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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 January 2 and 3, 1986. For information, call
502-564-8100, ext. 312.
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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.)

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

405 KAR 7:020E. Definitions and abbreviations.

RELATES TO: KRS Chapter 350
PURSUANT TO: KRS Chapter 13A, 350.028, 350.465
EFFECTIVE: December 2, 1985

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

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

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

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

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

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

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reclamation operations, unless the road:
(a) was designated as a public road pursuant
to the laws of the jurisdiction in which it is
located;
(b) is maintained with public funds, and
constructed in a manner similar to other public
roads of the same classification within the
jurisdiction; and
(c) There is substantial (more than
incidental) public use.
(6) "Agricultural use" means the use of any
tract of land for the production of animal or
vegetable life. The uses include, but are not
limited to, the pasturing, grazing, and watering of
livestock, and the cropping, cultivation, and
harvesting of plants.
(6) "Applicant" means any person seeking a
permit from the cabinet to conduct surface coal
mining and reclamation operations or operations
to conduct coal exploration operations pursuant
to KRS Chapter 350 and all applicable regulations.
(7) "Application" means the documents and
other information filed with the cabinet for the
issuance for exploration approval or a permit.
(7) "Approximate original contour" means that
surface configuration achieved by backfilling
and grading of the mined area so that the
reclaimed area, including any terracing or
access roads, closely resembles the general
surface configuration of the land prior to
mining and blends into and complements the
drainage pattern of the surrounding terrain
with all highwalls and spoil piles eliminated.
Permanent water impoundments may be permitted
where the cabinet has determined that they
comply with KRS Chapter 350, 405 KAR 16:100; 405
KAR 18:060, Section 10; and 405 KAR 16:210; or
405 KAR 18:100; 405 KAR 18:060, Section 8; and
405 KAR 18:220.
(9) "Aquifer" means a zone, stratum, or group
of strata that can store and transmit water in
sufficient quantities for domestic, agricultural, industrial, or other beneficial
use.
(10) "Area" as used in Title 405, Chapter 24,
means a geographic unit in which the criteria
alleged in the petition pursuant to 405 KAR
24:020, Sections 3 and 4 and 405 KAR 24:030,
Section 8, occur throughout and form a
significant feature.
(11) "Auger mining" means a method of mining
coal at a cliff or highwall by drilling holes
into an exposed coal seam from the highwall and
transporting the coal along an auger bit to the
surface and shall also include all other such
methods of mining in which coal is extracted
from beneath the overburden by mechanical
deVICES located at the face of the cliff or
highwall and extending laterally into the coal
seam, such as extended depth, secondary recovery
systems.
(12) "Best technology currently available"
means equipment, devices, systems, methods, or
techniques which will prevent, to the extent
possible, additional contributions of suspended
solids to stream flow or runoff outside the
permit area and minimize, to the extent
possible, disturbances and adverse impacts on
fish, wildlife and related environmental values,
and achieve enhancement of those resources where
practicable. The term includes equipment,
devices, systems, methods, or techniques which
are currently available anywhere as determined by
the cabinet, even if they are not in routine
use. The term includes, but is not limited to,
construction practices, siting requirements,
vegetative selection and planting requirements,
animal stocking requirements, scheduling of
activities and design of sedimentation ponds in
accordance with Title 405, Chapters 16 and 18.
The cabinet shall have the discretion to
determine the best technology currently
available on a case-by-case basis, as authorized
by KRS Chapter 350 and Title 405, Chapters 7
through 24.
(13) "Cabinet" means the Natural Resources and
Environmental Protection Cabinet.
(14) "Cemetery" means any area where human
bodies are interred.
(15) "Coal" means combustible carbonaceous
rock, classified as anthracite, bituminous,
subbrituminous, or lignite by ASTM Standard D
3887.
(16) "Coal exploration" means the field
gathering of:
(a) Surface or subsurface geologic, physical,
or chemical data by mapping, trenching,
drilling, geophysical, or other techniques
necessary to determine the quantity and quality of
overburden and coal of an area; or
(b) Environmental data to establish the
conditions of an area before beginning surface
coal mining and reclamation operations under the
requirements of Title 405, Chapters 7 through 24
where such activity may cause any disturbance of
the land surface or may cause any appreciable
effect upon land, air, water or other
environmental resources.
(17) "Coal mine waste" means coal processing
waste and underground development waste.
(18) "Coal processing plant" means a facility
where coal is subjected to chemical or physical
processing or cleaning, concentrating, crushing,
sizing, or other processing or preparation
including all associated support facilities
including but not limited to: loading
facilities; storage and stockpile facilities;
sheds, shops and other buildings; water
treatment and waste storage facilities; settling
basins and impoundments; and coal processing
and other waste disposal facilities (collection of
facilities, including all associated support
facilities and operations, where run-of-the-mine
coal is subjected to chemical or physical
processing and separated from its impurities).
(19) "Coal processing waste" means materials
which are separated from the product coal during
the cleaning, concentrating, or other processing
or preparation of coal.
(20) "Collateral bond" means an indemnity
agreement in a sum certain payable to the
cabinet executed by the permittee and which is
supported by the deposit with the cabinet of
cash, negotiable certificates of deposit or an
irrevocable letter of credit of any bank
organized and authorized to transact business in
the United States.
(21) "Combustible material" means organic
material that is capable of burning, either by
fire or through oxidation, accompanied by the
evolution of heat and a significant temperature
rise.
(22) "Community or institutional building"
means any structure, other than a public
building or an occupied dwelling, which is used
primarily for meetings, gatherings, or functions
of a local civic organizations or other community
groups; functions as an educational, cultural,
historic, religious, scientific, correctional,
mental health or physical health care facility;
or is used for public services, including, but not limited to, water supply, power generation or sewage treatment.
(23) "Compaction" means increasing the density of a material by reducing the voids between the particles by mechanical effort.
(24) "Complete" application" means an application for exploration approval or permit, which contains all information required under KRS Chapter 350 and Title 405, Chapters 7 through 24.
(25) "Cropland" means land used for the production of adapted crops for harvest, alone or in combination with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops. Land used for facilities in support of cropland farming operations which is adjacent to or an integral part of these operations is also included for purposes of land use categories.
(26) "Date of privity" means the effective date of the Secretary of Interior's unconditional or conditional approval of Kentucky's permanent regulatory program under Section 503 of the 1977 Surface Mining Control and Reclamation Act (P.L. 95-87).
(27) "Day" means calendar day unless otherwise specified to be a working day.
(28) "Department" means the Department for Surface Mining Reclamation and Enforcement.
(29) "Developed water resources Land" means land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply.
(30) "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by Title 405, Chapter 10 is released.
(31) "Diversion" means a channel, embankment, or other manmade structure constructed to divert water from one (1) area to another.
(32) "Downslope" means the land surface below the projected outcrop of the lowest coalbed being mined along each highwall.
(33) "Embankment" means a man-made deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.
(34) "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.
(35) "Excess spoil" means spoil material disposed of in a location other than the coal extraction area, provided that material used to replace the approximate original contour shall not be considered excess spoil.
(36) "Existing structure" means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations for which construction begins prior to January 18, 1983.
(37) "Experimental practice," as used in 405 KAR 7:060, means the use of alternative surface coal mining and reclamation operation practices for experimental or research purposes.
(38) "Extraction of coal as an incidental part" means the extraction of coal which is necessary to enable the construction to be accomplished. Only that coal extracted from within the right-of-way, in the case of a road, railroad, utility line or other such construction, or within the boundaries of the area directly affected by other types of government-financed construction, or considered incidental to that construction. Extraction of coal outside the right-of-way or boundary of the area directly affected by the construction shall be subject to the requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24.
(39) "Federal Lands" means any land, including mineral interests, owned by the United States, without regard to how the United States acquired ownership of the lands or which agency manages the lands. It does not include Indian lands.
(40) "Federal lands program" means a program established by the Secretary of the Interior pursuant to Section 523 of the Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87, 91 Stat. 445 (30 USC Section 1201 et seq.)) to regulate surface coal mining and reclamation operations on federal lands.
(41) "Fish and wildlife habitat" means land dedicated wholly or partially to the production, protection or management of species of fish or wildlife.
(42) "Forest land" means land used or managed for the long-term production of wood, wood fiber, or wood derived products. Land used for facilities in support of forest harvest and management operations which is adjacent to or an integral part of these operations is also included.
(43) "Fragile lands" means geographic areas containing natural, ecologic, scientific or aesthetic resources that could be damaged or destroyed by surface coal mining operations. These lands may include, but are not limited to, uncommon geologic features, National Natural Landmarks, valuable habitats for fish and wildlife, critical habitats for endangered or threatened species of animals and plants, wetlands, environmental corridors containing concentration of ecologic and aesthetic features, state-designated nature preserves and wild rivers, areas of recreational value due to high environmental quality, buffer zones around areas where surface coal mining is prohibited, and important, unique or highly productive soils or mineral resources other than coal.
(44) "Fugitive dust" means that particulate matter which becomes airborne due to wind erosion from exposed surfaces.
(45) "General area" means, with respect to hydrology, the topographic and ground water basin surrounding a permit area which is of sufficient size, including area extent and depth, to include one (1) or more watersheds containing perennial streams and ground water zones and to allow assessment of the probable cumulative impacts on the quality and quantity of surface and ground water systems in the basins.
(46) "Government-financed construction" means construction funded fifty (50) percent or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds, but shall not mean government financing agency guarantees.
insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or instalment payments.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(62) "Intermittent stream" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(85) "Person having an interest which is or may be adversely affected" or "person with a valid legal interest" shall include any person:
   (a) Who uses any resource of economic, recreational, aesthetic, or environmental value that may be adversely affected by coal exploration or surface coal mining and reclamation operations, or by any related action of the cabinet; or
   (b) Whose property is or may be adversely affected by coal exploration or surface coal mining and reclamation operations, or by any related action of the cabinet.

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

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

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

(89) "Principal shareholder" means any person who is the record or beneficial owner of ten percent or more of any class of voting stock of the applicant.

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

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

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

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

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

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

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

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

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

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

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

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

(102) "Refuse pile" means a surface deposit of coal mine waste that is not retained by an impounding structure and does not impound water, slurry, or other liquid or semi-liquid material.

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

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

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

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

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

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

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

(a) An environmental harm is imminent, if a condition, practice, or violation exists which:
   1. Is causing such harm; or
   2. May reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set by the cabinet's authorized agents pursuant to the provisions of KRS Chapter 350.

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

(110) "Slope" means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g. 1:15h). It may also be expressed as a percent or in degrees.

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

(112) "Soil horizons" means contrasting layers of soil parallel to or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four (4) master soil horizons are:

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

(b) "E horizon." The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by a lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequum by color of higher value or lower chroma, by coarser texture or by a combination of these properties.

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

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

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

(114) "Spoil" means overburden and other materials, excluding topsoil, coal mine waste, and mine coal, that are excavated during surface coal mining and reclamation operations.

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

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

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

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

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

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

(121) "Surface coal mining operations" means activities conducted on the surface of land in connection with a surface coal mine and surface operations and surface impacts incident to an underground coal mine. Such activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the use of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and clearing, concentrating, or other processing or preparation, and the loading of coal at or near the mine-site. Such activities shall not include the extraction of coal by a landowner for his own noncommercial use from land owned or leased by him, except that noncommercial use shall not include the extraction of coal by one (1) unit of an integrated company or other business entity which uses the coal in its own manufacturing or power plants; the extraction of coal as an incidental part of federal, state, or local government financed highway or other construction; or the extraction of, or intent to extract, 250 tons or less of coal by any person by surface coal mining operations within twelve (12) successive calendar months; the extraction of coal incidental to the extraction of other minerals where coal does not exceed six-tenths and two-thirds (16 2/3) percent of the tonnage of minerals removed for the purpose of commercial use or sale; or coal exploration. Surface coal mining operations shall also include the areas upon which such activities occur or where such activities disturb the natural land surface.
Such areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of the activities, structures, facilities, or other property or materials on the surface, resulting from or incident to such activities. This definition includes the terms "strip mining of coal" and the surface effects of underground mining of coal as defined in KRS Chapter 350.

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

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

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

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

(126) "Topsoil" means the A and E soil horizon layers of the four (4) master soil horizons.

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

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

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

(130) "Underground development waste" means waste coal, shale, claystone, siltstone, sandstone, limestone, or similar materials that are extracted from underground workings in connection with underground mining activities.

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

(a) Surface operations incident to underground extraction of coal or in situ processing, including construction, use, maintenance, and reclamation of roads; above-ground repair areas, storage areas, processing areas, and shipping areas; areas upon which are sited support facilities including hoist and ventilating ducts, areas utilized for the disposal and storage of waste, and areas on which materials incident to underground mining operations are placed for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities. This definition includes the terms "strip mining of coal" and the surface effects of underground mining of coal as defined in KRS Chapter 350.

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

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

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

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

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

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

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

(136) "Water transmitting zone" means a body of consolidated or unconsolidated rocks which, due to their greater primary or secondary permeability relative to the surrounding rocks, can reasonably be considered to function as a single hydraulic medium for the flow of ground water.

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

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

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

Section 3. Applicability of Amendments to Section 1(18) of this Regulation. The amendments to Section 1(18) of this regulation shall become applicable on December 1, 1985.

Section 4. Statement of Emergency. (1) The amendment to this regulation revises the definition of coal processing plant to include facilities previously exempted from regulation. This is necessary to comply with an order of the U.S. District Court, Eastern District of Kentucky, Civil Action No. 82-30.
(2) The regulations are being promulgated in an emergency regulation because the cabinet must initiate action in accordance with the compliance schedule of the judicial order prior to the time that an ordinary administrative regulation could be promulgated.
(3) This emergency regulation will be replaced by an ordinary administrative regulation.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: November 14, 1985
FILED WITH LRC: December 2, 1985 at 11 a.m.

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

405 KAR 8:050E. Permits for special categories of mining.

EFFECTIVE: December 2, 1985
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to permits for surface coal mining and reclamation operations, including certain special categories of mining. This regulation sets forth permit application requirements for special mining categories including mining on prime farmland, augering, in situ processes, offsite coal preparation plants, mountain top removal mining, and mining on steep slopes. This regulation sets forth the only variance from the requirement to return to approximate original contour in steep slopes. This regulation sets forth the manner in which the contemporaneous reclamation requirements can be met for combined surface and underground mining activities.

Section 1. In Situ Processing Activities. (1) Applicability. This section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations utilizing in situ processing activities.
(2) Application requirements. Any application for a permit for operations covered by this section shall be accompanied by all requirements of this chapter applicable to underground mining activities. In addition, the mining and reclamation operations plan for operation involving in situ processing activities shall contain information establishing how those operations will be conducted in compliance with the requirements of 405 KAR 20:080, including:
(a) Delineation of proposed holes and wells and production zone for approval of the cabinet;
(b) Specifications of drill holes and casing proposed to be used;
(c) A plan for treatment, confinement or disposal of all acid-forming, toxic-forming or radioactive gases, solids, or liquids constituting a fire, health, safety or environmental hazard caused by the mining and recovery process; and
(d) Plans for monitoring surface and ground water and air quality, as required by the cabinet.
(3) Criteria for approval. No permit shall be issued for operations covered by this section unless the cabinet first finds, in writing, upon the basis of a complete application made in accordance with subsection (2) of this section that the operations will be conducted in compliance with all requirements of this chapter relating to underground mining activities, and 405 KAR 20:080 and 405 KAR Chapter 18.

Section 2. Augering. (1) General. This section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations utilizing augering operations. Any application for a permit for operations covered by this section shall contain, in the mining and reclamation plan, a description of the augering method to be used and the measures to be used to comply with 405 KAR 20:030. No permit shall be issued for any operations covered by this section unless the cabinet finds, in writing, that in addition to meeting all other applicable requirements of this chapter, the operation will be conducted in compliance with 405 KAR 20:030.
(2) Augering on previously mined lands.
(a) In addition to other requirements of 405 KAR Chapter 8, each application for a permit to conduct auger mining on an area mined prior to May 3, 1978, and not reclaimed to the standards of title 405 shall contain such information as the cabinet deems necessary to describe the proposed affected area and method of operation and show that the proposed method of operation will result in stable postmining conditions, and reduce or eliminate adverse environmental conditions created by previous mining activities.
(b) If the cabinet determines that the affected area cannot be stabilized and reclaimed subsequent to augering or that the operation will result in adverse impact to the proposed permit area or adjacent area, the permit shall not be issued.
(c) The cabinet shall, consistent with all applicable requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24, issue a permit if the applicant demonstrates that the proposed surface coal mining operations will provide for...
reduction or elimination of the highwall, or reduction or abatement of adverse impacts resulting from past mining activities, or stabilization or enhancement of the previously mined area.

d) The cabinet shall ensure that all applicable performance standards can be met.

Section 3. Prime Farmlands. (1) Applicability. This section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations on prime farmlands historically used for cropland except:

(a) Any permit issued prior to August 3, 1977.

(b) Any renewal or revision of a permit issued prior to August 3, 1977. For the purposes of this paragraph, "renewal" of a permit shall mean a decision by the cabinet to extend the time by which the permittee may complete mining within the boundaries of the original permit, and "revision" of the permit shall mean a decision by the cabinet to allow changes in the method of mining operations within the original permit area, or the decision of the cabinet to allow incidental boundary changes to the original permit area.

(c) Lands included in any existing surface mining operation, for which a permit was issued for all or any part thereof prior to August 3, 1977, provided that:

1. Such lands are part of a single continuous mining pit begun under a permit issued before August 3, 1977;

2. The permittee had a legal right to mine the lands prior to August 3, 1977 through ownership, contract, or lease but not including an option to buy, lease or contract; and

3. The lands contained part of a continuous recoverable coal seam that was being mined in the pit begun under a permit issued prior to August 3, 1977.

(d) For the purposes of this subsection a pit shall be deemed to be a single continuous mining pit even if portions of the pit are crossed by a road, pipeline, railroad or powerline or similar crossing.

(2) Application requirements. If land within the proposed permit area is identified as prime farmland under 405 KAR 8:030, Section 21 or 405 KAR 8:040, Section 21, the applicant shall submit a plan for the mining and restoration of the land. Each plan shall contain, at a minimum:

(a) A soil survey of the permit area according to the standards of the National Cooperative Soil Survey and in accordance with the procedures set forth in U.S. Department of Agriculture Handbooks 436 (Soil Taxonomy, 1975) and 18 (Soil Survey Manual, 1951). The soil survey shall include a map unit, and representative soil profile description for each prime farmland soil within the permit area unless other representative descriptions from the locality, prepared in conjunction with the National Cooperative Soil Survey are available and their use is approved by the cabinet.

(b) The proposed method and type of equipment to be used for removal, storage, and replacement of the soil in accordance with 405 KAR 20:040.

(c) A demonstration that excessive compaction will be avoided in replacement of the soil.

(d) The location of areas to be used for the separate stockpiling of the soil and plans for soil stabilization before redistribution.

(e) If applicable, documentation, such as agricultural school studies or other scientific data from comparable areas, that supports the use of other suitable material, instead of the A, B, or C soil horizon, to obtain on the restored area equivalent or higher levels of yield as non-mined prime farmlands in the surrounding area under equivalent levels of management.

(f) Plans for seeding or cropping the final graded disturbed land and the conservation practices to be used to adequately control erosion and sedimentation and restoration of an adequate soil moisture regime, during the period from completion of regrading until release of the performance bond or equivalent guarantee under 405 KAR Chapter 10. Proper adjustments for seasons must be proposed so that final graded land is not exposed to erosion during seasons when vegetation or conservation practices cannot be established due to weather conditions.

(g) Available agricultural school studies or other scientific data for areas with comparable soils, climate, and management (including water management) that demonstrate that the proposed method of reclamation will achieve, within a reasonable time, equivalent or higher levels of yield after mining as existed before mining.

(3) Cabinet consultation with the Secretary of Agriculture.

(a) Before any permit is issued for areas that include prime farmlands, the cabinet shall consult with the Secretary of Agriculture.

(b) The Secretary of Agriculture may provide for review and comment of the proposed method of soil reclamation in the plan submitted under subsection (2) of this section. The secretary may suggest revisions resulting in more complete and adequate reclamation.

(c) Consultations shall be accomplished through the office of the State Conservationist of the U.S. SCS.

(4) Criteria for approval. A permit for the mining and reclamation of prime farmland may be granted by the cabinet, if it first finds, in writing, upon the basis of a complete application, that:

(a) The approved proposed postmining land use of these prime farmlands will be cropland;

(b) The permit incorporates as specific conditions the contents of the plan submitted under subsection (2) of this section, after consideration of any revisions to that plan suggested by the Secretary of Agriculture under subsection (3) of this section;

(c) There is a technologically feasible plan to restore the prime farmland, within a reasonable time, to equivalent or higher levels of yield as non-mined prime farmland in the surrounding area under equivalent levels of management; and

(d) The proposed operations will be conducted in compliance with the requirements of 405 KAR 20:040 and other environmental protection performance and reclamation standards for mining and reclamation of prime farmland of 405 KAR Chapters 7 through 24.

Section 4. Mountaintop Removal Mining. (1) Applicability. This section applies to any person who conducts or intends to conduct surface mining activities by mountaintop removal mining.

(a) Mountaintop removal mining means surface mining activities, where the mining operation removes an entire coal seam or seams running through the upper fraction of a mountain, ridge,
Section 5. Steep Slope Mining. (1) This section applies to any persons who conduct or intend to conduct steep slope surface coal mining and reclamation operations, except:
   (a) Where an applicant proposes to conduct surface coal mining and reclamation operations on flat or gently rolling terrain, leaving a plain or predominantly flat area, but on which an occasional steep slope is encountered as the mining operation proceeds;
   (b) Where a person obtains a permit under the provisions of Section 4 of this regulation; or
   (c) To the extent that a person obtains a permit incorporating a variance under Section 6 of this regulation.

(2) Any application for a permit for surface coal mining and reclamation operations covered by this section shall contain sufficient information to establish that the operations will be conducted in compliance with the requirements of 405 KAR 20:060, Section 2.

(3) No permit shall be issued for any operations covered by this section, unless the cabinet finds, in writing, that in addition to meeting all other requirements of this chapter, the operation will be conducted in accordance with the requirements of 405 KAR 20:060, Section 2.

Section 6. Variances from Approximate Original Contour Restoration Requirements for Steep Slope Mining. (1) General.
   (a) Applicability. This section applies to non-mountain top removal, steep slopes surface coal mining and reclamation operations where the operation is not to be reclaimed to achieve the approximate original contour required by 405 KAR 16:190 or 405 KAR 18:190 and 405 KAR 20:060, Section 2(3).
   (b) This section provides for a variance from approximate original contour restoration requirements on steep slopes for surface coal mining and reclamation operations to:
      1. Improve watershed control of lands within the permit area and on adjacent lands, when combined to the watershed control which would exist were the area restored to the approximate original contour; and
      2. Make land within the permit area, after reclamation, suitable for an industrial, commercial, residential, or public use, including recreational facilities.
   (2) Criteria for approval. The cabinet may issue a permit for surface mining activities incorporating a variance from the requirements for restoration of the affected lands to their approximate original contour only if it first finds, in writing, on the basis of a complete application, that all of the following requirements are met:
      (a) The applicant has demonstrated that the purpose of the variance is to make the lands to be affected within the permit area suitable for an industrial, commercial, residential, or public use postmining land use.
      (b) The proposed use, after consultation with the appropriate land-use planning agencies, if any, constitutes an equal or better economic or public use.
(c) The applicant has demonstrated compliance with the requirements for acceptable alternative postmining land uses of 405 KAR 16:210 or 405 KAR 18:220, as appropriate.

(d) The applicant has demonstrated that the watershed of lands within the proposed permit area and adjacent areas will be improved by the operations. The watershed will only be deemed improved if:

1. There will be a reduction in the amount of total suspended solids or other pollutants discharged to ground or surface waters from the permit area as compared to such discharges had the area been restored to approximate original contour, so as to improve public or private uses or the ecology of such waters; or, there will be reduced flood hazards within the watershed containing the permit area by reduction of the peak flow discharges from precipitation events or thaws; or, there will be an increase in streamflow during times of the year when the stream is normally at low flow or dry conditions and such increase in streamflow is determined by the cabinet to be beneficial to public or private users or the ecology of such streams; and

2. The total volume of flows from the proposed permit area, during every season of the year, will not vary in a way that adversely affects the ecology of any surface water or any existing or planned use of surface or ground water.

(e) The applicant has demonstrated that the owner of the surface of the lands within the permit area has knowingly requested, in writing, as part of the application, that a variance be granted. The request shall show an understanding that the variance could not be granted without the surface owner’s request.

(f) The applicant has demonstrated that the proposed operations will be conducted in compliance with the requirements of 405 KAR 20:060, Section 3.

(g) All other requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24 will be met by the proposed operations.

3. If a variance is granted under this section:

(a) The requirements of 405 KAR 20:060, Section 3 shall be made a specific condition of the permit.

(b) The permit shall be specifically marked as containing a variance from approximate original contour.

4. Periodic review.

(a) Any permits incorporating a variance issued under this section shall be reviewed by the cabinet to evaluate the progress and development of the mining activities, to establish that the permittee is proceeding in accordance with the terms of the variance:

1. Within the sixth month preceding the third year from the date of this issuance;

2. Before each permit renewal; and

3. Not later than the middle of each permit term.

(b) If the permittee demonstrates to the cabinet at any of the times specified in paragraph (a) of this subsection that the operations involved have been and continue to be conducted in compliance with the terms and conditions of the permit, the requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24, and the review required at that time need not be held.

5. Modifications of permit. The terms and conditions of a permit incorporating a variance under this section may be modified at any time by the cabinet, if it determines that more stringent measures are necessary to insure that the operations involved are conducted in compliance with the requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24.


(a) This section applies to any permittee who conducts or intends to conduct combined surface mining and underground mining activities where contemporaneous reclamation as required by 405 KAR 16:020 is not practicable and a delay is requested to allow underground mining activities to be conducted before the reclamation operations for the surface mining activities can be completed.

(b) This section provides only for delay in reclamation of surface mining activities, if that delay will allow underground mining activities to be conducted to ensure maximum practical recovery of coal resources and to avoid multiple future disturbances of surface lands or waters.

6. Application requirements. Any applicant who desires to obtain a variance under this section shall file with the cabinet complete applications for both the surface mining activities and underground mining activities which are to be combined. The mining and reclamation operation plans for these permits shall contain appropriate narratives, maps, and plans which:

(a) Show why the proposed underground mining activities are necessary or desirable to assure maximum practical recovery of coal;

(b) Show how multiple future disturbances of surface lands or waters will be avoided;

(c) Identify the specific surface areas for which a variance is sought and the particular sections of KRS Chapter 350 and 405 KAR Chapters 7 through 24 from which a variance is being sought;

(d) Show how the activities will comply with 405 KAR 20:020 and other applicable requirements of 405 KAR Chapters 7 through 24;

(e) Show why the variance sought is necessary for the implementation of the proposed underground mining activities;

(f) Provide an assessment of the adverse environmental consequences and damages, if any, that will result if the reclamation of surface mining activities is delayed; and

(g) Show how off-site storage of spoil will be conducted to comply with the requirements of KRS Chapter 350 and 405 KAR 16:130.

3. Criteria for approval. A permit incorporating a variance under this section may be issued by the cabinet if it first finds, in writing, upon the basis of a complete application filed in accordance with this section that:

(a) The applicant has presented, as part of the permit application, specific, feasible plans for the proposed underground mining activities;

(b) The proposed underground mining activities are necessary or desirable to assure maximum practical recovery of the mineral resources and will not avoid multiple future disturbances of surface land or waters;

(c) The applicant has satisfactorily demonstrated that the applications for the
surface mining activities and underground mining activities conform to the requirements of 405 KAR Chapters 16 through 24, and all other permits necessary for the underground mining activities have been issued by the appropriate authority;

(d) The surface area of surface mining activities proposed for the variance have been shown by the applicant to be necessary for implementing the proposed underground mining activities;

(e) No substantial adverse environmental damage, either on-site or off-site, will result from the delay in completion of reclamation otherwise required by KRS Chapter 350 and 405 KAR 16:020;

(f) The operations will, insofar as a variance is authorized, be conducted in compliance with the requirements of 405 KAR 20:020;

(g) Provisions for off-site storage of spoil will comply with the requirements of KRS Chapter 350 and 405 KAR 16:130;

(h) Liability under the performance bond required to be filed by the applicant with the cabinet pursuant to 405 KAR Chapter 10 shall be for the duration of the underground mining activities and until all requirements of 405 KAR Chapter 10 have been complied with; and

(i) The permit for the surface mining activities contains specific conditions:

1. Delineating the particular surface areas for which a variance is authorized;

2. Identifying the particular requirements of 405 KAR 20:020 which are to be complied with, in lieu of the otherwise applicable provisions of KRS Chapter 350 and 405 KAR Chapter 16;

3. Providing a detailed schedule for compliance with the particular requirements of 405 KAR 20:020 identified under subparagraph 2 of this paragraph.

4. Periodic review. Variances granted under permits issued under this section shall be reviewed by the cabinet no later than three (3) years from the dates of issuance of the permit and any permit renewals.

Section 8. Coal Processing Plants [or Support Facilities] Not Located Within the Permit Area of a Specified Mine. (1) Applicability. This section applies to any person who operates or intends to operate coal processing plants [and associated support facilities] not within a permit area of a specific mine, other than such plants which are located at the site of ultimate coal use. Notwithstanding the provisions of 405 KAR 7:016, the provisions of RAM #33, "Coal Processing Operations and Crushing and Loading Facilities," are null and void.

(2) Permit required. Any person who operates or intends to construct or operate such a coal processing plant [or support facility] shall (have) obtained a permit from the cabinet under 405 KAR Chapters 7 through 24.

(3) Previously operated exemptions. This subsection applies only to those coal processing plants subject to 405 KAR 20:070, Section 5.

(4) On or before February 1, 1986, all persons operating a coal processing plant who intend to operate after August 1, 1986 shall file an initially complete (as defined in 405 KAR 8:010, Section 13(1)(a)) permit application under 405 KAR Chapter 7 through 24. No person may operate a coal processing plant after August 1, 1986 unless the operation is being conducted under a permit issued under 405 KAR Chapters 7 through 24, except that person may continue to operate a coal processing plant after August 1, 1986 without a permit if:

1. An initially complete permit application has been timely filed. "Timely filed" shall mean filed on or before February 1, 1986, or, if filed within that time but determined to be initially incomplete, resubmitted within fifteen (15) calendar days of being served notice by the cabinet that the application is initially incomplete. Such notice shall be served in accordance with 405 KAR 7:090, Section 6. The cabinet has yet to issue or deny the permit; and

2. The person complies with the performance standards of 405 KAR 20:070.

(b) The applicant shall file a performance bond under 405 KAR Chapter 10 within sixty (60) calendar days of being served notice of the decision by the cabinet to issue the permit. Such notice shall be served in accordance with 405 KAR 7:090, Section 6. If the performance bond is not filed within that time the cabinet shall deny the permit application.

(c) Any time limits for cabinet action specified in 405 KAR 8:010 shall not apply to permit applications filed under this subsection, provided, however, the cabinet shall make every effort to timely review and issue or deny such permit applications prior to August 1, 1986.

[(3) Criteria for approval.] (4) Application.

(a) Any application for a permit for operations covered by this section shall be in accordance with 405 KAR 8:030, and, as applicable, 405 KAR 8:050 and shall contain in the mining and reclamation plan, specific plans, including descriptions, maps and drawings of the construction, operation, maintenance, reclamation and removal of the coal processing plants [and associated support facilities]. The plan shall demonstrate that those operations will be conducted in compliance with 405 KAR 20:070.

(b) For permit applications for operations subject to subsection (3) of this section, the requirements of 405 KAR 8:030, Section 21, and 405 KAR 8:050, Section 3, shall not apply to lands disturbed by the coal processing plants prior to December 1, 1985.

(c) Permit applications for operations subject to subsection (3) of this section, which were timely filed in accordance with subsection [(2)](3), shall not contain the information required under 405 KAR 8:030, Sections 12, 13, 14(3), and 15(4). Any such applicant failing to make a timely filing shall be required to submit this information.

[(5) Criteria for approval.] (6) Applicability of amendments to this section. The amendments to this section shall become applicable on December 1, 1985.

Section 9. Statement of Emergency. (1) The amendments to this regulation revise the permit application requirements for off-site coal processing plants and establishes an orderly process for permitting those plants that were previously exempted from regulation.
necessary to comply with an order of the U.S. District Court, Eastern District of Kentucky, Civil Action No. 82-30.

(2) The amendments are being promulgated in an emergency regulation because the cabinet must initiate action in accordance with the compliance schedule of the judicial order prior to the time that an ordinary administrative regulation could be promulgated.

(3) This emergency regulation will be replaced by an ordinary administrative regulation.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: November 14, 1985
FILED WITH LRC: December 2, 1985 at 11 a.m.

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

405 KAR 20:070E. Offsite coal processing plants [and support facilities].

RELATES TO: KRS 350.010, 350.151, 350.465
PURSUANT TO: KRS Chapter 13A, 350.028, 350.151, 350.465
EFFECTIVE: December 2, 1985
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate environmental protection performance standards for all surface coal mining and reclamation operations. This regulation sets forth certain performance standards for offsite coal processing plants [and support facilities].

Section 1. Applicability. This regulation establishes performance standards for coal processing plants that are not located within the permit area for a specific mine. This regulation shall not apply to coal processing plants which are located at the site of ultimate coal use.

Section 2. Performance Standards. Construction, operation, maintenance, modification, reclamation, and removal activities at coal processing plants shall comply with the provisions of 405 KAR Chapter 16 and 405 KAR 20:040, except as provided in this section and Section 5 of this regulation.

(1) Those provisions of 405 KAR 16:060 related to stream buffer zones shall not apply except that the findings required for approval of a stream buffer zone variance shall apply to any proposal to divert an intermittent or perennial stream.

(2) 405 KAR 16:010, Section 2, coal recovery, shall not apply.

(3) 405 KAR 16:010, Section 4, slide and erosion barriers, and Section 5, slides, shall not apply.

(4) 405 KAR 18:020 shall apply in lieu of 405 KAR 16:020.

(5) 405 KAR 16:040, casing and sealing of drilled holes, shall not apply.

(6) 405 KAR 16:120, use of explosives, shall not apply.

(7) 405 KAR 16:190, Section 5, thick overburden shall not apply.

(8) 405 KAR 16:250, Section 2(2), minimize damage, destruction or disruption of utility services, shall not apply.

(9) 405 KAR 20:050, steep slopes, shall not apply.

Section 3. Nearby Underground Mining Activities. Adverse effects upon or resulting from nearby underground mining activities shall be minimized by appropriate measures, including but not limited to, compliance with 405 KAR 16:010, Section 3.

Section 4. Water Supply Replacement. Any permittee shall replace the water supply of an owner of interest in real property who obtains all or part of his or her supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source, when the water supply has been adversely impacted by contamination, diminution, or interruption proximately resulting from the coal processing plant activities.

Section 5. Previously Exempted Operations. Those coal processing plants in existence on December 1, 1985 which were previously exempted from the requirements of 405 KAR Chapters 7 through 24 by the provisions of KRS 350.060(22) and which become subject to the provisions of this regulation on December 1, 1985 shall comply with all provisions of Sections 1 through 4 of this regulation, except as provided in this section.

(1) 405 KAR 16:010, Section 3, shall not apply to areas disturbed prior to December 1, 1985.

(2) For surface areas that are without suitable topsoil, 405 KAR 16:050, Section 1(3) shall apply.

(3) The requirements of 405 KAR 16:070, Section 1(1)(a) shall not apply until final action on the permit application by the cabinet and the sedimentation pond or other treatment facility design has been approved by the cabinet or the exemption provided by 405 KAR 16:070, Section 1(1)(c) has been granted. The cabinet, as a condition of the permit, may approve a reasonable time to construct or modify water treatment facilities.

(4) Any coal processing plant in existence on May 3, 1978, may comply with the backfilling and grading requirements of 405 KAR 16:190, Section 7.

(5) 405 KAR 20:040, prime farmland, shall not apply to any prime farmland disturbed prior to December 1, 1985.

(6) The ground water monitoring requirements of 405 KAR 16:110 shall not apply until final action on the permit application by the cabinet and the ground water monitoring plan is approved.

Section 6. Applicability of Amendments to this Rule. The amendments to this regulation, excluding Section 7, shall become applicable on December 1, 1985.

Section 7. Statement of Emergency. (1) The amendments to this regulation revise the performance standards for off-site coal processing plants. This is necessary to comply with an order of the U.S. District Court, Eastern District of Kentucky, Civil Action No. 82-30.

(2) The amendments are being promulgated in an emergency regulation because the cabinet must initiate action in accordance with the compliance schedule of the judicial order prior to the time that an ordinary administrative regulation could be promulgated.
(3) This emergency will be replaced by an ordinary administrative regulation.

[Section 1. Applicability. Each person who conducts surface coal mining and reclamation operations, which includes the operation of a coal processing plant or support facility which is not located within the permit area for a specific mine, shall obtain a permit in accordance with 405 KAR 8:050 to conduct those operations and comply with Section 2.]

[Section 2. Performance Standards. Construction, operation, maintenance, modification, reclamation, and removal activities at operations covered by this regulation shall comply with the following:]

(1) Signs and markers for the coal processing plant, coal processing waste disposal area, and water treatment facilities shall comply with 405 KAR 18:030.

(2) Roads, transport, and associated structures shall be constructed, maintained, and reclaimed in accordance with 405 KAR 18:230 and 405 KAR 18:260.

(3) Any stream or channel realignment shall comply with 405 KAR 18:080, Section 2.

(4) If required by the cabinet, any disturbed area related to the coal processing plant or associated facility shall have sediment control structures, in compliance with 405 KAR 18:060, Section 2 and 405 KAR 18:090, and all discharges from these areas shall meet the requirements of 405 KAR 18:060, Section 1 and 405 KAR 18:070 and any other applicable state or federal law.

(5) Permanent impoundments associated with coal processing plants shall meet the requirements of 405 KAR 18:100 and 405 KAR 18:060, Section 8. Dams constructed of or impounding coal processing waste shall comply with 405 KAR 18:160.

(6) Use of water wells shall comply with 405 KAR 18:060, Section 6.

(7) Disposal of coal processing waste, solid waste, and any excavated materials shall comply with 405 KAR 18:140, 405 KAR 18:150 and 405 KAR 18:130.

(8) Discharge structures for diversions and sediment control structures shall comply with 405 KAR 18:060, Section 3.

(9) Air pollution control measures associated with fugitive dust emissions shall comply with 405 KAR 18:170.

(10) Fish, wildlife and related environmental values shall be protected in accordance with 405 KAR 18:180.

(11) Slide areas and other surface areas shall comply with 405 KAR 18:010, Section 3.

(12) Adverse effects upon or resulting from nearby underground coal mining activities shall be minimized by appropriate measures including, but not limited to, compliance with 405 KAR 18:060, Section 8.

(13) Reclamation shall include proper topsoil handling procedures, revegetation, and abandonment, in accordance with 405 KAR 18:060, Section 5, 405 KAR 18:190, 405 KAR 18:200, 405 KAR 18:220, and 405 KAR 18:010, Sections 4 and 5.

(14) Conveyors, buildings, storage bins or stockpiles, water treatment facilities, water storage facilities, and any structure or system related to the coal processing plant shall comply with Title 405, Chapter 18.

(15) Any coal processing plant or associated structures located on prime farmland shall meet the requirements of 405 KAR 20:040.

Any permittee shall replace the water supply of an owner of interest in real property who obtains all or part of his or her supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source, where the water supply has been affected by contamination, diminution, or interruption proximately resulting from the operation of the coal processing plant or support facility.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: November 14, 1985
FILED WITH LRC: December 2, 1985 at 11 a.m.

STATEMENT OF EMERGENCY

KRS 156.070(2) requires the rules, regulations, and by-laws adopted by the Kentucky High School Athletic Association to be approved by the State Board of Education, and 702 KAR 7:070, Section 2(1), adopts and incorporates the 1984-85 version of said rules.

When KHSAA previously made its annual report to the state board, such report included various changes in its by-laws made last spring, but newly-published copies of the updated rules for 1985-86 were inadvertently not submitted, and no formal amendment to 702 KAR 7:070 was adopted.

Since the 1985-86 school year has already begun, the current version of KHSAA's rules and by-laws need to be put into full force and effect immediately. The 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 Local Services

702 KAR 7:070E. Interscholastic athletic eligibility and requirements; redshirting prohibited.

RELATES TO: KRS 156.070
PURSUANT TO: KRS 156.070
EFFECTIVE: November 18, 1985
NECESSITY AND FUNCTION: KRS 156.070 gives the State Board of Education the management and control of interscholastic athletics in the common schools, and the authority to designate an organization or agency to manage such athletics. This regulation is needed to establish with the public common schools a uniform system of eligibility to participate in interscholastic athletics and to designate an organization to manage interscholastic athletics in the secondary schools.

Section 1. Eligibility to Participate in Elementary School Athletics. (1) No pupil in the public common schools repeating the sixth grade during the 1985-86 school year, or enrolled in grades seven (7) through eight (8) during said year or thereafter and not subject to subsection (2) of this section, shall be eligible to participate in interscholastic athletics the second, or any subsequent, year the pupil is
enrolled in the same grade, and no public common school shall participate in an athletic contest with another school that does not adhere to this policy.

(2) Any pupil enrolling in the sixth grade of a public common school, and not repeating said grade, during the 1985–86 school year, and any subsequent sixth grade enrollee, shall have three (3) school years from the time of initial sixth grade enrollment to complete his or her eligibility in elementary school interscholastic athletics. No public common school shall participate in an athletic contest with another school that does not adhere to this policy.

Section 2. Eligibility to Participate in Secondary School Athletics. (a) The eligibility of students to participate in interscholastic athletics at the secondary level shall be governed by the constitution bylaws and tournament rules of the Kentucky High School Athletic Association (KHSAA), 1985–86 [1984–85], a copy of which is presented herewith for filing with the Legislative Research Commission and incorporated by reference. A copy of said rules may be obtained from the Office of Instruction, Department of Education, Frankfort, Kentucky 40601.

(b) Effective with the 1985–86 school year, pupils enrolling in the sixth grade of any school shall have seven (7) school years from the time of such enrollment to complete their eligibility in high school interscholastic athletics subject to the jurisdiction of KHSAA.

(c) No pupil enrolled in the seventh or eighth grade in 1985–86, or thereafter, and not subject to paragraph (a) of this subsection, shall be eligible for more than a total of one (1) year in each grade.

(d) No student who initially enrolled in the ninth grade during or prior to the 1985–86 school year or who is not otherwise subject to paragraph (a) of this subsection, and who has been enrolled in grades 9–12 eight (8) semesters, shall thereafter be eligible.

(e) The KHSAA shall adopt the provisions of this subsection as a part of its by-laws and shall fully implement and enforce said eligibility requirements for all high school athletics subject to its jurisdiction.

Section 3. Any public elementary or secondary school or school employee or official who knowingly allows participation of an ineligible player hereunder, or who, through reasonable diligence, should have known of such ineligibility, shall be considered in noncompliance with state accreditation standards or guilty of willful neglect of duty or breach of contract. Such shall apply not to coaches but also to personnel supervising coaches; such as but not limited to an athletic director, assistant principal, a principal, an assistant superintendent, a superintendent, or a school board member.

ALICE McDonALD, Superintendent
APPROVED BY AGENCY: November 6, 1985
FILED WITH LRC: November 18, 1985 at 8 a.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 since no administrative regulation has been filed with respect to these subject matters previously. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with House Bill 334.

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

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

902 KAR 12:080E. Policies and procedures for mental health/mental retardation facilities.

RELATES TO: KRS Chapter 210
PURSUANT TO: KRS 210.010
EFFECTIVE: November 10, 1985
REPLACED: December 10, 1985
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 5. Central State Hospital Policy Manual. The policies and procedures set forth in the September 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 September 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 8. Western State Hospital ICF Policy Manual. The policies and procedures set forth in the September 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 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 10 is revised as follows:

KENTUCKY CORRECTIONAL PSYCHIATRIC CENTER POLICY MANUAL

Policy #31 B-34 A new policy is developed to provide for hospitalization of inmates committed to the Corrections Cabinet. This policy also provides for hospitalization of inmates on an involuntary basis according to KRS Chapter 202A and in compliance with Vitrok vs. Jones. This new policy brings the policies and procedures of the Kentucky Correctional Psychiatric Center in compliance with existing policies of the Corrections Cabinet.

[Section 2 is revised as follows:

HAZELWOOD POLICY MANUAL

87-1-2 #4 Management Audit Plan. This policy outlines the responsibilities for oversite and review of facility activities to assure that information is properly communicated, and once reviewed, necessary actions taken. It appears to have no financial impact.

87-3-5 #49 Administration of PPD Skin Test. This policy was updated to be in compliance with the new regulations pertaining to employees' skin tests. There is no financial impact from the policy.

87-4-1 #6B Vehicle Regulations. This is a policy update and better complies with the facility's current needs in parking and enforcement of facility parking regulations. No financial impact.

87-4-2 #11B Receipt and Deposit of Funds. This is a policy update which more clearly outlines the handling of funds in the facility. No financial impact.

87-5-1 #18A Family/Guardian Notification of Injury or Illness. This policy was revised to more clearly specify family/guardian notification in cases of injury or illness of residents. No financial impact.


87-5-7 #21 Records Review. This is a policy addition which adds a built-in review of facility records in a survey inspector-type manner. No financial impact.

87-6-7 #2B Behavior Management Programs. The previous policy on Behavior Management was in compliance with the ICF/MR regulations only. The revised policy meets the requirements of ICF/MR and also meets the standards of the ACMRDO Accreditation Council. The new policy reflects the more current techniques utilized in the field of behavioral management. This policy does not appear to have any financial costs related.]

DENNIS D. BOYD, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: November 12, 1985
FILED WITH LRC: November 18, 1985 at 8 a.m.
PROPOSED AMENDMENTS

REVENUE CABINET
Department of Professional & Support Services
(Proposed Amendment)

103 KAR 27:080. Meals served by railroads, airlines [airplanes], etc.

RELATES TO KRS 139.050, 139.110, 139.130
PURSUANT TO: KRS Chapter 13A
NECESSITY AND FUNCTION: To interpret the sales and use tax law as it applies to meals served by railroads, airlines [airplanes] or other transportation facilities.

Section 1. Gross receipts or sales price, as the case may be, includes sales of meals by railroads, pullman car, airlines [airplane] or other transportation companies [company diners], while within the state.

Section 2. In cases where meals are served without a separately stated [in this case free off] charge to the passengers of the aforementioned companies, the company will be considered the consumer of the meals and the tax applies at the time of their sale to the company[, or at the time such meals are served or consumed in this state].

GARY W. GILLIS, Secretary
APPROVED BY AGENCY: December 12, 1985
FILED WITH LRC: December 13, 1985 at noon.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on January 21, 1986 at 10 a.m. in Room 406 of the Capitol Annex, Frankfort, Kentucky. If no written notice of intent to attend the public hearing is received within five (5) days before the scheduled hearing, the hearing will be cancelled. Those interested in attending shall notify in writing: Scott Akers, Revenue Cabinet, Division of Tax Policy and Legal Services, New Capitol Annex Building, Frankfort, Kentucky 40620.

REGULATORY IMPACT ANALYSIS
Agency Contact Person: Scott Akers
(1) Type and number of entities affected: This amendment clarifies this regulation's conformity with the statutes and cabinet policy. In 1978 it was determined that there was no sales tax exemption for food or fuel purchased by interstate air carriers within this state. This regulation had been interpreted to mean that food purchased in this state by air carriers was only subject to sales tax if the air passenger who consumed the food did so while within the boundaries of the state of Kentucky. The correct rule is that the tax applies at the time the air carrier makes the purchase since the air carrier is the consumer. The food is not being resold to the air passengers and, thus, the air carriers purchases are not exempt as sales for resale.
The amended language of this regulation conforms to the court's ruling in Delta Airlines, Inc. v. Revenue, Ky., 689 S.W.2d 14 (1985). There the court found that fuel purchased by air carriers within the state of Kentucky was subject to sales tax without regard to whether all of the fuel was consumed within the boundaries of the state of Kentucky. The court noted that there is no exemption for air carriers other than that contained in KRS 139.480(16). That provision contains no exemption for food purchased by an interstate air carrier.
(a) Direct and indirect costs or savings to those affected:
1. First year: Currently the Revenue Cabinet has assessed over $600,000 against airlines who failed to remit sales tax on purchases of food within the State of Kentucky. This amended regulation will further establish the validity of those assessments.
2. Continuing costs or savings: Air carriers and other common carriers will continue to be liable for the payment of sales tax on their food purchases.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None.
(b) Reporting and paperwork requirements: All persons engaged in selling food to common carriers are required to collect the sales tax and remit it with their monthly sales tax returns.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: There will be no significant costs or savings involved here since the regulation is merely being amended to clarify its conformity with current policy and practice.
2. Continuing costs or savings: There will be no additional costs or savings other than the fact that the amendment will continue to assure that sales tax is collected on the sales in question. Amendment of the regulation will eliminate a potential, though rather weak, defense some taxpayers may have to the assessment. As long as the current version of the regulation remains on the books there will be some taxpayers who will contend that even though their interpretation of the regulation may not have any statutory basis it is still valid because it comports with Revenue's pre-1978 interpretation. This position ignores the fact that a regulation must conform to the statutes upon which it is based in order to be valid. See Hansbach Metal Company vs. Revenue, Ky., 521 S.W.2d 85 (1975). The primary benefit of amending this regulation is simply to eliminate any ambiguity as to its meaning and application.
3. Additional factors increasing or decreasing costs: None.
(b) Reporting and paperwork requirements: The normal reporting and paperwork attributable to routine maintenance of taxpayer records will be required.
(3) Assessment of anticipated effect on state and local revenues: There will be no effect on local revenues. State revenues should be enhanced somewhat by increased taxpayer compliance with the law.
(4) Assessment of alternative methods; reasons why alternatives were rejected: None. This amendment results because the current regulation is not in conformity with the law.
Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None.
PUBLIC HEARING SCHEDULED: Please take notice that a hearing on the amendment to the above regulation has been scheduled for January 22, 1986 at 10 a.m. at the offices of the State Board of Examiners of Social Work, Berry Hill Annex, Frankfort, Kentucky. Any individual wishing to be present or appear at the hearing must notify Ms. Betty Qualls, Secretary to the Board, at least five (5) days prior to the hearing. If no one requests a hearing five (5) days before the scheduled date, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ms. Betty Qualls

(a) Type and number of entities affected: None
(b) Direct and indirect costs or savings to those affected: No cost.

1. First year: No cost.
2. Continuing costs or savings: No cost.
3. Additional factors increasing or decreasing costs (note any effects upon competition): No cost.

(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: No cost.
1. First year: No cost.
2. Continuing costs or savings: No cost.
3. Additional factors increasing or decreasing costs: No cost.

(c) 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:

Tiering: Was tiering applied? No. Tiering is not applicable to this amended regulation since the terms and conditions of the regulation apply equally to all persons who are engaged in buying or selling food for consumption by interstate common carriers.

FINANCE AND ADMINISTRATION CABINET
State Board of Examiners of Social Work
(Proposed Amendment)

201 KAR 23:120. Equivalency standard.

RELATES TO: KRS 335.090
PURSUANT TO: KRS Chapter 13A, 335.070
NECESSITY AND FUNCTION: This regulation clarifies what the board will consider as equivalent education to that of a baccalaureate degree in social work or a social welfare program.

Section 1. In determining equivalency, the board will compare any program to that of a master's or bachelor's degree from a CSWE (Council of Social Work Educators) accredited school.

In determining equivalency, the board will require that the educational content of a program shall include (1) human behavior and (or) the social environment; (2) social welfare policy and service; (3) research; (4) social work practice; and (5) educational practicum.

Section 2. (1) In human behavior and the social environment emphasis should be placed on the psychosocial situation. Six (6) hours of such courses should be at the upper division, or (2) if such is built on a base of psychological and sociological courses.

(2) Social welfare policy and service courses shall include at least three (3) hours at the upper division social work or social welfare courses, built on courses in political science and economics. In the absence of political science and economics, there shall be at least six (6) hours in the social welfare policies and services area.

(3) Research courses shall be one three (3) hour social research course based on some kind of basic research.

Social work practicum shall include six (6) hours of social work practice courses taught by an individual with an advanced degree in social work. In the absence of classes in lower division social work methods, three (3) additional hours shall be required in a lower division course, totalling nine (9) hours.

(5) Practicum shall be taught by an individual with an advanced degree in social work for at least 450 hours. Two (2) hours per week of supervision shall be required by an individual with an advanced degree in social work.

KENNETH PHILLIPS, Chairman
APPROVED BY AGENCY: November 18, 1985
FILED WITH LRC: December 6, 1985 at 9 a.m.
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
1.2 News Media
1.6 Extraordinary Occurrence Reports
1.11 Population Counts and Reporting Procedures
2.1 Inmate Canteen
3.1 Code of Ethics
3.2 Inclement Weather and Emergency Conditions Policy
3.3 Holding of Second Jobs by Bureau Employees
3.7 Employment of Relatives
3.10 Staff Clothing and Personal Appearance
3.12 Institutional Staff Housing
3.14 Corrections Cabinet Payroll Deduction Policy and Procedure
4.1 Attendance at Professional Meetings
4.2 Staff Training and Development
4.3 Firearms and Chemical Agents Training
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 Bedside Visits
9.5 Return of Escapes by Automobile
9.6 Contraband
9.7 Storage, Issue and Use of Weapons Including Chemical Agents
9.8 Search Policy
9.9 Transportation of Inmates
9.10 Security Inspections
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
11.5 Hair and Grooming Standards
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GEORGE W. WILSON, Secretary
APPROVED BY AGENCY: December 12, 1985
FILED WITH LRC: December 13, 1985 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for January 23, 1986 at 9 a.m. in 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: 1,987 employees of the Corrections Cabinet, 4,677 inmates, 3,436 parolees, 6,644 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
      2. Continuing costs or savings: Same as (2)(a).
      3. Additional factors increasing or decreasing...
costs: Same as (2)(a).

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:
(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.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Local Services
(Proposed Amendment)

702 KAR 3:190. Maximum class sizes.

RELATES TO: KRS 157.360
PURSUANT TO: KRS 156.070, 157.360

NECESSITY AND FUNCTION: KRS 157.360(2)(b) prescribes that the Superintendent of Public Instruction shall enforce maximum class sizes for every academic course requirement of the State Board of Education in kindergarten and grades one (1) through six (6), except in vocal and instrumental music, art, physical education, and special education classes and shall establish procedures for exemptions to the above. This regulation implements such functions.

Section 1. The maximum number of pupils enrolled in each academic class in grades kindergarten, one (1), two (2), and three (3) shall not exceed twenty (20), except (29), except classes in vocal and instrumental music, art, and physical education. The maximum number of pupils enrolled in each academic class in grades four (4), five (5), and six (6) shall not exceed thirty-one (31), except classes in vocal and instrumental music, art, and physical education.

Section 2. (1) A superintendent of a local school district may request approval from the State Board of Education for a one (1) year exemption of no more classes than enroll twenty (20) percent of the pupils in kindergarten and grades one (1) through six (6) in each school within the district, when unusual circumstances are believed to warrant an increased class size for a specific class or classes.
(2) The request for exemption shall be filed with the Professional Staff Data forms and shall be forwarded to the Office of Local Services, Division of School Management and Audit, not later than October 1.
(3) The request for exemption shall contain detailed, specific reasons and circumstances causing the increased class size for each class for which an exemption is requested.
(4) The request for exemption shall contain an educational plan assuring that all affected students will receive a quality education.

(5) The request for exemption shall include a specific plan for reducing the class size prior to the beginning of the next school year.
(6) No exemption will be granted in the same grade in the same school for more than one (1) year. Transferring of students between schools in subsequent years for the purpose of qualifying for an exemption is not approved.
(7) Since the district, as a condition for approval of an exemption, must provide a plan to alleviate the overcrowding problem, no school which has an exemption in a grade will be granted an exemption in the next grade for the following year. Transferring of students between schools in subsequent years for the purpose of qualifying for an exemption is not approved.
(8) No class granted an exemption in grades K-6 shall enroll more than thirty-five (35) students.

Section 3. The Office of Local Services shall enforce this regulation through examination of the enrollments recorded on each Professional Staff Data form and shall certify compliance or deny Foundation Program units to a school district in non-compliance with this regulation.

ALICE MCDONALD, Superintendent
APPROVED BY AGENCY: December 11, 1985
FILED WITH LRC: December 13, 1985 at noon
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on January 23, 1986, at 1 p.m., EST, in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its December meeting. Those persons wishing to attend and testify shall contact the writing: Laurel True, Secretary, State Board of Education. First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before January 18, 1986. 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: Robert Elder
(1) Type and number of entities affected: 43 school districts, 130 classes.
(2) Direct and indirect costs or savings to those affected:
1. First year: Approximately $910,000.00 for aids for 130 exemtion classes.
2. Continuing costs or savings: Reoccurring cost for salaries for aids.
3. Additional factors increasing or decreasing costs (note any effects upon competition): Reduction in number of aids as classes fall below minimum class size.
4. Reporting and paperwork requirements: Routine reports three times annually for monitoring.

(2) Effects on the promulgating administrative body:
(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

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(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: The requirement of aides would be in effect after other alternatives were considered.
(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: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. N/A

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


RELATES TO: KRS 156.095, 157.390, 158.070
PURSUANT TO: KRS 156.095, 157.390, 158.070
NECESSITY AND FUNCTION: KRS 156.095 authorizes the Department of Education to establish, direct, and maintain a state-wide program of in-service teacher training, with relevant purposes of such a program being the improvement of the leadership qualities and professional competence of principals and supervisors and for such other services designated by the State Board of Education for the improvement of instruction. KRS 157.390(2)(a) allows the state board to approve the use of extended employment days; and KRS 158.070 requires the state board to adopt regulations setting forth guidelines and procedures to be followed for the approval of the four (4) days of the minimum school term which are mandated to be utilized by each local school district for in-service activities for the professional staff. This regulation implements these duties and powers by interpreting what in-service education consists of and by requiring each local district to have approved annually a master in-service education plan by which it is to be guided in providing suitable in-service training programs and in requiring all instructional leaders to participate in the state-wide training program implemented under KRS 156.101.

Section 1. In-service education shall mean any training of school personnel to prepare them to satisfy a need of the school system. The data, skills, and concepts comprising the substance of the training programs are determined by deficiencies in the instructional, administrative and support services [other certified personnel] of the school system.

Section 2. Each local district board of education shall annually, by July 15, submit to the State Department of Education for approval a master in-service education plan. The plan shall include the following components:
(1) Name of local school district;
(2) Name of in-service education coordinator;
(3) Names of local school district's in-service education committee, which shall be a representative body of all areas or levels of educational personnel within the local school district;
(4) Description of needs assessment, including a brief description of procedures implemented to determine how the district's in-service education needs were assessed;
(5) Statement of district's instructional improvement goal(s), which shall be based on identified needs and which shall include but shall not be limited to the completion of the requisite training hours by all instructional leaders, as defined by KRS 156.101, regardless of the date of initial certification of such instructional leaders. Such training hours for instructional leaders may be completed as a part of the state-wide program for such, either during the regular school term or as an approved use of extended employment;
(6) Statement of district's in-service education objectives, which shall provide direction for education personnel in the attainment of the district's instructional improvement goal(s) and shall include but shall not be limited to the completion of the above-defined requisite training hours for all instructional leaders;
(7) Description of recordkeeping and procedures, including an indication of the participation of educational personnel in in-service education activities; and
(8) Description of evaluation, including:
(a) A summary of how in-service education programs implemented and operated by individual local school districts will be evaluated; and
(b) A summary of how the implementation of the master in-service education plan will be evaluated.

Section 3. (1) The master in-service plan shall address any local district instructional improvement or training needs that are in accordance with 704 KAR 3:035.
(2) In-service activities shall be related to teachers' instructional assignments and administrators' professional responsibilities. Activities must support the local school district's instructional improvement goal(s) and objectives identified in the master in-service plan.
(3) Activities for in-service credit of classroom teachers shall not supplant any of the six (6) hour instructional day on days when children are in attendance.
(4) In-service education activities shall not occur on snow days. Districts may, however, report flexible in-service on snow days. This situation involves a calendar change only; it does not result in activities on snow days.
(5) In-service credit shall not be awarded for college graduate courses that lead to a change in rank or certification status. Exceptions may be made for university courses that are clearly supportive of the participating district's master in-service plan.
(6) In-service credit shall not be awarded for those activities that provide remuneration for time served.
(7) Districts implementing a flexible in-service schedule shall award in-service credit for any given academic school year within the date limitations of the master in-service plan.
(8) Sick leave may not be applied to in-service days scheduled in a flexible format for those districts electing to use flexible in-service. The school board shall promulgate appropriate policy regulating such use.

(9) Approvable in-service activities are those which address instructional improvement for the school district, an individual school or a group of teachers. Activities which are not approvable for in-service credit include, but are not limited to: the following: organizational business meetings, compiling class rosters, scheduling, counting textbooks, writing lesson plans, housekeeping duties, faculty meetings, extracurricular activities, PTA/PTO meetings, sporting events, and field trips, etc.

Section 4. [3.] When implementing in-service education programs, each local school district shall adhere to its approved master in-service education plan as developed with technical assistance provided from the Department of Education.

ALICE MCDONALD, Superintendent
APPROVED BY AGENCY: December 11, 1985
FILED WITH OCR: December 13, 1985
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on January 23, 1986, at 1 p.m., EST, in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its December 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, or before January 18, 1986. 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: Tom Vest/Stephen Henderson

(1) Type and number of entities affected: All certified instructional personnel
(a) Direct and indirect costs or savings to those affected:
1. First year: No additional costs or savings, clarifies the existing regulation.
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 on paperwork requirements.

(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: No additional costs or savings; clarifies the existing regulation.
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No additional costs or savings.

(3) Assessment of anticipated effect on state and local revenues: None

(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: 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. This regulation will apply to all certified instructional personnel.

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

704 KAR 10:022. Elementary, middle and secondary schools standards.

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 adopt rules and regulations relating to grading, classifying, and accrediting all common schools, and further allows private, parochial, and church schools to voluntarily comply with accreditation standards and to be so certified by the state board. This regulation implements this duty by prescribing general standards to be used in the evaluation of public elementary, middle and secondary schools, and of those non-public schools voluntarily seeking an accreditation evaluation.

Section 1. (1) Pursuant to the authority vested in the Kentucky State Board of Education by KRS 156.070 and 156.160, the Kentucky Standards for Grading, Classifying and Accrediting Elementary, Middle and Secondary Schools, as amended on December 11, [September 10.] 1985, are presented herewith for filing with the Legislative Research Commission, and incorporated by reference.

(2) "Procedures for Kentucky Accreditation Program," April, 1985, as revised on September 10, 1985, is presented herewith for filing with the Legislative Research Commission and incorporated by reference.

Section 2. Pursuant to the authority vested in the Kentucky State Board of Education by KRS 156.160(2), non-public schools which voluntarily request accreditation shall be in compliance with all standards and indicators included in the Kentucky Standards for Grading, Classifying and Accrediting Elementary, Middle and Secondary Schools except those marked "N/A" (not applicable). These Voluntary Non-Public School Accreditation Standards, May, 1985, are presented herewith for filing with the Legislative Research Commission and incorporated hereby in reference.

Section 3. The procedures for the voluntary accreditation of individual non-public schools or related groups of such schools under common management and control shall be as follows:
(1) All non-public schools or groups of schools which voluntarily request accreditation shall notify the Division of Accreditation by letter of their intentions.

(2) An Instructional Services Advisor (I.S.A.) shall be assigned to a school and shall be the liaison between the school and the Department of Education. The I.S.A. shall provide the school with the department's self-study guide and provide technical assistance as needed.

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(3) An on-site team will visit each school to validate the school's self-study. This team shall be appointed by the Department of Education and shall consist of at least three (3) persons — an I.S.A., a local non-public school official and another Department of Education staff member.

(4) An additional team member shall be appointed for each additional five (5) faculty members beyond fifteen (15).

(5) A report shall be generated by the on-site team and a copy presented to the school or related group of schools. The school or related group of schools shall prepare a three (3) year plan of action to correct all non-compliance. The plan shall be monitored annually to assure that the plan of action is implemented.

(6) The school or related group of schools shall then be placed on a five (5) year accreditation cycle. The first year shall be the self-study and the on-site visit followed by a three (3) year plan of action, and the last year shall be devoted to updating the self-study.

(7) State funds may not be used for the accreditation of non-public schools. Such schools shall reimburse the Department of Education the total costs of accreditation certification, including necessary follow-up, either from their own funds or from any appropriate federal grants.


Section 5. A copy of all documents incorporated in this regulation may be obtained from the Office of Instruction, Department of Education.

ALICE Mc Donald, Superintendent
APPROVED: December 11, 1985
FILED WITH LRC: December 13, 1985 at noon
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on January 23, 1986, at 1 p.m., EST, in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its December 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 January 18, 1986. 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: Robert Elder
(1) Type and number of entities affected: 43 school districts, 130 classes.
(a) Direct and indirect costs or savings to those affected:
1. First year: Approximately $910,000.00 for aids for 130 exempted classes.
2. Continuing costs or savings: Reoccurring costs for salaries for aides.
3. Additional factors increasing or decreasing costs (note any effects upon competition):
   Reduction in number of aids as classes fall below maximum class size.
(b) Reporting and paperwork requirements: Routine reports three times annually for monitoring.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
(b) Reporting and paperwork requirements: None
(c) Assessment of anticipated effect on state and local revenues: None
(d) Assessment of alternative methods; reasons why alternatives were rejected: The requirement of aides would be in effect after other alternatives were considered.
(e) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(f) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
(g) Any additional information or comments: None

Tiering:
Was tiering applied? No. This regulation must apply evenly to all school districts.

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

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

RELATES TO: KRS 161.020, 161.025, 161.030
PURSUANT TO: KRS 156.070, 161.030
NECESSITY AND FUNCTION: KRS 161.020 prohibits any person from holding the position of superintendent, principal, teacher, supervisor, director of pupil personnel, or other public school position for which certificates may be issued unless he holds a certificate of legal qualifications for the particular position; KRS 161.025 gives the Kentucky Council on Teacher Education and Certification the duty to develop and recommend policies and standards relating to teacher preparation and certification; and KRS 161.030 rest the certification of teachers and other school personnel and the approval of teacher-preparatory colleges and universities and their curricula with the State Board of Education. This regulation establishes the standards and procedures which are to be used for the approval of the various teacher preparation programs offered by the colleges and universities, and where applicable, these curriculum standards are consistent with the Program of Studies as incorporated in 704 KAR 3:364.

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

Section 2. The Kentucky Standards for the Preparation-Certification of Professional School Personnel are hereby amended, and the amended document is hereby incorporated by reference and identified as the Kentucky Standards for the Preparation-Certification of Professional School Personnel, revised December [September], 1985. A copy of this document can be obtained from the Office of Instruction, Department of Education, Capital Plaza Tower, Frankfort, Kentucky.

ALICE MCDONALD, Superintendent
APPROVED BY AGENCY: December 11, 1985
FILED WITH LRC: December 13, 1985 at noon
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on January 23, 1986, at 1 p.m., EST, in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its December 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 January 18, 1986. 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: Dr. Sidney Simandle
(1) Type and number of entities affected: None. Colleges and universities already have the capacity for administering program.
(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: 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: 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. Uniform statewide program.

EDUCATION AND HUMANITIES CABINET
Department for the Blind
(Proposed Amendment)
720 KAR 1:010. Federal Vocational Rehabilitation Program.

RELATES TO: KRS 163.450 to 163.470
PURSUANT TO: KRS Chapter 13A
NECESSITY AND FUNCTION: KRS 163.450 to 163.470 designates the Department for the Blind to be responsible for all rehabilitation services for citizens of the Commonwealth of Kentucky who are blind and visually impaired. These regulations adopt federal rules governing the services, personnel, and administration of the Department for the Blind required as a condition for the agency to receive federal funds and to administer federal vocational rehabilitation programs. P.L. 93-112, as amended, requires the submission of a Three-Year State Plan for Vocational Rehabilitation Services to the Secretary of the United States Department of Education, and P.L. 93-516, as amended, requires the submission to the Commissioner of Rehabilitation Services, Department of Education, an application for designation as state licensing agency to administer the Randolph-Sheppard Vending Facility Program.

Section 1. Pursuant to the authority vested by KRS 163.450 to 163.470, the Kentucky State Plan for Vocational Rehabilitation Services for the Blind and Visually Impaired, as amended, for the period October 1, 1985 [1982], through September 30, 1987 [1985], effective October 1, 1985 [1983], is presented herewith for filing with the Legislative Research Commission and incorporated by reference. A copy of said plan may be obtained from the Department for the Blind, Education and Humanities Cabinet.

Section 2. Pursuant to the authority vested by KRS 163.450 to 163.470, the Kentucky Application for Designation as the Randolph-Sheppard Vending Facility Program, effective November 15, 1979, is presented herewith for filing with the Legislative Research Commission and incorporated by reference. A copy of said plan may be obtained from the Department for the Blind, Education and Humanities Cabinet.

CHARLES W. MCDOWELL, Commissioner
APPROVED BY AGENCY: December 12, 1985
FILED WITH LRC: December 12, 1985 at 3:30 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on January 22, 1986, at 10 a.m. at the Frankfort Office of the Department for the Blind, 427 Versailles Road. Those interested in attending this meeting shall contact: Edward A. Rademaker, Kentucky Department for the Blind, 427 Versailles Road, Frankfort, KY 40601.

REGULATORY IMPACT ANALYSIS
Agency Contact Person: Edward A. Rademaker
(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

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(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: 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:
Agency State Plan under P.L. 93-112.

Tiering:
Was tiering applied? Yes

CABINET FOR PUBLIC PROTECTION & REGULATION
Department of Financial Institutions
Division of Banking
(Proposed Amendment)


RELATES TO: KRS 287.095, 287.905
PURSUANT TO: KRS 287.020
NECESSITY AND FUNCTION: KRS 287.095 and 287.905 set forth the statutory procedures for filing applications by a bank holding company or individual to acquire control of a state-chartered bank or bank holding company which includes a state-chartered bank when either a state-chartered bank or a bank holding company which includes a state-chartered bank is involved in the transaction; the setting of filing and examination fees; and the examination of any holding company that controls a state-chartered bank. This administrative regulation is to insure uniformity in the procedures to be used in the application and examination processes.

Section 2. Filing Fee. Each application shall include a non-refundable investigation fee of $2,500 ([$250]). The fee assessed by the commissioner shall be paid prior to approval of the application by the commissioner.

Section 3. Examination Fees. If the commissioner examines or elects to participate in a joint examination with the applicable federal regulatory agency of any holding company that controls a state-chartered bank, the examination fee assessed against the company examined shall be based upon fair compensation for time and actual expenses.

Section 4. Publication of Notice. Publication of notice of intention of a bank holding company to acquire control of a state-chartered bank or to acquire control of a bank holding company which controls a state-chartered bank shall be the responsibility of the applicant pursuant to Regulation Y issued by the Federal Reserve Board (12 CFR 225, as revised effective February 3, 1984).

Section 5. Hearings. The department shall not hold hearings on any application or notice. Hearings, if any, shall be conducted by the Federal Reserve Board in accordance with Regulation Y issued by the Federal Reserve Board (12 CFR 225, as revised effective February 3, 1984) or by the appropriate federal banking agency pursuant to the federal Bank Change in Control Act of 1978, as amended (12 U.S.C. 1817(j)).
Section 6. Nonbank Activities and Acquisitions. Nonbank activities and acquisitions for bank holding companies are regulated by the Federal Reserve Board in accordance with Regulation Y issued by the Federal Reserve Board (12 CFR 225, as revised effective February 3, 1984).

Section 7. Coordination with Federal Reserve Board. The commissioner shall coordinate the application process for acquisition of control of state-chartered banks and bank holding companies which control a state-chartered bank with the Federal Reserve Board to insure that no unreasonable delays occur in the approval process.

MELVIN H. WILSON, Secretary
BALLARD W. CASSADY, JR., Commissioner
APPROVED BY AGENCY: December 12, 1985
FILED WITH LRC: December 12, 1985 at 4 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on January 22, 1986, at 10 a.m., prevailing local time, in the offices of the Department of Financial Institutions, 911 Leawood Drive, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing no later than January 17, 1986. J. Rick Jones, Department of Financial Institutions, 911 Leawood Drive, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS
Agency Contact Person: Wanda Harrod
(1) Type and number of entities affected: Individuals and multibank holding companies: number unknown at this time.
   (a) Direct and indirect costs or savings to those affected:
      1. First year: Increase fee by $2,250 from $250 to $2,500.
      2. Continuing costs or savings: None
      3. Additional factors increasing or decreasing costs (note any effects upon competition): None
   (b) Reporting and paperwork requirements: Must file application to form multibank holding company.
   (2) Effects on the promulgating administrative body:
      (a) Direct and indirect costs or savings:
         1. First year: None
         2. Continuing costs or savings: None
         3. Additional factors increasing or decreasing costs: None
      (b) Reporting and paperwork requirements: Analysis of applications and notices.
   (3) Assessment of anticipated effect on state and local revenues: Unknown at this time.
   (4) Assessment of alternative methods: reasons why alternatives were rejected: DNA
   (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. Uniform application to all regulated financial institutions.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Project Amendment)

902 KAR 8:020. Policies and procedures for local health department operations.

RELATES TO: KRS Chapter 212
PURSUANT TO: KRS 194.050, 211.090, 211.170, 211.180, 213.410
NECESSITY AND FUNCTION: KRS 211.170 directs the Cabinet for Human Resources to establish policies governing the activities of local health departments. This regulation adopts various manuals setting policies and standards for health departments.


Section 4. Medical Records System Policy and Procedure Manual for Local Health Departments in Kentucky. The policies and procedures set forth in the May 1, 1984, edition of the "Medical Records System Policy and Procedure Manual for Local Health Departments in Kentucky" governing the development and maintenance of medical records in local health departments are hereby adopted by reference.


Section 7. Local Health Department Environmental Data System Operational Procedures for Weekly Environmental Activity Report, Sanitation Programs Information Formulator, and Local Health Annual Data Report. The policies set forth in the September, 1982, edition of the "Local Health Department Environmental Data System Operational Procedures for Weekly Environmental Activity Report, Sanitation Programs Information Formulator, and Local Health Annual Data Report" are hereby adopted by


Section 10. Sudden Infant Death Syndrome Program. The policies set forth in the January 1, 1985, edition of the "Sudden Infant Death Syndrome Program" manual governing the operation of the Sudden Infant Death Syndrome Program conducted by local health departments are hereby adopted by reference.

Section 11. Standards for Genetic Disease Testing, Counseling and Education Services Program. The policies set forth in the October 15, 1985, edition of the "Standards for Genetic Disease Testing, Counseling and Education Services Program" manual governing the operation of genetic disease testing and counseling clinics conducted by local health departments are hereby adopted by reference.

Section 12. Standards for Regional Pediatric Clinics. The policies set forth in the October 15, 1985, edition of the "Standards for Regional Pediatric Clinics" manual governing the operation of regional pediatric programs conducted by local health departments are hereby adopted by reference.


Section 14. 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 15. Summary of Amendment. (1) In relation to Section 1 relating to the Local Health Policy Manual, LHP 500-1 "Overtime" is being revised to provide local health departments the option of compensating employees at a rate of pay of one and one-half (1 1/2) the regular rate for all time worked over forty (40) hours per week. [2 relating to the Financial Management Manual strike pages 48, 85, and 89(a) undated and substitute in lieu thereof new pages 48 and 85 dated November 15, 1985. This revision updates the Uniform Percentage Payment Schedule to correspond to federal poverty income guidelines and requires fidelity bonding on all employees and board of health members who handle local health department funds.]

(2) In relation to Sections 9 and 10 relating to the Consumer Product Safety Commissioner's Hazardous Substances Labeling Guide and the Consumer Product Safety Commission's In-Depth Investigations Manual. Local health departments no longer administer this program. Therefore, these two (2) manuals are obsolete and will not continue to be incorporated by reference in this regulation.

C HERNANDEZ, M.D., M.P.H., Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: December 5, 1985
FILED WITH LRC: December 12, 1985 at 4 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for January 21, 1986 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 January 16, 1986 of their desire to appear and testify at the hearing: R. Hughes Walker, General Counsel, Cabinet for Human Resources, 275 E. Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Phillip R. Spangler
(1) Type and number of entities affected: 47 Local Health Departments.
(a) Direct and indirect costs or savings to those affected:
1. First year: Some additional overtime costs/savings in reduced personnel turnover.
2. Continuing costs or savings: None.
3. Additional factors increasing or decreasing costs (note any effects upon competition): Much of additional cost will be reimbursable.
(b) Reporting and paperwork requirements: Agencies choosing to pay time and one-half to additional professional staff must give prior notice to the Division of Local Health.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Must maintain record of agencies which choose to pay additional overtime.
(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
(6) 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. N/A.
CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

RELATES TO: KRS 211.170, 212.170(4), 212.870
Pursuant To: KRS 194.050, 211.090, 212.170(4)
NECESSITY AND FUNCTION: KRS 211.170, 212.170, and 212.870 require the Cabinet for Human Resources to supervise the personnel functions and prescribe merit system standards for local health departments. In addition, 5 CFR, Part 900, Intergovernmental Personnel Act, 1986, requires the Cabinet to establish procedures for the operation of a personnel system on a merit basis as a condition precedent to the receipt of federal funds for the conduct of certain federally funded health programs. 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 the 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 merit system council for local health departments in accordance with applicable federal and state laws and regulations and KRS 212.170(4).

Section 1. Definitions. As used in this regulation: (1) "Council" means the merit system council for local health departments created by this regulation; and (2) "Local health department" means a county, city-county, or district health department created pursuant to KRS Chapter 212 but does not include health departments located in cities of the first class or urban-county health departments.

Section 2. Council Membership, Terms, and Meetings. (1) A merit system council is hereby created to serve local health departments. The council shall be composed of five (5) members who shall be appointed by the Secretary for Human Resources upon the recommendation of the Commissioner of the Department for Health Services. The members shall be public-spirited persons of recognized experience in the improvement of public administration, and in the impartial selection of efficient governmental personnel. No member of the council shall be an employee of a local health department or of the Department for Health Services.

(2) Members of the council shall serve for a term of three (3) years or until successors have been appointed, except that for members first appointed two (2) members shall be appointed for one (1) year, one (1) member for two (2) years, and two (2) members for three (3) years. A member appointed to fill a vacancy occurring prior to the expiration of the term shall be appointed for the remainder of such term.

(3) The council shall elect a chairman from its membership. Regular meetings of the council shall be held at least semi-annually. Special meetings of the council may be held upon call of the chairman or the commissioner of the Department for Health Services.

(4) The council shall be attached to the Department for Health Services for administrative and budgetary purposes.

(5) A simple majority of the members of the council shall constitute a quorum for the purpose of conducting official business. The council shall adopt procedures for the conduct of its activities.

Section 3. Merit System Rules and Regulations. The Cabinet for Human Resources hereby adopts the publication entitled "Rules and Regulations for the Local Health Departments of Kentucky" as amended to November 20, 1985 (September 15, 1984), by reference, as the merit system requirements for local health departments in Kentucky governing all phases of personnel management, including but not limited to appointments, promotions, examinations, separations, and disciplinary actions.

Section 4. Summary of Amendment. In relation to Section 3 of this regulation strike the cover page of the Merit System Rules and Regulations for Local Health Departments of Kentucky dated September 15, 1984, and substitute in lieu thereof a new cover page dated November 20, 1985, [May 1, 1984, and substitute in lieu thereof new cover page dated September 15, 1984. Strike page 9 undated and substitute in lieu thereof new page 9 dated 9-15-86 which permits county health departments, as well as district health departments, to use all available compensation plans.]

(1) Strike pages 25 and 26 undated and substitute in lieu thereof new pages 25 and 26 dated 11-20-85 which:
(a) Deletes allowance for twenty-four (24) hour dismissal of status employee and instead allows for suspension with pay until termination;
(b) Creates a new section which requires a pretermination hearing prior to dismissal of a status employee; and
(c) Requires that a status employee be given an opportunity to respond to charges prior to suspension.

(2) Strike page 27 undated and substitute in lieu thereof a new page 27 dated 11-20-85 which makes decisions of the Merit System Council binding upon the employee and the appointing authority.

(3) Strike page 31 undated and substitute in lieu thereof a new page 31 dated 11-20-85 which allows local health department employees to earn up to 200 hours of compensatory leave and requires a lump sum payment for compensatory hours upon termination of employment.

C. HERNANDEZ, M.D., M.P.H., Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: December 5, 1985
FILED WITH LRC: December 12, 1985 at 4 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for January 21, 1986 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 January 16, 1986 of their desire to appear and testify at the hearing: Mr. Hughes Walker, General Counsel, Cabinet for Human Resources, 275 E. Main Street, 4 West, Frankfort, Kentucky 40621.
REGULATORY IMPACT ANALYSIS

Agency Contact Person: Phillip R. Spangler

(1) Type and number of entities affected: All local health departments (47 agencies) except Fayette and Jefferson.

(a) Direct and indirect costs or savings to those affected: No significant 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: Insignificant
     (2) Effects on the promulgating administrative body: More effective resolution of personnel disciplinary of dismissal actions.
     (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: None
     (4) Assessment of alternative methods: reasons why alternatives were rejected: Not appropriate.
     (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. N/A.

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 5. Central State Hospital Policy Manual. The policies and procedures set forth in the September 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 September 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 8. Western State Hospital ICF Policy Manual. The policies and procedures set forth in the September 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 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.
**Administrative Register - 1174**

Section 12. Summary of Amendment.

Section 10 is revised as follows:

**Kentucky Correctional Psychiatric Center Policy Manual**

**Policy**

**#31 B-34** A new policy is developed to provide for hospitalization of inmates committed to the Corrections Cabinet. This policy also provides for hospitalization of inmates on an involuntary basis according to KRS Chapter 202A and in compliance with Vitek vs. Jones. This new policy brings the policies and procedures of the Kentucky Correctional Psychiatric Center in compliance with existing policies of the Corrections Cabinet.

[Section 2 is revised as follows:

**Hazelwood Policy Manual**

87-1-2 #4 Management Audit Plan. This policy outlines the responsibilities for overseeing and review of facility activities to assure that information is properly communicated, and once reviewed, necessary actions taken. It appears to have no financial impact.

87-3-5 #49 Administration of PPD Skin Test. This policy was updated to be in compliance with the new regulations pertaining to employees' skin tests. There is no financial impact from the policy.

87-4-1 #68 Vehicle Regulations. This is a policy update and better complies with the facility's current needs in parking and enforcement of facility parking regulations. No financial impact.

87-4-2 #11b Receipt and Deposit of Funds. This is a policy update which more clearly outlines the handling of funds in the facility. No financial impact.

87-5-1 #18a Family/Guardian Notification of Injury or Illness. This policy was revised to more clearly specify family/guardian notification in cases of injury or illness of residents. No financial impact.


87-5-7 #21 Records Review. This is a policy addition which adds a built-in review of facility records in a survey inspector-type manner. No financial impact.

87-6-7 #28 Behavior Management Programs. The previous policy on Behavior Management was in compliance with the ICF/MR regulations only. The revised policy meets the requirements of ICF/MR and also meets the standards of the ACRMDD Accreditation Council. The new policy reflects the more current techniques utilized in the field of behavioral management. This policy does not appear to have any financial costs related.]

DENNIS D. BOYD, Commissioner
E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: November 12, 1985
FILED WITH LRC: November 18, 1985 at 8 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for January 21, 1986 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 January 16, 1986 of their desire to appear and testify at the hearing: R. Hughes Walker, General Counsel, Cabinet for Human Resources, 275 E. Main Street, 4 West, Frankfort, Kentucky 40621.

**Regulatory Impact Analysis**

Agency Contact Person: Verna Fairchild
(1) Type and number of entities affected: KCPC
(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: Policies of KCPC will be in compliance with policy 18.11 of the Corrections Cabinet.
      (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: 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? Yes

Volume 12, Number 7 - January 1, 1986
CABINET FOR HUMAN RESOURCES  
Department for Health Services  
Division of Consumer Health Protection  
(Proposed Amendment)  


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 Resources hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any of the following opiates, including their isomers, optical 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) Acetyl-alpha-methylfentanyl, N-(1-(1-methyl-2-phenyl)-ethyl-4-piperidyl)-N-phenylacetamide;  
(2) [(2)] Alphafentanyl;  
(3) [(2)] Alpha-methylfentanyl, N-(1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl)propanoniilide;  
(4) Alpha-methylthiofentanyl, N-(1-(1-methyl-2-(2-thienyl)ethyl-4-piperidyl)) N-phenylpropanamide;  
(5) Benzylfentanyl, N-(1-benzyl-4-piperidyl)-N-phenylpropanamide;  
(6) Beta-hydroxyfentanyl, N-(1-(2-hydroxy-2-phenyl)ethyl-4-piperidyl)-N-phenylpropanamide;  
(7) Beta-hydroxy-3-methylfentanyl, N-(3-methyl-1-(2-hydroxy-2-phenyl)ethyl-4-piperidyl)-N-phenylpropanamide;  
(8) Difenoxin;  
(9) [(3)] 3-Methylfentanyl, [or] N-(3-methyl-1-(2-phenylethyl)-4-piperidyl)-N-phenylpropanamide;  
(10) 3-methylthiofentanyl, N-(3-methyl-1-(2-thienyl)ethyl-4-piperidyl)-N-phenylpropanamide;  
(11) Thiofentanyl, N-(1-(2-thienyl)ethyl-4-piperidyl)-N-phenylpropanamide;  
(12) Thiofentanyl, N-(1-(2-thiényl)ethyl-4-piperidyl)-N-phenylpropanamide; and  
(13) [(5)] Tildine.  

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, optical isomers, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, optical isomers, and salts of isomers is possible within the specific chemical designation:  

(1) Drotebanol;  
(2) 1-methyl-4-phenyl-4-propionoxy-piperidine (MRPP);  
(3) 1-(2-phenylethyl)-4-phenyl-4-acetyloxy-piperidine (PPAP).  

Section 3. Hallucinogenic Substances. 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 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-thiényl) cyclohexyl)piperidine, TCP, TP).  

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 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 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;  
(2) N-ethylamphetamine; and  
(3) 3,4-methylenedioxy-methamphetamine (MDMA).  

C HERNANDEZ, M.D., M.P.H., Commissioner  
E. AUSTIN, JR., Secretary  
APPROVED BY AGENCY: December 11, 1985  
FILED WITH LRC: December 13, 1985 at 11 a.m.  
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for January 21, 1986 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 January 16, 1986 of their desire to appear and testify at the hearing: R. Hughes Walker, General Counsel, Cabinet for Human Resources, 275 E. Main Street, 4 West, Frankfort, Kentucky 40621.
REGULATORY IMPACT ANALYSIS

Agency Contact Person: E. Edsel Moore, Manager

(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
   (3) 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 Health Services
Division of Consumer Health Protection
(Proposed Amendment)


RELATES TO: KRS Chapter 218A
PURSUANT TO: KRS 194.050, 211.090, 218A.200, 218A.050, 218A.250

NECESSITY AND FUNCTION: KRS 218A.020 authorizes the Cabinet for Health 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.050 and applicable federal regulations, the Cabinet for Human Resources designates the substances set forth in this regulation as Schedule II controlled substances.

Section 1. Reschedule of Certain Barbbituric Acid Derivatives to “Schedule II” Controlled Substances: Exceptions. The Cabinet for Human Resources hereby reschedules the following barbituric acid derivatives from Schedule III to Schedule II controlled substances, viz:

(1) Amobarbital;
(2) Secobarbital;
(3) Pentobarbital;
(4) Provided, however, that any material, compound, mixture, or preparation containing amobarbital, secobarbital, and pentobarbital or any salt thereof and on which (1) or more other active medicinal ingredient(s) which is not a controlled substance shall be in “Schedule III.”

(5) Provided: further, that any suppository dosage form containing amobarbital, secobarbital and pentobarbital or any salt thereof which has been approved by the United States Food and Drug Administration for marketing only as a suppository shall be in “Schedule III.”

Section 2. Immediate Precursors. The Cabinet for Human Resources hereby designates as Schedule II controlled substances, in addition to those specified by KRS 218A.070 and unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

(1) 1-Piperidinocyclohexanecarbonitrile and 1-Phenylcyclohexylamine, immediate precursors to Phencyclidine.

(2) Phenylacetone. Some trade or other names include: phenyl-2-propanone, P2P, benzyl methyl ketone, and methyl benzyl ketone, immediate precursors to amphetamine and methamphetamine.

Section 3. Hallucinogenic Substances. The Cabinet for Human Resources hereby designates as Schedule II controlled substances, in addition to those specified by KRS 218A.070 and unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances: Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug Administration approved drug product. (Some other names for dronabinol: (6a,8-trans)-Ga, 7,8,10a-tetrahydro-6, 6, 9-trimethyl-3-pentyl-6H-dibenz(b, d) pyran-1-ol or (-) delta-9-(trans)-tetrahydrocannabinol.)

Section 4. Opium and Derivatives. The Cabinet for Human Resources hereby designates as Schedule II controlled substances, in addition to those specified by KRS 218A.070, any of the following opium and opiates, and any salt, compound, derivative, or preparation of opium or opiate, excluding amorphophine, dextrimorphine, nalbuphine, naloxone, naltrexone, and their respective salts, but including the following:

(1) Raw opium;
(2) Opium extracts;
(3) Opium fluid;
(4) Powdered opium;
(5) Granulated opium;
(6) Tincture of opium;
(7) Codeine;
(8) Ethylmorphine;
(9) Etorphine hydrochloride;
(10) Hydrocodone;
(11) Hydromorphone;
(12) Ketopon;
(13) Morphine;
(14) Oxycodone;
(15) Oxymorphone;
(16) Thebaine.

Section 5. Opiates. The Cabinet for Human Resources hereby designates as Schedule II controlled substances, in addition to those specified by KRS 218A.070, any of the following opiates, including its isomers, esters, ethers, salts and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation, deorphan and
levapropropropoxyphene excepted:
(1) Bulk dextropropoxyphene (non-dosage forms);
(2) Sufentanil.

C HERNANDEZ, M.D., M.P.H., Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: December 11, 1985
FILED WITH LRC: December 13, 1985 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on
this regulation has been scheduled for January
21, 1986 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 January 16,
1986 of their desire to appear and testify at
the hearing: R. Hughes Walker, General Counsel,
Cabinet for Human Resources, 275 E. Main Street,
4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS
Agency Contact Person: E. Edsel Moore, Manager
(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 Health Services
Division of Consumer Health Protection
(Proposed Amendment)

RELATES TO: KRS Chapter 218A
PERSUAS TO: KRS 194.050, 211.090, 218A.020,
218A.100, 218A.250
NECESSITY AND FUNCTION: KRS 218A.100
authorizes the Cabinet for Human Resources to
place substances in Schedule IV if it finds
that: (1) the substance has a low potential for
abuse relative to substances in Schedule III;
(2) the substance has currently accepted medical
use in treatment in the United States; and (3)
abuse of the substance may lead to limited
physical dependence or psychological dependence
relative to the substances in Schedule III. In
addition, KRS 218A.020(3) provides that if any
substance is designated, rescheduled, or deleted
as a controlled substance under a federal law
and notice thereof is given to the cabinet, the
cabinet may similarly control the substance by
regulation. The Cabinet for Human Resources,
after considering such criteria, hereby
designates the substances set forth in this
regulation as Schedule IV controlled substances.

Section 1. Stimulants. The Cabinet for Human
Resources hereby designates as "Schedule IV"
controlled substances, in addition to those
specified by KRS 218A.110, any material,
compound, mixture, or preparation which contains
any quantity of the following substances,
including their salts, isomers (whether optical
position or geometric), and salts of such
isomers whenever the existence of such salts,
isomers, and salts of isomers is possible:
(1) Fenfluramine;
(2) Diethylpropion;
(3) Pemoline;
(4) [3] Phenetermine;
(5) [4] Pipradrol; and
(6) [5] SPA ((-)-1-dimethylamino-1,2-di-
phenylethane).

Section 2. Depressants. The Cabinet for Human
Resources hereby designates as "Schedule IV"
controlled substances, in addition to those
specified by KRS 218A.110, any material,
compound, mixture, or preparation which contains
any quantity of the following substances,
including its 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) Alprazolam;
(2) Bromazepam;
(3) Camazepam;
(4) Chlordiazepoxide;
(5) Cloazepam;
(6) Clonazepam;
(7) Clorazepate;
(8) Cloflormizazepan [Cloflormazepan];
(9) Cloxazolam;
(10) Delorazepam;
(11) Diazepam;
(12) Estazolam;
(13) Ethyl loflazepate;
(14) Fludiazepam;
(15) Flunitrazepam;
(16) Flurazepam;
(17) Halazepam;
(18) Haloxazolam;
(19) Ketozolam;
(20) Loroxalazepam;
(21) Lorazepam;
(22) Lorometazepam;
(23) Mebутamizazepan;
(24) Medazepam;
(25) Methohexital;
(26) Nimezaizepan;
(27) Nitrazepam;
(28) Nordiazepam;
(29) Oxazepam;
(30) Oxazolam;
(31) Pemoline;
(32) Pinazepam;
(33) [32] Pinazepam;
Section 3. Analgesics, Non-Narcotics. The Cabinet for Human Resources hereby designates as "Schedule IV" controlled substances, in addition to those specified by KRS 218A.116, any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts: Dextropropoxyphene (Alpha-(+) 4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxymethylbutane).

C. HERNANDEZ, M.D., M.P.H., Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: December 11, 1985
FILED WITH LRC: December 13, 1985 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on
this regulation has been scheduled for January 21, 1986 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 January 16, 1986 of their desire to appear and testify at the hearing: R. Hughes Walker, General Counsel, Cabinet for Human Resources, 275 E. Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS
Agency Contact Person: E. Edsel Moore, Manager
(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:
Has tiering applied? No, Not applicable for controlled substances regulations.

903 KAR 5:260. Unemployment insurance procedures.

RELATES TO: KRS 341.005 through 341.993
PURSUANT TO: KRS 13A.100, 13A.050, 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 November 15, 1985 (October 22, 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 payor/recipient cards for payment; for correcting and changing benefit data; for registering claimants for work; for conducting the eligibility review program; for managing 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 annuitants, claims for supplemental benefits and federal supplemental compensation benefits; for conducting investigations and issuing determinations; for determining the 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 last or returned checks; for detecting and initiating recovery of fraudulent overpayments; for filing appeals to eligibility determinations; for reporting workload and processing time spent; for compiling claims and monetary 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 October 15, 1985. 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 government employees; for combined wage claimants, interstate claimants, claims under the Trade Readjustment Act and claims under the Work Incentive Program; for reconsidering monetary rate determinations; for processing payments 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 August 1, 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 penalties and credits 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 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 maintaining workload; for developing the data for the division 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 and supplies; 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. The manual includes 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, including fraud in fringe cases; closing out fraud cases; preventing fraud; maintaining internal security; and conducting other investigations.

(7) Kentucky Unemployment Insurance Commission Administrative Manual issued September 1, 1985. This manual includes procedures for the daily operations of the branch. Such procedures include staff duties and responsibilities, the review of cases, the conduct of hearings, the preparation of decisions and the proper handling of records and reports.

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 unemployment insurance offices located throughout the state.


(3) [2] Chapter 3000, Continued Claims, strike contents page dated 6-13-85, and substitute in lieu thereof new contents page dated 10-30-85. Strike entire chapter and substitute in lieu thereof new chapter dated 10-30-85, which corrects heading on page IV to Part L, (3110-3140) — (3140-3150) dated 6-13-85, and substitute in lieu thereof page (3110-3140) — (3140-3150) dated 8-1-85, which deletes the acceptance of a claimant's registration with a private employment agency as constituting sufficient work search. Strike page (3025-3040) — (3025-3045) dated 6-13-85, and substitute in lieu thereof page (3025-3040) — (3040-3045) dated 8-30-85, which revises the procedures for completing forms and which excludes from in-person reporting those claimants who are in approved training.


(5) [4] Chapter 6000, Claims Investigation, strike pages (6105-6106) (3) — (6127-6131) dated 9-16-85, and substitute in lieu thereof pages (6106-6106) (3) — (6127-6131) dated 10-31-85, which provides for clarification when multiple
decisions are issued. Strike contents page (sections 619 through 6310) dated 9-16-85, and insert in lieu thereof contents page (sections 619 through 6310) dated 11-15-85. Strike pages (6125-6127) - (6127-6131) dated 10-31-85, and insert in lieu thereof pages (6125-6127) - (6130-6131) dated 11-15-85, which provides for referrals to the Quality Control Section. A mandatory Federal program devised to insure unemployment insurance are in compliance with law. [Entire chapter and insert in lieu thereof new chapter dated 9-16-85, which describes the proper usage of various forms and which revises the chapter's format to the standardized Department of Employment Services Manual format. Strike page (6090-6090) - (6090-6092) dated 9-16-85, and substitute in lieu thereof page (6090-6090) - (6090-6092) dated 10-22-85, which describes the proper form to use under certain circumstances. Strike page (6097-6097(3)) - (6097-6097) dated 9-16-85, and insert in lieu thereof page (6097-6097(3)) - (6097-6097) dated 10-22-85, which describes the proper form to use under certain circumstances.]

(6) (51) Chapter 8000 [7000], Appeals [Fraud], strike entire chapter and insert in lieu thereof new chapter dated 10-30-85 [10-18-85], which revises the chapter's format to the standardized Department for Employment Services Manual format.

(7) Chapter 9000, Extended Benefits, strike entire chapter and insert in lieu thereof new chapter dated 10-30-85, which removes PSC procedures and revises the chapter's format to the standardized Department for Employment Services Manual format.

(8) Chapter 13000, Statistical Reports, strike entire chapter and insert in lieu thereof new chapter dated 11-14-85, which revises the chapter's format to the standardized Department for Employment Services Manual format and which revises the procedures for the completion of forms.


[(2) Chapter 2000, State and Federal Claims Section, add new chapter dated 10-15-85, which revises the chapter's format to the standardized Department for Employment Services Manual format.]

[(3) Chapter 3000, Interstate Section, add new chapter dated 10-15-85, which revises the chapter's format to the standardized Department for Employment Services Manual format.]

[(4) Chapter 5000, the Federal Payment Section, add new chapter dated 10-15-85, which revises the chapter's format to the standardized Department for Employment Services Manual format.]

[(Section 5. Summary of Amendment. Tax Collections and Accounting Branch Manual. Chapter 300, Accounting and Delinquency Section, strike page 2 of Section 391 dated 7-29-83, and substitute in lieu thereof page 2 dated 8-1-85, which revises the procedure for completing forms. Strike page 6 of Section 314.1 dated 7-29-83, and substitute in lieu thereof page 6 dated 8-1-85, which revises the procedure for completing forms. Strike page 9 of Section 314.5 dated 7-29-83, and substitute in lieu thereof page 9 dated 8-1-85, which provides that the section supervisor will verify the amount of interest earned on daily deposits and will transfer such earnings to the trust fund.]
Chapter IV deletes performance awards. Chapter X issues a new revised WX-5 report with updated instructions. (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) Chapters II, III, IV, V, and IX of the Weatherization Assistance Program Specifications and Installations Standards Manual are changed to incorporate new and improved weatherization measures. (1983 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: December 4, 1985
FILED WITH LRC: December 12, 1985 at 4 p.m.
PUBLICATION SCHEDULED: A public hearing on this regulation has been scheduled for January 21, 1986 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 January 16, 1986 of their desire to appear and testify at the hearing: R. 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, Commissioner
(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:

Volume 12, Number 7 - January 1, 1986
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 & 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 November 14, 1985 [September 26, 1985], 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. 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 by 15% of the increase (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.) Freestanding (non-hospital based) facilities will be arrayed and the maximum set at 102 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 135 percent of 102 percent of the median of allowable trended costs of all other SNFs. The maximum payment amounts will be adjusted each July 1, beginning with July 1, 1985, so that the maximum amount for the prospective uniform rate year will be at 102 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 freestanding SNFs and basic ICFS, except that the maximum upper limit shall be set at 110 percent of the median of the array.

(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 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 recovered from a facility if the amount of the overpayment 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 or advances, and various forms of revolving 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;

5. 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.

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 paragraph 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-MR) 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 personal care beds exceeds 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.

For purposing of applying any 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, when reasonable, allowable costs for the facilities' prior fiscal year, and which are adjusted by trending 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 or 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-MR's) are not subject to the median per diem cost center upper limits shown in this subsection.

(f) 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 percent (1%) 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 reevaluation of assets for skilled nursing and intermediate care facilities.

(a) No increase will be allowed in capital costs. [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 revaluation 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 allowable historical base for depreciation for the purchaser will be the lesser of the allowable historical cost of the seller less any depreciation allowed to the seller in prior periods, or the actual purchase price. [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)."

(c) The amount of interest expense allowable to the purchaser is limited to the amount that was allowable to the seller at the time of the sale.

(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 or 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).
(c) 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 shall develop and 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).

(19) Each ICF that admits a recipient from an SNF during the period of September 1, 1985 through January 31, 1986 shall receive an incentive payment of seven (7) dollars and fifty (50) cents for each day of covered care rendered such recipient, subject to the following conditions:
(a) The recipient must meet SNF patient status criteria as of August 31, 1985 only because of non-availability of an ICF bed, where the recipient is on the waiting list of an ICF; and
(b) The incentive payment may be paid for more than ninety (90) covered days of care only if all such days are prior to February 1, 1986.

(20) Each ICF which admits a recipient from an SNF on or after February 1, 1986 as a result of a change of patient status (from SNF to ICF) shall receive an incentive payment of seven (7) dollars and fifty (50) cents for each day of covered care rendered the recipient; such incentive payment shall be paid for no more than ninety (90) days of care.

(21) The incentive payment referenced in subsections (19) and (20) of this section shall be paid without regard to maximum payment limitations shown elsewhere in this regulation.

(22) Effective September 26, 1985 (for services provided on or after September 1, 1985), a participating skilled nursing facility may be paid for care provided to Medicaid eligible patients who meet intermediate care patient status criteria subject to the following criteria or conditions:
(a) The payment will be made at the upper limit for payments to intermediate care facilities, or the skilled nursing rate for the facility if lower;
(b) The patient must be in the skilled nursing facility bed awaiting placement to an intermediate care bed; and
(c) The patient must have been reclassified from SNF patient status to ICF patient status; or, alternatively, the patient must meet ICF patient status criteria, and the appropriate representative of the Department for Social Services must certify that no ICF bed is available and that an emergency exists so that placement in the SNF bed offers the best alternative in the circumstances. Payment made based on the certification that no ICF bed is available and that an emergency exists may be made for no more than thirty (30) days; however, the certification and declaration of emergency may be renewed by the Department for Social Services as appropriate and payment may be made pursuant to such renewal.

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 so as to reasonably take into account economic conditions and trends.
(3) The unadjusted basic per diem cost (defined as the unadjusted allowable cost per patient per day for routine services) will then be divided by 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 for 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 recombed) 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 8-3-85)

<table>
<thead>
<tr>
<th>Basic Per Diem Cost</th>
<th>Investment Factor</th>
<th>Incentive Factor</th>
<th>Per Diem</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>$27.00 &amp; below</td>
<td>$.92</td>
<td>$.58</td>
<td></td>
<td></td>
</tr>
<tr>
<td>28.00 - 28.99</td>
<td>$.86</td>
<td>$.50</td>
<td></td>
<td></td>
</tr>
<tr>
<td>29.00 - 29.99</td>
<td>$.78</td>
<td>$.41</td>
<td></td>
<td></td>
</tr>
<tr>
<td>30.00 - 30.99</td>
<td>$.70</td>
<td>$.32</td>
<td></td>
<td></td>
</tr>
<tr>
<td>31.00 - 31.99</td>
<td>$.61</td>
<td>$.21</td>
<td></td>
<td></td>
</tr>
<tr>
<td>32.00 - 32.99</td>
<td>$.51</td>
<td>$.09</td>
<td></td>
<td></td>
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<tr>
<td>33.00 - 33.95</td>
<td>$.35</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Maximum Payment $33.95

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

(Effective 8-3-85)

<table>
<thead>
<tr>
<th>Basic Per Diem Cost</th>
<th>Investment Factor</th>
<th>Incentive Factor</th>
<th>Per Diem</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>$56.99 &amp; below*</td>
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</tr>
<tr>
<td>57.00 - 62.99</td>
<td>$1.29</td>
<td>$.75</td>
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<td>63.00 - 68.99</td>
<td>$1.18</td>
<td>$.62</td>
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</tr>
<tr>
<td>69.00 - 74.99</td>
<td>$1.06</td>
<td>$.47</td>
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<td></td>
</tr>
<tr>
<td>75.00 - 80.99</td>
<td>$.92</td>
<td>$.31</td>
<td></td>
<td></td>
</tr>
<tr>
<td>81.00 - 86.99</td>
<td>$.76</td>
<td>$.13</td>
<td></td>
<td></td>
</tr>
<tr>
<td>87.00 - 92.99</td>
<td>$.53</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Maximum Payment $99.06

*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 8-3-85)

<table>
<thead>
<tr>
<th>Basic Per Diem Cost</th>
<th>Investment Factor</th>
<th>Incentive Factor</th>
<th>Per Diem</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>$36.99 &amp; below</td>
<td>$.92</td>
<td>$.58</td>
<td></td>
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</tr>
<tr>
<td>37.00 - 38.99</td>
<td>$.86</td>
<td>$.50</td>
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<tr>
<td>39.00 - 40.99</td>
<td>$.78</td>
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</tr>
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<td>41.00 - 42.99</td>
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<td>$.32</td>
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</tr>
<tr>
<td>43.00 - 44.99</td>
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<td>$.21</td>
<td></td>
<td></td>
</tr>
<tr>
<td>45.00 - 46.99</td>
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<td>$.09</td>
<td></td>
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<tr>
<td>47.00 - 48.72</td>
<td>$.35</td>
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<td></td>
<td></td>
</tr>
</tbody>
</table>

Maximum Payment $48.72*

*The maximum payment for hospital based skilled nursing facilities is set at $50.77.

(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 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 percent of the median for the class and that adjustments to the payment maximums will be made effective July 1, 1985 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 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 uniform 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 audit 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, and 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 of this regulation, 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) Physical, occupational and speech therapy.
(b) Laboratory procedures.
(c) X-ray.
(d) Oxygen and other related oxygen supplies and inhalation therapy.
(e) Psychological and psychiatric therapy (for ICF/MR only).
(f) "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 trending and adjusted in accordance with the occupancy factor and the median cost center per diem upper limits.

5) "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.

6) "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.

(7) "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.

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

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

(10) "Prospective 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 .

(11) "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, hand feeding, incontinency care and tray services.

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

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

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

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

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

[Section 7. Implementation Date. The provisions of this regulation, as amended, shall be effective with regard to services provided on or after September 26, 1985 except as otherwise specified herein.]

MIKE ROBINSON, Deputy Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: December 12, 1985
FILED WITH LRC: December 12, 1985 at 4 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for January 21, 1986 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 January 16, 1986 of their desire to appear and testify at the hearing: R. Hughes Walker, General Counsel, Cabinet for Human Resources, 275 E. Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler

(1) Type and number of entities affected: All participating skilled nursing and intermediate care facilities.

(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:

*The change is considered to be technical in nature; the regulation has been amended to show specific methodology and policy as compared to general policy.

Tiering:

Was tiering applied? No. Not applicable for Medicaid regulations.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development
(Proposed Amendment)

904 KAR 2:020. Child support.

RELATES TO: KRS 205.795
PURSUANT TO: KRS 205.795

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. The cabinet is required by the Social Security Act to make efforts to establish paternity and/or secure support from absent parents of children receiving public assistance [Aid to Families with Dependent Children, hereinafter referred to as AFDC] as a result of desertion or abandonment or due to birth out-of-wedlock and for other [non-AFDC] children on application.

KRS 205.795 empowers the secretary to adopt regulations pertaining to the administration of the Child Support Program. This regulation specifies the procedure for the operation of the program.

Section 1. Compliance with Federal Regulations. The cabinet shall administer the Kentucky Child Support Program in accordance with Title IV-D of the Social Security Act and Title 45 CFR Sections 301, 302, 303, 304, [and] 305, 306 and 307.

Section 2. Relation to Title IV-A Program. The cabinet shall administer the Kentucky Child Support Program, as the program relates to Title IV-A recipients, in accordance with regulations cited in Section 1 above and Title 45 CFR Sections 205, 232, 233, 234, and 235.

Section 3. Relation to Title IV-E Program. The cabinet shall administer the Kentucky Child Support Program, as it relates to Title IV-E recipients, in accordance with regulations cited in Section 1 of this regulation and Title 45 CFR Section 1356.

Section 4. [3.] Definitions. (1) “Cabinet” shall mean the Cabinet for Human Resources.

(2) “Secretary” shall mean Secretary of the Cabinet for Human Resources.

(3) “Court order” shall mean any judgment, decree, or order of the courts of this or any other state.

(4) “Dependent child” or “needy dependent child” shall mean any person under age eighteen (18) who is not otherwise emancipated, self-supporting, married or a member of the Armed Forces of the United States and is a recipient of or an applicant for public assistance or who has applied for child support services in accordance with Title IV-D of the Social Security Act.

(5) “Duty of support” shall mean any obligation of support imposed or imposable by law or by court order, decree, or judgment whether interlocutory or final, and includes the duty to pay arrearages of support past due.

(6) “Parent” shall mean the natural or adoptive parent of an AFDC or non-AFDC child and includes the father of a child born out-of-wedlock if paternity has been established in a judicial proceeding or in any manner consistent with the laws of this state.

(7) “AFDC recipient” shall mean a child or caretaker relative who is receiving AFDC as prescribed by Title IV-A of the Social Security Act.

(8) “Cooperation” shall mean the act of providing to the IV-D agency or the responsible local official any verbal or written information or documentation needed by the IV-D agency or local official for child support activities, and otherwise complying with the requirements of the Child Support Program.

(9) “Good cause” shall mean that the public assistance [AFDC] recipient has a valid and acceptable reason (as determined by the cabinet) for failing to cooperate in activities related to the Child Support Program.

(10) “Non-public assistance [Non-AFDC] recipient” shall mean any child or family who does not receive public assistance [AFDC], but does receive child support services based on an application filed with the IV-D agency or with a
responsible local official who has entered into
a written agreement with the IV-D agency.
(11) "Responsible local official" shall mean
the elected or appointed official in a political
subdivision who is legally responsible for law
enforcement activities and has entered into
a written agreement with the IV-D agency.
(12) "Title IV-D agency" shall mean the
organizational unit in the state that has
responsibility for administering the Title IV-D
(Child Support) Program.
(13) "Title IV-A agency" shall mean the
organizational unit in the state that has
responsibility for administering the Title IV-A
(AFDC) program.
(14) "Title IV-F agency" shall mean the
organizational unit in the state that has
responsibility for administering the Title IV-F
(foster care, maintenance, and adoption
assistance) program.
(15) [[(14)] "Paternity blood tests" shall mean
tests used in contested paternity actions
including, but not limited to, ABO and Human
Leucocyte Antigen (HLA) tests administered by
qualified laboratories or medical personnel.
(16) "Public assistance" shall mean money
grants, assistance in kind or services to or for
the benefit of needy aged, needy blind, needy
permanently and totally disabled persons, needy
children or persons with whom a needy child
lives, or a family containing a combination of
these categories.

Section 5. [4.] Initiation of Child Support Action.
Child support action shall be
initiated upon referral of forms from the Title
IV-A or Title IV-E agency or upon application of
a non-public assistance [non-AFDC] recipient to
the IV-D agency or its authorized representative.

Section 6. [5.] Safeguarding Information.
Pursuant to 45 CFR 303.21 [302.18] and
consistent with KRS 205.175 and 205.190, the
cabinet will disclose information regarding
recipients of child support services only to
public officials or the recognized persons, such
as private attorneys, acting on behalf of the
recipients of child support services. No
recipients' information for their official
duties and to other persons and agencies
involved with the administration of the Child
Support Program or other federally assisted
programs which provide cash benefits or services
to needy individuals. Pursuant to 45 CFR
303.21(b) [302.18(b)], the IV-D agency may not
disclose to any committee or legislative body
any information that identifies by name or
address any applicant or recipient.

Section 7. [6.] Establishing Paternity.
In establishing paternity for children in the Child
Support Program pursuant to the Social Security
Act, the cabinet may utilize any of the
provisions which are contained in Kentucky
Revised Statutes related to paternity.

Section 8. [7.] Securing and Enforcing
Child Support. In securing or enforcing child support
for children in the Child Support Program
pursuant to the Social Security Act, the cabinet
may utilize any of the provisions which are
contained in Kentucky Revised Statutes related
to child support.

Section 9. [8.] Assignment of Child Support to
IV-D Agency. (1) By accepting public assistance
for or on behalf of a needy dependent child, a
public assistance [AFDC] recipient assigns to
the cabinet the right to all past due and future
child support including any voluntary
contributions made by the absent parent. Any
support income received by AFDC recipients must
be forwarded to the cabinet no later than the
tenth (10th) day of the month following receipt.
(2) Non-public assistance [Non-AFDC]
recipient may assign their support rights to
the cabinet, but these recipients are not
required to make such an assignment.

Section 10. [9.] Agency Receipt of Support
Payments. (1) When the support payment is made
payable to the cabinet, money received is
credited to the account of the non-custodial
or absent parent.
(2) If both the amount of the current month's
child support collection and the court ordered
amount equal or exceed the AFDC grant, the IV-D
agency will notify the IV-A agency, as required
by 45 CFR 302.32.

Section 11. [10.] Non-Public Assistance
[Non-AFDC] Recipients. The IV-D agency will
provide all services to individuals who are not
recipients of public assistance [AFDC] benefits
as provided in 45 CFR 302.33(a). The services
will be provided without cost to the applicant
except as is provided in 40 USC 453(2) and
463 regarding the federal parent locator
service. Additionally, any other fee which must
be paid to the federal government for services
will be collected by the IV-D agency from the
applicant.

(1) An application fee for these services must
be paid in accordance with 45 CFR 302.33 and KRS
205.121.
(2) In addition to the fees provided for in 42
U.S.C. 453(2) and 463 regarding the federal
parent locator service, the state may charge a
fee for federal income tax refund intercept
services in accordance with 45 CFR 302.72.
Additionally, any other fee which must be paid
to the federal government for services will be
collected by the IV-D agency from the applicant.

Section 12. [11.] Cooperative Agreements.
Pursuant to 45 CFR 302.34, 42 USC 654(7) and KRS
205.800, all eligible local officials may enter
into a written agreement with the cabinet to
collaborate in activities relative to the Child
Support Program when approved by the cabinet.
When officials enter into an agreement with the
cabinet, federal financial participation (FFP)
for child support activities will be provided
pursuant to federal laws and regulations when
billing is submitted in accordance with
procedures established by the cabinet. The
officials shall provide the cabinet with timely
fashion such statistical information concerning
IV-D activities as prescribed by the cabinet in
the manner and form prescribed by the cabinet.
If no agreement is executed, referrals for child
support activities may be made to local law
enforcement officials in accordance with the
official's statutory obligations, but the
officials will not be eligible for reimbursement
as specified above.

Section 13. [12.] Distribution of Child
Support Payments. Distribution of child support
payments received by the cabinet are made in
accordance with 45 CFR 302.32, 302.38, [and] 302.61, and 302.52. The first fifty (50) dollars of all child support collected in a month by the cabinet for an AFDC assistance unit which represents the current month's support obligation shall be returned to the assistance unit. Rights related to hearings as written in 904 KAR 2:055 do not apply to payment of the pass-through of support collected by the IV-D agency.

Section 14. (13.) Good Cause for Refusal to Cooperate: (1) The IV-D agency or its authorized representative must immediately notify the IV-A or IV-E agency at such time as the [AFDC] recipient refuses to cooperate in child support enforcement efforts. If the IV-A or IV-E agency should determine, pursuant to [IV-A] laws and regulations, that the recipient has a good cause for failing to cooperate and that pursuit of child support action would be detrimental to the best interests of the child, the IV-D agency will not pursue any action in the child's behalf.

(2) If the [IV-A] agency determines that the recipient has good cause for not cooperating but that additional child support action would not harm the child, the IV-D agency may proceed in the name of the cabinet for the use of and in behalf of the minor dependent child pursuant to federal laws and regulations.

Section 15. (14.) Parent Locator Service. The cabinet shall use available resources to locate absent parents for children in the Child Support Program in accordance with Kentucky Revised Statutes and applicable federal laws and regulations.

Section 16. (15.) Paternity Blood Testing. Pursuant to 45 CFR 303.5(c) the IV-D agency shall identify laboratories within the state which perform legally and medically acceptable blood tests, including ABO and HLA tests, which tend to include or exclude an alleged father in paternity proceedings under KRS Chapter 906. The IV-D agency shall make a list of such laboratories available upon request. In addition, the cabinet shall provide a list of all such laboratories to the Kentucky Bar Association and to the Administrative Office of the Courts for distribution to appropriate agencies and individuals on an annual basis.

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: November 12, 1985
FILED WITH LRC: December 12, 1985 at 4 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for January 21, 1986 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 offices in writing by January 16, 1986 of their desire to appear and testify at the hearing: R. Hughes Walker, General Counsel, Cabinet for Human Resources, 275 E. Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS
Agency Contact Person: Roy Butler
(1) Type and number of entities affected: Foster Care - 1,800 cases; non-AFDC application fee - 13,000 cases.

(a) Direct and indirect costs or savings to those affected: Non-AFDC application fee estimated to average $15.00 per case; $25 per case if certified to IRS for tax refund intercept.
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: Estimate $59,000 savings in state share collections for foster care. Annual revenue to cabinet of $195,000 from non-AFDC applications for application fee. Additional $325,000 ($25 per case) if certified to IRS for tax refund intercept.
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: Incentives at 6 percent, $10,000 annually, for foster care.
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: None
6. 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. N/A.

CABINET FOR HUMAN RESOURCES
Department for Social Services
Children's Residential Services
(Proposed Amendment)


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 [a] Cardinal Treatment Center Policy and Procedural Manual revised through October 17, [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.

Section 2. Summary of Amendments. Clarifies the number of points required to move from one phase to another, the method of tabulating points, and the number of points required to participate in special activities. [Insert in numerical order in Section II, Policy No. 204, Referral and Admission Activity, dated April 22, 1985, which is designed to provide a system for the compilation of regular statistical reports, aid in the identification of inappropriate referrals, and aid in the projection of trends in population needs.]

ANNA GRACE DAY, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: December 12, 1985
FILED WITH LRC: December 13, 1985 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for January 21, 1986 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 January 16, 1986 of their desire to appear and testify at the hearing; R. Hughes Walker, General Counsel, Cabinet for Human Resources, 275 E. Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Margaret Hockensmith
(1) Type and number of entities affected: One (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: 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: 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. Manual applies to only one facility.

CABINET FOR HUMAN RESOURCES
Department for Social Services
Division of Aging Services
(Proposed Amendment)

905 KAR 8:040. Allocation formula for Older Americans Act.

RELATES TO: KRS 205.201, 205.204
PURSUANT TO: KRS 194.050
NECESSITY AND FUNCTION: KRS 205.204 authorizes the cabinet to provide programs under the Older Americans Act.

Section 1. Title III of the Older Americans Act, Title III of the Older Americans Act, P.L. 97-115, Section 305(a)(2)(D), mandates that the state shall develop a formula for the distribution of funds in the state. The funding formula for allocation of Title III of the Older Americans Act for fiscal year 1985 shall be based upon the following:
   (1) The amount of funds allocated to each district in FY 1985 [1984]; and
   (2) Increases and decreases in FY 1985 [1985] funding were distributed based upon each ADD's share of the total FY 1985 [1984] allocation for the state.

Section 2. Title V of the Older Americans Act. The Title V funding formula for FY 1985 shall include the following: An equitable distribution of slots statewide with funds allocated based upon the number of slots per subproject sponsor in proportion to the total slots for the state.

ANNA GRACE DAY, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: December 12, 1985
FILED WITH LRC: December 13, 1985 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for January 21, 1986 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 January 16, 1986 of their desire to appear and testify at the hearing; R. Hughes Walker, General Counsel, Cabinet for Human Resources, 275 E. Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Margaret Hockensmith
(1) Type and number of entities affected: 15 area development districts.
   (a) Direct and indirect costs or savings to those affected: Allocations may vary from previous year due to change in base year.
      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
      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: N/A

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(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. Funds are allocated to each Area Development District by the same formula.

CABINET FOR HUMAN RESOURCES
Department for Social Services
Division of Aging Services
(Proposed Amendment)

905 KAR 8:060. Older Americans Act state plan.

RELATES TO: KRS 205.201, 205.204
PURSUANT TO: KRS 194.080

NECESSITY AND FUNCTION: P.L. 69-73, "Older Americans Act," as amended, authorizes grants to states for community planning and services and for training through research, development, or training project grants, to provide assistance in the development of new or improved programs to help older persons. KRS 194.080 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 the 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 Kentucky State Plan on Aging under Title III of the Older Americans Act in accordance with applicable federal laws and regulations.

Section 1. State Plan on Aging Under Title III. The Cabinet for Human Resources hereby adopts the "State Plan on Aging Under Title III of the Older Americans Act" for Fiscal Years 1986 and 1987 [(- Fiscal Year 1983-84 and the "State Plan on Aging Under Title III of the Older Americans Act - Fiscal Year 1984-85," by reference, as the Kentucky regulation for aging services under Title III covering all phases of the program included but are not limited to state agency organization, state agency responsibilities, planning and service area agencies on aging, needs and priorities for service, training, assessment, nutrition contracts, advocacy, ombudsman, special projects, allocation of funds, and other relevant components of the program. A copy of the State Plans on Aging under Title III of the Older Americans Act has been filed with the Department of Health and Human Services, Administration on Aging, 101 Marietta Tower, Atlanta, Georgia 30323. A copy shall be on file and available for public review during regular working hours in the Office of the Commissioner, Department for Social Services, 275 East Main Street, Frankfort, Kentucky.

Section 2. Summary of Amendments. This is an update of the state plan. It contains no major program changes. Allocations are based on each ADD's share of the total 1985 allocation.

ANNA GRACE DAY, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: December 12, 1985
FILED WITH LRC: December 13, 1985 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for January 21, 1986 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 January 16, 1986 of their desire to appear and testify at the hearing: R. Hughes Walker, General Counsel, Cabinet for Human Resources, 275 E. Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Margaret Hockensmith
(1) Type and number of entities affected: 15 area development 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):
(a) Reporting and paperwork requirements:
(b) 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:
(c) 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: 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:
(c) Any additional information or comments:

Tiering:
Was tiering applied? No. All Area Development Districts are required to comply with the same state plan.
PROPOSED REGULATIONS RECEIVED THROUGH DECEMBER 15

KENTUCKY TREASURY

20 KAR 1:010. Access to public records of State Treasury.

RELATES TO: KRS 61.870 to 61.884
PURSUANT TO: KRS 61.876
NECESSITY AND FUNCTION: KRS 61.876 requires that each public agency shall adopt rules and regulations to provide full access to public records, to protect public records from damage and disorganization, to prevent excess disruption of its essential functions, to provide assistance and information upon request and to ensure efficient and timely action in response to application for inspection of public records. This regulation proposes to fulfill this statutory requirement.

Section 1. The principal office location for the State Treasury is the first floor of the Capitol Annex, Frankfort, Kentucky 40601. Regular office hours are 8:00 a.m. to 4:30 p.m., Monday through Friday, prevailing time in Frankfort, Kentucky.

Section 2. The title of the official custodian of the records of the State Treasury is the State Treasurer of the Commonwealth of Kentucky, whose address is Capitol Annex, Frankfort, Kentucky 40601.

Section 3. Fees to be charged for copies of public records shall be ten (10) cents for each photocopy.

Section 4. The procedure to be followed in requesting inspection of public records shall be as follows:
   (1) Requests for inspection of public records shall be made directly to the State Treasurer or to the chief assistant to the State Treasurer. The name of the chief assistant shall be posted with these regulations in the Office of the State Treasurer.
   (2) Requests to inspect public records may be made orally or in writing, describing in reasonably sufficient detail the records to be inspected. Every reasonable attempt shall be made by the State Treasury to respond to oral requests; however, oral requests which are found to be vague, long or complex shall be required to be submitted in writing in letter form.
   (3) Records shall be inspected and copied in the presence of a member of the State Treasury to protect the records from damage or disorganization, to lessen disruption of office procedure, to provide timely assistance and information upon request to the person requesting inspection, and to provide full access to public records;
   (4) Suitable facilities shall be made available for inspection of public records.

Section 5. Those records which are available for inspection and those records which are unavailable for inspection are defined in KRS 61.870 to 61.884. A copy of this Act shall be displayed with this regulation in the State Treasury.

Section 6. A copy of this regulation shall be displayed in the main reception room of the State Treasury on the first floor of the Capitol Annex.

FRANCES JONES MILLS, State Treasurer
APPROVED BY AGENCY: November 19, 1985
FILED WITH LRC: November 19, 1985 at 3 p.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled at 10 a.m., Tuesday, January 28, 1986, in Room 107, Capitol Annex, Frankfort, Kentucky. Persons interested in attending this public hearing shall contact in writing no later than January 23, 1986: Marva M. Gay, Attorney/Principal Assistant, State Treasury, Capitol Annex, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marva M. Gay, Attorney
(1) Type and number of entities affected: None.
(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: No alternative allowed under state law.
               (5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None.
               (6) Any additional information or comments: The regulation is required pursuant to KRS 61.870 to 61.884.

Tiering:
Was tiering applied? No. Tiering is neither necessary nor desirable for implementation of this regulation.

REVENUE CABINET
Department of Professional & Support Services

103 KAR 20:010. Definition of gross income.

RELATES TO: KRS 136.070
PURSUANT TO: KRS Chapter 13A
NECESSITY AND FUNCTION: This regulation defines "gross income" for determining whether a corporation is entitled to a credit against its license tax. This regulation is necessary because the law fails to provide a definition of the term, "gross income."

Section 1. As used in KRS 136.070(6) to determine if a corporation is entitled to a
corporation license tax credit of one (1) dollar and forty (40) cents for each $1,000 of the first $350,000 of capital employed, "gross income" means total taxable and nontaxable receipts before reduction or deduction for cost of goods sold, cost of assets sold or any other deductions.

GARY W. GILLIS, Secretary
APPROVED BY AGENCY: December 12, 1985
FILED WITH LRC: December 13, 1985 at noon.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on January 24, 1986 at 10 a.m. in Room 406 of the Capitol Annex, Frankfort, Kentucky. If no written notice of intent to attend the public hearing is received within five (5) days before the scheduled hearing, the hearing will be cancelled. Those interested in attending shall notify in writing: Scott Akers, Revenue Cabinet, Division of Tax Policy and Legal Services, New Capitol Annex Building, Frankfort, Kentucky 40620.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Scott Akers
(1) Type and number of entities affected: Approximately 3,000 small corporations with gross receipts of $500,000 or less will be affected. Approximately 30,000 corporations doing business in Kentucky are subject to the license tax. This regulation defines what gross receipts are included in the computation of total gross receipts to determine if the corporation is allowed a $1.40 credit on the first $350,000 of capital.
(a) Direct and indirect costs or savings to those affected:
   1. First year: Taxpayers will have savings due to less correspondence and fewer assessments due to fewer errors on returns.
   2. Continuing costs or savings: Same as first year above.
   3. Additional factors increasing or decreasing costs (note any effects upon competition): None.
(b) Reporting and paperwork requirements: Less correspondence because there should be fewer inquiries to Revenue.
(c) Effects on the promulgating administrative body: (a) Direct and indirect costs or savings:
   1. First year: Revenue Cabinet employees will have to answer less correspondence and make fewer assessments due to more correctly filed returns.
   2. Continuing costs or savings: Same as first year above.
   3. Additional factors increasing or decreasing costs: None.
   (b) Reporting and paperwork requirements: No additional reporting or paperwork.
   (c) Assessment of anticipated effect on state and local finances: 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: 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? Yes. The law grants a $1.40 credit on the first $350,000 of capital to corporations which have gross receipts of $500,000 or less.

EDUCATION AND HUMANITIES CABINET
Governor's Commission on Literacy

700 KAR 1:010. Adult literacy program fund.
RELATES TO: KRS Chapter 158
PURSUANT TO: KRS 158.795
NECESSITY AND FUNCTION: The Education and Humanities Cabinet is authorized by KRS 158.795 to administer a statewide adult literacy program. The Governor's Commission on Literacy is authorized by KRS 158.795 to provide advice and counsel to the Education and Humanities Cabinet in administering the statewide adult literacy program and the provision of services in every county. This regulation is necessary to assure uniformity in the administration of literacy program grants under the statewide adult literacy programs. This regulation is filed in anticipation of the July 1, 1986, effective date in response to legislation enacted during the 1985 Special Session of the General Assembly.

Section 1. Program Purpose and Announcements. (1) The goal for the use of the literacy program grants is to encourage and promote the development and implementation of local literacy programs, or the improvement or supplementation of existing programs, in each county.
(2) Funding cycle(s) during which applications will be received for the program will be announced annually. Deadlines for receiving proposals will be established and advertised to all existing literacy programs throughout the Commonwealth. Interested parties and community groups will be notified about the program upon request to the Governor's Commission on Literacy, hereafter referred to as the commission. More than one (1) funding cycle is anticipated annually, but this will be dependent upon the level of funding available and number of applicants funded during the first funding cycle.

Section 2. Eligibility Requirements. (1) The following may apply for funding:
(a) State agencies and units of local government (including county, municipality, city, town, local public authority and special district agencies). This also includes such intrastate entities as districts, councils of governments and multicounty units, and other state and local organizations and institutions.
(b) Profit or non-profit public or private businesses.
(c) Community based organizations or subgroups of such organizations organized expressly for the purpose of providing adult literacy services and who are incorporated, or are a legal entity, or who have an individual who accepts responsibility for appropriate use of the grant funds.
(2) To be eligible for funding, projects must:
(a) Provide or coordinate direct adult literacy services or provide training or technical assistance to such programs.
(b) Provide services to individuals age sixteen (16) and above who read at or below a
fifth grade level, unless the application demonstrates the need and method for providing services to different ages and reading abilities, and can demonstrate that this is not a duplication of services.

(c) Be conducted in and applicable to use in Kentucky.

(d) Not charge for services except material costs may be borne by program participants; however, charges will be an exact rate paid by the program/service provider. In no instance will services be denied to persons who cannot pay.

(e) Show evidence of cooperation and coordination with other literacy programs within the community.

(f) Comply with non-discrimination requirements.

(g) Show documentation of cooperative referral between literacy and adult basic education programs.

(3) Proposals which are incomplete, subcontract for services, duplicate existing programs in the locality, or which request funds beyond the allowable maximum may be rejected.

(4) Project expenditures eligible for funding may include salaries, training, travel, operating expenses, books and materials, printing and duplicating, and equipment within limits set by the proposal guidelines. Construction expenditures are not eligible.

Section 3. Submission of Proposals. (1) Proposals must be submitted on application forms provided and within the deadline established in each funding cycle. A proposal submitted for consideration but not funded in any cycle may be resubmitted for consideration in any new funding cycle announced, providing signatures of responsible parties carry a current date.

(2) Proposals must be signed by a person who has the authority to obligate the organization to the terms of the grant or who accepts personal liability.

(3) Each applicant will be notified immediately by return postcard when a proposal is received by the commission.

Section 4. Evaluation of Proposals. (1) Project applications will be reviewed by the commission’s Grant Development and Review Committee and one (1) individual involved in literacy programs in another state.

(2) After the application submittal deadline, applicants shall not be permitted to initiate contact with anyone involved in the review and evaluation process or to initiate changes in their proposal. Proposal changes or budgetary amendments may be requested by the Project Review Committee or its designee.

(3) The proposal screening process consists of the following steps:

(a) The Project Review Committee will evaluate each proposal not eliminated in the prescreening process. During this evaluation, the applicant may be contacted for additional information or clarification on the project. Criteria which will be utilized to evaluate the proposals will be:

1. Qualifications and appropriateness of the applicant agency and agency staff to carry out adult literacy programs.

2. Quality of the implementation and operation plans, including clear objectives; methods for recruiting, training and managing volunteers; outreach plans; proven standards and measures of student progress; and instructional design.

3. Ability to evaluate the effectiveness of the program.

4. Extent of cooperation and coordination with and support of other literacy programs.

5. Ability to keep required records.

6. Completeness and appropriateness of budget and cost effectiveness.

7. Strength of plans for continuation of projects.

(b) The Project Review Committee reserves the right to recommend for funding any, all, or none of the proposals submitted in response to requests for proposals. The committee may also choose to negotiate with competing applicants from any county to encourage a joint program.

(c) Recommendations of the Project Review Committee will go to the full commission for consideration. The recommendations of the commission will be forwarded to the Secretary of Education and Humanities Cabinet who will make the final decision regarding funding awards.

(d) Applicants selected for funding will be notified by mail of the decision of their proposals no later than sixty (60) days after the deadline established for the funding cycle.

Section 5. Funding Terms and Conditions. (1) State funds appropriated for literacy programs will be allocated by county, based on the percent of adults in that county as compared to the state total who have completed only the eighth grade or less. Funds not granted to that county during the first funding cycle each year will subsequently be made available statewide.

(2) Grant fund awards will be made in two (2) semi-annual payments. The initial payment for fifty (50) percent of the award will be made at the beginning of the project period and the remainder will be made at the middle of the project period contingent upon the recipients meeting reporting and monitoring requirements. The entire grant may be paid at the beginning of project period when the applicant has a demonstrated need for receiving the payment at that time. If inappropriate or unapproved use of funds occurs, the remainder of the award may be suspended or revoked. Misused funds will be recovered.

(3) Funding of projects will be established by a document of grant conditions to be finalized after grantees are notified. The document will include requirements stipulated in this regulation and in the application guidelines.

(4) To insure proper use of funds, grantees will be held accountable for project expenses in a manner acceptable to the commission and the Secretary of the Education and Humanities Cabinet. A separate bank account for each project is required. All records will be kept for three (3) years after the end of the funding cycle, or until any audits have been completed.

(5) Grantees may invest grant funds and retain any interest earnings except that such earnings will be deemed grant funds and be used only for express purposes of the grant and shall be reported in all documents recording project financing.

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(6) After completion of each project grantees shall return any unspent grant funds.
(7) Equipment and material purchased with grant funds is owned by the grantee. If the grantee organization dissolves, the property must be given to an organization serving a public purpose and meeting non-discrimination requirements. Preference is to be given to literacy programs.

Section 6. Reporting Requirements. (1) Grantees will be required to submit to the commission quarterly reports on progress of projects and financial expenditures and encumbrances. The quarterly reports are due ten (10) working days after the end of the quarter. A final report will be required within fifteen (15) working days of the completion of the project year. Reports will be in a format designed by the commission and may include but not be limited to request for demographic data, copies of materials produced, test results, equipment inventory, and financial activities.
(2) Grantees will be required to submit information in standardized summative form which reflects student progress in the adult literacy programs.

Section 7. Requirements for Public Access. (1) Individuals authorized by the commission may visit the project site at mutually agreed upon times to observe progress, provide guidance and analyze and publicize projects supported under this program.
(2) Sharing and distributing information and materials developed under this project is a major goal of this program. Therefore, except for confidential information clearly identified in the project proposal, the results of the projects will be made a matter of public record and grantees will make their projects available for public observation at mutually agreed upon times.

Section 8. Confidentiality of Information. (1) Data which is specifically identifiable to individual students is considered confidential and recipient of project awards will develop a written policy concerning its protection.
(2) Summative information which outlines progress of students and demographic information will not be considered confidential when no particular individual can be identified by the information.
(3) The commission reserves the right to use and disseminate information and data derived from the use of these project funds to the extent such information is not protected by any claim of confidentiality.

LINDA L. HORTON, Assistant to the Secretary
JANE K. BESHARE, Chairperson
APPROVED BY AGENCY: December 12, 1985
FILED WITH LRC: December 12, 1985 at 1 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on January 21, 1986, at 9 a.m. at the Kentucky Department for Libraries and Archives. Those interested in attending this hearing shall contact: Pat Gleich, Adult Services Coordinator, Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS
Agency Contact Person: Linda L. Horton or Pat Gleich
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected: None
(2) First year:
(b) Continuing costs or savings:
(2) First year:
(3) Additional factors increasing or decreasing costs (note any effects upon competition):
(c) Direct and indirect costs or savings:
(1) First year:
(2) Continuing costs or savings:
(3) Additional factors increasing or decreasing costs:
(d) Reporting and paperwork requirements:
(1) Assessment of anticipated effect on state and local revenues: No additional costs will be borne by the state beyond legislature appropriation. Each county will be allocated a specific sum for which only one applicant may be funded. Dollars may or may not go to general purpose local governments.
(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
(6) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None

EDUCATION AND HUMANITIES CABINET
Governor's Commission on Literacy
700 KAR 1:020. State adult literacy program plan.

RELATED TO: KRS Chapter 158
PURSUANT TO: KRS 158.790, 158.796
NECESSITY AND FUNCTION: The Education and Humanities Cabinet is authorized by KRS 158.795 to administer a statewide adult literacy program. The following rules and regulations are necessary for the Education and Humanities Cabinet and the Governor's Commission on Literacy to exercise its duties. This regulation is filed in anticipation of the July 1, 1986, effective date in response to legislation enacted during the 1985 Special Session of the General Assembly.

The Governor's Commission on Literacy is authorized to formulate a statewide strategy and program plan for adult literacy by KRS 158.790. It is further authorized to review and evaluate literacy programs and report findings and recommendations to the Governor, the Legislative Research Commission, and appropriate cabinet and department heads. The function of this regulation is to assist in the evaluation of existing resources and to set planning goals and
guidelines which will provide for optional utilization of all resources directed toward adult literacy programs.

Section 1. Purpose. The purpose of this regulation is to establish the process by which the state adult literacy program plan is prepared, amended and revised. The state adult literacy program plan should serve as a major policy document which provides a coordinated approach for identifying statewide literacy program needs and addressing major adult literacy issues, and, insuring the provision of adult literacy services for each county of the Commonwealth.

Section 2. Definitions. (1) "Commission" means the Governor's Commission on Literacy established pursuant to KRS 158.790, which for administrative purposes is attached to the Education and Humanities Cabinet.
(2) "Cabinet" means the Education and Humanities Cabinet acting as the body administering a statewide adult literacy program pursuant to KRS 158.795.
(3) "State adult literacy program plan" means the document duly adopted by the Governor's Commission on Literacy and approved by the Secretary of the Education and Humanities Cabinet and the Governor.

Section 3. State Adult Literacy Program Plan Development. (1) The commission shall determine the statewide adult literacy program needs of the Commonwealth after providing reasonable opportunity for the submission of written recommendations from appropriate state agencies which provide such services and other agencies as designated by the Governor for the purpose of making such recommendations.
(2) The commission shall prepare, review at least biennially and revise as necessary a preliminary state adult literacy plan for the provision and coordination of adult literacy services.
(3) The commission shall invite appropriate state agencies to review the preliminary plan and shall receive comments in writing.
(4) The commission shall give written consideration to all comments received and specify what changes are being made in the plan in response to comment, and, if changes are not being made, specify the reasons for not changing the plan. A copy of the statements shall be available for public review and provided to those agencies which submitted comments on the plan.
(5) The commission shall submit the preliminary state adult literacy program plan to the Secretary of the Cabinet for Education and Humanities.
(6) After approval of the state adult literacy program plan by the secretary, the secretary shall submit the proposal plan to the Governor for approval or disapproval.

LINDA L. HORTON, Assistant to the Secretary
JANE K. BESHEAR, Chairperson
APPROVED BY AGENCY: December 12, 1985
FILED WITH LRC: December 12, 1985 at 1 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held January 21, 1986, at 9 a.m. at the Kentucky Department for Libraries and Archives. Those interested in attending this hearing shall contact: Pat Gleich, Adult Services Coordinator, Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS
Agency Contact Person: Linda L. Horton or Pat Gleich
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected: None
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: Task mandated by statute.
(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. This regulation involves only state-level program planning.

CABINET FOR HUMAN RESOURCES
Department for Social Services
Division of Program Management

905 KAR 5:040. Standards.

RELATES TO: KRS 209.030(7), 209.160
PURSUANT TO: KRS 194.050, 209.030(1)
NECESSITY AND FUNCTION: KRS 209.030(1) authorizes the Cabinet for Human Resources to adopt rules, regulations, procedures, guidelines and policies to provide for the protection of adults. KRS 209.160 authorizes additional funds from marriage licenses to be used for spouse abuse shelters. Since there are no licensing requirements for spouse abuse shelters or crisis centers, this regulation establishes reasonable performance standards for qualifying applicants for state funds related to spouse abuse shelters and crisis centers.

Section 1. Definitions. (1) "Advisory board" means any designated group to whom the governing board may delegate responsibility for study and recommendation of any function of the governing board but shall not delegate final approval, responsibility, accountability, or direction of agency policy as these shall remain the ultimate responsibility of the governing board.
(2) "Agency" means any public or non-profit
incorporated agency that has the capacity to provide services to victims of domestic violence and their families.

(3) "Cabinet" means Cabinet for Human Resources.

(4) "Crisis center" means a facility without lodging capacity which provides counseling, advocacy and domestic violence intervention services for victims of domestic violence and their families.

(5) "Department" means Department for Social Services.

(6) "Director" means the individual responsible for the administration of the agency and all related services.

(7) "Governing board" means a legally constituted group of individuals whose function is to oversee operations of spouse abuse services and with whom the state contracts for such services.

(8) "Primary service provider" means the agency within each area development district, (ADD), designated by the cabinet as the primary contractor and focal point of service delivery. The primary service provider’s area of jurisdiction is limited to those counties contained in each ADD.

(9) "Secondary service provider" means an agency within an area development district other than the primary service provider, which through contract with the primary service provider or the cabinet, provides spouse abuse related services to victims of domestic violence and their families. The secondary service provider’s area of jurisdiction is limited to those counties contained in each ADD.

(10) "Service area" means the counties located within the area development district within which a primary service provider and/or a secondary service provider is located.

(11) "Spouse abuse shelter" means a facility which provides temporary or emergency lodging, counseling, advocacy, food, and information and referral for victims of domestic violence and their immediate families.

(12) "Volunteer" means a person who is either third party funded or who is donating free service time and either works directly in the agency or is performing a related service at the request of the director.

Section 2. Management. (1) Each agency shall be managed by a governing board constituted so as to allow broad community participation in its activities. The governing board shall be responsible for agency compliance with all applicable federal, state and local regulations. The board shall develop written personnel rules and regulations, adopt written bylaws, and shall be responsible to submit all necessary reports, records, or information deemed necessary to determine fiscal, administrative and programmatic effectiveness.

(2) Board meetings shall be conducted in compliance with the provisions of KRS 61.805 (Open Meeting Law).

(3)(a) The governing board shall develop written personnel rules and regulations including, but not limited to:

1. Job classifications;
2. Specifications;
3. A compensation plan;
4. Attendance and leave policies;
5. Fringe benefits;
6. Affirmative action;
7. Personnel grievance procedures;
8. Hiring and firing practices.

(b) A copy of the personnel rules and regulations shall be available and distributed to all staff, volunteers and the department.

(c) The governing board shall adopt written bylaws. The bylaws shall include, but not be limited to:

1. The purpose of the agency;
2. Number of members;
3. Qualifications for board memberships;
4. The types of membership;
5. The method of selecting members;
6. Terms of members;
7. Officers and duties;
8. Method of election of officers and chairpersons.

(4) Minutes of each meeting of a governing board of each agency shall contain the date and place of the meeting, names of members present, the subject matter discussed and actions taken, the name of the reporter, and shall be forwarded within thirty (30) days to each member of the board(s) and to the department.

(5) In the event the agency is a subsidiary of a larger entity, the provisions of subsection (1), (2), (3) and (4) of this section shall apply to the larger entity.

Section 3. Staff. (1) In all agencies the governing board shall appoint one (1) staff person as director. The director shall have the overall responsibility for supervision of the duties and activities of all staff and volunteers, shall coordinate all shelter-agency services, fulfill all duties as required by the governing board, and shall report directly to the board on all agency activities.

(2) The agency shall maintain and/or assure the provision of such competent staff to provide services at the center or shelter. Staff and volunteers shall be at least eighteen (18) years of age unless under the direct supervision of an adult; shall have education, training or experience to perform their particular job, and a willingness to work with others, including people under stress, and to share responsibilities as necessary. Volunteers must at all times be under the overall control and direction of the director even though they are not considered paid staff.

(3) The agency shall submit to the department a staffing pattern and indicate areas of responsibility, as well as lines of authority and supervision.

(4) The agency shall provide and/or secure orientation and in-service training for staff and volunteers responsible for service delivery and shall maintain a record of the training provided.

(5) Each agency shall implement a system to assure compliance with affirmative action standards, and equal opportunity employment standards, and shall provide a system for handling and resolving grievances of staff and volunteers.

Section 4. Physical Facilities. (1) The agency shall comply with applicable local, state and federal building, fire, safety and health codes.

(2) The shelter shall be of sound construction and suitable for residential use.

(3) The shelter shall be dry, adequately heated, ventilated, and lighted; windows, doors, stoves, heaters, furnaces, pipes, and
ventilating fans shall be protected; screening shall be provided for windows and doors unless air-conditioning and floors shall be free from splinters and easily cleaned. All types of gas heaters and stoves shall be properly ventilated.

(4) A recreation area with comfortable furnishings in sufficient quantity to accommodate the number of children and adults using it at any one time shall be provided.

(5) Bedrooms shall be equipped with a bed for each client, of adequate size, with suitable springs, mattress, pillow, and bedding as well as adequate closet space and individual drawer space.

(6) The shelter and grounds shall be well maintained.

(7) Each agency shall maintain a security system to provide for the physical safety of the client.

Section 5. Medical and Dental. The agency shall assure access to emergency medical and dental services are available within the community or within close proximity.

Section 6. Meals. The agency shall provide all clients with three (3) meals per day, each including foods from at least three (3) of the four (4) basic food groups.

Section 7. Services. (1) The agency shall maintain and provide services on a continuing basis and for such hours as are necessary to meet the needs of eligible persons.

(2) Staff of the agency are to apprise clients of resources available from the agency or by referral which may assist them in the solution of their problems.

(3) Upon entrance into the crisis center or spouse abuse shelter, or when receiving any spouse abuse service, the following minimal information shall be obtained and recorded in a permanent record:

(a) Name, date of birth, sex, address, marital status.

(b) Names and date of birth of any accompanying dependents.

(c) Identification of reason for intake.

(d) Identification of any physical injury.

(e) Any medical attention provided.

(f) Identification of any physical condition or ailment which may impact upon services to be offered the client.

(g) Any prior contacts with any crisis center or spouse abuse shelter.

(4) Immediately following gathering the information required in subsection (3) of this section, the information shall be reported to the offices of the department located within the county where the facility exists in accordance with the department’s spouse abuse reporting policy. This report shall constitute compliance with the provisions of KRS 199.335(2) and 209.030(2).

(5) Upon completion of the gathering of information as required in subsection (3) of this section, a service plan shall be developed for each individual and accompanying dependents setting forth a summary of services needed by the individual and available within the facility and community.

(6) Referral of the client for services outside the crisis center or spouse abuse shelter shall be documented and maintained in the client’s permanent case record. Service coordination with all other agencies shall also be documented in the case record.

(7) Daily program activities shall be offered with emphasis upon each client’s physical, intellectual and social needs.

(8) The agency shall have and enforce a policy which prohibits possession of any weapon, alcohol or nonprescribed drugs while in the facility.

(9) In no instance shall cruel or unusual punishment be used.

(10) Each agency shall develop subject to department approval, procedures to provide for the movement to more appropriate accommodations for those clients who present a danger to self or others or those clients who refuse to comply with facility rules.

(11) Each agency shall establish written procedures to be given to each client upon initial contact describing the services to be rendered and a method for handling client complaints. The complaint procedure shall include an opportunity for the client to have access to department’s grievance procedure for review. The department shall have access to all client records in the possession of each agency for review upon the filing of a service complaint by the client.

(12) Each agency shall assure that services are available to all residents in the area in which the agency is located. An agency may accept referrals on a statewide basis so long as space is available. Each agency shall cooperate with other spouse abuse agencies on a statewide basis.

(13) Each agency shall develop and implement, subject to department approval, procedures for emergency and/or temporary shelter closure.

(14) Each agency shall maintain a record of any unusual incidents involving a client or clients and shall forward a copy of same to the department.

(15) Each agency shall develop and implement a plan for the provision of outreach services in all counties of the area development district in which it is located.

Section 8. Records. (1) Client case records shall be maintained on each individual or family unit served by the crisis center or residing in the spouse abuse shelter during the time that the client or family unit is receiving services.

(2) Client case records of each agency shall be maintained as confidential and shall not be shared with any person outside the cabinet. Any records of the Cabinet for Human Resources, Department for Social Services, in the possession of any agency are strictly confidential and shall be shared with other individuals and/or organizations only as provided in KRS 209.140, KRS 194.060, and KRS 199.335 and with the prior written permission of the department.

(3) The department shall have access to the agency property and to records of all services provided, including but not limited to agency financial and client case records for the purpose of auditing and monitoring.

Section 9. 905 KAR 5:010, Standards, is hereby repealed.

ANNA GRACE DAY, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: December 12, 1985

Volume 12, Number 7 - January 1, 1986
FILED WITH LRC: December 13, 1985 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on
this regulation has been scheduled for January
21, 1986 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 January 16,
1986 of their desire to appear and testify at
the hearing: R. Hughes Walker, General Counsel,
Cabinet for Human Resources, 275 E. Main Street,
4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Margaret Hockensmith
(1) Type and number of entities affected: Spouse abuse shelters partially funded by state funds – 15 at present.
(a) Direct and indirect costs or savings to those affected: The revised standards may or may not result in additional costs or savings.
1. First year: There could be a slight increase in cost to meet the standards initially.
2. Continuing costs or savings: Once standards are met, continuing costs would be minimal.
3. Additional factors increasing or decreasing costs (note any effects upon competition): Limit completion to agencies that can meet these minimum standards.
(b) Reporting and paperwork requirements: Requires governing board to maintain management records.
(2) Effects on the promulgating administrative body: Assures agency that the contractor is capable of providing the service purchased.
(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:

Tiering: Was tiering applied? No. All contractors expected to meet the same standards.

CABINET FOR HUMAN RESOURCES
Department for Social Services
Division of Program Management

905 KAR 5:050. Funding.
RELATES TO: KRS 209.030(7), 209.160
PURSUANT TO: KRS 209.030(1), 104.050
NECESSITY AND FUNCTION: KRS 209.030(7)
requires the Cabinet for Human Resources to provide protective services for adults except in cases where the adult refuses such services. KRS 209.160 creates a trust and agency account, to receive funds from the issuance of marriage licenses and charges the cabinet with the responsibility of using these funds for the purpose of providing protective shelter services for spouse abuse victims. KRS 209.030(1)
authorizes the cabinet to adopt such rules, regulations, procedures, guidelines or policies necessary to protect adults. The function of this regulation is to set forth the requirements necessary for spouse abuse shelters and programs to receive funding.

Section 1. Definitions. (1) "Annual plan and budget" means the annual application for funding submitted by each spouse abuse shelter or crisis center.
(2) "Cash," "contract," or "provider" means any non-state money or funds given to the agency for use in the spouse abuse shelter or related service, and which is not used to match any other grant or contract.
(3) "Certified expenditures" means any non-state cash expenditures incurred by the agency when such expenditures are determined to be allowable, reasonable and necessary under applicable state laws and regulations and are not used to match any other grant or contract. Such expenditures may be incurred by the agency whether public or private non-profit, or may be certified on behalf of the provider by a third party which may also be a public or private non-profit organization.
(4) "In-kind contribution" means property or services which directly benefit the services purchased; which are contributed by the agency or a third party without expenditure by the agency; and would have been allowable, reasonable and necessary cost in accordance with state laws and regulations, if purchased by the agency.
(5) "Match" means locally generated funds or expenditures in the form of certified expenditures, in-kind contributions and/or cash provided by a contract agency as required to obtain state funding.

Section 2. General Funds. (1) Method of allocation. Of the amount of general funds that are appropriated to the cabinet for spouse abuse shelter for each fiscal year, ninety-five (95) percent shall be allocated annually for the operation of these services by the designated primary service providers, and five (5) percent shall be retained by the cabinet for a six (6) month period to be used for the operation of supportive services by secondary service providers, and for emergency needs of one (1) or more primary service providers. After the first six (6) months of each fiscal year, the remaining unobligated funds shall be available for distribution among the designated primary service providers, based on validated need for increased funding.
(2) Primary service provider. (a) Eligibility criteria. The cabinet shall designate one (1) primary service provider for each area development district to receive an allocation of general funds. Such designation shall be in effect unless rescinded following a review of the agency's performance and/or its annual plan and budget proposal for the upcoming year. These agencies which will be initially designated as primary service providers by the cabinet shall be those receiving state general funds under contract as of the effective date of these regulations.
(b) Selection process. Each primary service

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provider shall be selected according to the cabinet’s predesigned contract review and selection process. Each selected agency shall submit a properly executed annual plan and budget proposal which shall indicate each agency’s capacity to provide spouse abuse shelter and other related services for abused spouses and their children. The application for funding shall be in the form and format prescribed by the department. Each agency’s application for funding shall specify the type and kind of services it proposes to perform, either as a provider or under subcontract, detailed fiscal considerations, and assurances that the agency and/or all subcontracts will comply with all applicable federal and state regulations. Each agency’s proposal shall include a commitment to provide outreach services in all counties of the area development district in which it is located.

(c) Match. Each primary service provider shall provide funds at the rate of twenty-five (25) percent local match to seventy-five (75) percent state general fund dollars. Of the required local match, five (5) percent shall be cash and the remainder may be provided in any combination of cash, certified obligations, or in-kind contributions. No match shall be provided by any state funded spouse abuse program or on behalf of another spouse abuse contractor.

(d) Geographic areas. The cabinet shall allocate general funds to primary service providers in each of the area development districts.

(3) Secondary service provider.

(a) Eligibility criteria. An agency that is properly organized and has the capacity to provide crisis center or spouse abuse shelter or related services in accordance with federal and state laws and regulations may enter into a written subcontract agreement with the primary service provider. If after negotiations, the primary service provider and the applying agency find they cannot agree on a subcontract, and the applying agency can document the need for its services, the applying agency may then request that the department consider them for funding under the following conditions:

1. The applying agency can submit proof that the service is needed by both the primary service provider and the ADD community.
2. The applying agency can document its willingness to cooperate with other major service providers in the same ADD.
3. The applying agency can document its efforts to subcontract and the basis for failure to effect a subcontract with the primary service provider.
4. The applying agency submits a request that the department review all existing and necessary information and that the department render a final funding decision.

(b) Selection process. After the department has received all of the required information from the applying agency, meetings will be scheduled with the applying agency and the primary service provider to determine if the submitted information justifies the need for funding before rendering one (1) of the following decisions:

1. If the service is not needed nor properly justified, no contract will be awarded.
2. If the service is needed by the primary service provider and the applying agency cannot agree to subcontract, a contract may be awarded in accordance with the cabinet’s predesigned contract and review processes. The applying agency shall coordinate their service programs with the primary service provider in order to avoid duplication of services. A local agreement must be executed between the primary and secondary service provider and submitted to the department for final approval. The local service agreement must outline the services to be provided, the coordination of these services, and a willingness to cooperate in the provision of services. It shall be department policy that all secondary service providers subcontract with the primary service provider to obtain second year funding.

3. If the service is needed and the department determines that it must be funded through the primary service provider for the current fiscal year, then the applying agency will be referred back to the primary service provider to resolve subcontract negotiations.

(c) Match. Secondary service providers shall provide matching funds as described in subsections (3) and (3)c of this section. No match may be provided by any state funded spouse abuse program or on behalf of another spouse abuse contractor.

(d) Documentation. All primary and secondary service providers shall maintain documentation of the local match that is sufficient to determine that all requirements of this regulation are met. Records documenting local match, regardless of the type or source, shall be available to the cabinet and/or authorized entities for the purpose of audit.

(e) Disallowance. All primary and secondary service providers may be subject to disallowances and reimbursement to the Commonwealth, if such local match is not documented by the provider or third party.

Section 3. Trust and Agency Funds. (1) Eligibility criteria. In order to be able to receive trust and agency funds, an agency must be designated as a primary service provider.

(2) Method of allocation. Of the trust and agency spouse abuse funds coming to the cabinet, ninety (90) percent shall be equally allocated among the designated primary service providers and ten (10) percent shall be retained by the cabinet to be used as emergency funds for primary service providers during the fiscal year on an as-needed basis. If any balance remains in the emergency funds at the end of the fiscal year this shall be added back to current year trust and agency funds.

(3) Unexpended funds. If all of the funds allocated to a primary service provider at the beginning of each fiscal year are not expended, then they may be held by the cabinet to be expended by the same primary service provider the following year in accordance with the approved annual plan and budget. If the designated primary service provider changes and a new primary service provider has been selected by the cabinet, then all remaining unencumbered funds allocated to that agency shall return to the cabinet. The cabinet may at its option assign these funds to the new primary service provider or designate them to the department fund for distribution as established in subsection (2) of this section.

Section 4. 905 KAR 5:020, Allocation for trust and agency funds for spouse abuse shelters, and
ANNA GRACE OAY, Commissioner
E. AUSIN, JR., Secretary
APPROVED BY AGENCY: December 12, 1985
FILED WITH LRC: December 13, 1985 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on
this regulation has been scheduled for January
21, 1986 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 January 16,
1986 of their desire to appear and testify at
the hearing: R. Hughes Walker, General Counsel,
Cabinet for Human Resources, 275 E. Main Street,
4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Margaret Hockensmith

(1) Type and number of entities affected:
Agencies that apply to contract for spouse abuse
shelters - 15 at present.
(2) 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):
Establishes a primary service provider in each
area development district and requires other
providers to contract with the primary provider.
(b) Reporting and paperwork requirements:
Subcontracts for primary provider agencies.
(2) Effects on the promulgating administrative
body:
(a) Direct and indirect costs or savings:
Reduces contract negotiation to one per area
development district.
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:
(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 method of funding
is consistent for all contractors.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of the December 9-10, 1985 Meeting

The December meeting of the Administrative
Regulation Review Subcommittee was held on
Monday, December 9, 1985 at 2 p.m. and on
Tuesday, December 10, 1985 at 10 a.m. in Room
103. Representative Bill Brinkley, Chairman,
called the meeting to order, and the secretary
called the roll. On motion of Senator Mcintosh,
seconded by Representative Meyer, the minutes
of the November 11-12, 1985 meeting were approved.

Present were:
Members: Representative Bill Brinkley,
Chairman; Senators Harold Haering, and Pat
Mcintosh; Representatives James Bruce and Joe
Meyer.

Guests: Representative Greg Stumbo; Clayton
Gabbard, Anne Keating, Department of Personnel;
Arthur Hatterick, Jr., Jim Terry, Personnel
Board; Jim Ahler, Board of Accountancy; Julio
Pollo, Richard L. Ross, Board of Pharmacy;
Stephen Frank, Real Estate Commission; Bill
Graves, Peter W. Pfeiffer, Tom Young, Department
of Fish and Wildlife Resources; Clyde P.
Baldwin, Laura D. Keller, Timothy Kuryla, George
Risk, Natural Resources and Environmental
Protection Cabinet; Gary Baile, Jim Judge,
Elizabeth Nell, and H. M. Snodgrass, Department
of Education; William E. Doyle, Department of
Financial Institutions; Frank F. Chuppe, State
Racing Commission; Judith G. Walden, Department
of Housing, Buildings and Construction; Roy
Butler, Barbara Coleman, Red Fitzpatrick, Lynne
Flynn, Eric Friedlander, Gary Grubbs, Michael
Harmon, N. Clifton Howard, Clifford Jennings,
Greg Lawther, Delano Miller, Sharon Perry,
Phillip R. Spangler, Sue Tutt, John Webb, Sara-
Widling, and Mark Yancey, Cabinet for Human
Resources; Teresa Champion, Jim Judy Ky.
Association of Health Care Facilities; Russell
Hester, Ky. Hospital Association.
LRC Staff: Susan Wunderlich, Joe Hood, Gregory
Karastellas, June Mabry, Donna Valencia, and
Carla Arnold.

The Subcommittee had no objections to the
following regulation, but makes the following
recommendations or statements:

Department of Personnel: Personnel Rules
101 KAR 1:140 (Service regulations.)
101 KAR 1:200 (Rules for unclassified
service.) The subcommittee noted the issues
raised in the two regulations above. Chairman
Brinkley moved that the following statement be
attached, which was seconded by Representative
Bruce, and passed by the subcommittee: "Two bill
drafts relating to the issues raised by these
other personnel regulations have been
presented for General Assembly action during the
session. These regulations are referred to the
House and Senate State Government Committees and
to the sponsors of the bills."

Cabinet for Human Resources: Department for
Health Services: Hospitalization of Mentally
III/Mentally Retarded
102 KAR 12:000 (Policies and procedures for
mental health/mental retardation facilities.)
Representative Bruce asked whether or not these
regulations provided that the issue of
involuntary commitment would be determined by a
The Subcommittee determined that the following regulations complied with KRS Chapter 13A:

Finance and Administration Cabinet: Board of Accountancy
201 KAR 1:035 (Application to take examination.)

Board of Pharmacy
201 KAR 2:010 (Schools approved by the board.)
201 KAR 2:125 (Drug products in aerosol-nebulizer delivery systems.)
201 KAR 2:135 (Drug products with bioinequivalence problems.)
201 KAR 2:140 (Drug products having drug standards deficiencies.)
201 KAR 2:155 (Suppositories and enemas for systemic use.)

General Government Cabinet: Kentucky Real Estate Commission
201 KAR 11:190 (Rules of practice and procedure for hearings before the Kentucky Real Estate Commission.) This regulation was technically amended to delete repetition in Section 3. While the Subcommittee had no objections to this regulation, Representative Meyer asked whether subsection (4) of Section 3 would permit utilization of the investigative file against the respondent during the hearing, but still preclude review of the file by the respondent. The agency responded that this was not its intent.

Tourism Cabinet: Fish and Wildlife Resources: Fish
301 KAR 1:015 (Boats and outboard motors: size limits.)
301 KAR 1:055 (Angling: limits and seasons.)
301 KAR 1:145 (Gear allowed for commercial fishing.)

Game
301 KAR 2:220 (Hunting seasons for migratory birds.)

Natural Resources and Environmental Protection: Department for Environmental Protection: Water Quality
401 KAR 5:005 (Permits to discharge sewage; industrial and other wastes; definitions.)
401 KAR 5:050 (Definitions and general provisions; KPDES permitting program.)
401 KAR 5:055 (Scope and applicability of the KPDES program.)
401 KAR 5:060 (KPDES application requirements.)
401 KAR 5:065 (KPDES permit conditions.)
401 KAR 5:070 (Provisions of the KPDES permit.)
401 KAR 5:075 (Cabinet review procedures for KPDES permits.)
401 KAR 5:080 (Criteria and standards for the KPDES.)
401 KAR 5:085 (KPDES discharge permit and variance fees.) This regulation was technically amended to clarify references to federal regulations.

Department for Surface Mining and Reclamation: General Provisions
405 KAR 7:015 (Documents incorporated by reference.)
405 KAR 7:020 (Hearings.)

Bond and Insurance Requirements
405 KAR 10:030 (Types, terms and conditions of performance bonds and liability insurance.)

Areas Unsuitable for Mining
405 KAR 24:030 (Process and criteria for designating lands unsuitable for surface mining operations.)

Education and Humanities Cabinet: Department of Education: Office of Local Services: General Administration
702 KAR 1:010 (Facilities surveys and plans.)

Office of Instruction: Instructional Services
704 KAR 3:005 (Educational Improvement Act.)

Teacher Certification
704 KAR 20:290 (Certification for early elementary level.)

Public Protection and Regulation Cabinet: Department of Financial Institutions
Securities
808 KAR 10:220 (Registration exemptions - NASDAQ/NMS exemption.)
808 KAR 10:230 (Fee payment - KRS 292.380(5))

Kentucky State Racing Commission: Thoroughbred Rules
810 KAR 1:013 (Entries, subscriptions and declarations.)
810 KAR 1:018 (Medication; testing procedures.)

Department of Housing, Buildings, and Construction: Kentucky Building Code
815 KAR 7:013 (Kentucky Building Code plan review fees.)

Mobile Homes and Recreational Vehicles
815 KAR 25:010 (Mobile homes.)
815 KAR 25:020 (Recreational vehicles.)

Cabinet for Human Resources: Department for Health Services: Local Boards of Health
902 KAR 8:020 (Policies and procedures for local health department operations.)

State Health Plan
902 KAR 17:010 (State health plan.)

Certificate of Need and Licensure
902 KAR 20:1016 (Operation and services; ambulatory surgical center.) The agency explained that the amendments to this regulation...
were necessary because of a recent court decision. Representative Meyer asked whether or not the state was extending the statute of limitations beyond the four year period. The agency stated that it was not extending the period but that it was proposing legislation to extend the period in conformity with federal suggestions or requirements. Representative Meyer stated that he would vote against the approval of this regulation.

Public Assistance
904 KAR 2:116 (Low income home energy assistance program.)
904 KAR 2:140 (Supplementary policies for programs administered by the Department for Social Insurance.)

904 KAR 2:170 (Incorporation by reference of materials relating to the Child Support Program.)
904 KAR 3:050 (Incorporation by reference of materials relating to the Food Stamp Program.)

The following regulation was deferred at the agency's request:

Public Protection and Regulation Cabinet: Harness Racing Commission: Quarter Horse, Appaloosa, and Arabian Commission
812 KAR 1:050 (Jockeys.)

The Subcommittee had no objections to emergency regulations which had been filed.

The Subcommittee adjourned at 10:30 a.m. until January 6, 1985.
CUMULATIVE SUPPLEMENT

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