants are treated equally under the law.

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

903 KAR 5:270. Maximum weekly benefit rates.

RELATES TO: KRS 341.380
PURSUANT TO: KRS 194.050, 341.380
NECESSITY AND FUNCTION: KRS 341.380 requires the Secretary for Human Resources to determine the average weekly wage for insured employment. Fifty-five (55) percent of this amount adjusted to the nearest multiple of one (1) dollar constitutes the maximum weekly unemployment insurance benefit rate for those workers whose benefit year commences on or after July 1, 1985 [1984], and prior to July 1, 1986 [1985]. This regulation applies the mathematical computation required by statute and contains the determination of the maximum weekly benefit rate.

Section 1. The secretary finds the following to exist:
(1) The "total monthly employment" reported by subject employers for the calendar year of 1984 [1983] was 13,455,245 [12,791,694];
(2) The "average monthly employment," obtained by dividing the total monthly employment by twelve (12), was 1,121,070 [1,065,975];
(3) The "total wages" reported by subject employers for the calendar year of 1984 [1983] was $18,453,034,358 [$16,894,998,249];
(4) The "average weekly wage" for the calendar year of 1984 [1983] for insured employment, obtained by dividing the average montly employment into total wages for such year and dividing by fifty-two (52), was $316.54 [$304.80];
(5) Fifty-five (55) percent of the average weekly wage of $316.54 [$304.80] for the calendar year of 1984 [1983] was $174.10 [$167.64];
(6) However, the "trust fund balance" as of December 31, 1984 [1983], was zero [$40,000], (the outstanding loan from the Federal Unemployment Trust Fund was $11,067,384 [$150,567,748]) and KRS 341.380 states that if the trust fund balance on December 31 is less than $120,000,000 the maximum weekly benefit rate shall not exceed the prior year's maximum weekly benefit rate; and
(7) The prior year's maximum weekly benefit rate was $140.

Section 2. On the basis of the above findings, and in accordance with KRS 341.380(3), the maximum weekly benefit rate for those workers whose benefit year commences on or after the first day of July, 1985 [1984], and prior to the first day of July, 1986 [1985], is determined to be $140.

JAMES P. DANIELS, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: June 26, 1985
FILED WITH LRC: June 28, 1985 at 3 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 21, 1985 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 6, 1985, of their desire to appear and testify at the hearing: Hughes Walker, General Counsel, Cabinet for Human Resources, 275 E. Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James P. Daniels
(1) Type and number of entities affected: All eligible u.i. recipients for the year 7-1-85 through 6-30-86.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: This regulation satisfies the statutory requirement of KRS 341.380(3), which mandates that the Secretary determines the maximum weekly rate prior to July 1, each year.

Tiering:
Was tiering applied? No. All claimants treated equally.

CABINET FOR HUMAN RESOURCES
Department for Employment Services
Division for Job Service and Special Programs
(Proposed Amendment)

903 KAR 6:020. Weatherization assistance for low income persons.

RELATES TO: KRS 194.030(9)
PURSUANT TO: KRS 13A.100, 194.050(1)
NECESSITY AND FUNCTION: Chapter 42 USC 6861 authorizes the states to implement a weatherization program. The Cabinet for Human Resources is authorized by KRS 194.050 to adopt such rules and regulations as are necessary to implement programs mandated by federal law or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. The function of this regulation is to implement the weatherization program in accordance with applicable federal laws and regulations.

Section 1. In order to facilitate the administration of the weatherization program as authorized by 42 USC 6861 and as regulated in Title 10 CFR Part 440, the following CFR and operating manuals are adopted by reference:
(1) Title 10 Code of Federal Regulations (CFR), Part 440, as issued January 27, 1984, which authorizes states to carry out a program of weatherization assistance for low-income persons established by Chapter 42 United States Code (U.S.C.), 6861.
(2) 1985 [1983] Weatherization Manual Revised Edition issued June, 1985 [September, 1983 and last revised May 11, 1984], which is provided to subgrantees administering the weatherization program throughout the state and includes an introduction and purpose of the Weatherization Manual, a list of subgrantees and areas served, program costs [a copy of 903 KAR 2:010] and implementation procedures for: subgrantee application and contracting; subgrantee contract modification; subgrantee private sector subcontracting; subgrantee financial management; subgrantee program operation; program monitoring and training and technical assistance; and completion and distribution of administrative reports and forms.
(3) Weatherization Assistance Program Specifications and Installations Standards Manual issued October, 1983 and last revised May 25, 1984, which is provided to subgrantees administering the weatherization program throughout the state to establish a common set of general requirements, material standards and installation standards and includes procedures for all measures used in weatherizing a dwelling, such as reducing air infiltration, attic, floor, wall, water heater and pipe and duct insulation, heating system tune-up and installation of storm windows.

Section 2. All documents incorporated by reference herein are on file for public inspection in the Office of the Commissioner for Employment Services, 275 East Main Street, Frankfort, Kentucky 40621, and in local Community Action Agency offices located throughout the state.

Section 3. 903 KAR 2:010 is hereby repealed.

Section 4. Summary of Amendment. (1) Chapters I through X as issued in 1983 and last revised May, 1984, strike all and insert new Chapters I through X revised June, 1985. These revisions grant service providers the opportunity to comment on future manual revisions, establishes a method for calculating program costs and incorporates recent changes in U.S. Department of Energy regulations.
(2) 903 KAR 2:010 is duplicative of requirements and procedures contained in this

regulation and is repealed for the sake of simplicity and to make it easier for the public to comprehend the Weatherization Program's requirements.

JAMES P. DANIELS, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: June 28, 1985
FILED WITH LRC: June 28, 1985 at 3 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 21, 1985 at 9 a.m. in the Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested pesons notify the following office inwriting by August 16, 1985, of their desire to appear and testify at the hearing: Hughes Walker, General Counsel, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Commissioner James P. Daniels
(1) Type and number of entities affected: 24 local non-profit agencies, 23 community action agencies.
(a) Direct and indirect costs or savings to those affected: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: No additional reports.
(2) Effects on the promulgating administrative body: Simplifies processing.
(a) Direct and indirect costs or savings: Minimal savings.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. All recipients of weatherization assistance are treated equally.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

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

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

Section 1. Reimbursement for Skilled Nursing and Intermediate Care Facilities. All skilled nursing or intermediate care facilities participating in the Title XIX program shall be reimbursed in accordance with this regulation. Payments made shall be in accordance with the requirements set forth in 42 CFR 447.250 through 42 CFR 447.280. A skilled nursing facility desiring to participate in Title XIX shall be required to participate in Title XVIII-A.

Section 2. Basic Principles of Reimbursement. (1) Payment shall be on the basis of rates which are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable state and federal laws, regulations, and quality and safety standards.
(2) Payment amounts shall be arrived at by application of the reimbursement principles developed by the cabinet (Kentucky Medical Assistance Program Intermediate Care/Skilled Nursing Facility Reimbursement Manual, revised July 1, 1985 [October 1, 1984], which is hereby incorporated by reference) and supplemented by the use of the Title XVIII-A reimbursement principles.

Section 3. Implementation of the Payment System. The cabinet's reimbursement system is supported by the Title XVIII-A Principles of Reimbursement, with the system utilizing such principles as guidelines in unaddressed policy areas. The cabinet's reimbursement system includes the following specific policies, components or principles:
(1) Prospective payment rates for routine services shall be set by the cabinet on a facility by facility basis, and shall not be subject to retroactive adjustment. Prospective rates shall be set annually, and may be revised on an interim basis in accordance with procedures set by the cabinet. An adjustment to the prospective rate (subject to the maximum payment for that type of facility) will be considered only if a facility's increased costs are attributable to one (1) of the following reasons: governmentally imposed minimum wage increases; the direct effect of new licensure requirements or new interpretations of existing requirements by the appropriate governmental agency as issued in regulation or written policy which affects all facilities within the class; or other governmental actions that result in an unforeseen cost increase. The amount of any prospective rate adjustment may not exceed that amount by which the cost increase resulting

directly from the governmental action exceeds on an annualized basis the inflation allowance amount included in the prospective rate for the general cost area in which the increase occurs. For purposes of this determination, costs will be classified into two (2) general areas, salaries and other. The effective date of interim rate adjustment shall be the first day of the month in which the adjustment is requested or in which the cost increase occurred, whichever is later.

(2) The prospective rate shall not exceed, on a facility by facility basis, an administratively established maximum payment for that type of facility. The state will set a uniform rate year for SNFs and ICFs (July 1-June 30) by taking the latest audited cost data available as of May 16 of each year and trending the facility costs to July 1 of the rate year. (Unaudited, partial year, and/or budgeted cost data may be used if a full year's audited data is unavailable. Unaudited reports are subject to adjustment to the audited amount, and will be used when an audited cost report ending within twenty-four (24) months of the 30th of April preceding the rate year is not available. Facilities paid on the basis of partial year or budgeted cost reports shall have their reimbursement settled back to allowable cost, with usual upper limits applied. Facilities beginning program participation on or after July 1, 1984 whose rates are subject to settlement back to cost will not be included in the arrays until such time as the facilities are no longer subject to cost settlement.) Allowable costs will then be indexed for inflation for the rate year, and the maximum set at 102 [105] percent of the median for the class (SNF or ICF). In recognition of the higher costs of hospital based SNFs, their upper limit shall be set at 165 percent of 102 [105] percent of the median of allowable trended and indexed costs of all other SNFs. The maximum payment amounts will be adjusted each July 1, beginning with July 1, 1985 [1982], so that the maximum payment amount for the prospective uniform rate year will be at 102 [105] percent of the median per diem allowable costs for the class (SNF or ICF) on July 1 of that year. For purposes of administrative ease in computations normal rounding may be used in establishing the maximum payment amount, with the maximum payment amount rounded to the nearest five (5) cents. Upon being set, the arrays and upper limits will not be altered due to revisions or corrections of data. For ICF-MRs, a prospective rate will be set in the same manner as for SNFs and basic ICFs, except that no maximum (upper limit) shall be imposed.

(3) The reasonable direct cost of ancillary services provided by the facility as a part of total care shall be compensated on a reimbursement cost basis as an addition to the prospective rate. Ancillary services reimbursement shall be subject to a year-end audit, retroactive adjustment and final settlement. Ancillary costs may be subject to maximum allowable cost limits under federal regulations. Any percentage reduction made in payment of current billed charges shall not exceed twenty-five (25) percent, except in the instance of individual facilities where the actual retroactive adjustment for a facility for the previous year reveals an overpayment by the cabinet exceeding twenty-five (25) percent of billed charges, or where an evaluation by the cabinet of an individual facility's current billed charges shows the charges to be in excess of average billed charges for other comparable facilities serving the same area by more than twenty-five (25) percent. A refund will be requested from a facility if the amount paid to the facility for legend drugs, covered legend devices and non-legend drugs, if applicable, exceeds the program's computed maximum allowable cost. The amount of refund will be determined by conducting a statistically accurate sample of the Medicaid patients for the facility's fiscal year. The percentage that a facility is over the computed maximum allowable cost will be multiplied by the amount paid by the program for drugs for the fiscal year under review.

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

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

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

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

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

(6) The allowable cost for services or goods purchased by the facility from related organizations shall be the cost to the related

organization, except when it can be demonstrated that the related organization is in fact equivalent to any other second party supplier, i.e., a relationship for purposes of this payment system is not considered to exist. A relationship will be considered to exist when an individual or individuals possess twenty (20) percent or more of ownership or equity in the facility and the supplying business; however, an exception to the relationship will be determined to exist when fifty-one (51) percent or more of the supplier's business activity of the type carried on with the facility is transacted with persons and organizations other than the facility and its related organizations.

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

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

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

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

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

(d) A facility may request that the Reimbursement Review Panel grant a waiver of its status as a newly participating facility based upon a presentation of facts showing that the provider had already incurred a substantial material financial obligation or binding commitment toward building or expanding a facility prior to April 1, 1981. The obtaining of a certificate of need shall not be construed, in itself, to be sufficient to justify approval of a waiver request, and a waiver, if granted, shall be applicable only with regard to that building or expansion for which the waiver was requested and approved.

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

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

(10) To determine the gain or loss on the sale of a facility for purposes of determining a purchaser's cost basis in relation to depreciation and interest costs, the following methods will be used for changes of ownership occurring before July 18, 1984:

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

(b) Add to the seller's depreciated basis two-thirds (2/3) of one (1) percent of the gain for each month of ownership since the date of acquisition of the facility by the seller to arrive at the purchaser's cost basis.

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

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

(e) If an enforceable agreement for a change of ownership was entered into prior to July 18, 1984, the purchaser's cost basis will be determined in the manner set forth in paragraphs (a) through (d) of this subsection.

(11) Notwithstanding the provisions contained in subsection (10) of this section, or in any other section or subsection of this regulation or the "Kentucky Medical Assistance Program Intermediate Care/Skilled Nursing Facility Reimbursement Manual," the cost basis for any facility changing ownership on or after July 18, 1984 (but not including changes of ownership pursuant to an enforceable agreement entered into prior to July 18, 1984 as specified in subsection (10)(e) of this section) shall be determined in accordance with the methodology set forth in the Social Security Act (as amended by the Deficit Reduction Act of 1984) and shown herein for the revaluation of assets of skilled nursing and intermediate care facilities.

(a) The Social Security Act, Section 1861(v)(1)(O) (as published in the Commerce Clearing House Medicare/Medicaid Guide) specifies the following:

"(i) In establishing an appropriate allowance for depreciation and for interest on capital indebtedness and (if applicable) a return on equity capital with respect to an asset of a hospital or skilled nursing facility which has undergone a change of ownership, such regulations shall provide that the valuation of the asset after such change of ownership shall be the lesser of the allowable acquisition cost of such asset to the owner of record as of the date of the enactment of this subparagraph, (or, in the case of an asset not in existence as of such date, the first owner of record of the asset after such date), or the acquisition cost of such asset to the new owner."

"(ii) Such regulations shall provide for recapture of depreciation in the same manner as provided under the regulations in effect on June 1, 1984."

"(iii) Such regulations shall not recognize, as reasonable in the provision of health care services, costs (including legal fees, accounting and administrative costs, travel costs, and the costs of feasibility studies) attributable to the negotiation or settlement of the sale or purchase of any capital asset (by acquisition or merger) for which any payment has previously been made under this title."

(b) The Social Security Act, Section 1902(a)(13) (as published in the Commerce Clearing House Medicare/Medicaid Guide) further specifies the following:

"(B) That the state shall provide assurances satisfactory to the Secretary that the payment methodology utilized by the State for payments to hospitals, skilled nursing facilities, and intermediate care facilities can reasonably be expected not to increase such payments, solely as a result of a change of ownership, in excess of the increase which would result from the application of section 1861(v)(1)(O)."

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

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

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

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

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

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

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

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

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

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

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

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

(18) Each facility shall submit the required data for determination of the prospective rate no later than sixty (60) days following the close of the facility's fiscal year. This time limit may be extended at the specific request of the facility (with the cabinet's concurrence).

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

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

(2) The allowable prior year cost, not including fixed or capital costs, will then be trended to the beginning of the uniform rate

year and increased by a percentage so as to reasonably take into account economic conditions and trends. Such percentage increase shall be known as an inflation factor.

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

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

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

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

(Effective 7-1-85 [7-1-84])

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$26.99 & below*	-	-
27.00 - 27.99	$1.38	$.87
28.00 - 28.99	$1.29	$.75
29.00 - 29.99	$1.18	$.62
30.00 - 30.99	$1.06	$.47
31.00 - 31.99	$ .92	$.31
32.00 - 32.99	$ .76	$.13
33.00 - 35.03 [35.05]	$ .53	-

Maximum Payment $35.03 [35.05]

*For a basic per diem of $26.99 and below, the investment amount will be equal to 7.5 percent, but not to exceed $1.38, and the incentive amount will be equal to 5.0 percent, but not to exceed $.87.

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

(Effective 7-1-84)

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$56.99 & below*	-	-
57.00 - 62.99	$1.38	$.87
63.00 - 68.99	$1.29	$.75
69.00 - 74.99	$1.18	$.62
75.00 - 80.99	$1.06	$.47
81.00 - 86.99	$ .92	$.31
87.00 - 92.99	$ .76	$.13
93.00 - 98.99	$ .53	-

*For a basic per diem of $56.99 and below, the investment amount will be equal to 7.5 percent, but not to exceed $1.38 and the incentive amount will be equal to 5.0 percent, but not to exceed $.87.

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

(Effective 7-1-85 [7-1-84])

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$36.99 & below*	-	-
37.00 - 38.99	$1.38	$.87
39.00 - 40.99	$1.29	$.75
41.00 - 42.99	$1.18	$.62
43.00 - 44.99	$1.06	$.47
45.00 - 46.99	$ .92	$.31
47.00 - 48.99	$ .76	$.13
49.00 - 51.13 [52.39]	$ .53	-

Maximum Payment $51.13 [52.39]**

*For a basic per diem of $36.99 and below, the investment amount will be equal to 7.5 percent, but not to exceed $1.38, and the incentive amount will be equal to 5.0 percent, but not to exceed $.87.

**The maximum payment for hospital based skilled nursing facilities is set at $83.01 [84.14].

(6) The prospective rate is then compared, as appropriate, with the maximum payment. If in excess of the program maximum, the prospective rate shall be reduced to the appropriate maximum payment amount. The maximum payment amounts have been set to be at or about 102 [105] percent of the median of adjusted basic per diem costs for the class, recognizing that hospital based skilled nursing facilities have special requirements that must be considered. The cabinet has determined that the maximum payment rates shall be reviewed annually against the criteria of 102 [105] percent of the median for the class and that adjustments to the payment maximums will be made effective July 1, 1985 [1982] and each July 1 thereafter. This policy shall allow, but does not require lowering of the maximum payments below the current levels if

application of the criteria against available cost data should show that 102 [105] percent of the median is a lower dollar amount than has been currently set.

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

(1) First recourse shall be for the facility to request in writing to the Director, Division of Medical Assistance, a re-evaluation of the point at issue. This request must be received within forty-five (45) days following notification of the prospective rate or forwarding of the audited cost report by the program. The director shall review the matter and notify the facility of any action to be taken by the cabinet (including the retention of the original application of policy) within twenty (20) days of receipt of the request for review or the date of the program/vendor conference, if one is held, except that additional time may be taken as necessary to secure further information or clarification pertinent to the resolution of the issue.

(2) Second recourse shall be for the facility to request in writing to the Commissioner, Department for Social Insurance, a review by a standing review panel to be established by the commissioner. This request must be postmarked within fifteen (15) days following notification of the decision of the Director, Division of Medical Assistance. Such panel shall consist of three (3) members: one (1) member from the Division of Medical Assistance, one (1) member from the Kentucky Association of Health Care Facilities, and one (1) member from the Division of Management and Development, Department for Social Insurance. A date for the reimbursement review panel to convene will be established within twenty (20) days after receipt of the written request. The panel shall issue a binding decision on the issue within thirty (30) days of the hearing of the issue, except that additional time may be taken as necessary to secure further information or clarification pertinent to the resolution of the issue. In carrying out the intent and purposes of the program the panel may take into consideration extenuating circumstances which must be considered in order to provide for equitable treatment and reimbursement of the provider. The attendance of the representative of the Kentucky Association of Health Care Facilities at review panel meetings shall be at the cabinet's expense.

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

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

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

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

(b) Physical, occupational and speech therapy.

(c) Laboratory procedures.

(d) X-ray.

(e) Oxygen and other related oxygen supplies and inhalation therapy.

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

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

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

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

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

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

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

(9) "Maximum payment" means the maximum amount the cabinet will reimburse, on a facility by facility basis, for routine services.

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

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

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

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

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

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

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

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

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

Section 7. Implementation Date. The provisions of this regulation, as amended, shall be effective with regard to services provided on or after July 1, 1985 [October 1, 1984].

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: June 28, 1985
FILED WITH LRC: June 28, 1985 at 3 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for August 21, 1985 at 9 a.m. in the Department of Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 16, 1985 of their desire to appear and testify at the hearing: R. Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: Approximately 190 intermediate care facilities and 87 skilled nursing facilities participating in the Medicaid Program.
(a) Direct and indirect costs or savings to those affected: None*
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: $2,500,000 (savings)
2. Continuing costs or savings: $2,500,000 (savings)
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: *The savings to the agency will be achieved by reductions in payments to participating SNFs and ICFs.

Tiering:
Was tiering applied? No. Not applicable to Medicaid regulations.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Developement
(Proposed Amendment)

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

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

Section 1. Mental Health Centers. In accordance with 42 CFR 447.325, the cabinet shall make payment to Kentucky based (in-state) providers who are appropriately licensed and have met the conditions for participation (including the signing of such contractural arrangements as the cabinet may require of this class of provider) set by the cabinet, on the following basis:

(1) Payment shall be on a prospective basis based on reasonable allowable prior year costs (utilizing the latest audited annual cost report or unaudited report if an audited report is not available) not to exceed usual and customary charges or the upper limits on payments. Allowable costs shall be trended to the beginning of the rate year and indexed for the rate year, so as to more accurately approximate actual costs which will be incurred during the year. (If an unaudited report is used, cost will not be adjusted based on audit.)

(2) Payment amounts shall be determined by application of the "Community Mental Health Center General Policies and Guidelines and Principles of Reimbursement," (revised July 1, 1985 [1984]) developed and issued by the cabinet, (incorporated by reference to the

extent that such policies, guidelines and principles are applicable to Title XIX services and reimbursement, and filed herein), supplemented by the use of Title XVIII reimbursement principles.

(3) Allowable costs shall not exceed customary charges which are reasonable. Allowable costs shall not include the costs associated with political contributions, membership dues, travel and related costs for trips outside the state (for purposes of conventions, meetings, assemblies, conferences, or any related activities), and legal fees for unsuccessful lawsuits against the cabinet. However, costs (excluding transportation costs) for training or educational purposes outside the state are allowable costs.

(4) The prospective rate shall not exceed 105 [110] percent of the median of the reasonable allowable cost for each reimbursable departmental cost center (i.e., inpatient, outpatient, partial hospitalization and personal care) for all participating facilities.

Section 2. Implementation of Payment System. (1) Payments may be based on units of service such as fifteen (15) minute or hourly increments, or at a daily rate, depending on the type of service.

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

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

(4) Each community mental health center provider shall make available to the cabinet at the end of each fiscal reporting period, and at such intervals as the cabinet may require, all patient and fiscal records of the provider, subject to reasonable prior notice by the cabinet. Notwithstanding this general requirement, the provider need not make available (for purposes of determining Medicaid payment amounts) staff notes or treatment records which show treatment details for non-Medicaid covered services; for such services, the information required shall be limited to a case summary sheet or listing which shows, at a minimum, the type of service provided, the staff member who provided the service, the date of the service, and appropriate identifying information relating to the patient.

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

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

Section 4. Reimbursement of Out-of-State Providers. The cabinet shall make payment to out-of-state mental health center providers who are appropriately licensed, participate with their state's Title XIX Medicaid Program, and have met the Kentucky Medical Assistance Program conditions of participation. The payment rate will be the lower of charges, or the facility's rate as set by the state Medicaid Program in the other state, or the upper limit for that type of service in effect for Kentucky providers.

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: June 28, 1985
FILED WITH LRC: June 28, 1985 at 3 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for August 21, 1985 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 16, 1985 of their desire to appear and testify at the hearing: R. Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: Approximately 14 mental health centers participating in the Medicaid Program.
(a) Direct and indirect costs or savings to those affected: None*
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: $200,000 (savings)
2. Continuing costs or savings: $200,000 (savings)
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: *The savings to the agency will be achieved by reductions in payments to participating mental health centers.

Tiering:
Was tiering applied? No. Not applicable to Medicaid regulations.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Developement
(Proposed Amendment)

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

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

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

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

(2) Payment amounts shall be determined by application of the "Primary Care Center General Policies and Guidelines and Principles of Reimbursement" (revised July 1, 1985 [November 1, 1984], and hereby incorporated by reference) developed and issued by the cabinet, supplemented by the use of title XVIII-A reimbursement principles.

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

(4) For services provided prior to July 1, 1985, reimbursement for medical and nursing cost center costs shall be subject to adjustment for a growth allowance. The growth allowance shall be computed for the year beginning each July, and shall be based on a projection of the change in the medical component of the Consumer Price Index over the previous year as applied to the median service cost of medical and nursing services, on a per visit basis, for all participating providers. Increases in medical and nursing center costs in excess of the growth allowance shall be disallowed. For those facilities with medical and nursing cost increases which are less than the growth allowance, the difference between the two (2) shall be reimbursable as a cost containment incentive payment at the time of the usual cost settlement.

(5) For services provided on or after July 1, 1985, the average allowable cost per visit for the medical and nursing services cost center shall not exceed the lesser of actual allowable costs, or charges, or the actual allowable average cost per visit for medical and nursing center services for the facility fiscal year ending prior to July 1, 1985 (not adjusted to the lower of cost or charges) plus an additional growth allowance of twenty (20) cents per visit per month (if such cost is incurred) for each month after the facility's fiscal year end but prior to July 1985. Primary care centers beginning participation on or after July 1, 1985 shall be reimbursed on the basis of the lower of reasonable allowable costs or charges (as shown in subsections (1) through (3) of this section) for the first two (2) years of participation in the program. For the third and subsequent years, the average allowable cost per visit may not exceed the lower of the facility's actual allowable costs, or charges, or the facility's actual allowable costs (not adjusted to the lower of cost or charges) for the second year of participation.

(6) [(5)] During the first six (6) months after the implementation of the policy contained in Section 1(4) of this regulation, centers with fiscal year endings occurring in the six (6) month period shall not have medical and nursing center costs disallowed as a result of imposition of the growth allowance upper limit, but shall be entitled to receive any applicable incentive payment.

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

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

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

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

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

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

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

participation for all eligible service elements, components, or sub-units of the center.

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

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: June 28, 1985
FILED WITH LRC: June 28, 1985 at 3 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for August 21, 1985 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 16, 1985 of their desire to appear and testify at the hearing: R. Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort. Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: Approximately 15 primary care centers participating in the Medicaid Program.
(a) Direct and indirect costs or savings to those affected: None*
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: $140,000 (savings)
2. Continuing costs or savings: $140,000 (savings)
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: *The savings to the agency will be achieved by reductions in payments to participating primary care centers.
Tiering:
Was tiering applied? No. Not applicable to Medicaid regulations.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

904 KAR 1:150. Payments for alternative home and community based services for the mentally retarded.

RELATES TO: KRS 205.520
PURSUANT TO: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the payment provisions relating to home and community based services provided to the mentally retarded as an alternative to intermediate care facility services for the mentally retarded.

Section 1. Coverage. The Cabinet for Human Resources shall reimburse participating providers of alternative intermediate services for the mentally retarded (AIS/MR) for services rendered to eligible medical assistance recipients who meet patient status criteria for intermediate care for the mentally retarded, and who are authorized for the AIS/MR service by the cabinet. The covered service elements are described and defined in 904 KAR 1:140, Alternative home and community based services for the mentally retarded, and services must be provided in accordance with the terms and conditions described therein. Payments may not exceed the limits specified in Section 3 of this regulation.

Section 2. Payment Amounts. (1) Residential services, including residential (home) training, personal care, and homemaker/home health aide, shall be paid for at the rate of forty (40) dollars per day.
(2) Case management services shall be paid for at the rate of forty (40) dollars per hour.
(3) Habilitation services shall be paid for at the rate of forty (40) dollars per hour.
(4) Adult day habilitation services shall be paid for at the rate of five (5) dollars per hour.
(5) In-home support services shall be paid for at the following rates:
(a) In-home training services shall be paid for at the rate of forty (40) dollars per hour.
(b) Homemaker/home health aide support services shall be paid for at the rate of twenty (20) dollars per hour.
(c) Personal care services shall be paid for at the rate of twenty (20) dollars per hour.
(6) Respite care (twenty-four (24) hours or more) shall be paid for at the rate of thirty-two (32) dollars per day. Respite care (less than twenty-four (24) hours) shall be paid

for at the rate of three (3) dollars and fifty (50) cents per hour, with the total not to exceed the upper limit of thirty-two (32) dollars for one (1) full day of care.

Section 3. Payment limits. (1) Payments shall be made on the above stated rate basis not to exceed the AIS/MR cluster annualized upper limit on payment.

(2) Under this system, an AIS/MR cluster will receive a total of Title XIX payments during the year in the amount of the established rates for services rendered Title XIX eligible recipients, so long as such payments (on a cumulative basis) do not exceed the annualized upper limits (total payment amount) which has been set for the cluster. Each cluster will also be required to maintain average expenditures per recipient (on a cumulative basis) as described by the Health Care Financing Administration, 42 CFR 441.303(d)(1), and interpreted for the AIS/MR cluster by the Cabinet for Human Resources.

(3) Utilizing the formula described in 42 CFR 441.303(d)(1) as a guideline and applying accumulated statistical data, the cabinet will set effective April [July] 1 each year the annualized upper limits and averages to be applied to the AIS/MR cluster services for the waiver year April 1 through March 31, applicable for waiver years beginning April 1, 1985 and thereafter [from July 1 to June 30 each year].

(4) The cabinet may reduce payment by the percentage amount which will assure that the payments to the cluster do not exceed the annualized upper limit or average expenditures. Reduction factors shall (to the extent possible) be applied in such a manner as to ensure as even flow of reinbursement to the AIS/MR cluster through the year, i.e., generally so as to ensure that the payments for any one (1) month do not exceed by a substantial amount the prorated annual amount.

(5) Any overpayment due the program at the end of the period as a result of exceeding the upper limit shall be recouped by settlement or by withholding payment.

Section 4. Implementation. Payments may be made for covered services provided beginning on April 1, 1983.

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 10, 1985
FILED WITH LRC: July 12, 1985 at 9 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for August 21, 1985 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 16, 1985 of their desire to appear and testify at the hearing: R. Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: Approximately 11 providers of AIS/MR services (all comprehensive care centers); an estimated 500-560 recipients of AIS/MR services.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None*
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
*This is a technical change with no anticipated savings or costs.

Tiering:
Was tiering applied? No. Not applicable for Medicaid regulations.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

904 KAR 1:250. Incorporation by reference of materials relating to the Medical Assistance Program.

RELATES TO: KRS 194.030(6), 205.520
PURSUANT TO: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the Medical Assistance Program and is applicable for both the categorically and medically needy.

Section 1. Incorporation by Reference. The cabinet shall incorporate by reference materials used in the implementation of the Medical Assistance Program, subject to the provisions contained in 904 KAR 2:140, Section 1, Supplementary policies for programs administered by the Department for Social Insurance.

Section 2. Listing of Incorporated Material. The following listed materials are hereby incorporated by reference, effective on the date

shown:

(1) Federal Medicaid regulations at 42 CFR Parts 430-456, and interim final regulations at 42 CFR Parts 430-456, effective July [April] 1, 1985. The regulations contain federal supplementary policies, interpretations and implementing instructions for the Medical Assistance Program as authorized by Title XIX of the Social Security Act.

(2) Federal "State Medicaid Manual," effective July [April] 1, 1985. The "State Medicaid Manual" contains federal interpretations and clarifications of policy relating to implementation of the Medical Assistance Program.

(3) Federal action transmittals and program memoranda issued by the Health Care Financing Administration as follows: HCFA-AT-79-63, 79-72, 79-98, 80-9, 80-59, 81-23, 81-33, 81-35, 82-1, 82-2, 82-20, 83-1, 83-4, 83-7, 83-8, 83-11, 84-1, 84-2, 84-4, 84-5, 84-10, 84-16, [and] 85-1, and HCFA PM-85-4, effective July 1, 1985 [effective April 1, 1985]. Action transmittals and program memoranda contain federal instructions relating to implementation of the Medical Assistance Program.

(4) Federal transmittal notices issued by the Health Care Financing Administration as follows: DQC-1-82, 10-82; DPO-76-81, 77-81, 78-81; MCD-46-81, 48-81, 55-81, 61-81, 62-81, 64-81, 67-81, 82-81, 86-81, 87-81, 89-81, 92-81, 1-82, 2-82, 6-82, 7-82, 10-82, 14-82, 16-82, 17-82, 18-82, 19-82, 25-82, 26-82, 28-82, 30-82, 33-82, 34-82, 35-82, 38-82, 41-82, 42-82, 50-82, 52-82, 2-83, 5-83, 9-83, 11-83, 12-83, 13-83, 14-83, 15-83, 19-83, 20-83, 26-83, 28-83, 29-83, 30-83, 35-83, 39-83, 40-83, 42-83, 1-84, 6-84, 7-84, 8-84, 9-84, 11-84, 13-84, 14-84, 15-84, 16-84, 18-84, 20-84, 23-84, 24-84, 25-84, 26-84, 27-84, 29-84, 34-84, 35-84, 36-84, 39-84, 48-84, 50-84, 51-84, 55-84, 2-85, 4-85, 5-85, 6-85, [and] 8-85, 10-85, 11-85, 14-85, 18-85, 19-85, 21-85, 22-85, 23-85, 24-85, and 25-85, effective July [April] 1, 1985. Transmittal notices contain federal clarifications of policy relating to implementation of the Medical Assistance Program.

(5) Medicare and Medicaid Guide, Volumes I, II, III, and IV, as published by the Commerce Clearing House, Inc., with the following related new developments transfer binders: 1981-1, 1981-2, 1982, 1983-1, 1983-2, and 1984-1, effective July [April] 1, 1985. The Medicare and Medicaid Guide contains reprints of federal laws and regulations relating to the Medicare and Medicaid programs; reprints of Medicare/Medicaid related court decisions; Medicare principles of reimbursement; summaries of state plan characteristics; and other items of general information relating to the Medicare and Medicaid programs. Although the cabinet is bound by federal Medicaid law and regulations in the implementation of the Medical Assistance Program, the Guide is used principally as supplementary material for reimbursement issues in situations where the cabinet's vendor reimbursement system uses the Medicare cost principles in unaddressed areas.

(6) State Medicaid Program policies and procedures manuals and letters issued by the cabinet, and which contain benefit descriptions and operating instructions used by agency staff and participating vendors in the provision of, and billing for, Medical Assistance benefits provided eligible program recipients, as follows:

(a) Home and Community Based Services Waiver Project Adult Day Health Care Services, effective July 1, 1985 [May 16, 1984];

(b) Alternative Intermediate Services/Mental Retardation Project, effective July 1, 1985 [October 1, 1984];

(c) Birthing Center Services, effective January 1, 1985;

(d) Community Mental Health Benefits, effective July 1, 1985 [May 16, 1984];

(e) Dental Benefits, effective July 1, 1985 [May 16, 1984];

(f) Early and Periodic Screening, Diagnosis and Treatment Benefits, effective July 1, 1985 [May 16, 1984];

(g) Family Planning Benefits, effective July 1, 1985 [May 16, 1984];

(h) Hearing Services Benefits, effective July [January] 1, 1985;

(i) Home and Community Based Services Waiver Project, effective July 1, 1985 [May 16, 1984];

(j) Home Health Benefits, effective July 1, 1985 [May 16, 1984];

(k) Hospital Services Benefits, effective July [April] 1, 1985;

(l) Independent Laboratory Services Benefits, effective July [January] 1, 1985;

(m) Intermediate Care Facility Benefits, effective January 1, 1985;

(n) Mental Hospital Services Benefits, effective July 1, 1985 [May 16, 1984];

(o) Nurse Anesthetist Services, effective July 1, 1985 [May 16, 1984];

(p) Nurse Midwife, effective July 1, 1985 [May 16, 1984];

(q) Pharmacy Services, effective July [April] 1, 1985;

(r) Physician Services Benefits, effective July [April] 1, 1985;

(s) Primary Care Benefits, effective July 1, 1985 [May 16, 1984];

(t) Rural Health Clinic Benefits, effective July 1, 1985 [May 16, 1984];

(u) Skilled Nursing Facility Benefits, effective January 1, 1985;

(v) Ambulance Transportation Benefits, effective May 16, 1984, as revised;

(w) Vision Services Benefits, effective July 1, 1985 [May 16, 1984];

[(x) Pharmacy letters, effective April 1, 1985;]

[(y) Podiatry Letter #A-3, effective January 1, 1985; and]

(x) [(z)] Podiatry Services, effective July [April] 1, 1985;

(y) Ambulatory Surgical Center Benefits, effective July 1, 1985;

(z) Renal Dialysis Center Benefits, effective July 1, 1985;

(aa) General Provider Letter A-8, effective July 1, 1985;

(bb) Medical Director's Letter dated April 26, 1985, effective July 1, 1985; and

(cc) EDS Federal Hospital Letter (as fiscal agent for the Medicaid Program) dated April 1, 1985, effective July 1, 1985.

Section 3. All documents included by reference herein may be reviewed during regular working hours in the Division of Management and Development, Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky.

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 2, 1985
FILED WITH LRC: July 3, 1985 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for August 21, 1985 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 16, 1985 of their desire to appear and testify at the hearing: R. Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All applicants or recipients of medical assistance: all providers of medical assistance covered services.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None*
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: *Any cost impact is shown in the state regulation governing the particular subject matter.

Tiering:
Was tiering applied? No. Not applicable to Medicaid regulations.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

904 KAR 2:140. Supplementary policies for programs administered by the Department for Social Insurance.

RELATES TO: KRS 194.030(6), Chapter 205
PURSUANT TO: KRS 194.050
NECESSITY AND FUNCTION: KRS 194.010 designates the Cabinet for Human Resources as the primary state agency responsible for the development and operation of assistance programs, and KRS 194.050 empowers the secretary of the Cabinet for Human Resources to adopt, administer and enforce regulations sufficient to operate the programs and fulfill the responsibilities vested in the cabinet. This regulation states the general policy of the cabinet with regard to program materials incorporated into regulatory form by reference for use by the Department for Social Insurance, and incorporates by reference materials related to the programs of aid to families with dependent children, medical assistance, home energy assistance, refugee assistance, food stamps, child support enforcement, state supplemental payments for the aged, blind or disabled, disability determination, and collections which are essential for the implementation of those programs.

Section 1. General Policy Relating to Program Materials Incorporated by Reference. (1) Kentucky administrative regulations relating to program matters reflect the policy of the cabinet with regard to the issues addressed in the regulation.
(2) Materials incorporated by reference shall be construed and interpreted in such a manner as to be consistent with the intent of agency policy as reflected in Kentucky administrative regulations, and shall be considered the agency statement of policy with regard to issues not otherwise addressed in Kentucky administrative regulations.

Section 2. Incorporation by Reference. The following listed materials are hereby incorporated by reference, effective on the date shown.
(1) Department for Social Insurance Manual of Operations, effective July [April] 1, 1985. The Manual of Operations provides operating instructions, procedural detail, and technical clarification for use of the department's field staff in implementing programs, under the authority of the department, including: aid to families with dependent children; refugee assistance; home energy assistance; child support enforcement; state supplementary payments; and medical assistance.
(2) Department for Social Insurance Manual of Forms, effective July [April] 1, 1985. The Manual of Forms provides forms with instructions for completion, usage, distribution and files maintenance for use of the department's field staff in implementing programs under the authority of the department, including: aid to families with dependent children; refugee assistance; home energy assistance; child support enforcement; state supplementary payments; medical assistance; and the food stamp program.
(3) Federal regulations at 45 CFR Parts 16, 74, and 95, effective May 16, 1984. Part 16, Procedures of the Departmental Grant Appeals Board, provides requirements and procedures applicable to resolution of certain disputes arising under several assistance programs funded by the United States Department of Health and Human Services. Part 74, Administration of Grants, establishes uniform requirements for the administration of grants provided under the

authority of the United States Department of Health and Human Services, and principles for determining costs applicable to activities assisted by Department of Health and Human Services grants. Part 95, General Administration - Grant Programs (Public Assistance and Medical Assistance), establishes requirements of the United States Department of Health and Human Services for various administrative matters relating to grant programs, including time limits for states to file claims, cost allocation plans, and conditions for federal financial participation for automatic data processing equipment and services.

Section 3. All documents incorporated by reference herein may be reviewed during regular working hours in the Division of Management and Development, Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky.

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 2, 1985
FILED WITH LRC: July 3, 1985 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for August 21, 1985 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 16, 1985 of their desire to appear and testify at the hearing: R. Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All recipients of assistance programs administered by the Department for Social Insurance.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None*
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
*Costs or savings are shown in the impact analysis for the governing regulations which show any policy changes.

Tiering:
Was tiering applied? No. Not applicable for public assistance regulations.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

904 KAR 2:150. Incorporation by reference of materials relating to the Aid to Families with Dependent Children Program.

RELATES TO: KRS 194.030(6), 205.200, 205.220, 205.231
PURSUANT TO: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility under the provisions of KRS Chapter 205 to administer public assistance programs under Title IV-A of the Social Security Act, namely Aid to Families with Dependent Children, herein referred to as AFDC. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the AFDC program.

Section 1. Incorporation by Reference. The cabinet shall incorporate by reference materials used in the implementation of the Aid to Families with Dependent Children Program, subject to the provisions contained in 904 KAR 2:140, Section 1, Supplementary policies for programs administered by the Department for Social Insurance.

Section 2. Listing of Incorporated Materials. The following listed materials are hereby incorporated by reference, effective on the date shown:
(1) Federal regulations at 45 CFR Parts 200-299, which set forth the federal requirements and guidelines for the administration of the Aid to Families with Dependent Children Program, effective July [April] 1, 1985; and
(2) Federal action transmittals, which provide operating instructions, procedural detail and technical clarification for use by the department's staff in administering the Aid to Families with Dependent Children Program, as follows: SSA-AT-77-44, 78-13, 78-14, 78-16, 78-21, 78-27, 78-28, 78-38, 79-2, 79-4, 79-5, 79-7, 79-11, 79-14, 79-18, 79-22, 79-26, 79-29, 79-31, 79-32, 79-33, 79-35, 79-42, 79-44, 80-2, 80-3, 80-9, 80-11, 80-19, 80-22, 80-24, 80-29, 80-30, 80-36, 80-38, 80-42, 80-44, 80-45, 80-50, 81-2, 81-7, 81-8, 81-10, 81-11, 81-12, 81-15, 81-16, 81-17, 81-18, 81-23, 81-29, 81-31, 81-33, 81-34, 81-35, 81-36, 81-37, 82-1, 82-5, 82-6, 82-9, 82-11, 82-13, 82-15, 82-16, 82-17, 82-18, 82-19, 82-20, 82-28, 82-33, 82-34, 83-6, 83-7, 83-10, 83-11, 83-13, 83-14, 83-17, 83-18, 83-21, 83-22, 83-23, 83-25, 83-27, 84-2, 84-3, 84-5, 84-6, 84-7, 84-8, 84-9, 84-13, 84-16, [and] 84-25, and 85-10, effective July 1, 1985 [January 1, 1985].

Section 3. All documents incorporated by reference herein may be reviewed during regular

working hours in the Division of Management and Development, Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky.

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 2, 1985
FILED WITH LRC: July 3, 1985 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for August 21, 1985 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 16, 1985 of their desire to appear and testify at the hearing: R. Hughes Walker. General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All applicants or recipients of the Aid to Families with Dependent Children (AFDC) program.
(a) Direct and indirect costs or savings to those affected: Unknown
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. Not applicable to Aid to Families with Dependent Children regulations.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

904 KAR 2:170. Incorporation by reference of materials relating to the Child Support Program.

RELATES TO: KRS 205.795
PURSUANT TO: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility for administering the Child Support Program in accordance with Title IV-D of the Social Security Act and KRS 205.710 to 205.800 and 205.992. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the Child Support Program.

Section 1. Incorporation by Reference. The cabinet shall incorporate by reference materials used in the implementation of the Child Support Program, subject to the provisions contained in 904 KAR 2:140, Section 1, Supplementary Policies for Programs Administered by the Department for Social Insurance.

Section 2. Listing of Incorporated Materials. The following listed materials are hereby incorporated by reference, effective on the date shown:
(1) Federal child support regulations at 45 CFR Parts 300-399, which set forth the requirements and guidelines for the administration of the Child Support Program, effective July 1, 1985 [October 1, 1984];
(2) Federal Office of Child Support Enforcement Action Transmittals, which provide federal program instructions for the implementation of the child support enforcement program in accordance with federal laws and regulations, as follows: OCSE-AT-75-5, 75-6, 76-1, 76-2, 76-5, 76-7, 76-8, 76-9, 76-14, 76-21, 76-22, 76-23, 77-3, 77-14, 78-2, 78-5, 78-6, 78-8, 78-16, 78-18, 79-2, 79-3, 79-6, 79-7, 79-8, 80-5, 80-9, 80-11, 80-17, 81-7, 81-12, 81-26, 82-17, 83-15, 83-18, and 84-05, effective October 1, 1984;
(3) Department for Social Insurance Child Support Manual of Procedures, which provides operational instructions and procedural detail for the implementation of the child support enforcement program, effective July [April] 1, 1985;
(4) Department for Social Insurance Child Support System Handbook, which provides systems and data processing instructions for the implementation of the child support enforcement program, effective July 1, 1985 [May 16, 1984]; and
(5) Department for Social Insurance Child Support Action Memorandums, which provide program clarifications, instructions, and procedural detail for the implementation of the child support enforcement program, as follows: DCSE-AM-82-07, 82-36, 83-16, 83-21, 83-30, 83-31, 83-38, 83-39, 83-48, 84-10, 84-16, 84-18, 84-19, 84-20, 84-29, 84-34, 84-36, 84-41, [and] 85-10, and 85-15 effective July [April] 1, 1985.

Section 3. All documents incorporated by reference herein may be reviewed during regular working hours in the Division of Management and Development, Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky.

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 2, 1985
FILED WITH LRC: July 3, 1985 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for August 21, 1985 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. However, this hearing will

be cancelled unless interested persons notify the following office in writing by August 16, 1985 of their desire to appear and testify at the hearing: R. Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: The provisions in the incorporated Federal Register are not yet being implemented as most have an implementation date of October 1, 1985. However, some of the provisions require changes in state statutes. We will be submitting a full impact analysis with the legislative proposals and the proposed administrative regulations for the program area. The remaining material being incorporated consists of Department for Social Insurance forms revisions and instructions for addressing clients' questions regarding AFDC recoupment. This material bears no measurable impact on the public nor on the budget of the Commonwealth.
(a) Direct and indirect costs or savings to those affected:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues:
(4) Assessment of alternative methods; reasons why alternatives were rejected:
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. Not applicable to the Child Support Program.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

904 KAR 3:090. Incorporation by reference of materials relating to the Food Stamp Program.

RELATES TO: KRS 194.030(6)
PURSUANT TO: KRS 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 Parts 251-282. KRS 194.050 authorizes the Secretary, Cabinet for Human Resources, to issue regulations necessary for the operation of the cabinet's programs. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the Food Stamp Program.

Section 1. Incorporation by Reference. The cabinet shall incorporate by reference materials used in the implementation of the Food Stamp Program, subject to the provisions contained in 904 KAR 2:140, Section 1, Supplementary Policies for Programs Administered by the Department for Social Insurance.

Section 2. Listing of Incorporated Materials. The following materials are hereby incorporated by reference, effective on the date shown:
(1) Federal food stamp regulations at 7 CFR Parts 250, 251 and 271-282, which set forth the federal requirements and guidelines for the administration of the Food Stamp Program and federal food stamp general notices published through the Federal Register, effective July [April] 1, 1985;
(2) Department for Social Insurance Food Stamp Handbook, which provides operating instructions, procedural detail and technical clarification for use by the department's field staff in administering the Food Stamp Program, effective July [April] 1, 1985; and
(3) Federal food stamp regional letters, which set forth federal clarification of federal food stamp regulations, as follows: 80-5, 80-5.1, 80-6, 80-7, 80-8, 80-9, 80-10, 80-11, 80-13, 80-15, 80-16, 80-17, 80-19, 80-21, 80-22.1, 80-23, 80-30, 80-31, 80-32, 80-33, 80-34, 80-36, 80-38, 80-39, 80-41.1, 80-42, 80-43, 80-44, 80-47, 80-48, 80-49, 80-50, 80-51, 80-52, 80-53, 80-54, 80-58, 80-58.1, 80-58.2, 80-59, 80-62, 80-67, 80-71, 80-72, 80-73, 80-76.1, 80-77, 80-78, 80-79, 80-80, 80-81, 80-82, 80-83, 80-85, 80-86, 80-87, 80-88, 80-89, 80-91, 80-92, 80-93, 80-96, 80-98, 80-99, 80-100, 80-101, 80-102, 80-103, 80-105, 80-106, 81-3, 81-3.1, 81-3.2, 81-4, 81-4.1, 81-4.2, 81-4.3, 81-5, 81-6, 81-8, 81-9, 81-10, 81-10.1, 81-10.2, 81-11, 81-12, 81-13, 81-14, 81-15, 81-16, 81-17, 81-18, 81-19, 81-20, 81-20.1, 81-20.2, 81-21, 81-22, 81-23, 81-24, 81-25, 81-26, 81-27, 81-28, 81-29, 81-30, 81-30.1, 81-33, 81-34, 81-34.1, 81-36, 81-37, 81-38, 81-39, 81-40, 81-41, 81-42, 81-43, 81-44, 81-45, 81-46, 81-46.1, 81-47, 81-48, 81-49, 81-50, 81-51, 81-52, 81-53, 81-54, 81-55, 81-57, 81-57.1, 81-58, 81-59, 81-60, 81-62, 81-64, 81-65, 81-66, 81-67, 81-68, 82-2, 82-3, 82-4, 82-5, 82-6, 82-7, 82-8, 82-9, 82-10, 82-11, 82-12, 82-13, 82-14, 82-15, 82-16, 82-17, 82-18, 82-18.1, 82-19, 82-20, 82-21, 82-23, 82-25, 82-25.1, 82-26, 82-27, 82-29, 82-29.1, 82-30, 82-31, 82-32, 82-35, 82-36, 82-37, 82-38, 82-39, 82-40, 83-1, 83-1.1, 83-1.2, 83-2, 83-2.1, 83-3, 83-4, 83-5, 83-6, 83-7, 83-9, 83-12, 83-14, 83-15, 83-17, 83-18, 83-19, 83-21, 83-22, 83-24, 83-25, 83-26, 83-27, 83-28, 83-30, 83-31, 83-33, 83-36, 84-1, 84-2, 84-3, 84-4, 84-5, 84-6, 84-7, 84-8, 84-9, 84-10, 84-11, 84-12, 84-13, 84-14, 84-15, 84-16, 84-17, 84-18, 84-19, 84-20, 84-21, 84-22, 84-23, 84-24, 84-26, 84-27, 84-28, 84-29, 84-30, 84-31, 84-32, 84-33, 84-34, 84-35, 84-36, 84-37, 84-38, 84-39, 84-40, 84-41, 84-42, 84-43, 84-45, 84-46, 84-47, 84-48, and 84-49, effective

January 1, 1985.

(4) Federal Food and Nutrition Service South East Regional Office (SERO) regulations supplement which sets forth federal policy clearances of federal regulations specified in subsection (1) of this section, effective July [April] 1, 1985.

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: July 2, 1985

FILED WITH LRC: July 3, 1985 at 11 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for August 21, 1985 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 16, 1985 of their desire to appear and testify at the hearing: R. Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler

(1) Type and number of entities affected: All households applying for or receiving food stamps.

(a) Direct and indirect costs or savings to those affected: Not significant

1. First year: Minimal

2. Continuing costs or savings: Unknown

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Minimal

(2) Effects on the promulgating administrative body: These revisions will keep the state's practices in compliance with federal requirements.

(a) Direct and indirect costs or savings: Minimal

1. First year: Minimal

2. Continuing costs or savings: Unknown

3. Additional factors increasing or decreasing costs: Unknown

(b) Reporting and paperwork requirements: Insignificant

(3) Assessment of anticipated effect on state and local revenues: No significant impact on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Changes are in compliance with federal requirements.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. Not applicable to these changes as federal requirements mandate uniform statewide implementation/application of policies.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Field Services
(Proposed Amendment)

905 KAR 1:180. DSS policy and procedures manual.

RELATES TO: KRS 194.030(8), 194.060, 199.011 to 199.375, 199.420 to 199.990, 200.080 to 200.120, 205.201 to 205.204, 205.455 to 205.465, Chapters 208 and 209

PURSUANT TO: KRS 194.050, 199.420, 200.080, 209.030

NECESSITY AND FUNCTION: P.L. 97-35, "Block Grants for Social Services--Title XX," authorizes grants to states for social services. KRS 194.050 authorizes the Cabinet for Human Resources to adopt such rules and regulations as are necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. The function of this manual is to implement a statewide social services program.

Section 1. DSS Policies and Procedures Manual. For the purpose of implementing and enforcing those sections of the Kentucky Revised Statutes relating to social service programs for children and adults that apply to the Department for Social Services, the Secretary of the Cabinet for Human Resources hereby adopts, by reference, the Department for Social Services' Policy and Procedural Manual as revised through June 18, 1985 [August 15, 1984], as the current policies and procedures of that department. The manual contains policies and procedures relating to management procedures, adult services, support services, family and children's services, and youth services. The Department for Social Services' Policy and Procedures Manual may be reviewed in any departmental field office located in each of the 120 counties or at the Office of the Commissioner, Department for Social Services, 275 East Main Street, Frankfort, Kentucky, during regular working hours.

Section 2. Summary of Amendment. Chapter IV, Family and Children's Services, Section A, Child Protective Services, strike pages 24-37 and DSS-150 and insert pages 24-37 and DSS-150 dated 7/85, which transmits a new form to permit inclusion of perpetrators in the Central Registry if the report is substantiated and instructions for completing the form. [(1) Strike Manual Index dated 5/84 and substitute in lieu thereof Manual Index dated 8/84 which updates the Manual Index.]

[(2) Chapter I, Management Procedures, Section B, Intake, Assessment and Registration, strike pages 11, 12, 13 and 14 dated 8/84 which update procedural instructions for the DSS-1A, client registration, to reflect changes in income eligibility.]

[(3) Chapter II, Adult Services, Section B, Alternate Care, strike pages 11 and 12 dated 5/84 and substitute in lieu thereof pages 11 and 12 dated 8/84 which change from two (2) days to ten (10) days from the date of decertification for a resident of a long-term care facility to

request reconsideration and deletes the definition of hardship recommendations.]

[(4) Chapter IV, Family and Children's Services, Section A, Child Protective Services, strike pages 14 and 15 dated 6/81 and substitute in lieu thereof pages 14 and 15 dated 8/84 which set forth the criteria for handling reports of suspected abuse/neglect in CHR facilities.]

[(5) Chapter IV, Family and Children's Services, Section B, Commitment and Termination, strike page 13 dated 3/82, page 14 dated 5/84 and page 15 dated 3/82 and substitute in lieu thereof pages 13, 14, 15 and 15a dated 8/84 which clarify age of majority; requires consideration of a guardian or conservator for physically/mentally handicapped youth six (6) months prior to age of majority; establishes priorities for recruiting guardians; prohibits administrators of long-term care facilities in which the youth reside from being guardian or conservator; provides a model letter to be used to notify the court that the department intends to release a child from commitment; and provides a model letter to be used to notify the court that a child has been releases from commitment.]

[(6) Chapter V, Youth Services, add Section D, Residential Tracking System, pages 1 through 9 dated 8/84 and for DSS-203 dated 9/82 which contain procedural instructions for the completion of DSS-203 which is designed to identify all youth participating in residential services programs.]

[(7) These changes update the DSS Policy and Procedural Manual used by staff of the Department for Social Services to provide services for clients.]

ANNA GRACE DAY, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 10, 1985
FILED WITH LRC: July 12, 1985 at 9 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 21, 1985 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by August 16, 1985: R. Hughes Walker, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Margaret Hockensmith
(1) Type and number of entities affected: Field offices in every county.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. All staff operate by the same policies and procedures.

PROPOSED REGULATIONS RECEIVED THROUGH JULY 15

FINANCE AND ADMINISTRATION CABINET
Board of Registration for Professional Engineers and Land Surveyors

201 KAR 18:150. Standards of practice.

RELATES TO: KRS 322.020, 322.290
PURSUANT TO: KRS 322.290(2)(f)
NECESSITY AND FUNCTION: To promulgate standards of practice for land surveyors in Kentucky.

Section 1. The land surveyor and the general public must understand that a land survey does not establish land ownership. Such a function is the purview of the courts. The land surveyor does perform the important service of marking on the ground what, in his opinion, the Deed of Conveyance purports to transfer. In fact, the land surveyor's marks on the ground constitute the actual survey. Field notes, drawings and descriptions are merely the written record of the land surveyor's work. This minimum standard of practice is to govern surveying in the Commonwealth of Kentucky as defined by KRS Chapter 322 and any document purporting to represent a survey must conform to these minimum standards. Any failure to comply with these standards on the part of a practitioner shall constitute misconduct, gross negligence or incompetence in the practice of land surveying.

Section 2. Research. The land surveyor shall obtain the necessary land records including adjoiner's deeds to insure that the proper description of the land to be surveyed has been obtained. The land surveyor shall have the additional responsibility to utilize any other available data pertinent to the survey being performed from any other source that is known to them. Evidence divulged by the field survey shall be carefully compared with the completed research in order to establish the boundaries of the land being surveyed. Research as required herein is solely intended for the location of

land boundaries and does not include the determination of title or encumbrances.

Section 3. Measurement Specifications. Based upon consultation with the client and their knowledge of local regulations, requirements and conditions, the land surveyor shall determine the appropriate precision required for the subject survey. Upon completion of the survey, the precision of the actual survey shall be related to the positional tolerance of location of any point/monument incorporated into the survey.

Section 4. (1) Positional tolerance is defined as the maximum distance that any point/monument of the survey may be mislocated with respect to any other point/monument as opposed to its theoretical location, by state-of-the-art equipment, given the location of any one point/monument and the determination of the meridian used for the survey. It represents the radius in feet, from the theoretically correct point.

(2) The relative precision shall meet or exceed the following: The true horizontal distance between two (2) points whose positions are stated relative to each other, whether directly or indirectly by calculation, shall not differ from the reported distance by more than 1 part in 2,500 plus 0.10 feet (this standard shall become 1 part in 5,000 plus 0.10 feet as of July 1, 1985).

Section 5. (1) Monumentation. Every land survey shall be monumented or witness monumented at all boundary corner locations. Every monument set by a land surveyor shall be of a substantial size and shall be made of durable materials and should include an element that makes it possible to detect the monument by means of some device for finding ferrous or magnetic objects. All monuments set by a land surveyor shall bear their registration number on a metallic cap or identifier.

(2) Existing permanent man-made or natural features are acceptable monuments. Some permanent man-made or natural features are subject to change, realignment or misinterpretation. Such monuments or features shall be "witness monumented."

(3) "Witness monumentation" refers to the setting of an offset monument when it is not possible or practicable to set the actual corner. Whenever witness monumentation is used, it should be placed "on line" if possible and shall be shown on plats and called for in descriptions.

Section 6. (1) Documentation (descriptions, plats, etc.). The monuments noted and left by the land surveyor constitute the actual survey. However, descriptions and plats of survey are the most frequent written records of the survey given the dignity of publication and recordation.

(2) Descriptions. Any description written by a land surveyor for the purpose of defining land boundaries shall be complete and accurate and be based upon the completed field survey. All descriptions shall contain the following details:

(a) Location in reference to a major physical feature or primary control network;

(b) Reference to its source of title;

(c) Metes and bounds of the tract shall be given in order;

(d) Objects or monuments marking the corners shall be described, and if any boundary follows some prominent feature of the terrain, the fact shall be stated;

(e) Calculated area of the tract.

(3) Plats of survey. All final plats of surveys prepared in the Commonwealth of Kentucky must be drawn to scale on durable, dimensionally stable media and clearly contain the following information:

(a) The direction and length of each line. Geometrically curved lines must be identified with sufficient curve data to define the curve.

(b) The area of the land being surveyed.

(c) A description of all the monuments including a notation as to whether found or set.

(d) At least one (1) corner referenced to a corner of the parent tract, or durable physical object, or a primary control network (i.e., state plane coordinates).

(e) Names or roads, and adjoiners and/or subdivision lot designations and title references if discovered in the course of performing the survey.

(f) Encroachments discovered in the course of the survey.

(g) A north point or reference meridian.

(h) A vicinity map of sufficient detail to find the land being surveyed, unless the location of the subject property is definitely shown by the plat itself.

(i) A statement as to whether or not the directions and distances as shown on the plat have been adjusted for closure.

(j) A statement as to the basis of the reference meridian used to determine the directions of survey lines. If a magnetic meridian is used, this meridian should be related to objects not effected by this survey.

(k) The dated signature and seal of the land surveyor responsible for the survey.

(l) Written and graphic scale.

(m) A title block containing the following:

1. Title of the survey.
2. Location of the land being surveyed.
3. Name and address of the land surveyor or the surveying firm.
4. Name and address of client.

An example of an acceptable plat of survey is incorporated by reference hereto.

Section 7. (1) Miscellaneous. Preliminary plats and/or other non-recordable documents - All preliminary plats or other non-recordable documents shall be marked as to their intended use. These documents should not be sealed, example markings would be "PRELIMINARY - NOT FOR RECORDING OR LAND TRANSFER."

(2) Partial surveys - When a client desires only a portion of his property surveyed, and this portion can be clearly isolated from the remainder of the property without affecting the interests of adjoining owners, these standards shall apply to the survey of only the desired portion. The remainder of a tract, out of which a portion has been surveyed, may be shown on a plat of the portion surveyed out for identification purposes only, and any subsequent description of that remainder requires a separate survey of that remainder in order to prepare such description.

LARRY S. PERKINS, Executive Director
APPROVED BY AGENCY: January 31, 1984
FILED WITH LRC: July 12, 1985 at 10 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 27, 1985, at 1:30 p.m. at Kentucky Engineering Center located at Route 3, Millville Road, Frankfort, Kentucky. Those interested in attending this hearing shall contact: Larry S. Perkins, Executive Director, State Board of Registration for Professional Engineers and Land Surveyors, Route 3, 96-5, Millville Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Larry S. Perkins
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected: N/A
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: N/A
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. The impact of the regulation will affect all land surveyors equally.

DEPARTMENT OF AGRICULTURE
State Board of Agriculture

302 KAR 34:040. Receivership of grain of involvent dealers and warehousemen.

RELATES TO: KRS 251.680, 251.700
PURSUANT TO: KRS 251.700
NECESSITY AND FUNCTION: To clarify the role of the Department of Agriculture in protecting stored grain in the event of a grain dealer insolvency.

Section 1. In the event of an insolvency at a grain dealer/warehouse the Commissioner of the Kentucky Department of Agriculture may take special receivership of any grain found at the facility to insure that the grain is not lost through theft, weather, etc. The department may sell the grain and place the money in escrow for the benefit of the owners at such time as the owners are determined.

DAVID E. BOSWELL, Commissioner
APPROVED BY AGENCY: June 21, 1985
FILED WITH LRC: June 27, 1985 at 2 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on the regulation will be held on August 22, 1985, at 10 a.m. in Room 713 of the Capital Plaza Tower. Those interested in attending this hearing shall contact: Thomas M. Troth, General Counsel, Department of Agriculture, Room 705, Capital Plaza Tower, Frankfort, Kentucky 40601. Unless written notification of intent to attend a public hearing is received by the promulgating agency at least five (5) days before the hearing date, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Tom Dowler
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected: None
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: N/A
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: N/A
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: This method is the most feasible.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. Applies evenly throughout the industry.

TRANSPORTATION CABINET
Office of Personnel Management

600 KAR 1:045. Disciplinary and separation procedures.

RELATES TO: KRS Chapters 13A and 18A, 174.080
PURSUANT TO: KRS 12.080, 13A.100, 174.080
NECESSITY AND FUNCTION: KRS 174.080 allows the Secretary of the Transportation Cabinet to promulgate administrative regulations. KRS 13A.100 requires any administrative body which is empowered to promulgate administrative regulations to prescribe the disciplinary procedures within the jurisdiction of the

administrative body. This regulation is necessary to define and prescribe such disciplinary procedures within the Transportation Cabinet.

Section 1. Signatory Authority for Suspensions, Fines, and Dismissals. In the case of a proposed suspension, fine, or dismissal of a Transportation Cabinet employee, the employee's division, office or district will prepare the required letter of notification advising the employee of his suspension, fine, or dismissal for the signature of the Executive Director of the Office of Personnel Management. After the signature of the executive director has been obtained, notification letters to central office employees will be returned to the division, or office for delivery to the employee. For district office employees, notification letters will be delivered or mailed to the employee by the Office of Personnel Management.

Section 2. Signatory Authority for Written Reprimand. (1) Central office. In the case of a proposed written reprimand for an employee of the central office, the employee's division or office will prepare the written reprimand for the signature of the Executive Director of the Office of Personnel Management. After the signature of the executive director has been obtained, the letter will be returned to the division or office for delivery to the employee.

(2) District office. The approval of the Executive Director of the Office of Personnel Management must be obtained prior to the delivery of the written reprimand to the employee. The chief district engineer of the employee's district shall sign the letter of reprimand of a district office employee.

Section 3. Responsibility of the Immediate Supervisor. The immediate supervisor will report employee delinquency, misconduct or incompetency in accordance with procedures established in this regulation. The supervisor who fails to report employees who violate the policies and procedures of the Transportation Cabinet or the provisions of the personnel laws and regulations because of friendship or other personal reasons, or because he does not agree with the regulations or the disposition of certain similar cases, is evading his responsibility and may be disciplined.

Section 4. Disciplinary Procedures. (1) Employee incident reports. If an employee commits an act which involves delinquency, misconduct, incompetency or other unacceptable behavior, or violates the policies and procedures of the Transportation Cabinet or the provisions of the personnel laws and regulations, the employee's supervisor shall complete an employee incident report. The supervisor shall, if possible, obtain the employee's signature on the employee incident report indicating that the employee has seen the report and has received a copy. The supervisor shall then given copies of the report to the employee, to the Office of Personnel Management and to the chief district engineer, division director or office head.

(2) Investigations. The chief district engineer, office head or division director may, upon receipt of an employee incident report, investigate the allegations contained therein or appoint another individual or committee to investigate the allegations. If an investigation is undertaken, a copy of any report which may be made as a result of the investigation shall be sent to the Office of Personnel Management.

(3) Recommendations. After receipt of an employee incident report, the chief district engineer, division director or office head may recommend to the Executive Director of the Office of Personnel Management that disciplinary action be taken against the employee in accordance with the procedures outlined in this regulation. In the event that no disciplinary action is taken as a result of the employee incident report, the report will be equivalent to an oral warning to the employee.

Section 5. Layoffs. The Transportation Cabinet must prepare and submit a layoff plan to the Commissioner of Personnel for approval prior to separation by layoff. The Office of Personnel Management is responsible for coordinating the preparation of the layoff plan and will submit the plan to the Department of Personnel for approval. The Executive Director of the Office of Personnel Management shall notify the employee of his layoff in accordance with 101 KAR 1:120, Section 2.

Section 6. Dismissals. (1) Dismissals shall be governed by 101 KAR 1:120, Section 3. The notification of dismissal shall either be hand-delivered to the employee at least ten (10) working days prior to the effective date of dismissal, or sent to him by certified mail at least thirteen (13) working days prior to the effective date of dismissal.

(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 Secretary of Transportation or his deputy. An employee who desires to respond to the charges in writing or requests to appear personally will be advised to submit his written response or request to appear to the Executive Director of the Office of Personnel Management. All written responses to the charges or requests to appear personally will be responded to by the Executive Director of the Office of Personnel Management on behalf of the Secretary, Transportation Cabinet.

Section 7. Resignation. An employee who desires to terminate his service with the state by resignation shall be governed by 101 KAR 1:120, Section 5. A Transportation Cabinet employee's written resignation shall be submitted to the employee's chief district engineer, office head or division director. A written notice of resignation signed by the employee or the party accepting his resignation is required. If no written notice of resignation is submitted, but resignation is indicated by the employee through absenteeism or other such acts, disciplinary action will be taken against the employee.

Section 8. Transfers. All transfers shall be

governed by 101 KAR 1:110, Section 2.

(1) In-county transfers. The Executive Director of the Office of Personnel Management may permanently transfer employees within the same county in accordance with 101 KAR 1:110, Section 2.

(2) Involuntary, out-of-county transfers. The Executive Director of the Office of Personnel Management shall notify Transportation Cabinet employees of involuntary, out-of-county transfers in accordance with 101 KAR 1:110, Section 2.

(3) Temporary transfers. In the district offices, the chief district engineer may make temporary transfers (assignments) in accordance with 101 KAR 1:110, Section 2. For all other Transportation Cabinet employees, the Executive Director of the Office of Personnel Management shall notify employees of their temporary transfers (assignments) in accordance with 101 KAR 1:110, Section 2.

Section 9. Demotion. The Executive Director of the Office of Personnel Management shall notify Transportation Cabinet employees of demotions in accordance with 101 KAR 1:110, Section 3.

Section 10. Non-Merit Employees. The signatory authority for disciplinary and personnel actions concerning non-merit Transportation Cabinet employees shall be the same as for the corresponding disciplinary and personnel actions concerning merit Transportation Cabinet employees outlined in this regulation. Disciplinary and personnel actions concerning non-merit Transportation Cabinet employees shall be undertaken in accordance with personnel laws and regulations.

Section 11. 600 KAR 1:040 is hereby repealed.

C. LESLIE DAWSON, Secretary
APPROVED BY AGENCY: June 25, 1985
FILED WITH LRC: June 25, 1985 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public comment hearing on this proposed administrative regulation will be held on August 27, 1985 at 1:30 p.m., local prevailing time in the fourth floor hearing room of the State Office Building, corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by August 22, 1985 so notify: Rusty Cheuvront, Assistant to the Secretary, Transportation Cabinet, State Office Building, Frankfort, Kentucky 40602.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Rusty Cheuvront
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative was to keep 600 KAR 1:040. As the Transportation Cabinet's policy has changed with the appointment of Secretary Dawson, the regulation which sets out the disciplinary procedures affected by that policy must also be changed. If the Transportation Cabinet were to keep 600 KAR 1:040, but follow the new policy, its actions would be in violation of KRS Chapter 13A and its new policy would be ineffective.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None. This regulation contains the procedures of the Transportation Cabinet which are not promulgated in any other statute or regulation.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: This regulation is filed so that the Transportation Cabinet will remain in compliance with KRS 13A.100 in its disciplinary actions.

Tiering:
Was tiering applied? No. All Transportation Cabinet employees should be treated the same.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Vocational Education

705 KAR 4:210. Diploma requirements for postsecondary students.

RELATES TO: KRS 163.030
PURSUANT TO: KRS 156.070, 163.030
NECESSITY AND FUNCTION: KRS 163.030 gives the State Board of Education all necessary power and authority in administering the state's vocational education programs. This regulation is necessary in order to set a statewide standard for awarding diplomas to postsecondary students in the state's vocational-technical schools.

Section 1. The following requirements shall be met before a diploma is awarded to a postsecondary vocational education student. Each applicant must:
(1) Hold a high school diploma or meet GED requirements;
(2) Meet the academic requirements as measured by the California Test of Basic Skills or Test of Adult Basic Education as specified in 709 KAR 1:070;
(3) Complete one (1) course each in the areas of study skills, computer literacy, economics, and employability skills, or have demonstrated competence in each such area;
(4) Complete the tasks for a major set forth on the Dictionary of Occupational Titles, provided such is designated as a diploma exit point in one of the postsecondary vocational programs as defined in the "Office of Education

DOT Cross Reference" prepared by the Program Services Division and distributed on November 21, 1984. Said document is hereby incorporated by reference, and a copy of such may be obtained from the Occupational Management Information Unit in the Office of Vocational Education; and

(5) Pass a written occupational achievement test prepared by the Office of Vocational Education and validated by Kentucky vocational teachers for the particular occupational program. The test shall be normed using scores from Kentucky students.

Section 2. Students may take the occupational achievement test after verification by the instructor that the student has successfully demonstrated shop or laboratory performance, technical knowledge, attitude and conduct. Students who fail to pass the occupational achievement test may retake the test at the next testing period, remain enrolled for additional instruction, or terminate enrollment and accept a certificate of completion. Students who elect to retake the test may only be retested one (1) time without additional instruction or related work experience.

Section 3. Clear and specific notice of diploma requirements and of levels of satisfactory achievement shall be disseminated to each student upon entrance into a vocational program.

Section 4. These regulations shall apply to postsecondary students entering vocational programs August 1, 1985, and thereafter.

ALICE McDONALD, Superintendent
APPROVED BY AGENCY: July 2, 1985
FILED WITH LRC: July 5, 1985 at noon.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on August 30, 1985, at 9 a.m., EDT, in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its July meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 25, 1985. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Audrey Carr
(1) Type and number of entities affected: 17 SVTS and 5 Postsecondary Health facilities.
(a) Direct and indirect costs or savings to those affected: N/A
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body: N/A
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Little if any change in reporting/paperwork requirements.
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. N/A

CABINET FOR HUMAN RESOURCES
Department for Social Services
Children's Residential Services

905 KAR 7:110. Northern Kentucky Treatment Center Policy and Procedures Manual.

RELATES TO: KRS Chapters 202A and 208
PURSUANT TO: KRS 194.050
NECESSITY AND FUNCTION: P.L. 97-35, Subpart C, "Social Services Block Grant - Title XX" authorizes grants to states for the provision of social services. KRS 194.050 authorizes the Cabinet for Human Resources to adopt such rules and regulations as are necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. The function of this regulation is to implement a program for the care and treatment of children who are delinquent. status offenders and mentally ill or emotionally disturbed.

Section 1. Residential Facility Manual. The Cabinet for Human Resources hereby adopts by reference as operating policies and procedures the Northern Kentucky Treatment Center Policies and Procedures Manual as revised through March 1, 1985. This manual sets forth the policies and procedures for the care and treatment of juveniles residing in the Northern Kentucky Treatment Center. This manual may be reviewed during regular working hours at the Office of the Commissioner, Department for Social Services, 275 East Main Street, Frankfort, Kentucky.

ANNA GRACE DAY, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 10, 1985
FILED WITH LRC: July 12, 1985 at 9 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 21, 1985, at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by August 16, 1985: R. Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Margaret Hockensmith
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected: None - Manuals presently in effect.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None - Manuals presently in effect.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. Manual applies to only one facility.

CABINET FOR HUMAN RESOURCES
Department for Social Services
Children's Residential Services

905 KAR 7:120. Lake Cumberland Boys' Camp Policy and Procedural Manual.

RELATES TO: KRS Chapter 208
PURSUANT TO: KRS 194.050
NECESSITY AND FUNCTION: P.L. 97-35, Subpart C, "Social Services Block Grant - Title XX" authorizes grants to states for the provision of social services. KRS 194.050 authorizes the Cabinet for Human Resources to adopt such rules and regulations as are necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. The function of this regulation is to implement a program for the care and treatment of children who are delinquent.

Section 1. Residential Facility Manual. The Cabinet for Human Resources hereby adopts by reference as operating policies and procedures the Lake Cumberland Boys' Camp Policy and Procedural Manual revised through May 11, 1984. This manual sets forth the policies and procedures for the care and treatment of juveniles residing in Lake Cumberland Boys' Camp. This manual may be reviewed during regular working hours at the Office of the Commissioner, Department for Social Services, 275 East Main Street, Frankfort, Kentucky.

ANNA GRACE DAY, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 10, 1985
FILED WITH LRC: July 12, 1985 at 9 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 21, 1985, at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by August 16, 1985: R. Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Margaret Hockensmith
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected: None - Manuals presently in effect.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None - Manuals presently in effect.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. Manual applies to only one facility.

CABINET FOR HUMAN RESOURCES
Department for Social Services
Children's Residential Services

905 KAR 7:130. Morehead Treatment Center Policy Manual.

RELATES TO: KRS Chapter 208
PURSUANT TO: KRS 194.050
NECESSITY AND FUNCTION: P.L. 97-35, Subpart C, "Social Services Block Grant - Title XX" authorizes grants to states for the provision of social services. KRS 194.050 authorizes the Cabinet for Human Resources to adopt such rules and regulations as are necessary to implement

programs mandated by federal law, or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. The function of this regulation is to implement a program for the care and treatment of children who are delinquent.

Section 1. Residential Facility Manual. The Cabinet for Human Resources hereby adopts by reference as operating policies and procedures the Morehead Treatment Center Policy Manual dated 1983. This manual sets forth the policies and procedures for the care and treatment of juveniles residing in the Morehead Treatment Center. This manual may be reviewed during regular working hours at the Office of the Commissioner, Department for Social Services, 275 East Main Street, Frankfort, Kentucky.

ANNA GRACE DAY, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 10, 1985
FILED WITH LRC: July 12, 1985 at 9 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 21, 1985, at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by August 16, 1985: R. Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Margaret Hockensmith
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected: None - Manuals presently in effect.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None - Manuals presently in effect.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. Manual applies to only one facility.

CABINET FOR HUMAN RESOURCES
Department for Social Services
Children's Residential Services

905 KAR 7:140. Central Kentucky Treatment Center Policy Manual.

RELATES TO: KRS Chapter 208
PURSUANT TO: KRS 194.050
NECESSITY AND FUNCTION: P.L. 97-35, Subpart C, "Social Services Block Grant - Title XX" authorizes grants to states for the provision of social services. KRS 194.050 authorizes the Cabinet for Human Resources to adopt such rules and regulations as are necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. The function of this regulation is to implement a program for the care and treatment of children who are delinquent.

Section 1. Residential Facility Manual. The Cabinet for Human Resources hereby adopts by reference as operating policies and procedures the Central Kentucky Treatment Center Policy Manual dated 1983. This manual sets forth the policies and procedures for the care and treatment of juveniles residing in the Central Kentucky Treatment Center. This manual may be reviewed during regular working hours at the Office of the Commissioner, Department for Social Services, 275 East Main Street, Frankfort, Kentucky.

ANNA GRACE DAY, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 10, 1985
FILED WITH LRC: July 12, 1985 at 9 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 21, 1985, at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by August 16, 1985: R. Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Margaret Hockensmith
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected: None - Manuals presently in effect.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None - Manuals presently in effect.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state

and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. Manual applies to only one facility.

CABINET FOR HUMAN RESOURCES
Department for Social Services
Children's Residential Services

905 KAR 7:150. Green River Boys' Camp Policy Manual.

RELATES TO: KRS Chapter 208
PURSUANT TO: KRS 194.050
NECESSITY AND FUNCTION: P.L. 97-35, Subpart C, "Social Services Block Grant - Title XX" authorizes grants to states for the provision of social services. KRS 194.050 authorizes the Cabinet for Human Resources to adopt such rules and regulations as are necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. The function of this regulation is to implement a program for the care and treatment of children who are delinquent.

Section 1. Residential Facility Manual. The Cabinet for Human Resources hereby adopts by reference as operating policies and procedures the Green River Boys' Camp Policy and Procedures Manual revised through May 11, 1984. This manual sets forth the policies and procedures for the care and treatment of juveniles residing in Green River Boys' Camp. This manual may be reviewed during regular working hours at the Office of the Commissioner, Department for Social Services, 275 East Main Street, Frankfort, Kentucky.

ANNA GRACE DAY, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 10, 1985
FILED WITH LRC: July 12, 1985 at 9 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 21, 1985, at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by August 16, 1985: R. Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Margaret Hockensmith
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected: None - Manuals presently in effect.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None - Manuals presently in effect.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. Manual applies to only one facility.

CABINET FOR HUMAN RESOURCES
Department for Social Services
Children's Residential Services

905 KAR 7:160. Woodsbend Boys' Camp Policies and Procedures Manual.

RELATES TO: KRS Chapter 208
PURSUANT TO: KRS 194.050
NECESSITY AND FUNCTION: P.L. 97-35 , Subpart C., "Social Services Block Grant - Title XX" authorizes grants to states for the provision of social services. KRS 194.050 authorizes the Cabinet for Human Resources to adopt such rules and regulations as are necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. The function of this regulation is to implement a program for the care and treatment of children who are delinquent.

Section 1. Residential Facility Manual. The Cabinet for Human Resources hereby adopts by reference as operating policies and procedures the Woodsbend Boys' Camp Policies and Procedures Manual revised through May 11, 1984. This manual sets forth the policies and procedures for the care and treatment of juveniles residing in Woodsbend Boys' Camp. This manual may be reviewed during regular working hours at the Office of the Commissioner, Department for Social Services, 275 East Main Street, Frankfort, Kentucky.

ANNA GRACE DAY, Commissioner

E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 10, 1985
FILED WITH LRC: July 12, 1985 at 9 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 21, 1985, at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by August 16, 1985: R. Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Margaret Hockensmith
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected: None - Manuals presently in effect.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None - Manuals presently in effect.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. Manual applies to only one facility.

CABINET FOR HUMAN RESOURCES
Department for Social Services
Children's Residential Services

905 KAR 7:170. Cardinal Treatment Center Policy and Procedural Manual.

RELATES TO: KRS Chapter 208
PURSUANT TO: KRS 194.050
NECESSITY AND FUNCTION: P.L. 97-35 , Subpart C., "Social Services Block Grant - Title XX" authorizes grants to states for the provision of social services. KRS 194.050 authorizes the Cabinet for Human Resources to adopt such rules and regulations as are necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. The function of this regulation is to implement a program for the care and treatment of children who are delinquent.

Section 1. Residential Facility Manual. The Cabinet for Human Resources hereby adopts by reference as operating policies and procedures the Cardinal Treatment Center Policy and Procedural Manual revised through June 1, 1985. This manual sets forth the policies and procedures for the care and treatment of juveniles residing in Cardinal Treatment Center. This manual may be reviewed during regular working hours at the Office of the Commissioner, Department for Social Services, 275 East Main Street, Frankfort, Kentucky.

ANNA GRACE DAY, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 10, 1985
FILED WITH LRC: July 12, 1985 at 9 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 21, 1985, at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by August 16, 1985: R. Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Margaret Hockensmith
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected: None-Manuals presently in effect.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None-Manuals presently in effect.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. Manual applies to only one facility.

CABINET FOR HUMAN RESOURCES
Department for Social Services
Children's Residential Services

905 KAR 7:180. Rice-Audubon Policy and Procedural Manual.

RELATES TO: KRS Chapter 208
PURSUANT TO: KRS 194.050
NECESSITY AND FUNCTION: P.L. 97-35 , Subpart C., "Social Services Block Grant - Title XX" authorizes grants to states for the provision of social services. KRS 194.050 authorizes the Cabinet for Human Resources to adopt such rules and regulations as are necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. The function of this regulation is to implement a program for the care and treatment of children who are delinquent.

Section 1. Residential Facility Manual. The Cabinet for Human Resources hereby adopts by reference as operating policies and procedures the Rice-Audubon Policy and Procedural Manual revised through May 11, 1984. This manual sets forth the policies and procedures for the care and treatment of juveniles residing in the Rice-Audubon Treatment Center. This manual may be reviewed during regular working hours at the Office of the Commissioner, Department for Social Services, 275 East Main Street, Frankfort, Kentucky.

ANNA GRACE DAY, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 10, 1985
FILED WITH LRC: July 12, 1985 at 9 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 21, 1985, at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by August 16, 1985: R. Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Margaret Hockensmith
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected: None-Manuals presently in effect.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None-Manuals presently in effect.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. Manual applies to only one facility.

CABINET FOR HUMAN RESOURCES
Department for Social Services
Children's Residential Services

905 KAR 7:190. Lincoln Village Policy and Procedurals Manual.

RELATES TO: KRS Chapter 208
PURSUANT TO: KRS 194.050
NECESSITY AND FUNCTION: P.L. 97-35, Subpart C, "Social Services Block Grant - Title XX" authorizes grants to states for the provision of social services. KRS 194.050 authorizes the Cabinet for Human Resources to adopt such rules and regulations as are necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. The function of this regulation is to implement a program for the care and treatment of children who are delinquent.

Section 1. Residential Facility Manual. The Cabinet for Human Resources hereby adopts by reference as operating policies and procedures the Lincoln Village Policy and Procedures Manual dated September 15, 1983. This manual sets forth the policies and procedures for the care and treatment of juveniles residing in the Lincoln Village Treatment Center. This manual may be reviewed during regular working hours at the Office of the Commissioner, Department for Social Services, 175 East Main Street, Frankfort, Kentucky.

ANNA GRACE DAY, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 11, 1985
FILED WITH LRC: July 15, 1985 at noon
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 21, 1985, at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in atending this hearing shall notify in writing the following office by August 16, 1985: Hughes Walker, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Margaret Hockensmith
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to

those affected: None--Manuals presently in effect.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None--Manuals presently in effect.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. Manual applies to only one facility.

CABINET FOR HUMAN RESOURCES
Department for Social Services
Children's Residential Services

905 KAR 7:200. Re-Ed Treatment Policy/Procedural Manuals.

RELATES TO: KRS Chapters 202A and 208
PURSUANT TO: KRS 194.050
NECESSITY AND FUNCTION: P.L. 97-35 , Subpart C., "Social Services Block Grant - Title XX" authorizes grants to states for the provision of social services. KRS 194.050 authorizes the Cabinet for Human Resources to adopt such rules and regulations as are necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. The function of this regulation is to implement a program for the care and treatment of children who are delinquent, status offenders and mentally ill or emotionally disturbed.

Section 1. Residential Facility Manual. The Cabinet for Human Resources hereby adopts by reference as operating policies and procedures the Re-Ed Treatment Program Policy/Procedural Manuals, Chapters II, III, and IV revised through October 1, 1984. This manual sets forth the policies and procedures for the care and treatment of children in the Re-Ed Program. This manual may be reviewed during regular working hours at the Office of the Commissioner, Department for Social Services, 275 East Main Street, Frankfort, Kentucky.

ANNA GRACE DAY, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 10, 1985
FILED WITH LRC: July 12, 1985 at 9 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 21, 1985, at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by August 16, 1985: R. Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Margaret Hockensmith
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected: None-Manuals presently in effect.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None-Manuals presently in effect.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. Manual applies to only one facility.

CABINET FOR HUMAN RESOURCES
Department for Social Services
Children's Residential Services

905 KAR 7:210. Central Kentucky Re-Ed Center Policy and Procedural Manual.

RELATES TO: KRS Chapters 202A and 208
PURSUANT TO: KRS 194.050
NECESSITY AND FUNCTION: P.L. 97-35 , Subpart C., "Social Services Block Grant - Title XX" authorizes grants to states for the provision of social services. KRS 194.050 authorizes the Cabinet for Human Resources to adopt such rules and regulations as are necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. The function of this regulation is to

implement a program for the care and treatment of children who are delinquent, status offenders and mentally ill or emotionally disturbed.

Section 1. Residential Facility Manual. The Cabinet for Human Resources hereby adopts by reference as operating policies and procedures the Central Kentucky Re-Ed Center Policy and Procedural Manual revised through October 1, 1984. This manual sets forth the policies and procedures for the care and treatment of children in the Central Kentucky Re-Ed Program. This manual may be reviewed during regular working hours at the Office of the Commissioner, Department for Social Services, 275 East Main Street, Frankfort, Kentucky.

Section 2. Repeal. 905 KAR 7:030, Children's Residential Services Facilities Manuals, is hereby repealed and the manuals attached to that regulation cited by the name of the manual.

ANNA GRACE DAY, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 10, 1985
FILED WITH LRC: July 12, 1985 at 9 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 21, 1985, at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by August 16, 1985: R. Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Margaret Hockensmith
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected: None-Manuals presently in effect.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None-Manuals presently in effect.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. Manual applies to only one facility.

REPRINT

COMPILER'S NOTE: 401 KAR 5:026 is being reprinted to correct a typographical error by the Compiler's office. The Cabinet proposed to delete Section 8 as indicated on page 1132 of the February 1985 Administrative Register. In the subsequent publication of the regulation on page 1372 of the April 1985 Register, the brackets reflecting the proposed deletion of Section 8 were inadvertently omitted. There is no indication in the Compiler's records that the agency intended to change the original version submitted with respect to that section.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Amended After Hearing)

401 KAR 5:026. Classification of waters.

RELATES TO: KRS 224.020, 224.060
PURSUANT TO: KRS 224.033(17)
NECESSITY AND FUNCTION: This regulation applies the use classifications found in Sections 4, 5, 6, and 7 of 401 KAR 5:031 to the surface waters of the Commonwealth. This regulation also makes all surface waters subject to the general criteria specified in Section 2 of 401 KAR 5:031.

Section 1. Classification to Designated Uses. Waters classified under this regulation shall be designated for all legitimate uses listed in KRS 224.020(1) except as specified in 401 KAR 5:031, Section 5. Until reclassified in accordance with the procedures of this regulation, the criteria which are indicated for these classifications shall be applicable in all cases unless otherwise ordered by the cabinet pursuant to 401 KAR 5:031, Section 8. Outstanding resource waters may have unique water quality characteristics which shall be maintained by additional criteria adopted pursuant to 401 KAR 5:031, Section 7.

Section 2. Reclassification. (1) The reclassification of waters of the Commonwealth which establishes a different classification than is established under this regulation shall be adopted only upon affirmative findings by the cabinet ursuant to Sections 5 and 6 of this regulation. Prior to adding or removing any use, the cabinet shall provide notice and an opportunity for a public hearing.
(2) In reclassifying any water body, the cabinet shall ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of

downstream waters.

(3) A use shall not be removed for a water body if that use is currently being attained, or if such uses will be attained by implementing effluent limitations required under 401 KAR 5:035 and 401 KAR 5:045 and by implementing cost-effective and reasonable best management practices for nonpoint source control.

(4) If a water body is designated for a more stringent use than is currently being attained, the cabinet shall reclassify the water body upon demonstration that the designated use is unattainable due to natural background; irretrievable person-induced conditions; or that existing "point" sources would have to be controlled beyond the most stringent effluent limitation levels required for such sources under 401 KAR 5:035 and 401 KAR 5:045 and imposition of such extra controls would result in substantial and widespread economic and social impact.

(5) Implementation of this section will be consistent with 401 KAR 5:029, Section 2.

Section 3. Priority for Implementation. Except as provided in subsection (4) of this section, the priorities for reclassification of the waters of the Commonwealth are:

(1) Waters receiving (or proposed to receive) discharges from publicly-owned treatment works and/or serving as public water supply sources in the following order of priority:

(a) Any local units of government with a pending public construction permit application for installation or upgrading of a sewage treatment plant and/or public water treatment plant.

(b) Any local units of government in the 201 Construction Grants Program for installation or upgrading of a sewage treatment plant, in an order of priority consistent with their priority project list rank.

(c) Any local units of government which request consideration prior to their entering into either their own construction project, a NPDES or KPDES permit action, or the 201 Construction Grants Program for installation or upgrading of a sewage treatment plant.

(d) Other local units of government.

(2) Waters receiving (or proposed to receive) discharges from any other (private or semi-public) treatment works, in the following order of priority:

(a) New NPDES or KPDES permit applicants or proposed NPDES or KPDES permit modifications to waterways which may potentially be classified for a beneficial use of cold-water aquatic habitat.

(b) All other segments with private or semi-public facilities, on a first-come, first-serve basis.

(3) All other surface waters which do not have any existing or proposed point source dischargers.

(4) These priorities may be varied in a particular case pursuant to an administrative hearing.

Section 4. Responsibility for Providing Documentation. The following entities are responsible for providing the documentation for the reclassification of the surface waters under this regulation. The required documentation is outlined in Section 5.

(1) The cabinet shall provide supporting documentation for the reclassification of waters on which are located (or proposed to be located) facilities which are either:

(a) Publicly-owned treatment works;

(b) Outstanding resource waters on publicly owned land; or

(c) New NPDES or KPDES permit applicants or proposed NPDES or KPDES permit modifications for waters which may potentially be classified for a beneficial use of outstanding resource waters.

(2) Any applicant filing for reclassification in circumvention of the priority system contained in Section 3 shall provide classification documentation for waters on which discharges from private or semi-public treatment works are located (or proposed to be located). In these cases the applicant sustains the burden of proof that the reclassification is appropriate and necessary.

(3) The cabinet shall provide documentation for all other waters which do not have any existing or proposed point source dischargers.

Section 5. Required Documentation. This section outlines the documentation which shall be required to support the reclassifications of surface waters of the Commonwealth as follows:

(1) A USGS 7.5 minute map will be prepared showing those waters or stream segments to be classified. A description consisting of a river mile index with existing and proposed discharge points.

(2) Existing uses and water quality data for the proposed waters or stream segments for which the reclassification is proposed. Where adequate data are unavailable, additional studies may be required by the cabinet.

(3) General land uses (e.g., mining, agricultural, recreation, low, medium, and high density residential commercial-industrial, etc.) as well as specific land uses adjacent to the waters for the length of the segment for which the reclassification is proposed.

(4) The existing and designated uses of the receiving waters into which the segment under consideration discharges and the downstream uses of those receiving waters.

(5) General physical characteristics of the stream segment including, but not limited to width, depth, bottom composition, and slope.

(6) The frequency of occasions when there is no natural flow in the segment, the low flow in the segment and low flow in adjacent segments.

(7) An assessment of the existing and potential aquatic life habitat in the stream segment under consideration and the adjacent upstream segment. The existing aquatic life in the area must be documented as well as an assessment of livestock and natural wildlife dependence upon the stream segment. The occurrence of individuals or populations, indices of diversity and well-being, and abundance of species of any unique native biota must be documented.

(8) The existing and proposed designated uses for the stream segment(s) in question.

(9) Information must be supplied pursuant to Section 2, specifically:

(a) An explanation of the irretrievable person-induced, or natural conditions which preclude attainment of a higher use designation;

or

(b) An assessment of the substantial and widespread social and economic impacts of additional controls necessary for existing point sources, beyond the most stringent effluent limitation levels normally required for such sources.

Section 6. Procedures for Reclassification. This section outlines the procedures by which use reclassifications will be assigned. Procedures for reclassification of a water of the Commonwealth shall be initiated and considered in the order of priority specified in Section 3 of this regulation.

(1) For each of the waters for which a reclassification is proposed, the cabinet or applicant as defined in Section 4(2) of this regulation, shall prepare a fact sheet containing, but not limited to, the following information:

(a) The name and address of the applicant;

(b) The name and sketch or description of the waters proposed for specified use classifications, including the location of existing and proposed dischargers;

(c) The proposed use classifications;

(d) A brief abstract of the supportive documentation which demonstrates that said classification is appropriate;

(e) The appropriate water quality criteria for the segment(s) based on the proposed designated use(s);

(f) The treatment requirements proposed for discharges to the waters in question if designated for the proposed use(s);

(g) A "plain English" summary of the implications of such designation for the community and other users or potential users of the waters in question;

(h) The procedure by which the designation will be made.

(2) Based upon all available information, the staff shall make its recommendation of use classifications of the waters in question to the secretary.

(3) The secretary shall cause to be prepared a list of segments and their classification to be published as an administrative regulation.

(4) Upon completing the review period and the procedures for promulgation under adminstrative rule making, all designated waters and their use classifications shall be listed in Section 7 of this regulation.

Section 7. Stream Use Classifications. (1) Listed in the tables below are the use classifications for specific waters of the Commonwealth. The County column indicates the county in which the mouth of the stream is located. The identifying symbols for use classifications are as follows:

WAH - Warmwater Aquatic Habitat
CAH - Coldwater Aquatic Habitat
PCR - Primary Contact Recreation
SCR - Secondary Contact Recreation
DWS - Domestic Water Supply (applicable at existing points of public water supply withdrawal)
ORW - Outstanding Resource Water

(2) Waters not specifically listed in this section are designated for the use of warmwater aquatic habitat, primarily contact recreation, secondary contact recreation and domestic water supply in accordance with Section 1 of this regulation.

(3) Exceptions to specific criteria listed to protect use classifications in 401 KAR 5:031 are shown in the tables of stream use classifications in this section. All other criteria in 401 KAR 5:031 applicable to the listed use classifications also apply to these streams.

[Section 8. The provisions of this regulation shall not be severable with 401 KAR 5:029, 401 KAR 5:031, and 401 KAR 5:035.]

(See table on following pages)

Stream	Zone	County	Use Classification	Exceptions to Specific Criteria
	BIG SANDY BASIN			
Hood Creek	Source to Wheeler Branch	Lawrence	CAH, PCR, SCR	
	LITTLE SANDY RIVER BASIN			
Big Caney Creek	Source to Grayson Lake	Elliott	CAH, PCR, SCR	
Laurel Creek	Source to Little Sandy River	Elliott	CAH, PCR, SCR	
	TYGARTS CREEK BASIN			
Buffalo Creek	Source to Tygarts Creek	Carter	WAH, PCR, SCR	
Little Whiteoak Creek	Source to Tygarts Creek	Greenup	WAH, PCR, SCR	
Tygarts Creek	Source to Ohio River	Greenup	WAH, PCR, SCR, DWS	
	LICKING RIVER BASIN			
Caney Creek	Source to North Fork Licking River	Rowan/Morgan	CAH, PCR, SCR	
Fleming Creek	Source to Licking River	Nicholas	WAH, PCR, SCR	
Slate Creek	Source to Licking River	Bath	WAH, PCR, SCR, DWS	
	KENTUCKY RIVER BASIN			
Chimney Top Creek	Basin	Wolfe	CAH, PCR, SCR	
East Fork Indian Creek	Source to Indian Creek	Menifee	CAH, PCR, SCR	
Gladie Creek	Basin	Menifee	CAH, PCR, SCR	
Middle Fork Red River	Source to River Mile 10.6	Powell	CAH, PCR, SCR	
Red River	River Mile 68.6 to River Mile 59.5	Menifee/Wolfe	WAH, PCR, SCR, ORW	
Silver Creek	Source to Kentucky River	Madison	WAH, PCR, SCR	
South Fork Elkhorn Creek	Source to North Fork Elkhorn Creek	Franklin	WAH, PCR, SCR	
Swift Camp Creek	Source to Red River	Wolfe	CAH, PCR, SCR	
Town Branch	Source to South Fork Elkhorn Creek	Fayette	WAH, PCR, SCR	
	SALT RIVER BASIN			
Chenoweth Run	Source to Floyds Fork	Jefferson	WAH, PCR, SCR	
Currys Fork	Conflucence of South and North Forks to Floyds Fork	Oldham	WAH, PCR, SCR	
Floyds Fork	Source to Salt River	Bullitt	WAH, PCR, SCR	
Mill Creek	Source to Salt River	Bullitt	WAH, PCR, SCR	
North Fork of Currys Fork	Source to South Fork of Currys Fork	Oldham	WAH, PCR, SCR	
Unnamed tributary to Mill Creek	Source to Mill Creek at River Mile 11.8	Bullitt	WAH, PCR, SCR	

Stream	Zone	County	Use Classification	Exceptions to Specific Criteria
		GREEN RIVER BASIN		
Beaver Dam Creek	Source to Green River	Edmonson	CAH, PCR, SCR	
Black Lick Creek	Source to Clear Fork	Logan	WAH, PCR, SCR, DWS	
Buffalo Creek	Source to Green River (in Mammoth Cave National Park	Edmonson	CAH, PCR, SCR	
Cypress Creek	Source to Pond River	McLean	WAH, PCR, SCR	
Gasper River	Source to Barren River	Warren	WAH, PCR, SCR	
Green River	River Mile 225.9 to River Mile 181.7	Edmonson/Hart	WAH, PCR, SCR, ORW	
Green River	River Mile 181.7 to River Mile 168.0	Edmonson/Warren	WAH, PCR, SCR, DWS	
Green River	River Mile 168.0 to River 148.0	Butler/Warren	WAH, PCR, SCR, ORW	
Green River	River Mile 148.0 to Ohio River	Henderson	WAH, PCR, SCR, DWS	
Lick Fork Creek	Source to W. Fork Drakes Creek	Simpson	CAH, PCR, SCR	
Lynn Camp Creek	Source to Green River	Hart	CAH, PCR, SCR	
Underground River System	Mammoth Cave National Park	Edmonson/Hart/ Barren	CAH, PCR, SCR, ORW	
Mud River	Source to GreenRiver	Butler/Muhlen-burg	WAH, PCR, SCR	
Roundstone Creek	Source to Hwy 1140 (River Mile 3.5)	Hart	CAH, PCR, SCR	
Trammel Fork	Source to Hway 31E (River Mile 23.6)	Warren	CAH, PCR, SCR	
Wiggington Creek	Source to Gasper River	Logan	WAH, PCR, SCR	
		LOWER CUMBERLAND RIVER BASIN		
Casey Creek	Source to Little River	Trigg	CAH, PCR, SCR	
Skinframe Creek	Source to Livingston Creek	Lyon	CAH, PCR, SCR	
Sulphur Spring Creek	Source to Red River	Simpson	CAH, PCR, SCR	
		TENNESSEE RIVER BASIN		
Tennessee River	River Mile 22.4 to River Mile 0.0	Livingston/ McCracken	WAH, PCR, SCR, DWS	
		TRADEWATER RIVER BASIN		
Craborchard Creek/ Vaughn Ditch	Source to Tradewater River	Webster	WAH, PCR, SCR	
Montgomery Creek	Source to Tradewater River	Caldwell	WAH, PCR, SCR	
Tradewater River	Source to Ohio River	Crittenden	WAH, PCR, SCR	

Stream	Zone	County	Use Classification	Exceptions to Specific Criteria
	OHIO RIVER BASIN (Main Stem and Minor Tributaries)			
Ohio River	Big Sandy River (River Mile 664.15) to Mississippi River	Ballard	WAH, PCR, SCR, DWS	
Doe Run Creek	Source to KY Hwy 1628 (River Mile 5.15)	Meade	CAH, PCR, SCR	
Sinking Creek	Source to Kwy 259 (River Mile 4.0	Breckinridge	CAH, PCR, SCR	
	UPPER CUMBERLAND RIVER BASIN			
Bad Branch	Basin	Letcher	CAH, PCR, SCR	
Bark Camp Creek	Basin	Whitley	CAH, PCR, SCR	
Beaver Creek	Basin	McCreary	CAH, PCR, SCR	
Beaver Creek	Source to Lake Cumberland	Wayne	WAH, PCR, SCR	
Big South Fork Cumberland River	River Mile 55.2 to River Mile 45.0	McCreary/ Wayne	WAH, PCR, SCR, ORW	
Breeden's Creek	Basin	Harlan	CAH, PCR, SCR	
Buck Creek	River Mile 47.7 to River Mile 10.5	Pulaski	WAH, PCR, SCR, ORW	
Bunches Creek	Basin	Whitley	CAH, PCR, SCR	
Cane Creek	Basin	Laurel	CAH, PCR, SCR	
Cogur Fork	Basin	McCreary	CAH, PCR, SCR	
Cumberland River	Cumberland River Dam to Highway 90 bridge (River Mile 426.5	Russell/ Cumberland	CAH, PCR, SCR, DWS	
Difficulty Creek	Basin	McCreary	CAH, PCR, SCR	
Dogslaughter Creek	Basin	Whitley	CAH, PCR, SCR	
Fugitt Creek	Basin	Harlan	CAH, PCR, SCR	
Horse Lick Creek	River Mile 12.3 to River Mile 0.0	Jackson	WAH, PCR, SCR, ORW	
Kelly Branch	Basin	Harlan	CAH, PCR, SCR	
Kennedy Creek	River Mile 1.0 to River Mile 0.0	Wayne	WAH, PCR, SCR, ORW	
Little South Fork Cumberland River	River Mile 35.6 to River Mile 4.1	Wayne	WAH, PCR, SCR, ORW	
Looney Creek	Basin	Harlan	CAH, PCR, SCR	
Martin's Fork	Basin above Hway 987 (River Mile 27.4	Harlan	CAH, PCR, SCR, ORW	

Stream	Zone	County	Use Classification	Exceptions to Specific Criteria
Middle Fork, Rock-castle River	River Mile 61.1 to River Mile 41.3	Jackson	WAH, PCR, SCR, ORW	
Poor Fork Cumberland River	Basin above Jefferson National Forest Boundary (River Mile 720.55	Letcher	CAH, PCR, SCR	
Poor Fork Cumberland	River Mile 720.55 to Clover Fork Cumberland River	Harlan	WAH, PCR, SCR, DWS	
Razor Fork	Basin	Harlan	CAH, PCR, SCR	
Rock Creek	Tennessee-Kentucky State Line to White Oak Creek	McCreary	CAH, PCR, SCR, ORW	
Rockcastle River	River Mile 27.9 to River Mile 8.5	Laurel/ Pulaski	WAH, PCR, SCR, ORW	
Roundstone Creek	Source to Rockcastle River	Rockcastle	WAH, PCR, SCR, DWS	
Yellow Creek	Source to Cumberland River	Bell	WAH, PCR, SCR	
Shillalah Creek	Source to Cumberland Gap National Historical Park Boundary	Bell	CAH, PCR, SCR	
Troublesome Creek	Basin	McCreary	CAH, PCR, SCR	
Sugar Run	Source to Cumberland Gap National Historical Park Boundary	Bell	CAH, PCR, SCR	

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the July 8-9, 1985 Meeting

The July meeting of the Administrative Regulation Review Subcommittee was held on Monday, July 8, 1985 at 2 p.m. and on Tuesday, July 9, 1985 at 10:30 a.m. in Room 103. Representative Bill Brinkley, Chairman, called the meeting to order, and the secretary called the roll. On motion of Representative Bruce, seconded by Representative Holloway, the minutes of the June 3-4, 1985 meeting were approved.

Present were:

Members: Representative Bill Brinkley, Chairman; Senator Pat McCuiston; Representatives James Bruce, Edward Holloway and Joe Meyer.

Guests: Arthur Hatterick, Jr., Personnel Board; Bruce E. Bailey, TEN-URE Employees - CHR; Bill Stevens, Kentucky Association State Employees; Sarah Jackson, Carroll Roberts, Pat A. Wilson, Board of Hairdressers & Cosmetologists; Gene Record, Board of Barbering; Alma W. Baker, Kathleen Bellinger, Mary Romelfanger, William C. Shouse, Sharon M. Weisenbeck, Board of Nursing; Martha W. Pride, Kentucky Association of Baccalaureate & Higher Degree Nursing; Patsy O. Turner, Kentucky State University; Pat Emerson, Marie Piekarski, Kentucky Council of Association Degree Nursing; Don R. McCormick, Department of Fish and Wildlife; Roy E. Back, Jr., Jewell Hawkins, Charles Arthur Knowles, Sandra G. Pullen, Clement Ritter, Jr., Transportation Cabinet; Gary Bale, Charles Calloway, Clara DeMoss, Don Fightmaster, Conley Manning, Elizabeth Nelli, Ross B. Payton, Bill Ramsey, James A. White, Carolynn Conyer Wosoba, Department of Education; Eugene D. Attkisson, Department of Mines and Minerals; Patrick Watts, Department of Insurance; Don Blevins, County Clerks Association; Larry D. Stanley, Public Service Commission; Ronda Paul, Division of Securities; Judith Walden, Department of Housing, Buildings & Construction; David E. Cathers, Barbara Coleman, Ked R. Fitzpatrick, Gary Grubbs, Anne Hager, Cliff Howard, Suann Hudson, Richard King, Greg Lawther, Clarence P. Marshall, Mary Milam, Sharon Satterly, Stan Smith, Phillip R. Spangler, Sue Tutt, Mark Yancey, Charles E. Yates, Cabinet for Human Resources; Sharon Ferguson, Kentucky Municipal League; Etta Ruth Kepp, Governor's Office for Policy & Management; Mitzi Mahoney, Political Science Dept., University of Kentucky.

LRC Staff: Susan Wunderlich, Joe Hood, Gregory Karambellas, June Mabry, Donna Valencia, and Carla Arnold.

Press: Paul Long, State Journal

The Administrative Regulation Review Subcommittee met on July 8-9, 1985, and submits the following report:

The Subcommittee had no objections to the following regulations, but makes the following recommendations:

Personnel Board: Personnel Rules

101 KAR 1:070 (Registers.)

101 KAR 1:090 (Types of appointments.)

Chairman Brinkley felt that these regulations exceeded statutory authority. However, since these regulations were the result of conflicting interpretations of KRS Chapter 13A, and were being studied by the Personnel Subcommitte of the Interim Joint Committee on State Government, the Subcommittee approved the Chairman's motion that the issues presented in these regulations be referred to the Personnel Subcommitte for study and recommendations for the 1986 regular session of the General Assembly.

The Subcommittee determined that the following regulations, as amended, complied with the requirements of KRS Chapter 13A:

Public Protection and Regulation Cabinet: Department of Insurance: Motor Vehicle Reparations (No-Fault)

806 KAR 39:070 (Proof of motor vehicle insurance.) The Subcommittee agreed to amend this regulation to require insurance companies to instruct policy holders (1) to contact the county clerk if the vehicle identification number on the registration and the number on the motor vehicle do not match in order to have the registration corrected; and, (2) to contact the insurance company to have the vehicle identification number on the insurance identification card corrected.

Public Service Commission: Utilities

807 KAR 5:001 (Rules of procedure.) The Subcommittee agreed to amend this regulation to require compliance with the open records law.

Department of Housing, Buildings and Construction: Kentucky Building Code

815 KAR 7:010 (Administration and enforcement.) The Subcommittee agreed to amend this regulation to clarify the department's requirements in complying with the Kentucky building code.

815 KAR 7:020 (Building code.) The Subcommittee agreed to technically amend this regulation by deleting the reference to nonexisting appendices.

The Subcommittee determined that the following regulations complied with KRS Chapter 13A:

General Government Cabinet: Board of Hairdressers & Cosmetologists

201 KAR 12:150 (School records.)

Board of Barbering

201 KAR 14:170 (Reinstatement in case of revocation of license.)

Board of Nursing

201 KAR 20:310 (Faculty for prelicensure registered nurse and practical nurse programs.)

Tourism Cabinet: Department of Fish and Wildlife Resources: Game

301 KAR 2:045 (Upland game birds, furbearers and small game; seasons limits.)

Transportation Cabinet: Department of Highways: Pre-Construction

603 KAR 2:015 (Prequalification for construction; certificate of eligibility.)

Education and Humanities Cabinet: Department of Education: Office of Local Services: School District Finance
702 KAR 3:090 (Depository bond, penal sum.)
Pupil Transportation
702 KAR 5:010 (Responsibilities of division.)
702 KAR 5:030 (Superintendent's responsibilities.)
702 KAR 5:080 (Bus drivers' qualifications; responsibilities.)
School Terms, Attendance and Operation
702 KAR 7:010 (Terms and months.)
702 KAR 7:020 (Calendar.)
702 KAR 7:030 (Census.)
Office of Instruction: Instructional Services
704 KAR 3:335 (State plan for the administration of Chapter 2, ECIA of 1981.)
Health and Physical Education Programs
704 KAR 4:010 (Physical education.)
Elementary and Secondary Education Act
704 KAR 10:022 (Elementary, middle and secondary schools standards.)
Teacher Certification
704 KAR 20:005 (Kentucky standards for preparation program approval.)
704 KAR 20:235 (Learning and behavior disorders; teacher's provisional certificate.)
Office of Vocational Education: Administration
705 KAR 1:010 (Three year program plan.)
Office of Federal Programs: Adult Education
709 KAR 1:070 (Minimum standards of admission for long-term adult students in vocational programs.)

Public Protection and Regulation Cabinet: Department of Mines & Minerals: Division of Oil and Gas
805 KAR 1:030 (Well location plat, preparation, form and contents.)
Surface Mining Safety Standards
805 KAR 3:020 (General standards.)
Miner Training, Education and Certification
805 KAR 7:010 (Definitions.)
805 KAR 7:020 (Training and certification of inexperienced miners.)
805 KAR 7:060 (Program approval.)
Department of Financial Institutions: Division of Securities
808 KAR 10:010 (Forms for application, registration; reporting and compliance.)
808 KAR 10:020 (Net capital of broker-dealers.)
808 KAR 10:060 (Abandoned applications.)
808 KAR 10:090 (Issuer's reports.)
808 KAR 10:120 (Registration files.)
808 KAR 10:130 (Amendments to registration statement.)
808 KAR 10:140 (Registration statements to be current.)
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808 KAR 10:210 (Registration exemptions - Federal Regulation D.)
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815 KAR 4:010 (Elevators, dumbwaiters, escalators and moving walks standards.)

Cabinet for Human Resources: Department for Health Services: Local Boards of Health
902 KAR 8:020 (Policies and procedures for local health department operations.)
Hospitalization of Mentally Ill and Mentally Retarded
902 KAR 12:070 ("Means Test" pursuant to the "Patient Liability Act of 1978".)
902 KAR 12:080 (Policies and procedures for mental health/mental retardation facilities.)
Department for Social Insurance: Medical Assistance
904 KAR 1:004 (Resource and income standard of medically needy.)
904 KAR 1:011 (Technical eligibility requirements.)
904 KAR 1:014 (Out-patient hospital services.)
904 KAR 1:260 (Coordination of benefits between the medical assistance program and the crime victims compensation board.)
Public Assistance
904 KAR 2:006 (Technical requirements; AFDC.
904 KAR 2:022 (Kentucky administrative process for child support.)
904 KAR 2:116 (Low income home energy assistance program.)

The following regulations were deferred at the agency's request:

Department of Agriculture: Livestock Sanitation
302 KAR 20:055 (Brucellosis vaccination.)

Public Protection and Regulation Cabinet: Department of Alcoholic Beverage Control: Licensing
804 KAR 4:250 (Special temporary licenses.)
Malt Beverage Equipment, Supplies and Service
804 KAR 11:030 (Beer tastings.)
Department of Mines & Minerals: Miner Training, Education and Certification
805 KAR 7:030 (Annual retraining program.)
805 KAR 7:040 (Training of newly hired miners.)
805 KAR 7:050 (Training of miners for new work assignments.)
805 KAR 7:070 (Monthly reporting procedures and maintenance.)
Harness Racing Commission: Quarter Horse, Appaloosa, and Arabian Commission
812 KAR 1:050 (Jockeys.)

Cabinet for Human Resources: Department for Health Services: Communicable Diseases
902 KAR 2:080 (Sexually transmitted diseases.)
Certificate of Need and Licensure Board
902 KAR 20:132 (Certificate of need expenditure minimums.)

The Subcommittee had no objections to emergency regulations which had been filed.

The Subcommittee adjourned at 11:15 a.m. until August 12, 1985.

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