

Administrative Register of Kentucky

LEGISLATIVE RESEARCH COMMISSION FRANKFORT, KENTUCKY

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MEETING NOTICE: The next meeting of the Administrative Regulation Review Subcommittee is tentatively scheduled on March 5-6, 1991. See tentative agenda on pages 2597-2598 in this Administrative Register.

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Title	Chapter	Regulation
806	KAR 50	155
Cabinet, Department, Board or Agency	Office, Division, or Major Function	Specific Regulation

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ADMINISTRATIVE REGISTER - 2597

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
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Motor Vehicle Commission

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**PUBLIC PROTECTION AND REGULATION CABINET
Alcoholic Beverage Control Board**

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ADMINISTRATIVE REGULATION REVIEW PROCEDURE

Filing and Publication

Administrative bodies shall file with the Regulations Compiler all proposed administrative regulations, public hearing information, tiering statement, regulatory impact analysis, fiscal note, and the federal mandate comparison. Those administrative regulations received by the deadline required in KRS 13A.050 shall be published in the Administrative Register.

Public Hearing

The administrative body shall schedule a public hearing on proposed administrative regulations to be held not less than twenty (20) nor more than thirty (30) days following publication. 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.

Any person interested in attending the scheduled 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 of the cancellation. If the hearing is held, the administrative body shall submit within fifteen (15) days following the hearing a statement of consideration summarizing the comments received at the hearing and the administrative body's responses to the comments.

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.

Review Procedure

If a proposed administrative regulation is amended as a result of the public hearing, the amended version shall be published in the next Administrative Register; and the administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting following publication. If a proposed administrative regulation is not amended as a result of the hearing or if the hearing is cancelled, the administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting. After review by the Subcommittee, the administrative regulation shall be referred by the Legislative Research Commission to an appropriate jurisdictional committee for a second review. The administrative regulation shall be considered as adopted and in effect as of adjournment on the day the appropriate jurisdictional committee meets or thirty (30) days after being referred by LRC, whichever occurs first.

EMERGENCY ADMINISTRATIVE REGULATIONS NOW IN EFFECT

(NOTE: Emergency regulations expire 120 days from publication or upon replacement or repeal.)

STATEMENT OF EMERGENCY 1 KAR 6:010E

The Capital Planning Advisory Board is directed by KRS Chapter 7A to develop a statewide six-year capital improvement plan. The board is empowered by KRS 7A.140 to promulgate regulations to establish the process and to define the information that will be provided by state agencies and universities and used by the board in the development of the six-year plan. The instructions and forms that define what will be required are incorporated by reference in the administrative regulations. These forms and instructions will be issued to state agencies and universities by February 15, 1991, so the state agencies and universities can provide the required information by the stated deadline of May 15, 1991. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on February 6, 1991.

REPRESENTATIVE MARSHALL LONG, Chairman

LEGISLATIVE RESEARCH COMMISSION Capital Planning Advisory Board

1 KAR 6:010E. Policies and procedures.

RELATES TO: KRS Chapter 7A
STATUTORY AUTHORITY: KRS 7A.140
EFFECTIVE: February 6, 1991

NECESSITY AND FUNCTION: KRS 7A.140 authorizes the Capital Planning Advisory Board to adopt any administrative regulations necessary to carry out its planning and advisory functions. The

purpose of this regulation is to establish the policies and procedures for the capital planning process.

Section 1. The Governor, the Chief Justice, and the Legislative Research Commission shall provide:

(1) Statements of the type and amount of space currently occupied by their respective agencies in Franklin, Fayette, Jefferson, Boone, Kenton, and Campbell counties; and

(2) Projections of future space needs in those counties through FY 1996.

Section 2. State agencies, other than institutions of higher education, shall submit information specified by the board in the document titled "State Agencies Six-Year Capital Plan Instructions." This document, dated February 1, 1991, is incorporated by reference and may be reviewed or obtained at the Office of the Capital Planning Advisory Board, Room 2A, Capitol Annex, Frankfort, Kentucky 40601, Monday through Friday from 8 a.m. to 4:30 p.m. (EST).

Section 3. Institutions of higher education shall submit information specified by the board in the document titled "Higher Education Institutions Six-Year Capital Plan Instructions." This document, dated February 1, 1991, is incorporated by reference and may be reviewed or obtained at the Office of the Capital Planning Advisory Board, Room 2A, Capitol Annex, Frankfort, Kentucky 40601, Monday through Friday from 8 a.m. to 4:30 p.m. (EST).

Section 4. Agencies providing information to the Kentucky Information Systems Commission

pursuant to KRS 61.950 shall not be required to provide that information to the board.

(1) The Kentucky Information Systems Commission shall provide the board with the following information:

(a) List and approval or disapproval status of all submitted computing and communications items;

(b) List of the selected computing items on which the Kentucky Information Systems Commission places high value; and

(c) List of selected high-value communications items, primarily those related to a statewide network.

(2) The board may utilize the information received from the Kentucky Information Systems Commission in the formulation of the board's statewide six-year capital improvement plan.

Section 5. The board shall exclude road projects from its information request for the 1991 planning period, and accept, for review only, the Highway Biennial Construction and Preconstruction Program developed pursuant to KRS 176.440 by the Transportation Cabinet as reviewed by the General Assembly's Interim Joint Committee on Transportation.

Section 6. In providing the information required by KRS 7A.120, state agencies and institutions of higher education shall include any lease of real property where the estimated cost of purchasing the real property is \$200,000 or more, separately in the forms required by Sections 2 and 3 of this regulation, as appropriate.

Section 7. An agency providing any information to the board on behalf of another agency shall submit written notice to the board by May 15, 1991, specifying the type of information to be provided and the date by which it shall be provided.

REP. MARSHAL LONG, Chairman

APPROVED BY AGENCY: February 1, 1991

FILED WITH LRC: February 6, 1991 at 4 p.m.

STATEMENT OF EMERGENCY

31 KAR 4:060E

This emergency administrative regulation is necessary because the 1990 Regular Session of the General Assembly requires the State Board of Elections to conduct a purge of ineligible and deceased voters in every even-numbered year beginning with the July 1, 1990 fiscal year; and requires it to be completed no later than the close of registration books for the primary election, April 29, 1991. In order to comply with the statutory timetable it is necessary to implement this emergency administrative regulation immediately. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on February 7, 1991.

WALLACE G. WILKINSON, Governor
BREMER EHRLER, Chairman

STATE BOARD OF ELECTIONS

31 KAR 4:060E. Biennial purge.

RELATES TO: KRS 116.112

STATUTORY AUTHORITY: KRS 116.112(1)

EFFECTIVE: February 7, 1991

NECESSITY AND FUNCTION: To provide a schedule to conduct a purge of ineligible and deceased voters in every even-numbered year beginning with the July 1, 1990 fiscal year.

Section 1. (1) Notice to registered voters to be purged as ineligible or deceased shall begin January 1, 1991, and shall be completed no later than the close of registration books for the primary election, April 29, 1991.

(2) The board elects to use the United States Postal Service Address Information System (AIS) to determine voters to whom notice shall be mailed.

Section 2. The board shall notify a county clerk of the:

(1) Names of voters in his county to whom purgation notices have been mailed; and

(2) Date the purgation notices were mailed.

Section 3. The purgation notice required by KRS 116.112(4) is hereby incorporated by reference.

BREMER EHRLER, Chairman

APPROVED BY AGENCY: February 7, 1991

FILED WITH LRC: February 7, 1991 at 2 p.m.

STATEMENT OF EMERGENCY

405 KAR 7:020E

This emergency administrative regulation defines the terms "owned or controlled" and "owns or controls", defines "cessation order", and modifies the existing definition of "notice of violation." Ownership and control are key concepts in the withholding of permits from persons who are responsible for unabated violations, delinquent civil penalties or delinquent federal reclamation fees at surface coal mining operations. This emergency regulation is one of five emergency regulations, filed concurrently, that respond to recent federal regulation changes pertaining to the withholding of permits under Section 510(c) of the 1977 federal Surface Mining Act.

It is necessary to promulgate this emergency administrative regulation because of immediately pending events in two major lawsuits affecting the surface mining regulatory program. Since February 1988 the cabinet has been operating under a settlement agreement in National Wildlife Federation et al. v. Miller et al., Civil Action No. 86-99, (E.D. Ky.). Under the terms of this agreement, and as a consequence of the federal applicant violator system (AVS) nationwide computer network, the cabinet has been implementing some aspects of the federal regulations that are counterpart to the five emergency regulations being filed concurrently. This settlement agreement is scheduled to expire in February 1991. If these regulations are not in place when the agreement expires the cabinet will have questionable authority for continuing certain program requirements. This could result in some permits being issued that should be

withheld, and these permits may subsequently be subject to suspension or rescission, which would have significant adverse consequences for the permittees, their owners and employees. Also, a settlement agreement in Save Our Cumberland Mountains, Inc., et al. v. William P. Clark, et al., D.D.C. No. 81-2134 ("Amended Order"), commonly called the "SOCM Settlement Agreement", requires OSM to enter into memorandums of agreement with the states, under which the states will assist OSM in carrying out full implementation of the "permit-blocking" provisions of Section 510(c) of the federal Surface Mining Act. The cabinet expects to enter into a memorandum with OSM in the immediate future. The terms of this memorandum will obligate the cabinet to conduct activities which depend for their legal authority upon the existence of these regulations. Failure to enact these regulations immediately would jeopardize the cabinet's ability to fulfill its program obligations.

This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on January 23, 1991.

WALLACE G. WILKINSON, Governor
CARL H. BRADLEY, Secretary

**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, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 USC 1253, 1255, 1291
STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.465, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 USC 1253, 1255, 1291

EFFECTIVE: January 29, 1991

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 KAR Title 405, Chapters 7 through 24.

Section 1. Definitions. Unless otherwise specifically defined or otherwise clearly indicated by their context, terms in KAR 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 groundwater, fish, wildlife, vegetation or other resources protected by KRS Chapter 350 may be adversely impacted by surface coal mining and reclamation operations.

(4) "Administratively complete application" means an application for permit approval or approval for coal exploration where required, which the cabinet determines to contain information addressing each application requirement of the regulatory program and to contain all information necessary to initiate technical processing and public review.

(5) "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 incident 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 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.

(7) "Applicant" means any person(s) seeking a permit, permit revision, permit amendment, permit renewal, or transfer, assignment, or sale of permit rights from the cabinet to conduct surface coal mining and reclamation operations or approval to conduct coal exploration operations pursuant to KRS Chapter 350 and all applicable regulations.

(8) "Application" means the documents and other information filed with the cabinet seeking issuance of permits; revisions; amendments; renewals; and transfer, assignment or sale of permit rights for surface coal mining and reclamation operations or, where required, seeking approval for coal exploration.

(9) "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 and either 405 KAR 16:100; 405 KAR 16:060, Section 10; and 405 KAR 16:210 or 405 KAR 18:100; 405 KAR 18:060, Section 10; and 405 KAR 18:220.

(10) "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.

(11) "Area" as used in KAR 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.

(12) "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.

(13) "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 run off 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 KAR 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 KAR Title 405, Chapters 7 through 24.

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

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

(16) "Cessation order" means an order for cessation and immediate compliance and any similar order issued by QSM or issued by any state pursuant to its laws or regulations under SMCRA.

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

(18) [(17)] "Coal exploration" means the field gathering of:

(a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching,

drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

(b) Environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of KAR 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.

(19) [(18)] "Coal mine waste" means coal processing waste and underground development waste.

(20) [(19)] "Coal processing plant" means a facility where coal is subjected to chemical or physical processing or cleaning, concentrating, crushing, sizing, screening, 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 water storage facilities; settling basins and impoundments; and coal processing and other waste disposal areas.

(21) [(20)] "Coal processing waste" means materials which are separated from the product coal during the cleaning, concentrating, or other processing or preparation of coal.

(22) [(21)] "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.

(23) [(22)] "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.

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

(25) [(24)] "Compaction" means increasing the density of a material by reducing the voids between the particles by mechanical effort.

(26) [(25)] "Complete and accurate application" means an application for permit approval or approval for coal exploration where required, which the cabinet determines to contain all information required under, and necessary to comply with, KRS Chapter 350 and Title 450, Chapters 7 through 24, in order to make decisions concerning its administrative and technical acceptability and whether a permit or exploration approval should be issued.

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

purposes of land use categories.

(28) [(27)] "Cumulative impact area" means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface - and groundwater systems. Anticipated mining shall include, at a minimum, the entire projected lives through bond release of:

- (a) The proposed operation;
- (b) All existing operations;
- (c) Any operation for which a permit application has been submitted to the cabinet; and
- (d) All operations required to meet diligent development requirements for leased federal coal for which there is actual mine development information available.

(29) [(28)] "Date of primacy" means the effective date of the Secretary of Interior's unconditional or conditional approval of Kentucky's permanent regulatory program under Section 503 of the 1977 Surface Mining Control and Reclamation Act (P.L. 95-87). The effective date of the subject approval was May 18, 1982.

(30) [(29)] "Day" means calendar day unless otherwise specified to be a working day.

(31) [(30)] "Department" means the Department for Surface Mining Reclamation and Enforcement.

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

(33) [(32)] "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 KAR Title 405, Chapter 10 is released.

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

(35) [(34)] "Downslope" means the land surface below the projected outcrop of the lowest coal-bed being mined along each highwall.

(36) [(35)] "Embankment" means a manmade 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.

(37) [(36)] "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.

(38) [(37)] "Excess spoil" means spoil material disposed of in a location other than the coal extraction area, provided that spoil material used to achieve the approximate original contour shall not be considered excess spoil.

(39) [(38)] "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.

(40) [(39)] "Extraction of coal as an incidental part" means the extraction of coal which is necessary to enable the construction to

be accomplished. Only that coal extracted from within the right-of-way, in the case of a road, railroad, utility line or other such construction, or within the boundaries of the area directly affected by other types of government-financed construction, may be considered incidental to that construction. Extraction of coal outside the right-of-way or boundary of the area directly affected by the construction shall be subject to the requirements of KRS Chapter 350 and KAR Title 405, Chapters 7 through 24.

(41) [(40)] "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.

(42) [(41)] "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.

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

(44) [(43)] "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.

(45) [(44)] "Fragile lands" means areas containing natural, ecologic, scientific, or aesthetic resources that could be significantly damaged by surface coal mining operations. Examples of fragile lands include uncommon geologic formations, paleontological sites, National Natural Landmarks, valuable habitats for fish or wildlife, areas where mining may result in flooding, critical habitats for endangered or threatened species of animals or plants, wetlands, environmental corridors containing a concentration of ecologic and aesthetic features, state-designated nature preserves and wild rivers, and areas of recreational value due to high environmental quality.

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

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

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

(49) [(48)] "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.

(50) [(49)] "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.

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

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

(53) [(52)] "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.

(54) [(53)] "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.

(55) [(54)] "Historic lands" means areas containing historic, cultural, or scientific resources. Examples of historic lands include properties listed on or eligible for listing on a State or National Register of Historic Places, National Historic Landmarks, archaeological sites, properties having religious or cultural significant to Native Americans or religious groups, and properties for which historic designation is pending.

(56) [(55)] "Historically used for cropland."

(a) "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) 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.

(57) [(56)] "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, run-off, evaporation, and changes in ground and surface water storage.

(58) [(57)] "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.

(59) [(58)] "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.

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

(61) [(60)] "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.

(62) [(61)] "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.

(63) [(62)] "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.

(64) [(63)] "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 run-off and groundwater discharge.

(65) [(64)] "Irreparable damage to the environment" means any damage to the environment, in violation of SMCRA, KRS Chapter 350, or KAR Title 405 Chapters 7 through 24, that cannot be corrected by actions of the applicant.

(66) [(65)] "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.

(67) [(66)] "Monitoring" means the collection of environmental data by either continuous or periodic sampling methods.

(68) [(67)] "Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing microclimatic conditions suitable for germination and growth.

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

(70) [(69)] "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, KAR 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.

(71) [(70)] "Notice of violation" means any written notification from a governmental entity of a violation of law or regulation, whether by letter, memorandum, legal or administrative pleading, or other written communication. This shall include a notice of noncompliance and order for remedial measures.

(72) [(71)] "Noxious plants" means species classified under Kentucky law as noxious plants.

(73) [(72)] "Occupied dwelling" means any building that is currently being used on a

regular or temporary basis for human habitation.

(74) [(73)] "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.

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

(76) [(75)] "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 a 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, KAR 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.

(77) [(76)] "Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

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

(79) "Owned or controlled" and "owns or controls" means any one (1) or a combination of the relationships specified in paragraphs (a) and (b) of this definition:

(a)1. Being a permittee of a surface coal mining operation;

2. Based on instruments of ownership or voting securities, owning of record in excess of fifty (50) percent of an entity; or

3. Having any other relationship that gives one (1) person authority directly or indirectly to determine the manner in which an applicant, an operator, or other entity conducts surface coal mining operations.

(b) The following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not in fact have the authority directly or indirectly to determine the manner in which the relevant surface coal mining operation is conducted:

1. Being an officer or director of an entity;

2. Being the operator of a surface coal mining operation;

3. Having the ability to commit the financial or real property assets or working resources of an entity;

4. Being a general partner in a partnership;

5. Based on the instruments of ownership or the voting securities of a corporate entity, owning of record ten (10) through fifty (50) percent of the entity; or

6. Owning or controlling coal to be mined by another person under a lease, sublease, or other

contract and having the right to receive the coal after mining or having authority to determine the manner in which that person or another person conducts a surface coal mining operation.

(80) [(78)] "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.

(81) [(79)] "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface run-off. The term does not include "intermittent stream" or "ephemeral stream."

(82) [(80)] "Performance bond" means a surety bond, collateral bond, or a combination thereof, or bonds filed pursuant to the provisions of the Kentucky Bond Pool Program (405 KAR 10:200, KRS 350.595, and 350.700 through 350.755), by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, KAR Title 405, Chapters 7 through 24, and the requirements of the permit and reclamation plan.

(83) [(81)] "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.

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

(85) [(83)] "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.

(86) [(84)] "Permittee" means an operator or a person holding or required by KRS Chapter 350 or KAR 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 Chapter 350 and KAR Title 405, Chapters 7 through 24 are satisfied.

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

(88) [(86)] "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.

(89) [(87)] "Petitioner" means a person who submits a petition under KAR 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 KAR Title 405, Chapter 24 to terminate such a designation.

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

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

(92) [(90)] "Principal shareholder" means any person who is the record or beneficial owner of ten (10) percent or more of any class of voting stock of the applicant.

(93) [(91)] "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.

(94) [(92)] "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 groundwater; the surface or groundwater flow, timing and pattern; and the stream channel conditions on the permit area and adjacent areas.

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

(96) [(94)] "Public building" means any structure that is owned or leased, and principally used by a governmental agency for public business or meetings.

(97) [(95)] "Publicly-owned park" means a public park that is owned by a federal, state, or local governmental entity.

(98) [(96)] "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.

(99) [(97)] "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.

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

(101) [(99)] "Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and run-off to infiltrate and reach the zone of saturation.

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

(103) [(101)] "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.

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

(105) [(103)] "Reference area" means a land

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

(106) [(104)] "Refuge 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 semiliquid material.

(107) [(105)] "Renewable resource lands".

(a) As used in KAR Title 405, Chapter 24, "renewable resource lands" means geographic areas which contribute significantly to the long-range productivity of water supplies or of food or fiber products, such lands to include aquifers and aquifer recharge areas.

(b) As used in 405 KAR 8:040, Section 26, "renewable resource lands" means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazing lands.

(108) [(106)] "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.

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

(110) [(108)] "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.

(111) [(109)] "Secretary" means the Secretary of the Cabinet for Natural Resources and Environmental Protection.

(112) [(110)] "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 run-off to allow suspended solids to settle out. A sedimentation pond shall not include secondary sedimentation control structures such as straw dikes, riprap, check dams, mulches, dugouts and other measures that reduce overland flow

velocity, reduce run-off volume or trap sediment, to the extent that such secondary sedimentation structures drain to a sedimentation pond.

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

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

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

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

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

(115) [(113)] "Slurry mining" means the hydraulic breakdown of subsurface coal with drill-hole equipment, and the education of the resulting slurry to the surface for processing.

(116) [(114)] "Soil horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The 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 leaching 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 sequence 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.

(117) [(115)] "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.

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

(119) [(117)] "Stabilize" means to control movement of soil, spoil piles, or areas of

disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

(120) [(118)] "Steep slope" means any slope of more than twenty (20) degrees.

(121) [(119)] "Substantially disturb" means, for purposes of coal exploration, to significantly impact land or water resources by blasting; by removal of vegetation, topsoil, or overburden; by construction of roads or other access routes; by placement of excavated earth or waste material on the natural land surface; or by other such activities, or to remove more than 250 tons of coal.

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

(123) [(121)] "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.

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

(125) [(123)] "Surface coal mining operations" means activities conducted on the surface of lands in connection with a surface coal mine and surface operations and surface impacts incident to an underground coal mine. Such activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the use of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and cleaning, concentrating, or other processing or preparation, and the loading of coal at or near the 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 sixteen 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 such activities and for haulage, and excavations, workings, impoundments, dams,

ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities. This definition includes the terms "strip mining of coal" and the surface effects of underground mining of coal as defined in KRS Chapter 350.

(126) [(124)] "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.

(127) [(125)] "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).

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

(129) [(127)] "Ton" means 2,000 pounds avoirdupois (.90718 metric ton).

(130) [(128)] "Topsoil" means the A and E soil horizon layers of the four (4) master soil horizons.

(131) [(129)] "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.

(132) [(130)] "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.

(133) [(131)] "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.

(134) [(132)] "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.

(135) [(133)] "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; aboveground repair areas, storage areas, processing areas, and shipping areas; areas upon which are sited support facilities including hoist and ventilating ducts, areas utilized for the disposal and storage of waste, and areas on which materials

incident to underground mining operations are placed; and

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

(136) [(134)] "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.

(137) [(135)] "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 KAR 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 KAR Title 405, Chapters 7 through 24, or permit conditions.

(138) [(136)] "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.

(139) [(137)] "Water table" means the upper surface of a zone of saturation, where the body of groundwater is not confined by an overlying impermeable zone.

(140) [(138)] "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 groundwater.

(141) [(139)] "Wetland" means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(a) "Hydric soil" means soil that, in its undrained condition, is saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation.

(b) "Hydrophytic vegetation" means a plant growing in:

1. Water; or
2. A substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content.

(142) [(140)] "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 KAR 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 KAR 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), as amended
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.

CARL H. BRADLEY, Secretary

FRANK DICKERSON, Commissioner

APPROVED BY AGENCY: January 22, 1991

FILED WITH LRC: January 29, 1991 at 2 p.m.

STATEMENT OF EMERGENCY 405 KAR 8:010E

This emergency administrative regulation restructures and revises current requirements pertaining to the withholding of permits from persons who are responsible for unabated violations, delinquent civil penalties and delinquent federal reclamation fees at surface coal mining operations. Further, it establishes criteria and procedures pertaining to permits which are determined to have been issued improvidently, in that circumstances existed which should have prevented issuance, including procedures for possible suspension or rescission of the permits. This emergency regulation is one of five emergency regulations, filed concurrently, that respond to recent federal regulation changes pertaining to the withholding of permits under Section 510(c) of the 1977 federal Surface Mining Act.

It is necessary to promulgate this emergency administrative regulation because of immediately pending events in two major lawsuits affecting the surface mining regulatory program. Since February 1988 the cabinet has been operating under a settlement agreement in National Wildlife Federation et al. v. Miller et al., Civil Action No. 86-99, (E.D. Ky.). Under the terms of this agreement, and as a consequence of the federal applicant violator system (AVS) nationwide computer network, the cabinet has been implementing some aspects of the federal regulations that are counterpart to the five emergency regulations being filed concurrently. This settlement agreement is scheduled to expire in February 1991. If these regulations are not

in place when the agreement expires the cabinet will have questionable authority for continuing certain program requirements. This could result in some permits being issued that should be withheld, and these permits may subsequently be subject to suspension or rescission, which would have significant adverse consequences for the permittees, their owners and employees. Also, a settlement agreement in Save Our Cumberland Mountains, Inc., et al. v. William P. Clark, et al., D.D.C. No. 81-2134 ("Amended Order"), commonly called the "SOCM Settlement Agreement", requires OSM to enter into memorandums of agreement with the states, under which the states will assist OSM in carrying out full implementation of the "permit-blocking" provisions of Section 510(c) of the federal Surface Mining Act. The cabinet expects to enter into a memorandum with OSM in the immediate future. The terms of this memorandum will obligate the cabinet to conduct activities which depend for their legal authority upon the existence of these regulations. Failure to enact these regulations immediately would jeopardize the cabinet's ability to fulfill its program obligations.

This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on January 23, 1991.

WALLACE G. WILKINSON, Governor
CARL H. BRADLEY, Secretary

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

405 KAR 8:010E. General provisions for permits.

RELATES TO: KRS 350.020, 350.055, 350.060, 350.070, 350.085, 350.090, 350.130, 350.135, 350.450, 350.465, 27 CFR 55.206, 55.218, 55.219, 55.220, 30 CFR 77.1301(c), 30 CFR Parts 730, 733, 735, 773-775, 777, 778.17, 917, 30 USC 1253, 1255-1261, 1263-1266, 1272

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.060, 350.135, 350.450, 350.465, 30 CFR Parts 730, 733, 735, 773-775, 777, 778.17, 917, 30 USC 1253, 1255-1261, 1263-1266, 1272

EFFECTIVE: January 29, 1991

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. This regulation provides for permits to conduct these operations. The regulation specifies when permits are required, application deadlines, requirements for applications for permanent program permits, fees, verification of applications, public notice requirements, submission of comments on permit applications, the right to file objections, informal conferences, review of the permit applications, criteria for application approval or denial and relevant actions, term of the permits, conditions of permits, review of outstanding permits, revisions of permits and renewals, transfers, assignments, and sales of permit rights.

Section 1. Applicability. Excluding coal exploration operations, this regulation shall apply to all applications, all actions regarding permits, and all surface coal mining and reclamation operations.

Section 2. General Requirements. (1) Permanent program permits required. No person shall engage in surface coal mining and reclamation operations unless that person has first obtained a valid permanent program permit under this chapter for the area to be affected by the operations.

(2) General filing requirements for permanent program permit applications.

(a) Each person who intends to engage in surface coal mining and reclamation operations shall file a complete and accurate application for a permanent program permit which shall comply fully with all applicable requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24, and shall not begin the operations until the permit has been granted.

(b) Renewal of valid permanent program permits. An application for renewal of a permit under Section 21 of this regulation shall be filed with the cabinet at least 120 days before the expiration of the permit.

(c) Revision of permanent program permits. A permittee may, at any time, apply for a revision of a permit, but shall not vary from the requirements of the permit until the revision has been approved by the cabinet. The term of a permit shall remain unchanged by a revision.

(d) Succession to rights granted under prior permanent program permits. An application for the transfer, sale, or assignment of rights granted under a permit may be submitted at any time. The actual transfer, sale, or assignment of permit rights, however, may not take place until written permission has been granted by the cabinet.

(e) Amendment of permanent program permits. A permittee may, at any time, apply for an amendment to a permit under Section 23 of this regulation, but shall not begin surface coal mining and reclamation operations on the areas until the amendment has been approved by the cabinet. The term of a permit shall remain unchanged by an amendment.

(3) Compliance with permits. Any person engaging in surface coal mining and reclamation operations under a permit issued pursuant to KRS Chapter 350 shall comply with the terms and conditions of the permit, including the plans and other documents submitted as part of the application and approved by the cabinet, and the applicable requirements of KRS Chapter 350 and 405 KAR.

Section 3. Coordination of Review of Permit Applications. (1) For the purposes of avoiding duplication, the cabinet shall coordinate the review and issuance of permits for surface coal mining and reclamation operations with:

(a) Any other federal or Kentucky permit process applicable to the proposed operations, as required by Section 503 of SMCRA; and

(b) Applicable requirements of the Endangered Species Act of 1973, as amended (16 USC 1531 et seq.); the Fish and Wildlife Coordination Act, as amended (16 USC 661 et seq.); the Migratory Bird Treaty Act of 1918, as amended (16 USC 703 et seq.); the National Historic Preservation Act of 1966, as amended (16 USC 470 et seq.); and

the Bald Eagle Protection Act, as amended (16 USC 668a), as required by 30 CFR 773.12.

(2) This coordination shall be accomplished by providing the appropriate agencies with an opportunity to comment on permit applications as set forth in Section 8(6) and (7) of this regulation and, if necessary, by any other measures the cabinet may deem appropriate.

Section 4. Preliminary Requirements. A person desiring a permit shall submit to the cabinet a preliminary application of the form and content prescribed by the cabinet. The preliminary application shall contain pertinent information, including a map at a scale of one (1) inch equals 400 or 500 feet, marked to show the proposed permit area and adjacent areas; and the areas of land to be affected, including, but not limited to, locations of the coal seam(s) to be mined, access roads, haul roads, spoil or coal waste disposal areas, and sedimentation ponds. Areas so delineated on the map shall be physically marked at the site in a manner prescribed by the cabinet. Personnel of the cabinet shall conduct, within fifteen (15) working days after filing, an on-site investigation of the area with the person or his or her representatives and representatives of appropriate local, state or federal agencies, after which the person may submit a permit application.

Section 5. General Format and Content of Applications. (1)(a) Applications for permits to conduct surface coal mining and reclamation operations shall be filed in the number, form and content required by the cabinet, including a copy to be filed for public inspection under Section 8(8) of this regulation.

(b) The application shall be on forms provided by the cabinet, and originals and copies of the application shall be prepared, assembled and submitted in the number, form and manner prescribed by the cabinet with attachments, plans, maps, certifications, drawings, calculations or other documentation or relevant information as the cabinet may require.

(c) The application shall be complete with respect to all information required by 405 KAR and include, at a minimum: for surface mining activities, all the applicable information required under 405 KAR 8:030; for underground mining activities, all the information required under 405 KAR 8:040; and, for special types of surface coal mining and reclamation operations, all the information required under 405 KAR 8:050. No application shall be determined to be administratively complete unless all design plans for the permit area are in detailed form.

(2) Information set forth in the application shall be current, presented clearly and concisely, and supported by appropriate references to technical and other written material available to the cabinet.

(3) The collection and analysis of all technical data submitted in the application shall be planned by or conducted under the direction of a professional qualified in the subject to be analyzed and shall be accompanied by:

- (a) Names of persons or organizations which collected and analyzed the data;
- (b) Dates of the collection and analyses; and
- (c) Descriptions of methodology used to collect and analyze the data.

(4) The application shall state the name, address and position of officials of each private or academic research organization or governmental agency who provided information which has been made a part of the application regarding land uses, soils, geology, vegetation, fish and wildlife, water quantity and quality, air quality, and archaeological, cultural, and historic features.

(5)(a) The applicant shall designate in the permit application either himself or some other person who will serve as agent for service of notices and orders. The designation shall identify the person by full name and complete mailing address, and if a natural person, the person's Social Security number. The person shall continue as agent for service of process until a written revision of the permit has been made to designate another person as agent.

(b) The applicant may designate persons authorized by the applicant to submit modifications to the application to the cabinet. If the designation has not been made in the application, or in separate correspondence, the cabinet shall accept modifications only from the applicant.

(6) General requirements for maps and plans.

(a) If any of the information marked on the preliminary map required under Section 4 of this regulation has changed, the application shall contain an updated USGS seven and one-half (7 1/2) minute topographic map marked as required in Section 4 of this regulation.

(b) Maps submitted with applications shall be presented in a consolidated format, to the extent possible, and shall include the types of information set forth on topographic maps of the U.S. Geological Survey of the 1:24,000 scale series. Maps of the permit area and adjacent areas shall be at a scale of 400 or 500 feet to the inch, inclusive; and the scale shall be clearly shown on the map. However, when the cabinet determines that a map scale larger than 400 feet to the inch is required to adequately show mine site details, a map of larger scale shall be provided by the applicant. The map required by 405 KAR 8:030, Section 23(1)(a) or 405 KAR 8:040, Section 23(1)(a), regarding additional areas on which permits will be sought, shall be a USGS seven and one-half (7 1/2) minute (1:24,000) topographic map.

(c) Where a map or drawing is required to be certified by a qualified registered professional engineer, the map or drawing shall bear the seal and signature of the engineer as required by KRS Chapter 322, and shall be certified in accordance with 405 KAR 7:040, Section 10.

(d) All engineering design plans submitted with applications shall be prepared by or under the direction of a qualified registered professional engineer and shall bear the engineer's seal, signature, and certification as required by KRS Chapter 322 and 405 KAR 7:040, Section 10.

(e) Maps and plans submitted with the application shall clearly identify all previously mined areas as defined at 405 KAR 16:190, Section 7(2)(c) or 405 KAR 18:190, Section 5(2)(c).

(7) Referenced materials. If used in the application, referenced materials shall either be provided to the cabinet by the applicant or be readily available to the cabinet. If provided, relevant portions of referenced published materials shall be presented briefly

and concisely in the application by photocopying or abstracting and with explicit citations.

Section 6. Application and Acreage Fees. (1) Each application for a surface coal mining and reclamation permit shall be accompanied by a fee determined by the cabinet. The fee may be less than, but shall not exceed the actual or anticipated cost of reviewing, administering and enforcing the permit.

(2) The applicant shall submit an application fee of \$375 for each application, plus an additional seventy-five (75) for each acre or fraction thereof of the area of land to be affected by the operation. If the cabinet approves an incremental bonding plan submitted by the applicant, the acreage fees may be paid individually as the bond for each increment is submitted. However, no acreage fees shall be required for surface areas overlying underground or auger workings which will not be affected by surface operations and facilities.

(3) The fee shall accompany the application in the form of a cashier's check or money order payable to the Kentucky State Treasurer. No permit application shall be processed unless the application fee has been paid.

Section 7. Verification of Application. Applications for permits; revisions; amendments; renewals; or transfers, sales, or assignments of permit rights shall be verified under oath, before a notary public, by the applicant or his authorized representative, that the information contained in the application is true and correct to the best of the official's information and belief.

Section 8. Public Notice of Filing of Permit Applications. (1) An applicant for a permit, major revision, amendment, or renewal of a permit shall place an advertisement in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located.

(2)(a) The first advertisement shall be published on or after the date the application is submitted to the cabinet. The applicant may elect to begin publication on or after the date the applicant receives the notification from the cabinet under Section 13(2) of this regulation that the application has been deemed administratively complete and ready for technical review. The advertisement shall be published at least once each week for four (4) consecutive weeks, with the final consecutive weekly advertisement being published after the applicant's receipt of written notice from the cabinet that the application has been deemed administratively complete and ready for technical review.

(b) The final consecutive weekly advertisement shall clearly state that it is the final advertisement, and that written objections to the application may be submitted to the cabinet until thirty (30) days after the date of the final advertisement.

(3) Within fifteen (15) days of the final date of publication of the advertisement, the applicant shall submit to the cabinet proof of publication of the required final four (4) consecutive weekly notices, satisfactory to the cabinet, which may consist of an affidavit from

the publishing newspaper certifying the dates, place and content of the advertisements.

(4) The advertisement shall be entitled "Notice of Intention to Mine" and shall be of a form specified by the cabinet.

(5) The advertisement shall contain, at a minimum, the following information:

(a) The name and business address of the applicant; and

(b) A map or description which shall:

1. Clearly show or describe towns, rivers, streams, and other bodies of water, local landmarks, and any other information, including routes, streets, or roads and accurate distance measurements, necessary to allow local residents to readily identify the proposed permit area;

2. Clearly show or describe the exact location and boundaries of the proposed permit area;

3. State the name of the U.S. Geological Survey seven and one-half (7 1/2) minute quadrangle map(s) which contains the area shown or described; and

4. If a map is used, show the north arrow and map scale.

(c) The location where a copy of the application is available for public inspection under subsection (8) of this section;

(d) The name and address of the cabinet to which written comments, objections, or requests for permit conferences on the application may be submitted under Sections 9, 10, and 11 of this regulation;

(e) If an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road or to relocate or close a public road; except where public notice and hearing have been previously provided for this particular part of road in accordance with 405 KAR 24:040, Section 2(6)(a) and (b); a concise statement describing the public road, the particular part to be relocated or closed, and the approximate timing and duration of the relocation or closing;

(f) If the application includes a request for an experimental practice under 405 KAR 7:060, a statement indicating that an experimental practice is requested and identifying the regulatory requirement for which a variance is requested; and

(g) The application number.

(6) Within five (5) working days after the application for a permit, major revision, amendment, or renewal of a permit has been determined to be administratively complete, the cabinet shall issue written notification of:

(a) The applicant's intention to conduct surface coal mining and reclamation operations on a particularly described tract of land;

(b) The application number;

(c) Where a copy of the application may be inspected; and

(d) Where comments on the application may be submitted under Section 9 of this regulation.

(7) The written notifications required by subsection (6) of this section shall be sent to:

(a) Local government agencies with jurisdiction over or an interest in the area of the proposed operations, including, but not limited to, planning agencies and sewage and water treatment authorities and water companies, either providing sewage or water services to users in the area of the proposed operations or having water sources or collection, treatment, or distribution facilities located in these areas; and

(b) All federal and Kentucky governmental agencies which have the authority to issue permits and licenses applicable to the proposed surface coal mining and reclamation operation and which are a part of the permit coordination process required by Section 3 of this regulation; and

(c) Those agencies with an interest in the particular proposed operation including, but not limited to:

1. The USDA Soil Conservation Service State Conservationist;
2. The local U.S. Army Corps of Engineers district engineer;
3. The National Park Service;
4. Kentucky and federal fish and wildlife agencies; and
5. The state historic preservation officer.

(8) In accordance with Section 12 of this regulation, the cabinet shall, upon receipt of the application, make the application available for public inspection and copying during all normal working hours at the appropriate regional office of the cabinet where the mining has been proposed, and shall provide reasonable assistance to the public in the inspection and copying of the application.

Section 9. Submission of Comments or Objections by Public Agencies. (1) Written comments or objections on applications for permits, major revisions, amendments, and renewals of permits may be submitted to the cabinet by the public agencies to whom notification has been provided under Section 8(6) and (7) of this regulation with respect to the effects of the proposed mining operations on the environment within their area of responsibility.

(2) These comments or objections shall be submitted to the cabinet in the manner prescribed by the cabinet, and shall be submitted within thirty (30) calendar days after the date of the written notification by the cabinet pursuant to Section 8(6) and (7) of this regulation.

(3) The cabinet shall immediately file a copy of all comments or objections at the appropriate regional office of the cabinet for public inspection under Section 8(8) of this regulation. A copy shall also be transmitted to the applicant.

Section 10. Right to File Written Objections.

(1) Any person whose interests are or may be adversely affected or an officer or head of any federal, state, or local government agency or authority to be notified under Section 8 of this regulation shall have the right to file written objections to an application for a permit, major revision, amendment, or renewal of a permit with the cabinet, within thirty (30) days after the last publication of the newspaper notice required by Section 8(1) of this regulation.

(2) The cabinet shall, immediately upon receipt of any written objections:

- (a) Transmit a copy of the objections to the applicant; and
- (b) File a copy at the appropriate regional office of the cabinet for public inspection under Section 8(8) of this regulation.

Section 11. Permit Conferences. (1) Procedure for requests. Any person whose interests are or may be adversely affected by the decision on the

application, or the officer or head of any federal, state or local government agency or authority to be notified under Section 8 of this regulation may, in writing, request that the cabinet hold an informal conference on any application for a permit, major revision, amendment, or renewal of a permit. The request shall:

(a) Briefly summarize the issues to be raised by the requester at the conference;

(b) State whether the requester desires to have the conference conducted in the locality of the proposed mining operations; and

(c) Be filed with the cabinet not later than thirty (30) days after the last publication of the newspaper advertisement placed by the applicant under Section 8(1) of this regulation.

(2) Except as provided in subsection (3) of this section, if a permit conference has been requested in accordance with subsection (1) of this section, the cabinet shall hold a conference within twenty (20) working days after the last date to request a conference under subsection (1)(c) of this section. The conference shall be conducted according to the following:

(a) If requested under subsection (1)(b) of this section, the conference shall be held in the locality of the proposed mining.

(b) The date, time, and location of the conference shall be sent to the applicant and parties requesting the conference and advertised once by the cabinet in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located, at least two (2) weeks prior to the scheduled conference.

(c) If requested, in writing, by a conference requester in a reasonable time prior to the conference, the cabinet may arrange with the applicant to grant parties to the conference access to the permit area and, to the extent that the applicant has the right to grant access, to the adjacent areas prior to the established date of the conference for the purpose of gathering information relevant to the conference.

(d) The requirements of 405 KAR 7:090 shall not apply to the conduct of the conference. The conference shall be conducted by a representative of the cabinet, who may accept oral or written statements and any other relevant information from any party to the conference. An electronic or stenographic record shall be made of the conference proceedings, unless waived by all the parties. The record shall be maintained and shall be accessible to the parties of the conference until final release of the applicant's performance bond or other equivalent guarantee pursuant to 405 KAR Chapter 10.

(3) If all parties requesting the conference stipulate agreement before the requested conference and withdraw their requests, the conference need not be held.

(4) Permit conferences held in accordance with this section may be used by the cabinet as the public hearing required under 405 KAR 24:040, Section 2(6) on proposed relocation and closure of public roads.

Section 12. Public Availability of Information in Permit Applications on File with the Cabinet.

(1) General availability.

(a) The cabinet shall make an application for a permit, major or minor revision, amendment, or renewal of a permit available for the public to inspect and copy by placing a full copy of the application at the regional office for the area in which mining shall occur. The application will be made available by the cabinet for public inspection and copying, at reasonable times, in accordance with Kentucky open records statutes, KRS 61.870 to 61.884. This copy need not include confidential information exempt from disclosure under subsections (2) and (3) of this section.

(b) The application required by paragraph (a) of this subsection shall be placed at the appropriate regional office no later than the first date of newspaper advertisement of the application.

(c) The applicant shall be responsible for placing all changes in the copy of the application retained at the regional office when the changes are submitted to the Division of Permits.

(2) Information pertaining to coal seams, test borings, core samples, or soil samples in applications shall be made available for inspection and copying to any person with an interest which is or may be adversely affected.

(3) Confidentiality. The cabinet shall provide for procedures to ensure the confidentiality of qualified confidential information. Confidential information shall be clearly identified by the applicant and submitted separately from the remainder of the application. Where a dispute arises concerning the disclosure or nondisclosure of confidential information, the cabinet shall provide notice and convene a hearing in accordance with 405 KAR 7:090. Confidential information shall be limited to the following:

(a) Information that pertains only to the analysis of the chemical and physical properties of the coal to be mined, except information on components of the coal which are potentially toxic in the environment;

(b) Information on the nature and location of archaeological resources on public land and Indian land as required under the Archaeological Resources Protection Act of 1979.

Section 13. Department Review of Applications for Permits, Revisions, Amendments, and Renewals. (1) General.

(a) The cabinet shall review the application for a permit, revision, amendment, or renewal; written comments and objections submitted; and records of any permit conference held on the application and make a written decision, within the time frames listed in Section 16(1) of this regulation, concerning approval of, requiring modification of, or concerning rejection of the application.

(b) An applicant for a permit, revision, or amendment shall have the burden of establishing that the application is in compliance with all requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(2)(a) Administrative completeness determination. Within ten (10) working days of initial receipt of the application the cabinet shall provide written notification to the applicant as to the administrative completeness of the application. If the application is determined to be incomplete, the cabinet shall notify the applicant within ten (10) working

days after initial receipt of the application by certified mail, return receipt requested, or by registered mail, of the deficiencies which render the application incomplete. The applicant may submit supplemental information to correct the identified deficiencies for a period of ten (10) working days after the applicant's receipt of the initial notice of incompleteness. If, after ten (10) working days, the cabinet determines that the application is still incomplete, the cabinet shall return the incomplete application to the applicant with written notification of the reasons for the determination.

(b) A determination by the cabinet that the application is administratively complete means that the application contains the major elements required by KRS Chapter 350 and 405 KAR Chapters 7 through 24 which are necessary to allow meaningful review of the application by the cabinet. An application shall not be deemed administratively complete if one (1) or more major elements are found to be absent from the application, which, by virtue of their absence, would require that the permit be denied. A determination that an application is administratively complete shall not mean that the application is complete in every detail, nor shall it mean that any aspect of the application is technically sufficient or approvable.

(3) Processing of the administratively complete application. Within the time periods set forth in Section 16 of this regulation, the cabinet shall either:

(a) Notify the applicant of the cabinet's decision to issue or deny the application; or

(b) Notify the applicant in writing, by certified mail, return receipt requested, or by registered mail, promptly upon discovery of deficiencies in the application and allow the application to be temporarily withdrawn for the purpose of correcting the deficiencies. Temporary withdrawal periods shall not be counted against the time available to the cabinet for consideration of the application.

(4) Review of violations.

(a) Based on available information concerning failure-to-abate cessation orders issued by OSM, Kentucky, or any other state; unabated imminent harm cessation orders issued by OSM, Kentucky, or any other state; delinquent civil penalties assessed pursuant to SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and regulations adopted pursuant thereto, or any other state's laws or regulations under SMCRA; bond forfeitures by OSM, Kentucky, or any other state where violations upon which the forfeitures were based have not been corrected; delinquent abandoned mine reclamation fees; and unabated violations of federal, Kentucky, and any other state's laws, rules and regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, the cabinet shall not issue the permit if any surface coal mining reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant is currently in violation of SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and regulations adopted pursuant thereto, any other state's laws or regulations under SMCRA, or any other law, rule, or regulation referred to in this subsection. In the absence of a failure-to-abate cessation order, the cabinet

may presume that a notice of violation issued by OSM, Kentucky, or any other state pursuant to its laws and regulations under SMCRA has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation, except where evidence to the contrary is set forth in the permit application, or where the violation is for nonpayment of abandoned mine reclamation fees or civil penalties. If a current violation exists, the cabinet shall require the applicant or person who owns or controls the applicant, before issuance of the permit, to either: [If the cabinet determines from either the lists submitted as part of the application under 405 KAR 8:030, Section 3(3) or 405 KAR 8:040, Section 3(3), or from other available information, that any surface coal mining operation owned or controlled by the applicant is currently in violation of any law, rule, or regulation of the United States or any state law, rule, or regulation enacted pursuant to federal law, rule, or regulation, pertaining to air or water environmental protection, or of SMCRA or KRS Chapter 350, and regulations promulgated pursuant thereto, the cabinet shall require the applicant, before the issuance of the permit, to either:]

1. [(a)] Submit to the cabinet proof that the current violation has been or is in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation [which is satisfactory to the cabinet and other agencies which have jurisdiction over the violation, that the violation has been or is in the process of being corrected]; or

2. Establish for the cabinet that the applicant, or any person owned or controlled by either the applicant or any person who owns or controls the applicant, has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the current violation. If the initial judicial review authority affirms the violation, then the applicant shall within thirty (30) days of the judicial action submit proof required under subparagraph 1 of this paragraph.

(b) Any permit that is issued on the basis of proof submitted under paragraph (a)1 of this subsection that a violation is in the process of being corrected, or pending the outcome of an appeal described in paragraph (a)2 of this subsection, shall be conditionally issued.

(c) If the cabinet makes a finding that the applicant, anyone who owns or controls the applicant, or the operator specified in the application, controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of KRS Chapter 350 and regulations adopted pursuant thereto of such nature and duration, and with resulting irreparable damage to the environment as to indicate an intent not to comply with those laws or regulations, no permit shall be issued. Before such a finding becomes final, the applicant or operator shall be afforded an opportunity for an adjudicatory hearing on the determination as provided for in 405 KAR 7:090, Section 5(1)(a).

[(b)] Establish to the cabinet that the applicant has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of that violation. In this case, the permit shall contain a condition requiring that if the

administrative or initial judicial hearing authority either denies a stay applied for in the appeal, or affirms the violation, then any surface coal mining operations being conducted under the permit shall be terminated unless and until the permittee complies with paragraph (a) of this subsection. For loss of appeal on violations of laws or regulations of the United States or states other than Kentucky, operations shall be terminated under this paragraph only when the cabinet has actual, verified notice of the loss of appeal and the subsequent failure of the permittee to correct or begin correcting the violation; and the termination shall be set aside by the cabinet only when the cabinet has actual, verified notice that the permittee has corrected the violation or is in the process of correcting the violation.]

(5) Final compliance review. After an application is approved, but before the permit is issued, the cabinet shall reconsider its decision to approve the application, based on the compliance review required by subsection (4)(a) of this section in light of any new information submitted under 405 KAR 8:030, Sections 2(11) and 3(4), or 405 KAR 8:040, Sections 2(11) and 3(4). [No permit shall be issued if the cabinet determines that the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violation of SMCRA, KRS Chapter 350, or 405 KAR Chapters 7 through 24 of such a nature and duration and with such resulting "irreparable damage to the environment" (as defined in 405 KAR 7:020) that indicates an intent not to comply with SMCRA, KRS Chapter 350, or 405 KAR Chapters 7 through 24. Before any final determination by the cabinet pursuant to this subsection the applicant or operator shall be afforded an opportunity for an adjudicatory hearing on the determination as provided for in 405 KAR 7:090.]

Section 14. Criteria for Application Approval or Denial. No application for a permit, revision (as applicable), or amendment of a permit shall be approved unless the application affirmatively demonstrates and the cabinet finds, in writing, on the basis of information set forth in the application or from information otherwise available, which has been documented in the approval, that:

(1) The permit application is complete and accurate and in compliance with all requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(2) The applicant has demonstrated that surface coal mining and reclamation operations, as required by KRS Chapter 350 and 405 KAR Chapters 7 through 24 can be feasibly accomplished under the mining and reclamation plan contained in the application.

(3) The assessment of the probable cumulative impacts of all anticipated coal mining in the cumulative impact area on the hydrologic balance has been made by the cabinet and the operations proposed under the application have been designed to prevent material damage to the hydrologic balance outside the proposed permit area.

(4) The proposed permit area is:

(a) Not included within an area designated unsuitable for surface coal mining operations under 405 KAR 24:030;

(b) Not within an area under study for designation as unsuitable for surface coal mining operations in an administrative proceeding begun under 405 KAR 24:030, unless the applicant demonstrates that, before January 4, 1977, he or she made substantial legal and financial commitments in relation to the operation for which he or she is applying for a permit;

(c) Not on any lands subject to the prohibitions or limitations of 405 KAR 24:040, Section 2(1), (2) or (3);

(d) Not within 100 feet of the outside right-of-way line of any public road, except as provided for in 405 KAR 24:040, Section 2(6); and

(e) Not within 300 feet from any occupied dwelling, except as provided for in 405 KAR 24:040, Section 2(5).

(5)(a) The proposed operations will not adversely affect any publicly-owned parks or any places included on the National Register of Historic Places, except as provided for in 405 KAR 24:040, Section 2(4); and

(b) The cabinet has taken into account the effect of the proposed operations on properties listed and eligible for listing on the National Register of Historic Places. This finding may be supported in part by inclusion of appropriate permit conditions or changes in the mining and reclamation plan to protect historic resources, or a documented decision that the cabinet has determined that no additional protection measures are necessary.

(6) For operations involving the surface mining of coal where the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the cabinet the documentation required under 405 KAR 8:030, Section 4(2) or 405 KAR 8:040, Section 4(2).

(7) With regard to current violations, the applicant has either:

(a) Submitted the proof required by Section 13(4)(a) of this regulation; or

(b) Made the demonstration required by Section 13(4)(b) of this regulation.

(8) The applicant has paid all reclamation fees from previous and existing operations as required by 30 CFR 870, or has entered into a payment schedule approved by OSM.

(9) The applicant or the operator, if other than the applicant, does not control and has not controlled mining operations with a demonstrated pattern of willful violations of SMCRA or KRS Chapter 350 of such a nature and duration and with such resulting "irreparable damage to the environment" (as defined in 405 KAR 7:020) as to indicate an intent not to comply with SMCRA or KRS Chapter 350.

(10) The applicant has demonstrated that any existing structure will comply with 405 KAR 8:030, Section 25 and 405 KAR 8:040, Section 25, and the applicable performance standards of KAR 405 KAR Chapters 16 and 18.

(11) The applicant has, if applicable, satisfied the requirements for approval of a long-term, intensive agricultural postmining land use.

(12) The applicant can reasonably be expected to submit the performance bond or other equivalent guarantee required under 405 KAR Chapter 10 prior to the issuance of the permit.

(13) The applicant has, with respect to prime farmland obtained either a negative determination or satisfied the requirements of

405 KAR 8:050, Section 3.

(14) The applicant has satisfied the applicable requirements of 405 KAR 8:050 regarding special categories of mining.

(15) The cabinet has made all specific approvals required under 405 KAR Chapters 16 through 20.

(16) The cabinet has found that the activities would not affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitats as determined under the Endangered Species Act of 1973 (16 USC 1531 et seq.).

(17) The applicant has not forfeited any bond under KRS Chapter 350. When the applicant has forfeited a bond, the permit may be issued if the land for which the bond was forfeited has been satisfactorily reclaimed without cost to the state or the operator or person has paid a sum that the cabinet finds is adequate to reclaim the land.

(18) The applicant has not had a permit revoked, suspended or terminated under KRS Chapter 350. If the applicant has had a permit revoked, suspended or terminated, another permit may be issued, or a suspended permit may be reinstated, only if the applicant has complied with all of the requirements of KRS Chapter 350 or submitted proof satisfactory to the cabinet that the violation has been corrected or is in the process of being corrected, in respect to all permits issued to him or her.

(19) The operation will not constitute a hazard to or do physical damage to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, or other public property.

(20) The surface coal mining operation will not adversely affect a wild river established pursuant to KRS Chapter 146 or a state park unless adequate screening and other measures as approved by the cabinet have been incorporated into the permit application and the surface coal mining operation has been jointly approved by all affected agencies as set forth under 405 KAR 24:040.

(21) For a proposed remining operation where the applicant intends to reclaim in accordance with the requirements of 405 KAR 16:190, Section 7 or 405 KAR 18:190, Section 5, the applicant has demonstrated, to the satisfaction of the cabinet, that the site of the operation will be a previously mined area as defined in those sections.

Section 15. Criteria for Application Approval or Denial Regarding Existing Structures. No application for a permit, revision, or amendment which proposes to use an existing structure in connection with or to facilitate the proposed surface coal mining and reclamation operation shall be approved, unless the applicant demonstrates and the cabinet finds, in writing, on the basis of information set forth in the complete and accurate application, that the provisions of 405 KAR 7:040, Section 4, have been met.

Section 16. Application Approval or Denial Actions. (1) The cabinet shall take action on applications within the following time periods as appropriate:

(a)1. Except as provided for in paragraph (b)

of this subsection, for a complete and accurate application submitted under Section 2(2)(a), (b), (d), and (e) of this regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application within sixty-five (65) working days after the notice of administrative completeness under Section 13(2) of this regulation, except that periods of temporary withdrawal under Section 13(3)(b) of this regulation shall not be counted against the sixty-five (65) working-day period available to the cabinet.

2. Except as provided in paragraph (b) of this subsection, for a complete and accurate application submitted under Section 2(2)(c) of this regulation of a major revision as provided in Section 20 of this regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application within forty-five (45) working days after the notice of administrative completeness under Section 13(2) of this regulation, except that periods of temporary withdrawal under Section 13(3)(b) of this regulation shall not be counted against the forty-five (45) working-day period available to the cabinet.

3. For a complete and accurate application submitted under Section 2(2)(c) of this regulation for a minor revision as provided in Section 20 of this regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application within fifteen (15) working days after the notice of administrative completeness under Section 13(2) of this regulation, except that periods of temporary withdrawal under Section 13(3)(b) of this regulation shall not be counted against the fifteen (15) working-day period available to the cabinet.

(b) If the notice, hearing and conference procedures mandated by KRS Chapter 350 and 405 KAR prevent a decision from being made within the time periods specified in paragraph (a) of this subsection, the cabinet shall have additional time to issue its decision, but not to exceed twenty (20) days from the completion of the notice, hearing and conference procedures.

(2) The cabinet shall issue written notification of the decision to approve, modify, or deny the application, in whole or part, to the following persons and entities:

- (a) The applicant;
- (b) Each person who files comments or objections to the permit application;
- (c) Each party to an informal permit conference, if held;
- (d) The county judge-executive of the county, and the chief executive officer of any municipality, in which the permit area lies. This notice shall be sent within ten (10) days after the issuance of the permit and shall include a description of the location of the permit area; and

(e) The field office director of the Office of Surface Mining Reclamation and Enforcement.

(3) If the application has been denied, the notification required in subsection (2) of this section, for the applicant, any person filing objections to the permit and parties to an informal conference, shall include specific reasons for the denial.

(4) If the cabinet decides to approve the application, it shall require that the applicant file the performance bond before the permit is issued, in accordance with 405 KAR Chapter 10.

(5) The cabinet shall publish a summary of its decision in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located.

Section 17. Term of Permit. (1) Each permit shall be issued for a fixed term not to exceed five (5) years. A longer fixed permit term may be granted at the discretion of the cabinet only if:

(a) The application is complete and accurate for the specified longer term; and

(b) The applicant shows that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and for the opening of the operation with the need confirmed, in writing, by the applicant's proposed source for the financing.

(2)(a) A permit shall terminate, if the permittee has not begun the surface coal mining and reclamation operation covered by the permit within three (3) years of the issuance of the permit.

(b) The cabinet may grant reasonable extensions of the time for commencement of these operations, upon receipt of a written statement showing that the extensions of time are necessary, if:

1. Litigation precludes the commencement or threatens substantial economic loss to the permittee; or

2. There are conditions beyond the control and without the fault or negligence of the permittee.

(c) With respect to coal to be mined for use in a synthetic fuel facility or specified major electric generating facility, the permittee shall be deemed to have commenced surface mining operations when construction of the synthetic fuel or generating facility is initiated.

(d) Extensions of time granted by the cabinet under this subsection shall be specifically set forth in the permit and notice of the extension shall be made to the public.

(3) Permits may be suspended, revoked, or modified by the cabinet, in accordance with Section 19 of this regulation; Section 3 of 405 KAR 7:060; Sections 4, 6, and 7 of 405 KAR 8:050; and 405 KAR Chapter 12.

Section 18. Conditions of Permits. Actions by an applicant, permittee, or operator to submit an application to the cabinet, to accept a permit issued by the cabinet, or to begin operations pursuant to a permit issued by the cabinet, shall be deemed to constitute knowledge and acceptance of the conditions set forth in this section, which shall be applicable to each permit issued by the cabinet pursuant to this chapter whether or not the conditions have been set forth in the permit.

(1) General.

(a) The permittee shall comply fully with all terms and conditions of the permit and all applicable performance standards of KRS Chapter 350 and 405 KAR Chapters 7 through 24; and

(b) Except to the extent that the cabinet otherwise directs in the permit that specific actions be taken, the permittee shall conduct all surface coal mining and reclamation operations as described in the approved application; and

(c) The permittee shall conduct surface coal mining and reclamation operations only on those

lands specifically designated as the permit area on the maps submitted under 405 KAR 8:030 or 405 KAR 8:040 and authorized for the term of the permit; and which are subject to the performance bond in effect pursuant to 405 KAR Chapter 10.

(2) Right of entry.

(a) Without advance notice, unreasonable delay, or a search warrant, and upon presentation of appropriate credentials, the permittee shall allow authorized representatives of the Secretary of the Interior and the cabinet to:

1. Have the rights of entry provided for in 405 KAR 12:010, Section 3; and

2. Be accompanied by private persons for the purpose of conducting a federal inspection when the inspection is in response to an alleged violation reported to the cabinet by the private person.

(b) The permittee shall allow the authorized representatives of the cabinet to be accompanied by private persons for the purpose of conducting an inspection pursuant to 405 KAR 12:030.

(3) Environment, public health, and safety.

(a) The permittee shall take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from failure to comply with any term or condition of the permit, including, but not limited to:

1. Any accelerated or additional monitoring necessary to determine the nature and extent of failure to comply and the results of the failure to comply;

2. Immediate implementation of measures necessary to comply; and

3. Warning, as soon as possible after learning of the failure to comply, any person whose health and safety is in imminent danger due to the failure to comply.

(b) The permittee shall dispose of solids, sludge, filter backwash, or pollutants removed in the course of treatment or control of waters or emissions to the air in the manner required by 405 KAR Chapters 16 through 20, and which prevents violation of any other applicable Kentucky or federal law.

(c) The permittee shall conduct its operations:

1. In accordance with any measures specified in the permit as necessary to prevent significant, imminent environmental harm to the health or safety of the public; and

2. Utilizing any methods specified in the permit by the cabinet in approving alternative methods of compliance with the performance standards of KRS Chapter 350 and 405 KAR Chapters 16 through 20, in accordance with KRS Chapter 350 and 405 KAR Chapters 16 through 20.

(4) Reclamation fees. The permittee shall pay all reclamation fees required by 30 CFR 870 for coal produced under the permit for sale, transfer, or use, in the manner required by that subchapter.

(5) Within thirty (30) days after a cessation order is issued by QSM for operations conducted under the permit or after an order for cessation and immediate compliance is issued under 405 KAR 12:020, Section 3 for operations conducted under the permit, except where a stay of the order is granted and remains in effect, the permittee shall either submit to the cabinet the following information, current to the date the order was issued, or notify the cabinet in writing that there has been no change since the immediately preceding submittal of the information:

(a) Any new information needed to correct or update the information previously submitted to the cabinet by the permittee under 405 KAR 8:030, Section 2(3) or 405 KAR 8:040, Section 2(3); or

(b) If not previously submitted, the information required from a permit applicant by 405 KAR 8:030, Section 2(3) or 405 KAR 8:040, Section 2(3).

Section 19. Review of Permits. (1)(a) The cabinet shall review each permit issued under this chapter during the term of the permit. This review shall occur not later than the middle of the permit term and as required by 405 KAR 7:060 and 405 KAR 8:050, Sections 4, 6, and 7. Issued permits shall be reevaluated in accordance with the terms of the permit and the requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24, including reevaluation of the bond.

(b) For permits of longer than five (5) year terms, a review of the permit shall be no less frequent than the permit midterm or every five (5) years, whichever is more frequent.

(2) After the review required by subsection (1) of this section, or at any time, the cabinet may, by order, require revision or modification of the permit provisions to ensure compliance with KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(3) Copies of the decision of the cabinet shall be sent to the permittee.

(4) Any order of the cabinet requiring revision or modification of permits shall be based upon written findings and shall be subject to the provisions for administrative and judicial review of 405 KAR 7:090.

Section 20. Permit Revisions. (1) General. A revision to a permit shall be obtained:

(a) For changes in the surface coal mining and reclamation operations described in the existing application and approved under the current permit.

(b) When a revision is required by an order issued under Section 19 of this regulation.

(c) In order to continue operation after the cancellation or material reduction of the liability insurance policy, performance bond, or other equivalent guarantee upon which the original permit was issued; or

(d) As otherwise required under 405 KAR Chapters 7 through 24.

(2) Major revision.

(a) A revision is a major revision if the proposed change is of such scope and nature that the cabinet determines that public notice is necessary to allow participation in the cabinet's decision by persons who have an interest which may be adversely affected by the proposed change. Major revisions shall include, but shall not be limited to:

1. Changes in the postmining land use;

2. Enlargement or relocation of impoundments so as to increase the safety hazard classification of the impoundment;

3. Variances to approximate original contour requirements;

4. Construction or relocation of roads, where the construction or relocation could adversely affect the interests of persons other than the surface owner;

5. Changes which may adversely affect significant fish and wildlife habitats or endangered species;

6. Proposed experimental practices;
7. Changes which may cause major impacts on the hydrologic balance;
8. Incidental boundary revisions that affect new watersheds;
9. Incidental boundary revisions that include diversions of perennial streams;
10. Incidental boundary revisions that include new areas from which coal will be removed, except these revisions shall be limited to ten (10) percent of the permit area acreage or five (5) acres, whichever is less.

(b) Major revisions shall be subject to all of the requirements of Sections 5; 7 through 12; 13(1), (2), (3); 14(1) through (6), (8), (10) through (16), (19) through (21); 15; 16; 18; and 24 of this regulation; and shall be submitted on forms prescribed by the cabinet. In addition to the requirements of Section 8(5) of this regulation, the advertisement shall contain a statement that the applicant proposes to revise the existing permit and shall contain a description of the proposed change.

(3) Minor revisions.

(a) All revisions which are not determined by the cabinet to be major revisions are minor revisions. Minor revisions shall be subject to Sections 5; 7; 12; 13(1), (2), (3); 14(1) through (6), (10) through (16), (19) through (21); 15; 16(1) through (4); 18; and 24 of this regulation, except that minor field revisions described in paragraph (d) of this subsection shall not be subject to the administrative completeness determination of Section 13(2) of this regulation, and the time frame for review in Section 16(1)(a)3 of this regulation shall begin at the time of application submittal. Minor revisions shall be submitted on forms prescribed by the cabinet.

(b) If the cabinet determines that a proposed minor revision is actually a major revision during the administrative completeness determination under Section 13 of this regulation, the cabinet shall so inform the applicant and return the application.

(c) The cabinet shall notify, in writing, those persons, if any, that the cabinet determines could have an interest that may be adversely affected by the proposed change. Those persons shall have the right to file written objections to the revision within ten (10) days of the date of the notification.

(d) The following minor revisions shall be deemed minor field revisions which may be reviewed and processed in accordance with this section by the appropriate regional office of the department. However, if the number of persons that potentially could have an interest that may be adversely affected by the proposed change is large enough that public notice by newspaper advertisement rather than individual notice by letter from the cabinet is necessary, the regional administrator shall determine that the proposed revision is a major revision and it shall not be processed under this paragraph.

1. Proposals for minor relocation of underground mine entries where:

- a. There are no structures or "renewable resource lands" (as that term is defined in paragraph (b) of the definition provided in 405 KAR 7:020, Section 1) overlying the area;
- b. There is no proposed change to the permit boundary; and
- c. The proposed new location is on the same face-up area and coal seam as originally

permitted, is within the same drainage area as the original location, is controlled by the same sedimentation pond, and there will be no additional disturbed acreage within the drainage area of that sedimentation pond.

2. Proposals for retention of concrete platforms and small buildings where:

- a. There is no proposed change to the previously approved postmining land use; and
- b. The application contains a notarized letter from the surface owner requesting retention of the structure.

3. Proposals to leave roads as permanent, except proposals involving roads to impoundments, excess spoil fills, coal mine waste fills, or air shafts; roads within 100 feet of an intermittent or perennial stream; and roads within areas designated unsuitable for mining under 405 KAR 24:040, Section 2, regardless of whether a previous waiver or approval has been granted. The application shall contain a notarized letter from the surface owner including a request to retain the road and a statement acknowledging that the surface owner understands that the operator has no responsibility for maintenance of the road after the performance bond has been released pursuant to 405 KAR 10:040 for the area in which the road is located.

4. Proposals to increase the diameter of culverts used as road crossdrains, not including culverts used for stream crossings, provided that the proposed culvert is the same type of pipe as the previously approved culvert.

5. Proposals to install additional culverts used as road crossdrains (not including culverts used for stream crossings), provided that the diameter of the proposed additional culvert is equal to the diameter of the nearest downstream crossdrain and is the same type of pipe as the nearest downstream crossdrain.

6. Proposals for minor relocation of on-bench sediment control structures (dugouts only) in order to locate the structures at low spots on the same bench on which they were initially proposed, where:

- a. The drainage area to the structure will remain the same as the original design;
- b. The proposed location will not cause short-circuiting of the structure; and
- c. There is no proposed change to the permit boundary.

7. Proposals to retain diversions of overland flow (not including stream diversions) as permanent facilities where:

a. The application contains a notarized letter from the surface owner including a request to retain the diversion and a statement accepting maintenance responsibilities for the diversions; and

b. The diversions have previously been designed to the standards for permanent diversions.

8. Proposals for relocation of topsoil storage areas where:

a. There is no proposed change to the permit boundary; and

b. The proposed new location was previously permitted as a disturbed area within the same drainage area as the original location, is controlled by the same sedimentation pond, and there will be no additional disturbed acreage within the drainage area of that sedimentation pond.

9. Proposals to substitute plant species where:

a. The proposed species is of the same vegetative type (grass, legume, tree, or shrub) as the original species;

b. The proposed species will serve the equivalent function of the original species with respect to the previously approved: revegetation plan, postmining land use plan, and the fish and wildlife protection and enhancement plan; and

c. The proposed species and its application or planting rate are compatible with the remainder of the previously approved species mixture to be planted.

10. Proposals to utilize hydroseeding for trees instead of planting trees or tree seedlings where:

a. Hydroseeding is an appropriate method for the tree species being established; and

b. No change in tree species is involved unless concurrently approved under subparagraph 9 of this paragraph.

11. Proposals to change the type of mulch to be utilized on the permit area, including a revised rate of application consistent with the different type of mulch proposed.

12. Proposals to retain small depressions in the reclaimed area.

13. Proposals required by the cabinet to increase frequency of air blast monitoring.

14. Proposals required by the cabinet to increase frequency of air pollution monitoring.

15. Proposals to employ more effective fugitive dust controls, and proposals required by the cabinet to employ additional fugitive dust controls.

16. Proposals to add a portable coal crusher where:

a. The crusher and associated conveying equipment are a completely portable, trailer mounted unit;

b. The equipment will be utilized to crush coal only from the permit area on which it is proposed to be located;

c. The operation will not generate coal mine waste;

d. There is no proposed change to the permit boundary; and

e. The equipment will always be located in the mining pit or other location previously permitted as a disturbed area controlled by a previously approved sedimentation pond and there will be no additional disturbed acreage or delayed reclamation within the drainage area of any of the sedimentation ponds.

17. Proposals to change the time periods, or the types or patterns of warning or all-clear signals, when explosives are to be detonated.

18. Proposals to relocate an explosive storage area within the existing permit area in accordance with 27 CFR 55.206, 55.218, 55.219, 55.220, and 30 CFR 77.1301(c).

19. Approval for minor relocation of support facilities such as conveyors, hoppers, and coal stockpiles where:

a. There is no proposed change to the permit boundary; and

b. The proposed new location was previously permitted as a disturbed area within the same drainage area as the original location, is controlled by the same sedimentation pond, and there will be no additional disturbed acreage within the drainage area of that sedimentation pond.

20. Proposals for modifications of shared facilities where that modification has already been approved in a revision for one of the

permittees by the Division of Permits and no additional performance bond was required for the initial revision.

21. Proposals to add a hopper to a permitted area where:

a. There is no proposed change to the permit boundary; and

b. The proposed location was previously permitted as a disturbed area controlled by a previously approved sedimentation pond and there will be no additional disturbed acreage or delayed reclamation within the drainage area of that sedimentation pond.

22. Proposals to change the brush disposal plan, not including any proposals to bury brush in the backfill area on steep slopes or in excess spoil fills or coal mine waste fills.

23. Proposals to cut berms, provided that the cuts will not cause bypassing or short circuiting of on-bench structures or other sedimentation control structures.

24. Proposals to change the basis of judging revegetation from reference areas to the technical standards established in 405 KAR Chapters 7 through 24.

25. Proposals for incidental boundary revisions for minor off-permit disturbances where:

a. The total acreage of the minor off-permit disturbances is no more than one (1) acre combined per proposal;

b. The cumulative acreage limitation established in the definition of "incidental boundary revision" in 405 KAR 7:020 is not exceeded;

c. The area to be permitted does not include any wetlands, prime farmlands, stream buffer zones, federal lands, habitats of unusually high value for fish and wildlife, areas that may contain threatened or endangered species, or areas designated unsuitable for mining under 405 KAR Chapter 24;

d. The off-permit disturbance was not a coal extraction area nor shall any future coal extraction occur on the area;

e. There are no structures such as excess spoil disposal fills, coal mine waste disposal fills or impoundments, or water impoundments involved;

f. The surface owner of the area to be permitted is a surface owner of disturbed area under the existing permit; and

g. An additional performance bond in the amount of \$5000 has been filed by the permittee.

h. If deemed necessary for any reason, the regional administrator may decline to review and process any proposal to permit an off-permit disturbance as a minor field revision and instead require that an application be submitted to the Division of Permits.

26. Except as provided below, proposals to remove sedimentation ponds previously approved as permanent impoundments where the application contains a notarized letter from the surface owner requesting the elimination of the impoundment, the application contains an acceptable plan for removal, and the criteria for sedimentation pond removal have been met. However, proposals to remove sedimentation ponds in the following situations shall not be processed as minor field revisions:

a. Where the structure has a hazard classification of B or C;

b. Where the impoundment is a developed water resource land use;

c. Where the removal or activities associated with the removal of the structure may adversely affect significant fish and wildlife habitats or threatened or endangered species;

d. Where the impoundment may be a necessary element in the achievement of the previously approved postmining land use (such as a stock pond for pastureland where no other nearby source of water is available to the livestock); or

e. Where the impoundment was originally planned to be left for the purpose, in whole or in part, of enhancing fish and wildlife and related environmental values.

27. Proposals to approve exemptions from the requirement to pass drainage through sedimentation ponds for disturbed areas that, due to unexpected field conditions, will not drain to an approved sedimentation pond where:

a. There has not been any acid drainage or drainage containing concentrations of total iron or manganese from this or nearby areas of the mine that could result in water quality violations if untreated and none is expected based on overburden analysis;

b. The application contains a justification that it is not feasible to control the drainage by a sedimentation pond;

c. The disturbed area is one (1) acre or less;

d. The application contains a plan to immediately implement alternate sedimentation control measures including, at a minimum, mulching, silt fences, straw bale dikes and establishment of a quick growing temporary vegetative cover;

e. The application contains sufficient plan views and cross sections certified by a registered professional engineer to clearly illustrate the feasibility of the proposal and the location of the alternate control methods (minimum scale one (1) inch equals 100 feet); and

f. The application contains a MRP map certified by a registered professional engineer showing the location of the disturbed area and the drainage area clearly.

(e) Proposed minor revisions which only seek to change the engineering design of impoundments and diversions of overland flow where no change in permit boundary is involved shall not be subject to the administrative completeness determination of Section 13(2) of this regulation; however, the application shall be processed in, and written notice that the application has been determined to be subject to this paragraph and is being forwarded for technical review shall be provided to the applicant within ten (10) working days. The time frame for review in Section 16(1)(a)3 of this regulation shall begin at the time of this notice.

(4) Any extensions to the area covered by a permit, except for incidental boundary revisions, shall be made by application for a new or amended permit and shall not be approved under this section.

(5) Fees. Applications for major and minor revisions shall include a basic fee of \$375, except that minor field revisions shall have no basic fee. If the revision application proposes incidental boundary revisions which would increase the acreage in the permit, an additional acreage fee of seventy-five (75) dollars per acre, or fraction thereof, shall be included with the application, except that no acreage fee shall be required for surface areas

overlying underground workings which will not be affected by surface operations and facilities.

Section 21. Permit Renewals. (1) General requirements for renewal. Any valid, existing permit issued pursuant to this chapter shall carry with it the right of successive renewal, within the approved boundaries of the existing permit, upon expiration of the term of the permit.

(2) Contents of renewal applications. Applications for renewal of permits shall be submitted within the time prescribed by Section 2(2)(b) of this regulation. Renewal applications shall be in a form and with content as required by the cabinet and in accordance with this section, and shall include at a minimum:

(a) The name and address of the permittee, the term of the renewal requested and the permit number;

(b) A copy of the proposed newspaper notice and proof of publication of same under Section 8 of this regulation;

(c) Evidence that liability insurance under 405 KAR 10:030, Section 4, will be provided by the applicant for the proposed period of renewal;

(d) A renewal fee of \$375;

(e) Evidence that the performance bond will continue in effect for any renewal requested, as well as any additional bond required by the cabinet pursuant to 405 KAR 10:020; and

(f) Any additional revised or updated information which may be required by the cabinet.

(3) Applications for renewal shall be subject to the requirements of Sections 8 through 11, 13 and 16 of this regulation.

(4) An application for renewal shall not include any proposed revisions to the permit. Revisions shall be made by separate application and shall be subject to the requirements of Section 20 of this regulation.

(5) Term of renewal. Any permit renewal shall be for a term not to exceed the period of the original permit established under Section 17 of this regulation.

(6) Approval or denial of renewal applications.

(a) The cabinet shall approve a complete and accurate application for permit renewal, unless it finds, in writing, that:

1. The terms and conditions of the existing permit are not being satisfactorily met;

2. The present surface coal mining and reclamation operations are not in compliance with the environmental protection standards under KRS Chapter 350 and 405 KAR Chapters 7 through 24;

3. The requested renewal substantially jeopardizes the applicant's continuing responsibility to comply with KRS Chapter 350 and 405 KAR Chapters 7 through 24 on existing permit areas;

4. The applicant has not provided evidence that any performance bond required for the operations will continue in effect for the proposed period of renewal, as well as any additional bond the cabinet might require pursuant to 405 KAR Chapter 10;

5. Any additional revised or updated information required by the cabinet has not been provided by the applicant; or

6. The applicant has not provided evidence of having liability insurance in accordance with 405 KAR 10:030, Section 4.

(b) In determining whether to approve or deny a renewal, the burden shall be on the opponents

of renewal.

(c) The cabinet shall send copies of its decision to the applicant, any persons who filed objections or comments to the renewal, to any persons who were parties to any informal conference held on the permit renewal and to the field office director of the Office of Surface Mining Reclamation and Enforcement.

(d) Any person having an interest which is or may be adversely affected by the decision of the cabinet shall have the right to administrative and judicial review set forth in Section 24 of this regulation.

Section 22. Transfer, Assignment, or Sale of Permit Rights. (1) General. No transfer, assignment, or sale of the rights granted under any permit issued pursuant to 405 KAR shall be made without the prior written approval of the cabinet, in accordance with this section.

(2) Application requirements. An applicant (successor) for approval of the transfer, assignment, or sale of permit rights shall:

(a) Provide a complete and accurate application, on forms provided by the cabinet, for the approval of the proposed transfer, assignment, or sale. The application shall be signed by both the existing holder of permit rights and the applicant for succession. Additionally, the following information shall be provided:

1. The name and address of the existing permittee and the permit number;

2. A brief description of the proposed action requiring approval;

3. The legal, financial, compliance, and related information required by 405 KAR 8:030, Sections 2 through 10 and 405 KAR 8:040, Sections 2 through 10; and

4. A processing fee of \$375.

(b) Advertise the filing of the application in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county where the operations are located, indicating the name and address of the applicant, the original permittee, the permit number, the geographic location of the permit, and the address to which written comments may be sent under subsection (3) of this section.

(c) Obtain sufficient performance bond coverage which will ensure reclamation of all lands affected by the permit, including areas previously affected by the existing permittee on the permit being transferred.

(3) Public participation. Any person whose interests are or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any federal, state, or local government agency, may submit written comments on the application to the cabinet within fifteen (15) days of the date of publication of the advertisement.

(4) Criteria for approval. The cabinet may allow a permittee to transfer, assign, or sell permit rights to a successor if it finds, in writing, that the successor:

(a) Is eligible to receive a permit in accordance with the criteria specified in Section 14 of this regulation;

(b) Has submitted a performance bond, in accordance with 405 KAR Chapter 10, which will ensure reclamation of all lands affected by the permit, including areas previously disturbed by the existing permittee on the permit being transferred, and which is at least equivalent to

the bond of the existing permittee;

(c) Has submitted proof that liability insurance, as required by 405 KAR 10:030, Section 4, has been obtained; and

(d) Meets any other requirements specified by the cabinet in order to ensure compliance with KRS Chapter 350 or 405 KAR Chapters 7 through 24.

(5) Notice of decision. The cabinet shall notify the original permittee, the successor, any commenters or objectors, and the field office director of the Office of Surface Mining Reclamation and Enforcement of its final decision.

(6) Permit reissuance. After receiving the notice described in subsection (5) of this section, the successor shall immediately provide proof to the cabinet of the consummation of the transfer, assignment, or sale of permit rights. Upon submission of this proof, the cabinet shall reissue the original permit in the name of the successor.

(7) Rights of successor. All rights and liabilities under the original permit shall pass to the successor upon reissuance of the permit, except that the original permittee shall remain liable for any civil penalties resulting from violations occurring prior to the date of reissuance of the permit. The cabinet shall not approve transfer of a surface coal mining permit to any person who would be ineligible to receive a new permit under KRS 350.130(3).

(8) Requirements for new permits for persons succeeding to rights granted under a permit. A successor in interest who is able to obtain appropriate bond coverage may continue surface coal mining and reclamation operations according to the approved mining and reclamation plan and permit of the original permittee. However, any successor in interest seeking to change the conditions of mining or reclamation operations, or any of the terms or conditions of the original permit shall make application for a new permit, revision, or amendment, as appropriate.

(9) Release of bond liability. The cabinet may release the prior permittee from bond liability on the permit area if the successor in interest has filed a performance bond satisfactory to the cabinet, has received written approval of the cabinet for the transfer, sale or assignment of rights, has submitted proof of execution of the agreement, and has assumed all liability under 405 KAR for reclamation of the areas affected by all prior permittees.

Section 23. Amendments. Except for incidental boundary revisions, no extensions to an area covered by a permit shall be approved under Section 20 (permit revisions) or Section 21 (permit renewals) of this regulation. All such extensions shall be made by application for another permit. However, if the permittee desires to add the new area to his existing permit in order to have existing areas and new areas under one (1) permit, the cabinet may so amend the original permit provided that the application for the new area shall be subject to all procedures and requirements applicable to applications for original permits under 405 KAR.

Section 24. Administrative and Judicial Review. (1) Following the final decision of the cabinet concerning the application for a permit, revision or renewal thereof, application for transfer, sale, or assignment of rights or concerning an application for coal exploration,

the applicant, permittee or any person with an interest which is or may be adversely affected may request a hearing on the reasons for the final decision in accordance with 405 KAR 7:090.

(2) Any applicant or any person with an interest which is or may be adversely affected and who has participated in the administrative proceedings as an objector shall:

(a) Have the right to judicial review as provided in KRS 224.085 if the applicant or person is aggrieved by the decision of the cabinet in an administrative hearing requested pursuant to subsection (1) of this section; or

(b) Have the right to an action in mandamus pursuant to KRS 350.250 if the cabinet fails to act within time limits specified in KRS Chapter 350 or 405 KAR Chapters 7 through 24.

Section 25. Improvidently Issued Permits. (1) Permit review. If the cabinet has reason to believe that it improvidently issued a surface coal mining and reclamation permit, the cabinet shall review the circumstances under which the permit was issued, using the criteria in subsection (2) of this section. If the cabinet finds that the permit was improvidently issued, the cabinet shall comply with subsection (3) of this section.

(2) Review criteria. The cabinet shall find that a surface coal mining and reclamation permit was improvidently issued if:

(a) Under the violation review criteria of the cabinet at the time the permit was issued:

1. The cabinet should not have issued the permit because of an unabated violation or a delinquent penalty or fee; or

2. The permit was issued on the presumption that a notice of violation was in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation, but a cessation order subsequently was issued; and

(b) The violation, penalty, or fee:

1. Remains unabated or delinquent; and

2. Is not the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; and

(c) Where the permittee was linked to the violation, penalty, or fee through ownership or control, under the violations review criteria of the regulatory program at the time the permit was issued an ownership or control link between the permittee and the person responsible for the violation, penalty, or fee still exists, or where the link was severed the permittee continues to be responsible for the violation, penalty, or fee.

(3) Remedial measures. If the cabinet, under subsection (2) of this section, finds that because of an unabated violation or a delinquent penalty or fee a permit was improvidently issued, the cabinet shall use one (1) or more of the following remedial measures:

(a) Implement, with the cooperation of the permittee or other person responsible, and of the responsible agency, a plan for abatement of the violation or a schedule for payment of the penalty or fee;

(b) Impose on the permit a condition requiring that in a reasonable period of time the permittee or other person responsible abate the violation or pay the penalty or fee;

(c) Suspend the permit until the violation is abated or the penalty or fee is paid; or

(d) Rescind the permit under subsection (4) of this section.

(4) Rescission procedures. If the cabinet, under subsection (3)(d) of this section, elects to rescind an improvidently issued permit, the cabinet shall serve on the permittee a notice of proposed suspension and rescission which includes the reasons for the finding of the cabinet under subsection (2) of this section and states that:

(a) Automatic suspension and rescission. After a specified period of time not to exceed ninety (90) days the permit automatically will become suspended, and not to exceed ninety (90) days thereafter rescinded, unless within those periods the permittee submits proof, and the cabinet finds, that:

1. The finding of the cabinet under subsection (2) of this section was erroneous;

2. The permittee or other person responsible has abated the violation on which the finding was based, or paid the penalty or fee, to the satisfaction of the responsible agency;

3. The violation, penalty, or fee is the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; or

4. Since the finding was made, the permittee has severed any ownership or control link with the person responsible for, and does not continue to be responsible for, the violation, penalty, or fee;

(b) Cessation of operations. After permit suspension or rescission, the permittee shall cease all surface coal mining and reclamation operations under the permit, except for violation abatement and for reclamation and other environmental protection measures as required by the cabinet; and

(c) Right to appeal. The permittee may file an appeal for administrative review of the notice under 405 KAR 7:090, but the procedures of 405 KAR 7:090, Section 8 shall not apply to suspend the effect of the notice.

CARL H. BRADLEY, Secretary

FRANK DICKERSON, Commissioner

APPROVED BY AGENCY: January 22, 1991

FILED WITH LRC: January 29, 1991 at 2 p.m.

STATEMENT OF EMERGENCY 405 KAR 8:030E

This emergency administrative regulation restructures and broadens current permit application informational requirements regarding identification of the various interests associated with the application. It requires more detailed information regarding the owners and controllers of the applicant and more information regarding other surface coal mining operations of the applicant and its owners and controllers. This emergency regulation is one of five emergency regulations, filed concurrently, that respond to recent federal regulation changes pertaining to the withholding of permits under Section 510(c) of the 1977 federal Surface Mining Act.

It is necessary to promulgate this emergency administrative regulation because of immediately pending events in two major lawsuits affecting the surface mining regulatory program. Since

February 1988 the cabinet has been operating under a settlement agreement in National Wildlife Federation et al. v. Miller et al., Civil Action No. 86-99, (E.D. Ky.). Under the terms of this agreement, and as a consequence of the federal applicant violator system (AVS) nationwide computer network, the cabinet has been implementing some aspects of the federal regulations that are counterpart to the five emergency regulations being filed concurrently. This settlement agreement is scheduled to expire in February 1991. If these regulations are not in place when the agreement expires the cabinet will have questionable authority for continuing certain program requirements. This could result in some permits being issued that should be withheld, and these permits may subsequently be subject to suspension or rescission, which would have significant adverse consequences for the permittees, their owners and employees. Also, a settlement agreement in Save Our Cumberland Mountains, Inc., et al. v. William P. Clark, et al., D.D.C. No. 81-2134 ("Amended Order"), commonly called the "SOCM Settlement Agreement", requires OSM to enter into memorandums of agreement with the states, under which the states will assist OSM in carrying out full implementation of the "permit-blocking" provisions of Section 510(c) of the federal Surface Mining Act. The cabinet expects to enter into a memorandum with OSM in the immediate future. The terms of this memorandum will obligate the cabinet to conduct activities which depend for their legal authority upon the existence of these regulations. Failure to enact these regulations immediately would jeopardize the cabinet's ability to fulfill its program obligations.

This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on January 23, 1991.

WALLACE G. WILKINSON, Governor
CARL H. BRADLEY, Secretary

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

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

RELATES TO: KRS 350.060, 350.465, 30 CFR Parts 730-733, 735, 773.13(a), 778-780, 785.17(b), (d), 917, 30 USC 1253, 1255, 1257, 1258, 1267

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.060, 350.465, 30 CFR Parts 730-733, 735, 773.13(a), 778-780, 785.17(b), (d), 917, 30 USC 1253, 1255, 1257, 1258, 1267

EFFECTIVE: January 29, 1991

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to permits for surface mining activities. This regulation specifies certain information to be shown by the applicant related to legal and compliance status, environmental resources, and his mining and reclamation plan. This regulation further specifies certain showings to be made by the applicant to obtain a permit.

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

to conduct surface mining activities.

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

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

- (a) Legal, financial, compliance, and related information;
- (b) Environmental resources information; and
- (c) Mining and reclamation plan information.

Section 2. Identification of Interests. An application shall contain the following information, except that the submission of a Social Security Number is voluntary:

(1) A statement as to whether the applicant is a corporation, partnership, single proprietorship, association, or other business entity;

(2) The name, address, telephone number and, as applicable, Social Security Number and employer identification number of the:

- (a) Applicant;
- (b) Applicant's resident agent; and
- (c) Person who will pay the abandoned mine land reclamation fee.

(3) For each person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in 405 KAR 7:020, as applicable;

(a) The person's name, address, Social Security Number, and employer identification number;

(b) The person's ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;

(c) The title of the person's position, date position was assumed, and when submitted under 405 KAR 8:010, Section 18(5) date of departure from the position;

(d) Each additional name and identifying number, including employer identification number, federal or state permit number, and MSHA number with date of issuance, under which the person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the United States within the five (5) years preceding the date of the application; and

(e) The application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the person in any state in the United States.

(4) For any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant under the definition of "owned or controlled" and "owns and controls" in 405 KAR 7:020, the operation's:

- (a) Name, address, identifying numbers, including employer identification number, federal or state permit number, and MSHA number, the date of issuance of the MSHA number, and the regulatory authority; and
- (b) Ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure.

(5) [(1) Each application shall contain] The names and addresses of:

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

[(a) [(b)] Every legal or equitable owner of record of the property to be mined (see the definition of "property to be mined" in 405 KAR 7:020);

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

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

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

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

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

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

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

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

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

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

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

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

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

[(8) [(6) Each application shall contain] The name of the proposed mine and all MSHA identification numbers that have been assigned for the mine and all mine associated structures that require MSHA approval [sections].

[(9) [(7) Each application shall contain] Proof, such as a power of attorney or a

resolution of the board of directors, that the individual signing the application has the power to represent the applicant in the permit matter.

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

[(11) After an applicant has been notified that his or her application has been approved, but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subsections (1) through (4) of this section.

[(12) The applicant shall submit the information required by this section and Section 3 of this regulation in any prescribed cabinet format that is issued.

Section 3. Violation [Compliance] Information. Each application shall contain the following information:

[(1) [Each application shall contain] A statement of whether the applicant, any subsidiary, affiliate, or persons controlled by or under common control with the applicant has:

(a) Had a coal mining permit of the United States or any state suspended or revoked in the [last] five (5) years preceding the date of submission of the application; or

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

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

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

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

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

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

(e) The current status of these proceedings.

[(3) For any violation of a provision of SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and regulations adopted pursuant thereto, any other state's laws or regulations under SMCRA, any federal law, rule, or regulation pertaining to air or water environmental protection, or any Kentucky or other state's law, rule, or regulation enacted pursuant to federal law, rule, or regulation pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, a list of all violation notices received by the applicant during the three (3) year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant. For each violation notice or cessation order

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

(a) Any identifying numbers for the operation, including the federal or state permit number and MSHA number, the dates of issuance of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department, or agency; [The date of issuance and identity of the issuing regulatory authority, department, or agency;]

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

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

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

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

2. The current status of the proceedings and of the violation notice; and

3. [2.] The actions, if any, taken or being taken by any person identified in this subsection [the applicant] to abate the violation.

(4) After an applicant has been notified that his or her application has been approved, but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subsections (1) through (3) of this section.

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

Section 4. Right of Entry and Right to Surface Mine. (1) Each application shall contain a description of the documents upon which the applicant bases his or her legal right to enter and begin surface mining activities in the permit area and whether that right is the

subject of pending litigation. The description shall identify those documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

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

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

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

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

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

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

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

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

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

(1) Type of permit or license;

(2) Name and address of issuing authority;

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

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

Section 9. Identification of Location of Public Office for Filing of Application. Each application shall identify, by name and address, the appropriate regional office of the cabinet

where the applicant will file a copy of the entire application for public inspection under 405 KAR 8:010, Section 8(8).

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

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

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

(b) The cabinet may require the applicant to identify and evaluate important historic and archaeological resources that may be eligible for listing on the National Register of Historic Places, through collection of additional information, field investigations, or other appropriate analyses.

Section 12. General Requirements for Baseline Geologic and Hydrologic Information. (1) The application shall contain baseline geologic and hydrologic information which has been collected, analyzed, and submitted in the detail and manner acceptable to the cabinet, and which shall be sufficient to:

(a) Identify and describe protective measures pursuant to Section 32(1) of this regulation which will be implemented during the mining and reclamation process to assure protection of the hydrologic balance, or to demonstrate that protection of the hydrologic balance can be assured without the design and installation of protective measures; and to design necessary protective measures pursuant to Section 32(2) of this regulation;

(b) Determine the probable hydrologic consequences of the mining and reclamation operations upon the hydrologic balance in the permit area and adjacent area pursuant to Section 32(3) of this regulation so that an assessment can be made by the cabinet pursuant to 405 KAR 8:010, Section 14(3) of the probable cumulative impacts of all anticipated mining on the hydrologic balance in the cumulative impact area;

(c) Determine pursuant to 405 KAR 8:010, Section 14(2) and (3) whether reclamation as required by 405 KAR can be accomplished and whether the proposed operation has been designed

to prevent material damage to the hydrologic balance; and

(d) Design surface and groundwater monitoring systems pursuant to Section 32(4) of this regulation for the during-mining and postmining time period which, together with the baseline data collected under Sections 14(1) and 15(1) of this regulation, will demonstrate whether the mining operation is meeting applicable effluent limitations and stream standards and protecting the hydrologic balance.

(2)(a) Geologic and hydrologic information pertaining to the area outside the permit and adjacent area but within the cumulative impact assessment area shall be provided to the applicant by the cabinet:

1. If this information is needed in preparing the cumulative impact assessment; and

2. If this information is available from an appropriate federal or state agency.

(b) If this information is needed by the cabinet for conducting the cumulative impact assessment and is not available from a federal or state agency, the applicant may gather and submit this information to the cabinet as part of the permit application.

(3) Interpolation, modeling, correlation or other statistical methods, and other data extrapolation techniques may be used if the applicant can demonstrate to the satisfaction of the cabinet that the data extrapolation techniques are valid and that information obtained through the techniques meets the requirements of subsection (1) of this section.

(4) All water quality analyses performed to meet the requirements of this chapter shall be conducted according to the methodology in the fourteenth edition of "Standard Methods for the Examination of Water and Wastewater," or the methodology in 40 CFR Parts 136 and 434. All water quality sampling shall be conducted according to either methodology listed above when feasible.

Section 13. Baseline Geologic Information. (1) The application shall contain baseline geologic information collected from the permit area which shall meet the requirements of Section 12(1) of this regulation and shall include at a minimum:

(a) The results of samples obtained from continuous cores; drill cuttings; channel cuttings from fresh, unweathered, rock outcrops; or other rock or soil material which has been collected using acceptable sampling techniques.

1. The vertical extent of sampling shall include those strata from the surface down to and including the stratum immediately below the lowest coal seam to be mined; and

2. Where aquifers which are located within the permit area underlie the lowest coal seam to be mined and these aquifers may be adversely affected by the mining operation, the vertical extent of sampling shall also include those strata from the lowest coal seam to be mined down to and including the aquifers.

3. The area and vertical density of sampling shall, at a minimum, be sufficient to determine the distribution of strata which have a potential to produce acid drainage and to determine the area and vertical extent of aquifers which may be adversely affected.

4. If the vertical extent, and the area and vertical density of sampling specified in subparagraphs 1 through 3 of this paragraph are not sufficient to locate suitable strata for use

as a topsoil substitute, or for other required design or analysis, additional sampling shall be conducted as necessary to furnish adequate geologic information.

(b) Chemical analyses including, but not limited to, maximum potential acidity and neutralization potential of each overburden stratum and the stratum immediately below the lowest coal seam to be mined, to identify those strata which have a potential to produce acid or toxic drainage.

(c) Chemical analyses of the coal seam to be mined to determine the potential to produce acid or toxic drainage, including the parameters of total sulfur and pyritic sulfur; except that the cabinet shall not require an analysis for pyritic sulfur if the applicant can demonstrate to the satisfaction of the cabinet that an analysis for total sulfur provides adequate information to assure protection of the hydrologic balance.

(d) Collection of geologic information from the permit area as required in this subsection may be waived in whole or in part if:

1. The applicant can demonstrate to the satisfaction of the cabinet through geologic correlation or other procedures that information collected from outside the permit area is representative of the permit area and is sufficient to meet the requirements of Section 12(1) of this regulation; or

2. Other information equivalent to that required by this subsection is available to the cabinet in a satisfactory form and is made a part of the permit application; and

3. The cabinet provides a written statement granting a waiver.

(2) The application shall contain a description of the geology of the proposed permit area and adjacent area which shall meet the requirements of Section 12(1) of this regulation and be based on the information required in subsection (1) of this section or other appropriate geologic information. The description shall include, at a minimum, geologic logs, cross-sections, fence diagrams, or other appropriate illustrations and written descriptions depicting:

(a) Within the permit area:

1. The structural geology and lithology of overburden strata and the stratum immediately below the lowest coal seam to be mined;

2. The thickness and chemical characteristics of each overburden stratum and the stratum immediately below the lowest coal seam to be mined; and

3. Where aquifers may be adversely affected by the mining operation, the structural geology, lithology, thickness, and area extent of the aquifers; and structural geology and lithology of strata, and thickness of each stratum, from the surface down to the aquifers.

(b) Within the adjacent area, the approximate area extent and approximate thickness of aquifers which may be adversely affected by the mining operation.

(3) If determined by the cabinet to be necessary to assure adequate reclamation and protection of the hydrologic balance, the cabinet may require geologic information and description in addition to that required by subsections (1) and (2) of this section including, but not limited to, leaching tests of material from strata which may be disturbed by the operation to determine the potential for the

operation to produce drainage with elevated levels of acidity, sulfate, and total dissolved solids, and the collection of information to greater depths within the proposed permit area or the collection of information for areas outside the proposed permit area.

Section 14. Baseline Ground Water Information.

(1) The application shall contain baseline groundwater information for the permit area and adjacent area which shall be collected and submitted in a manner acceptable to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this regulation.

(2) Groundwater information shall include an inventory of wells, springs, underground mines, or other similar groundwater supply facilities which are currently being used, have been used in the past, or have a potential to be used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the location, ownership, type of usage, and where possible, other relevant information such as the depth and diameter of wells and approximate rate of usage, pumpage or discharge from wells, springs, and other groundwater supply facilities.

(3) Groundwater information shall include seasonal groundwater quantity and quality data collected from monitoring wells, springs, underground mines, or other appropriate groundwater monitoring facilities, at a sufficient number of monitoring locations with adequate area distribution to meet the requirements of Section 12(1) of this regulation. Seasonal groundwater quantity and quality data shall be provided for each water transmitting zone above, and potentially impacted water transmitting zone below, the lowest coal seam to be mined including at a minimum:

(a) Groundwater levels; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; pH; dissolved iron; dissolved manganese; acidity; alkalinity; and sulfate. For data collected prior to August 13, 1985, total iron and total manganese may be substituted for dissolved iron and dissolved manganese.

(4) The groundwater information described in subsection (3) of this section shall be required in whole or in part for coal seams if the coal seams to be mined are serving as water supply sources or are otherwise significant in protecting the hydrologic balance.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet may require groundwater information in addition to that described in subsections (2), (3), and (4) of this section including, but not limited to, information pertaining to aquifer storage, yield, discharge, recharge capacity, and additional water quality parameters.

Section 15. Baseline Surface Water Information.

(1) The application shall contain baseline surface water information for the permit area and adjacent area which shall be collected and submitted in a manner acceptable to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this regulation.

(2) Surface water information shall include an

inventory of all streams, lakes, impoundments or other surface water bodies in the permit and adjacent area which are currently being used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the name of the surface water body which is being used as a water supply source; the location, drainage area, ownership, and type of usage for the withdrawal; and where possible other relevant information such as the rate of withdrawal and seasonal variation.

(3) Surface water information shall include:

(a) The name, location, and ownership where appropriate, of all streams, lakes, impoundments, and other surface water bodies which receive run-off from watersheds which will be disturbed by the operation; and

(b) The location and description of any existing facilities located in watersheds which will be disturbed by the mining operation which may contribute to surface water pollution, such as existing or abandoned mining operations, oil wells, logging operations, or other similar facilities, including the location of any discharges which may be flowing from the facilities.

(4) Surface water information shall include seasonal quantity and quality data collected from a sufficient number of watersheds which will be disturbed by the operation with adequate area distribution to meet the requirements of Section 12(1) of this regulation and include at a minimum:

(a) Flow rates; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; total suspended solids; pH; total iron; total manganese; acidity; alkalinity; and sulfate.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet may require surface water information in addition to that described in subsections (2), (3), and (4) of this section including, but not limited to, information pertaining to flood flows and additional water quality parameters.

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

(2) If contamination, diminution, or interruption of a surface or groundwater source may result, then the application shall identify and describe the adequacy and suitability of the alternative sources of water supply that could be developed for existing premining uses and approved postmining land uses.

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

(a) The average seasonal precipitation;

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

(c) Seasonal temperature ranges.

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

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

(2) Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of analyses, trials, and tests as required under 405 KAR 16:050, Section 2(5).

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

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

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

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

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

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

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

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

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

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

(4) If the investigation indicates that lands within the proposed permit area may be prime

farmlands, the applicant shall contact the U.S. SCS to determine if a soil survey exists for those lands and whether the applicable soil map units have been designated as prime farmlands. If no soil survey has been made for the lands within the proposed permit area, the applicant shall request the SCS to conduct a soil survey.

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

(b) When a soil survey for lands within the proposed permit area contains no soil map units which have been designated as prime farmland after review by the U.S. SCS, the applicant shall submit with the permit application a request for negative determination under subsection (2)(d) of this section for the nondesignated land.

(5) The cabinet shall decide to grant or deny a negative determination based upon documentation provided by the applicant and any other pertinent information, such as cropping history, available to the cabinet from other sources.

(6) The cabinet shall consult with the SCS in deciding on a request for negative determination under subsection (2)(c) of this section.

(7) The cabinet shall examine any records on crop history available from the Agriculture Stabilization and Conservation Service when deciding on a request for negative determination under subsection (2)(a) of this section.

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

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

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

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

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

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

(a) The type of mining method used;

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

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

(d) The approximate dates of past mining; and

(e) The uses of the land preceding mining.

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

(4) The application shall contain a description identifying the extent to which cities, towns, and municipalities, or parts thereof, are located within the proposed permit area.

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

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

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

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

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

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

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

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

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

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

(j) Each public road located in or within 100 feet of the proposed permit area;

(k) Each cemetery that is located in or within 100 feet of the proposed permit area;

(l) Other relevant information required by the cabinet.

(2) The application shall include drawings, cross sections, and maps showing:

(a) Elevations and locations of test borings and core samplings;

(b) Elevations and locations of monitoring

stations or other sampling points in the permit area and adjacent areas used to gather data on water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the application, or which will be used for such data gathering during the term of the permit;

(c) Nature, depth, and thickness of the coal seams to be mined, any coal or rider seams above the seam to be mined, each stratum of the overburden, and the stratum immediately below the lowest coal seam to be mined, for the permit area;

(d) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;

(e) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit area and adjacent areas;

(f) Location and extent of subsurface water, if encountered, within the proposed permit area or adjacent areas;

(g) Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drainage patterns, and irrigation ditches within the proposed permit area and adjacent areas;

(h) Location and extent of existing or previously surface-mined areas within the proposed permit area;

(i) Location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent areas;

(j) Location and dimensions of existing areas of spoil, waste, and noncoal waste disposal, dams, embankments, other impoundments, and water treatment and air pollution control facilities within the proposed permit area;

(k) Sufficient slope measurements to adequately represent the existing land surface configuration of the proposed permit area, measured and recorded according to the following:

1. Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed or, where this is impractical, at locations and in a manner as specified by the cabinet.

2. Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances, or any other distance determined by the cabinet to be representative of the premining configuration of the land.

3. Slope measurements shall take in account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.

(3) The permit application shall include the map information specified in Sections 22(1)(a), 24(3), 24(4)(c), 24(4)(h), 27(1), 28(1), 31, 32, 33, 34, and 38 of this regulation, and 405 KAR 8:010, Section 5(6).

(4) Maps, drawings, and cross-sections included in a permit application which are required by this section shall be prepared by or under the direction of and certified by a qualified registered professional engineer, and shall be updated as required by the cabinet. The qualified registered professional engineer shall

not be required to certify true ownership of property.

Section 24. Mining and Reclamation Plan; General Requirements. (1) Each application shall contain a detailed mining and reclamation plan (MRP) for the proposed permit area as set forth in this section through Section 38 of this regulation, showing how the applicant will comply with KRS Chapter 350 and 405 KAR Chapters 16 through 20.

(2) Each application shall contain a description of the mining operations proposed to be conducted within the proposed permit area, including, at a minimum, the following:

(a) A narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations; and

(b) A narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of the facilities is to be approved as necessary for postmining land use as specified in 405 KAR 16:210):

1. Dams, embankments, and other impoundments;
2. Overburden and topsoil handling and storage areas and structures;
3. Coal removal, handling, storage, cleaning, and transportation areas and structures;
4. Spoil, coal processing waste, and noncoal waste removal, handling, storage, transportation, and disposal areas and structures;
5. Mine facilities; and
6. Water and air pollution control facilities.

(3) Each application shall contain plans and maps of the proposed permit area and adjacent areas as follows:

(a) The plans and maps shall show the lands proposed to be affected throughout the operation and any change in a facility or feature to be caused by the proposed operations, if the facility or feature was shown under Section 23 of this regulation.

(b) The following shall be shown for the proposed permit area:

1. Buildings, utility corridors and facilities to be used;
2. The area of land to be affected within the proposed permit area, according to the sequence of mining and reclamation;
3. Each area of land for which a performance bond or other equivalent guarantee will be posted under 405 KAR Chapter 10;
4. Each coal storage, cleaning and loading area;
5. Each topsoil, spoil, coal waste, and noncoal waste storage area;
6. Each water diversion, collection, conveyance, treatment, storage, and discharge facility to be used;
7. Each air pollution collection and control facility;
8. Each source of waste and each waste disposal facility relating to coal processing or pollution control;
9. Each facility to be used to protect and enhance fish and wildlife and related environmental values;
10. Each explosive storage and handling facility; and
11. Location of each sedimentation pond,

permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, in accordance with Section 34 of this regulation, and fill area for the disposal of excess spoil in accordance with Section 27 of this regulation.

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

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

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

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

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

(d) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of 405 KAR 16:050 including a demonstration of suitability of any proposed topsoil substitutes or supplements;

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

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

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

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

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

obtained, has applied for, or intends to apply for.

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

(a) Location;

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

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

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

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

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

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

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

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

Section 26. MRP; Blasting. (1) Each application shall contain a blasting plan for the proposed permit area explaining how the applicant intends to comply with the requirements of 405 KAR 16:120. This plan shall include, at a minimum, information setting forth the limitations the permittee will meet with regard to ground vibration and airblast, the bases for the ground vibration and airblast limitations, and the methods to be applied in controlling the adverse effects of blasting operations.

(2) Each application shall contain a description of the systems to be used to monitor compliance with the standards for ground vibration and airblast including identification of the types, capabilities, and sensitivities of blast monitoring equipment and identification of the monitoring procedures and locations.

(3) Blasting operations within 500 feet of active underground mines require approval of the cabinet, MSHA, and the Kentucky Department of Mines and Minerals.

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

describe the geotechnical investigation, design, construction, operation, maintenance, and removal if appropriate, of the site and structures.

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

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

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

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

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

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

(3) If, under 405 KAR 16:130, Section 1(4), rock toe buttresses or key way cuts are required, the application shall include the following:

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

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

Section 28. MRP; Transportation Facilities.

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

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

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

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

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

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

Section 29. MRP; Surface Mining Near Underground Mining. For surface mining activities within the proposed permit area to be conducted within 500 feet of an underground mine, the application shall describe the

measures to be used to comply with 405 KAR 16:010, Section 3.

Section 30. MRP; Protection of Public Parks and Historic Places. (1) For any publicly-owned parks or any places listed on the National Register of Historic Places that may be adversely affected by the proposed operations, each plan shall describe the measures to be used to prevent adverse impact; or, if valid existing rights exist or joint agency approval is to be obtained under 405 KAR 24:040, Section 2(4), to minimize adverse impacts.

(2) The cabinet may require the applicant to protect historic or archaeological properties listed or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures. These measures need not be completed prior to permit issuance, but shall be completed before the properties are affected by surface mining activities.

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

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

(2) Relocating a public road.

Section 32. MRP; Protection of the Hydrologic Balance. (1) Each application shall contain a description, as set forth in this subsection, of the measures to be taken to minimize disturbances to the hydrologic balance within the permit area and adjacent area and to prevent material damage to the hydrologic balance outside the permit area.

(a) The description shall be based upon the baseline geologic, hydrologic, and other information required by Sections 12 through 16 of this regulation and other appropriate information, shall be specific to local hydrologic conditions, and shall be prepared in a manner and detail acceptable to the cabinet.

(b) The description shall identify the protective measures to be taken to enable the operation to meet, at a minimum, each of the hydrologic requirements referenced in this paragraph, or shall demonstrate to the satisfaction of the cabinet that protective measures are not necessary for the operation to meet the requirements:

1. Meet applicable water quality statutes, regulations, standards, and effluent limitations as required by 405 KAR 16:060, Section 1(3);

2. Avoid acid or toxic drainage as required by 405 KAR 16:060, Sections 4, 5, and 6;

3. Control the discharge of sediment to streams located outside the permit area as required by 405 KAR 16:060, Section 2;

4. Control the drainage and discharge of water within the permit area as required by 405 KAR 16:060, Sections 1(4), 3, 9, and 12, and 405 KAR 16:080;

5. Restore the approximate premining recharge capacity of the permit area as required by 405 KAR 16:060, Section 5; and

6. Protect or replace the water supply of

present users as required by 405 KAR 16:060, Section 8.

(c) The cabinet may require that the description include protective measures in addition to those identified under paragraph (b) of this subsection, if the cabinet determines that additional measures are needed to protect the hydrologic balance in accordance with 405 KAR 16:060.

(2) Each application shall include the design of any necessary protective measures identified under subsection (1) of this section. The design shall be prepared in a manner and detail acceptable to the cabinet including, as appropriate, calculations, maps, drawings, and written explanations as necessary to document the design.

(3) Each application shall include a determination of the probable hydrologic consequences of the mining and reclamation operations for the permit area and adjacent area.

(a) The determination shall be based upon the baseline geologic, hydrologic, and other information required by Sections 12 through 16 of this regulation and other appropriate information, and may include information statistically representative of the site.

(b) The determination shall be completed according to the parameters and in the detail required by the cabinet to enable the cabinet to prepare a cumulative impact assessment, and shall take into account the anticipated effects of protective measures required by this chapter.

(c) For surface water systems, the determination shall, at a minimum, include probable impacts on:

1. Peak discharge rates, emphasizing the potential for flooding;
2. Settleable solids at peak discharge;
3. Low-flow discharge rates, emphasizing the potential for water supply diminution;
4. Suspended solids at low flow;
5. pH, at low flow, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(d) For groundwater systems, the determination shall, at a minimum, include probable impacts on:

1. Water quantity, emphasizing water levels and the potential for water supply diminution for existing users, and dewatering of aquifers which are not currently being used for water supply but have the potential to be developed as a water supply source.
2. pH, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(e) An application for a major revision to a permit shall be reviewed by the cabinet to determine whether a new or updated determination of the probable hydrologic consequences shall be required.

(4)(a) The application shall include a plan for the collection, recording, and reporting of groundwater and surface water quantity and quality data to monitor the effects of the mining and reclamation operations on the hydrologic balance, according to 405 KAR 16:110.

(b) The monitoring plan shall be based on the geologic and hydrologic baseline information, the mining and reclamation plan, and the determination of probable hydrologic consequences; and shall:

1. Identify the quantity and quality parameters to be monitored, sampling frequency, and monitoring site locations; and

2. Describe how the data may be used to determine the impacts of the operation on the hydrologic balance.

(5) An application for a major revision to a permit shall be reviewed by the cabinet to determine whether a new or updated cumulative hydrologic impact assessment shall be made.

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

Section 34. MRP; Impoundments and Embankments.

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

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

(b) Contain a description, map, and appropriate cross-sections and drawings of the structure and its location;

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

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

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

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

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

(2) Sedimentation ponds.

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

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

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

(4) Coal processing waste banks. Coal processing waste banks shall be designed to

comply with the requirements of 405 KAR 16:140.

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

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

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

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

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

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

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

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

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

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

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

and the relationship of the proposed use to existing land use policies and plans. This description shall explain:

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

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

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

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

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

(3) Approval of the initial postmining land use plan pursuant to this section, shall not preclude subsequent consideration and approval of a revised postmining land use plan in accordance with the applicable requirements of 405 KAR.

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

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

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

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

CARL H. BRADLEY, Secretary
FRANK DICKERSON, Commissioner

APPROVED BY AGENCY: January 22, 1991

FILED WITH LRC: January 29, 1991 at 2 p.m.

STATEMENT OF EMERGENCY
405 KAR 8:040E

This emergency administrative regulation restructures and broadens current permit application informational requirements regarding identification of the various interests associated with the application. It requires more detailed information regarding the owners and controllers of the applicant and more information regarding other surface coal mining operations of the applicant and its owners and controllers. This emergency regulation is one of five emergency regulations, filed concurrently, that respond to recent federal regulation changes pertaining to the withholding of permits under Section 510(c) of the 1977 federal Surface Mining Act.

It is necessary to promulgate this emergency administrative regulation because of immediately pending events in two major lawsuits affecting the surface mining regulatory program. Since February 1988 the cabinet has been operating under a settlement agreement in National Wildlife Federation et al. v. Miller et al., Civil Action No. 86-99, (E.D. Ky.). Under the terms of this agreement, and as a consequence of the federal applicant violator system (AVS) nationwide computer network, the cabinet has been implementing some aspects of the federal regulations that are counterpart to the five emergency regulations being filed concurrently. This settlement agreement is scheduled to expire in February 1991. If these regulations are not in place when the agreement expires the cabinet will have questionable authority for continuing certain program requirements. This could result in some permits being issued that should be withheld, and these permits may subsequently be subject to suspension or rescission, which would have significant adverse consequences for the permittees, their owners and employees. Also, a settlement agreement in Save Our Cumberland Mountains, Inc., et al. v. William P. Clark, et al., D.D.C. No. 81-2134 ("Amended Order"), commonly called the "SOCM Settlement Agreement", requires OSM to enter into memorandums of agreement with the states, under which the states will assist OSM in carrying out full implementation of the "permit-blocking" provisions of Section 510(c) of the federal Surface Mining Act. The cabinet expects to enter into a memorandum with OSM in the immediate future. The terms of this memorandum will obligate the cabinet to conduct activities which depend for their legal authority upon the existence of these regulations. Failure to enact these regulations immediately would jeopardize the cabinet's ability to fulfill its program obligations.

This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on January 23, 1991.

WALLACE G. WILKINSON, Governor
CARL H. BRADLEY, Secretary

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

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

RELATES TO: KRS 350.060, 350.151, 30 CFR Parts 730-733, 735, 773.13(a), 778, 783, 784, 785.17(b), (d), 917, 30 USC 1253, 1255, 1257, 1258, 1266, 1267

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.060, 350.151, 350.465, 30 CFR Parts 730-733, 735, 773.13(a), 778, 783, 784, 785.17(b), (d), 917, 30 USC 1253, 1255, 1257, 1258, 1266, 1267

EFFECTIVE: January 29, 1991

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

Section 1. General. (1) Applicability.

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

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

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

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

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

Section 2. Identification of Interests. An application shall contain the following information, except that the submission of a Social Security Number is voluntary:

(1) A statement as to whether the applicant is a corporation, partnership, single proprietorship, association, or other business entity;

(2) The name, address, telephone number and, as applicable, Social Security Number and employer identification number of the:

(a) Applicant;

(b) Applicant's resident agent; and

(c) Person who will pay the abandoned mine land reclamation fee.

(3) For each person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in 405 KAR 7:020, as applicable:

(a) The person's name, address, Social

Security Number, and employer identification number:

(b) The person's ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;

(c) The title of the person's position, date position was assumed, and when submitted under 405 KAR 8:010, Section 18(5) date of departure from the position;

(d) Each additional name and identifying number, including employer identification number, federal or state permit number, and MSHA number with date of issuance, under which the person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the United States within the five (5) years preceding the date of the application; and

(e) The application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the person in any state in the United States.

(4) For any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in 405 KAR 7:020, the operation's:

(a) Name, address, identifying numbers, including employer identification number, federal or state permit number, and MSHA number, the date of issuance of the MSHA number, and the regulatory authority; and

(b) Ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure.

(5) [(1) Each application shall contain] The names and addresses of:

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

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

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

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

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

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

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

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

the application shall contain the following information where applicable:]

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

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

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

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

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

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

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

[(8) [(6) Each application shall contain] The name of the proposed mine and all MSHA identification numbers that have been assigned for the mine and all mine associated structures that require MSHA approval [sections].

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

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

[(11) After an applicant has been notified that his or her application has been approved, but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subsections (1) through (4) of this section.

[(12) The applicant shall submit the information required by this section and Section 3 of this regulation in any prescribed cabinet format that is issued.

Section 3. Violation [Compliance] Information. Each application shall contain the following information:

[(1) [Each application shall contain] A statement of whether the applicant, any subsidiary, affiliate, or persons controlled by or under common control with the applicant has:

(a) Had a coal mining permit of the United States or any state suspended or revoked in the [last] five (5) years preceding the date of submission of the application; or

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

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

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

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

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

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

(e) The current status of these proceedings.

(3) For any violation of a provision of SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and regulations adopted pursuant thereto, any other state's laws or regulations under SMCRA, any federal law, rule, or regulation pertaining to air or water environmental protection, or any Kentucky or other state's law, rule, or regulation enacted pursuant to federal law, rule, or regulation pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, a list of all violation notices received by the applicant during the three (3) year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant. For each violation notice or cessation order reported, the lists shall include the following information, as applicable: [Each application shall contain a list of each violation notice pertaining to SMCRA or KRS Chapter 350 and regulations promulgated pursuant thereto, received by the applicant in connection with any surface coal mining operation during the three (3) year period before the application date. Each application shall also contain a list of each violation notice pertaining to air or water environmental protection received by the applicant in connection with any surface coal mining operation during the three (3) year period before the application date, for violations of any law, rule, or regulation of the United States, or of any state law, rule, or regulation enacted pursuant to federal law, rule or regulation. The application shall also contain a statement regarding each violation notice, including:]

(a) Any identifying numbers for the operation, including the federal or state permit number and MSHA number, the dates of issuance of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department, or agency; [The date of issuance and identity of the issuing regulatory authority, department, or agency;]

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

(c) The final resolution of each violation

notice, if any;

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

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

2. The current status of the proceedings and of the violation notice; and

3. [2.] The actions, if any, taken or being taken by any person identified in this subsection [the applicant] to abate the violation.

(4) After an applicant has been notified that his or her application has been approved, but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subsections (1) through (3) of this section.

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

Section 4. Right of Entry and Right to Mine.

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

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

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

Section 5. Relationship to Areas Designated Unsuitable for Mining.

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

(2) If an applicant claims the exemption in

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

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

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

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

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

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

- (1) Type of permit or license;
- (2) Name and address of issuing authority;
- (3) Identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses; and
- (4) If a decision has been made, the date of approval or disapproval by each issuing authority.

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

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

Section 11. Environmental Resource Information. (1) Each permit application shall include a description of the existing environmental resources either within the areas affected by proposed surface operations and facilities, or within the proposed permit area and adjacent areas, as required by Sections 11 through 23 of this regulation. The descriptions

required by this regulation may, where appropriate, be based upon published texts or other public documents together with reasonable extrapolations from specific data available from existing permit areas or other appropriate areas.

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

(b) The cabinet may require the applicant to identify and evaluate important historic and archaeological resources that may be eligible for listing on the National Register of Historic Places, through collection of additional information, field investigations, or other appropriate analyses.

Section 12. General Requirements for Baseline Geologic and Hydrologic Information. (1) The application shall contain baseline geologic and hydrologic information which has been collected, analyzed, and submitted in the detail and manner acceptable to the cabinet, and which shall be sufficient to:

(a) Identify and describe protective measures pursuant to Section 32(1) of this regulation which will be implemented during the mining and reclamation process to assure protection of the hydrologic balance, or to demonstrate that protection of the hydrologic balance can be assured without the design and installation of protective measures; and to design necessary protective measures pursuant to Section 32(2) of this regulation.

(b) Determine the probable hydrologic consequences of the mining and reclamation operations upon the hydrologic balance in the permit area and adjacent area pursuant to Section 32(3) of this regulation so that an assessment can be made by the cabinet pursuant to 405 KAR 8:010, Section 14(3) of the probable cumulative impacts of all anticipated mining on the hydrologic balance in the cumulative impact area;

(c) Determine pursuant to 405 KAR 8:010, Section 14(2) and (3) whether reclamation as required by 405 KAR can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance; and

(d) Design surface and groundwater monitoring systems pursuant to Section 32(4) of this regulation for the during-mining and postmining time period which, together with the baseline data collected under Sections 14(1) and 15(1) of this regulation, will demonstrate whether the mining operation is meeting applicable effluent limitations and stream standards and protecting the hydrologic balance.

(2)(a) Geologic and hydrologic information pertaining to the area outside the permit and adjacent area but within the cumulative impact assessment area shall be provided to the applicant by the cabinet:

1. If this information is needed in preparing the cumulative impact assessment; and
2. If this information is available from an appropriate federal or state agency.

(b) If this information is needed by the cabinet for conducting the cumulative impact assessment and is not available from a federal or state agency, the applicant may gather and submit this information to the cabinet as part of the permit application.

(3) Interpolation, modeling, correlation or other statistical methods, and other data extrapolation techniques may be used if the applicant can demonstrate to the satisfaction of the cabinet that the data extrapolation techniques are valid and that information obtained through the techniques meets the requirements of subsection (1) of this section.

(4) All water quality analyses performed to meet the requirements of this chapter shall be conducted according to the methodology in the fourteenth edition of "Standard Methods for the Examination of Water and Wastewater," or the methodology in 40 CFR Parts 136 and 434. All water quality sampling shall be conducted according to either methodology listed above when feasible.

Section 13. Baseline Geologic Information. (1) The application shall contain baseline geologic information collected from the permit area which shall meet the requirements of Section 12(1) of this regulation and shall include at a minimum:

(a) The results of samples obtained from continuous cores; drill cuttings; channel cuttings from fresh, unweathered, rock outcrops; or other rock or soil material which has been collected using acceptable sampling techniques.

1. For those areas where overburden will be removed, the vertical extent of sampling shall include those strata from the surface down to and including the stratum immediately below the lowest coal seam to be mined; and

2. For those areas overlying underground workings where overburden will not be removed, the vertical extent of sampling shall include those strata above and below the coal seam to be mined which may be impacted by the mining operation.

3. Where aquifers within the permit area are located above or below the coal seam to be mined and these aquifers may be adversely affected by the mining operation, the vertical extent of sampling shall also include the aquifer and those strata which lie between the coal seam and the aquifer.

4. The areal and vertical density of sampling shall, at a minimum, be sufficient to determine the distribution of strata which have a potential to produce acid drainage and to determine the areal and vertical extent of aquifers which may be adversely affected.

5. If the vertical extent, and the areal and vertical density of sampling specified in subparagraphs 1 through 4 of this paragraph are not sufficient to locate suitable strata for use as a topsoil substitute, to determine the potential for subsidence, or for other required design or analysis, additional sampling shall be conducted as necessary to furnish adequate geologic information.

(b)1. To identify strata which have a potential to produce acid or toxic drainage for areas where overburden will be removed, chemical analyses including, but not limited to, maximum potential acidity and neutralization potential of each overburden stratum and the stratum immediately below the lowest coal seam to be mined; and

2. To identify strata which have a potential to produce acid or toxic drainage for areas overlying underground workings where overburden will not be removed, chemical analyses including, but not limited to, maximum potential acidity and neutralization potential of the strata immediately above and below the coal seam to be mined.

(c) Chemical analyses of the coal seam to be mined to determine the potential to produce acid or toxic drainage, including the parameters of total sulfur and pyritic sulfur; except that the cabinet shall not require an analysis for pyritic sulfur if the applicant can demonstrate to the satisfaction of the cabinet that an analysis for total sulfur provides adequate information to assure protection of the hydrologic balance.

(d) For standard room and pillar mining operations, the engineering properties of clays or soft rock such as clay shale, if any, located immediately above and below each coal seam to be mined.

(e) Collection of geologic information from the permit area as required in this subsection may be waived in whole or in part if:

1. The applicant can demonstrate to the satisfaction of the cabinet through geologic correlation or other procedures that information collected from outside the permit area is representative of the permit area and is sufficient to meet the requirements of Section 12(1) of this regulation; or

2. Other information equivalent to that required by this subsection is available to the cabinet in a satisfactory form and is made a part of the permit application; and

3. The cabinet provides a written statement granting a waiver.

(2) The application shall contain a description of the geology of the proposed permit area and adjacent area which shall meet the requirements of Section 12(1) of this regulation and be based on the information required in subsection (1) of this section or other appropriate geologic information. The description shall include, at a minimum, geologic logs, cross-sections, fence diagrams, or other appropriate illustrations and written descriptions depicting:

(a) Within the permit area:

1. The structural geology and lithology of overburden strata and the stratum immediately below the lowest coal seam to be mined for those areas where overburden will be removed; and the structural geology and lithology of strata which may be impacted by the mining operation for those areas overlying underground workings where overburden will not be removed.

2. The thickness and chemical characteristics of each overburden stratum and the stratum immediately below the lowest coal seam to be mined for those areas where overburden will be removed; or the thickness and chemical characteristics of each stratum which may be impacted by the mining operation for those areas overlying underground workings where overburden will not be removed.

3. Where aquifers may be adversely affected by the mining operation, the structural geology, lithology, thickness, and areal extent of the aquifers; and structural geology and lithology of strata, and thickness of each stratum, whether located above or below the coal seam to be mined, which lie between the coal seam and

the aquifers.

4. For standard room and pillar mining operations, the thickness and engineering properties of clays or soft rock such as clay shale, if any, located immediately above and below each coal seam to be mined.

(b) Within the adjacent area, the approximate areal extent and approximate thickness of aquifers which may be adversely affected by the mining operation.

(3) If determined by the cabinet to be necessary to assure adequate reclamation and protection of the hydrologic balance, the cabinet may require geologic information and description in addition to that required by subsections (1) and (2) of this section including, but not limited to, leaching tests of material from strata which may be disturbed by the operation to determine the potential for the operation to produce drainage with elevated levels of acidity, sulfate, and total dissolved solids, and the collection of information to greater depths within the proposed permit area or the collection of information for areas outside the proposed permit area.

Section 14. Baseline Ground Water Information.

(1) The application shall contain baseline groundwater information for the permit area and adjacent area which shall be collected and submitted in a manner acceptable to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this regulation.

(2) Groundwater information shall include an inventory of wells, springs, underground mines, or other similar groundwater supply facilities which are currently being used, have been used in the past, or have a potential to be used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the location, ownership, type of usage, and where possible, other relevant information such as the depth and diameter of wells and approximate rate of usage, pumpage or discharge from wells, springs, and other groundwater supply facilities.

(3) Groundwater information shall include seasonal groundwater quantity and quality data collected from monitoring wells, springs, underground mines, or other appropriate groundwater monitoring facilities, at a sufficient number of monitoring locations with adequate areal distribution to meet the requirements of Section 12(1) of this regulation. Seasonal groundwater quantity and quality data shall be provided for each water transmitting zone above, and potentially impacted water transmitting zone below, the lowest coal seam to be mined including at a minimum:

(a) Groundwater levels; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; pH; dissolved iron; dissolved manganese; acidity; alkalinity; and sulfate. For data collected prior to August 13, 1985, total iron and total manganese may be substituted for dissolved iron and dissolved manganese.

(4) The groundwater information described in subsection (3) of this section shall be required in whole or in part for coal seams if the coal seams to be mined are serving as water supply sources or are otherwise significant in protecting the hydrologic balance.

(5) If additional information is needed to

assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet may require groundwater information in addition to that described in subsections (2), (3), and (4) of this section including, but not limited to, information pertaining to aquifer storage, yield, discharge, recharge capacity, and additional water quality parameters.

Section 15. Baseline Surface Water Information. (1) The application shall contain baseline surface water information for the permit area and adjacent area which shall be collected and submitted in a manner acceptable to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this regulation.

(2) Surface water information shall include an inventory of all streams, lakes, impoundments or other surface water bodies in the permit and adjacent area which are currently being used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the name of the surface water body which is being used as a water supply source; the location, drainage area, ownership, and type of usage for the withdrawal; and where possible other relevant information such as the rate of withdrawal and seasonal variation.

(3) Surface water information shall include:

(a) The name, location, and ownership where appropriate, of all streams, lakes, impoundments, and other surface water bodies which receive run-off from watersheds which will be disturbed by the operation; and

(b) The location and description of any existing facilities located in watersheds which will be disturbed by the mining operation which may contribute to surface water pollution, such as existing or abandoned mining operations, oil wells, logging operations, or other similar facilities, including the location of any discharges which may be flowing from the facilities.

(4) Surface water information shall include seasonal quantity and quality data collected from a sufficient number of watersheds which will be disturbed by the operation with adequate areal distribution to meet the requirements of Section 12(1) of this regulation and include at a minimum:

(a) Flow rates; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; total suspended solids; pH; total iron; total manganese; acidity; alkalinity; and sulfate.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet may require surface water information in addition to that described in subsections (2), (3), and (4) of this section including, but not limited to, information pertaining to flood flows and additional water quality parameters.

Section 16. Alternative Water Supply Information. If contamination, diminution, or interruption of an underground or surface source of water (for domestic, agricultural, industrial, or other legitimate use) within the proposed permit area or adjacent area may result

from underground mining activities, then the applicant may identify, in the permit application, the alternative sources of water supply that could be developed to replace the existing sources.

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

- (a) The average seasonal precipitation;
 - (b) The average direction and velocity of prevailing winds; and
 - (c) Seasonal temperature ranges.
- (2) The cabinet may request additional data as deemed necessary to ensure compliance with the requirements of this chapter.

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

(2) Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of the analyses, trials and tests required under 405 KAR 18:050, Section 2(5).

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

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

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

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

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

- (a) The land has not been historically used as cropland;
- (b) The slope of the land is ten (10) percent or greater;
- (c) Other relevant factors exist which would preclude the soils from being defined as prime farmland according to 7 CFR 657, such as a very rocky surface, or the land is frequently flooded during the growing season more often than once

in two (2) years and the flooding has reduced crop yields; or

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

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

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

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

(b) When a soil survey as required by this section contains no soil map units which have been designated as prime farmland, after review by the U.S. SCS, the applicant shall submit with the permit application a request for negative determination under subsection (2)(d) of this section for the nondesignated land.

(5) The cabinet shall decide to grant or deny a negative determination based upon documentation provided by the applicant and any other pertinent information, such as cropping history, available to the cabinet from other sources.

(6) The cabinet shall consult with the SCS in deciding on a request for negative determination under subsection (2)(c) of this section.

(7) The cabinet shall examine any records on crop history available from the Agriculture Stabilization and Conservation Service when deciding on a request for negative determination under subsection (2)(a) of this section.

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

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

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

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

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

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

- (a) The type of mining method used;
- (b) The coal seams or other mineral strata mined;
- (c) The extent of coal or other minerals removed;
- (d) The approximate dates of past mining; and
- (e) The uses of the land preceding mining.

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

(4) The application shall contain a description identifying the extent to which cities, towns, and municipalities, or parts thereof, are located within the proposed permit area.

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

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

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

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

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

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

(f) The boundaries of land within the proposed permit area upon which, or under which, the applicant has the legal right to conduct underground mining activities. In addition, the map shall indicate the boundaries of that portion of the permit area which the applicant has the legal right to enter upon the surface to conduct surface operations.

(g) The location of surface and subsurface manmade features within, passing through, or

passing over the proposed permit area, including, but not limited to, major electric transmission lines, pipelines, and agricultural drainage tile fields;

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

(i) The location of all buildings in and within 1000 feet of the proposed permit area, with identification of the current use of the buildings;

(j) Each public road located in or within 100 feet of the proposed permit area;

(k) Each cemetery that is located in or within 100 feet of the proposed permit area;

(l) Other relevant information required by the cabinet.

(2) The application shall include drawings, cross-sections, and maps showing:

(a) Elevations and locations of test borings and core samplings;

(b) Elevations and locations of monitoring stations or other sampling points in the permit area and adjacent areas used to gather data on water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the application or which will be used for such data gathering during the term of the permit;

(c) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;

(d) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit area and adjacent areas;

(e) Location and extent of subsurface water, if encountered, within the proposed permit area or adjacent areas;

(f) Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drainage patterns, and irrigation ditches within the proposed permit area and adjacent areas;

(g) Location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent areas;

(h) Location and dimensions of existing coal refuse disposal areas and dams, or other impoundments within the proposed permit area;

(i) Sufficient slope measurements to adequately represent the existing land surface configuration of the area to be affected by surface operations and facilities, measured and recorded according to the following:

1. Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed or, where this is impractical, at locations and in a manner as specified by the cabinet.

2. Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances, or any other distance determined by the cabinet to be representative of the premining configuration of the land.

3. Slope measurements shall take into account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.

(3) The permit application shall include the

map information specified in Sections 22(1)(a), 24(3), 24(4)(c), 24(4)(h), 26, 27(1), 28, 31, 32, 33, 34, and 38 of this regulation and 405 KAR 8:010, Section 5(6).

(4) Maps, drawings and cross-sections included in a permit application and required by this section shall be prepared by, or under the direction of and certified by a qualified registered professional engineer, and shall be updated as required by the cabinet. The qualified registered professional engineer shall not be required to certify the true ownership of property.

Section 24. Mining and Reclamation Plan; General Requirements. (1) Each application shall contain a detailed mining and reclamation plan (MRP) for the proposed permit area as set forth in this section through Section 39 of this regulation, showing how the applicant will comply with KRS Chapter 350 and 405 KAR Chapters 16 through 20.

(2) Each application shall contain a description of the mining operations proposed to be conducted within the proposed permit area, including, at a minimum, the following:

(a) A narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations; and

(b) A narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of the facility is to be approved as necessary for postmining land use as specified in 405 KAR 18:220):

1. Dams, embankments, and other impoundments;
2. Overburden and topsoil handling and storage areas and structures;
3. Coal removal, handling, storage, cleaning, and transportation areas and structures;
4. Spoil, coal processing waste, mine development waste, and noncoal waste removal, handling, storage, transportation, and disposal areas and structures;
5. Mine facilities; and
6. Water pollution control facilities.

(3) Each application shall contain plans and maps of the proposed permit area and adjacent areas as follows:

(a) The plans, maps and drawings shall show the underground mining activities to be conducted, the lands to be affected throughout the operation, and any change in a facility or feature to be caused by the proposed operations, if the facility or feature was shown under Section 23 of this regulation.

(b) The following shall be shown for the proposed permit area:

1. Buildings, utility corridors, and facilities to be used;
2. The area of land to be affected within the proposed permit area, according to the sequence of mining and reclamation;
3. Each area of land for which a performance bond or other equivalent guarantee will be posted under 405 KAR Chapter 10;
4. Each coal storage, cleaning and loading area;
5. Each topsoil, spoil, coal preparation waste, underground development waste, and noncoal waste storage area;
6. Each water diversion, collection,

conveyance, treatment, storage and discharge facility to be used;

7. Each source of waste and each waste disposal facility relating to coal processing or pollution control;

8. Each facility to be used to protect and enhance fish and wildlife related environmental values;

9. Each explosive storage and handling facility;

10. Location of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, in accordance with Section 34 of this regulation, and each disposal area for underground development waste and excess spoil, in accordance with Section 28 of this regulation;

11. Cross-sections, at locations as required by the cabinet, of the anticipated final surface configuration to be achieved for the affected areas;

12. Location of each water and any subsidence monitoring point;

13. Location of each facility that will remain on the proposed permit area as a permanent feature, after the completion of underground mining activities.

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

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

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

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

(c) A plan for backfilling, soil stabilization, compacting and grading, with contour maps or cross-sections that show the anticipated final surface configuration of the proposed permit area, in accordance with 405 KAR 18:190;

(d) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of 405 KAR 18:050 including a demonstration of suitability of any proposed topsoil substitutes or supplements;

(e) A plan for revegetation as required in 405 KAR 18:200, including, but not limited to, descriptions of the: schedule of revegetation; species and amounts per acre of seeds and seedlings to be used; methods to be used in planting and seeding; mulching techniques; irrigation, if appropriate, and pest and disease control measures, if any; measures proposed to be used to determine the success of revegetation as required in 405 KAR 18:200, Section 6; and a soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation;

(f) A description of the measures to be used to maximize the use and conservation of the coal resource as required in 405 KAR 18:010, Section 2;

(g) A description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with 405 KAR 18:150 and 405 KAR

18:190, Section 3 and a description of the contingency plans which have been developed to preclude sustained combustion of the materials;

(h) A description, including appropriate drawings and maps, of the measures to be used to seal or manage mine openings, and to plug, case or manage exploration holes, other bore holes, wells and other openings within the proposed permit area, in accordance with 405 KAR 18:040; and

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

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

(a) Location;

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

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

(d) A showing, including relevant monitoring data or other evidence, whether the structure meets the performance standards of 405 KAR Chapters 16 through 20, or if the structure does not meet those performance standards, a showing whether the structure meets the interim performance standards of 405 KAR Chapter 3.

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

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

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

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

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

Section 26. MRP; Subsidence Control. (1) The application shall include a survey which shall show whether structures or renewable resource lands exist within the proposed permit area and adjacent areas and whether subsidence, if it occurred could cause material damage or diminution of reasonably foreseeable use of the structures or renewable resource lands.

(2) If the survey shows that no structures or renewable resource lands exist, or no material damage or diminution could be caused in the event of mine subsidence, and if the cabinet

agrees with this conclusion, no further information need be provided in the application under this section.

(3) If the survey shows that structures or renewable resource lands exist, or that subsidence could cause material damage or diminution of value or foreseeable use of the land, or if the cabinet determines that damage or diminution could occur, the application shall include a subsidence control plan which shall contain the following information:

(a) A detailed description of the mining method and other measures to be taken which may affect subsidence, including:

1. The technique of coal removal, such as longwall mining, room and pillar with pillar removal, hydraulic mining or other methods; and

2. The extent, if any, to which planned and controlled subsidence is intended.

(b) A detailed description of the measures to be taken to prevent subsidence from causing material damage or lessening the value of reasonably foreseeable use of the surface, including:

1. The anticipated effects of planned subsidence, if any;

2. Measures, if any, to be taken in the mine to reduce the likelihood of subsidence, including measures such as backstowing or backfilling of voids; leaving support pillars of coal; and areas in which no coal removal is planned, including a description of the overlying area to be protected by leaving coal in place.

3. Measures to be taken on the surface to prevent material damage or lessening of the value or reasonably foreseeable use of the surface, including measures such as reinforcement of sensitive structures or features; installation of footers designed to reduce damage caused by movement; change of location of pipelines, utility lines or other features; relocation of movable improvements to sites outside the angle-of-draw; and monitoring, if any, to determine the commencement and degree of subsidence so that other appropriate measures can be taken to prevent or reduce material damage.

(c) A detailed description of the measures to be taken to mitigate the effects of any material damage or diminution of value or foreseeable use of lands which may occur, including one (1) or more of the following as required by 405 KAR 18:210, Section 3:

1. Restoration or rehabilitation of structures and features, including approximate land-surface contours, to premining condition;

2. Replacement of structures destroyed by subsidence;

3. Purchase of structures prior to mining and restoration of the land after subsidence to condition capable of supporting and suitable for the structures and foreseeable land uses;

4. Purchase of noncancellable insurance policies payable to the surface owner in the full amount of the possible material damage or other comparable measures.

(d) A detailed description of measures to be taken to determine the degree of material damage or diminution of value or foreseeable use of the surface, including measures such as:

1. The results of presubsidence surveys of all structures and surface features which might be materially damaged by subsidence;

2. Monitoring, if any, proposed to measure

deformations near specified structures or features or otherwise as appropriate for the operation.

Section 27. MRP; Return of Coal Processing Waste to Abandoned Underground Workings. (1) Each plan shall describe the design, operation and maintenance of any proposed use of abandoned underground workings for coal processing waste disposal, including flow diagrams and any other necessary drawings and maps, for the approval of the cabinet and MSHA under 405 KAR 18:140, Section 7.

(2) Each plan shall describe the source and quality of waste to be stowed, area to be backfilled, percent of the mine void to be filled, method of constructing underground retaining walls, influence of the backfilling operation on active underground mine operations, surface area to be supported by the backfill, and the anticipated occurrence of surface effects following backfilling.

(3) The applicant shall describe the source of the hydraulic transport mediums, method of dewatering the placed backfill, retainment of water underground, treatment of water if released to surface streams, and the effect on the hydrologic regime.

(4) The plan shall describe each permanent monitoring well to be located in the backfilled area, the stratum underlying the mined coal, and gradient from the backfilled area.

(5) The requirements of this section shall also apply to pneumatic backfilling operations, except where the operations are exempted by the cabinet from requirements specifying hydrologic monitoring.

Section 28. MRP; Underground Development Waste and Excess Spoil. Each plan shall contain descriptions, including appropriate maps and cross-section drawings, of the proposed disposal methods and sites for placing underground development waste and excess spoil according to 405 KAR 18:130, 405 KAR 18:140, and 405 KAR 18:160 as applicable. Each plan shall describe the geotechnical investigation, design, construction, operation, maintenance, and removal, if appropriate, of the structures and be prepared according to 405 KAR 8:030, Section 27 and the applicable requirements of this regulation.

Section 29. MRP; Transportation Facilities.

(1) Each application shall contain a description of each road, conveyor, and rail system to be constructed, used, or maintained within the proposed permit area. The description shall include a map, appropriate cross-sections, and the following:

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

(b) A report of appropriate geotechnical analysis, where approval of the cabinet is required for alternative specifications or for steep cut slopes under 405 KAR 18:230.

(c) A description of each measure to be taken to obtain approval of the cabinet for alteration or relocation of a natural drainageway under 405 KAR 18:230.

(d) A description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for

approval by the cabinet under 405 KAR 18:230.

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

Section 30. MRP; Protection of Public Parks and Historic Places. (1) For any publicly-owned parks or any places listed on the National Register of Historic Places that may be adversely affected by the proposed operations, each plan shall describe the measures to be used to prevent adverse impact; or, if valid existing rights exist or joint agency approval is to be obtained under 405 KAR 24:040, Section 2(4), to minimize adverse impacts.

(2) The cabinet may require the applicant to protect historic or archaeological properties listed or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures. These measures need not be completed prior to permit issuance, but shall be completed before the properties are affected by underground mining activities.

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

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

(2) Relocating a public road.

Section 32. MRP; Protection of Hydrologic Balance. (1) Each application shall contain a description, as set forth in this subsection, of the measures to be taken to minimize disturbances to the hydrologic balance within the permit area and adjacent area and to prevent material damage to the hydrologic balance outside the permit area.

(a) The description shall be based upon the baseline geologic, hydrologic, and other information required by Sections 12 through 16 of this regulation and other appropriate information, shall be specific to local hydrologic conditions, and shall be prepared in a manner and detail acceptable to the cabinet.

(b) The description shall identify the protective measures to be taken to enable the operation to meet, at a minimum, each of the hydrologic requirements referenced in this paragraph, or shall demonstrate to the satisfaction of the cabinet that protective measures are not necessary for the operation to meet the requirements:

1. Meet applicable water quality statutes, regulations, standards, and effluent limitations as required by 405 KAR 18:060, Section 1(3);

2. Avoid acid or toxic drainage as required by 405 KAR 18:060, Sections 4, 5, and 6;

3. Control the discharge of sediment to streams located outside the permit area as required by 405 KAR 18:060, Section 2; and

4. Control the drainage and discharge of water within the permit area as required by 405 KAR 18:060, Sections 1(4), 3, 8 and 9, and 405 KAR 18:080.

(c) The cabinet may require that the

description include protective measures in addition to those identified under paragraph (b) of this subsection, if the cabinet determines that additional measures are needed to protect the hydrologic balance in accordance with 405 KAR 18:060.

(2) Each application shall include the design of any necessary protective measures identified under subsection (1) of this section. The design shall be prepared in a manner and detail acceptable to the cabinet including, as appropriate, calculations, maps, drawings, and written explanations as necessary to document the design.

(3) Each application shall include a determination of the probable hydrologic consequences of the mining and reclamation operations for the permit area and adjacent area.

(a) The determination shall be based upon the baseline geologic, hydrologic, and other information required by Sections 12 through 16 of this regulation and other appropriate information, and may include information statistically representative of the site.

(b) The determination shall be completed according to the parameters and in the detail required by the cabinet to enable the cabinet to prepare a cumulative impact assessment, and shall take into account the anticipated effects of protective measures required by this chapter.

(c) For surface water systems, the determination shall, at a minimum, include probable impacts on:

1. Peak discharge rates, emphasizing the potential for flooding;
2. Settleable solids at peak discharge;
3. Low-flow discharge rates, emphasizing the potential for water supply diminution;
4. Suspended solids at low flow;
5. pH, at low flow, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(d) For groundwater systems, the determination shall, at a minimum, include probable impacts on:

1. Water quantity, emphasizing water levels and the potential for water supply diminution for existing users, and dewatering of aquifers which are not currently being used for water supply but have the potential to be developed as a water supply source.
2. pH, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(e) An application for a major revision to a permit shall be reviewed by the cabinet to determine whether a new or updated determination of the probable hydrologic consequences shall be required.

(4)(a) The application shall include a plan for the collection, recording, and reporting of groundwater and surface water quantity and quality data to monitor the effects of the mining and reclamation operations on the hydrologic balance, according to 405 KAR 18:110.

(b) The monitoring plan shall be based on the geologic and hydrologic baseline information, the mining and reclamation plan, and the

determination of probable hydrologic consequences; and shall:

1. Identify the quantity and quality parameters to be monitored, sampling frequency, and monitoring site locations; and

2. Describe how the data may be used to determine the impacts of the operation on the hydrologic balance.

(5) An application for a major revision to a permit shall be reviewed by the cabinet to determine whether a new or updated cumulative hydrologic impact assessment shall be made.

Section 33. MRP; Diversions. Each application shall contain descriptions, including maps and cross-sections, of stream channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with 405 KAR 18:080.

Section 34. MRP; Impoundments and Embankments.

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

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

(b) Contain a description, map, and appropriate cross-sections and drawings of the structure and its location;

(c) Contain all hydrologic and geologic information and computations necessary to demonstrate compliance with the design and performance standards of 405 KAR Chapter 18; and all information utilized by the applicant to determine the probable hydrologic consequences of the mining operation under Section 32(3) of this regulation;

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

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

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

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

(2) Sedimentation ponds.

(a) Sedimentation ponds, whether temporary or permanent, shall be designed in compliance with the requirements of 405 KAR 18:090. Any sedimentation pond or earthen structure which will remain on the proposed permit area as a permanent water impoundment shall also be designed to comply with the requirements of 405 KAR 18:100.

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

(3) Permanent and temporary impoundments. Permanent and temporary impoundments shall be designed to comply with the requirements of 405 KAR 18:100. Each plan shall comply with the requirements of MSHA, 30 CFR 77.216-1 and 77.216-2.

(4) Coal processing waste banks. Coal processing waste banks shall be designed to comply with the requirements of 405 KAR 18:140.

(5) Coal processing waste dams and embankments. Coal processing waste dams and

embankments shall be designed to comply with the requirements of 405 KAR 18:160. Each plan shall comply with the requirements of MSHA, 30 CFR 77.216-1 and 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:

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

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

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

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

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

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

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

(2) A plan for fugitive dust control practices, as required under 405 KAR 18:170.

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

Section 37. MRP; Postmining Land Use. (1) Each plan shall contain a description of the proposed use, following reclamation, of the land to be affected within the proposed permit area by surface operations or facilities, including a discussion of the utility and capacity of the reclaimed land to support a variety of

alternative uses, and the relationship of the proposed use to existing land use policies and plans. This description shall explain:

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

(b) Where a land use different from the premining land use is proposed, all supporting documentation submitted for approval of the proposed use under 405 KAR 18:220;

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

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

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

(3) Approval of the initial postmining land use plan pursuant to this section, shall not preclude subsequent consideration and approval of a revised postmining land use plan in accordance with the applicable requirements of 405 KAR.

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

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

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

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

Section 39. MRP; Blasting. (1) Each application shall contain a blasting plan for the proposed permit area explaining how the applicant intends to comply with the requirements of 405 KAR 18:120. This plan shall include, at a minimum, information setting forth the limitations the permittee will meet with regard to ground vibration and airblast, the bases for the ground vibration and airblast limitations, and the methods to be applied in controlling the adverse effects of blasting operations.

(2) Each application shall contain a description of the systems to be used to monitor compliance with the standards for ground vibration and airblast including the types, capabilities, and sensitivities of blast monitoring equipment and identification of the monitoring procedures and locations.

(3) Blasting operations within 500 feet of active underground mines require approval of the cabinet, MSHA, and the Kentucky Department of Mines and Minerals.

CARL H. BRADLEY, Secretary

FRANK DICKERSON, Commissioner

APPROVED BY AGENCY: January 22, 1991

FILED WITH LRC: January 29, 1991 at 2 p.m.

STATEMENT OF EMERGENCY 405 KAR 10:040E

This emergency administrative regulation provides that revegetation established on mined lands reclaimed to an agricultural postmining land use, other than prime farmlands, need not meet productivity success standards to qualify for Phase II bond release. It is necessary to promulgate that emergency administrative regulation because the current administrative regulation is subject to conflicting interpretations and because numerous applicants are seeking Phase II bond release in the current favorable season who will be adversely affected if their Phase II bond release is delayed. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on January 8, 1991.

WALLACE G. WILKINSON, Governor
CARL H. BRADLEY, Secretary

NATURAL RESOURCES & ENVIRONMENTAL PROTECTION CABINET Department for Surface Mining Reclamation & Enforcement

405 KAR 10:040E. Procedures, criteria and schedule for release or credit of performance bond.

RELATES TO: KRS 350.060, 350.064, 350.093, [350.110,] 350.113, 350.151, 350.465, 30 CFR Parts 730-733, 735, 800.40, 917, 30 USC 1253, 1255, 1269

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.060, 350.064, 350.093, 350.151, 350.465, 30 CFR Parts 730-733, 735, 800.40, 917, 30 USC 1253, 1255, 1269

EFFECTIVE: January 22, 1991

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to set out by regulation procedures and criteria for the release of performance bond. This regulation specifies the procedures, criteria, and schedule, including reclamation phases, for the release and partial release of liability under performance bonds. This regulation also sets forth certain notice and hearing requirements pertinent to bond release.

Section 1. Procedures for Release of Performance Bond. (1) Application for bond release. The permittee or any person authorized

to act on his or her behalf may or the cabinet shall, initiate an application for release of all or part of the performance bond liability applicable to a particular permit or increment after all reclamation, restoration and abatement work in a reclamation phase as defined in Section 2(4) of this regulation has been completed on the entire permit area or increment.

(a) Bond release applications may only be filed at times or seasons that allow the cabinet to evaluate properly the reclamation operations alleged to have been completed.

(b) Within thirty (30) days of the initiation of any bond release request, the permittee shall submit copies of letters which it has sent to adjoining property owners, surface owners (their agents and lessees), local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the surface coal mining and reclamation operation took place, notifying them of the intention to seek release from the bond. For bond releases initiated by the cabinet, the cabinet shall undertake the notification requirements set forth in this subsection. The notices shall also state that these individuals and their representatives may participate in a bond release inspection by contacting the cabinet. These notices shall be sent at the time the permittee initiates the application for release.

(c) Upon the filing of an application for bond release by a permittee, or the initiation of such release by the cabinet, the cabinet shall notify, by certified mail, within thirty (30) days of such filing or initiation, the municipality or county judge-executive where the surface coal mining operation is located.

(d) Within thirty (30) days after advertising an application for bond release as per the requirements of subsection (2) of this section, the permittee, or the cabinet if it elected to advertise as per subsection (2) of this section, shall submit proof of said publication. Proof of publication shall be placed, by the cabinet, with the bond release application. Such proof of publication shall be considered part of the bond release application.

(2) Public notice. At the time of initiating an application for bond release under this section, the permittee shall, and the cabinet may at permittee expense, advertise the filing of the application in the newspaper of largest bona fide circulation according to the definition in KRS 424.110 to 424.120 in the county or counties in which the permit area is located. Said advertisement shall begin within sixty (60) days of the initiation of any application for bond release whether said bond release application is initiated by the permittee or the cabinet. Should the cabinet initiate a bond release pursuant to this subsection but choose not to advertise the release pursuant to this section, and the permittee does not advertise the request for the release within the time schedules established by this subsection, the bond release application shall be denied. The advertisement shall be placed in the newspaper at least once a week for four (4) consecutive weeks. The advertisement shall contain:

(a) The name of the permittee, the permit number and the date of issuance or renewal of the permit or increment;

(b) The precise location and the number of

acres of the lands subject to the application;

(c) The type and total amount of bond filed for the permit area or increment and the reclamation phase for which release is sought;

(d) The type and approximate dates of reclamation work performed;

(e) A description of the results achieved as they relate to the permittee's approved reclamation plan;

(f) A statement that written comments, objections, and requests for a public hearing may be submitted to the cabinet, provide the appropriate address of the cabinet, and the closing date by which comments, objections, and requests must be received;

(g) A statement that a public hearing has been scheduled, including the date and location of the hearing; and

(h) A statement that the schedule public hearing shall be cancelled if the cabinet does not receive a request for the public hearing by the closing date for requests for hearing.

(3) Objections, comments or requests for public hearing prior to bond release.

(a) Any person with a valid legal interest which might be adversely affected by release of the bond, or the responsible officer or head of any federal, state, or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation or which is authorized to develop and enforce environmental standards with respect to such operations, shall have the right to file written objections to the proposed release from bond and, if desired, file a request for a public hearing with the cabinet within thirty (30) days after the last publication of the notice required by subsection (2) of this section.

(b) The cabinet shall schedule a public hearing for each request for bond release, such hearing to be scheduled within five (5) working days of the end of the public comment period. If the cabinet does not receive a request for a public hearing by the end of the public comment period, the cabinet shall cancel the public hearing. The public hearing shall be held in the locality of the surface coal mining operation for which bond release is sought. The person requesting the release shall contact the cabinet prior to beginning advertisements under subsection (2) of this section to obtain the date and location of the public hearing in order to include this information in the advertisement.

(c) The hearing under paragraph (b) of this subsection shall be legislative in nature and the provisions of 405 KAR 7:090 shall not apply. The cabinet shall have the authority to administer oaths, subpoena witnesses or written or printed material, compel the attendance of witnesses or the production of materials, and take evidence including, but not limited to, inspection of the land affected and other surface coal mining operations carried on by the applicant in the general vicinity. A verbatim record of each public hearing shall be made, and a transcript shall be made available on the motion of any party or by order of the cabinet.

(d) Without prejudice to the right of an objector or the applicant and upon agreement of all parties, the cabinet may hold an informal conference in accordance with the procedures in 405 KAR 8:010, Section 11 for permit conferences to resolve such written objections in lieu of

the public hearing under paragraph (b) of this subsection. The informal conference shall be held at the same time and location as was scheduled for the public hearing. The cabinet shall make a record of the informal conference unless waived by all parties, which shall be accessible to all parties. The cabinet shall also furnish all parties of the informal conference with a written finding of the cabinet on the informal conference, and the reasons for said finding.

(4) Inspection and evaluation. The cabinet shall inspect and evaluate the reclamation work involved within thirty (30) days after initiation of a bond release request by the permittee, or any person authorized to act on his or her behalf, or as soon thereafter as weather conditions permit. The evaluation shall consider, among other factors, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of future occurrence of such pollution, and the estimated cost of abating such pollution. The surface owner, agent, or lessee known to the cabinet shall be given notice of such inspection and may participate with the cabinet in making the bond release inspection. The cabinet may arrange with the permittee to allow access to the permit area, upon request by any person with an interest in bond release, for the purpose of gathering information relevant to the proceeding.

(5)(a) Notice of decision. The cabinet shall as described in paragraph (b) of this subsection provide notification in writing of its decision to release or not to release all or part of the performance bond within five (5) days following receipt of proof of public advertisement as required in this section, or within five (5) days of the end of the thirty (30) day public comment period provided for in subsection (3) of this section, whichever is later. Provided, however, that if an informal conference or public hearing has been requested pursuant to subsection (3) of this section, the cabinet shall provide its notice of decision within thirty (30) days following said informal conference or public hearing.

(b) The notice of the decision shall state the reasons for the decision, recommend any corrective actions necessary to secure the release, and notify the permittee, the surety, any person with an interest in collateral who has previously requested such notification in writing, persons who filed objections in writing, and objectors who were a party to the informal conference or public hearing of their right to request, within thirty (30) days of notice, a formal hearing as provided for by subsection (6) of this section. Where the decision is to release all or part of the performance bond, the notice shall state that the release shall occur fourteen (14) days after the date of the decision unless temporary relief is granted under 405 KAR 7:090, Section 8.

(c) In no event shall the cabinet disapprove an application for reclamation phase I or II release of a surety bond or a bond secured by a letter of credit solely upon the permittee's failure to pay penalties or fines, if applicable reclamation requirements for the requested release have been fully met.

(6) Requests for formal hearing after bond release or denial. Any person aggrieved by the decision of the cabinet to approve or disapprove

a bond release application, in whole or in part, shall have the right to request a formal hearing pursuant to 405 KAR 7:090. When the cabinet has decided to release all or part of the performance bond, the release shall not occur until fourteen (14) days after the date of the decision. At the end of that fourteen (14) days, the cabinet shall effect the release unless temporary relief is granted under 405 KAR 7:090, Section 8.

Section 2. Criteria and Schedule for Release of Performance Bond. (1) Monies pledged under performance bonds shall not be eligible for release until the permittee has met the requirements of the applicable reclamation phase as defined in subsection (4) of this section. The cabinet may release portions of the monies pledged under performance bonds applicable to a permit or increment following completion of reclamation phases on the entire permit area or entire increment.

(2) The maximum portion of the monies pledged under performance bonds applicable to a permit area which may be released shall be calculated on the following basis:

(a) Release an amount not to exceed sixty (60) percent of the total original bond amount on the permit area, section, or increment upon completion of phase I reclamation.

(b) Release an additional amount not to exceed twenty-five (25) percent of the total original bond amount on the permit area or increment upon completion of phase II reclamation, but in all cases the amount remaining shall be sufficient to reestablish vegetation and reconstruct any drainage structures.

(c) Release the remaining portion of the total performance bond on an entire permit area or increment after standards of phase III reclamation have been attained on the entire permit area or increment and final inspection and procedures of Section 1 of this regulation have been satisfied. After the final bond release for phase III reclamation on an increment, the increment shall be deleted from the permit area.

(3) The cabinet shall not release any monies pledged under performance bonds applicable to a permit if such release would reduce the total remaining monies pledged under performance bonds to an amount less than that necessary for the cabinet to complete the approved reclamation plan, achieve compliance with the requirements of KRS Chapter 350, Title 405, Chapters 7 through 24 or the permit, and abate any significant environmental harm to air, water or land resources or danger to the public health and safety which might occur prior to the release of all performance bond liability for the permit area.

(4) Reclamation phases are defined as follows:

(a) Reclamation phase I shall be deemed to have been completed on the entire permit area or increment when the permittee completes backfilling, regrading, topsoil replacement, and drainage control including soil preparation and initial seeding and mulching in accordance with the approved reclamation plan and a report for the area has been submitted to the cabinet in accordance with 405 KAR 16:200, Section 8 or 405 KAR 18:200, Section 8;

(b) Reclamation phase II shall be deemed to have been completed on the entire permit area or increment when:

1. Revegetation has been established in accordance with the approved reclamation plan and the standards for the success of revegetation, except productivity standards, have been [are] met;

2. The lands are not contributing suspended solids to stream flow or run off outside the permit area or increment in excess of the requirements of KRS 350.420, Title 405, Chapters 16 or 18, or the permit;

3. With respect to prime farmlands, soil productivity has been restored as required by 405 KAR 20:040, Section 6 and the plan approved under 405 KAR 8:050, Section 3; and

4. The provisions of a plan approved by the cabinet for the sound future management of any permanent impoundment by the permittee or landowner have been implemented to the satisfaction of the cabinet.

(c) Reclamation phase III will be deemed to have been completed on the entire permit area or increment when the permittee has successfully completed all surface coal mining and reclamation operations in accordance with the approved reclamation plan, such that the land is capable of supporting the postmining land use approved pursuant to 405 KAR 16:210 or 405 KAR 18:220; and has achieved compliance with the requirements of KRS Chapter 350, Title 405, Chapters 7 through 24, and the permit; and the applicable liability period under 405 KAR 10:020, Section 3(2) has expired.

CARL H. BRADLEY, Secretary

FRANK DICKERSON, Commissioner

APPROVED BY AGENCY: January 3, 1991

FILED WITH LRC: January 22, 1991 at 9 a.m.

STATEMENT OF EMERGENCY 405 KAR 12:020E

This emergency administrative regulation requires that within 60 days after issuing an order for cessation and immediate compliance the cabinet shall notify in writing any person who has been identified as owning or controlling the permittee, that the cessation order was issued and that the person has been identified as an owner or controller. This emergency regulation is one of five emergency regulations, filed concurrently, that respond to recent federal regulation changes pertaining to the withholding of permits under Section 510(c) of the 1977 federal Surface Mining Act.

It is necessary to promulgate this emergency administrative regulation because of immediately pending events in two major lawsuits affecting the surface mining regulatory program. Since February 1988 the cabinet has been operating under a settlement agreement in National Wildlife Federation et al. v. Miller et al., Civil Action No. 86-99, (E.D. Ky.). Under the terms of this agreement, and as a consequence of the federal applicant violator system (AVS) nationwide computer network, the cabinet has been implementing some aspects of the federal regulations that are counterpart to the five emergency regulations being filed concurrently. This settlement agreement is scheduled to expire in February 1991. If these regulations are not in place when the agreement expires the cabinet will have questionable authority for continuing certain program requirements. This could result in some permits being issued that should be

withheld, and these permits may subsequently be subject to suspension or rescission, which would have significant adverse consequences for the permittees, their owners and employees. Also, a settlement agreement in Save Our Cumberland Mountains, Inc., et al. v. William P. Clark, et al., D.D.C. No. 81-2134 ("Amended Order"), commonly called the "SOCM Settlement Agreement", requires OSM to enter into memorandums of agreement with the states, under which the states will assist OSM in carrying out full implementation of the "permit-blocking" provisions of Section 510(c) of the federal Surface Mining Act. The cabinet expects to enter into a memorandum with OSM in the immediate future. The terms of this memorandum will obligate the cabinet to conduct activities which depend for their legal authority upon the existence of these regulations. Failure to enact these regulations immediately would jeopardize the cabinet's ability to fulfill its program obligations.

This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on January 23, 1991.

WALLACE G. WILKINSON, Governor
CARL H. BRADLEY, Secretary

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

405 KAR 12:020E. Enforcement.

RELATES TO: KRS 350.020, 350.028, 350.050, 350.085, 350.113, 350.130, 350.151, 350.465, 350.990, 30 CFR Parts 730-733, 735, 840.13-.14, 840.16, 843, 30 USC 1253, 1255, 1271

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.050, 350.130, 350.465, 30 CFR Parts 730-733, 735, 840.13-.14, 840.16, 843, 30 USC 1253, 1255, 1271

EFFECTIVE: January 29, 1991

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part directs the cabinet to rigidly enforce regulations promulgated to control the injurious effects of surface coal mining and reclamation operations. This regulation sets forth various kinds of notices and orders to be issued by authorized representatives of the cabinet. The regulation directs that there be issued a notice of noncompliance and order for remedial measures. The regulation requires that an order for cessation and immediate compliance be issued for failure to abate a violation during a specified abatement period or for situations of imminent harm. The regulation sets forth the general form of the notices and orders and authority to vacate, modify, or terminate such orders or notices. The regulation sets forth procedures for suspension or revocation of a permit and for a determination of whether a pattern of violations exists.

Section 1. General. (1) The secretary of the cabinet may from time to time or for a definite period designate, by written order or by other means appropriate under the circumstances, authorized representatives to perform duties pursuant to the regulations contained in Title 405, Chapters 7 through 24.

(2) Unless otherwise provided to the contrary in Title 405, Chapters 7 through 24 or unless the secretary has made a written order contrary to the terms of this subsection, personnel authorized by the Commissioner of the Department of Surface Mining Reclamation and Enforcement are deemed the authorized representatives of the cabinet for the purposes of Sections 2, 3, and 4 of this regulation.

Section 2. Notice of Noncompliance and Order for Remedial Measures. (1) Issuance. An authorized representative of the cabinet shall issue a notice of noncompliance and order for remedial measures if, on the basis of inspection, he or she finds a violation of KRS Chapter 350; Title 405, Chapters 7 through 24; any term or condition of a permit; any term or condition of approval (for coal exploration and reclamation operations requiring cabinet approval); or any other applicable requirement.

(2) Form and content. A notice of noncompliance and order for remedial measures issued pursuant to this section shall be in writing and shall be signed by the authorized representative of the cabinet who issued it. The notice shall set forth with reasonable specificity:

(a) The nature of the violation;

(b) The remedial action required, if any, which may include accomplishment of interim steps if appropriate;

(c) A reasonable time for remedial action, if any, which may include time for accomplishment of interim steps if appropriate; and

(d) A reasonable description of the portions of the surface coal mining and reclamation operations or coal exploration and reclamation operations to which the notice applies.

(3) Service. Service of a notice of noncompliance and order for remedial measures shall be in the manner set forth in Section 5 of this regulation.

(4) Extension. An authorized representative of the cabinet may, by written notice, extend the time set for remedial action or for accomplishment of an interim step, if the failure to meet the time previously set was not caused by lack of diligence on the part of the person to whom the notice of noncompliance and order for remedial measures was issued.

(a) The total time for remedial action under such notice, including all extensions, shall not exceed ninety (90) days from the date of issuance of the notice except upon a showing by the permittee or the person conducting the coal exploration and reclamation operations that it is not feasible to abate the violation within ninety (90) calendar days due to one (1) or more of the circumstances set forth in paragraph (b) of this subsection. An abatement period exceeding ninety (90) days pursuant to this subsection shall not be granted for situations in which the permittee's failure or the failure of the person conducting the coal exploration and reclamation operations to abate within ninety (90) days has been caused by a lack of diligence or intentional delay by the permittee or the person conducting the coal exploration and reclamation operations in completing the remedial action required.

(b) Circumstances which may qualify surface coal mining and reclamation operations or coal exploration and reclamation operations for an abatement period of more than ninety (90) days

are situations in which:

1. The permittee of the ongoing surface coal mining and reclamation operations or the person conducting the coal exploration and reclamation operations has timely applied for and diligently pursued a permit renewal or other necessary approval of designs or plans, but such permit or approval, for reasons not within the control of the permittee or the person conducting the coal exploration and reclamation operations, has not been and will not be issued prior to ninety (90) days after the valid permit or approval expires or is required;

2. There is a valid judicial order precluding abatement within ninety (90) days to which the permittee or the person conducting the coal exploration and reclamation operations has diligently pursued all rights of appeal and to which he or she has no other effective legal remedy;

3. The permittee or the person conducting the coal exploration and reclamation operations cannot abate within ninety (90) days due to a labor strike; or

4. Weather conditions preclude abatement within ninety (90) days; due to weather conditions abatement within ninety (90) days would clearly cause more environmental harm than it would prevent; or abatement within ninety (90) days requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act.

(c) Whenever an abatement period in excess of ninety (90) days is approved by the cabinet, interim abatement measures shall be imposed to the extent necessary to minimize harm to the public and the environment.

(d) If any of the conditions in paragraph (b) of this subsection exist, the permittee or the person conducting the coal exploration and reclamation operations may request the authorized representative of the cabinet to grant an abatement period exceeding ninety (90) days. The authorized representative of the cabinet shall not grant such an abatement period without the approval of the Director of the Division of Field Services or his or her designee, and the abatement period granted shall not exceed the shortest possible time necessary to abate the violation. The permittee or the person conducting the coal exploration and reclamation operations shall have the burden of establishing by clear and convincing proof that he or she is entitled to an extension under the provisions of this subsection. In determining whether or not to grant an abatement period exceeding ninety (90) days, the authorized representative of the cabinet may consider any relevant written or oral information from the permittee, the person conducting the coal exploration and reclamation operations, and any other sources. The authorized representative of the cabinet shall promptly and fully document in the applicable file his or her recommendation for granting or denying the request and the reasons therefor. The authorized representative's immediate supervisor shall review this document before approving or disapproving the extended abatement period and shall promptly and fully document the reasons for his or her approval or disapproval in the applicable file.

(e) Any determination made under paragraph (d) of this subsection shall be in writing and shall be subject to administrative and judicial review

pursuant to 405 KAR 7:090.

(f) No extension granted under this subsection may exceed ninety (90) days in length. In situations in which the condition or circumstance that prevented abatement within ninety (90) days exists at the expiration of the extension, the permittee or the person conducting the coal exploration and reclamation operations may request a further extension in accordance with the procedures of this subsection.

(5) Modification. An authorized representative of the cabinet may, by written notice, modify an order for remedial measures for good cause.

(6) Termination. An authorized representative of the cabinet shall, by issuance of a notice of inspection of noncompliance, provide written notice to the person to whom a notice of noncompliance and order for remedial measures has been issued that such notice is terminated when the authorized representative of the cabinet determines that all violations listed therein have been corrected. Such termination shall not affect the right of the cabinet to assess civil penalties for those violations pursuant to 405 KAR 7:090 or to impose any other applicable sanctions as authorized by law.

(7) Vacation. Based upon the written recommendation of the regional administrator and the authorized representative of the cabinet who issued the notice of noncompliance and order for remedial measures, the Director of the Division of Field Services may vacate a notice of noncompliance and order for remedial measures determined to have been issued in error.

Section 3. Order for Cessation and Immediate Compliance. (1) Issuance.

(a) If the person to whom a notice of noncompliance and order for remedial measures has been issued fails to comply with the terms of such notice within the time for remedial action established therein or as subsequently extended, an authorized representative of the cabinet shall immediately issue to the person an order for cessation and immediate compliance.

(b) An authorized representative of the cabinet shall immediately issue an order for cessation and immediate compliance if he or she finds, on the basis of an inspection, any condition or practice; any violation of KRS Chapter 350; any violation of Title 405, Chapters 7 through 24; or any violation of a term or condition of the applicable permit or exploration approval which:

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

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

(c) An authorized representative of the cabinet shall immediately issue an order for a cessation and immediate compliance if he or she finds, on the basis of an inspection, that surface coal mining and reclamation operations are being conducted by a person without a valid surface coal mining and reclamation operations permit for the activities or that coal exploration and reclamation operations are being conducted without proper notice of intention to explore or approval for such operations, as applicable, in accordance with 405 KAR 8:020.

(2) Form and content.

(a) An order for cessation and immediate compliance shall be in writing and shall be

signed by the authorized representative of the cabinet who issued it. The order shall set forth with reasonable specificity:

1. The nature of the violation;
2. A reasonable description of the portions of the operations in which it applies;
3. The remedial measures, if any, necessary to abate the violation in the most expeditious manner possible; and
4. The time established for abatement, if appropriate, including the time for complying with any interim steps.

(b) At the same time that the authorized representative of the cabinet issues an order for cessation and immediate compliance pursuant to subsection (1)(b) or (c) of this section, he or she shall also issue a notice of noncompliance and order for remedial measures.

(3) Service. Service of an order for cessation and immediate compliance shall be in the manner set forth in Section 5 of this regulation.

(4) Effect.

(a) The order for cessation and immediate compliance shall require the cessation of all surface coal mining and reclamation operations, all coal exploration and reclamation operations, or the portions or operations thereof relevant to the condition, practice, or violation covered by the order. The order shall require the person to whom it is issued to take any affirmative steps which the authorized representative of the cabinet deems necessary to abate the condition, practice, or violation in the most expeditious manner possible. The order may require the use of existing or additional personnel and equipment.

(b) The order shall remain in effect until the condition, practice, or violation has been abated; until the order is vacated, modified, or terminated in writing pursuant to subsection (5) of this section; until it is vacated, modified, or terminated by a hearing officer pursuant to 405 KAR 7:090; or until the order expires pursuant to Section 6 of this regulation.

(c) Reclamation operations and other activities intended to protect public health and safety and the environment shall continue during the period of any order unless otherwise provided in the order.

(5) Modification, extension, vacation, and termination.

(a) An authorized representative of the cabinet may, by written notice, modify or terminate an order for cessation and immediate compliance issued pursuant to this section for good cause and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the person to whom it was issued.

(b) The secretary or his or her authorized representative shall terminate an order for cessation and immediate compliance, by written notice to the person to whom the order was issued, when he or she determines that all conditions, practices, and violations listed in the order have been abated. Termination shall not affect the right of the cabinet to assess civil penalties for those violations under 405 KAR 7:090 or to impose any other applicable sanctions as authorized by law.

(c) Based upon the written recommendations of the regional administrator and the authorized representative of the cabinet who issued the order for cessation and immediate compliance,

the Director of the Division of Field Services may vacate an order for cessation and immediate compliance determined to have been issued in error.

(6) Within sixty (60) days after issuing an order for cessation and immediate compliance, the cabinet shall notify in writing any person who has been identified under 405 KAR 8:010, Section 18(5) and either 405 KAR 8:030, Section 2(3) and (4) or 405 KAR 8:040, Section 2(3) and (4) as owning or controlling the permittee, that the cessation order was issued and that the person has been identified as an owner or controller.

Section 4. Notice of Inspection and Noncompliance. (1) Issuance. If an authorized representative of the cabinet issues a notice of noncompliance and order for remedial measures or an order for cessation and immediate compliance, he or she shall reinspect the areas affected by the surface coal mining and reclamation operations or the coal exploration and reclamation operations on or soon after the date given in the notice or order for completion of remedial measures. At the time of reinspection, the authorized representative of the cabinet shall issue a notice of inspection of noncompliance.

(2) Form and content. The notice of inspection of noncompliance shall set forth whether:

(a) The remedial measures have been completed, and the notice or order is therefore terminated;

(b) The remedial measures have not been completed, but the notice or order is modified or extended for good cause; or

(c) The remedial measures have not been completed. Following such a determination, the cabinet shall:

1. For the situations in which the inspection was a reinspection of a notice of noncompliance and order for remedial measures, issue an order for cessation and immediate compliance; and

2. For situations in which the inspection was a reinspection of an order for cessation and immediate compliance and if the order for cessation and immediate compliance has not been abated following the preliminary hearing, initiate a formal hearing for suspension or revocation of the permit or approval, initiate a formal hearing for bond forfeiture, or initiate administrative proceedings for other appropriate relief.

(3) Service. Service of a notice of inspection for noncompliance shall be in the manner set forth in Section 5 of this regulation.

Section 5. Service of Notices and Orders. (1) Any notice of noncompliance and order for remedial measures, order for cessation and immediate compliance, or notice of inspection of noncompliance shall be served on the person to whom it is issued or the person's designated agent promptly after issuance.

(2) Each notice of noncompliance and order for remedial measures, order for cessation and immediate compliance, and notice of inspection of noncompliance shall be served by hand, by certified mail (return receipt requested), or by registered mail to the person to whom the notice or order has been issued or to his or her designated agent for service. The notice or order shall also be served by hand to the individual who, based upon reasonable inquiry by the authorized representative, appears to be in

charge at the site of the surface coal mining and reclamation operations or coal exploration and reclamation operations referred to in the notice or order. If no such individual can be located at the site, a copy of the notice or order may be tendered to any individual at the site who appears to be an employee or agent of the person to whom the notice or order has been issued. Service, whether by hand or by mail, shall be complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept. For surface coal mining and reclamation operations, service by mail shall be addressed to the designated agent for service; to the permanent address of the permittee as identified on the permit or in the application; or, if no address is identified for the permittee in the application, to such other address as is known to the cabinet. For coal exploration and reclamation operations, service by mail shall be addressed to the designated agent for service; to the permanent address of the person conducting the coal exploration and reclamation operations as identified in the notice of intention to explore or in the application for coal exploration and reclamation approval submitted pursuant to 405 KAR 8:020; or, if no address is identified for the person conducting the coal exploration and reclamation operations in the notice or the application submitted pursuant to 405 KAR 8:020, to such other address as is known to the cabinet. If no person is present at the site of the surface coal mining and reclamation operations or the coal exploration and reclamation operations, service by mail shall by itself be sufficient notice.

(3) Designation by any person of an agent for service of notices and orders issued pursuant to this regulation and notices of hearing issued pursuant to 405 KAR 7:090 shall be made a part of the applicable permit application, notice of intention to explore, or application for coal exploration and reclamation approval. Such person shall continue as agent for service of process until such time as written revision of the permit, a notice of intention to explore, or coal exploration and reclamation approval is made which designates another person as agent.

(4) The cabinet may furnish copies of notices and orders to any person having an interest which is or may be adversely affected by the coal exploration and reclamation operations or by the surface coal mining and reclamation operations and any person having an interest in the permit or exploration area.

Section 6. Expiration. When a notice of noncompliance and order for remedial measures or an order for cessation and immediate compliance requires cessation of coal removal expressly or by implication, such notice or order shall expire thirty (30) days after it is served unless a hearing pursuant to 405 KAR 7:090 is held at or near the mine site or the exploration site within that time except that such notices and orders shall not expire if the condition, practice, or violation in question has been abated or if the person to whom the notice or order has been issued has waived the preliminary hearing or has agreed to its postponement. Expiration of the order shall not affect the rights of the cabinet to assess appropriate penalties and to impose applicable sanctions with respect to the time period during which the

order was in effect for the violations for which the order was issued.

Section 7. Suspension and Revocation of Permits and Exploration Approvals. The cabinet may initiate formal hearings for suspension or revocation of permits and coal exploration and reclamation approvals, may initiate formal hearings for bond forfeitures, and may initiate formal hearings or judicial proceedings for other appropriate relief measures.

Section 8. Inability to Comply. (1) No notice or order issued pursuant to the regulations of this Title may be vacated because of inability to comply.

(2) Inability to comply may not be considered in determining whether a pattern of violations exists.

(3) Rapid compliance, good faith, diligence, and inability to comply may be considered in mitigation of proposed penalty assessments under 405 KAR 7:090.

CARL H. BRADLEY, Secretary

FRANK DICKERSON, Commissioner

APPROVED BY AGENCY: January 22, 1991

FILED WITH LRC: January 29, 1991 at 2 p.m.

STATEMENT OF EMERGENCY 601 KAR 1:005E

The changes in this administrative regulation are necessary to coordinate with proposed emergency administrative regulation 601 KAR 11:040. The change allows commercial drivers who operate exclusively in intrastate commerce within Kentucky to apply for a medical waiver to the federal requirements set forth in 49 CFR Part 391 (adopted in 601 KAR 1:005). However, the United States Department of Transportation has only granted the various states the privilege of issuing these medical waivers until March 31, 1992. After that time, no more intrastate medical waivers may be issued. By April 1, 1992 most operators of commercial motor vehicles will have to have obtained a commercial drivers license. Part of the application process for obtaining the commercial drivers license includes providing proof that the commercial driver is medically fit to operate a commercial motor vehicle. This administrative regulation needs to be adopted on an emergency basis to allow it to be in place as long as possible before it becomes void. In addition it will be possible in Kentucky to make application for a commercial drivers license in early 1991. It is imperative that the medical waiver process be in place as soon as a person can apply for a commercial drivers license. While not everyone who applies for a medical waiver will be able to safely operate commercial motor vehicles, those who can but do not meet the stringent federal safety requirements should be allowed the opportunity to obtain a medical waiver and therefore continue employment. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Administrative Regulations Compiler on January 15, 1991.

WALLACE G. WILKINSON, Governor
MILD D. BRYANT, Secretary

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Vehicle Enforcement

601 KAR 1:005E. Safety regulations.

RELATES TO: KRS Chapters 138, 281, Title 49, Code of Federal Regulations, Part 390-397

STATUTORY AUTHORITY: KRS 138.665, 281.600, 281.726, 281.730, 281.750, Title 49, Code of Federal Regulations, Part 390-397

EFFECTIVE: January 24, 1991

NECESSITY AND FUNCTION: This regulation sets out safety procedures to be followed by motor carriers operating in the Commonwealth of Kentucky.

Section 1. Definitions. (1) "Farm-to-market agricultural transportation" means the operation of a motor vehicle that is controlled and operated by a farmer who, as a private motor carrier is using the vehicle to transport agricultural products from his farm or to transport farm machinery or farm supplies to his farm. It also includes any operation of a motor vehicle by a farmer which is generally thought of as farm machinery. The transportation of hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with 601 KAR 1:025, Transporting hazardous materials, permit, is not included in this definition.

(2) "Daylight hours" means that period of time one-half (1/2) hour before sunrise through one-half (1/2) hour after sunset.

(3) "Load limit" means the rated seating capacity for which a passenger-carrying vehicle is licensed plus twenty-five (25) percent of the rated seating capacity.

Section 2. [(1)] All commercial motor vehicles operated for-hire or in private carriage, interstate or intrastate, except as set forth in Section 3 of this regulation [those listed in subsection (2) of this section] shall be governed by the following Motor Carrier Safety Regulations adopted and issued by the United States Department of Transportation:

(1) [(a)] Title 49, Code of Federal Regulations, Part 390, General, effective as amended through August [March] 30, 1990;

(2) [(b)] Title 49, Code of Federal Regulations, Part 391, Qualifications of Drivers, effective as amended through February 1, 1990;

(3) [(c)] Title 49, Code of Federal Regulations, Part 392, Driving of Motor Vehicles, effective as amended through November 15, 1988;

(4) [(d)] Title 49 Code of Federal Regulations, Part 393, Parts and Accessories Necessary for Safe Operation, with a latest effective date of November 24, 1989;

(5) [(e)] Title 49, Code of Federal Regulations, Part 394, Notification, Recording and Reporting of Accidents, effective as amended through December 21, 1988;

(6) [(f)] Title 49, Code of Federal Regulations, Part 395, Hours of Service of Drivers, effective as amended through August 13, 1990 [November 15, 1988];

(7) [(g)] Title 49, Code of Federal Regulations, Part 396, Inspection, Repair and Maintenance, effective as amended through December 7, 1989. The first annual inspection of

motor carrier vehicles operating exclusively in intrastate commerce and subject to the provisions of this administrative regulation shall be completed by December 31, 1990 even though Part 396 mandates the first inspection for interstate carriers to be completed by July 1, 1990; and

(8) [(h)] Title 49, Code of Federal Regulations, Part 397, Transportation of Hazardous Materials; Driving and Parking Rules, effective as amended through November 15, 1988.

Section 3. [(2)] The following exemptions and exceptions to compliance with the provisions of Section 2 of this regulation [subsection (1) of this section] are adopted:

(1) [(a)] City buses, suburban buses, taxicabs, motorcycles and motor vehicles primarily designed for carrying passengers and having provisions for not more than eight (8) passengers and the driver are not required to comply with the federal regulations adopted by or incorporated by reference in this administrative regulation. Except that any operator of one (1) of these vehicles who is required by KRS Chapter 281A to obtain a commercial driver's license shall provide proof of having passed the medical examination set forth in 49 CFR Part 391 or have received a medical waiver as set forth in 601 KAR 11:040 and subsection (8) of this section.

(2) [(b)] Vehicles owned by the federal government, a state government, a county government, a city government, or a board of education and vehicles operating in interstate commerce which are specifically excluded by Title 49, Code of Federal Regulations, Part 390 are not required to comply with the federal regulations adopted by or incorporated by reference in this administrative regulation. Except that any operator of one (1) of these vehicles who is required by KRS Chapter 281A to obtain a commercial driver's license shall provide proof of having passed the medical examination set forth in 49 CFR Part 391 or have received a medical waiver as set forth in 601 KAR 11:040 and subsection (8) of this section.

(3) [(c)] Motor vehicles which are used exclusively in intrastate commerce and exclusively in farm-to-market agricultural transportation when operated during daylight hours by a private motor carrier are not required to comply with Title 49, Code of Federal Regulations, Part 393, Subpart B, relative to lighting device requirements. They are, however, required to have two (2) stop lamps and mechanical turn signals as set forth in 49 CFR 393, Subpart B.

(4) [(d)] Motor vehicles which are used exclusively in intrastate commerce and exclusively for the transportation of primary forest products from the harvest area to a mill or other processing facility which is located at a point not more than fifty (50) air miles from the harvest area when operated during daylight hours are not required to comply with Title 49, Code of Federal Regulations, Part 393, Subpart B relative to lighting devices requirements. They are, however, required to have two (2) stop lamps and mechanical turn signals as set forth in 49 CFR 393, Subpart B.

(5) [(e)] Except for transporters of hazardous materials under 601 KAR 1:025, motor vehicle operators who are operating a vehicle on an intrastate commerce basis are not required to be

twenty-one (21) years of age as set forth in 49 CFR 391.11(b)(1). However, they shall be at least eighteen (18) years of age.

(6) [(f)] Electric utility motor carriers while operating exclusively in intrastate commerce shall be exempt from the maximum and on-duty hours for drivers set forth in 49 CFR 395.3 during an emergency which requires their employees to work to restore electric power.

(7) [(g)] Motor carriers which operate exclusively in intrastate commerce shall be exempt from the drug testing requirements of 49 CFR Parts 391 and 394.

(8) A commercial vehicle driver who operates a commercial vehicle exclusively in intrastate commerce within Kentucky, may apply for a medical waiver of the requirements of 49 CFR Part 391 under the provisions of 601 KAR 11:040. If a medical waiver is issued, the waiver shall be in the possession of the commercial driver any time he is operating a commercial motor vehicle.

Section 4. [3.] Buses. Buses shall be maintained in a clean and sanitary condition so that the health of passengers will not be impaired. Seats shall be comfortable in order that passengers will not be subjected to unreasonable discomfort which might be detrimental to their health and welfare. Employees in charge of buses shall be courteous and helpful to passengers, properly caring for baggage so that it will not be damaged, and shall be acquainted with the routes traveled and schedules maintained, so that the passengers will not be subjected to unnecessary delays. All operators shall take into consideration the health and welfare of their passengers and control their operations in the public interest. Express and freight, mail bags, newspapers and baggage shall be so placed as not to interfere with the driver or with the safety and comfort of passengers. These items shall be protected from the weather but shall not be carried in the aisles or in such position as to block exits or doorways on the bus.

Section 5. [4.] Overcrowding of Passenger Vehicles. No bus operated by an authorized carrier, except city or suburban buses, shall transport passengers in excess of its load limit. No passenger shall be permitted to occupy the rear door-well of any bus vehicle that is equipped with a rear door-well.

Section 6. [5.] Out-of-service Criteria and Sticker. (1) The basic safety criteria to be followed by the Kentucky Transportation Cabinet in determining if a commercial driver or vehicle shall be declared unqualified or placed out-of-service shall be the "North American Uniform Out-of-service Criteria" adopted on February 15, 1990 by the Commercial Vehicle Safety Alliance. The criteria are incorporated by reference as a part of this administrative regulation.

(2) If a commercial vehicle is being operated [determined to be operating] either improperly registered or without registration or in violation of any safety regulation or requirement, officers of the Division of Motor Vehicle Enforcement are authorized to affix to the vehicle a notice indicating the nature of the violation and [,] requiring its correction before the motor vehicle is further operated. In

accordance with Part II of the "North American Uniform Out-of-service Criteria", a law enforcement officer may impose restricted service conditions instead of placing the commercial motor vehicle out-of-service. Refusal of the vehicle operator to grant permission for a law enforcement [an] officer [of the Division of Motor Vehicle Enforcement] to conduct a safety inspection of [either] the vehicle [or its operator] shall be cause for the officer to place the vehicle out-of-service until the [such] permission is granted. Operation of a vehicle in violation of the out-of-service notice affixed to it shall constitute a separate violation of these regulations.

(3) If a commercial driver is determined to be unqualified to drive and is placed out-of-service but the commercial motor vehicle is not placed out-of-service, the motor carrier may provide a different driver for the commercial motor vehicle. However, the commercial driver placed out-of-service shall not again operate a commercial motor vehicle until he is once again qualified. Refusal of the commercial driver to grant permission for a law enforcement officer to conduct a safety inspection regarding the driver himself shall be cause for the officer to place the driver out-of-service until the permission is granted. Operating a commercial motor vehicle in violation of an out-of-service order shall constitute a separate violation of these regulations.

(4) The material incorporated by reference in this section may be reviewed at any of the weigh stations operated by the Transportation Cabinet. These weigh stations are generally in operation twenty-four (24) hours a day. Further, the material may be reviewed or copied at the Division of Motor Vehicle Enforcement, 8th Floor, State Office Building, Corner of High and Clinton Streets, Frankfort, Kentucky 40622. The office hours there are 8 a.m. through 4:30 p.m. eastern time on regular Kentucky state government work days.

JEROME LENTZ, Commissioner

MILO D. BRYANT, Secretary

APPROVED BY AGENCY: January 7, 1991

FILED WITH LRC: January 24, 1991 at 3 p.m.

STATEMENT OF EMERGENCY 601 KAR 11:010E

This emergency administrative regulation sets the fees for commercial drivers who are applying for commercial driver's licenses. This administrative regulation needs to be adopted on an emergency basis because it will be possible in Kentucky to make application for a commercial drivers license in early 1991. KRS 281A.150 which authorizes this administrative regulation was effective on January 1, 1991. It is imperative that the fees be adopted as soon as a person can apply for a commercial drivers license. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Administrative Regulations Compiler on January 15, 1991.

WALLAGE G. WILKINSON, Governor
MILO D. BRYANT, Secretary

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing

601 KAR 11:010E. Fees relating to commercial driver's licenses.

RELATES TO: KRS Chapter 281A
 STATUTORY AUTHORITY: KRS 281A.150
 EFFECTIVE: January 24, 1991

NECESSITY AND FUNCTION: KRS 281A.150, as effective January 1, 1991, sets the maximum fee allowed to be charged for various commercial driver's licenses. It further allows the Transportation Cabinet to set the exact fees by administrative regulation. This administrative regulation is promulgated to set the fees that are to be divided between the Transportation Cabinet, Department of State Police and the circuit court clerk (through the Administrative Office of the Courts).

Section 1. Instruction Permit. An applicant for a commercial driver's license instruction permit shall pay a fee of thirty-five (35) dollars to the circuit court clerk.

Section 2. Commercial Driver's License (Nongrandfathered). (1) An applicant for a commercial driver's license who does not meet the requirements of KRS 281A.200, and who has already been issued an instruction permit, shall pay a fee to the circuit court clerk based upon the number of months the commercial driver's license is valid. The license shall expire in the birth month and year of the applicant's regular operator's license issued pursuant to KRS 186.412. The fee shall be as follows:

License Validity	37-48	25-36	13-24	1-12
(Months)				
Total Cost	\$40.00	\$31.25	\$22.50	\$13.75

(2) An applicant for a commercial driver's license who does not meet the requirements of KRS 281A.200, and who has not already been issued an instruction permit, shall pay a fee to the circuit court clerk based upon the number of months the commercial driver's license is valid. The license shall expire in the birth month and year of the applicant's regular operator's license issued pursuant to KRS 186.412. The fee shall be as follows:

License Validity	37-48	25-36	13-24	1-12
(Months)				
Total Cost	\$75.00	\$66.25	\$57.50	\$48.75

Section 3. Commercial Driver's License (Grandfathered). An applicant for a commercial driver's license who meets the requirements of KRS 281A.200, shall pay a prorated fee to the circuit court clerk as required by KRS 281A.200(3). The fees shall be as follows:

License Validity	37-48	25-36	13-24	1-12
(Months)				
Total Cost	\$62.00	\$53.25	\$44.50	\$35.75

Section 4. Renewals. An applicant for renewal of a commercial driver's license shall pay a fee of thirty-five (35) dollars to the circuit court clerk. This fee shall include the eight (8) dollar operator's license fee required by KRS Chapter 186 for a four (4) year license.

Section 5. Transfer from Another Jurisdiction. An applicant for a commercial driver's license who possesses a valid commercial driver's license issued by another licensing jurisdiction shall pay a fee of fifty-nine (59) dollars to the circuit court clerk. This fee shall include the eight (8) dollar operator's license fee required by KRS Chapter 186 for a four (4) year license.

Section 6. Duplicate Commercial Driver's License. An applicant for a duplicate commercial driver's license shall pay a fee of ten (10) dollars to the circuit court clerk.

Section 7. Endorsements or Class Upgrade. An applicant for an additional commercial driver's license endorsement or upgrade of commercial driver's license class shall pay a fee of fifteen (15) dollars to the circuit court clerk. If the applicant is required to submit to more than one (1) test there is an additional fee of five (5) dollars for each additional test.

Section 8. School, Church, Mass Transit and Nonprofit Bus Driver's License. An applicant for a commercial driver's license who applies for a Class B or C commercial license in order to only drive a school bus, church bus, mass transit bus or nonprofit bus shall pay his fee to the circuit court clerk based upon the number of months the commercial driver's license is valid. The license shall expire in the birth month and year of the applicant's regular operator's license issued pursuant to KRS 186.412. The fee shall be as follows:

License Validity	37-48	25-36	13-24	1-12
(Months)				
Total Cost	\$20.00	\$19.00	\$18.00	\$17.00

JEROME L. LENTZ, Acting Commissioner
 MILO D. BRYANT, Secretary

APPROVED BY AGENCY: January 11, 1991
 FILED WITH LRC: January 24, 1991 at 3 p.m.

STATEMENT OF EMERGENCY
601 KAR 11:040E

This administrative regulation is necessary to coordinate with proposed emergency administrative regulation 601 KAR 1:005. The proposed new administrative regulation allows commercial drivers who operate exclusively in intrastate commerce within Kentucky to apply for a medical waiver to the federal requirements set forth in 49 CFR Part 391 (adopted in 601 KAR 1:005). However, the United States Department of Transportation has only granted the various states the privilege of issuing these medical waivers until March 31, 1992. After that time, no more intrastate medical waivers may be issued. By April 1, 1992 most operators of commercial motor vehicles will have to have obtained a commercial drivers license. Part of the application process for obtaining the commercial drivers license includes providing proof that the commercial driver is medically fit to operate a commercial motor vehicle. This administrative regulation needs to be adopted on an emergency basis to allow it to be in place as long as possible before it becomes void. In addition it is now possible in Kentucky. It is imperative that the medical waiver process be in

place as soon as a person can apply for a commercial drivers license. While not everyone who applies for a medical waiver will be able to safely operate commercial motor vehicles, those who can but do not meet the stringent federal safety requirements should be allowed the opportunity to obtain a medical waiver and therefore continue employment. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Administrative Regulations Compiler on January 15, 1991.

WALLACE G. WILKINSON, Governor
MILD D. BRYANT, Secretary

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing
Division of Motor Carriers
Division of Motor Vehicle Enforcement

601 KAR 11:040E. Medical waivers for intrastate operators of commercial motor vehicles.

RELATES TO: KRS Chapter 281A, 281.600, 49 CFR Part 383, 49 CFR Part 391

STATUTORY AUTHORITY: KRS 281A.040, 281.600, 49 CFR 383 Subpart E, 49 CFR 391 Subpart E

EFFECTIVE: January 24, 1991

NECESSITY AND FUNCTION: The federal requirements for the issuance of a commercial driver's license to a driver operating in interstate commerce include a certification that the driver meets the qualification requirements contained in 49 CFR Part 391. The Federal Highway Administration does not require a person who operates entirely in intrastate commerce to be subject to 49 CFR Part 391. He is subject however, to Kentucky driver qualification requirements. In 601 KAR 1:005 the Transportation Cabinet adopted the majority of the driver qualification requirements of 49 CFR Part 391 on both an interstate and intrastate commerce basis. However, medical waivers in addition to those allowed in 49 CFR 391.49 are allowed until March 31, 1992 for drivers operating exclusively in intrastate commerce. This administrative regulation sets forth the procedure and standards for obtaining an intrastate medical waiver.

Section 1. Application for Intrastate Medical Waiver. (1) A commercial driver who operates exclusively in intrastate commerce and who has failed to meet the physical requirements of 49 CFR 391 Subpart E, adopted in 601 KAR 1:005 may apply to the Transportation Cabinet until January 31, 1992 for a medical waiver.

(2) The application for medical waiver shall be on Kentucky Transportation Cabinet form TC 94-38, "Request for Medical Waiver" adopted January, 1991. This form is incorporated by reference as a part of this administrative regulation.

(3) A copy of the completed medical examination form required by 49 CFR 391.43 and 601 KAR 1:005 shall be attached to the application for medical waiver. The form shall be completed by a licensed doctor of medicine or osteopathy. The medical examination form shall indicate the reason the applicant failed to meet the requirements of 49 CFR 391 Subpart E.

(4) A copy of the applicable supplemental medical report form completed by a licensed doctor of medicine or osteopathy shall be attached to the application for medical waiver. The supplemental medical report forms relate to "cardiovascular conditions"; "neurological conditions"; "musculoskeletal conditions"; "metabolic conditions"; "alcohol or other drug dependence"; "mental and emotional conditions"; and "vision conditions". The licensed doctor of medicine or osteopathy shall determine which ones of these forms are applicable to the medical waiver applicant. Each of these forms was adopted by the Transportation Cabinet in December, 1990 and is incorporated by reference as part of this administrative regulation.

(5) The application for medical waiver, medical examination form and supplemental medical report form shall be submitted to the Transportation Cabinet, Division of Driver Licensing, State Office Building, Frankfort, Kentucky 40622.

(6) A copy of the forms incorporated by reference may be obtained from the Division of Driver Licensing, State Office Building, Frankfort, Kentucky 40622 by writing or appearing in person. The office hours on regular Kentucky state government working days are 8 a.m. through 4:30 p.m. eastern time. Copies of the forms may also be obtained from the driver license issuance office of the circuit court clerk in each county.

Section 2. (1) The Division of Driver Licensing shall base its decision on granting the requested medical waiver on the information obtained from the driving history record of the applicant, the original medical examination form, the supplemental medical report form, in some cases a skills test and any other information the Division of Driver Licensing deems pertinent.

(2) The following medical guidelines shall be considered by the Division of Driver Licensing in evaluating the information related to the commercial driver:

(a) Loss or impairment of foot, leg, arm, hand or fingers. Neither paraplegics nor quadriplegics shall be issued a medical waiver.

(b) Vision. To be considered for a medical waiver, the commercial driver's distance visual acuity shall be 20/60 (Snellen) or better with corrective lenses in one (1) or both eyes. The commercial driver's visual fields shall not be narrowed to less than 110 degrees of total visual field. The commercial driver shall readily distinguish which light of traffic signals and devices showing standard red, green and amber is illuminated. The commercial driver shall neither wear bioptic lenses nor have uncorrectable double vision.

(c) Hearing. No waiver of 49 CFR 391.41(11) shall be issued.

(d) Epilepsy or other condition likely to cause loss of consciousness. The commercial driver with epilepsy or other condition likely to cause loss of consciousness shall have been seizure free for one (1) year prior to requesting the waiver. The commercial driver shall not have experienced loss of consciousness, blackout, fainting or disorientation in the year immediately prior to requesting the waiver. The commercial driver shall be reliable in taking his prescribed medication to be considered for a medical waiver

as proven by the blood content levels of his medication.

(e) Cardiovascular. The commercial driver shall not have experienced a fainting or blackout spell in the year immediately prior to requesting the waiver. The commercial driver shall have no heart disease symptoms while operating a motor vehicle or sitting at rest to be considered for a medical waiver. The commercial driver shall not have any difficulty in breathing or painful breathing. The commercial driver shall have had no uncontrollable attacks of choking, suffocation or shortness of breath during the year immediately past. The commercial driver's blood pressure shall not be irregular. The commercial driver's diastolic blood pressure shall not consistently be above 110 millimeters of mercury. The commercial driver shall not have an aortic or ventricular aneurysm. The commercial driver shall not have had any uncontrollable instances of syncope or vertigo during the year immediately prior to the application for waiver.

(f) Diabetes. The commercial driver shall neither have an uncontrolled condition of diabetes nor shall he have had any instances of diabetes shock or coma in the year immediately prior to the application for waiver.

(g) Alcohol or drugs. The commercial driver shall have been free of addiction to or abuse of alcohol or other drugs for at least one (1) year.

(h) Emotional or mental. The commercial driver shall exhibit no homicidal, suicidal or destructive behavior. The commercial driver shall have had no bouts of extreme anxiety, depression, paranoia, confusion, delusions or hallucinations within the year immediately prior to the application for waiver. The commercial driver shall not have been hospitalized for any mental or emotional condition in the three (3) years immediately prior to the application for waiver.

(3) The guidelines the Division of Driver Licensing shall follow in evaluating the information on the commercial driver's complete driving history record shall be the following:

(a) If there are three (3) or more accidents on the commercial driver's driving history record during the immediately preceding two (2) year period and the commercial driver has indicated or a court has determined them to be the fault or partial fault of the commercial driver, the waiver request may be denied.

(b) If there is an accident involving a fatality or victim incapacitation on the commercial driver's driving history record and the commercial driver has indicated or a court has determined the accident to be the fault or partial fault of the applicant, the waiver request may be denied.

(c) If during the immediately prior two (2) years the commercial driver's driving privilege was withdrawn in accordance with the requirements of KRS 186.560, the application for waiver shall be denied.

(d) If during the immediately prior two (2) years the commercial driver's driving privilege was withdrawn in accordance with the provisions of 601 KAR 13:025, the application for waiver shall be denied.

(e) If during the immediately prior two (2) years the commercial driver was convicted of more than one (1) serious violation as defined in KRS 281A.010, the application for waiver may be denied.

(4) The commercial driver shall have been a commercial driver for the immediately preceding two (2) years to be considered for a medical waiver.

Section 3. (1) If a commercial driver is granted a medical waiver prior to March 31, 1992, he shall submit to at least annual medical reexaminations.

(2) For the waiver to continue in effect after 1992 the physician performing the medical reexamination shall be able to state that the condition of the commercial driver which caused the waiver to be issued has not worsened and that no additional nonqualifying condition has manifested.

(3) The driving history record of a commercial driver approved for a medical waiver may be evaluated at any time but shall be evaluated by the Division of Driver Licensing at least once a year. If any of the events listed in Section 2(3) of this regulation occur, the medical waiver may be withdrawn.

(4) After completion of a test of the commercial driver's driving skills requested by the Division of Driver Licensing, the Kentucky State Police shall submit the test results and recommendations for waiver refusal or restrictions on a medical waiver to the Division of Driver Licensing. If a medical waiver with restrictions is issued, the restriction shall be noted on the commercial driver's motor vehicle operator's license or commercial driver's license.

(5) If an intrastate medical waiver is issued to a commercial driver, he shall notify the Division of Driver Licensing immediately of any change in or worsening of his physical or mental condition.

(6) If an intrastate medical waiver is issued to a commercial driver with a progressive disease, the Division of Driver Licensing may require the commercial driver to submit to a periodic skills test with the Kentucky State Police.

(7) If an intrastate medical waiver is issued to a person with a pacemaker, he shall submit an annual report on the functioning of the device to the Division of Driver Licensing.

(8) The commercial driver shall submit all periodic reports requested by the Division of Driver Licensing or report for a skills test in a timely manner. If he fails to do so, his medical waiver shall be cancelled.

(9) The employer of a commercial driver who has obtained a medical waiver shall notify the Division of Driver Licensing of any change in the physical or mental condition of the commercial driver. In addition, the employer shall notify the Division of Driver Licensing of any changes in employment or employment conditions of the commercial driver.

Section 4. (1) If a commercial driver is denied a medical waiver by the Division of Driver Licensing, he may appeal to the Commissioner of the Department of Vehicle Regulation. In considering the appeal, the Commissioner of the Department of Vehicle Regulation shall request from the Medical Review Board established in accordance with 601 KAR 13:010 a review of the case and recommendation on the appeal.

(2) The appeal shall be filed with the Commissioner of the Department of Vehicle

Regulation in writing within thirty (30) days of the decision of the Division of Driver Licensing.

(3) A member of the Medical Review Board with specific qualifications in the medical area relating to the appeal shall review the appeal when requested by the commissioner.

(4) The commissioner's review shall be based on the information provided to the Division of Driver Licensing, the recommendation of the Medical Review Board and any additional information requested by the commissioner.

(5) The findings of the Commissioner of the Department of Vehicle Regulation shall be administratively final.

(6) The Commissioner of the Department of Vehicle Regulation shall provide a copy of his findings to both the commercial driver and the Division of Driver Licensing.

(7) A commercial driver aggrieved by the findings of the Commissioner of the Department of Vehicle Regulation may appeal to Franklin Circuit Court.

JEROME L. LENTZ, Acting Commissioner

MILO D. BRYANT, Secretary

APPROVED BY AGENCY: January 11, 1991

FILED WITH LRC: January 24, 1991 at 3 p.m.

STATEMENT OF EMERGENCY

904 KAR 2:016E

This emergency administrative regulation implements the federal law PL 101-508 by requiring deletion of the phrase "or legal guardian" in determining how to consider income in regard to a dependent child whose parent is under age 18. In order to prevent the potential loss of federal funding, this change must be implemented in a timely fashion. This is effective February 1, 1991. This emergency administrative regulation implements the federal law PL 101-508 by requiring deletion of the phrase "or legal guardian" in the exclusion of resources in regard to a dependent child whose parent is under age 18. In order to prevent the potential loss of federal funding, this change must be implemented in a timely fashion. This is effective February 1, 1991. This emergency administrative regulation implements the federal law PL 101-508 by requiring earned income tax credit payments and advance payments of earned income tax credit payments be excluded as income rather than being disregarded. In order to prevent the potential loss of federal funding, this change must be implemented in a timely fashion. This is effective February 1, 1991. This administrative regulation implements a federal policy clarification by requiring households moving from one state to another having to receive AFDC from the new state in which they reside for at least one of the three of the six months preceding the first month of ineligibility. This administrative regulation implements 45 CFR 250.20 which allows AFDC-UP qualifying parents to volunteer for participation in the JOBS program and in particular circumstances, be eligible for child care payments. This change will increase the employability of unemployed parents and assist them in achieving self-sufficiency. This change is effective February 1, 1991. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed

with the Regulations Compiler for the February 1991 filing.

WALLACE G. WILKINSON, Governor

HARRY J. COWHERD, M.D., Secretary

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

904 KAR 2:016E. Standards for need and amount; AFDC.

RELATES TO: KRS 205.200(2), 205.210(1), 42 CFR 435.831, 45 CFR 233, 250.33, 255, 256, PL 101-508
STATUTORY AUTHORITY: KRS 194.050, 205.200(2)

EFFECTIVE: February 11, 1991

NECESSITY AND FUNCTION: The Cabinet for Human Resources is required to administer the public assistance programs. KRS 205.200(2) and 205.210(1) require that the secretary establish the standards of need and amount of assistance for the Aid to Families with Dependent Children Program, referred to as AFDC, in accordance with federal regulations and Title IV-A of the Social Security Act. This regulation sets forth the standards by which the need for and the amount of an AFDC assistance payment is established.

Section 1. Definitions. (1) "Approved JOBS activities" means participation in component, precomponent, component preparation, preemployment, transitional extension or self-initiated JOBS activities which have been determined by the Department for Social Insurance to be consistent with employment goals.

(2) "Assistance group" means a group composed of one (1) or more children and may include as specified relative any person specified in 904 KAR 2:006, Section 3. The assistance group shall include the dependent child, child's eligible parent, and all eligible siblings living in the home with the needy child. Additionally, if the dependent child's parent is a minor living in the home with his eligible parent, the minor's parent shall also be included in the assistance group if the minor's parent applied for assistance. The incapacitated or unemployed natural or adoptive parent of the child who is living in the home shall be included as second parent if the technical eligibility factors are met.

(3) "Beyond the control" means:

(a) Loss or theft of the money;

(b) The individual to whom the lump sum was designated no longer lives in the household, making the lump sum income inaccessible;

(c) Expenditure of the lump sum income to meet extraordinary expenses, that are not included in the AFDC Standard of Need.

(4) "Certified child care providers" means a small family day care in a provider's home serving fewer than four (4) children. This provider has voluntarily registered with the Cabinet for Human Resources, Department for Social Services. Standards for certification are contained in 905 KAR 2:070.

(5) "Claimant" means the individual responsible for an overpayment.

(6) "Combination programs" means any educational program which includes as its basis literacy or GED. This program must also include life skills, skills training or job readiness training.

(7) "Component" means services and activities

such as education, job skills training, job readiness, job development and placement, job search, on-the-job training, work supplementation or community work experience program activities available under the Job Opportunities and Basic Skills (JOBS) program. Each individual component is described in 904 KAR 2:006.

(8) "Component preparation" means the period in which assessment, testing, development of the employability plan and referrals for removal of barriers takes place.

(9) "Full-time employment" means employment of thirty (30) hours per week or 130 hours per month or more.

(10) "Full-time school attendance" means a workload of at least:

(a) The number of hours required by the individual program for participation in a General Educational Development (GED) program; or

(b) Twelve (12) semester hours or more in a college or university; or six (6) semester hours or more during the summer term; or the equivalent in a college or university if other than a semester system is used; or

(c) The number of hours required by the individual high school/vocational school to fulfill their definition of full time; or

(d) Eight (8) clock hours per month in a literacy program.

(e) Twenty-five (25) clock hours per week in combination programs.

(11) "Gross income limitation standard" means 185 percent of the sum of the assistance standard, as set forth in Section 7 of this regulation.

(12) "Licensed child care providers" means day care centers serving twelve (12) or more children, or day care in a provider's home serving four (4) to twelve (12) children, which are licensed by the Division of Licensing and Regulation, Office of the Inspector General, as provided in 905 KAR 2:010.

(13) "Lump sum income" means income that does not occur on a regular basis, and does not represent accumulated monthly income received in a single sum.

(14) "Minor" means any person who is under the age of eighteen (18) or under the age of nineteen (19) in accordance with 45 CFR 233.90(b)(3). EXCEPTION: For the purpose of deeming income, a minor parent [or legal guardian] is considered any person under the age of eighteen (18).

(15) "Part-time employment" means employment of less than thirty (30) hours per week or 130 hours per month or not employed throughout the entire month.

(16) "Part-time school attendance" means a workload of anything less than "full-time school attendance."

(17) "Precomponent" means a waiting period between the dates of component assignment and component commencement.

(18) "Preemployment" means a waiting period between the dates of hiring and employment commencement.

(19) "Prospective budgeting" means computing the amount of assistance based on income and circumstances which will exist in the month(s) for which payment is made.

(20) "Recoupment" means recovery of overpayments of assistance payments.

(21) "Retrospective budgeting" means computing amount of assistance based on actual income and

circumstances which existed in the second month prior to the payment month.

(22) "Sanctioned individual" means any person who is required to be included in the assistance group but who is excluded from the assistance group due to failure to fulfill an eligibility requirement.

(23) "Self-initiated" means approved participation in which education or training activities are initiated by the client and determined to meet agency criteria. Specific criteria is contained in 904 KAR 2:006.

(24) "Transitional extension" means a period of up to ninety (90) days subsequent to the discontinuance of the AFDC case in which supportive service payments may continue if:

(a) The case is not eligible for transitional child care, as described in Section 9 of this regulation;

(b) The case is not discontinued due to fraudulent activity; and

(c) The case is not discontinued due to failure to comply with procedural requirements; and

(d) The JOBS participant elects to continue the approved component activity in which she is engaged at the time of discontinuance.

(25) "Unavailable" means that the income is not accessible to the AFDC benefit group for use toward basic food, clothing, shelter, and utilities.

(26) "Unregulated child care providers" means private providers, such as friends or relatives, who are not required to be certified or licensed.

Section 2. Resource Limitations. (1) Real and personal property owned in whole or in part by an applicant or recipient including a sanctioned individual and his parent, even if the parent is not an applicant or recipient, if the applicant or recipient is a dependent child living in the home of the parent, shall be considered.

(2) The amount that can be reserved by each assistance group shall not be in excess of \$1,000 equity value excluding those items specifically listed in subsection (1) of this section as follows:

(3) Excluded resources. The following resources shall be excluded from consideration:

(a) One (1) owner-occupied home;

(b) Home furnishings, including all appliances;

(c) Clothing;

(d) One (1) motor vehicle, not to exceed \$1,500 equity value;

(e) Farm machinery, livestock or other inventory, and tools and equipment other than farm, used in a self-employment enterprise;

(f) Items valued at less than fifty (50) dollars each;

(g) One (1) burial plot or space per family member;

(h) Funeral agreements not to exceed maximum equity of \$1,500 per family member;

(i) Real property which the assistance group is making a good faith effort to sell. This exemption shall not exceed a period of nine (9) months and is contingent upon the assistance group agreeing to repay AFDC benefits received beginning with the first month of the exemption. Any amount of AFDC paid during that period that would not have been paid if the disposal of property had occurred at the beginning of the period is considered an overpayment. The amount of the repayment shall not exceed the net proceeds of the sale. If the property has not

been sold within the nine (9) months, or if eligibility stops for any other reason, the entire amount of assistance paid during the nine (9) month period shall be treated as an overpayment;

(j) Other items or benefits mandated by federal regulations.

(4) Disposition of resources.

(a) An applicant or recipient shall not have transferred or otherwise divested himself of property without fair compensation in order to qualify for assistance.

(b) If the transfer was made expressly for the purpose of qualifying for assistance and if the uncompensated equity value of the transferred property, when added to total resources, exceeds the resource limitation, the household's application shall be denied, or assistance discontinued.

(c) The time period of ineligibility shall be based on the resulting amount of excess resources and begins with the month of transfer.

(d) If the amount of excess transferred resources does not exceed \$500, the period of ineligibility shall be one (1) month; the period of ineligibility shall be increased one (1) month for every \$500 increment up to a maximum of twenty-four (24) months.

Section 3. Income Limitations. In determining eligibility for AFDC the following shall apply:

(1) Gross income test.

(a) The total gross non-AFDC income of the assistance group, as well as income of parent, sanctioned individual and amount deemed available from the parent [or legal guardian] of a minor parent [or legal guardian] living in the home with such assistance group, and amount deemed available from a stepparent living in the home, and amount deemed available from an alien's sponsor and sponsor's spouse if living with the sponsor, shall not exceed the gross income limitation standard.

(b) Disregards specified in Section 4(1) of this regulation shall apply.

(c) If total gross income exceeds the gross income limitation standard, the assistance group is ineligible.

(2) Applicant eligibility test.

(a) An applicant eligibility test shall be applied if:

1. The gross income is below the gross income limitation standard; and

2. The assistance group has not received assistance during the four (4) months prior to the month of application.

(b) The total gross income after application of exclusions or disregards set forth in Section 4(1) and (2) of this regulation shall be compared to the assistance standard set forth in Section 7 of this regulation.

(c) If income exceeds this standard, the assistance group is ineligible.

(d) For assistance groups who meet the gross income test but who have received assistance any time during the four (4) months prior to the application month, the applicant eligibility test shall not apply.

(3) Benefit calculation.

(a) If the assistance group meets the criteria set forth in subsections (1) and (2) of this section, benefits shall be determined by applying disregards in Section 4(1), (2), and (3) of this regulation.

(b) If the assistance group's income, after

application of appropriate disregards, exceeds the assistance standard, the assistance group is ineligible.

(c) Amount of assistance for the initial two (2) months of eligibility shall be determined prospectively and for subsequent months retrospectively.

(4) Ineligibility period.

(a) A period of ineligibility shall be established for an applicant or recipient whose income in the month of application or during any month for which assistance is paid exceeds the limits as set forth in subsections (2) or (3) of this section due to receipt of lump sum income.

(b) The ineligibility period shall be recalculated if any of the following circumstances occur:

1. The standard of need increases and the amount of grant the assistance group would have received also changes.

2. Income, which caused the calculation of the ineligibility period, has become unavailable for reasons that were beyond the control of the benefit group.

3. The assistance group incurs and pays necessary medical expenses not reimbursable by a third party.

Section 4. Excluded or Disregarded Income. All gross non-AFDC income received or anticipated to be received by the assistance group, natural parent and parent [or legal guardian] of a minor parent [or legal guardian] living in the home with such assistance group and stepparent living in the home, shall be considered with the applicable exclusions or disregards as set forth below:

(1) Gross income test. All incomes listed below shall be excluded or disregarded:

(a) Disregards applicable to stepparent income or income of the parent [or legal guardian] of a minor parent [or legal guardian] living in the home with the assistance unit, as set forth in Section 5 of this regulation;

(b) Disregards applicable to alien sponsor's income, as set forth in Section 6 of this regulation;

(c) Disregards applicable to self-employment income;

(d) Earnings received by a dependent child from participation in the Summer Youth Program, Work Experience Program, Limited Work Experience Program, and Tryout Employment Program under the Job Training Partnership Act (JTPA) for a period not to exceed six (6) months within a given calendar year, effective March 1, 1988;

(e) Unearned income received by a dependent child from participation in a JTPA program;

(f) Value of the monthly allotment of food stamp coupons or value of United States Department of Agriculture (USDA) donated foods;

(g) Nonemergency medical transportation payments;

(h) Payments from complementary programs if no duplication exists between the other assistance and the assistance provided by the AFDC program;

(i) Educational grants, loans, scholarships, including payments for actual educational costs made under the GI Bill, obtained and used under conditions that preclude their use for current living costs and all education grants and loans to any undergraduate made or insured under any program administered by the United States Commissioner of Education;

(j) Highway relocation assistance;

(k) Urban renewal assistance;

(l) Federal disaster assistance and state disaster grants;

(m) Home produce utilized for household consumption;

(n) Housing subsidies received from federal, state or local governments;

(o) Receipts distributed to members of certain Indian tribes by the federal government under 25 USC 459, 1261 and 1401 [which are referred to in Section 5 of Public Law 94-114 that became effective October 17, 1975];

(p) Funds distributed per capita to or held in trust for members of any Indian tribe by the federal government under 25 USC 459, 1261 and 1401 [under Public Law 92-254, Public Law 93-134 or Public Law 94-540];

(q) Benefits received from the [under Title VII,] Nutrition Program for the Elderly, under 42 USC 3001 [of the Older Americans Act of 1965, as amended];

(r) Payments for supporting services or reimbursement of out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE) and any other programs under 42 USC 5001 and 5011 [Titles II and III, pursuant to Section 418 of Public Law 93-113];

(s) Payments to "Volunteers in Service to America" (VISTA) participants under 42 USC 1451 [volunteers under Title I of Public Law 93-113 pursuant to Section 404(g) of Public Law 93-113] except when the value of such payments when adjusted to reflect the number of hours volunteers are serving is the same as or greater than the minimum wage under state or federal law, whichever is greater;

(t) The value of supplemental food assistance received under 42 USC 1771 [the Child Nutrition Act of 1966, as amended], and the special food service program for children under 42 USC 1755 [the National School Lunch Act], as amended;

(u) Payments from the Cabinet for Human Resources, Department for Social Services, for child foster care, adult foster care, or subsidized adoption;

(v) Payments made under the Low Income Home Energy Assistance Program [Act] (LIHEAP) under 42 USC 8621, and other energy assistance payments which are made to an energy provider or provided in-kind;

(w) The first fifty (50) dollars of child support payments collected in a month which represents the current month's support obligation and is returned to the assistance group;

(x) For a period not to exceed six (6) months within a given year, earnings of a dependent child in full-time school attendance;

(y) Nonrecurring gifts of thirty (30) dollars or less received per calendar quarter for each individual included in the assistance group; and

(z) Effective January 3, 1989, loans.

(aa) Effective June 1, 1989, up to \$12,000 to Aleuts and \$20,000 to individuals of Japanese ancestry for payments made by the United States Government to compensate for hardships experienced during World War II.

(bb) Effective June 1, 1989, the essential person's portion of the SSI check.

(cc) Income of an individual receiving mandatory or optional state supplementary payments.

(dd) The advance payment or refund of earned income tax credit (EITC).

(ee) [(dd)] Other benefits mandated by federal regulations or legislation.

(2) Applicant eligibility test. The exclusions or disregards set forth in subsection (1) of this section and those listed below shall be applied:

(a) Earnings received from participation in the Job Corps Program under JTPA by an AFDC child;

(b) Earnings of a dependent child in full-time school attendance for a period not to exceed six (6) months within a given year;

(c) Standard work expense deduction of ninety (90) dollars for full-time and part-time employment; and

(d) Child care, for a child or incapacitated adult living in the home and receiving AFDC, is allowed as a work expense is allowed not to exceed \$175 per month per individual for full-time employment or \$150 per month per individual for part-time employment, or \$200 per month per individual for child under age two (2); [; and]

[(e) The advance payment or refund of earned income tax credit (EITC).]

(3) Benefit calculation. After eligibility is established, exclude or disregard all incomes listed in subsections (1) and (2) of this section as well as:

(a) Child support payments assigned and actually forwarded or paid to the department; and

(b) First thirty (30) dollars and one-third (1/3) of the remainder of each individual's earned income not already disregarded, if that individual's needs are considered in determining the benefit amount. The one-third (1/3) portion of this disregard shall not be applied to an individual after the fourth consecutive month it has been applied to his earned income. The thirty (30) dollar portion of this disregard shall be applied concurrently with the one-third (1/3) disregard, however, it shall be extended for an additional eight (8) months following the four (4) months referenced in the preceding sentence. These disregards shall not be available to the individual until he has not been a recipient for twelve (12) consecutive months; and

(c) Earnings of a child in full-time school attendance or earnings of a child in part-time school attendance, if not working full-time.

(4) Exceptions. Disregards from earnings in subsections (2)(c) and (d) and (3)(b) of this section shall not apply for any month in which the individual:

(a) Reduces, terminates, or refuses to accept employment within the period of thirty (30) days preceding such month, unless good cause exists as follows:

1. The individual is unable to engage in such employment or training for mental or physical reasons; or

2. The individual has no way to get to and from the work site or the site is so far removed from the home that commuting time would exceed three (3) hours per day; or

3. Working conditions at such job or training would be a risk to the individual's health or safety; or

4. A bona fide offer of employment at a minimum wage customary for such work in the community was not made; or

5. Effective February 1, 1988, the child care

arrangement is terminated through no fault of the client; or

6. Effective February 1, 1988, the available child care does not meet the needs of the child, for example, handicapped or retarded children.

(b) Fails to make a timely report of earnings unless good cause exists as follows:

1. The assistance group moved and reported the move timely, however, the move resulted in a delay in receiving or failure to receive the mandatory monthly report form; or

2. An immediate family member living in the home was institutionalized or died during the filing period; or

3. The specified relative was out of town during the entire filing period; or

4. The assistance group has been directly affected by a natural disaster (for example, fire, flood, storm, earthquake).

(c) Requests assistance be terminated for the primary purpose of evading the four (4) month limitation on the deduction in subsection (3)(b) of this section.

(5) Sanction exception. The earned income of sanctioned individuals shall be counted without providing the exclusions or disregards in either subsections (2) and (3) of this section.

Section 5. Income and Resources. Income and resources of a stepparent living in the home with a dependent child and parent [or legal guardian] living in the home with a minor parent [or legal guardian] but whose needs are not included in the grant are considered as follows:

(1) Income. The gross income is considered available to the assistance group, subject to the following exclusions or disregards:

(a) The first seventy-five (75) dollars of the gross earned income;

(b) An amount equal to the AFDC assistance standard for the appropriate family size, for the support of the stepparent or parent [or legal guardian] of a minor parent [or legal guardian] and any other individuals living in the home but whose needs are not taken into consideration in the AFDC eligibility determination and are or may be claimed by the stepparent or parent [or legal guardian] of a minor parent [or legal guardian] as dependents for purposes of determining his federal personal income tax liability;

(c) Any amount actually paid by the stepparent or parent [or legal guardian] of a minor parent [or legal guardian] to individuals not living in the home who are or may be claimed by him as dependents for purposes of determining his personal income tax liability;

(d) Payments by the stepparent and parent [or legal guardian] of a minor parent [or legal guardian] for alimony or child support with respect to individuals not living in the household; and

(e) Income of a stepparent and parent [or legal guardian] of a minor parent [or legal guardian] receiving Supplemental Security Income (SSI) [under Title XVI].

(2) Sanction exception. The needs of any sanctioned individual are not eligible for the exclusions listed in this section.

(3) Resources. Resources which belong solely to the stepparent and parent [or legal guardian] of a minor parent [or legal guardian] are not considered in determining eligibility of the parent or the assistance group.

Section 6. Alien Income and Resources. (1) For the purposes of this section the alien's sponsor and sponsor's spouse (if living with the sponsor) shall be referred to as sponsor.

(2) The gross non-AFDC income and resources of an alien's sponsor shall be deemed available to the alien, subject to disregards as set forth below, for a period of three (3) years following entry into the United States.

(3) If an individual is sponsoring two (2) or more aliens, the income and resources shall be prorated among the sponsored aliens.

(4) A sponsored alien is ineligible for any month in which adequate information on the sponsor or sponsor's spouse is not provided.

(5) If an alien is sponsored by an agency or organization, which has executed an affidavit of support, that alien is ineligible for benefits for a period of three (3) years from date of entry into the United States, unless it is determined that the sponsoring agency or organization is no longer in existence or does not have the financial ability to meet the alien's needs.

(6) The provisions of this section shall not apply to those aliens identified in subsection (5) of this section.

(a) Income. The gross income of the sponsor is considered available to the assistance group subject to the following disregards:

1. Twenty (20) percent of the total monthly gross earned income, not to exceed \$175;

2. An amount equal to the AFDC assistance standard for the appropriate family size of the sponsor and other persons living in the household who are or may be claimed by the sponsor as dependents in determining his federal personal income tax liability, and whose needs are not considered in making a determination of eligibility for AFDC;

3. Amounts paid by the sponsor to nonhousehold members who are or may be claimed as dependents in determining his federal personal tax liability;

4. Actual payments of alimony or child support paid to nonhousehold members; and

5. Income of a sponsor receiving SSI or AFDC.

(b) Resources. Resources deemed available to the alien shall be the total amount of the resources of the sponsor and sponsor's spouse determined as if he were an AFDC applicant in this state, less \$1,500.

Section 7. Payment Maximum. (1) The AFDC payment maximum includes amounts for food, clothing, shelter, and utilities.

(2) Countable income is deducted in determining eligibility for and the amount of the AFDC assistance payment, as follows:

Effective July 1, 1989		
Number of Eligible Persons	Payment Maximum	Standard of Need
1 child	\$162	\$394
2 persons	\$196	\$460
3 persons	\$228	\$526
4 persons	\$285	\$592
5 persons	\$333	\$658
6 persons	\$376	\$724
7 or more persons	\$419	\$790

(3) Since the payment maximum does not meet full need, effective July 1, 1989, a forty-five (45) percent ratable reduction shall be applied to the deficit between the family's countable

income and the standard of need for the appropriate family size.

(4) The assistance payment shall be fifty-five (55) percent of the deficit or the payment maximum, whichever is the lesser amount.

Section 8. Job Opportunities and Basic Skills (JOBS) Child Care and Supportive Services. (1) Individuals participating in the JOBS program shall be entitled to payment of:

(a) Child care;

(b) Transportation; and

(c) Other supportive service costs necessary for participation in an approved JOBS activity, as described in subsection (10) of this section.

(2) JOBS activities are described in 904 KAR 2:006, Section 9.

(3) Child care eligibility in JOBS components. Child care shall be paid for a child meeting the criteria specified in Section 9(1) of this regulation. Child care shall be provided in the following situations:

(a) Precomponent;

(b) Component preparation;

(c) Component participation;

(d) Preemployment;

(e) Transitional extension; or

(f) On-the-job training (OJT) participants discontinued due to earned income or employment of 100 hours a month or more of the principal wage earner (PWE) in an AFDC-unemployed parent (AFDC-UP) case.

(4) Child care eligibility in self-initiated activities.

(a) Child care shall be provided in the same situations as in JOBS components with the following exceptions:

1. Transitional extension;

2. OJT participants discontinued due to increased earnings or hours of employment;

3. Component preparation; and

4. Precomponent, for persons waiting to enter self-initiated activities for the first time.

(b) Child care shall be provided only for approved self-initiated activities.

(5) Child care limitations.

(a) Child care payments shall be made directly to the provider, in an amount equal to the actual cost, up to a payment maximum based on local market rates.

(b) Payments shall not be made to a provider if the provider is:

1. The parent;

2. The legal guardian;

3. A member of the AFDC assistance unit which includes the child needing care;

4. Not meeting applicable standards of state and local law; or

5. Not allowing parental access.

(c) Local market rates shall be determined by:

1. The type of provider;

2. The age of the child;

3. The special needs of the child. Special needs shall be verified by:

a. Entitlement to disability benefits; or

b. Written statement from a physician or professional from a service agency such as Comprehensive Care, or the Department for Social Services;

4. The amount of time care is needed; and

5. The geographical boundaries of the fifteen (15) area development districts.

(d) Full-time (FT) and part-time (PT) attendance shall be determined by the provider.

(e) FT and PT maximum payment levels shall be

established for the following groups of dependent children:

1. "Special needs" includes children in no certain age group;

2. "Infants" includes children under age one (1);

3. "Toddlers" includes children from age one (1) up to age three (3);

4. "Preschool" includes children from age three (3) up to age five (5);

5. "School-age" includes children age five (5) and over.

(f) Child care maximum payments shall be made as follows:

PURCHASE AREA DEVELOPMENT DISTRICT #1

	Special Needs		Infants		Toddlers	
	FT	PT	FT	PT	FT	PT
Licensed	\$10	10	10	7	10	7
Certified	\$ 9	9	9	6	9	6
Unregulated	\$ 8	8	8	5	8	5
	Preschool		School-age			
	FT	PT	FT	PT	FT	PT
Licensed	\$10	7			10	7
Certified	\$ 9	6			9	6
Unregulated	\$ 8	5			8	5

PENNYRILE AREA DEVELOPMENT DISTRICT #2

	Special Needs		Infants		Toddlers	
	FT	PT	FT	PT	FT	PT
Licensed	\$10	10	10	7	9	6
Certified	\$ 9	9	9	6	8	5
Unregulated	\$ 8	8	8	5	7	4
	Preschool		School-age			
	FT	PT	FT	PT	FT	PT
Licensed	\$ 9	6			9	6
Certified	\$ 8	5			8	5
Unregulated	\$ 7	4			7	4

GREEN RIVER AREA DEVELOPMENT DISTRICT #3

	Special Needs		Infants		Toddlers	
	FT	PT	FT	PT	FT	PT
Licensed	\$10	10	9	6	9	6
Certified	\$ 9	9	8	5	8	5
Unregulated	\$ 8	8	7	4	7	4
	Preschool		School-age			
	FT	PT	FT	PT	FT	PT
Licensed	\$ 9	6			8	5
Certified	\$ 8	5			7	4
Unregulated	\$ 7	4			6	3

BARREN RIVER AREA DEVELOPMENT DISTRICT #4

	Special Needs		Infants		Toddlers	
	FT	PT	FT	PT	FT	PT
Licensed	\$12	12	12	9	10	7
Certified	\$11	11	11	8	9	6
Unregulated	\$10	10	10	7	8	5

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	Preschool		School-age	
	FT	PT	FT	PT
Licensed	\$10	7	10	7
Certified	\$ 9	6	9	6
Unregulated	\$ 8	5	8	5

LINCOLN TRAIL AREA DEVELOPMENT DISTRICT #5

	Special Needs		Infants		Toddlers	
	FT	PT	FT	PT	FT	PT
Licensed	\$10	10	10	7	9	6
Certified	\$ 9	9	9	6	8	5
Unregulated	\$ 8	8	8	5	7	4

	Preschool		School-age	
	FT	PT	FT	PT
Licensed	\$ 9	6	8	5
Certified	\$ 8	5	7	4
Unregulated	\$ 7	4	6	3

KENTUCKIANA REGIONAL PLANNING AND DEVELOPMENT AGENCY AREA DEVELOPMENT DISTRICT #6

	Special Needs		Infants		Toddlers	
	FT	PT	FT	PT	FT	PT
Licensed	\$13	13	13	10	13	10
Certified	\$12	12	12	9	12	9
Unregulated	\$11	11	11	8	11	8

	Preschool		School-age	
	FT	PT	FT	PT
Licensed	\$11	8	11	8
Certified	\$10	7	10	7
Unregulated	\$ 9	6	9	6

NORTHERN KENTUCKY AREA DEVELOPMENT DISTRICT #7

	Special Needs		Infants		Toddlers	
	FT	PT	FT	PT	FT	PT
Licensed	\$12	12	12	9	12	9
Certified	\$11	11	11	8	11	8
Unregulated	\$10	10	10	7	10	7

	Preschool		School-age	
	FT	PT	FT	PT
Licensed	\$12	9	11	8
Certified	\$11	8	10	7
Unregulated	\$10	7	9	6

BUFFALO TRACE AREA DEVELOPMENT DISTRICT #8

	Special Needs		Infants		Toddlers	
	FT	PT	FT	PT	FT	PT
Licensed	\$10	10	8	5	8	5
Certified	\$ 9	9	7	4	7	4
Unregulated	\$ 8	8	6	3	6	3

	Preschool		School-age	
	FT	PT	FT	PT
Licensed	\$ 8	5	8	5
Certified	\$ 7	4	7	4
Unregulated	\$ 6	3	6	3

GATEWAY AREA DEVELOPMENT DISTRICT #9

	Special Needs		Infants		Toddlers	
	FT	PT	FT	PT	FT	PT
Licensed	\$10	10	8	5	8	5
Certified	\$ 9	9	7	4	7	4
Unregulated	\$ 8	8	6	3	6	3

	Preschool		School-age	
	FT	PT	FT	PT
Licensed	\$ 8	5	8	5
Certified	\$ 7	4	7	4
Unregulated	\$ 6	3	6	3

FIVCO AREA DEVELOPMENT DISTRICT #10

	Special Needs		Infants		Toddlers	
	FT	PT	FT	PT	FT	PT
Licensed	\$10	10	10	7	10	7
Certified	\$ 9	9	9	6	9	6
Unregulated	\$ 8	8	8	5	8	5

	Preschool		School-age	
	FT	PT	FT	PT
Licensed	\$10	7	9	6
Certified	\$ 9	6	8	5
Unregulated	\$ 8	5	7	4

BIG SANDY AREA DEVELOPMENT DISTRICT #11

	Special Needs		Infants		Toddlers	
	FT	PT	FT	PT	FT	PT
Licensed	\$10	10	10	7	10	7
Certified	\$ 9	9	9	6	9	6
Unregulated	\$ 8	8	8	5	8	5

	Preschool		School-age	
	FT	PT	FT	PT
Licensed	\$10	7	10	7
Certified	\$ 9	6	9	6
Unregulated	\$ 8	5	8	5

KENTUCKY RIVER AREA DEVELOPMENT DISTRICT #12

	Special Needs		Infants		Toddlers	
	FT	PT	FT	PT	FT	PT
Licensed	\$11	11	11	8	11	8
Certified	\$10	10	10	7	10	7
Unregulated	\$ 9	9	9	6	9	6

	Preschool		School-age	
	FT	PT	FT	PT
Licensed	\$ 9	6	9	6
Certified	\$ 8	5	8	5
Unregulated	\$ 7	4	7	4

CUMBERLAND VALLEY AREA DEVELOPMENT DISTRICT #13

	Special Needs		Infants		Toddlers	
	FT	PT	FT	PT	FT	PT
Licensed	\$10	10	10	7	10	7
Certified	\$ 9	9	9	6	9	6
Unregulated	\$ 8	8	8	5	8	5
	Preschool				School-age	
	FT	PT			FT	PT
Licensed	\$ 9	6			10	7
Certified	\$ 8	5			9	6
Unregulated	\$ 7	4			8	5

LAKE CUMBERLAND AREA DEVELOPMENT DISTRICT #14

	Special Needs		Infants		Toddlers	
	FT	PT	FT	PT	FT	PT
Licensed	\$10	10	9	6	9	6
Certified	\$ 9	9	8	5	8	5
Unregulated	\$ 8	8	7	4	7	4
	Preschool				School-age	
	FT	PT			FT	PT
Licensed	\$ 9	6			9	6
Certified	\$ 8	5			8	5
Unregulated	\$ 7	4			7	4

BLUEGRASS AREA DEVELOPMENT DISTRICT #15

	Special Needs		Infants		Toddlers	
	FT	PT	FT	PT	FT	PT
Licensed	\$12	12	12	9	12	9
Certified	\$11	11	11	8	11	8
Unregulated	\$10	10	10	7	10	7
	Preschool				School-age	
	FT	PT			FT	PT
Licensed	\$11	8			11	8
Certified	\$10	7			10	7
Unregulated	\$ 9	6			9	6

(g) Child care payments shall be limited as follows:

1. Six (6) semesters (three (3) years) for a two (2) year postsecondary program;

2. Eight (8) semesters (nine (9) with good cause) for a four (4) year postsecondary program; or

3. No restrictions on other education and training activities.

(h) These limits apply to both full-time and part-time enrollment.

(i) In preemployment or precomponent, child care payments shall be limited to a period of two (2) weeks up to one (1) month if necessary to guarantee the child care arrangement shall not be lost.

(j) Child care payments shall not be made if:

1. An AFDC-UP qualifying parent is participating; and

2. The nonparticipating parent is not incapacitated.

(6) Authorization of child care payment.

(a) Child care payments shall be authorized upon the receipt of appropriate verification of

the cost of care.

(b) Departmental forms required for verification are incorporated by reference in this regulation.

(c) Payments shall be authorized in accordance with 904 KAR 2:050.

(7) Restrictions on authorization of child care payments. Payment shall not be made if:

(a) Verification is not returned by the end of the month following the month in which the cost was incurred;

(b) The participant is sanctioned for noncompliance with JOBS activities, as specified in 904 KAR 2:006; or

(c) A fair hearing decision is pending on an issue of noncompliance with JOBS.

(8) Transportation payments in JOBS components. Transportation reimbursement shall be paid in the following situations:

(a) Precomponent;

(b) Component preparation;

(c) Component participation;

(d) Transitional extension; or

(e) On-the-job training (OJT) participants discontinued due to earned income or employment of 100 hours a month or more of the PWE in an AFDC-UP case.

(9) Transportation payments in self-initiated activities.

(a) Transportation shall be provided in the same situations as in JOBS components, with the exceptions of:

1. Transitional extension;

2. OJT participants discontinued due to increased earnings or hours of employment;

3. Component preparation; and

4. Precomponent, for persons waiting to enter self-initiated activities for the first time.

(b) Reimbursement shall be paid only for approved self-initiated activities.

(10) Transportation payment amount and authorization.

(a) A standard rate of three (3) dollars per day shall be paid for individuals participating in approved JOBS activities.

(b) Transportation reimbursement shall be made after receipt of appropriate verification. Departmental forms required for verification are incorporated by reference. Payments shall be made as specified in 904 KAR 2:050.

(c) Transportation payments shall be limited in the same manner as child care payments, as described in subsection (4)(g) of this section.

(d) In precomponent, transportation payments are limited to two (2) weeks up to one (1) month if necessary to guarantee that the arrangements shall not be lost.

(11) Restrictions on authorization of transportation payments. Payments shall not be made if:

(a) Appropriate verification is not returned by the end of the month following the month in which the cost was incurred;

(b) The participant is sanctioned for noncompliance with JOBS activities, as specified in 904 KAR 2:006; or

(c) A fair hearing decision is pending on an issue of noncompliance with JOBS.

(12) Other supportive services in JOBS components.

(a) Nonrecurring services shall be provided if necessary for participation in the approved JOBS activities of:

1. Component preparation;

2. Component participation;

3. Transitional extension;
4. Preemployment; or
5. OJT participants discontinued due to earned income or increased hours of employment.

(b) These services shall be approved by the case manager as defined in 904 KAR 2:006.

(c) Examples of services which may be approved are the purchase of:

1. Remedial health care items or services not covered under the Medicaid program;
2. Necessary clothing; or
3. Any other item identified by a referral agency, the case manager, or the participant as being necessary for participation.

(13) Other supportive services in self-initiated activities. Nonrecurring services shall be provided in the same situations as in JOBS components, with the following exceptions:

- (a) Transitional extension;
- (b) OJT participants discontinued due to increased earnings or hours of employment; or
- (c) Component preparation.

(14) Limitations on other supportive services.

(a) A cumulative limit of \$300 in a twelve (12) month period, beginning with the first day of the month in which the first supportive service payment is made, shall be in effect for any participant in these approved JOBS activities:

1. Component preparation;
2. Component-related;
3. Transitional extension; or
4. OJT participants discontinued due to increased earnings or hours of employment.

(b) A separate \$300 limit, per job, for preemployment supportive services may be paid.

(c) Other supportive services shall be limited in the same manner as child care payments, as described in subsection (4)(g) of this section.

(15) Restrictions on authorization of supportive service payments. Payments shall not be made for the period during which:

- (a) Verification is not returned by the service provider;
- (b) The participant is sanctioned for noncompliance with JOBS activities, as specified in 904 KAR 2:006; or
- (c) A fair hearing decision is pending on an issue of noncompliance with JOBS.

Section 9. Transitional Child Care (TCC). (1) Effective April 1, 1990, child care assistance shall be provided by the state to families whose eligibility for AFDC assistance has ceased due to:

(a) Increased hours of, or earnings from, employment; or

(b) As a result of the loss of income disregards due to the expiration of the time limits at Section 4(3)(b) of this regulation.

(2) TCC shall be administered by the Cabinet for Human Resources, Department for Social Insurance through an interagency agreement with the Department for Social Services.

(3) Child care assistance shall be provided for children if the criteria in subsection (4) of this section are met.

(4) Technical eligibility. The following requirements shall be met during any month for which TCC is paid:

(a) The child(ren) is under age thirteen (13); or

1. Physically or mentally incapable of caring for himself, as verified by the state based on a determination of a physician or a licensed or

certified psychologist; or

2. A dependent child under court supervision (if needy); or

3. Would be a dependent child except for the receipt of benefits under SSI under Title XVI or foster care under Title IV-E.

(b) Child care must be necessary in order to permit a member of an AFDC family to accept or retain employment;

(c) Payments are not made for care provided by parents, legal guardians or members of the assistance unit (including essential persons);

(d) The family shall have ceased to be eligible for AFDC as a result of increased hours of, or increased income from, employment or the loss of income disregards due to the time limitations at Section 4(3)(b) of this regulation;

(e) The family shall have received AFDC;

1. In at least three (3) of the six (6) months preceding the first month of ineligibility; and

2. At least one (1) of the three (3) months was received in the state of Kentucky.

(f) The family requests TCC benefits, provides the information necessary for determining eligibility and fees, and meets application requirements;

(g) The family ceased to be eligible for AFDC on or after April 1, 1990.

(5) Time limitations.

(a) Eligibility for TCC begins with the first month for which the family is ineligible for AFDC and continues for a period of twelve (12) consecutive months when the family requests assistance for TCC.

(b) Families may begin to receive child care in any month during the twelve (12) month eligibility period.

(6) Notification of eligibility. A family shall be notified of their potential eligibility for TCC when their AFDC benefits are terminated.

(7) Sanctions. The family is not eligible for TCC for any remaining portion of the twelve (12) month period if the caretaker relative:

(a) Terminates employment unless good cause exists as follows:

1. The individual is personally providing care for a child under age six (6) and employment will require the individual to work more than twenty (20) hours per week.

2. Child care is necessary for the individual to participate in the program or accept employment and such care is not available or the available child care does not meet the special needs of the child, e.g., handicapped or retarded child.

3. The individual is unable to engage in employment or training for mental or physical reasons including participation in a drug and alcohol rehabilitation program.

4. Unavailability of transportation with no readily accessible alternative means of transportation available.

5. Travel time to the work site exceeds two (2) hours daily.

6. Illness of another household member requiring the presence of the participant.

7. Temporary incarceration.

8. Discrimination by an employer based on age, race, sex, color, handicap, religious beliefs, national origin or political beliefs.

9. Work demands or conditions that render continued employment unreasonable, such as consistently not being paid on schedule or work presents a risk of the individual's health or

safety.

10. Wage rates are decreased subsequent to acceptance of employment.

11. Acceptance of a better job which, because of circumstances beyond the control of the recipient, does not materialize.

12. Employment would result in a net loss of cash income.

(b) Fails to cooperate with the state IV-A agency in establishing payments and enforcing child support obligations, per 904 KAR 2:006, Section 11.

(8) Notices and hearings. Notices of adverse action, hearings, and appeals shall comply with the provisions of 904 KAR 2:046 and 904 KAR 2:055.

(9) Fee requirements. Each family receiving TCC shall be required to contribute toward the payment for child care based on the family's income.

(a) A minimum fee of one (1) percent of the family's gross income shall be charged for families who fall below the federal poverty income guidelines. A fee equivalent to seven and five-tenths (7.5) percent of gross income shall be charged for child care when the gross income exceeds the federal poverty guidelines as defined in 905 KAR 3:010 and 905 KAR 3:020.

(b) Individuals who fail to cooperate in paying required fees may, subject to notices and hearing requirements, lose eligibility for TCC for the period of time back fees are owed, unless satisfactory arrangements are made to make full payment.

(10) Recoupment. The following provisions apply to overpayments in TCC:

(a) Necessary action shall be taken promptly by the state IV-A agency to correct and recoup any overpayments.

(b) Overpayments, including assistance paid pending hearing decisions, shall be recovered from:

1. The responsible party;
2. The family unit which was overpaid;
3. The provider who was responsible for the overpayment;
4. Individuals who were members of the family when overpaid; or
5. Families which include members of a previously overpaid family.

(c) Overpayments shall be recovered through:

1. Repayment by the individual or child care provider to the cabinet; or
2. Reduction in child care payments; or
3. Reduction of AFDC benefits only upon a voluntary request of the recipient family.

(d) Repayment by the individual shall allow the recipient family to retain, for any month, a reasonable amount of funds.

(e) Underpayments and overpayments may be offset against each other in adjusting incorrect payments.

(f) Benefits shall not be suspended, reduced, discontinued or terminated until a decision is rendered after a hearing as specified in 904 KAR 2:055 requested within the timely notice period.

Section 10. Recoupment. The following provisions are effective for all overpayments discovered on or after April 1, 1982, regardless of when the overpayment occurred.

(1) Necessary action will be taken promptly to correct and recoup any overpayments.

(2) Overpayments, including assistance paid pending hearing decisions, shall be recovered:

(a) The claimant;

(b) The overpaid assistance unit;

(c) Any assistance unit of which a member of the overpaid assistance unit has subsequently become a member; or

(d) Any individual member of the overpaid assistance unit whether or not currently a recipient.

(3) Overpayments shall be recovered through:

(a) Repayment by the individual to the cabinet; or

(b) Reduction of future AFDC benefits, which shall result in the assistance group retaining, for the payment month, family income and liquid resources of not less than ninety (90) percent of the amount of assistance paid to a like size family with no income in accordance with Section 7 of this regulation; or

(c) Civil action in the court of appropriate jurisdiction.

(4) In cases which have both an overpayment and an underpayment, the cabinet shall offset one against the other in correcting the payment to current recipients.

(5) Neither reduction in future benefits nor civil action shall be taken except after notice and an opportunity for a fair hearing as specified in 904 KAR 2:055 is given and the administrative and judicial remedies have been exhausted or abandoned in accordance with Title 904, Chapter 2.

Section 11. Provisions contained in this regulation shall become effective February 1, 1991 [October 1, 1990].

Section 12. Material Incorporated by Reference. (1) Forms necessary for verification of child care and supportive service payments in the JOBS program are incorporated effective October 1, 1990.

(2) These forms may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

MIKE ROBINSON, Commissioner

HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: January 24, 1991

FILED WITH LRC: February 11, 1991 at 3 p.m.

STATEMENT OF EMERGENCY 907 KAR 1:004E

This emergency administrative regulation is being amended to comply with the Omnibus Budget Reconciliation Act of 1990 which requires states, effective January 1, 1991, to cover qualified Medicare beneficiaries (QMBs) at 100 percent of poverty and to exclude the Social Security cost of living increase during their eligibility determination until the month following the month in which revised poverty guidelines are published. The regulation is also amended to revise the definition of "otherwise available income for community spouses and to show that mandatory deductions may be excluded from income in the posteligibility process. It is necessary to promulgate this regulation on an emergency basis to comply with federal requirements in a timely manner. This emergency administrative regulation differs from the emergency administrative regulation on the same subject matter that was filed on July 19, 1990

since this emergency administrative regulation is amended to contain the above named changes. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler on or about January 1, 1991.

WALLACE G. WILKINSON, Governor
HARRY J. COWHERD, Secretary

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:004E. Resource and income standard of medically needy.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 435, 42 USC 1396a, b, c, d, p, r-5

EFFECTIVE: January 17, 1991

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance [in accordance with requirements of Title XIX of the Social Security Act]. KRS 205.520(3) empowers the cabinet, by regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provisions of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the resource and income standards by which eligibility of the medically needy is determined.

Section 1. Definitions. The following definitions shall be applicable:

(1) "Spouse" means a person legally married to another under state law.

(2) "Institutionalized spouse" means an individual who is in a medical institution or nursing facility, or participates in a home and community based services (HCBS) waiver program, with a spouse who is not in a medical institution or nursing facility or HCBS waiver program so long as such individual is likely to be in the medical institution or nursing facility or waiver program for at least thirty (30) consecutive days while the community spouse remains out of a medical institution or nursing facility or HCBS waiver program.

(3) "Community spouse" means the spouse of an institutionalized spouse, who remains at home in the community and is not living in a medical institution or nursing facility or participating in an HCBS waiver program.

(4) "Medical institution or nursing facility" means a hospital, skilled nursing facility, or intermediate care facility (including intermediate care facility for the mentally retarded).

(5) "Continuous period of institutionalization" means thirty (30) or more consecutive days of institutional care in a medical institution or nursing home (or both) and may include thirty (30) consecutive days of receipt of home and community based waiver services (or a combination of both). A continuous period of institutionalization terminates when an individual has been out of a medical institution or nursing facility, or HCBS waiver program, for thirty (30) consecutive days.

(6) "Likely to remain" in an institution means a determination by the cabinet based on a physician's written statement that an individual in a medical institution, nursing facility, or

HCBS waiver program is expected to remain in that setting or program for thirty (30) consecutive days.

(7) "Countable resources" are resources not subject to exclusion in the Medicaid Program.

(8) "State spousal resource standard" means the amount of couples' combined countable resources determined necessary by the cabinet for community spouses to maintain themselves in the community.

(9) "Spousal protected resource amounts" are resources deducted from couples' combined resources for community spouses in eligibility determinations for institutionalized spouses; amounts above spousal protected resource amounts are used to determine eligibility for institutionalized spouses.

(10) "Spousal resource allowances" means the differences in the dollar value of resources protected for community spouses and the value of the resources actually held in the name of community spouses.

(11) "Resource assessment" means the assessment, at the beginning of the first continuous period of institutionalization (beginning on or after September 30, 1989) of the institutionalized spouse upon request by either spouse, of the joint resources of a couple when a member of the couple enters a medical institution or nursing facility or becomes a participant in an HCBS waiver program.

(12) "Support right" means the right of institutionalized spouses to receive support from community spouses under state law.

(13) "Assigned support right" means the assignment of the support right of an institutionalized individual to the state or Medicaid program.

(14) "Undue hardship" means that Medicaid eligibility of the institutionalized spouse cannot be established on the basis of assigned support rights and the spouse is subject to discharge from the medical institution, nursing facility, or HCBS waiver program due to inability to pay.

(15) "Other family members" means children who are either minor or dependent, dependent parents and dependent siblings of either member of a couple and who reside with the community spouse.

(16) "Minors" means the couples' minor children (under age twenty-one (21)) who live with a community spouse and are being claimed as dependents by either spouse under the Internal Revenue Service Code (IRSC).

(17) "Dependent children" means the couples' children age twenty-one (21) and above who live with the community spouse and are claimed as dependents by either spouse under the IRSC.

(18) "Dependent parents" means parents of either member of a couple who live with the community spouse and are claimed as dependents by either spouse under the IRSC.

(19) "Dependent siblings" means a brother or sister of either member of a couple (including half-brothers and half-sisters and siblings gained through adoption) who reside with the community spouse and are claimed as dependents by either spouse under the IRSC.

(20) "Otherwise available income" means income to which community spouses have access and control. If the community spouse is working, the amount of mandatory deductions such as taxes is not considered available; court ordered payments and other obligations such as child support are also deducted from otherwise available income.

(21) "Gross income" means nonexcluded income which would be used to determine eligibility prior to income disregards.

(22) "Community spouse maintenance standard" means the income standard to which community spouses' income is compared for purposes of determining the amount of allowances used in the posteligibility calculation.

(23) "Other family members maintenance standard" means an amount equal to one-third (1/3) of the difference between the income of other family members and the standard maintenance amount.

(24) "Standard maintenance amount" means one-twelfth (1/12) of the income official poverty line (defined by the federal Office of Management and Budget and revised annually in accordance with sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981) for a family unit of two (2) members (with revisions of the official poverty line applied for medical assistance provided during and after the second calendar quarter that begins after the date of publication of the revisions) multiplied by 122 percent effective September 30, 1989, and multiplied by 133 percent effective July 1, 1991, and multiplied by 150 percent effective July 1, 1992.

(25) "Monthly income allowances" means amounts deducted in the posteligibility calculation for maintenance needs of community spouses and other family members. The allowances are based on the deficit remaining after spouses' and other family members' income is compared to appropriate maintenance needs standards.

(26) "Significant (or extreme) financial duress" exists when either member of a couple establishes to the satisfaction of a hearing officer that the community spouse needs income above the level permitted by the community spouse maintenance standard to provide for medical, remedial, or other support needs of the community spouse so as to permit the community spouse to remain in the community.

Section 2. Resource Limitations and Exclusions of the Medically Needy. The following provisions are applicable with regard to computation of allowable resources:

(1) The upper limit for resources for family size of one (1) and for family size of two (2) is set at \$2,000 and \$4,000 respectively, effective January 1, 1989, with fifty (50) dollars for each additional member.

(2) A homestead, occupied or abandoned, household equipment, and farm equipment without limitation on value are excluded from consideration.

(3) Equity of \$6,000 in income-producing, nonhomestead real property, business or nonbusiness, essential for self-support, is excluded from consideration. Effective with regard to determinations of eligibility made on or after May 1, 1990, the value of property (including the tools of a tradesperson and the machinery and livestock of a farmer) that is essential for self-support for the individual or spouse, or family group in the instance of families with children, and which is used in a trade or business or by the individual or member of the family group as an employee is excluded from consideration as a resource. In addition, for AFDC related MA only cases the value of otherwise countable real property (whether income producing or nonincome producing) may be

excluded from consideration for six (6) months if a good faith effort is being made to dispose of the property properly; an additional three (3) months may be allowed for the disposal at the request of the recipient if efforts to dispose of the property within the six (6) month period have been unsuccessful.

(4) Equity of \$4,500 in automobiles is excluded from consideration; however, if an automobile is used for employment, to obtain medical treatment of a specific or regulation medical problem, or if specially equipped (e.g., as for use by the handicapped) the total value of such automobile is excluded.

(5) Burial reserves of up to \$1,500 per individual, which may be in the form of burial agreement(s) (prepaid burials or similar arrangements), trust fund(s), life insurance policies, or other identifiable funds are excluded from consideration. The cash surrender value of life insurance is considered when determining the total value of burial reserves. When burial funds are commingled with other funds, the applicant has up to thirty (30) days to separately identify the burial reserve amount. Effective with regard to determinations of eligibility made on or after August 1, 1990, interest or other appreciation of value of an excluded burial space is excluded as income or a resource so long as such amount is left to accumulate as a part of the burial space.

(6) Burial spaces, plots, vaults, crypts, mausoleums, urns, caskets, and other repositories which are customarily and traditionally used for the remains of deceased persons are excluded from consideration as a countable resource without regard to value.

(7) Resources determined in accordance with subsections (3), (4), and (5) of this section, or Section 21 of this regulation, to be in excess of excluded amounts must be considered countable resources when determining whether the individual or family group exceeds the upper limits specified in subsection (1) of this section. If resources exceed the upper limits, the individual or family group is ineligible.

(8) The following exclusions are also applicable as stated:

(a) Proceeds from the sale of a home are excluded from consideration for three (3) months from date of receipt if used to purchase another home.

(b) Resources of a blind or disabled person necessary to fulfill an approved plan for achieving self-support are excluded from consideration.

(c) Payments or benefits from federal statutes, other than [Title XVI (Supplemental Security Income)], benefits are excluded from consideration (as either a resource or income) if precluded from consideration in supplemental security income [Title XVI] determinations of eligibility by the specific terms of the statute.

(d) Disaster relief assistance is excluded from consideration.

(e) Cash or in-kind replacement for repair or replacement of an excluded resource is excluded from consideration if used to repair or replace the excluded resource within nine (9) months of the date of receipt.

(f) Effective with regard to determinations of eligibility made on or after April 16, 1988, and applicable with regard to the usual three (3) month period for retroactive eligibility, the life interest that Medicaid applicants or

recipients may have in real estate or other property shall be excluded from consideration as an available resource.

(g) Effective with regard to determinations of eligibility for periods beginning on or after December 1, 1988 real property is excluded from consideration for adult medical assistance and state supplementation recipients if:

1. Such property is jointly owned and its sale would cause undue hardship due to loss of housing for the other owner or owners; or

2. Its sale is barred by a legal impediment; or

3. The owner's reasonable efforts to sell have been unsuccessful.

(h) Cash payments intended specifically to enable applicants or recipients to pay for medical or social services are not considered as available income or as a resource in the month of receipt or for one (1) calendar month following the month of receipt. If the cash is still being held at the beginning of the second month following its receipt, it will be considered a resource.

(i) Effective with regard to determinations of eligibility made on or after June 1, 1989, any amount received which is a result of an underpayment (i.e., which is a retroactive payment) of benefits from Title II (Federal Old Age, Survivors, and Disability Insurance Benefits) or Title XVI (Supplemental Security Income) is excluded as a resource for the first six (6) months following the month in which the amount is received or for the first nine (9) months following receipt if receipt is during the period of October 1, 1987 through September 30, 1989.

(j) Federal Republic of Germany reparation payments shall not be considered available income in the posteligibility treatment of income of individuals in nursing facilities or hospitals or who are receiving home and community based services under a waiver.

(k) Social Security cost of living adjustments on January 1 of each year shall not be considered as available income for qualified Medicare beneficiaries until after the month following the month in which the official poverty guideline promulgated by the Department of Health and Human Services, U.S. Government, is published.

Section 3. Income and Resource Exemptions. Income and resources which are exempted from consideration for purposes of computing eligibility for the comparable money payment program (Aid to Families With Dependent Children and Supplemental Security Income) shall be exempted from consideration by the cabinet, except that the AFDC earned income disregard (first thirty (30) dollars and one-third (1/3) of the remainder) may not be allowed in determining eligibility for medical assistance only.

Section 4. Income Limitations of the Medically Needy. Eligibility from the standpoint of income is determined by comparing adjusted income as defined in Section 5 of this regulation, of the applicant, applicant and spouse, or applicant, spouse and minor dependent children with the following scale of income protected for basic maintenance:

Size of Family	Annual	Monthly
1	\$2,600	\$217
2	3,200	267
3	3,700	308
4	4,600	383
5	5,400	450
6	6,100	508
7	6,800	567

For each additional member, \$720 annually or sixty (60) dollars monthly is added to the scale. The change shown in this section of the regulation shall be effective with regard to determinations of eligibility made on or after July 1, 1989.

Section 5. Additional Income Considerations. (1) In comparing income with the scale as contained in Section 4 of this regulation, gross income is adjusted as follows in all cases with exceptions as contained in Section 6 of this regulation:

(a) Effective with regard to determinations of eligibility made on or after October 1, 1989, in Aid to Families with Dependent Children (AFDC) related medical assistance cases, the standard work related expenses of adult members and out-of-school youth are deducted from gross earnings. For those with either full-time or part-time employment the standard work expense deduction is ninety (90) dollars per month. All earnings of an in-school child are disregarded. Full-time and part-time employment, and school attendance, shall be as defined in 904 KAR 2:016, Standards for need and amount; AFDC.

(b) Effective with regard to determinations of eligibility made on or after October 1, 1989, in AFDC related medical cases, dependent care as a work expense is allowed (but only when the dependent is included in the assistance unit) for full-time and part-time employment (as defined in 904 KAR 2:016, Standard for need and amount; AFDC). The dependent care work expense shall be deducted after all other disregards have been applied. The dependent care work expense allowed shall not exceed, per month, \$200 for full-time or part-time employment per child under age two (2), and \$175 for full-time employment or \$150 for part-time employment per child age two (2) and above and for each incapacitated adult.

(c) Effective with regard to determinations of eligibility made on or after October 1, 1989, in AFDC related medical assistance cases, any advanced payment or refund relating to the federal earned income tax credit shall be disregarded.

(2) The following special factors are applicable for pregnant women, infants and children eligible pursuant to Section 1902(1) of the Social Security Act:

(a) Effective with regard to determinations of eligibility made on or after July 1, 1990, pregnant women and children under age one (1) may have family income up to, but not to exceed, 185 percent and children age one (1) or over but under age six (6) may have family income up to, but not to exceed, 133 percent of the official poverty income guidelines as promulgated by the Department of Health and Human Services, United States Government, and revised annually, and the updated official poverty guidelines to be used for a year will be the latest poverty guidelines available as of March 1 of the particular state fiscal year;

(b) Pregnant women, infants and children who

would be eligible under provisions of 42 USC 1396a(1) [1902(1)] of the Social Security Act except for income in excess of the allowable standard may not become eligible by spending down to the official poverty guidelines;

(c) Effective with regard to determinations of eligibility made on or after June 1, 1989, available resources shall be disregarded;

(d) The Aid to Families with Dependent Children (AFDC) budgeting methodology (except for application of the AFDC earned income disregard of the first thirty (30) dollars and one-third (1/3) of the remainder) shall be used; and

(e) Changes of income that occur after the determination of eligibility of a pregnant woman shall not affect such pregnant woman's eligibility through the remainder of the pregnancy including the usual post partum period which ends at the end of the month containing the 60th day of a period beginning on the last day of her pregnancy.

(3) The following special income and resource limits and provisions shall be [are] applicable for determinations of eligibility of qualified Medicare beneficiaries for the special Medicare [Title XVIII] benefits described in 907 KAR 1:006, effective for determinations of eligibility made on or after January 1, 1989.

(a) The following income upper limits, shown as a percentage of the official poverty income level, shall be effective on the specified dates: January 1, 1990, ninety (90) percent; and January 1, 1991, 100 [ninety-five (95)] percent; and January 1, 1992, 100 percent.

(b) The official poverty income guidelines shall [will] be those promulgated by the Department of Health and Human Services, United States Government, and revised annually, and the updated official poverty guidelines to be used for a year shall [will] be the latest poverty guidelines available as of March 1 of the particular state fiscal year.

(c) The income disregards to be used will be those applicable in the federal Supplemental Security Income (SSI) program.

(d) Resources shall be limited to no more than twice the allowable amount for the federal Supplemental Security Income (SSI) program.

Section 6. Specified Individuals in Long-term Care Facilities. For aged, blind or disabled individuals in long-term care facilities not subject to treatment as the institutionalized spouse of a community spouse as shown in Section 21 of this regulation, the following requirements with respect to income limitations and treatment of income shall be applicable.

(1) In determining eligibility, the appropriate medically needy standard or special income level is used as are appropriate disregards and exclusions from income. In determining patient liability for the cost of institutional care, gross income is used as shown in subsections (2) and (3) of this section.

(2) Income protected for basic maintenance, effective March 1, 1991 [July 1, 1986], is forty (40) dollars monthly plus any mandatory, nondiscretionary deductions from income in lieu of the figure shown in Section 4 of this regulation. Mandatory nondiscretionary deductions include such items as minimum state and federal taxes, but does not include items such as court-ordered child support, alimony, and similar payments resulting from actions by

the recipient. All income in excess of the amount protected for basic maintenance [forty (40) dollars] is applied to the cost of care except as follows:

(a) Available income in excess of the basic maintenance allowance [forty (40) dollars] is first conserved as needed to provide for needs of the minor children up to the appropriate family size amount from the scale as shown in Section 4 of this regulation.

(b) Remaining available income is then applied to the incurred costs of medical and remedial care that are not subject to payment by a third party (except that, effective for determinations of eligibility for periods beginning on or after December 1, 1988, the incurred costs may be reimbursed under another public program of the state or political subdivision of the state), including Medicare and health insurance premiums and medical care recognized under state law but not covered under the state's Medicaid plan.

(3) The basic maintenance standard allowed the individual during the month of entrance into or exit from the long term care facility shall reasonably take into account home maintenance costs.

(4) When an individual loses eligibility for a supplementary payment due to entrance into a participating long term care facility, and the supplementary payment is not discontinued on a timely basis, the amount of any overpayment is considered as available income to offset the cost of care (to the Medical Assistance Program) if actually available for payment to the provider.

(5) Effective with regard to determinations of eligibility made on March 16, 1989 and thereafter, Supplemental Security Income (SSI) or state supplementation payments received by specified institutionalized Medicaid eligible individuals in accordance with 42 USC 1382 [Section 1611](e)(1)(G) [of the Social Security Act] shall be excluded from consideration as either income or a resource, and such payments may not be used in the posteligibility process to increase the patient liability.

Section 7. Spend-down Provisions. No technically eligible individual or family is required to utilize protected income for medical expenses before qualifying for medical assistance. Individuals with income in excess of the basic maintenance scale as contained in Section 4 of this regulation may qualify for medical assistance in any part of a three (3) month period in which medical expenses incurred have utilized all excess income anticipated to be in hand during that period; effective October 1, 1988, medical expenses incurred in periods prior to the quarter for which spend-down eligibility is being determined may be used to offset excess income so long as such medical expenses remain unpaid at the beginning of the quarter and have not previously been used as spend-down expenses. Effective for determinations of eligibility for periods beginning on or after February 1, 1989, the incurred costs may be reimbursed under another public program of the state or political subdivision of the state and still be considered incurred costs of the applicant or recipient.

Section 8. Consideration of State Supplementary Payments. For an individual receiving state supplementary payments, that

portion of the individual's income which is in excess of the basic maintenance standard is applied to the special need which results in the supplementary payment.

Section 9. Special Needs Contributions for Institutionalized Individuals. Voluntary payments made by a relative or other party on behalf of a long term care facility resident or patient shall not be considered as available income if made to obtain a special privilege, service, or item not covered by the Medical Assistance Program. Examples of such special services or items include television and telephone service, private room or bath, private duty nursing services, etc.

Section 10. Pass-through Cases. Increases in social security payments due to cost of living increases but for which the individual would be eligible for supplemental security income benefits or state supplementary payments, and which are received after April 1, 1977, shall be disregarded in determining eligibility for medical assistance benefits; such individuals shall remain eligible for the full scope of program benefits with no spend-down requirements. Beginning on November 1, 1986, the additional amount specified in 42 USC 1383c(b) [Section 12202 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA)] shall be disregarded, i.e., that amount of social security benefits to which certain widows or widowers were entitled as a result of the recomputation of benefits effective January 1, 1984, and except for which (and subsequent cost of living increases) such individuals would be eligible for federal supplemental security income benefits; eligibility as a result of such disregard shall not exist prior to July 1, 1986. To be eligible, applicants must apply by July 1, 1988.

Section 11. Relative Responsibility. For purposes of the Medical Assistance Program, spouses are considered responsible for spouses and parents are considered responsible for dependent minor children. Effective for determinations of eligibility made on or after December 1, 1987, children under age twenty-one (21) living with parents (but not including children age eighteen (18) and above who are blind or disabled) are considered dependent minor children for purposes of deeming of income and resources under the Medicaid Program even if such children are emancipated under state law. This responsibility, with regard to income and resources, is determined as follows:

(1) "Living with" is defined as sharing a common living arrangement or household, but not including living in the same room in a long term care facility. "Living apart" is defined as not sharing a common household, whether due to estrangement, disability, or illness. Effective July 1, 1987, a husband and wife sharing a room or comparable accommodation in a long term care facility may be considered to be "living with" each other after they have continuously shared such a room or accommodation for six (6) months, if treating such husband and wife as living apart would prevent either of them from receiving medical assistance.

(2) In cases of aged, blind, or disabled applicants or recipients living with their eligible spouse, total resources and adjusted

income of the couple is considered in relation to the resource and income limitations for a family size of two (2), or if other dependents live with the couple, the appropriate family size including the dependents.

(3) In cases of aged, blind or disabled applicants or recipients living with an ineligible spouse, income from the ineligible spouse shall be deemed as available to the eligible spouse as outlined below.

(a) Determine the potential spend-down amount of the eligible individual by comparing the countable income to the Medically Needy Income Level (MNIL) for one (1) as shown in Section 4 of this regulation.

(b) Allocate to other dependents in the household from the ineligible spouse income in an amount equal to one-half (1/2) of the MNIL for a family size of one (1) for each dependent.

(c) If the ineligible spouse's income is more than one-half (1/2) of the MNIL for a family size of one (1), combine the income of the ineligible spouse with that of the eligible individual and compare that figure with the MNIL for a couple to determine continuing eligibility or the spend-down amount. Effective December 1, 1989, if the ineligible spouse's income is less than one-half (1/2) of the MNIL for a family size of one (1), the income is disregarded and the income of the eligible individual is compared with the MNIL for a family size of one (1).

(d) Compare the amount resulting from paragraph (a) of this subsection with the result of paragraph (c) of this subsection and determine eligibility using the spend-down amount, if any, which is greater.

(e) Resources shall be considered in the same manner as for an eligible spouse.

(4) In cases of aged, blind, or disabled couples, living apart for any reason other than institutionalization, both of whom are concurrently applying for or receiving MA only, income and resources are considered in relation to resource and income limitations for a family size of two (2), or if other dependents live with either spouse, the family size including such dependents, but only for the first six (6) months after the month of separation, that such couple lives apart; however, if mutual consideration of income and resources causes the individuals to lose eligibility as a couple, eligibility for the individuals is determined in accordance with subsection (5) of this section. If the separation is due to the institutionalization of a spouse, mutual consideration of income for the institutionalized spouse ceases in the month of separation and for the community spouse in the month after the month of separation but resources are considered mutually available to each other the month of separation, and for the six (6) months following that month unless such would act to preclude eligibility of the individual in long-term care (except when the resource rule shown in Section 21 of this regulation is applicable due to a continuous period of institutionalization beginning on or after September 30, 1989).

(5) In cases of an aged, blind, or disabled individual living apart from a spouse (for a reason other than institutionalization) who is not a recipient of MA only, eligibility is determined on a couple basis for the month of separation and as a single individual after the

month of separation.

(6) For an individual whose case is being worked as if he were a single individual due to living apart from his spouse, as shown in Section 11(4) and (5) of this regulation, who has jointly held resources with his spouse, one-half (1/2) of the jointly held resource would be considered a resource; except that the entire amount of a jointly held checking or savings account is considered a resource if the resource may be accessed independently of the spouse.

(7) Total resources and adjusted income of parent(s) and children for whom application is made is considered in relation to limitations for family size. Excluded, however, is the income and resources of an SSI parent and the SSI essential person spouse whose medical assistance eligibility is based on inclusion in the SSI case. Resources and income of an SSI essential person, spouse or nonspouse, whose medical assistance eligibility is not based on inclusion in the SSI case must be considered.

(8) In cases of a blind or disabled child under eighteen (18) living with his parent(s) (including stepparent, if applicable), total resources and adjusted income of the parent(s) is related to limitations for family size, including the applicant or recipient child and other dependent children of parent using the adult scale. The income and resources of the parent(s) shall also be considered available to such child who is aged eighteen (18) through twenty-one (21), if in school, when to do so will work to the child's benefit and the individual was aged eighteen (18) through twenty-one (21) in September, 1980, and was MA eligible at that time.

(9) Income and resources of parent(s) are not considered available to a child living apart from the parent(s), but any continuing contribution actually made is considered as income. Living apart may mean living in a medical institution, special school or in foster care and such status continues even if the child makes visits to the parent(s) home. For comparison with the resource and income limitations, the child's individual resources and income are considered in relation to family size of one (1). Effective with regard to determinations of eligibility for periods beginning on or after December 1, 1988, the following criteria should be used to determine whether a child who has been living with his parents and is institutionalized in a psychiatric facility is to be considered as living apart from his parents: a child is to be considered as living with his parents unless he has been in the facility for thirty (30) or more days or a physician specifies that it is anticipated he will remain in the facility for thirty (30) or more days (regardless of whether the child actually does so); a child who is institutionalized in a psychiatric facility but is legally committed to or in the custody of the Cabinet for Human Resources is not to be considered as living with his parents.

(10) When a recipient (but not including a child) in a family case has income and resources considered in relation to family size and enters a long term care facility, his income and resources are considered in the same manner as previously for up to one (1) year with, effective with regard to determinations of eligibility made on or after March 1, 1991

[February 1, 1988], the individual allowed the [forty (40) dollars as his] basic maintenance standard as shown in Section 6(2) of this regulation. When a child in a family case is in the long term care facility, eligibility of the child is determined in the same manner for up to a year but his liability for the cost of care is determined by allowing to the child from his own income the basic maintenance standard as shown in Section 6(2) of this regulation [forty (40) dollars] and considering the remainder available for the cost of care. (Note: in this situation any welfare payment made to the child is disregarded when determining liability for cost of care.) The eligibility of the individual, with regard to income and resources, shall be determined on the basis of living apart from the other family members whenever it becomes apparent that the separation will last for more than one (1) year.

Section 12. Treatment of Income of the Stepparent or Parent/Legal Guardian of a Minor Parent/Legal Guardian (referred to as a "Grandparent") and Effect on Eligibility of the Assistance Group Effective with Regard to Determinations of Eligibility Made On or After June 1, 1989. An incapacitated (as determined by the department) stepparent's income, or a grandparent's income, is considered in the same manner as for a parent if the stepparent or grandparent is included in the family case. When the stepparent or grandparent living in the home is not being included in the family case, the stepparent's gross income is considered available to the spouse or the grandparent's gross income is considered available to the minor parent in accordance with the policies set forth in this section.

(1) Disregards/exclusions from income. The following disregards/exclusions from income shall be applied:

(a) The first seventy-five (75) dollars of the gross earned income of the stepparent or grandparent who is employed full time or part time (with full-time and part-time employment as defined in Section 5(1) of this regulation).

(b) An amount equal to the medically needy income limitations scale as shown in Section 4 of this regulation for the appropriate family size, for the support of the stepparent or grandparent and any other individuals (not including the spouse or minor parent) living in the home but whose needs are not taken into consideration in the medical assistance eligibility determination and are claimed by the stepparent or grandparent as dependents for purposes of determining his federal personal income tax liability.

(c) Any amount actually paid by the stepparent or grandparent to individuals not living in the home who are claimed by him as dependents for purposes of determining his personal income tax liability.

(d) Payments by the stepparent or grandparent for alimony or child support with respect to individuals not living in the household.

(e) Income of a stepparent or grandparent receiving supplemental security income.

(f) Verified medical expenses for the stepparent or grandparent and his dependents in the home.

(2) Determining eligibility of the grandchild(ren) and stepchild(ren). When a stepparent or grandparent has available income

remaining after disregards/exclusions are applied, the income may be deemed to the spouse (of the stepparent) or minor parent (child of the grandparent) but not to the stepchild(ren) or grandchild(ren). Eligibility of the stepchild(ren) or grandchild(ren) is determined in the following manner in order to take this requirement into consideration: consider only the income of the grandchild(ren) and minor parent, or stepchild(ren) and parent (spouse of the stepparent) as appropriate. The budget size would include the child(ren) and parent. If there is no excess, the child(ren) is eligible; if there is an excess, the excess amount may be spent down in the usual manner.

(3)(a) To determine separate eligibility of the minor parent (of the grandchild) or spouse (of a stepparent) when the eligibility of the grandparent or stepparent is not to be determined, consider the income of the child(ren) and his parent, and the actual amount available for deeming from the grandparent or stepparent. The budget size would include the child(ren) and parent (but not the grandparent or stepparent). If there is no excess, the minor parent or spouse (of a stepparent) is eligible; if there is an excess, the excess amount may be spent down in the usual manner.

(b) When the grandparent (of a minor parent) or the stepparent (spouse of the parent with children) are to be included in the case, eligibility of the minor parent or spouse cannot be determined separately but must be determined in combination with that of the grandparent or stepparent. The combined eligibility of the minor parent and grandparent or spouse and incapacitated stepparent is determined in the usual way including the available income of the grandparent or stepparent, the minor parent or spouse of the stepparent, and the grandchild(ren) or stepchild(ren) as appropriate. When the grandparent or incapacitated stepparent is included in the case, the amount excluded for the needs of the grandparent or stepparent in the determination of available income in subsection (1) of this section must be considered as available income for purposes of this determination of eligibility. If there is no excess, the minor parent and grandparent or spouse and incapacitated stepparent are eligible; if there is an excess, the excess amount may be spent down in the usual manner.

(4) When determining eligibility of individuals or family groups with excess income, uncovered incurred medical expenses of all members of the budget unit (and dependents of members of the budget unit whose needs are considered when determining the eligibility of that member) may be used to meet the spend-down amount(s).

Section 13. Companion Cases. When spouses or parent(s) and children living in the same household apply separately for assistance, relative responsibility must be taken into consideration.

(1) In the case of an application for assistance for a dependent child(ren), the income, resources and needs of the parent(s) must be included in the determination of need of the child(ren) even when the parent(s) applies for assistance for himself on the basis of age, blindness, or disability (except as shown in subsection (3) of this section).

(2) In the case of a spouse, income and resources of both spouses are combined and compared against the medically needy income and resources limits for a family size of two (2) even though a separate determination of eligibility shall be made for each individual.

(3) In the case of families with children with a parent eligible for supplemental security income (SSI), neither the income, resources, nor needs of the SSI eligible individual are to be included in the determination of eligibility of the children.

(4) A parent in a family case may request that one (1) or more children be technically excluded from the determination of eligibility due to income while a regular application for Medicaid eligibility is processed for other children in the family group. In this circumstance, the income and resources of the technically excluded child(ren) and the technically excluded child(ren)'s needs are excluded in the budgeting process when determining eligibility of the family group. A separate spend-down case(s) may then be established for the technically excluded child(ren); the income, resources and needs of the responsible relative or parent are included in the budget in accordance with usual criteria, and income/resources and needs of siblings in the other case may also be included in budgeting for the spend-down case if that works to the advantage of the technically excluded child(ren) for whom eligibility is being determined in the spend-down case. Excess income in the spend-down case may be spent-down using uncovered incurred medical care costs of any member of the family included in the budgeting process for the spend-down case.

Section 14. Treatment of Lump-sum Income. The following policy is effective with regard to determinations of eligibility made on or after August 1, 1990: for adult related cases, lump-sum income is counted as income in the month received to the extent feasible; any portion of the income remaining is considered as a resource for the following months and considered in relation to resource limitations; the exception to the treatment of lump sum income is specified in Section 2(8)(i) of this regulation; for AFDC related cases, lump sum income is divided by the medically needy income level and prorated over the resultant number of months. Effective February 1, 1989, lump sum income for individuals eligible under the federal poverty level standards specified in Section 5(2) and (3) of this regulation would be divided by the appropriate standard for the eligible group and prorated over the resultant number of months.

Section 15. Transferred Resources. (1) Effective for determinations of eligibility made on or after October 1, 1989, an individual who transferred property on or before June 30, 1988 for less than fair market value must have a period of ineligibility for medical assistance computed beginning with the month in which the resources were transferred. The period of ineligibility shall be equal to the lesser of twenty-four (24) months or the number of months derived by deducting from the uncompensated excess value the actual cost of care on a monthly basis if the individual is institutionalized or \$500 for each month from the month of transfer if not institutionalized.

(2) Effective for determinations of eligibility on or after October 1, 1989, when an institutionalized individual (defined as an individual in a skilled nursing facility, general intermediate care facility, or a participant in the home and community based services waiver program) applies for medical assistance a period of ineligibility for payments for such service must be computed if at any time during the thirty (30) month period immediately preceding the application (but on or after July 1, 1988) the individual (or his spouse with regard to transfers occurring after December 19, 1989) disposed of property for less than fair market value. The period of ineligibility for such service (beginning with the month in which the resources were transferred) shall be equal to the lesser of thirty (30) months or the number of months derived by dividing the total uncompensated value of the resources so transferred by the average cost, to a private patient at the time of the application, of nursing facility services in the state (either intermediate care or skilled nursing care as appropriate for the level of care).

(3) An individual shall not be ineligible for medical assistance or an institutional type of service by virtue of subsection (1) or (2) of this section to the extent that the conditions specified in 42 USC 1396p [Section 1917](c)(2)(B), (C) and (D) of the Social Security Act] or Section 21 of this regulation are met, nor shall an individual be ineligible for medical assistance or an institutional type of service due to transfer of resources for less than fair market value except in accordance with this section.

(4) The disposal of a resource, including liquid assets, at less than fair market value shall be presumed to be for the purpose of establishing eligibility unless the individual shows the transfer was in accordance with 42 USC 1396p [Section 1917](c)(2)(B) or (C)(i) [of the Social Security Act] or presents convincing evidence that the disposal was exclusively for some other purpose. If the purpose of the transfer is in accordance with 42 USC 1396p [Section 1917](c)(2)(B) or (C)(i) or is for some reason other than to qualify for medical assistance or if the transferred resource was considered an excluded resource at the time it was transferred, the value of the transferred resource is disregarded. If the resource was transferred for an amount equal to at least the assessed value for tax purposes, the resource will be considered as being disposed of for fair market value. Notwithstanding the preceding, if the assessed agricultural value is used for tax purposes the transfer is required to be for an amount equal to the fair market value.

(5) After determining that the purpose of the transfer was to become or remain eligible, the cabinet shall first add the uncompensated equity value of the transferred resource to other currently held resources to determine if retention of the property would have resulted in ineligibility. For this purpose, the resource considered available shall be the type of resource it was prior to transfer, e.g., if nonhomestead property was transferred, the uncompensated equity value of the transferred property would be counted against the permissible amount for nonhomestead property. If retention of the resource would not have

resulted in ineligibility, the value of the transferred resource would thereafter be disregarded.

(6) If retention would result in ineligibility, the cabinet will compute a period of ineligibility for medical assistance or an institutional type of service as provided for in subsections (1) and (2) of this section.

(7) The uncompensated value may be excluded from consideration when good cause exists. A waiver of consideration of the uncompensated amount will be granted subject to the following criteria:

(a) "Good cause" means that an expense (or loss) was incurred by the individual or family group due to a natural disaster, fire, flood, storm or earthquake; or illness resulting from accident or disease; or hospitalization or death of a member of the immediate family; or civil disorder or other disruption resulting in vandalism, home explosions, or theft of essential household items.

(b) The exclusion may not exceed the amount of the incurred expense or loss; the amount of the uncompensated value to be excluded cannot include any amount which is payable by Medicaid, Medicare, or other insurance.

Section 16. Special Provisions for AIS/MR Recipients. Medical assistance eligibility for participants in the program of alternative intermediate services for the mentally retarded (AIS/MR) shall be determined taking into consideration the special provisions contained in this section and in Section 21 of this regulation.

(1) Usual institutional deeming rules shall be applicable.

(2) AIS/MR services program participants who participate in the AIS/MR program for thirty (30) consecutive days (including any actual days of institutionalization within that period) and who have income not in excess of 300 percent of the SSI standard for an individual shall be determined to be eligible as categorically needy under a special income level (i.e., the special income level is 300 percent of the SSI standard). Income protected for basic maintenance of the AIS/MR participant in the posteligibility determination of patient liability for individuals eligible as medically needy or on the basis of the special income level of 300 percent of the federal SSI standard shall be the standard for the federal supplemental security income program in addition to the SSI general exclusion.

(3) If an AIS/MR services program participant has income in excess of 300 percent of the SSI standard, eligibility of the participant is determined in the usual manner for an individual who is institutionalized, with the cost of AIS/MR services projected if eligibility is determined on a monthly basis.

(4) Eligibility shall continue on the same basis as for an institutionalized individual when the cost of care is greater than the recipient's adjusted monthly income or the recipient is eligible based on the special income level of 300 percent of the SSI level as specified in 907 KAR 1:011, Technical eligibility requirements.

(5) In the posteligibility determination of available income the personal needs allowance includes, effective March 1, 1991, any mandatory, nondiscretionary deductions from

income (such as state and federal taxes but not including such items as court-ordered child support, alimony, and similar payments resulting from actions by the recipient).

Section 17. Special Provisions for Hospice Recipients. Medical assistance eligibility for participants under the Medicaid hospice benefit shall be determined (when necessary to establish eligibility for medical assistance benefits for cases with income in excess of the usual basic maintenance standard) taking into consideration the special provisions contained in this section.

(1) Income protected for basic maintenance of the hospice participant in the posteligibility determination of patient liability for noninstitutionalized individuals eligible on the basis of the special income level of 300 percent of the federal SSI standard shall be the standard for the federal supplemental security income (SSI) program in addition to the SSI general exclusion. For the noninstitutionalized medically needy participants (all of whom must spend-down on a quarterly basis), the amount protected for basic maintenance is the usual medically needy standard as shown in Section 4 of this regulation plus the SSI general exclusion. For the institutionalized medically needy the amount protected for basic maintenance in the eligibility determination is the medically needy standard for the appropriate family size plus the SSI general exclusion. If a hospice participant is institutionalized in a long-term care facility, the basic maintenance amount is forty (40) dollars per month.

(2) When eligibility is determined for an institutionalized monthly spend-down case, the attributed cost of care against which monthly available income of the hospice participant shall be applied shall be the hospice routine home care per diem (for the hospice providing care) as established by the Medicare program plus the room and board rate for the appropriate level of care (i.e., skilled nursing or intermediate care).

(3) Eligibility shall continue on the same monthly basis as for an institutionalized individual when the recipient is eligible based on the special income level of 300 percent of the SSI level as specified in 907 KAR 1:011, Technical eligibility requirements.

(4) A hospice participant may be eligible for benefits based on this section only if he has elected coverage under the Medicaid hospice benefit rather than the regular Medicaid program.

(5) Usual institutional deeming rules shall be applicable with regard to the categorically needy including all participants eligible on the basis of the special income level of 300 percent of the SSI standard. Community deeming procedures are used for all medically needy individuals not eligible under the special income level.

(6) In the posteligibility determination of available income the personal needs allowance includes, effective March 1, 1991, any mandatory, nondiscretionary deductions from income (such as state and federal taxes but not including such items as child support, alimony, and similar payments resulting from actions by the recipient).

Section 18. Special Provisions for Recipients Participating in the Home and Community Based Services Waiver Program. Medical assistance

eligibility for participants under the home and community based (HCB) services waiver program shall be determined (when necessary to establish eligibility for medical assistance benefits for cases with income in excess of the usual basic maintenance standard) taking into consideration the special provisions contained in this section and in Section 21 of this regulation.

(1) Income protected for basic maintenance of HCB services program participants who are eligible as medically needy or under the special income level shown in this section shall be the standard used for an individual in the federal supplemental security income (SSI) program in addition to the SSI general exclusion.

(2) HCB services program participants who participate in the HCB program for thirty (30) consecutive days (including any actual days of institutionalization within that period) and who have income not in excess of 300 percent of the SSI standard for an individual shall be determined to be eligible as categorically needy under a special income level (i.e., the special income level is 300 percent of the SSI standard).

(3) If an HCB services program participant has income in excess of 300 percent of the SSI standard, eligibility of the participant is determined in the usual manner for an individual who is institutionalized, with the cost of HCB services projected if eligibility is determined on a monthly basis.

(4) Usual institutional deeming rules shall be applicable.

(5) In the posteligibility determination of available income the personal needs allowance includes, effective March 1, 1991, any mandatory, nondiscretionary deductions from income (such as state and federal taxes but not including such items as child support, alimony, and similar payments resulting from actions by the recipient).

Section 19. Treatment of Potential Payments from Medicaid Qualifying Trusts. When an individual (or his spouse for the individual's benefit) creates (other than by will) a trust (or similar legal device) with amounts payable to the same individual, such trust shall be considered a "Medicaid qualifying trust" if the trustee(s) of the trust are permitted to exercise discretion as to the amount of the payments from the trust to be paid to the individual. In this circumstance the amount considered available to the trust beneficiary shall be the maximum amount the trustee(s) may (using the trustee's discretion) pay in accordance with the terms of the trust, regardless of the amount actually paid. The cabinet may, however, consider as available only that amount actually paid if to do otherwise would create an undue hardship upon the individual; the criteria for determining "undue hardship" shall be established by the cabinet.

Section 20. Resource Assessment. Pursuant to 42 USC 1396r-5 [Section 1924](c)(1)(B) [of the Social Security Act as amended], an assessment of the joint resources of an institutionalized spouse and the community spouse shall be made upon request of either spouse at the beginning of a continuous period of institutionalization of the institutionalized spouse and upon receipt of relevant documentation of resources. The cabinet shall complete the assessment within forty-five (45) days when the necessary

documentation or verification is provided in a timely manner. When the resource assessment is complete, each spouse shall receive a copy of the assessment and notification that the right of appeal of such assessment shall exist at such time as the institutionalized spouse applies for medical assistance.

Section 21. Protection of Income and Resources of Couple for Maintenance of Community Spouse. 42 USC 1396r-5 [Section 1924 of the Social Security Act, as amended], provides for special treatment of income and resources for certain institutionalized spouses. The income eligibility and posteligibility provisions are effective October 1, 1989 for persons institutionalized on or after September 30, 1989. The resource provisions are effective with regard to determinations of eligibility made on or after October 1, 1989 for institutionalized persons beginning a continuous period of institutionalization on or after September 30, 1989.

(1) Supersedes other provisions. The provisions of this section supersede any other provisions of this regulation which is inconsistent with them.

(2) Nonapplicability. Except as specifically provided, this section does not apply to the determination of what constitutes income or resource or the methodology and standards for determining and evaluating income and resources.

(3) Provisions for treatment of income. The following income provisions shall be applicable.

(a) Separate treatment of income. During any month in which an institutionalized spouse is in the institution, except as provided in paragraph (b) of this subsection, no income of the community spouse shall be deemed available to the institutionalized spouse.

(b) Attribution of income. In determining the income of an institutionalized spouse or community spouse, after the institutionalized spouse has been determined or redetermined to be eligible for medical assistance, except as otherwise provided in this section and regardless of any state laws relating to community property or the division of marital property, the provisions of 42 USC 1396r-5 [Section 1924](b)(2)(A), (B), (C), and (D) [of the Social Security Act, as amended], shall be applicable.

(4) Provisions for treatment of resources. The following resource provisions shall be applicable:

(a) Attribution of resources at time of initial eligibility determinations. In determining the resources of an institutionalized spouse at the time of application for benefits under Medicaid, regardless of any state laws relating to community property or the division of marital property, except as provided in paragraph (b) of this subsection, all the resources held by either the institutionalized spouse, community spouse, or both, shall be considered to be available to the institutionalized spouse.

(b) Nonattributed resources. The following protected amounts shall be deducted from couples' combined countable resources at time of determination of initial eligibility of the institutionalized spouse:

1. The state spousal resource standard; and, if applicable

2. Additional amounts transferred under a

court support order; or, if applicable

3. An additional amount designated by a hearing officer.

(c) Exceptions to resource ineligibility by assignment of support rights. The institutionalized spouse shall not be ineligible by reason of resources determined under paragraphs (a) and (b) of this subsection to be available for the cost of care in the following circumstances:

1. When the institutionalized spouse has assigned to the cabinet any rights to support from the community spouse;

2. When the institutionalized spouse lacks the ability to execute an assignment due to physical or mental impairment but the state has the right to bring a support proceeding against a community spouse without such assignment; or

3. When the cabinet determines that denial of eligibility would work an undue hardship.

(d) Separate treatment of resources after eligibility for benefits established. During the continuous period in which an institutionalized spouse is in an institution and after the month in which an institutionalized spouse is determined to be eligible for Medicaid benefits, no resources of the community spouse shall be deemed available to the institutionalized spouse. Resources of the institutionalized spouse protected for the needs of the community spouse but not transferred to the community spouse by the time of the second regularly scheduled redetermination of eligibility (i.e., one (1) year from the month of the initial determination of eligibility) shall be considered available to the institutionalized spouse.

(e) Excess value of an automobile. The equity value of an automobile in excess of prescribed limits which would otherwise be considered available is not included as a countable resource.

(5) Protecting income for the community spouse. The following provisions are applicable with regard to protecting income for the community spouse:

(a) The following allowances are to be offset from income of an institutionalized spouse. After an institutionalized spouse is determined or redetermined to be eligible for Medicaid, in determining the amount of the spouse's income that is to be applied monthly to payment for the costs of care in the institution, there shall be deducted from the spouse's monthly income the following amounts in the following order:

1. A personal needs allowance of forty (40) dollars plus, effective March 1, 1991, any mandatory, nondiscretionary deductions from income (such as court-ordered child support, alimony and similar payments resulting from actions by the recipient);

2. A community spouse monthly income allowance, but only to the extent income of the institutionalized spouse is made available to (or for the benefit of) the community spouse;

3. A family allowance determined in accordance with the definition of other family members maintenance standard; and

4. Amounts for incurred expenses for medical or remedial care for the institutionalized spouse.

(b) Establishment of the community spouse maintenance standard. The community spouse maintenance standard is set at \$1,500 per month, to be increased for each calendar year after

1989 by the same percentage as the percentage increase in the consumer price index for all urban consumers (all items; U.S. city average) between September 1988 and the September before the calendar year involved; the maintenance standard may be increased for an individual; as appropriate, by a hearing officer.

(c) Court ordered support. If a court has entered an order against an institutionalized spouse for monthly income for the support of the community spouse, the community spouse monthly income allowance for the spouse shall not be less than the amount of the monthly income so ordered.

(6) Permitting transfer of resources to community spouse. The following provisions shall be applicable with regard to transfers of resources from an institutionalized spouse.

(a) Permitted transfer. An institutionalized spouse may, without regard to the usual prohibition against disposal of assets for less than fair market value, transfer to the community spouse (or to another for the sole benefit of the community spouse) an amount equal to the community spouse resource allowance, but only to the extent the resources of the institutionalized spouse are transferred to (or for the sole benefit of) the community spouse. The transfer shall be made as soon as practicable after the initial determination of eligibility, taking into account such time as may be necessary to obtain a court order under paragraph (c) of this subsection.

(b) Establishment of the community spouse resource allowance. The community spouse resource allowance is set at \$60,000, to be increased for each calendar year after 1989 by the same percentage as the percentage increase in the consumer price index for all urban consumers (all items; U.S. city average) between September 1988 and the September before the calendar year involved; for an individual, the allowance may be a higher amount established by a hearing officer, or a higher amount transferred under a court order as specified in paragraph (c) of this subsection.

(c) Transfers under court orders. As specified in 42 USC 1396r- [Section 1924] (f)(3) [of the Social Security Act, as amended], if a court has entered an order against an institutionalized spouse for the support of a community spouse, the usual prohibition against disposal of assets for less than fair market value shall not apply to amounts of resources transferred pursuant to such order for the support of the spouse of a family member.

(7) Prohibited transfers. Except for transfers of resources to the community spouse as specified in subsection (6) of this section, the transfer of resource policies defined in Section 15 of this regulation apply.

(8) Requirement for notice and fair hearings. The following notice and fair hearings requirements are applicable:

(a) Notice. Upon a determination of eligibility for Medicaid of an institutionalized spouse or a request by either the institutionalized spouse, or the community spouse, or a representative acting on behalf of either spouse, the cabinet shall notify both spouses (if upon determination of Medicaid eligibility of the institutionalized spouse) or the spouse making the request (if that is the situation) of the amount of the community spouse monthly income allowance, of the amount of any

family allowance, of the method for computing the amount of the community spouse resources allowance, and of the spouse's right to a fair hearing under this subsection respecting ownership or availability of income or resources, and the determination of the community spouse monthly income or resource allowance.

(b)1. Fair hearings. Both the institutionalized spouse and community spouse are entitled to a fair hearing if dissatisfied with the determination of the following:

a. The community spouse monthly income allowance;

b. The amount of monthly income determined to be otherwise available to the community spouse;

c. The attribution of resources at time of initial eligibility determination; or

d. The determination of the community spouse resource allowance.

2. Revision of monthly maintenance needs allowance. If either the institutionalized spouse or community spouse establishes during the hearing that the community spouse needs income, above the level otherwise provided by the monthly maintenance needs allowance, due to exceptional circumstances resulting in significant financial duress, there shall be substituted, for the monthly maintenance needs allowance otherwise provided for, an amount adequate to provide such additional income as is necessary.

3. Revision of community spouse resource allowance. If either spouse establishes during the hearing process that the community spouse resource allowance (in relation to the amount of income generated by such an allowance) is inadequate to raise the community spouse's income to the monthly maintenance needs allowance, there shall be substituted, for the community spouse resource allowance otherwise allowed, an amount adequate to provide such a monthly maintenance needs allowance.

Section 22. Effective Date. The amendments to this regulation shall be effective with regard to determinations of eligibility made on or after January 1, 1991 except as specified in Sections 6, 16, 17, 18, and 21 of this regulation.

ROY BUTLER, Commissioner

HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: January 3, 1991

FILED WITH LRC: January 17, 1991 at 9 a.m.

STATEMENT OF EMERGENCY 907 KAR 1:011E

This emergency administrative regulation is being amended to comply with mandates contained in the Omnibus Budget Reconciliation Act of 1990 including the requirement for extended eligibility for infants under age one (1); mandatory coverage of individuals related to implementation of the work supplementation program is also included. This regulation must be promulgated on an emergency basis to comply with federal requirements on a timely basis. This emergency administrative regulation differs from the emergency administrative regulation on the same subject matter that was filed on July 19, 1990. This emergency administrative regulation is amended to contain the above named mandated changes as a result of the Omnibus

Budget Reconciliation Act of 1990 and implementation of the work supplementation program. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler on or about January 1, 1991.

WALLACE G. WILKINSON, Governor
HARRY J. COWHERD, Secretary

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:011E. Technical eligibility requirements.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 435.45, CFR 233.100, 42 USC 402, 416, 423, 1382c, 1395i, 1396a, b, c, d, PL 99-603

EFFECTIVE: January 17, 1991

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, referred to as MA, to Kentucky's indigent citizenry. This regulation sets forth the technical eligibility requirements of the MA Program.

Section 1. The Categorically Needy. All individuals receiving Aid to Families with Dependent Children, Title IV-E benefits, Supplemental Security Income or Optional or Mandatory State Supplementation shall be [are] eligible for MA as categorically needy individuals. In addition, the following classifications of needy persons shall be [are] included in the program as categorically needy and thus eligible for MA participation.

(1) Children in foster family care or private nonprofit child caring institutions dependent in whole or in part on a governmental or private agency;

(2) Children in psychiatric hospitals or medical institutions for the mentally retarded;

(3) Pregnant women;

(4) Children of unemployed parents;

(5) Children in subsidized adoptions dependent in whole or in part on a governmental agency;

(6) Families terminated from the Aid to Families with Dependent Children (AFDC) program because of increased earnings, hours of employment or loss of earnings disregards;

(7) Children (but not their parents) who meet the income and resource requirements of the Aid to Families with Dependent Children program, who were born after September 30, 1983 and who are under the age of five (5); and effective July 1, 1987, children (but not their parents) who meet the income and resource requirements of the Aid to Families with Dependent Children Program, who are under eighteen (18) years of age (or under age nineteen (19) if a full-time student in a secondary school or the equivalent level of vocational or technical training and if expected to complete the program before age nineteen (19));

(8) A child(ren) born to a woman eligible for and receiving medical assistance, so long as the child(ren) has not reached his first birthday,

resides in the household of the woman, and the woman remains (or would remain if pregnant) eligible for such assistance. In this situation, an application is deemed to have been made and the child found eligible for MA as of the date of birth;

(9) Effective June 1, 1987, individuals in institutions meeting appropriate patient status criteria who (if not institutionalized) would not be eligible for supplemental security income (SSI) or optional state supplementation benefits due to income, shall [may] be eligible under a special income level which is set at 300 percent of the SSI benefit amount payable for an individual with no income. Eligibility for similar hospice participants and similar participants in the waiver projects of home and community based services for the mentally retarded and the aged, blind or disabled shall [may] also be determined under this provision. Eligibility of an individual whose gross income exceeds 300 percent of the previously specified SSI benefit amount shall [may] not be determined in accordance with this provision;

(10) Effective July 1, 1987, qualified severely impaired individuals as specified in 42 USC 1396a(a)(10)(A)(i)(II) [Section 9404 of P.L. 99-509] and Sections 2, 3 and 4 of P.L. 99-643 (to the extent such coverage is mandatory in this state);

(11) Effective July 1, 1987, individuals who lose SSI eligibility but would be eligible for SSI benefits except for entitlement to or an increase in child's insurance benefits based on disability as specified in Section 6 of P.L. 99-643;

(12) Effective February 1, 1989, individuals specified in Section 9116 of P.L. 100-203 who lose SSI or state supplementation payments as a result of receipt of benefits under 42 USC 402(e) or (f) [Section 202(e) or (f) of the Social Security Act], would be eligible for SSI or SSP except for such benefits, and are not entitled to hospital insurance benefits under the Medicare program; [Part A of Title XVIII; and]

(13) Effective with regard to determinations of eligibility for periods beginning on or after July 1, 1990, women during pregnancy (and as though pregnant through the end of the month containing the 60th day of a period beginning on the last day of pregnancy), and infants and children under six (6) years of age, as specified in 42 USC 1396a(l)(1) [Section 1902(l) of the Social Security Act], subject to the following:

(a) Pregnant women, infants and children are required to meet the income requirements for this eligibility group as specified in 907 KAR 1:004, Resource and income standard of medically needy; and

(b) When an infant or child eligible under this provision is receiving covered inpatient services on a birthday which will make him ineligible due to age, the infant or child will remain eligible until the end of the stay for which the covered inpatient services are furnished so long as the infant or child remains otherwise eligible except for age; and

(14) Effective with regard to determination of eligibility for periods beginning on or after January 1, 1991, participants in a work supplementation program under the Title IV-A program (Aid to Families with Dependent Children (AFDC)) and any child or relative of the

participating individual (or other individual living in the same household as the participating individual) who would be eligible for AFDC if there was no work supplementation program.

Section 2. The Medically Needy. Other individuals (including children as shown in Section 1(7) of this regulation), and pregnant women meeting income and resource standards of the medically needy program), meeting technical requirements comparable to the categorically needy group, but with sufficient income to meet their basic maintenance needs may apply for MA with need determined in accordance with income and resource standards prescribed by regulation of the Cabinet for Human Resources. Included within the medically needy eligible groups are pregnant women during the course of their pregnancy; a woman who, while pregnant, is eligible for, has applied for, and has received medical assistance, shall continue to be eligible as though she were pregnant until the end of the month containing the 60th day of a period beginning on the last day of her pregnancy (i.e., the day on which her child is born or the pregnancy is otherwise terminated).

Section 3. Qualified Medicare Beneficiaries and Qualified Disabled Working Individuals. (1) Effective January 1, 1989, coverage is extended to qualified Medicare beneficiaries as specified in 42 USC 1396a(a)(10)(E) [Section 301 of the Medicare Catastrophic Coverage Act of 1988], subject to the income and resource limitations shown in 907 KAR 1:004, and for the scope of benefits specified in 907 KAR 1:006. A qualified Medicare beneficiary must be eligible for and receiving Medicare Part A benefits, and may be determined eligible for benefits as a qualified Medicare beneficiary eligible individual effective for the month after the month in which the determination is made but not retroactively and not for the month in which the determination is made.

(2) Effective July 1, 1990, qualified disabled working individuals as defined in 42 USC 1396i-2 and 42 USC 1396d(s) [Section 1818 and 1905(s)] of the Social Security Act shall be eligible under Medicaid for payment of their Medicare Part A premiums as shown in 907 KAR 1:006.

Section 4. Technical Eligibility Requirements. Technical eligibility factors of families and individuals included as categorically needy under Section 1(1) through (6) of this regulation, or as medically needy under Section 2 of this regulation are:

(1) Children in foster care, private institutions, psychiatric hospitals or mental retardation institutions must be under eighteen (18) years of age (or under age nineteen (19) if a full-time student in a secondary school or the equivalent level of vocational or technical training and if expected to complete the program before age nineteen (19));

(2) Pregnant women are eligible only upon medical proof of pregnancy, except as otherwise specified in Section 2 of this regulation;

(3) Unemployment relating to eligibility of both parents and children is defined as:

(a) Employment of less than 100 hours per month, except that the hours may exceed that standard for a particular month if the work is intermittent and the excess is of a temporary

nature as evidenced by the fact that the individual was under the 100 hour standard for the prior two (2) months and is expected to be under the standard during the next month;

(b) The individual has prior labor market attachment consisting of earned income of at least fifty (50) dollars during six (6) or more calendar quarters ending on March 31, June 30, September 30, or December 31, within any thirteen (13) calendar quarter period ending within one (1) year of application, or the individual within twelve (12) months prior to application received unemployment compensation;

(c) The individual is currently receiving or has been found ineligible for unemployment compensation;

(d) The individual is currently registered for employment at the state employment office, and available for full-time employment;

(e) The unemployed parent must not have refused suitable employment without good cause as determined in accordance with 45 CFR Section 233.100(a)(3)(ii);

(f) The unemployed parent must meet the requirements for independent employment search as specified herein. That is:

1. The unemployed parent must make not less than twenty-four (24) contacts with prospective employers in each three (3) month period following an approval, reinvestigation or reapproval.

2. The unemployed parent may not contact the same prospective employer more than once in each calendar month.

3. If the unemployed parent does not meet the requirement for the minimum number of employment contacts during the three (3) month period, the parent may, prior to or upon receipt of the advance notice of proposed discontinuance, meet the requirement for the number of contacts for the prior three (3) month period. These contacts shall not offset the requirement for employer contacts during the three (3) month period following the next approval, reinvestigation or reapproval.

(4) Under the definition contained in subsection (3) of this section, a parent shall not be considered as unemployed if he is:

(a) Temporarily unemployed due to weather conditions or lack of work when it is anticipated he can return to work within thirty (30) days; or

(b) On strike, or unemployed as a result of involvement in a labor dispute when such involvement would disqualify the individual from eligibility for unemployment insurance in accordance with KRS 341.360; or

(c) Unemployed because he voluntarily quit his most recent work for the purpose of attending school; or

(d) A farm owner or tenant farmer, unless he has previously habitually required and secured outside employment and currently is unable to secure outside employment; or

(e) Self-employed and not available for full-time employment.

(5) An aged individual must be at least sixty-five (65) years of age.

(6) A blind individual must meet the definition of blindness as contained in 42 USC 416 and 42 USC 1382c [Titles II and XVI of the Social Security Act] relating to RSDI and SSI.

(7) A disabled individual must meet the definition of permanent and total disability as contained in 42 USC 423 and 42 USC 1382c [Titles

II and XVI of the Social Security Act] relating to RSDI and SSI.

(8) Families who lose AFDC eligibility on or after October 1, 1990 solely because of increased earnings or hours of employment of the caretaker relative or loss of earnings disregards may receive up to twelve (12) months of extended medical assistance for family members included in the AFDC grant prior to losing AFDC eligibility. The extended medical assistance shall be divided into two (2) transitional six (6) month benefit periods. Each transitional benefit period has specified eligibility and reporting requirements.

(a) The first transitional six (6) month benefit period begins with the month the family became ineligible for AFDC. To be eligible for this transitional benefit period, the family shall have correctly received AFDC in three (3) of the six (6) months immediately preceding the month the family became ineligible for AFDC; have a dependent child living in the home; and meet the reporting requirements relating to earnings and child care costs no later than the 21st day of the fourth month. When the family no longer has a dependent child living in the home, medical assistance for all family members, except the former dependent child, shall be terminated the last day of the month the family no longer includes a dependent child, with eligibility for the former dependent child(ren) determined in accordance with usual program requirements. If the reporting requirements are not met, the medical assistance benefits shall be denied for the second transitional six (6) month benefit period.

(b) To continue to receive medical assistance for the optional second transitional six (6) month benefit period, the family shall meet the following conditions: received medical assistance for the entire first transitional six (6) month period and met the reporting requirements; have a dependent child living in the home; gross income minus child care cost is less than 185 percent of the federal poverty income level; meet the reporting requirements no later than the 21st day of the fourth month, the seventh month, and the tenth month; and during the immediately preceding three (3) months the caretaker relative was employed or if unemployed in any one (1) or more months, it was due to involuntary loss of employment, illness or other good cause established to the satisfaction of the Medicaid program. When a family no longer has a dependent child living in the home, medical assistance for all family members, except the former dependent child, shall be terminated the last day of the month the family no longer includes a dependent child, with the eligibility for the former dependent child(ren) determined in accordance with usual program requirements. If the family's income exceeds the income standard or does not meet the reporting requirements, except for good cause established to the satisfaction of the Medicaid program, the medical assistance shall be terminated the last day of the appropriate reporting month.

(c) Good cause exists under the following circumstances: the specified relative was out-of-town for the reporting month; an immediate family member living in the home was institutionalized or died during the reporting month; the assistance group was the victim of a natural disaster such as flood, storm, earthquake or serious fire; or the assistance

group moved and reported the move timely, but the move resulted in a delay in receiving or failure to receive the transitional medical assistance report form.

(9) Parents may be included for assistance in the cases of families with children including natural and adoptive parents. Other relatives who may be included in the case (one (1) only) are caretaker relatives to the same extent they may be eligible in the Aid to Families with Dependent Children Program.

(10) An applicant who is deceased shall [may] have eligibility determined in the same manner as if he was alive, in order to pay medical bills during the terminal illness.

(11) Effective for determinations of eligibility made on or after January 1, 1989, including the usual determinations of retroactive eligibility for pending cases for periods prior to January 1, 1989, children of the same parent, i.e., a "common" parent, residing in the same household shall be included in the same case unless this acts to preclude eligibility of an otherwise eligible household member. If a family member(s) is pregnant, the unborn child(ren) shall [will] be considered as a family member(s) for budgeting purposes.

(12) The following citizenship and residency requirements shall [will] be applicable:

(a) To be eligible, an applicant or recipient shall [must] be a citizen of the United States, or an alien legally admitted to this country or an alien who is residing in this country under color of law (except as specified in paragraph (b) of this subsection). An alien shall [must] have been admitted for permanent residence except as shown in paragraphs (b), (c) and (d) of this subsection. The applicant or recipient shall [must] also be a resident of Kentucky. Generally, this means the individual must be residing in the state for other than a temporary purpose; however, there are exceptions with regard to recipients of a state supplementary payment and institutionalized individuals. The conditions for determining state residency are specified in federal regulations at 42 CFR 435.403.

(b) Effective January 1, 1987, an alien not legally admitted to this country or residing in this country under color of law shall [may] be eligible for medical assistance under the following circumstances and conditions:

1. The alien must meet all other requirements for receipt of medical assistance, however, an alien qualifying as a categorically needy recipient need not actually receive an AFDC or federal supplemental security income (SSI) cash payment so long as the alien meets the income resource and categorical requirements of the applicable cash assistance program;

2. The alien must have (or have had within the usual period for retroactive eligibility) an emergency medical condition, defined as a medical condition (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part;

3. Approval of eligibility shall be for a time limited period, with such period to include the month in which the medical emergency began and the next following month, with the added provision that the eligibility period shall

[may] be extended for an appropriate period of time upon presentation to the cabinet of acceptable documentation that the medical emergency will exist for a more extended period of time than is allowed for in the time limited eligibility period; and

4. The medical assistance to which the alien shall be entitled is limited to the medical care and services (including limited follow-up) necessary for the treatment of the emergency medical condition of the alien.

(c) Effective May 5, 1987, select groups of aliens who are illegally residing in this country may qualify for legalization of residence status under Section 201 of P.L. 99-603. Such aliens are prohibited from Medicaid eligibility for a period of five (5) years (beginning on the date temporary resident status is granted) except as follows:

1. The aged, blind or disabled may be eligible;
2. Children under age eighteen (18) may be eligible;

3. Pregnant women may be eligible for pregnancy related services only; and

4. All such aliens may qualify for emergency services to the extent specified in paragraph (b) of this subsection and with the limitations shown.

(d) Effective June 1, 1987, aliens qualifying for legalization of status as seasonal agricultural workers under Section 302 of P.L. 99-603 are subject to the same coverage limitations as shown in paragraph (c) of this subsection.

(13) An individual shall [may] be determined eligible for medical assistance for up to three (3) months prior to the month of application if all conditions of eligibility are met. The effective date of medical assistance shall [is] generally be the first day of the month of eligibility. For individuals eligible on the basis of unemployment, eligibility shall [may] not exist for the thirty (30) day period following the starting date of the unemployment. In these cases, the effective date of eligibility may be as early as the first day following the end of the thirty (30) day period if all other conditions of eligibility are met. For individuals eligible on the basis of desertion, a period of desertion must have existed for thirty (30) days, and the effective date of eligibility shall [may] not precede the first day of the month in which the thirty (30) day period ends. For individuals eligible on the basis of utilizing their excess income for incurred medical expenses, the effective date of eligibility shall be [is] the day the spend-down liability is met.

(14) "Child" means a needy dependent child under the age of eighteen (18) (or under age nineteen (19) if a full-time student in a secondary school or the equivalent level of vocational or technical training and if expected to complete the program before the age nineteen (19)), who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States, and who is a recipient of or applicant for public assistance. Included within this definition is an individual(s) meeting the age requirement specified above, previously emancipated, who has returned to the home of his parents, or to the home of another relative, so long as such individual is not thereby residing with his spouse.

(15) Benefits shall be denied to any family for any month in which any legally liable caretaker relative with whom the child is living is, on the last day of such month, participating in a strike, and no individual's needs shall be considered in determining eligibility for medical assistance for the family if, on the last day of the month, such individual is participating in a strike. The definition of a strike includes a strike or other concerted stoppage of work by employees (including a stoppage by reason of expiration of a collective bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees.

(16) A responsible relative (but not a child) sanctioned (removed) from an AFDC or AFDC related medical assistance only case due to failure to meet a technical eligibility requirement shall [may] not be eligible for medical assistance as a medically needy individual unless such individual is separately eligible for medical assistance without regard to eligibility as a member of the group from which such individual has been sanctioned.

Section 5. Institutional Status. No individual shall be eligible for MA if a resident or inmate of a nonmedical public institution. No individual shall be eligible for MA while a patient in a state tuberculosis hospital unless he has reached age sixty-five (65). No individual shall be eligible for MA while a patient in a mental hospital or psychiatric facility unless he is under age twenty-one (21) or age twenty-two (22) if receiving such inpatient services on his 21st birthday or is sixty-five (65) years of age or over. No individual shall be eligible for MA while a patient in a skilled nursing facility or intermediate care facility classified by the Medicaid program as an institution for mental diseases unless such individual has reached age sixty-five (65).

Section 6. Emergency Shelters. Effective July 1, 1985, an individual (or family group) who is in an emergency shelter for a temporary period of time may be eligible for medical assistance even though the shelter is considered a public institution under certain conditions. These conditions are as follows:

(1) The individual (or family group) must be a resident of an emergency shelter no more than six (6) months in any nine (9) month period, effective with regard to determinations of eligibility for periods beginning on or after December 1, 1988.

(2) The individual (or family group) must not be in the facility serving a sentence imposed by the court, or awaiting trial.

(3) The individual (or family group) must be otherwise eligible when outside the emergency shelter; that is, eligibility must have existed immediately prior to admittance to the shelter, or it must exist immediately after leaving the shelter.

Section 7. Application for Other Benefits. As a condition of eligibility for medical assistance, applicants and recipients must apply for all annuities, pensions, retirement and disability benefits to which they are entitled, unless they can show good cause for not doing so. Good cause shall be [is] considered to exist

when such benefits have previously been denied with no change of circumstances, or the individual does not meet all eligibility conditions. Annuities, pensions, retirement and disability benefits shall include, but [are] not be limited to, veterans' compensations and pensions, retirement and survivors disability insurance benefits, railroad retirement benefits, and unemployment compensation. Notwithstanding the preceding, no applicant or recipient shall be required to apply for federal benefits when the federal law providing for such benefits shows the benefit to be optional and that the potential applicant or recipient for such benefit need not apply for such benefit when to do so would, in his opinion, act to his disadvantage.

Section 8. Assignment of Rights to Medical Support. By accepting assistance for or on behalf of a child, a recipient shall be [is] deemed to have made an assignment to the Cabinet for Human Resources of any medical support owed for the child not to exceed the amount of medical assistance payments made on behalf of the recipient.

Section 9. Third Party Liability as a Condition of Eligibility. Any individual (except as further specified in this section) applying for or receiving medical assistance shall be required as a condition of eligibility to cooperate with the Cabinet for Human Resources in identifying, and providing information to assist the cabinet in pursuing, any third party who may be liable to pay for care or services available under the Medicaid Program unless such individual has good cause for refusing to cooperate as determined by the cabinet taking into consideration the best interests of the individuals involved. A failure of the individual to cooperate without good cause shall result in ineligibility of the individual. A pregnant woman eligible under poverty level standards shall not be required to cooperate in establishing paternity or securing support for her unborn child.

Section 10. Provision of Social Security Numbers. Each applicant for or recipient of medical assistance shall be required to provide a social security number as a condition of eligibility except as provided in this section. However, no one shall be denied eligibility or discontinued from eligibility due to a delay in receipt of a social security number from the Social Security Administration when appropriate application for such number has been made. Effective with regard to determinations or redeterminations of eligibility on or after June 1, 1990, if the specified relative refuses to cooperate with obtaining a social security number for the newborn child or other dependent children, the specified relative shall be ineligible due to failure to meet technical requirements. The newborn child or other dependent may still be eligible for medical assistance if financial eligibility requirements are met.

Section 11. Effective Date. The amendments to this regulation shall be effective with regard to determinations of eligibility made on or after January 1, 1991.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: January 4, 1991
FILED WITH LRC: January 17, 1991 at 9 a.m.

STATEMENT OF EMERGENCY 907 KAR 1:013E

This emergency administrative regulation is being amended to limit reimbursement for the professional component of hospital inpatient services provided by out-of-state hospitals to 75 percent of usual and customary charges. This regulation must be promulgated on an emergency basis to contain cost as the Medicaid Program is currently facing a substantial deficit. This emergency administrative regulation differs from the emergency administrative regulation on the same subject matter that was filed on July 11, 1990. This emergency administrative regulation is amended to limit reimbursement for the professional component of hospital inpatient services provided by out-of-state hospitals to 75 percent of usual and customary charges. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler on or about February 1, 1991.

WALLACE G. WILKINSON, Governor
HARRY J. COWHERD, M.D., Secretary

CABINET FOR HUMAN RESOURCES Department for Medicaid Services

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

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050; 20 CFR 405.402 through 405.488; 42 CFR 440.10, 440.140, 447.250 through 447.280; 42 USC 1396a, b, d, r-4

EFFECTIVE: February 6, 1991

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

Section 1. Acute Care Hospital, Rehabilitation Hospital and Mental Hospital (Including Psychiatric Facility) Inpatient Services. The Department for Medicaid Services shall [state agency will] pay for inpatient hospital services provided to eligible recipients of Medical Assistance through the use of rates that are reasonable and adequate to meet the costs that are required to be incurred by efficiently and economically operated hospitals to provide services in conformity with applicable state and federal laws, regulations, and quality and safety standards.

Section 2. Establishment of Payment Rates. The policies, methods, and standards to be used by the cabinet in setting payment rates are specified in the cabinet's "Inpatient Hospital

Reimbursement Manual" revised February 1, 1991 [July 1, 1990], and amended August 1, 1990, which is incorporated by reference in this regulation. For any reimbursement issue or area not specified in the manual, the cabinet shall [will] apply the Medicare standards and principles [described in 20 CFR Sections 405.402 through 405.488] (excluding the Medicare inpatient routine nursing salary differential). The Kentucky Medical Assistance Program Inpatient Hospital Reimbursement Manual may be reviewed during regular working hours (8 a.m. to 4:30 p.m.) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office.

[Section 3. Compliance with Federal Medicaid Requirements. The cabinet will comply with the requirements shown in 42 CFR 447.250 through 447.280.]

Section 3. [4.] General Description of the Payment System. (1) Use of prospective rates. Each hospital shall [will] be paid using a prospective payment rate based on allowable Medicaid costs and Medicaid inpatient days. The prospective rate shall [will] be all inclusive in that both routine and ancillary cost shall [will] be reimbursed through the rate. For universal rate years prior to January 1, 1985 the prospective rate shall [will] not be subject to retroactive adjustment except to the extent that an audited cost report alters the basis for the prospective rate or the projected inflation index utilized in setting the individual rate is different from actual inflation as determined by the index being used. For universal rate years beginning on or after January 1, 1985, the prospective rate shall [will] not be subject to retroactive adjustment except to the extent that facilities with a rate based on unaudited data shall [will] have their rate appropriately revised for the rate year when the audited cost report is received from the fiscal intermediary. However, total prospective payments shall not exceed the total customary charges in the prospective year. Overpayments shall [will] be recouped by payment from the provider to the cabinet of the amount of the overpayment, or alternatively, by the withholding of the overpayment amount by the cabinet from future payments otherwise due the provider.

(2) Use of a uniform rate year. A uniform rate year shall [will] be set for all facilities, with the rate year established as January 1 through December 31 of each year. The first uniform rate year for mental hospitals shall be July 1, 1985 through June 30, 1986; however, effective January 1, 1986 the mental hospital rate year shall be reestablished and shall be January 1 through December 31 of each year thereafter. Changes of rates throughout the rate year as a result of policy changes shall not change the rate year, although the facility rates may change. Hospitals are not required to change their fiscal years.

(3) Trending of cost reports. Allowable Medicaid cost as shown in cost reports on file in the cabinet, both audited and unaudited, shall [will] be trended to the beginning of the rate year so as to update Medicaid costs. When trending, capital costs and return on equity capital are excluded. The trending factor to be used shall [will] be the Data Resources, Inc.

rate of inflation for the period being trended.

(4) Indexing for inflation. After allowable costs have been trended to the beginning of the rate year, an indexing factor shall be [is] applied so as to project inflationary cost in the uniform rate year. The forecasting index currently in use is prepared by Data Resources, Inc. This policy shall be effective August 3, 1985.

(5) Peer grouping. Acute care hospitals (but not including those considered to be primarily rehabilitative in nature) shall [will] be peer grouped according to bed size. The peer groupings for the payment system shall [will] be: 0-50 beds, 51-100 beds, 101-200 beds, 201-400 beds, and 401 beds and up (except that the designated state teaching hospitals affiliated with or a part of the University of Kentucky and the University of Louisville shall not be included in the array for facilities with 401 beds and up unless such facility's primary characteristics are considered essentially the same as the peer group's, and the facility, although not a university teaching hospital as such, is treated in such a manner as to recognize the presence of the major pediatric teaching component existing outside the state university hospitals). No facility in the 201-400 peer group shall have its operational per diem reduced below that amount in effect in the 1982 rate year as a result of the establishment of a peer grouping of 401 beds and up. Mental hospitals shall [will] not be peer grouped but shall [will] have a separate array of mental hospitals only. Rehabilitation hospitals and acute care hospitals considered to be primarily rehabilitative in nature shall [will] not be peer grouped or arrayed.

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

(7) Use of a reduced depreciation allowance. The allowable amount for depreciation on building and fixtures (not including major movable equipment) shall be sixty-five (65) percent of the reported depreciation amount as shown in the hospital's cost reports. The use of a reduced depreciation allowance is not applicable with regard to mental hospitals.

(8) Use of upper limits with regard to services provided on or after July 1, 1990.

(a) For acute care hospitals, an upper limit shall [will] be established on all costs (except Medicaid capital cost) at the weighted median per diem cost for hospitals in each peer group, using the most recent Medicaid cost report available as of December 1 of each year. For mental hospitals, an upper limit shall [will] be established on all costs (except Medicaid capital cost) at the weighted median per diem cost for hospitals in the array. A mental hospital designated by the cabinet as a primary referral and services resource for children in the custody of the cabinet shall be exempt from the upper limit for the array and shall be paid at actual projected cost with no year end settlement to actual cost; the projected cost may be adjusted for usual cost of living

increases using the Data Resources, Incorporated Index. Upon being set, the arrays and upper limits shall [will] not be altered due to revisions or corrections of data; however the arrays or upper limits may be changed as a result of changes of agency policy. Hospitals participating in the Hospital Indigent Care Assurance Program (HICAP) shall also receive, in addition to regular program payments, amounts which are payable under HICAP. The HICAP payments shall be the product of the ratio of each hospital's Medicaid patient days compared to total Medicaid patient days as applied to total available HICAP funds (which are the hospital assessments paid minus administrative expense, hold-harmless amounts, and the contingency reserve amount and taking into consideration available federal Medicaid matching funds). For hospitals which are disproportionate share hospitals the limitations shown in paragraph (b) of this subsection and subsection (9) of this section shall be applicable for HICAP payments. If a hospital which is a nondisproportionate share hospital is determined by the cabinet to be a nonparticipant in HICAP, the amounts otherwise payable under HICAP to the hospital shall not be made.

(b) The following upper limits and payment principles shall apply to disproportionate share hospitals as defined in subsection (9) of this section.

1. Acute care hospitals with Medicaid utilization of twenty (20) percent or higher, and hospitals having twenty-five (25) percent or more nursing days resulting from Medicaid covered deliveries as compared to the total number of paid Medicaid days, shall have an upper limit set at 120 percent of the weighted median per diem cost for hospitals in the array. In addition to the per diem amount computed in this manner, the hospitals shall be paid (as appropriate) additional amounts for services to infants under age one (1) (as shown in subsection (9)(b)2 of this section). The hospitals shall also be entitled to amounts payable under HICAP (as shown in subsection (9)(b)3 of this section) or the disproportionate share minimum adjustment amount shown in subsection (9)(b)1 of this section if greater.

2. Designated state teaching hospitals and major affiliated pediatric teaching hospitals (i.e., those affiliated with or a part of the University of Kentucky and the University of Louisville) shall have an upper limit set at 126 percent of the weighted median per diem cost for all other hospitals of comparable size (401 beds and up). The pediatric teaching hospitals shall also be paid, in addition to the facilities' base rate, an amount which is equal to two (2) percent of the base for each one (1) percent of Medicaid occupancy but this amount shall not exceed the prospective reasonably determined uncompensated Medicaid cost to the facility. In addition to the per diem amount computed using the limits specified in this subparagraph, the hospitals shall be paid (as appropriate) additional amounts for services to infants under age one (1) (as shown in subsection (9)(b)2 of this section). The hospitals shall also be entitled to amounts payable under HICAP (as shown in subsection (9)(b)3 of this section) or the disproportionate share minimum adjustment amount shown in subsection (9)(b)1 of this section if greater.

3. Mental hospitals with Medicaid utilization

of thirty-five (35) percent or higher shall have an upper limit set at 115 percent of the weighted median per diem cost for hospitals in the array. The per diem amount shall be computed using this upper limit or by using the disproportionate share minimum payment amount shown in subsection (9)(b)1 of this section if doing so [will] results in a higher per diem amount.

4. All other disproportionate share acute care hospitals shall have their upper limit set at the weighed median per diem of the cost for hospitals in the array. In addition to the per diem amount computed in this manner, the hospitals shall be paid (as appropriate) additional amounts for services to infants under age one (1) (as shown in subsection (9)(b)2 of this section). The hospitals shall also be entitled to amounts payable under HICAP (as shown in subsection (9)(b)3 of this section) or the disproportionate share minimum adjustment amount shown in subsection (9)(b)1 of this section if greater.

(9) Disproportionate share hospitals.

(a) Disproportionate share hospitals are those hospitals meeting the criteria specified in 42 USC 1396r-4(b) [Section 4112(b)] and (d) [of the Omnibus Budget Reconciliation Act of 1987 (OBRA 87)] and those hospitals which may not meet such criteria but meet the criteria specified in 42 USC 1396r-4(d) [Section 4112(d) of OBRA 87] and meet this additional criteria:

1. Acute care hospitals with Medicaid utilization of twenty (20) percent or higher and mental hospitals with Medicaid utilization of thirty-five (35) percent or higher;

2. Hospitals which are designated state teaching hospitals;

3. Hospitals which are designated major pediatric teaching hospitals;

4. Hospitals having twenty-five (25) percent or more nursery days resulting from Medicaid covered deliveries as compared to the total number of paid Medicaid days; and

5. Effective with regard to services provided on or after July 1, 1990, hospitals not meeting the additional criteria specified in subparagraphs 1 through 4 of this paragraph but with Medicaid utilization of five (5) percent or higher.

(b) The upper limit for payments for hospitals in Kentucky shall be [is] set at the lower of allowable Medicaid cost or the median of the facility array of allowable cost with payment adjustments allowed for hospitals deemed disproportionate share hospitals in accordance with subsections (8) and (9) of this section. For compliance with 42 USC 1396r-4(c) [Section 4112(c) of OBRA 1987], the minimum payment adjustment and actual payment adjustment shall [will] be computed in the following manner:

1. All hospitals determined to be disproportionate share hospitals shall be entitled to a minimum payment adjustment equal to one (1) dollar as an addition to the hospital payment rate computed using usual upper limits; and for hospitals with Medicaid utilization in excess of one (1) standard deviation above the mean Medicaid inpatient utilization rate for hospitals receiving Medicaid payments in the state, a further payment adjustment which is equal to ten (10) cents for each one (1) percent of Medicaid utilization in the hospital which is in excess of utilization at the one (1) standard deviation level.

2. Effective with regard to medically necessary hospital inpatient services provided by all Kentucky disproportionate share hospitals on or after July 1, 1990 to infants under the age of one (1) with exceptionally high costs or long lengths of stay (defined as being those costs and days of stay which for newborns are after thirty (30) days beyond the date of discharge for the mother of the child and for all other infants are after thirty (30) days from the date of admission), the payment rate shall be set at 110 percent of the per diem payment rate, without regard to length of stay or number of admissions of the infants.

3. Effective with regard to services provided on or after July 1, 1990 any hospital which is participating in the Hospital Indigent Care Assurance Program (HICAP) shall receive disproportionate share payments under HICAP. HICAP assessments and payments are described in 907 KAR 1:017, Hospital indigent care assurance program. If a hospital is determined by the cabinet to be a nonparticipant in the HICAP program, the hospital shall be entitled to the minimum adjustment shown in subparagraph 1 of this paragraph.

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

(11) Hospitals whose general characteristics are not those of an acute care or mental hospital (i.e., because they are rehabilitation hospitals or acute care hospitals considered to be primarily rehabilitative in nature) are not subject to the operating cost upper limits.

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

Section 4. [5.] Payments to Participating Out-of-state Hospitals. (1) Effective with regard to services provided on or after July 1, 1990 participating out-of-state hospitals shall be reimbursed for covered inpatient services rendered eligible Kentucky Medicaid recipients at the rate of seventy-five (75) percent of usual and customary charges, up to the in-state per diem upper limit for a comparable size hospital, except as specified in subsection (2) of this section.

(2) Effective with regard to medically necessary hospital inpatient services provided on or after July 1, 1990 to infants under the age of one (1), for days of stay which for newborns are after thirty (30) days beyond the date of discharge for the mother of the child and for all other infants are after thirty (30) days from the date of admission, participating out-of-state disproportionate share hospitals (determined in the same manner as for in-state hospitals except that out-of-state hospitals are not included in facility arrays) shall be paid at the rate of eighty-five (85) percent of usual and customary actual billed charges up to 110 percent of the per diem upper limit for the in-state peer group for comparably sized hospitals in recognition of exceptionally high costs and lengths of stay related to infants under the age of one (1), without regard to length of stay or number of admissions of the infants.

(3) Professional costs (i.e., physician fees) for all covered days of stay shall be paid at seventy-five (75) percent of [on the basis of] the usual and customary charges of the provider.

Section 5. Effective Date. The amendments to this regulation shall be effective with regard to services provided on or after February 1, 1991.

ROY BUTLER, Commissioner

HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: January 28, 1991

FILED WITH LRC: February 6, 1991 at 3 p.m.

REGULATIONS AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission
(As Amended)

201 KAR 11:011. Definitions.

RELATES TO: KRS [Chapter] 324.010,
324.046, 324.111, 324.160
STATUTORY AUTHORITY: KRS [Chapter 13A,]
324.281(5), 324.282

NECESSITY AND FUNCTION: To inform and set certain standards for the licensees and to protect the public.

Section 1. "Regular employee" shall mean an employee whose compensation is fixed in advance in writing, who does not receive commission who works exclusively for the owner, and whose total compensation is subject to withholding and FICA taxes.

Section 2. As used in KRS 324.010(1)(a), the term "broker" shall not include office or clerical employees of a broker, so long as such employees are limited to the duties normally attributed to such positions, and such employees do not solicit or accept listings or offers, do not show property, do not negotiate real estate transactions, do not disclose information which is available only to the broker and not to the public, and do not otherwise hold themselves out to the public as engaged in the business of brokering real estate.

Section 3. As used in KRS 324.160(1)(j), the term "prizes" shall mean any thing of value which is offered to a prospective purchaser on a condition set forth in the offer to said prospective purchaser. However, this section, KRS 324(1)(j) shall not prohibit a licensee from giving or offering complimentary refreshments, i.e., snacks, sodas, etc., to the general public or giving a complimentary gift whose value is less than fifty (50) dollars to a purchaser at or after a closing where the purchaser's purchase of real estate is consummated and where said gift was not offered at any time prior to said closing.

Section 4. As used in KRS 324.046 and in these regulations, the term "academic credit hour" shall mean one (1) college semester hour or sixteen (16), fifty (50) minute hours of actual classroom attendance.

Section 5. "Contract deposits" means money delivered to a licensed agent as part of an offer to enter a contract for the sale of real property, once the offer or any counteroffer is accepted and an executory contract exists.

Section 6. "Without unreasonable delay" as used in KRS 324.111(1) means within two (2) working days of the creation of the executory contract for the sale of real property.

GEORGE G. SIRK, JR., Chairman
APPROVED BY AGENCY: December 11, 1990
FILED WITH LRC: December 12, 1990 at 10 a.m.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission
(As Amended)

201 KAR 11:095. Closing statements; rental management agreements.

RELATES TO: KRS [Chapter]
324[.160], 281(5), 324.282
STATUTORY AUTHORITY: KRS [Chapter 13A,]
324.281(5), 324.282

NECESSITY AND FUNCTION: To inform and set certain standards for the licensees and to protect the public.

Section 1. A real estate broker shall [cause to be] furnish[ed] a debit and credit type closing statement to a buyer and seller upon closing a real estate transaction if the financial institution or the attorney involved in a real estate transaction fails to furnish a closing statement.

[Section 2. All rental management agreements shall be in writing in order to avoid controversies.]

GEORGE G. SIRK, JR., Chairman
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GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission
(As Amended)

201 KAR 11:105. Owner's consent and authorization.

RELATES TO: KRS [Chapter] 324.160
STATUTORY AUTHORITY: KRS [Chapter 13A,]
324.281(5), 324.282
NECESSITY AND FUNCTION: To inform and set certain standards for the licensees and to protect the public.

Section 1. A real estate broker shall not [never] offer real estate [a property] for sale or lease without the consent [authorization] of the owner, [or owners, and] [but] When publicly promoting or advertising the real estate, the broker shall [must] have a written listing agreement signed by the owner [or owners] [a property, it shall be listed in writing].

Section 2. A [No] sign shall not [ever] be placed on any property by a real estate broker without the consent of the owner.

GEORGE G. SIRK, JR., Chairman
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GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission
(As Amended)

201 KAR 11:121. Improper conduct.

RELATES TO: KRS [Chapter] 324.160

STATUTORY AUTHORITY: KRS [Chapter 13A,] 324.281(5), 324.282

NECESSITY AND FUNCTION: To inform and set certain standards for the licensees and to protect the public.

Section 1. The following shall be improper for any licensed agent:

(1) To accept or agree to accept, without written disclosure to the seller and buyer, a referral fee from any person in return for directing a client or customer to such person, or another, who provides or agrees to provide any goods, service insurance or financing related to a transaction involving real estate. This provision shall not affect paying or receiving referral fees between licensed agents for brokerage services.

[(2) To negotiate or attempt to negotiate, concerning real estate listed with a licensed agent, with the owner of said real estate, or with anyone other than the listing agent or agents in the listing agent's company, without the consent of the listing agent and the owner.]

(2) [(3)] To offer, either through advertising, direct contact or by others, to the general public, any prize, money, free gift, rebate or any other thing of value, as an inducement. It shall not be improper conduct to disseminate information:

(a) About the fee or other compensation the licensed agent agrees to charge for his services; or

(b) About inducements offered by the licensed agent's client.

(3) [(4)] To refuse or prohibit any prospective purchaser from viewing or inspecting real estate listed for sale or lease with the agent, or with the agent's company, without the written and signed direction of the owner.

(4) [(5)] To fail to act in accordance with a fiduciary standard toward his client. [Client in this regulation means the person or persons the agent has agreed to represent, either expressly or by implication.]

(5) [(6)] For any licensee who publicly advertises for listings that "if we cannot sell your home, we will buy your home" or words of similar effect, without disclosing in said advertising the exact conditions under which said licensee will agree to buy said home and the manner in which the purchase price the licensee will agree to pay will be calculated. The disclosure required by this regulation shall be in letters which are at least one-half (1/2) the size of the letters used in making the offer "if we cannot sell your home, we will buy your home" or words of similar effect.

(6) [(7)] To violate a statute or administrative regulation governing brokers, sales associates, or real estate transactions.

GEORGE G. SIRK, JR., Chairman

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GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission
(As Amended)

201 KAR 11:170. Private school approval.

RELATES TO: KRS 324.010(1)(f), (g)

STATUTORY AUTHORITY: KRS [Chapter 13A,] 324.281(5), 324.282

NECESSITY AND FUNCTION: To set policies and procedures for private school approval.

Section 1. To obtain a certificate of approval, a real estate school shall [must] apply to the commission on forms provided by the commission and supply all information requested concerning curriculum, instructors, and other educational materials and policies. The forms required in this section are incorporated by reference, and may be reviewed or obtained at the Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Monday through Friday from 8 a.m. to 4:30 p.m.

Section 2. The curriculum for an approval real estate school shall:

(1) Include a minimum of three (3) academic [forty-eight (48) clock] hours [of classroom instruction] per course;

(2) Be conducted for a maximum of no more than seven (7) hours during a twenty-four (24) hour period; and

(3) Consist of a course[(s)] containing at least [,but not limited to,] topics and materials prescribed by the Real Estate Commission.

Section 3. An approved real estate school shall not:

(1) Advertise in conjunction with the business of a broker or a brokerage firm; or

(2) [Be allowed to] Discuss, induce, or promote affiliation with any broker or brokerage firm.

Section 4. (1) An approved real estate school shall maintain accurate and permanent records on all students enrolled in courses. Permanent records shall include each student's record of courses completed or attempted, academic [clock] hours awarded, and final grades.

(2) Temporary records shall be maintained for three (3) years. These records shall include student attendance records and test scores.

(3) The [A] sample "official transcript" [as] specified in KRS 324.046(3) shall be submitted with the approved school application.

(4) An approved real estate school shall provide to the commission current course schedules and instructor resumes at least seven (7) days after the course begins.

Section 5. An approved real estate school shall permit inspections and monitoring by the commission or its designee to evaluate any aspect of the administration or operation of the school.

Section 6. An approved school shall notify the commission within ten (10) days of any material change from the information originally furnished on the application form or attachments thereto. An approved school shall renew its certification with the Real Estate Commission annually on forms provided by the commission. The forms

required in this section are incorporated by reference, and may be reviewed or obtained at the Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Monday through Friday from 8 a.m. to 4:30 p.m. The annual renewal date shall be November 1 [based on the initial certification date]. It shall be the school's responsibility to renew on or before the annual renewal date.

Section 7. Private school approval may be withdrawn if the commission determines that:

(1) Information contained on the application or renewal is inaccurate or misleading[, or changed].

(2) The establishment or conduct of the school is not in compliance with these regulations or the instruction is so deficient as to impair the value of the course. Where a school has been given notice of a deficiency under this section, the commission shall give the school an opportunity to correct the deficiency within thirty (30) days.

Section 8. An effort made directly or indirectly by a school, official or employee, [thereof] or anyone on their behalf to reconstruct the real estate licensing examination or portion thereof shall result in immediate revocation of school approval.

[Section 9. The commission shall follow the hearing procedures outlined in KRS 324.170 through 324.200 whenever action is taken to revoke a school's certificate of approval.]

GEORGE G. SIRK, JR., Chairman

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GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission
(As Amended)

201 KAR 11:175. Instructor approval procedures and guidelines.

RELATES TO: KRS [Chapter] 324.010(1)(f)
STATUTORY AUTHORITY: KRS [Chapter] 13A,] 324.281(5), 324.282

NECESSITY AND FUNCTION: To inform and set certain standards for the licensees and to protect the public.

Section 1. In order to be approved by the commission, an instructor shall submit an application on forms available from the commission and shall have: [The following provisions set forth the qualifications and rules governing instructors approved by the commission:]

[(1) To be approved by the commission the instructor must submit an application on forms available from the commission, and have one (1) of the following qualifications:]

(1) [(a)] A bachelors, masters or doctorate degree from a college or university duly accredited by a nationally recognized rating or accrediting organization, in a field reasonably related to real estate;

(2) [(b)] An associate degree from a college or university duly accredited by a nationally recognized rating or accrediting organization, in real estate;

(3) Completed [(c)] five (5) consecutive years full-time experience (averaging at least twenty (20) hours per week for each of the five (5) years);

(4) [(d)] A valid current teachers certificate authorizing the holder to teach in the field of real estate;

(5) [(e)] Any combination of teaching in secondary education and full-time experience in real estate totaling five (5) years (averaging at least twenty (20) hours per week for each year of experience).

(6) The forms required in this section are incorporated by reference, and may be reviewed or obtained at the Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Monday through Friday from 8 a.m. to 4:30 p.m.

Section 2. [(2)] Approval of an instructor may be withdrawn by the commission for [any of the following]:

(1) A [(a)] Any violation of any provision of KRS Chapter 324 or an administrative [any] regulation promulgated under it;

(2) [(b)] Falsification of [any] material submitted to the commission to become an approved instructor;

(3) [(c)] Failure to provide to the commission requested material;

(4) [(d)] Engaging in any brokerage activity] While acting as an instructor in an [the] educational facility, engaging in brokerage activity with any of the enrolled students;

(5) Soliciting investments from a student:

[(e) Soliciting investments from any student the instructor becomes acquainted with as an instructor.]

(6) [(f)] Attempting to recruit any student to a real estate company while acting as an instructor.

Section 3. [(3)] Only an approved instructor shall teach [any of the following]:

(1) [(a)] Preliminary courses offered by an

(a) Approved real estate school; or

(b) [Preliminary courses offered by an] Accredited real estate school which receives any funding under the real estate education, research and recovery fund; and [(KRS 324.400 et seq.).]

(2) [(c)] Mandatory continuing education courses.

GEORGE G. SIRK, JR., Chairman

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GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission
(As Amended)

201 KAR 11:210. Licensing, education and testing requirements.

RELATES TO: KRS [Chapter] 324.010, 324.020, 324.040, 324.045, 324.046

STATUTORY AUTHORITY: KRS [Chapter] 13A[(100(3))], 324.281(5), 324.282

NECESSITY AND FUNCTION: To set forth

procedures and standards for education requirements, testing, and license applications.

[Section 1. An applicant for licensure cannot engage in any real estate activities until the license has been issued and received by the principal broker.]

[Section 2. An applicant for licensure accepts responsibility to meet all statutory and regulatory licensing requirements. Applicants having questions regarding applicability of education courses, pending complaints, past criminal convictions, or any other requirement should contact the commission in writing prior to the examination.]

[Section 3. An applicant for licensure must have successfully completed all education requirements prior to taking the required written examination.]

Section 1. [4. An applicant for licensure must provide proof of high school graduation or successful passage of the General Educational Development test.] In lieu of proof of high school graduation or a GED diploma, an applicant [the above, candidates] may submit an official transcript which indicates completion of a degree program at a post secondary institution, or a transcript which indicates successful completion of twenty-eight (28) academic semester hours or equivalent from a post secondary institution.

Section 2. [5.] An official transcript is a document imprinted with the institution's seal, signed by the registrar, and sent directly from the institution to the commission.

[Section 6. An applicant who has attended an approved or accredited real estate school as defined by KRS 324.010, must provide an official transcript indicating successful completion of course, date of completion, [clock or] academic [semester] hours awarded, and other information which would indicate compliance with statutory or regulatory requirements.]

[Section 7. Sixteen (16) clock hours from an approved school will be equal to one (1) academic semester hour from an accredited college or university.]

Section 3. [8.] A real estate course shall be one which is designated specifically as a real estate course by an approved or accredited real estate school which offers the course. The academic content for the course shall [must] specifically focus on real estate. The course shall [must] be for academic credit and not a continuing education unit, examination preparation or review, experiential education, or competency testing. Candidates shall [may] not submit completion of the same course or essentially same course twice for licensure credit.

Section 4. [9.] An applicant who successfully passes the [entire] real estate examination shall [must] apply for a license within sixty (60) days after the examination. A candidate who fails to apply for a license within this period shall be reexamined. [Failure to do so necessitates the candidate's

reexamination.]

[Section 10. Candidates for licensure must successfully pass the entire examination within a two (2) year period prior to licensure.]

GEORGE G. SIRK, JR., Chairman

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GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission
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201 KAR 11:230. Mandatory continuing education.

RELATES TO: KRS [Chapter] 324.410(3)
STATUTORY AUTHORITY: KRS [Chapter 13A,] 324.281(5), 324.282

NECESSITY AND FUNCTION: To inform and set certain standards for the licensees and to protect the public.

Section 1. [The following regulations shall apply to mandatory continuing education for all real estate licensees.]

(1) Beginning with the calendar year January 1, 1992, actively licensed agents shall be required to attend annually six (6) hours of continuing education courses sponsored or approved by the commission. [All actively licensed agents must attend six (6) hours of continuing education courses sponsored or approved by the commission each year. Year shall mean, for purposes of this regulation, a calendar year, ending December 31. This regulation shall be effective beginning the calendar year 1992.] Of this six (6) hours, two (2) hours shall [must] be in courses on real estate law.

(2) In order for an education course to be approved by the commission, the sponsor of the course shall [must] provide to the commission:

(a) An outline of the course in such detail that all the pertinent material to be taught is disclosed; and

(b) [Must provide the commission with] The work experience, credentials and educational background of the instructors of the course.

(3) To receive approval, an education course shall consist of topics that will:

(a) Enable a student to better understand the brokerage business;

(b) serve the public.

(4) Courses that are self-motivational in nature shall not be approved.

(5) A course instructor shall be reasonably competent by educational background or work experience and have adequate knowledge of the course material. He shall be an "approved instructor" under the prelicensure education requirements established in 201 KAR 11:175.

(6) An education course shall be sponsored by an accredited real estate school, or by a school that has been given a certificate of approval by the Kentucky Board of Proprietary Education, other appropriate governmental regulatory body, or by an approved real estate school.

(7) A sponsor shall:

(a) Provide:

1. Attendance records to the commission;

2. Course evaluation forms to students for

submission to the commission;

(b) Permit monitoring and inspection by the commission;

(c) Sign a written agreement relating to compliance with commission requirements, on a form prescribed by the commission; and

(d) Make the course available to all licensed agents, subject to space limitations.

(8) The forms required in subsection (5) of this section are incorporated by reference, and may be reviewed or obtained at the Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Monday through Friday from 8 a.m. to 4:30 p.m.

(9) An education course shall consist of a minimum of two (2) hours. One (1) hour of continuing education shall be allowed for each fifty (50) minutes of actual attendance.

(10) An escrowed licensee shall not be required to attend continuing education courses. Before a license is changed from escrow to active, a licensee shall provide the commission with documentation of the completion of current continuing education requirements.

(11) A sales associate licensee shall not be required to attend continuing education courses during the first year in which he is licensed.

(12) Beginning April 1, 1993, an active license shall not be renewed unless the licensee has complied with the provisions of this administrative regulation.

(13)(a) A licensee shall complete the mandatory continuing education requirements of this regulation by December 31 of each calendar year.

(b) Proof of completion of the mandatory continuing education requirements shall be submitted to the commission on or before January 15 of the following calendar year.

(c) If a licensee fails to comply with the provisions of paragraphs (a) and (b) of this subsection, the executive director shall notify him as soon as practicable on or after January 31 of the following calendar year.

(d) A license shall not be cancelled if a licensee:

1. Places his license in escrow; or
2. Completes the requirements of a delinquency plan that complies with subsection (14) of this regulation.

(14)(a) On or before February 15 of the following calendar year, a licensee shall submit a written delinquency plan to complete the continuing education requirements for the previous calendar year.

(b) The delinquency plan shall include a list of approved or sponsored education courses that the licensee agrees to attend.

(c) The delinquency plan shall provide that the continuing education requirements for the previous calendar year shall be completed on or before June 15.

(d) The licensee shall submit a fee of \$200 with his delinquency plan.

(e) If a licensee fails to complete an approved delinquency plan, his license shall be suspended for two (2) years.

(f) A licensee who places his license in escrow under the provisions of subsection (13)(d) of this section shall not be permitted to reactivate his license unless he has:

1. Completed mandatory continuing education requirements; and
2. Paid the fee provided for by paragraph (d) of this subsection.

(15) The time requirements provided in this regulation may be extended by the commission if:

(a) A true hardship or other good cause clearly warrants relief; and

(b) The request for extension is requested in writing on or before January of the following calendar year.

[(3) To receive approval:]

[(a) The courses must be on topics which will enable the student to better understand the brokerage business and to better service the public, and courses which are self-motivational in nature will not be approved; and]

[(b) The instructor of the course must be reasonably competent by educational background or work experience to have adequate knowledge of the course material, and must be an "approved instructor" under this commission's prelicense education requirements (201 KAR 11:__); and]

[(c) The course must be sponsored by an accredited real estate school (see KRS 324.010(1)(g)) or by a school that has been given a certificate of approval by the Kentucky Board of Proprietary Education or other appropriate governmental regulatory body or by an approved real estate school (see KRS 324.010(1)(f)).]

[(4) The sponsor must agree:]

[(a) To provide attendance records to the commission to ensure that those students he certifies have attended have in fact been present in the course during all of the instruction;]

[(b) To provide accurate records to the commission of all persons so attending;]

[(c) To provide course evaluation forms to all students for comments to the commission;]

[(d) To allow the commission to monitor and inspect any aspect of the sponsor's requirements under this regulation;]

[(e) To enter a written agreement with the commission to ensure compliance with all aspects of the sponsor's obligations to the students and the commission on forms prescribed by the commission; and]

[(f) To make the course available to all licensed agents, subject only to space limitations of the facility where the course is taught.]

[(5) One (1) hour of continuing education credit will be allowed for each fifty (50) minutes of actual attendance. The minimum number of hours for each course shall be two (2) hours.]

[(6) Escrowed licensees will not be required to attend continuing education courses under this regulation. Each licensee shall, before changing their license from escrow to active, document compliance with this mandatory continuing education regulation to the commission for the year when they so change the license.]

[(7) Licensees who first receive their sales associate licenses during the license year (ending March 31) will not be required to attend continuing education courses under this regulation for the license year of first licensure.]

[(8) No active license will be renewed unless this regulation has been complied with, beginning with the license year ending March 31, 1992.]

[(9) If any licensee fails to comply with the mandatory continuing education requirements of this regulation, the executive director shall

as soon as practicable on or after January 31 of each year notify those licensees who have so failed, of their delinquency in credit hours. If by the 15th day of the following February, the licensee has not submitted to the commission proof of his compliance by the preceding December 31, the licensee's license shall be cancelled. The license will not be so cancelled if the licensee places his license in escrow, or if the licensee enters an approved delinquency plan with the commission as set forth in subsection (10) of this regulation.]

[(10) A licensee who fails to complete the mandatory continuing education requirements of this regulation for any education year may submit a delinquency plan for making up his delinquency, provided the commission has not approved such a delinquency plan for the licensee for either of the two (2) preceding education years. The plan will only be approved by the commission if the licensee pays a fee of \$200 and the plan lists approved or sponsored courses the licensee agrees to attend which would provide, by the 15th day of the following June, the credit hours needed to make up the deficiency. Failure to complete an approved delinquency plan shall result in automatic suspension of license for two (2) years.]

[(11) The time requirements of this regulation may be extended by the commission in case of true hardships or other good cause clearly warranting relief, but only if requested in writing on or before January 31 following the education year ending December 31 of deficiency.]

[(16) [(12)] A licensee who teaches an approved mandatory education course shall be entitled to one (1) hour of credit for each hour of instruction he teaches plus two (2) hours credit for preparation for each course he teaches.

[(17) Hours of instruction in prelicense education courses shall be credited to the mandatory continuing education requirements.

[(18) Hours of mandatory continuing education exceeding the amount required shall not be carried forward to the next year's requirements.

[(19) Education courses offered by the commission shall be available at no charge to a licensee.

[(13) A licensee who receives instruction in education courses which qualify for prelicense education shall receive credit for those hours as mandatory continuing education hours.]

[(14) A licensee who receives an excess number of hours of mandatory continuing education in any one (1) year shall not be allowed to carry those excess hours forward to the next year.]

[(15) The commission shall make available at no charge to the licensed agents each year approved education courses with hours sufficient to comply with this regulation.]

GEORGE G. SIRK, JR., Chairman

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GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission
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201 KAR 11:245. Property management procedures and guidelines.

RELATES TO: KRS [Chapter] 324.160(1)(f), (h)

STATUTORY AUTHORITY: KRS [Chapter] 13A,] 324.281(5), 324.282

NECESSITY AND FUNCTION: To inform and set certain standards for the licensees and to protect the public.

Section 1. [The following regulations must be observed by all licensed agents who engage in property management:]

(1) A [No] licensed agent shall not engage in property management without a current written property management agreement[, which complies with this regulation].

(2) A [All] property management agreement shall [must] contain:

(a) The business name and address of the licensed agent's company;

(b) The name and address of the owner;

(c) The address of the real estate being managed and the number of units;

(d) The date when the agreement begins and ends, and a provision stating whether the owner agrees or not to automatic annual renewal;

(e) A provision stating the method for early termination;

(f) The amount of, or the method for computing the amount of compensation to the licensed agent;

(g) The amount of or the method of determining the minimum security deposit to be collected from tenants for each unit managed;

(h) The name and address of the bank where the agent's escrow account is kept where the security deposit will be held together with the account number. This information must also be contained in the lease;

(i) [(h)] A provision which is in accord with [the Landlord Tenant Act (KRS 383.580 [500 et seq.])] setting forth the procedures governing returning or retaining the security deposit. This provision shall also [, and which also must] be contained in the lease;

(j) [(i)] A provision setting forth the conditions under which the agent is authorized to pay expenses related to the real estate being managed;

(k) [(j)] A statement setting forth the date when the agent shall [will] send the owner an accounting of the transactions related to the real estate being managed;

(l) [(k)] A copy of the form of the lease document which the licensee shall [will] have the tenant sign must be attached to the agreement;

(m) [(l)] A provision whereby the owner certifies that he has received a duplicate copy of the agreement and the attached lease form; and [.]

(n) [(m)] The signature and date of signature of the owner and the agent.

Section 2. (1) An owner ledger, in electronic or written form, shall be maintained for each owner of real estate being managed.

(2) A tenant ledger, in electronic or written form, shall be maintained for each tenant renting real estate being managed.

(3)(a) A receipt shall be given for money received.

(b) Money received shall be deposited into an escrow or management account of the agent without undue delay. Agents who have an ownership in the real estate being managed shall comply with the requirements of KRS 383.580.

(c) The amount of money received shall be entered into the owner and tenant ledgers, by unit.

(4) Expenses paid by an agent shall be documented by invoice or receipt, by unit. Documentation shall be retained with an agent's records.

(5) Adjustments to a security deposit shall be made in accordance with KRS 383.580. Adjustments shall also be entered on the owner and tenant ledgers, by unit.

(6) An agent shall send a monthly accounting to an owner of transactions:

(a) Related to the real estate being managed, by unit; and

(b) Entered on the owner and tenant ledgers, by unit.

(7) Within sixty (60) days of the termination of a management agreement, an agent shall send the owner a final accounting. The final accounting shall contain transactions that occurred after the last monthly accounting.

(8) An agent who owns the real estate being managed shall:

(a) Comply with the accounting requirements relating to receipt, deposit and adjustment of tenant security deposits; and

(b) Be exempt from the other accounting requirement specified in this administrative regulation.

Section 3. A broker shall retain property management agreements, leases, monthly statements, owner and tenant ledgers, and bank statements relating to property management for four (4) years.

Section 4. A tenant security deposit shall be deposited and maintained in an escrow account in compliance with KRS 324.111. Agents who have an ownership in the real estate being managed shall comply with the requirements of KRS 383.580.

[(3) The following accounting rules shall be followed by all licensed agents who engage in property management:]

[(a) A separate electronic or written ledger must be maintained for each owner of real estate being managed (hereafter referred to as "owner ledger").]

[(b) A separate electronic or written ledger must be maintained for each tenant renting real estate being managed (hereafter referred to as "tenant ledger").]

[(c) All rents and security deposits and other money received must be receipted for, must be deposited into the escrow or management account of the agent without undue delay, and must be entered on both the owner ledger, by unit, and on the tenant ledger.]

[(d) All expenses paid by the agent shall be properly documented by invoice or receipt by unit, and this documentation shall be retained with the agent's records.]

[(e) All adjustments to the security deposit must be made in accordance with the Landlord Tenant Act (KRS 383.500 et seq.) and must be entered on both the owner ledger by unit and on

the tenant ledger.]

[(f) The agent must send to the owner each month a monthly accounting which sets forth fairly and accurately all transactions related to the real estate being managed, by unit, and which must include all transactions entered on the owner ledger by unit and on the tenant ledger(s).]

[(g) Upon termination of a management agreement, the agent must send to the owner within sixty (60) days of the termination, a final accounting setting forth those transactions required in the monthly accounting, which occurred after the last monthly accounting.]

[(h) Agents who own the real estate being managed need only comply with the accounting rules set forth herein as they relate to tenant's security deposits, their receipt, deposit and adjustment.]

[(4) Brokers shall preserve for four (4) years all property management agreements, leases, monthly statements, owner and tenant ledgers, and bank statements relating to property management.]

[(5) All tenant security deposits shall be deposited and maintained in an escrow account such as is required in KRS 324.111. Withdrawals from said account shall be in accord with the Landlord Tenant Act (KRS 383.500 et seq.).]

GEORGE G. SIRK, JR., Chairman

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**GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission
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201 KAR 11:250. Listing and purchase contracts - provisions required.

RELATES TO: KRS [Chapter] 324.281(5), 324.282

STATUTORY AUTHORITY: KRS [Chapter] 13A, 324.281(5), 324.282

NECESSITY AND FUNCTION: To inform and set certain standards for the licensees and to protect the public.

Section 1. Listing contracts shall include the [following]:

(1) [The] Listing price of the property, unless the sale is to be by auction;

(2) [The] Date of the signing of the listing contract for all parties who sign;

(3) [The] Date and time of expiration of the listing contract;

(4) [The] Fee or commission agreed upon;

(5) [The] Street, address or location of the real estate listed for sale;

(6) [The] Signatures of all owners; and

(7) Special directions of the owner concerning limitations on showings and subagency restrictions.

Section 2. An [All] offer to purchase and a [all] counteroffer prepared by or at the direction of a licensed agent shall include the [following]:

(1) [The] Purchase price, the amount of contract deposit given and who is to hold the deposit;

(2) [The] Date and time of signing of the

offer or counteroffer for all parties who sign;
 (3) [The] Date and time when the offer or counteroffer expires;
 (4) [The] Street, address or a general description of the real estate sufficient to identify the parcel;
 (5) [The] Names of the offering party and the agent who prepared the offer or counteroffer; and
 (6) [A] Provision setting forth the date by which the closing shall [must] occur and when possession shall [is to] be given to the buyer.

Section 3. (1) A licensed agent shall insert the following provision in a contract made after an executory contract of sale of real estate that has not lapsed according to its terms: "This contract is contingent upon the nonperformance of a contract of sale, and any signed extension, in which (insert names of purchasers) have agreed to purchase the real estate that is the subject of this contract."

(2) The provision required in subsection (1) of this section shall be:

(a) Inserted by the agent who prepares the offer to purchase, if he is aware of the existing contract; and

(b) Made by the listing agent as a counteroffer. [It shall be the duty of all licensed agents to cause to be inserted as a contractual provision in any back-up contract, that is a contract which is made after an executory contract of sale of real estate which has not lapsed according to its terms, the following provision: "This contract is contingent upon the nonperformance of a certain contract of sale and any signed extension thereof, wherein (purchasers) agreed to purchase the real estate which is the subject of this contract to purchase." The provision must be inserted by the agent who prepares the offer to purchase if said agent knows of the existing contract, and must be made by the listing agent as a counteroffer.]

GEORGE G. SIRK, JR., Chairman
 APPROVED BY AGENCY: December 11, 1990
 FILED WITH LRC: December 12, 1990 at 10 a.m.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission
(As Amended)

201 KAR 11:300. Use of facsimile transmissions.

RELATES TO: KRS [Chapter] 324.281(5), 324.282

STATUTORY AUTHORITY: KRS [Chapter 13A,] 324.281(5), 324.282

NECESSITY AND FUNCTION: To inform and set certain standards for the licensees and to protect the public.

Section 1. [The following shall apply to the use of facsimile transmissions by licensed agents:]

(1) A licensee may use facsimile (FAX) devices to transmit and receive documents according to the provisions of [rules set out in] this regulation.

(2) A copy of a[n]y document transmitted by FAX device shall be immediately mailed by

regular mail, postage prepaid and properly addressed, to the person to whom the FAX transmission is [was] transmitted.

(3) A[n]y document received by FAX device shall be immediately reproduced on nonthermographic paper and placed in the licensee's file as [which is] required under 201 KAR 11:062.

[(4) When this regulation has been followed, the time of transmission of a document by FAX device shall be considered the time of delivery of the document, and for documents required to be submitted under 201 KAR 11:045, shall be considered the time of submission of the document.]

Section 2. If a licensee complies with Section 1 of this regulation, the time of delivery of a document transmitted by FAX device, and a document required to be submitted under 201 KAR 11:045, shall be the time of transmission by FAX device.

GEORGE G. SIRK, JR., Chairman
 APPROVED BY AGENCY: December 11, 1990
 FILED WITH LRC: December 12, 1990 at 10 a.m.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Chief State School Officer
(As Amended)

701 KAR 5:080. Application for approval of alternative school-based decision making model.

RELATES TO: KRS 156.160, 160.345
STATUTORY AUTHORITY: KRS 156.070, 165.160
NECESSITY AND FUNCTION: KRS 160.345 establishes a statutory administrative structure for school-based decision making councils, but allows for schools to apply for exemption from the statutory model upon presentation of specified information and documentation; and KRS 156.160 mandates the State Board for Elementary and Secondary Education to prescribe uniform forms and blanks for use by local school districts. This regulation prescribes the application to be submitted for exemption from the statutory administrative structure for school councils.

Section 1. Schools requesting exemption from the administrative structure for school-based decision-making councils prescribed by KRS 160.345 shall submit the "Application for An Alternative Model for School-Based Decision-Making" to the chief state school officer and the State Board for Elementary and Secondary Education for approval. Said form is incorporated herein by reference and may be inspected, copied, and obtained at the Office of Research and Planning, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

[Section 2. Such application shall be submitted to the chief state school officer by May 31st of each calendar year for implementation in the succeeding school year following approval.]

This is to certify that the chief state school officer has reviewed and recommended this

administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

JOHN H. BROCK, Superintendent

HENRY E. POGUE, IV, Chairman

APPROVED BY AGENCY: November 14, 1990

FILED WITH LRC: December 12, 1990 at 11 a.m.

EDUCATION AND HUMANITIES CABINET

Department of Education

Office of School Administration and Finance
(As Amended)

702 KAR 1:005. Textbook program plan.

RELATES TO: KRS 156.031, 156.400 to 156.476, 157.100 to 157.190

STATUTORY AUTHORITY: KRS 156.410, 156.437, 156.447, 156.474, 156.476, 157.100, 157.110, 157.120, 157.130, 157.140, 157.150, 157.160

NECESSITY AND FUNCTION: KRS 156.031 requires that regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary and resubmitted to the Legislative Research Commission prior to December 30, 1990. KRS 156.400 to 156.476 sets up the Kentucky Textbook Commission and the statutory policies and procedures for the adoption, purchase, use and distribution of textbooks to be utilized in the schools of the Commonwealth; and [...] KRS 157.100 to 157.190 require that the Department of Education purchase textbooks for certain grades and set up management procedures for the textbook program. This regulation establishes the standards and procedures which are necessary to carry out such statutory requirements dealing with textbooks.

Section 1. The subjects included in the "Program of Studies for Kentucky Schools" shall be arranged into six (6) groups as follows: Group I - Social Studies K-12; Group II - Language Arts K-12 and Reading 9-12; Group III - Science K-12; Group IV - Music K-12 and Vocational Education 1-12; Group V - Mathematics K-12 and Computer Education 6-12; Group VI - Reading K-8, Literature, Art, Foreign Language, and Health K-12; Driver Education 10-12 [Group I - Social Studies K-12; Group II - Language Arts K-12 (except Reading K-8 and Literature K-12); Group III - Science K-12; Group IV - Mathematics K-12; Group V - Reading K-8, Music K-12, Industrial Arts 7-12, Business Education 7-12, (except Introduction to Computers 9-11, Data Processing I 11-12, Data Processing II 12, Word Processing I 11-12, and Word Processing II 12), Vocational Education 7-12, (except Air Conditioning 10-12, Auto Body Repair 10-12, Auto Mechanics 10-12, Electricity 10-12, Electronics 10-12, Machine Shop 10-12, and Radio/TV Repair 10-12), and Trades and Industry 11-12; and Group VI - Literature K-12, Art Education K-12, Foreign Language 3-12, Driver Education 9-12, and Health and Physical Education K-12].

Section 2. (1) The Department of Education [Division of Textbook Services] shall requisition and publishers submitting bids shall ship adequate textbook samples to the Department of Education [Division of Textbook Services] and individual State Textbook Commission members, reviewers, and curriculum committees during the selection and adoption process. All available

textbook samples, program descriptions, list of gratis items for districts adopting or purchasing books, and other pertinent bid information shall be provided by [before] the bid opening. Samples and information not available at bid opening shall be shipped to the Department of Education [Division of Textbook Services], commission members, reviewers and curriculum committees as soon as possible and not later than the date of the commission hearing held under Section 3 of this regulation.

(2) When the selection process has been completed and the individual commission members, reviewers and curriculum committees have no further need for samples in their possession, such shall be disposed of in the following manner:

(a) Reclaimed by publishers;

(b) Transferred to local school districts, institutions of higher education, or other appropriate agencies; or

(c) Sold by the State Board for Elementary and Secondary [of] Education. All sales and transfers shall be properly receipted and filed with [in] the Department of Education [Division of Textbook Services]. Official adoption samples, however, shall [must] be disposed of in accordance with KRS 156.470.

Section 3. (1) Each adoption year before the September listing, the State Textbook Commission shall conduct a hearing for the purpose of interviewing publisher agents and representatives and providing an opportunity for agents and representatives to make presentations on textbooks submitted for listing.

(2) The commission shall hear any person or organization that may have complaints or concerns about a textbook being considered for listing at the publisher hearing or the September listing.

(3) Parties desiring to be heard shall file with the Secretary of the State Textbook Commission a request two (2) weeks prior to either meeting to assure a place on the agenda. The request need not be in any prescribed form but shall [must] clearly state:

(a) Name and address of the person or organization requesting the hearing;

(b) Title, author and copyright date of the textbook in question;

(c) Sections of the textbook being questioned and nature of concern;

(d) Anticipated problems that would be created if the textbook is placed in use; and

(e) Suggested alternatives.

(4) A reasonable amount of time shall be assigned to the agenda for the hearing and one (1) spokesperson shall represent a group or organization.

(5) The commission's position and/or action shall be forwarded to the concerned parties after the September listing has been concluded.

Section 4. (1) The Kentucky State Textbook Commission has the right to inquire into and ascertain if any publisher has violated this regulation or the Kentucky Revised Statutes; or if the publisher has used undue influence or unethical tactics to secure bids or to assure local adoption. Undue influence or unethical tactics shall include, but not necessarily be limited to, unsolicited contact by agents and representatives of individual publishers with members of the State Textbook Commission and the

buying for or giving to State Textbook Commission members and local district selection committee members meals, gifts, trips, or entertainment to assure the listing, adoption, and purchase of their textbooks. If there is sufficient evidence that publishers are guilty of any of the aforementioned, they shall be called before the State Textbook Commission to determine if violations did occur and what course of action shall [should] be taken.

(2) Publishers proposing to give local districts free-of-charge items, including but not limited to kits, duplicating masters, workbooks, and extra textbooks, if said districts [would] adopt and purchase their textbooks, shall file a list of gratis items as an official part of their bid.

(3) In addition to textbook sampling required under KRS 156.440, publishers may sample gratis items to local districts for use in the adoption process. Gratis sampling shall be minimal and not be done in a manner to assure the adoption and purchase of a publisher's textbooks.

(4) The State Textbook Commission shall have the right to refuse to execute or to cancel a publisher contract upon discovery that said publisher has violated any part of this regulation or does not have the ability to perform all the terms and conditions of the contract.

(5) All bidders for textbook contracts shall file with the Department of Education [Division of Textbook Services] the name of a Kentucky person, firm, or corporation upon whom process may be served. The name of the process agent, together with such other information concerning said agent, shall be made available to the proper authorities for the purpose of serving process.

Section 5. Publishers and local school districts may agree to pilot new textbook programs for one (1) school year on a selective and controlled basis to determine the effectiveness of a particular textbook program. Piloting shall not be conducted during the adoption year (July-April) for a subject being considered for adoption by the local districts. The chief state school officer [Superintendent of Public Instruction] shall approve all piloting programs. The local school district superintendent shall file the request for approval with the chief state school officer [Superintendent of Public Instruction]. The request need not be in any prescribed form but shall clearly state:

- (1) The publisher that will conduct the pilot;
- (2) The purpose of the pilot;
- (3) The subject and grade levels in which the pilot shall [will] be conducted;
- (4) The schools where the pilot shall [will] be conducted;
- (5) The name of the school district staff member supervising the pilot;
- (6) Beginning and ending date of pilot;
- (7) Brief summary of evaluation procedures.

Section 6. Any school administrator or teacher who [that] receives directly or indirectly any gift, reward, or promise of a reward for his influence in reviewing and selecting textbooks shall be subject to the penalties of KRS 156.480.

Section 7. (1) The "Manufacturing Standards and Specifications for Textbooks," developed and

approved by the National Association of State Textbook Administrators, in consultation with the Association of American Publishers and the Book Manufacturers' Institute, as revised February, 1982, shall apply to all textbooks submitted for adoption in Kentucky. Said edition is incorporated by reference and is on file in and can be inspected, copied, and obtained from the Division of Textbook Services, Department of Education, 15th Floor, Capital Plaza Tower, Frankfort, 8 a.m. - 4:30 p.m., Monday-Friday.

(2) Publishers who have filed an old copyright with the official bid on or before July 15 may substitute the revised edition at the commission hearing. Publishers may submit a galley proof, incomplete book, or statement of intent with the official bid; however, the book shall be complete and on file with the State Textbook Commission on or before the date of the commission hearing. Ancillary materials, including workbooks and teacher editions, shall be completed on or before the July 1 contract date.

Section 8. Defective binding, workmanship or material shall be reported as soon as detected. Publishers shall be held responsible for all defective textbooks. Textbooks that show manufacturing defects in the first or second year of use shall be replaced by the publisher on a one-for-one basis. After the first two (2) years of use, replacement agreement shall [must] be negotiated between the local district and [reached with] the publishers. School districts shall start the replacement process as soon as it has been determined that textbooks are defective.

Section 9. (1) Request to substitute revised editions of textbooks under contract shall be considered at the regular meetings of the State Textbook Commission to be held on or before May 1 and on or before September 20.

(2) Substitutions shall not be permitted for textbooks to be used the last year of a contract.

(3) The publisher shall agree to supply either the listed or the substituted textbook in accordance with local school district's request.

(4) The revised edition shall be at the same price at which the book is bid and sold elsewhere in the United States at the date of the substitution approval and the content shall be compatible for use with the old edition.

(5) The physical materials and workmanship of the revised edition shall be of equal or better quality than the older edition.

(6) Ancillary materials for a substituted textbook or program shall be available at the time the publisher submits substitution request.

(7) Publishers shall provide thirty (30) days prior to date of the commission meeting a sample of the substituted textbook and a list of the changes with page numbers [summary description] of the revised edition that compares it with the textbook [and/]or program presently on the State Multiple List.

Section 10. (1) Multivolume textbook programs for a single subject or a series for more than one (1) grade level are [is defined as] two (2) or more books initially planned, written, designed, bound, sequential and identifiable as one (1) program.

(2) A district may implement curriculum programs in grades kindergarten through twelve

(12) through the purchase of adopted textbooks from one (1), two (2), or three (3) textbook programs for grades kindergarten through eight (8) and up to ten (10) programs for grades nine (9) through twelve (12).

(3) A reading program from one (1) publisher shall consist of a basic reading program of readiness, preprimers, primers, and readers for grades kindergarten through six (6) or kindergarten through eight (8).

Section 11. (1) The wholesale and exchange prices in Kentucky shall not exceed the lowest wholesale and exchange prices at which textbooks are to be bid and sold elsewhere in the United States for the same adoption period. If reductions in prices are made elsewhere in the United States on the same textbooks being sold in Kentucky, publishers shall lower the price in Kentucky.

(2) The retail price to be used in Kentucky shall not be more than twenty (20) percent in excess of the publisher wholesale price.

(3) The publisher contract shall state that upon settlement, the lowest exchange price, except on consumable textbooks, is the price to be paid for textbooks by the state to publishers who during the term of the contract give in exchange an old textbook of corresponding kind and grade, and may be of a different series to that provided for in the contract.

Section 12. (1) Local school districts are hereby authorized, for elementary school use, to use up to thirty-five (35) [(30)] percent of the elementary school textbook funds for the optional purchase of supplementary textbooks, print and nonprint media materials and audio-visual equipment other than those selected by the State Textbook Commission. Optional textbook funds may be used to purchase basal textbooks or instructional materials to be used in lieu of a basal textbook for the following:

(a) Courses and programs appearing in the "Program of Studies for Kentucky Schools, Grades K-12" for which textbooks are not listed on the State Multiple List;

(b) Courses and programs appearing in the "Program of Studies for Kentucky Schools, Grades K-12" that have organizational patterns and teaching methodology that require a variety of instructional materials;

(c) Kindergarten programs;

(d) Special education classes; and

(e) Courses and programs requiring State Board for Elementary and Secondary [of] Education annual approval. Basal programs for the aforementioned courses and basal textbooks for all other subjects in the State Board for Elementary and Secondary [of] Education approved "Program of Studies for Kentucky Schools, Grades K-12" shall be purchased before optional textbook funds are used to purchase supplementary materials.

(2) The following materials shall be [are] eligible to be purchased with optional textbook funds:

(a) Preprinted organized materials including reference books, pamphlets, magazines, weekly readers, workbooks, worktexts, textbooks not on the State Multiple List, kits, master units, programmed instructional materials, computer courseware and similar qualifying materials.

(b) Preprocessed organized audio-visual materials including films, film loops, tapes,

slides, filmstrips, recordings, graphic materials, transparencies, globes, maps, charts, art objects, and similar qualifying materials.

(c) Preprinted or preprocessed programs including kits and materials being used in lieu of textbooks for particular curriculum areas.

(d) Minor audio-visual equipment needed to utilize the audio-visual materials being purchased with optional funds.

(3) The following materials shall [are] not be eligible to be purchased with optional funds:

(a) Rebinding, equipment other than minor audio-visual, furniture, personnel services, teachers' guides and manuals, testing programs, library books, supplies and materials consumed in initial use and raw and/or blank materials.

(b) Major audio-visual installations such as public address systems, sound laboratories for language, computers, and televisions (including receiving sets and related equipment).

(4) School districts with special instructional material needs may exceed the designated optional portion of their textbook funds by making written application to the Department of Education [Division of Textbook Services]. Annual approval shall [must] be obtained before funds are obligated if there is a need to exceed the designated thirty-five (35) [(30)] percent option. The application signed by the district superintendent shall include a detailed description stating name of the program or course, rationale for the program, and percent of funds requested.

(5) After acquisition of eligible supplementary textbooks, materials, and equipment and payment of invoices, a request for reimbursement shall be submitted to the Department of Education [Division of Textbook Services] on Form FT-21 before March 1. All claims submitted for the purchase of instructional materials for enrichment programs and programs not listed in the "Program of Studies for Kentucky Schools, Grades K-12" shall [must] include a copy of the State Board for Elementary and Secondary [of] Education approval of the program and instructional materials to be used.

(6) Regulations relating to the purchase of media materials, audio-visual equipment and all other instructional materials and supplies by local school districts shall contain the following requirements:

(a) Items to be purchased should be identified as consumable or nonconsumable;

(b) Each local school district shall establish a per pupil allocation of funds to purchase equipment, materials and supplies, and of this allocation a portion shall be for consumable items and the remainder for nonconsumable items;

(c) Local school districts may use all or a portion of student fees as part of the per pupil allocation of funds to purchase instructional equipment, materials and supplies;

(d) Each local school district shall survey teachers to determine their needs for instructional equipment, materials, and supplies. The local district board of education shall take into consideration the survey of teacher needs in the purchase of instructional equipment, materials, and supplies; and

(e) A financial report on allocations to and expenditures for instructional equipment, materials and supplies shall be prepared annually by the school district and shall be a public record.

Section 13. (1) The school districts shall make textbook adoptions for all the subjects in the six (6) adoption groups. The number of adopted textbooks, however, shall not exceed three (3) textbooks and/or programs per subject in any one (1) grade in grades kindergarten through eight (8). High schools, grades nine (9) through twelve (12) automatically adopt all listed textbooks [and ten (10) textbooks and/or programs per subject in any one (1) grade in grades nine (9) through twelve (12)].

(2) School districts shall indicate their tentative first, second and third choices in grades kindergarten through twelve (12). A summary of the choices shall be provided to the publisher for inventory purposes and shall in no way restrict purchases to any particular choice.

(3) Districts may purchase any or all adopted textbooks [and/or programs in any number and combination based on identified pupil needs rather than grade level assignment.

Section 14. (1) Pupils in grades kindergarten through twelve (12) with impaired vision shall be considered eligible for the use of textbooks and materials in clear type of eighteen (18) to twenty-four (24) points upon certification by an eye specialist as follows:

(a) Pupils who cannot read more than 20/70 on a Standard Snellan Chart with the better eye after correction.

(b) Pupils with progressive eye difficulties, including those with progressive myopia, even though glasses may bring the vision nearly to normal, and pupils who suffer from noncommunicable diseases of the eye or diseases of the body that seriously affect the vision.

(2) Certification of pupils' visual impairment shall be made by [on forms supplied to] local school districts to the [by the Bureau of Education for Exceptional Children,] Department of Education.

(3) Request for large print textbooks and material shall be directed to the Department of Education [Division of Materials and Curriculum].

(4) The local board of education shall assume responsibility for the care of textbooks and return them to the Kentucky Instructional Material Resource Center [Resource Bank Distribution Center] when no longer needed.

(5) Large print textbooks and materials purchased by the Department of Education shall [Division of Textbook Services are] not charged to the textbook account of the local school district.

Section 15. (1) The Department of Education [Division of Textbook Services] shall prepare textbook budgets annually and allocate funds to local school districts, based upon the Kentucky General Assembly biennial appropriation, for the purpose of purchasing full basal textbook programs during the first year of each adoption [and/or funding. After basal textbook needs have been met, surplus funds may be used to purchase supplementary materials.

(2) When allocating funds for the purchase of textbooks, the Department of Education [Division of Textbook Services] shall use the pupil membership at the close of the first month of the current school year.

(3) A statement of elementary school funds allocated to each school district shall be mailed to the superintendent after March 1. The

statement shall reflect the balances from the previous year, allotment for the ensuing year, sales and fines for the past year, and growth adjustments providing funds to purchase books for new pupils.

(4) School districts shall utilize their textbook allocation by March 1 of the year for which the funds were allocated.

Section 16. (1) Local school districts shall establish and maintain a textbook rental program for grades nine (9) through twelve (12) by renting to pupils all currently adopted, state-provided textbooks [purchased prior to July 1, 1984,] and purchasing and renting textbooks from each scheduled incoming adoption group [beginning in 1984 with Adoption Group IV (mathematics)]. This shall [does] not prohibit local districts from using local funds to provide a free textbook program.

(2) Local school districts not providing a free textbook program for grades nine (9) through twelve (12) shall establish annually a textbook rental fee based on the cost of the adoption group scheduled for purchase and the cost of replenishments. The maximum rental fee shall be based on four (4) dollars per two (2) semester course that requires the use of basal textbooks. Local school districts, at their option, may charge a deposit fee not to exceed two (2) dollars per two (2) semester course to be refunded if textbooks are returned in satisfactory condition. Textbook rental fees for pupils enrolled for less than a full school year shall be prorated based on the number of days of membership.

(3) The school district shall requisition textbooks from the State Multiple List for the grades nine (9) through twelve (12) rental program from the Department of Education [Division of Textbook Services]. The Department of Education [Division of Textbook Services] shall process the requisitions to the different publishers. The textbooks are to be shipped to the local school districts. Publishers shall invoice the local school districts.

(4) Local school districts shall establish and maintain one (1) centralized textbook rental program account subject to audit. All textbook rental monies shall be receipted to pupils and rental monies, requisitions, and payments to publishers shall be processed through the centralized account.

(5) School districts shall purchase a complete basal textbook program for grades nine (9) through twelve (12) the first year of each scheduled adoption for each subject in the adoption group for which basal textbooks are appropriate.

(6) The Department of Education [Division of Textbook Services] shall provide local districts with requisition forms, an annual inventory report, and the information necessary for districts to maintain an efficient textbook rental program for grades nine (9) through twelve (12).

(7) All textbook statutes and regulations governing the textbook program for elementary and secondary schools not invalidated by the textbook rental program statutes and regulations shall be applicable to the textbook rental program for grades nine (9) through twelve (12).

Section 17. (1) The Department of Education [Division of Textbook Services] shall provide

Annual Report and requisition forms to all school districts. These forms shall be prepared in duplicate. The original copy shall be sent to the Department of Education [Division of Textbook Services] and the second copy retained by the district. The Annual Report (FT-8) and requisition (FT-9) may be filed after March 1 and shall be filed by June 30.

(2) The Department of Education [Division of Textbook Services], upon receipt and approval of a requisition for textbooks from any school district, shall issue a local purchase order. A copy of the local purchase order shall be sent to the publisher, two (2) copies sent to the local district and two (2) copies retained by the Department of Education [Division of Textbook Services].

(3) All adopted textbooks purchased with state textbook funds shall be purchased through the office of the Department of Education [Division of Textbook Services].

(4) Publishers shall ship direct to local school districts by prepaid freight or United Parcel Service and issue invoices in triplicate to the Department of Education [Division of Textbook Services].

(5) Upon receipt of textbooks, the school district shall check items of shipment against the local purchase order (receiving report) and if all textbooks were received in satisfactory condition, certify this fact by mailing one (1) copy of the local purchase order (receiving report), dated and signed to the Department of Education [Division of Textbook Services]. The Department of Education [Division of Textbook Services] may then order payment.

(6) All textbooks shall be labeled as property of the Commonwealth of Kentucky. For economy in administration, the uniform label is affixed by the publishers in accordance with the "Manufacturing Standards and Specifications for Textbooks." School districts shall record the purchase date and the issue date on the uniform label.

(7) Textbook uniform labels shall not be completed until an examination of the shipment shows that it agrees in detail with the purchase order. A textbook with label completed is classified as a used textbook.

(8) A complete record shall be kept by the school district for all state-provided textbooks for grades kindergarten through eight (8) and all textbooks purchased with pupil rental fees for grades nine (9) through twelve (12) delivered to teachers or principals of the different schools. Form FT-5 or a comparable form shall be used. Form FT-5 shall [will] be furnished upon request in quantities equal to number of teachers or principals.

(9) When textbooks are issued, a requisition card shall be filled out in duplicate for each pupil. Form FT-6 or a comparable form shall be used. Form FT-6 shall [will] be furnished upon request in quantities equal to pupil membership.

Section 18. The Department of Education [Division of Textbook Services] shall encourage and facilitate the transfer of surplus textbooks that may be in local school districts' textbook depositories. The Department of Education [Division of Textbook Services] shall, at appropriate times during a school year, solicit from the districts a list of surplus textbooks and mail to all districts a master list of available textbooks. Districts that need

textbooks on the master list shall [will] request the Department of Education [Division of Textbook Services] to initiate a transfer. The district having possession of the surplus textbooks requested by a district shall ship the books and notify the Department of Education [Division of Textbook Services] the number of books shipped and cost of transportation. Upon receipt of the books, the receiving district shall [will] notify the Department of Education [Division of Textbook Services]. The Department of Education [Division of Textbook Services] shall interaccount funds by transferring the cost of the textbooks and transportation cost from the receiving district to the shipping district's textbook account. The cost to the receiving district of all transferred textbooks shall be fifty (50) percent of the wholesale price plus transportation.

Section 19. Pupils or parents shall compensate school districts for textbooks lost, damaged, or destroyed while in their possession and the compensation shall be as follows: 100 percent of retail cost for one (1) and two (2) year old textbooks; seventy-five (75) percent of retail cost for three (3) and four (4) year old textbooks; and twenty-five (25) percent of retail cost for five (5) and six (6) year old textbooks.

Section 20. (1) Textbooks to be rebound shall not qualify for publisher replacement under Section 8 hereof. Textbooks with five (5) or more years of use shall be rebound only in extreme cases of shortages and emergencies.

(2) Textbooks in need of rebinding shall be reported on Form FT-16 to the Department of Education [Division of Textbook Services] with the Annual Report. After approval, the request is forwarded to the bindery under contract with the Commonwealth of Kentucky. The bindery shall pick up books or instruct the districts to ship the books collect. Rebound books shall be returned to the school district by the bindery with shipping charges prepaid. The bindery shall mail the invoice to the Department of Education [Division of Textbook Services] for payment. Such payments shall not be charged to the textbook account of local school districts.

Section 21. (1) District superintendents shall make an accurate count of all state-provided textbooks for grades kindergarten through eight (8) and all textbooks purchased with pupil rental fees for grades nine (9) through twelve (12) under adoption that are suitable for classroom instruction and report same on the Annual Report (FT-8).

(2) The Department of Education [Division of Textbook Services] shall file an annual exchange report with publishers identifying the titles and number of textbooks purchased to replace textbooks no longer suitable for classroom instruction. A claim requesting credit memorandums in the amount of the difference between the wholesale and exchange price for each textbook purchased shall be filed with publishers. The credit memorandums shall be used in payment of invoices for textbooks purchased from said publishers during the next purchase year. Publishers shall relinquish their claim for exchange textbooks if not claimed within a reasonable period of time after replacement.

(3) The local superintendent shall assume

responsibility for the disposal of unclaimed textbooks no longer suitable for classroom instruction and may dispose of them in the following manner:

(a) Make the unclaimed textbooks available to teachers for use in grouping, reference, supplementary and other classroom activities.

(b) Make the unclaimed textbooks available to pupils within the district.

(c) Publicize in the local newspaper that unclaimed textbooks are available to individual residents of the local district. Unclaimed textbooks disposed of in this manner shall not be made available to used textbook dealers.

(d) Make the unclaimed textbooks available to civic organizations for the purpose of distribution to undeveloped countries.

(e) Make the unclaimed textbooks available to recycling operations.

(f) Destroy unclaimed textbooks in any manner that is practical and in the best interest of the state and local school district. Any funds from the sale of unclaimed textbooks shall be retained by the local district [paid into the state treasury].

Section 22. (1) No child shall be denied full participation in any educational program due to an inability to purchase any and all necessary textbooks. [Beginning with the 1986-87 school year.] Local school districts shall make available free textbooks to all children in grades nine (9) through twelve (12) who are unable to rent or purchase textbooks, using the eligibility guidelines for the free and reduced price lunch program. The parents of such children may be asked to contribute financially toward the rental and deposit cost of their children's textbooks the same percentage that they contribute financially toward the cost of their children's lunches.

(2) Local school districts shall adopt policies and procedures whereby, at the beginning of the school year, pupils or their parents are given written notice of the availability of, and guidelines and procedures for obtaining, free and reduced rental textbooks. Such policies and procedures shall also insure that the following occur:

(a) Any verbal or written communication with students or parents regarding payment of fees for textbooks shall include a statement that free or reduced rental textbooks will be made available to students in accordance with this section and a statement clearly explaining school procedures for obtaining such textbooks; and

(b) Any written communication regarding payment of fees for textbooks shall include a form that parents can use to request waiver or partial waiver of textbook fees.

(3) In exceptional circumstances, at the discretion of a local school district not providing free textbooks to all pupils, pupils who do not meet free or reduced price lunch guidelines may be provided free textbooks.

(4) Local districts shall keep records for documentation and compliance purposes, which shall be made available to the Department of Education upon said department's request. Such records shall include:

(a) The numbers of pupils in grades nine (9) through twelve (12) receiving free lunches and reduced price lunches;

(b) The number of pupils in grades nine (9)

through twelve (12) who request or apply for, or whose parents request or apply for, free or reduced rental textbooks and the number of pupils receiving free or reduced rental textbooks.

(c) Copies of any forms, notices or instructions used by schools in the collection of textbook fees or the provision of free or reduced rental textbooks.

(5) In the provision of textbooks to indigent children, no child shall be discriminated against because of race, sex, color, national origin, age, or handicap and there shall be no overt identification of any such children.

Section 23. Every public school student shall have a textbook(s) or facsimile furnished free of charge, [to the extent of state textbook funds available,] for each subject studied in grades one (1) through eight (8), and, except for students otherwise partially or wholly exempted from the rental fee, shall have such textbook(s) available for the reasonable rental fee set forth in Section 16 of this regulation for each subject studied in grades nine (9) through twelve (12). Materials for kindergarten classes shall be purchased to comply with the minimum equipment and materials list of the state accreditation standards. The only exceptions to this regulation shall be health, physical education, music, and art textbooks, which may be purchased by the school district in classroom sets one (1) through twelve (12) and which may be available to be taken home by students for further study. Vocational education textbooks may be purchased in reference sets, classroom sets, or individually as identified by content area in the guidelines for textbook adoption. All other exceptions necessitated by curriculum needs or organizational patterns shall [must] be approved by the chief state school officer [Superintendent of Public Instruction].

Section 24. Forms FT-21 designated in Section 12(5) of this regulation; FT-8 and FT-9 designated in Section 17(1) of this regulation; FT-5 designated in Section 17(8) of this regulation; FT-6 designated in Section 17(9) of this regulation; and FT-16 designated in Section 20(2) of this regulation are incorporated herein by reference, and may be inspected, copied, and obtained from the Division of Textbook Services, Department of Education, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

JOHN H. BROCK, Superintendent

HENRY E. POGUE, IV, Chairman

APPROVED BY AGENCY: November 14, 1990

FILED WITH LRC: December 12, 1990 at 10 a.m.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of School Administration and Finance
(As Amended)

702 KAR 3:240. School council funding formula.

RELATES TO: KRS 160.345

STATUTORY AUTHORITY: KRS 156.070, 160.345

NECESSITY AND FUNCTION: The State Board for Elementary and Secondary Education is directed by KRS 160.345 to adopt by administrative regulation, upon recommendation of the chief state school officer, a formula by which school district funds are allocated to each school council. This regulation implements that duty.

Section 1. **Definitions.** (1) [Definitions, in accordance with accounting handbooks and account codes, for] "Instructional supplies, materials and equipment" include[, but are not limited to,] the following codes, as set forth in the "Kentucky School Financial Accounting System," incorporated by reference in 702 KAR 3:120:

(a) Library books - Codes: 251.01, 251.04, 252.01, 252.04;

(b) Periodicals and newspapers - Codes: 253.01, 253.04, 254.01, 254.04;

(c) Library supplies - Codes: 255.01, 255.03, 256.01, 256.03;

(d) Audio visual material and equipment - Codes: 257.01, 257.04, 258.01, 258.04;

(e) Supplementary books - Codes: 263.01, 263.04, 264.01, 264.04;

(f) Teaching supplies to include paper products - Codes: 265.01, 265.02, 266.01, 266.02;

[(g) Textbooks other than state funded - Code: 268;]

[(h)] [(h)] Instructional equipment other than computer laboratories - Codes: 231, 741.01, 871.01, 1272; and

[(i)] [(i)] Instructional travel (other than instructional personnel coded in Code 213) - Code: 267.

(2) Items not to be considered as an expenditure for the above purposes are technology related expenditures for computer laboratories and the initial inventory of a new school plant.

Section 2. The local school district board of education shall appropriate within the district budget in kindergarten through the 12th grade an amount not less than seventy-five (75) dollars per child enrolled (except kindergarten which shall be based on full-time equivalent enrollment), based upon previous end of year enrollment, in each school for the purposes of instructional materials, supplies and equipment. The school-based council shall determine the expenditure of these funds in each of the schools with councils.

Section 3. In schools where school-based councils do not exist, the central administration shall expend the seventy-five (75) dollars required for each child enrolled.

Section 4. Effective with the effective date of this regulation, school-based councils, for purposes of determining expenditures, shall be operational on or before May 1 preceding the school year or by a date agreed upon between the

local board of education and the school-based council.

Section 5. This regulation shall be effective July 1, 1991, except as specifically designated otherwise.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

JOHN H. BROCK, Superintendent

HENRY E. POGUE, IV, Chairman

APPROVED BY AGENCY: November 14, 1990

FILED WITH LRC: November 15, 1990 at 11 a.m.

PUBLIC PROTECTION & REGULATION CABINET
Department of Housing, Buildings & Construction
Office of State Fire Marshal
(As Amended)

815 KAR 10:040. Fire Prevention Code.

RELATES TO: KRS Chapters 198B, 227

STATUTORY AUTHORITY: KRS 227.300

NECESSITY AND FUNCTION: The Commissioner of the Department of Housing, Buildings and Construction is required by KRS 227.300 to establish reasonable regulations based upon good engineering practice and principles providing a reasonable degree of safety for human life against the emergencies of fire and panic, and insuring, as far as practicable, against fire loss. These regulations shall constitute the fire prevention code for Kentucky which shall be known as the Kentucky Standards of Safety. They shall be used, where applicable, as a supplement to the Kentucky Building Code. This regulation is necessary to establish minimum fire safety standards especially for buildings not constructed in accordance with applicable building codes in existence at time of construction. These standards are enforceable by the State Fire Marshal, pursuant to KRS Chapter 227 and local authorities pursuant to KRS 227.320. This amendment is necessary because of conflicts in Articles 16 and 28 with existing regulations for oil and gas wells in the Department for Mines and Minerals. [This regulation includes the substance of 815 KAR 10:020, which is being repealed.]

Section 1. Definitions. Definitions in this section shall apply to this regulation and shall be incorporated into Article 2, Section 201 of the Kentucky Standards of Safety.

(1) "Alternate" or "alternative" means a system, condition, arrangement, materials or equipment submitted to or accepted by the State Fire Marshal or other fire code official as a substitute for another code requirement because the substitute meets the intent of the code.

(2) "Code official" means the State Fire Marshal or other enforcement officer designated by the appointing authority of a local governmental jurisdiction for the enforcement of this code and the codes and standards adopted herein. (See "Fire code official")

(3) "Combustible" means capable of burning or producing flame at ordinary temperatures or being easily ignited.

(4) "Common path of travel" means that portion

of exit access that must be traversed before two (2) separate and distinct paths of travel to two (2) exits are available. Paths that merge are common paths of travel. Common path of travel is measured in the same manner as travel distance but terminates at that point where two (2) separate and distinct routes become available.

(5) "Distinct hazard" means any situation, process, material or condition which is likely to cause a fire or explosion or provide a ready fuel supply to augment the spread or intensity of the fire or explosion which poses a threat to life or the property of others, and including any condition likely to result in collapse of some portion of the structure in case of fire or explosion or other impending disaster that may be a threat to life or property.

(6) "Dwelling or private dwelling" means a single unit providing complete and independent living facilities for one (1) or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation.

(7) "Fire chief" means the authorized head of a fire department that is recognized by the State Fire Marshal's Office.

(8) "Fire code official" means the State Fire Marshal or other enforcement officer designated by the appointing authority of a local governmental jurisdiction for the enforcement of this regulation and the codes and standards adopted herein. (See "Code official")

(9) "Fire department" means a fire department recognized by the State Fire Marshal's Office.

(10) "Fire lane" means the road, path, or other passageway developed to allow the passage of fire apparatus through congested areas (both built-up and wildland).

(11) "Fire prevention code" means the BOCA National Fire Prevention Code, 1990 edition, as adopted by the Commissioner of the Department of Housing, Buildings and Construction and otherwise known as the Kentucky Standards of Safety.

(12) "Fire suppression system" means a fixed system of approved appliances/devices, valves and piping designed and installed to control/suppress fire either by means of manual or automatic activation.

(13) "Fire suppression system inspector" means any individual having met the minimum requirements adopted by the Office of the State Fire Marshal.

(14) "Floor loading" means forces or other actions that arise on structural systems from the weight of all permanent construction, occupants and their possessions including:

(a) "Dead load" the weight of all permanent structural and nonstructural components of a building, such as walls, floors, roofs, ceilings, stairways and fixed service equipment.

(b) "Live load" the weight superimposed by the use and occupancy of the building, not including the wind load, earthquake load, or dead load.

(15) "Historic building" means an existing building or structure identified and classified as historic property by the Kentucky Heritage Commission or the National Register of Historic Places.

(16) "Kentucky fire incident report" means a form for the reporting of fires which is obtained pursuant to KRS 304.13-380 from the State Fire Marshal for use by fire departments.

(17) "LED" means level of exit discharge.

(18) "NFPA" means the National Fire Protection Association.

(19) "Occupancy classification" means the various use groups as classified in the Kentucky Building Code and set forth in Section F-202.0 of this regulation.

(20) "Place of assembly" means buildings or portions thereof used for gathering together fifty (50) or more persons for purposes set forth in F-202.0, Use Group A, of this code.

(21) "Process" means the manufacturing, handling, blending, conversion, purification, recovery, separation, synthesis or use or any combination of any commodity or material regulated by this code.

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

(23) "Smoke barrier" means a continuous membrane, either vertical or horizontal, such as a wall, floor, approved door, or ceiling assembly, that is designed and erected with construction materials to restrict the movement of smoke. A smoke barrier may or may not have a fire resistance rating. These barriers shall have protected openings.

(24) "Smoking" means a lighting, igniting, holding or possession of any lighted cigar, cigarette or pipe.

(25) "State Fire Marshal" means the administrative head of the Division of Fire Prevention, Department of Housing, Buildings and Construction, Commonwealth of Kentucky, and signified by the abbreviation, "SFM".

(26) "Unfriendly fire" means a fire that is deliberately set (arson) or ignites through carelessness, negligence, or other cause in a manner as to endanger the safety of any person or property.

(27) "Use group" means the classification of a building or structure based on the purpose for which it is intended to be used.

Section 2. Adoption of Fire Prevention Code. The BOCA National Fire Prevention Code/1990, 8th Edition, published by and copies available from Building Officials and Code Administrators International, Inc., 4051 W. Flossmoor Road, Country Club Hills, Illinois 60477, is hereby incorporated by reference as it is set forth at length in this regulation, with specific changes to the BOCA Code set forth in Sections 3 through 18 [17] of this regulation. Copies are available at the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday.

Section 3. Article 1. (1) Amend subsection F-100.1 to read as follows: "F-100.1 Title: These regulations as set forth herein shall be known as the Kentucky Standards of Safety (Fire Prevention Code) and are herein referred to as same or as "this code"."

(2) Create a new subsection to read as follows: "F-100.5 Intent of Code: It is the express intent of this code to provide a reasonable degree of safety for human life. Therefore, where the purpose of any provision of this regulation can be fulfilled by other means, the specific requirements of this code may be modified by the fire code official to allow alternative arrangements that will secure as nearly equivalent safety from fire as practical."

Nothing in this code is intended to invalidate any lawfully adopted local government ordinance."

(3) Create a new subsection, "F-100.6 Continuation of Use" to read as follows:

(a) "F-100.6.1 The use and occupancy of any building which was constructed after the implementation of the Kentucky Building Code and for which there has been issued a lawful certificate of use or occupancy by the building code official may be continued without change so long as it is maintained and used as originally permitted and approved."

(b) "F-100.6.2 The use and occupancy of any building, other than a building covered by F-100.6.1, existing on the date of adoption of this code may be continued without change except as may be specifically covered by this code and deemed necessary by written decision of the fire code official for the life safety of the occupants and the public under Article 1 and 4 of this code."

(4) Create a new subsection, "F-100.7 Change in Use" to read as follows:

(a) "F-100.7.1 It shall be unlawful to make any change in the use of any structure or portion thereof with the potential to create a greater hazard to the public because of increased structural or fire loading or inadequate exits for the number of occupants without the written approval of the building official when required by the Kentucky Building Code."

(b) "F-100.7.2 Any proposed new use not subject to the Kentucky Building Code shall comply with the provisions of this code relating to the new use, as required by the fire code official."

(5) Create subsection F-100.8 to read as follows: "F-100.8 Certificate of Use and Occupancy. If the fire code official finds an existing building or facility to be in substantial compliance with the intent of this code and that there are no violations of any order of the building official or State Fire Marshal pending, he may issue a certificate authorizing the legal use and occupancy of the building or facility and that use may continue without change as allowed by F-100.6.1. Upon request, the building code official shall cooperate with the fire code official, pursuant to Section 106 of the Kentucky Building Code, in assessing existing buildings for relative fire safety."

(6) Amend subsection F-101.2 to read as follows: "F-101.2 Existing buildings: Buildings built under and in full compliance with the codes in force at the time of construction or alteration thereof, and that have been properly maintained and used as originally permitted, shall be exempt from the requirements of this code pertaining to any of the following matters:

1. Fire protection of structural elements.
2. Exits required, except as provided for existing buildings under this code.
3. Isolation of hazardous operations and mixed uses; provided, however, that the fire code official shall require the installation of fire safety devices or systems (fire extinguishers, fire alarms, fire detection devices, sprinklers or similar systems) where they are necessary to provide safety to life and property. In lieu of requiring the installation of safety devices or systems or when necessary to secure safety in addition thereto, the fire code official shall prescribe limitations on the handling and

storage of materials or substances or upon operations that are liable to cause fire, contribute to the spread of fire, or endanger life or property."

(7) Amend subsection F-101.3 to read as follows: "F-101.3 Application of building code: The planning, design and construction of new buildings and structures to provide egress facilities, fire protection, and built-in fire protection equipment shall be controlled by the Kentucky Building Code and any alterations, additions or changes in buildings required by the provisions of this code which are within the scope of the Kentucky Building Code shall be made in accordance with the standards set forth therein."

(8) Delete subsections F-101.4 and F-101.4.1 from Article 1 of the 1990 Edition of the BOCA National Fire Prevention Code in their entirety.

(9) Amend subsection F-101.6 to read as follows: "F-101.6 Compliance Alternatives:

(a) "F-101.6.1 If this code requires a particular system, condition, arrangement, material, equipment, or any other particular provision, the fire code official may grant alternatives if he finds that the alternative(s) are consistent with the intent of this code to provide adequate protection for life safety. The decision shall be written and shall provide a reasonable time to comply with the terms of the alternatives."

(b) "F-101.6.2 An application for an alternative may be filed with the fire code official by the owner or occupant and shall be accompanied by evidence, letters, statutes, results of tests or other supporting information as may be required to justify the request. The fire code official shall keep a record of action on applications and a signed copy of the fire code official's decision shall be provided for the applicant. Acceptance of any alternative by the fire code official shall signify compliance with this code under the provision for which an alternative is offered. Failure of the property owner or occupant to comply with the alternatives granted shall void the alternative."

(10) Create subsection "F-101.7 Exempted Facilities" to read as follows:

(a) "F-101.7.1 State prisons, day care centers, hospitals, nursing homes and other facilities required to be licensed by the Kentucky Cabinet for Human Resources or the Corrections Cabinet are not required to comply with the provisions of the fire prevention code if they are inspected and approved by the Office of the State Fire Marshal in accordance with federally mandated codes or the edition of NFPA Pamphlet #101 (The Life Safety Code) under which the facility was initially approved. This regulation makes no change in the standards previously applicable to these facilities."

(b) "F-101.7.2 This code does not apply to single family dwellings."

(11) Amend F-104.1 to read as follows: "F-104.1 Enforcement officer: It shall be the duty and responsibility of the State Fire Marshal, his designee, or local fire code official acting pursuant to lawful ordinance adopting this code to enforce the provisions of the fire prevention code as herein set forth. The designated enforcement officer of this code is herein referred to as the fire code official."

(12) Create a new subsection to read as follows: "F-104.9 Interpretations: Formal interpretations of the provisions of this code

shall be issued by the State Fire Marshal upon written request, and a record of these interpretations shall be maintained by the State Fire Marshal and regularly communicated to all persons who purchased the Fire Prevention Code book and others who are registered with the State Fire Marshal to be on the mailing list. These interpretations shall be used by all fire code officials to provide consistency in the understanding and enforcement of this Code. Upon adoption of these Standards of Safety by any unit of local government, pursuant to KRS 227.320, all interpretations of the Standards of Safety promulgated by the commissioner shall be interpreted likewise by the State Fire Marshal and the interpretations shall be used by all local fire code officials in the understanding and enforcement of this Code."

(13) Delete subsections F-105.6; F-105.7 and F-105.8 from Article 1 of the 1990 Edition of the BOCA National Fire Prevention Code in their entirety.

(14) Amend subsection F-106.2 to read as follows: "F-106.2 Permits required: Permits, if adopted by city or county ordinance, shall be obtained from the local fire code official according to the local adopting legislation. Inspection or permit fees, if any, shall be stipulated in the local adopting legislation. Permits shall at all times be kept in the premises designated therein and shall at all times be subject to inspection by the fire code official."

(15) Create subsection F-106.8 to read as follows: "F-106.8 The State Fire Marshal shall not become involved in the local permit process, and where local permits are required, the State Fire Marshal shall not perform any related inspections. Exception: Permits required by law to be issued by the State Fire Marshal, shall be issued according to state statute or regulations and inspected accordingly."

(16) Amend Section "F-108.0 Means of Appeal" to read as follows:

(a) "F-108.1 Local Appeals: Any party aggrieved by a decision of the local fire code official and any local fire code official desiring a ruling, may appeal to the local appeals body as provided by local ordinance."

(b) "F-108.1.1 State Fire Marshal appeals: Appeals from decisions of the State Fire Marshal or by his authority, pursuant to KRS 227.230, shall be made in accordance with the provisions of KRS Chapter 227."

(17) Amend subsection F-109.3 to read as follows: "F-109.3 Unsafe buildings. All buildings and structures that are or shall hereafter become unsafe or deficient in adequate exit facilities or which constitute a fire hazard, or are otherwise dangerous to human life or the public welfare, or by reason of illegal or improper use, occupancy or maintenance or which have sustained structural damage by reason of fire, explosion, or natural disaster shall be deemed unsafe buildings or structures. A vacant building, or portion of a building, unguarded or open at door or window shall be deemed a fire hazard and unsafe within the meaning of this code. The fire code official or authorized fire chief shall order the unsafe conditions to be remedied in accordance with this regulation or removed."

(18) Amend subsection F-111.2 to read as follows: "F-111.2 Failure to correct violations: If the notice of violation is not complied with

within the time specified by the fire code official, the fire code official shall request the legal counsel of the jurisdiction to institute the appropriate legal proceedings to restrain, correct or abate the violation or to require removal or termination of the unlawful use of the building or structure in violation of the provisions of this code or of any order or direction made pursuant thereto."

(19) Delete subsections F-112.0 through F-112.7 from Article 1 of the 1990 edition of the BOCA National Fire Prevention Code in their entirety.

Section 4. Article 2. Create a new Section, F-202 and subsections F-202.1 through F-202.12 which shall be entitled, "Use Group Classification" and which shall read as follows:

(1) "F-202.1 General: All buildings and structures shall be classified with respect to use in one (1) of the use groups listed in Table F-202 below.

TABLE F-202

1. Use Group A	assembly (See Section F-202.2)
2. Use Group B	business (See Section F-202.3)
3. Use Group E	educational (See Section F-202.4)
4. Use Group F	factory and industrial (See Section F-202.5)
5. Use Group H	high hazard (See Section F-202.6)
6. Use Group I	institutional (See Section F-202.7)
7. Use Group M	mercantile (See Section F-202.8)
8. Use Group R	residential (See Section F-202.9)
9. Use Group S	storage (See Section F-202.10)
10. Use Group U	utility and miscellaneous (See Section F-202.11)"

(2) "F-202.2 USE GROUP A, ASSEMBLY USES:"

(a) "F-202.2.1 General: All buildings and structures, or parts thereof, shall be classified in Use Group A which are used or designed for the gathering together of persons for purposes of civic, social or religious functions, recreation, food or drink consumption or awaiting transportation. Exception: Assembly type uses with a total occupant load of less than fifty (50) shall be classified as Use Group B (Business)."

(b) "F-202.2.2 Use Group A-1, theaters: This use group shall include all theaters and all other buildings and structures, or parts thereof, intended for the production and viewing of the performing arts or motion pictures and usually provided with fixed seats, including theaters, motion picture theaters and television and radio studios admitting an audience. Stages and platforms shall comply with the applicable provisions of the Kentucky Building Code."

(c) "F-202.2.3 Use Group A-2 structures: This use group shall include all buildings and places of public assembly, without theatrical stage accessories, designed for use as dance halls, night clubs and for similar purposes, including all rooms, lobbies and other spaces connected thereto with a common means of egress and entrance."

(d) "F-202.2.4 Use Group A-3 structures: This use group shall include all buildings with or without an auditorium in which persons assemble

for amusement, entertainment or recreation, and incidental motion picture, dramatic or theatrical presentations, lectures or other similar purposes without theatrical stage other than a raised platform; and principally used without permanent seating facilities, including art galleries, exhibition halls, museums, lecture halls, libraries, restaurants other than night clubs, and recreation centers; and buildings designed for other similar assembly purposes including passenger terminals."

(e) "F-202.2.5 Use Group A-4 structures: This use group shall include all buildings used as churches and for similar religious purposes."

(f) "F-202.2.6 Use Group A-5, outdoor assembly: This use group shall include structures used for outdoor assembly intended for participation in or reviewing activities including grandstands, bleachers, coliseums, stadiums, amusement park structures and fair or carnival structures. These structures shall comply with the provisions of the Kentucky Building Code listed in Appendix A for special uses and occupancies."

(3) "F-202.3 USE GROUP B, BUSINESS USES: F-202.3.1 General: All buildings and structures, or parts thereof, shall be classified in Use Group B which are used for the transaction of business, for the rendering of professional services, or for other special services that involve stocks of goods, wares or merchandise in limited quantities for use incidental to office uses or sample purposes."

(4) "F-202.4 USE GROUP E, EDUCATIONAL USES. F-202.4.1 General: All buildings and structures, or parts thereof, other than those used for business training or vocational training, shall be classified in Use Group E which are used by more than five (5) persons at one (1) time for educational purposes including, among others, schools, academies, colleges and universities. Educational type uses with a total occupant load less than fifty (50) shall be classified in Use Group B. School buildings, or parts thereof, for business training or vocational training shall be classified in the same use group as the business or vocation taught."

(5) "F-202.5 USE GROUP F, FACTORY AND INDUSTRIAL USES."

(a) "F-202.5.1 General. All buildings and structures, or parts thereof, in which occupants are engaged in performing work or labor in the fabricating, assembling or processing of products or materials shall be classified in Use Group F, including, among others, factories, assembling plants, industrial laboratories and all other industrial and manufacturing uses, except those of Use Group H involving highly combustible, flammable or explosive products and materials."

(b) "F-202.5.2 Use Group F-1 structures: Factory and industrial use which are not otherwise classified as low hazard Use Group F-2, shall be classified as moderate hazard factory and industrial, Use Group F-1."

(c) "F-202.5.3 Use Group F-2 structures: Factory and industrial uses which involve the fabrication or manufacturing of noncombustible materials which during finishing, packing or processing do not involve a significant fire hazard shall be classified as Use Group F-2."

(6) "F-202.6 USE GROUP H, HIGH HAZARD USES."

(a) "F-202.6.1 General: All buildings and structures, or parts thereof, shall be classified in Use Group H which are used for the

manufacturing, processing, generation or storage of corrosive, highly toxic, highly combustible, flammable or explosive materials that constitute a high fire or explosion hazard, including loose combustible fibers, dust and unstable materials."

(b) "F-202.6.2 Exceptions: The following shall not be classified as Use Group H but shall be classified in the usage group which they most nearly resemble:

1. Any building or portion of a building containing less than the exempt amount of those materials shown in Table F-202.6 when maintained in accordance with this code.

2. Buildings containing rooms conforming to the requirements of Article 6 of the Kentucky Building Code listed in Appendix A.

3. Rooms containing flammable liquids in tightly-closed containers of one (1) gallon (0.0038 m³) capacity or less for retail sale or private use on the premises and in quantities not exceeding two (2) gallons per square foot (0.082 m³/m²) of room area.

4. Rooms used for preparation or storage of food products for retail sale on the premises.

5. Retail paint salesrooms with quantities of paint not exceeding two (2) gallons per square foot (0.082 m³/m²) of room area.

6. Liquor stores and distributors without bulk storage.

7. The storage or use of materials for agricultural purposes for use on the premises.

8. Closed systems housing flammable or combustible liquids or gases used for the operations of machinery or equipment.

9. Cleaning establishments which utilize combustible liquid solvents having a flash point of 140 degrees F. (60 degrees C.) or higher in closed systems employing equipment listed by an approved testing laboratory, provided this use is separated from all other areas of the building by one (1) hour fire-resistance rated construction.

10. Cleaning establishments which utilize a liquid solvent having a flash point at or above 200 degrees F. (93 degrees C.).

11. Refrigeration systems.

12. Tire retail stores without bulk storage.

13. Any other building or portion thereof which is exempt from this classification by the Kentucky Building Code."

(c) The following table shall apply to this section:

"F-TABLE 202.6
EXEMPT AMOUNTS OF HAZARDOUS MATERIALS,
LIQUIDS AND CHEMICALS

Material	Maximum quantities ^e
1. Flammable Liquids	
Class I-A	30 gal. ^b
Class I-B	60 gal. ^b
Class I-C	90 gal. ^b
2. Combustible liquids ^c	
Class II	120 gal. ^b
Class III-A	250 gal. ^b
3. Combination flammable liquids ^a	120 gal. ^b
4. Flammable gases	3,000 cu. ft. at one atmosphere of pressure at 70°F.
5. Liquefied flammable gases	60 gal.
6. Combustible fibers-loose	100 cu. ft.

7. Combustible fibers-baled	1,000 cu. ft.
8. Flammable solids	500 lbs.
9. Unstable material	No exemptions
10. Corrosive liquids	55 gal.
11. Oxidizing material-gases	6,000 cu. ft.
12. Oxidizing material-liquids	50 gal.
13. Oxidizing material-solids	500 lbs.
14. Organic peroxides	10 lbs.
15. Nitromethane (unstable materials)	No exemptions
16. Ammonium nitrate	1,000 lbs.
17. Ammonium nitrate compound mixtures containing more than 60% nitrate and poisonous gas	1,000 lbs.
18. Highly toxic material and poisonous gas	No exemptions
19. Smokeless powder	20 lbs. ^d
20. Black sporting powder	5 lbs. ^d

Note a. Containing not more than the exempt amounts of Class 1-A, 1-B or 1-C flammable liquids.

Note b. The maximum quantities shall be increased by 100 percent in areas which are not accessible to the public. In buildings where automatic fire suppression systems are installed, the maximum quantities shall be increased 100 percent in the areas accessible to the public.

Note c. Tank storage up to 660 gallons for fuel burning equipment meeting the requirements of the mechanical code in Appendix A shall be permitted.

Note d. Maximum quantities in the amount specified by NFPA 495 shall be permitted when stored in accordance with NFPA 495 listed in Appendix A.

Note e. 1 gallon = 0.00379 m³, 1 cubic foot = 0.028 m³, 1 pound = 0.454 kg."

(d) "F-202.6.3 Multiple hazards. Buildings in this category shall be further classified H1 - H4 as set forth in the Kentucky Building Code and materials representing hazards that are classified in one or more of the Use Group H subuses shall conform to the code requirements for each of the use groups so classified."

(7) "F-202.7 USE GROUP I, INSTITUTIONAL USES."

(a) "F-202.7.1 General. Licensed institutional facilities shall conform to Section F-101.2.1."

(b) "F-202.7.2 Jails. Jails shall conform to the requirements of the Corrections Cabinet. State prisons shall conform to the requirements of the Life Safety Code, NFPA 101."

(8) "F-202.8 USE GROUP M, MERCANTILE USES. F-202.8.1 General: All buildings and structures, or parts thereof, shall be classified in Use Group M which are used for display and sales purposes involving stocks of goods, wares or merchandise incidental to these purposes and accessible to the public; including, among others, retail stores, motor fuel service stations, shops and salesrooms and markets. Highly combustible goods shall be limited to small quantities that do not constitute a high hazard; and if not so limited, the construction shall comply with the requirements for Use Group H as set forth in the provisions of the Kentucky Building Code in appendix A."

(9) "F-202.9 USE GROUP R, RESIDENTIAL USES."

(a) "F-202.9.1 General: All buildings and structures, or parts thereof, shall be classified in Use Group R in which families or

households live, or in which sleeping accommodations are provided for individuals with or without dining facilities, excluding those that are classified as institutional buildings."

(b) "F-202.9.2 Use Group R-1 structures. This use group shall include all hotels, motels, boarding houses and similar buildings arranged for shelter and sleeping accommodations and in which the occupants are primarily transient in nature, making use of the facilities for a period of less than thirty (30) days."

(c) "F-202.9.3 Use Group R-2 structures: This use group shall include all multiple-family dwellings (apartment buildings) having more than two (2) dwelling units, except as provided in Section F-202.9.4 and shall also include all boarding houses and similar buildings arranged for shelter and sleeping accommodations in which the occupants are primarily not transient in nature."

(d) "F-202.9.3.1 Dormitories: A dormitory facility which accommodates more than five (5) persons more than two and one-half (2 1/2) years of age shall be classified as Use Group R-2. Exception: Licensed facilities."

(e) "F-202.9.4 Use Group R-3 structures: This use group shall include all buildings arranged for the use of one (1) or two (2) family dwelling units adjacent to or located above one another provided they are completely separated by fire-resistance rating, if required by the Kentucky Building Code, and each unit has independent means of egress."

(f) "F-202.9.5 Use Group R-4 structures: This use group shall include all detached one (1) or two (2) family dwellings not more than three (3) stories in height, and their accessory structures."

(10) "F-202.10 USE GROUP S, STORAGE USES."

(a) "F-202.10.1 General: All buildings and structures, or parts thereof, shall be classified in Use Group S which are used primarily for the storage of goods, wares or merchandise, except those of Use Group H that involve highly combustible or explosive products or materials; including, among others, warehouses, storehouses and freight depots."

(b) "F-202.10.2 Moderate hazard uses: Buildings used for the storage of moderate hazard contents which are likely to burn with moderate rapidity, but which do not produce either poisonous gases, fumes or explosives, shall be classified in Use Group S-1."

(c) "F-202.10.3 Low hazard uses: Low hazard uses shall include buildings used for the storage of noncombustible materials, and of low hazard wares that do not ordinarily burn rapidly such as products on wood pallets or in paper cartons without significant amounts of combustible wrappings, but with a negligible amount of plastic trim such as knobs, handles or film wrapping. These uses shall be classified as Use Group S-2."

(11) "F-202.11 USE GROUP U, UTILITY AND MISCELLANEOUS USES. F-202.11.1 General: All buildings and structures of an accessory character and miscellaneous structures not classified in any specific use group shall be constructed, equipped and maintained to meet the requirements of this code commensurate with the fire and life hazard incidental to their use. Utility and miscellaneous uses shall include fences over six (6) feet (1829 mm) high, tanks, cooling towers, retaining walls and buildings such as private garages, carports, sheds and

agricultural buildings."

(12) "F-202.12 Further identification on use group classification shall be found in the Kentucky Building Code listed in Appendix A."

Section 5. Article 3. (1) Amend subsection F-302.1 to read as follows: "F-302.1 General: A person shall not deposit hot ashes or cinders, or smoldering coals, or greasy or oily substances susceptible to spontaneous ignition, into any combustible container or place the same within ten (10) feet (3048 mm) of any combustible materials, except in metal or other noncombustible covered receptacles. These receptacles, unless resting on a noncombustible floor or on the ground outside of the building, shall be placed on noncombustible stands and in every case shall be kept at least two (2) feet (610 mm) away from any combustible wall or partition, or exterior window or door opening."

(2) Amend subsection F-303.1 to read as follows: "F-303.1 General: Any person using a torch or other flame or heat producing device for removing paint from any building or structure shall provide one (1) approved fire extinguisher or water hose connected to the water supply on the premises where burning is done. In all cases, the person doing the burning shall remain on the premises one (1) hour after each use of the torch, flame or heat producing device."

(3) Create subsection F-304.2 to read as follows: "F-304.2 Dumpsters: Dumpsters that are located adjacent to buildings for collection of trash and debris shall not be placed within ten (10) feet of a combustible portion of a building, including the eave of a roof. Exception: Where approved by the fire code official."

(4) Amend subsection F-305.1 to read as follows: "F-305.1 General: The storage of combustible or flammable material shall conform to the requirements of this code and NFPA 30, 40, 231, 231C, 231D and 231F, as listed in Appendix A."

(5) Amend subsection F-306.1 as follows: "F-306.1 General: Combustible materials such as cotton batting, straw, dry vines, leaves, trees, artificial flowers or shrubbery and foam plastic materials shall not be used for decorative purposes in show windows or other parts of buildings in a quantity to constitute a fire hazard, unless the materials are flame retardant."

(6) Amend subsection F-306.2.2 to read as follows: "F-306.2.2 Special effects: Any parade float utilizing special effects which are designed to create smoke, flame, heat or sparking conditions shall be approved by the local fire code official prior to utilization."

(7) Create a new subsection, F-306.4, to read as follows: "F-306.4 Decorations. Furnishings or decorations of an explosive or highly combustible character shall not be used."

(8) Amend Section F-307 as follows: "F-307.3 Candles: The use of candles and open flame devices in places of assembly shall conform to the requirements of Subsections F-701.4 and F-701.5."

(9) Delete subsection F-307.3.1 from Article 1 of the 1990 Edition of the BOCA National Fire Prevention Code in its entirety.

(10) Amend Section F-310.1 to read: "F-310.1 Commercial kitchen exhaust systems shall be cleaned at frequent intervals to remove deposits

of residue and grease in the system whenever buildup of residue and grease is apparent."

(11) Delete subsection F-310.1.1 from Article 1 of the 1990 Edition of the BOCA National Fire Prevention Code in its entirety.

(12) Create a new subsection, F-310.2, to read as follows: "F-310.2 Maintenance and inspection of commercial kitchen exhaust systems shall be in conformance to this section and Article 5."

(13) Create a new subsection, F-310.3, to read as follows: "F-310.3 An inspection and servicing of the fire extinguishing system shall be made in accordance with F-507.2."

(14) Create a new subsection, "F-310.4 Cleaning", to read as follows:

(a) "F-310.4.1 Flammable solvents or other flammable cleaning aids shall not be used."

(b) "F-310.4.2 At the start of the cleaning process, electrical switches, detection devices and system components that may be accidentally activated shall be locked, pinned, protectively covered or sealed."

(c) "F-310.4.3 Care shall be taken not to apply cleaning chemicals on fusible links or other detection devices of the automatic extinguishing system."

(d) "F-310.4.4 When cleaning procedures are completed, all electrical switches, detection devices, and system components shall be returned to an operable state by qualified personnel. Cover plates shall be replaced and dampers and diffusers shall be positioned for proper air flow."

(15) Amend subsection F-312.2 to read as follows: "F-312.2 Prohibited areas: Smoking shall be prohibited where conditions exist to make smoking a fire hazard including areas of piers, wharves, warehouses, stores, industrial plants, institutions, schools, and in spaces where combustible materials are stored or handled. Smoking in places of assembly shall conform to Section F-701.6."

(16) Amend subsection F-312.6 to read as follows: "F-312.6 Ashtrays: Where smoking is permitted, there shall be provided on each table and at other convenient locations noncombustible ashtrays or match receivers. Ashtrays shall be designed with deep grooves or snuffers that hold cigarettes securely. The sides shall be steep enough to force smokers to place cigarettes entirely within the ashtray. Commercial type ashtrays filled with sand or with closing lids shall be used where appropriate."

(17) Amend subsection F-313.1 to read as follows: "F-313.1 Required access for fire apparatus: All premises which the fire department may be called upon to protect in case of fire and which are not readily accessible from public roads shall be provided with suitable gates, access roads, and fire lanes so that all buildings and water supplies on the premises are at all times accessible to fire apparatus. The designation, maintenance and marking of fire lanes on private property shall be accomplished as specified by the locally authorized fire department of the jurisdiction. The designation, maintenance and marking of fire lanes on public ways shall be accomplished by local ordinance on recommendation of the local fire department. No person shall park a motor vehicle on, or otherwise obstruct, any required fire lane and no person shall park a motor vehicle within ten (10) feet of a fire hydrant. Enforcement of designated fire lanes and fire hydrant clearance shall be the responsibility of

the local police or other authority as determined by local ordinance of the jurisdiction within which the lanes and hydrants are located."

(18) Amend subsection F-313.2 to read as follows: "F-313.2 Vertical clearance. All fire apparatus access roads shall have an unobstructed vertical clearance of not less than thirteen (13) feet six (6) inches. Exception: Upon approval, vertical clearance may be reduced, provided the reduction does not impair access by fire apparatus and approved signs are installed and maintained indicating the established vertical clearance."

(19) Amend subsection F-314.1 to read as follows: "F-314.1 Abatement of electrical hazards: When any electrical hazards are identified, the conditions shall be abated. All identified hazardous electrical conditions in permanent wiring shall be corrected in accordance with NFPA 70 listed in Appendix A."

(20) Amend subsection F-315.1 to read as follows: "F-315.1 Applicability. This section shall apply to portable equipment, either with or without wheels, used for heating tar, pitch, asphalt, or other similar substances for application on roofs, streets, floors, pipes, or other objects."

(21) Delete subsection F-315.1.1 from Article 1 of the 1990 Edition of the BOCA National Fire Prevention Code in its entirety.

(22) Create a new subsection, F-315.5, to read as follows: "F-315.5 Certain fuels prohibited. No person shall use solid fuel or Class I flammable liquids as fuel for an asphalt (tar) kettle."

(23) Create a new subsection "F-315.6 Asphalt (Tar) Kettles in Transit" to read as follows:

(a) "F-315.6.1 Open flame. Open flame in an asphalt (tar) kettle while in transit is prohibited."

(b) "F-315.6.2 Latching devices. Kettle doors or lids shall be closed and secured while in transit."

(c) "F-315.6.3 Asphalt (tar) kettles on trucks. Kettles not equipped with wheels shall not be fired or used when mounted on a truck, except if the truck body is of all metal construction and the kettle is securely attached to the bed of the truck. Firing of small patch kettles while located in the bed of a truck is prohibited. Tank trucks and trailers used for transportation of asphalt or similar substances shall be constructed and operated in accordance with the NFPA 385, Standard for Tank Vehicles for Flammable and Combustible Liquids."

(24) Amend subsection F-316.2 to read as follows: "F-316.2 Permit required: When required by local legislation, a person shall not store, keep or have on hand more than twenty-five (25) pounds (11.35 kg) of nitrate film without securing a permit from the fire code official for the activity. A person shall not sell, lease or otherwise dispose of any nitrate film to any person not having a permit to handle, use or display the film."

(25) Amend subsection F-317.2 to read as follows: "F-317.2 Permit required: When required by local legislation, all retailers, jobbers and wholesalers storing or handling more than twenty-five (25) pounds (11.35 kg) of cellulose nitrate (pyroxylin) plastics shall obtain a permit from the local fire code official. A permit shall also be obtained from the local fire code official for the manufacture of

articles of cellulose nitrate (pyroxylin) plastics, including the use of cellulose nitrate (pyroxylin) plastics in the manufacture or assembling of other articles."

(26) Create a new Section, "F-319.0 Reporting Fires and Hazardous Substances" and subsections F-319.1 through F-319.3.1 to read as follows:

(a) "F-319.1 Reporting emergency conditions. In the event of an unfriendly fire or accidental release of a hazardous gas, liquid or solid in any building or premises, the discoverer shall immediately spread an alarm to all occupants of the building or premises and to all persons who might be endangered by the fire or release and with all reasonable dispatch and diligence call or otherwise notify the fire department legally committed to serve the area."

1. "F-319.1.1 Unfriendly fires. If an unfriendly fire occurs and is extinguished, the discoverer shall immediately notify the fire department legally committed to serve the area."

2. "F-319.1.2 Hazardous materials. Where state or local legislation has been adopted specifying reportable quantities of hazardous materials released, notification shall conform to the provisions of legislation."

(b) "F-319.2 Notification of the State Fire Marshal. The Fire Chief or highest ranking fire department officer shall promptly notify the Office of the State Fire Marshal upon becoming aware of any of the following:

1. A hazardous materials incident.
2. A fire or fire related fatality (including vehicles and single family dwellings).

3. A fire or fire related injury serious enough to become a fatality.

4. A fire involving major structural damage in a regulated building, including:

a. All institutional, educational, state owned or state leased and high hazard occupancies.

b. All business, mercantile and industrial occupancies having a capacity over 100 persons.

c. All assembly occupancies, except churches, having a capacity over 100 persons.

d. Churches with a capacity over 400 persons and more than 6,000 square feet in floor area.

e. Any other building more than three (3) stories in height or 20,000 square feet of floor area."

(c) "F-319.3 Fire Department Operations at Emergencies. The highest ranking fire department officer conducting operations in connection with the extinguishment of any fire, or control of any explosion or other emergency situation shall have full power and authority to direct all operations for extinguishment or control and to take the necessary precautions to save life, protect property and prevent further injury or damage. In the pursuit of these operations, including the investigation of the cause of the emergency or the situation which required fire department notification, the highest ranking officer may control or prohibit the approach to the scene of the emergency by any vehicle, vessel, thing or person." "F-319.3.1 Fire scene control. No person shall obstruct the operations of the fire department in connection with the extinguishment of any fire, or the actions relative to other emergencies, or disobey any lawful command of the highest ranking officer in charge of the emergency or any part thereof, or any lawful order of a police officer assisting the fire department."

Section 6. Article 4. (1) Create a new subsection "F-400.4 Purpose and Intent" to read as follows:

(a) "F-400.4.1 Every building or structure shall be provided with exits of kinds, numbers, location and capacity appropriate to the individual building or structure, with due regard to the character of the occupancy, the number of persons exposed, the fire protection available, and the height and type of construction of the building or structure, to afford all occupants convenient facilities for escape."

(b) "F-400.4.2 In existing buildings, it is not always practical to strictly apply the provisions of this code. Physical limitations may require disproportionate effort or expense with little increase in life safety. In these cases, the fire code official shall be satisfied that reasonable safety is assured."

(c) "F-400.4.3 In existing building, it is intended that any condition that represents a serious threat to life be mitigated by application of appropriate safeguards. It is not intended to require modifications for conditions that do not represent a significant threat to life even though the circumstances are not literally in compliance with the code."

(d) "F-400.4.4 The requirements for existing buildings may be modified if their application clearly would be impractical in the judgment of the fire code official, but only where it is clearly evident that a reasonable degree of safety is provided."

(2) Create a new subsection F-400.5 to read as follows: "F-400.5 Alternatives and Modifications. Compliance with this section may be used by the fire code official in lieu of other specific provisions of the code to satisfy the intent of the code as it relates to inadequate number of exits, excessive travel distances to exits, unenclosed or improperly enclosed exit stairs, inadequate fire separation or smoke barriers and other appropriate circumstances. Because all building systems interact with each other, any consideration of compliance alternatives should take into account all existing and proposed conditions to determine their original or continued acceptability."

These alternatives are not all-inclusive and do not preclude consideration and approval of other appropriate alternatives by the fire code official. Buildings with alternative fire protection features accepted by the fire code official shall be considered as conforming with the code."

(a) "F-400.5.1 Inadequate number of exits:

1. Provide connecting fire-exit balconies, acceptable to the enforcement authority, between buildings; or

2. Provide alternate exit or egress facilities leading to safety outside the building or to a place of safe refuge in the building or an adjoining building, acceptable to the enforcement authority; or

3. Provide an exterior fire escape(s), acceptable to the enforcement authority, where the providing of enclosed interior or enclosed exterior stairs is not practical; or

4. Install approved smoke detectors or fire suppression system."

(b) "F-400.5.2 Excessive travel distances to exits:

1. Install an approved smoke detection system

throughout the building; or

2. Install an approved complete automatic fire suppression system; or

3. Subdivide the exit travel route with smoke barriers acceptable to the enforcement authority; or

4. Increase the fire resistance rating of corridor walls and doors acceptable to the enforcement authority; or

5. Provide additional approved means of escape."

(c) "F-400.5.3 Unenclosed or improperly enclosed exit stairs to the satisfaction of the fire code official as follows:

1. Improve enclosure or exit stairway; or

2. Add a partial fire suppression system; or

3. Add a sprinkler draft curtain; or

4. Add a smoke detection system."

(d) "F-400.5.4 Inadequate fire separation walls or smoke barriers to the satisfaction of the fire code official as follows:

1. Improve enclosure or exit stairway; or

2. Add a partial fire suppression system; or

3. Add a sprinkler draft curtain; or

4. Add a smoke detection system."

(e) "F-400.5.5 Acceptance of Alternatives. The acceptance of any alternative(s) shall be in writing and shall be deemed to satisfy the intent of this code as it relates to the provisions for which the alternative(s) is offered as listed below:

1. Any alternative(s) specifically listed in F-400.5.1 through F-400.5.4 and complied with as set forth therein;

2. Any other alternative which is accepted or allowed by the fire code official."

(3) Create a new subsection F-400.6 to read as follows: "F-400.6 Upgrading of Existing Buildings. If, upon inspection, the fire code official finds that enforcement of this code requires alterations to a building, he shall identify the sections of this code which require correction and specify the type of correction necessary in order to achieve compliance. This decision shall be in writing to the owner or occupant and shall include a reasonable time for completion of the corrections. Failure of the owner or occupant to make the corrections described by the fire code official within the time frame specified shall be considered a violation subject to further action pursuant to F-111.2. Any party aggrieved by a decision of the fire code official may appeal in accordance with F-108."

(4) Amend subsection F-401.1 to read as follows: "F-401.1 Number of Means of Egress: Except as accepted in writing by the fire code official pursuant to Section F-101.6 or F-400.5 or as permitted in any Exception No. 1 - 4 of this section, every floor area of all occupancy types shall be provided the minimum number of approved, remote means of egress based on the occupant load as follows:

500 or fewer persons - two (2) means of egress

501 - 1000 persons - three (3) means of egress

1001 or more persons - four (4) means of egress

Exception No. 1 - Living units in Use Group R-2 (apartment buildings, rooming houses and multiple single family dwelling units)

Living Units. A living unit may have a single exit provided:

a. That living unit has an exit door directly to the street or yard at ground level; or

b. That living unit has direct access to an outside stair serving a maximum of two (2) units

both located on the same floor; or

c. That living unit has direct access to an interior stair serving that unit only and separated from all other portions of the building with fire barriers having a one (1)-hour fire resistance rating with no opening therein; or

d. Any individual living unit below the fourth story may have an outside window openable from the inside without the use of tools or special knowledge as the second exit.

Building Exits. A building of three (3) stories or less may have a single exit under the following conditions:

a. The stairway is completely enclosed by smoke barriers; and

b. Doors protecting all openings into the stairs are approved solid wood core or steel doors with self-closing devices; and

c. The stairway does not serve more than one-half (1/2) story below the level of exit discharge; and

d. All corridors serving as access to exits are smoke resistant; and

e. There is not more than approximately thirty-five (35) feet of travel distance from the entrance door of any living unit to an exit; and

f. Three-quarter (3/4) hour rated vertical and horizontal separation between living units is provided.

Fire Tower Exits. A building of any height with not more than four (4) living units per floor, with a smokeproof enclosure or outside stair as the exit, immediately accessible to all living units served thereby, may have a single exit. (A unit is immediately accessible if there is not more than 20 ft. (6.1 m) of travel distance from the entrance door of any living unit to an exit.)

Exception No. 2 - Use Group M:

A. Where no part of the store is more than 75 feet from the exit or covered mall, where it is considered a pedestrian way, a single exit is permitted.

B. Where no part of the store is more than 100 feet from the exit or covered mall, where it is considered a pedestrian way and the story on which it is located is protected throughout by an approved automatic sprinkler system, a single exit is permitted.

Exception No. 3 - Use Group B:

A. For a room or area with a total occupant load of less than 100 persons having an exit that discharges directly to the outside at the level of exit discharge of the building with a total distance of travel, including travel within the exit, from any point of not over 100 feet (30 m), a single exit may be permitted. Travel shall be on the same floor level or, if the traversing of stairs is required, stairs shall not be more than fifteen (15) feet (4.5 m) in height, and they shall be provided with complete enclosures to separate them from any other part of the building, with no door openings therein. A single outside stairway may serve all floors allowed within the fifteen (15) feet (4.5 m) vertical travel limitation.

B. Any business occupancy not over three (3) stories and not exceeding an occupant load of thirty (30) people per floor may be permitted with a single separate exit to each floor if the total travel distance to the outside of the building does not exceed 100 feet (30 m) and if the exit is enclosed and serves no other levels

and discharges directly to the outside. A single outside stairway may serve all floors.

Exception No. 4 - Use Group F:

A. In low and ordinary hazard industrial occupancies, a single means of egress shall be permitted from any story or section, provided that the exit can be reached within seventy-five (75) feet.

B. There shall be at least two (2) separate means of egress from every high hazard area regardless of size.

Exception No. 5 - Use Group S:

A. In low hazard storage occupancies, a single means of egress shall be permitted from any story or section.

B. In ordinary hazard storage occupancies, a single means of egress shall be permitted from any story or section, provided that the exit can be reached within the distance allowed as common path of travel."

(5) Amend Table F-401.2 to read as follows:

TABLE F-401.2
ENCLOSURE EXCEPTIONS

Building use group	Exception conditions ^a
Business	When connecting not more than two (2) floor levels and less than 3,500 square feet per floor, or when connecting not more than three (3) floor levels and the building is equipped throughout with an approved automatic fire suppression system.
Education	When connecting not more than two (2) floor levels and approved by the State Fire Marshal.
Factory-industrial, storage	When connecting not more than two (2) floor levels, or when connecting not more than three (3) floor levels and the building is equipped throughout with an approved automatic fire suppression system.
Mercantile	When connecting not more than two (2) floor levels and less than 2,000 square feet per floor, or when connecting not more than two (2) floor levels and the building is equipped throughout with an approved automatic fire suppression system.
Residential-hotels	When connecting not more than two (2) floor levels and the building is equipped throughout with an approved automatic fire suppression system.

Note a. 1 square foot = 0.093 m².

(6) Create a new subsection F-401.2.2 to read as follows: "F-401.2.2 Increase in Exits. Additional exits shall be provided to satisfy the travel distance requirements found in Section F-401.5."

(7) Amend subsection F-401.3 and create paragraphs F-401.3.1 through F-401.3.9 to read

as follows: "F-401.3 Exit capacity: The capacity of the exits serving a floor shall be sufficient for the occupant load thereof determined as follows:

(a) F-401.3.1 Design occupant load: In determining required facilities, the number of occupants for whom exit facilities shall be provided shall be established by the largest number computed in accordance with each of the following:

a. Actual number: The actual number of occupants for whom each occupied space, floor, or building is designed.

b. Number by Table F-401.3: The number of occupants computed at the rate of one (1) occupant per unit of area as prescribed in Table F-401.3.

c. Number by combination: The number of occupants of any space as computed in a. and b. above, plus the number of occupants similarly computed for all spaces that discharge through the space in order to gain access to an exit.

(b) F-401.3.2 Increased occupant load: The occupant load permitted in any building or portion thereof is permitted to be increased from that number established for the given use by Table F-401.3 when all other requirements of the code are also met based on the modified number. Where required by the fire code official, an approved aisle, seating, or fixed equipment diagram to substantiate any increase in occupant load shall be submitted. Where required by the fire code official, the diagram shall be posted.

(c) F-401.3.3 Maximum occupant load: The occupant load of any space or portion thereof shall not exceed one (1) occupant per three (3) square feet (0.28 m²) of occupiable floor space.

(d) F-401.3.4 Fixed seats: The occupant load for an assembly or educational area having fixed seats shall be determined by the number of fixed seats installed. The capacity of fixed seats without dividing arms shall equal one (1) person per eighteen (18) inches (457 mm). For booths, the capacity shall be one (1) person for twenty-four (24) inches (610 mm).

(e) F-401.3.5 Mezzanine levels: The occupant load of a mezzanine level discharging through a floor below shall be added to that floor's occupant load, and the capacity of the exits shall be designed for the total occupant load thus established.

(f) F-401.3.6 Roofs: Roof areas occupied as roof gardens or for assembly, educational, storage or other purposes shall be provided with exit facilities to accommodate the calculated occupant load, but there shall not be less than two (2) approved means of egress from roof areas of Use Groups A and E.

TABLE F-401.3
MAXIMUM FLOOR AREA ALLOWANCES PER OCCUPANT

Use	Floor area in square feet per occupant
Assembly with fixed seats	See Section 401.3.4
Assembly without fixed seats	
Concentrated (chairs only/ not fixed)	7 net
Standing space	3 net
Unconcentrated (tables & chairs)	15 net

Bowling alleys, allow 5 persons for each alley including 15 feet of runway and for additional areas	7 net
Business areas	100 gross
Court rooms/other than fixed seating areas	4 net
Educational	
Classroom area	20 net
Shops & other vocational room areas	50 net
Industrial areas	100 gross
Institutional areas	
Inpatient treatment areas	240 gross
Outpatient areas	100 gross
Sleeping areas	120 gross
Library	
Reading rooms	50 net
Stack area	100 gross
Mercantile basement & grade floor areas	30 gross
Areas on other floors	60 gross
Storage, stock, shipping areas	300 gross
Parking garages	200 gross
Residential	200 gross
Storage areas, mechanical equipment room	300 gross

Note a. 1 foot = 304.8 mm; 1 square foot = 0.093m²

(g) F-401.3.7 Assembly buildings: All buildings used for assembly purposes shall front on at least one (1) street on which the main entrance and exit discharge shall be located. Where there is a single main entrance, the entrance shall be capable of serving as the main exit and shall provide an egress capacity for at least one-half (1/2) of the total occupant load. In addition to having access to a main exit, each level of a building of Use Group A shall be provided with additional exits which shall provide an egress capacity for at least two-thirds (2/3) of the total occupant load served by that level.

(h) F-401.3.8 Exit capacity. The capacity of means of egress for a floor, balcony, tier or other occupied space shall be sufficient for the occupant load thereof.

(i) F-401.3.9 Minimum width: The width of each means of egress component shall be computed in accordance with Table 401.3.1 for the required capacity of the component, but shall not be less than the minimum width as prescribed by this code for each component.

TABLE F-401.3.1
EGRESS WIDTH PER OCCUPANT

Use group	Without fire suppression system (inches per person) ^a	
	Stairways	Doors, ramps, corridors
A,B,E,F,M,R,S	0.3	0.2
H	-	-
I-1	0.4	0.2
I-2	1.0	0.7
I-3	0.3	0.2
Use group	With fire suppression system (inches per person) ^a	
	Stairways	Doors, ramps, corridors

A,B,E,F,M,R,S	0.2	0.15
H	0.3	0.2
I-1	0.2	0.2
I-2	0.6	0.5
I-3	0.3	0.2

Note a. 1 inch = 25.4mm"

(8) Amend subsection F-401.4 to read as follows: "F-401.4 Corridor enclosure. All corridors serving as an exit access shall be constructed of materials which provide an effective smoke barrier."

(9) Amend subsection F-401.5 to read as follows: "F-401.5 Travel Distance to Exits: Travel distance to at least one (1) exit shall not exceed 200 feet in nonsprinklered buildings and 250 feet in buildings equipped throughout with an approved automatic sprinkler system."

Exceptions:

1. Use Group F-2, S-2 shall not exceed 300 feet without sprinklers and 400 feet with sprinklers.

2. An additional 200 feet is permitted for travel distance within a covered mall.

3. In a high rise occupancy with a complete automatic fire suppression system, 300 feet travel distance is permitted.

4. In Use Group H and a HPM facility travel distance shall be limited to 75 feet."

(10) Amend Section F-403 by deleting subsections F-403.1, F-403.2 and F-403.3 and replacing with the following new subsections:

(a) "F-403.1. Egress Illumination. Illumination of means of egress shall be provided in accordance with this section for every building and structure. Exception: Means of egress illumination may be eliminated in structures of Use Group F or S occupied only during daylight hours, with skylights or windows arranged to provide, during these hours, the required level of illumination on all portions of the means of egress."

(b) "F-403.1.1 Artificial lighting. Illumination of means of egress shall be continuous during the time that the conditions of occupancy require that the means of egress be available for use. Artificial lighting shall be employed at places and for periods of time as required to maintain the illumination to the minimum foot-candle values herein specified."

(c) "F-403.1.2 Floor lighting. The floors of means of egress shall be illuminated at all points including angles and intersections of corridors and passageways, stairways, landings of stairs, and exit doors to values of not less than 1.0 foot-candle measured at the floor. Exception: In auditoriums, theaters, concert or opera halls, and other places of assembly, the illumination of the floors of exit access may be reduced during periods of the performances to values not less than one-fifth foot candle."

(d) "F-403.1.3 Any required illumination shall be so arranged that the failure of any single lighting unit, such as the burning out of an electric bulb, will not leave any area in darkness."

(e) "F-403.1.4 The same equipment or units installed to meet the requirements of this Code may also serve the function of illumination of means of egress, provided that all applicable requirements of this section for illumination are also met."

(f) "F-403.4 Sources of Illumination. Illumination of means of egress shall be from a

source of reasonably assured reliability, such as public utility electric service."

(g) F-403.4.1 Electricity. Where electricity is used as a source of illumination of means of egress, the installation shall be properly made in accordance with the National Electrical Code, NFPA 70.

(h) F-403.4.2 Battery powered. No battery operated electric light nor any type of portable lamp or lantern shall be used for primary illumination of means of egress, but may be used as an emergency source to the extent permitted under Emergency Lighting, Section F-403.5.

(i) F-403.4.3 Other lighting sources. No luminescent, fluorescent, or reflective material shall be permitted as a substitute for any of the required illumination herein specified."

(j) "F-403.5 Emergency lighting. Means of egress in all rooms, buildings or spaces with an occupant load of more than 100 persons shall be provided with emergency lighting. Exception: All places of assembly shall have emergency lighting. Churches with an occupant load of 300 persons or less and used only for religious purposes are exempt."

(k) "F-403.5.1 Continuity. Where maintenance of illumination depends upon changing from one energy source to another, there shall be no appreciable interruption of illumination during the changeover. Where emergency lighting is provided by a prime mover-operated electric generator, a delay of not more than ten (10) seconds shall not be permitted."

(l) "F-403.5.2 Duration. Emergency lighting facilities shall be arranged to maintain the specified degree of illumination for a period of one and one-half (1 1/2) hours in the event of failure of the normal lighting."

(m) "F-403.5.3 Approved batteries. Emergency lights shall use only reliable types of storage batteries, provided with suitable facilities for maintenance in properly charged condition. Dry batteries shall not be used to satisfy these requirements. Electric storage batteries used in lights or units shall be approved for their intended use and shall comply with the National Electrical Code, NFPA 70, listed in Appendix A."

(n) "F-403.5.4 Power failure. An emergency lighting system shall be so arranged as to provide the required illumination automatically in the event of any interruption of normal lighting, such as any failure of public utility or other outside electrical power supply, opening of a circuit breaker or fuse, or any manual act(s), including accidental opening of a switch controlling normal lighting facilities."

(o) "F-403.5.5 Automation of system. An emergency lighting system either shall be continuously in operation or shall be capable of repeated automatic operation without manual intervention."

(11) Amend subsection F-404.4 to read as follows: "F-404.4 Single- and multiple-station smoke detectors: A minimum of one (1) approved single-station or multiple-station smoke detector shall be installed in each guestroom, suite or sleeping area in buildings of Use Group R-1 and in dwelling units in the immediate vicinity of the bedrooms in buildings of Use Groups R-2 and R-3. In buildings of Use Group R-3, smoke detectors shall be required on every story of the dwelling unit, including basements. In dwelling units with split levels, a smoke detector installed in the upper level shall suffice for the adjacent lower level provided

that the lower level is less than one (1) full story below the upper level. If there is an intervening door between the adjacent levels, a smoke detector shall be installed on both levels. All detectors shall be installed in accordance with NFIPA 74 listed in Appendix A; except that the use of smoke detectors installed in existing occupancies prior to the effective date of this Code which are installed and maintained in operable condition according to manufacturer's instructions, may be continued without change."

(12) Amend Section F-404.5 to read as follows: "F-404.5 Manual alarms. Fire Protective Signaling Systems (manual alarms) shall be required in all buildings of Use Group E; all buildings of Use Group B when three (3) or more stories in height; all buildings of Use Group R-1; all buildings of Use Group R-2 when four (4) or more stories in height."

Exception No. 1 - Buildings of Use Group B less than seven (7) stories in height equipped with a complete approved automatic sprinkler system.

Exception No. 2 - Buildings of Use Group R-1 where each guest room has exterior exit access and the building is not greater than three (3) stories in height."

(13) Create a new Section "F-407.0 Emergency Generators" to read as follows:

(a) "F-407.1 Conduct or Witness Test. The fire code official may conduct or witness a test on the complete system upon installation."

(b) "F-407.2 Tested Periodically. Systems shall be tested periodically on a schedule and in a manner acceptable to the fire code official to assure their maintenance in proper operating condition as required by NFIPA 70 listed in Appendix A."

(c) "F-407.3 Battery Systems Maintenance. Where batteries are used for starting or ignition of prime movers, the fire code official shall require periodic maintenance."

(d) "F-407.4 Written Record. A written record shall be kept on tests and maintenance."

(e) "F-407.5 Testing under Load. Means for testing legally required standby systems under load shall be provided."

(14) Create a new Section "F-408.0 Storage Room Separations" to read as follows: "F-408.1 Storage Rooms. Rooms used for storage in quantities deemed hazardous by the fire code official in Use Groups A, B, E, R-1 and R-2 in excess of fifty (50) square feet shall be constructed of materials having a minimum of one (1)-hour fire resistance rating, be protected by an approved automatic fire suppression system or comply with alternatives accepted by the fire code official pursuant to Section F-400.5."

(15) Create a new Section "F-409.0 Marking of

Means of Egress" to read as follows:

(a) "F-409.1 Where required. Exits in all rooms, buildings or spaces with an occupant load greater than fifty (50) persons shall be clearly marked with approved exit signs."

Exceptions:

1. Main exterior doors that obviously and clearly are identifiable as exits.

2. Previously approved exit signs."

(b) "F-409.2 Marking of Signs. Access to exits shall be marked by readily visible signs in all cases where the exit or way to reach it is not immediately visible to the occupants."

(c) "F-409.3 Location and design of signs. Every required sign designating an exit or way of exit access shall be so located and of size, distinctive color, and design as to be readily visible and shall provide contrast with decorations, interior finish, or other signs. (See, also, Section F-604.0)"

(d) "F-409.4 Size of Signs. Every sign required by this Code shall have the word "EXIT" or other required wording in plainly legible letters not less than six (6) inches high with the principal strokes of letters not less than three-quarters (3/4) inch wide. Exception: Existing signs having the required wording in plainly legible letters not less than four and one-half (4 1/2) inches high may be continued in use."

(e) "F-409.5 Illumination of Signs. Every sign shall be suitably illuminated by a reliable light source giving a value of not less than five (5) foot-candles on the illuminated surface. Illumination shall be continuous as required under the provisions of Section F-403.0, Illumination and Signs, and where emergency lighting facilities are required, exit signs shall be illuminated from the same source."

(f) "F-409.6 Information signs. A sign shall be provided at each floor landing in all interior stairways more than three (3) stories above grade designating the floor level above the floor of discharge. All elevator lobby call stations on all floor levels in buildings more than seventy-five (75) feet (22860 mm) above the lowest level of fire department access shall be marked with approved signs reading as follows: Use Stairways in Case of Fire - Do Not Use Elevators."

(16) Create a new Section, "F-410.0 Special Occupancy Requirements" to read as follows:

(a) "F-410.0 Special Occupancy Requirements."

(b) "F-410.1 Assembly."

1. "F-410.1.1 Location of Places of Assembly. Places of assembly located above or below the level of exit discharge shall comply with the minimum construction type set forth in Chart F-410.1.1."

CHART F-410.1.1

Use group	Type of Construction				
	Noncombustible		Type 2		Unprotected 2C
	Type 1 Protected 1A	Type 1 Protected 1B	Protected 2A	Protected 2B	
A-1 Assembly, theaters	N.L.	N.L.	5 St. 65'	3 St. 40'	2 St. 30'
A-2 Assembly, night clubs and similar uses	N.L.	4 St. 50'	3 St. 40'	2 St. 30'	1 St. 20'
A-3 Assembly; lecture halls, recreation centers, terminals, restaurants other than nightclubs	N.L.	N.L.	5 St. 65'	3 St. 40'	2 St. 30'
A-4 Assembly, churches	N.L.	N.L.	5 St. 65'	3 St. 40'	2 St. 30'

Use group	Type of Construction			Combustible	
	Noncombustible/Combustible		Type 4	Type 5	
	Type 3 Protected 3A	Type 3 Unprotected 3B	Heavy Timber 4	Protected 5A	Unprotected 5B
A-1 Assembly, theaters	3 St. 40'	2 St. 30'	3 St. 40'	1 St. 20'	1 St. 20'
A-2 Assembly, night clubs and similar uses	2 St. 30'	1 St. 20'	2 St. 30'	1 St. 20'	1 St. 20'
A-3 Assembly; lecture halls, recreation centers, terminals, restaurants other than nightclubs	3 St. 40'	2 St. 30'	3 St. 40'	1 St. 20'	1 St. 20'
A-4 Assembly, churches	3 St. 40'	2 St. 30'	3 St. 40'	1 St. 20'	1 St. 20'

- Exception: i Places of assembly are permitted to be one (1) additional story in height than specified in buildings provided with 100% automatic sprinkler protection.
- Exception: ii Places of assembly with an occupant load in excess of fifty (50) may be located on the second story if approved by the fire code official pursuant to F-400.5.

2. "F-410.1.2 Assembly Aisles: Assembly aisles in buildings or portions of buildings of Use Group A shall conform to the requirements of the Kentucky Building Code listed in Appendix A."

(c) "F-410.2 Educational."

1. "F-410.2.1 Corridor Width. Exit access corridors shall be not less than six (6) feet clear width."

2. "F-410.2.2 Closets. Janitor closets shall be protected by an automatic sprinkler or an approved automatic detection device."

3. "F-410.2.3 Smoke resistance of interior corridors. Interior corridors shall be smoke resistant. Classroom doors opening into corridors shall have a minimum twenty (20) minute rating or be one and three-quarter (1 3/4) inch solid bonded wood core doors.

Exception 1. When all classrooms served by the corridor have an exterior exit.

Exception 2. When the building has an approved automatic sprinkler system approved by the State Fire Marshal.

Exception 3. When corridor smoke detection is provided and interconnected to the building alarm system."

4. "F-410.2.4 Windowless rooms. Approved emergency lighting shall be installed in windowless classrooms."

(d) "F-410.3 Hotels and Dormitories."

"F-410.3.1 Separation of corridors. Guest room doors which open onto an interior exit access corridor shall have a minimum twenty (20) minute fire-resistance rating or be solid wood core or steel door and be self-closing. All self-closing devices used for this purpose shall be approved by the fire code official. Spring-loaded hinges are acceptable."

(e) "F-410.4 Apartments."

"F-410.4.1 Protection of corridors. Doors between living units and interior exit access

corridors shall have a minimum twenty (20) minute fire-resistance rating or be solid wood core or steel doors. All corridors serving as exit access shall provide an effective smoke barrier.

Exception 1. When the building has an approved sprinkler system in the corridor.

Exception 2. When there are approved interconnected smoke detectors in each corridor on every level. Detectors shall be spaced not greater than thirty (30) feet on center."

2. "F-410.4.2 Doors. All doors, rated or not, between living units and corridors shall be self-closing. All self-closing devices used for this purpose shall be approved by the fire code official. Spring loaded hinges are acceptable. Exception: Where accepted by the fire code official pursuant to Section F-101.6 or F-400.5."

3. "F-410.5 Lodging or Rooming Houses."

4. "F-410.5.1 Required means of egress. Lodging or rooming houses shall conform to the requirements of Use Group R-2 in the Kentucky Building Code listed in Appendix A.

Exception: Lodging or rooming houses which have accommodations for sixteen (16) or fewer persons shall have a primary means of egress available to every sleeping room and a secondary means of escape consisting of one (1) of the following:

a. A door, stairway, passage or hall (independent of and remote from the primary means of escape) which provides an unobstructed way of travel to the exterior at street or ground level, or

b. A passage through an adjacent, nonlockable space to an approved means of escape which is independent of and remote from the primary means of escape, or

c. A window in accordance with Section F-603.0."

(f) "F-410.6 Mercantile."

1. "F-410.6.1 No dwelling unit may have its sole means of egress through any mercantile occupancy in the same building."

2. "F-410.6.2 Dwelling unit above mercantile prohibited. No multiple dwelling occupancy shall be located above a mercantile occupancy."

Exception 1. When the dwelling and their exits are separated from the mercantile occupancy with one (1) hour construction.

Exception 2. When approved by the fire code official."

3. "F-410.6.3 Door swing. Doors which serve only the street floor in mercantile occupancies with 3,000 square feet or less may swing inward."

(g) "F-410.7 Business."

1. "F-410.7.1 Limitation of dwelling unit over business use. A residential occupancy shall not be permitted over a business occupancy unless the residential occupancy and its exits are separated by one (1) hour construction."

Exception: When approved by the fire code official."

2. "F-410.8 Mixed Uses."

3. "F-410.8.1 Dissimilar use groups. When a building is occupied for two (2) or more uses, not of the same use group, it shall comply with the requirements of the Kentucky Building Code listed in Appendix A."

Section 7. Article 5. (1) Amend Section F-500.3 to read as follows: "F-500.3 Acceptance test: All fire protection systems shall be tested in accordance with the requirements of this code and with the Kentucky Building Code listed in Appendix A. The tests shall be the responsibility of the owner or an authorized representative, and the fire code official shall be given an opportunity to be present. All tests required by this code and the standards listed in this code shall be conducted at the expense of the owner or the owner's representative."

(2) Create a new subsection to read as follows: "F-500.7 Inspections and Test Requirements: All inspections and tests required by Sections F-503.0, F-504.0, F-505.0, F-506.0, F-507.0, F-508.0, F-509.0, F-511.0, F-512.0, F-514.0 and F-515.0 shall be conducted only by persons authorized by the State Fire Marshal's Office and shall be recorded on forms approved by the State Fire Marshal's Office."

(3) Amend the Exception in F-513.2 to read as follows: "Exception: The written log of tests as specified in Section F-504.1 shall not be required in buildings of Use Group R-2 or R-3."

(4) Create a new "Section F-518.0 Commercial Kitchen Exhaust" to read as follows: "F-518.1 Periodic inspection: An approved inspection shall be performed a minimum of once every six (6) months on each commercial kitchen exhaust suppression system. Inspections and tests shall only be made by a licensed rangehood suppression systems contractor. The inspection shall ascertain that the system will cover all the cooking surfaces with the extinguishing agent when manually or automatically actuated. The manual actuation, automatic actuation, and system interconnections shall also be inspected to determine that they operate as required. All inspections and tests shall be recorded on forms approved by the State Fire Marshal's office; a copy of the inspection report shall be forwarded to the State Fire Marshal's Office within ten (10) working days of the date of inspection."

(5) Create a new "Section F-519.0 Manual Fire

Alarm Systems" to read as follows: "F-519.1 Manual fire alarm systems inspection: Manual fire alarm systems within all buildings shall be checked monthly by the owner or owner's representatives. The use of the system for fire drill purposes shall be accepted as a test of only those parts of the system actually used in the drill procedure. Accurate logs shall be maintained on the premises indicating box number, location, data and type of device tested. Any defect, modification or repair shall be logged, and the log shall be available to the fire department."

Section 8. Article 6 is hereby adopted in its entirety.

Section 9. Article 7. (1) Create a new subsection, "F-700.2 Fire Exit Drills" to read as follows:

(a) "F-700.2.1 Fire exit drills conforming to the provisions of this Article shall be regularly conducted in occupancies where specified by the provisions of this Article or by appropriate action of the fire code official. Drills shall be designed in cooperation with the local authorities."

(b) "F-700.2.2 Fire exit drills, where required by this code, shall be held with sufficient frequency to familiarize all occupants with the drill procedure and to have the conduct of the drill a matter of established routine."

(c) "F-700.2.3 Responsibility for the planning and conduct of drills shall be assigned only to competent persons qualified to exercise leadership under the supervision of the owner-operator or administrator."

(d) "F-700.2.4 In the conduct of drills, emphasis shall be placed upon orderly evacuation under proper discipline rather than upon speed."

(e) "F-700.2.5 Drills shall include suitable procedures to make sure that all persons in the building, or all persons subject to the drill, actually participate."

(f) "F-700.2.6 Drills shall be held at unexpected times and under varying conditions to simulate the unusual conditions that occur in the case of fire."

(g) "F-700.2.7 The fire code official may observe fire exit drills but shall not activate the alarm system."

(h) "F-700.2.8 Records of required drills shall be kept and made available to the fire code official."

(2) Amend subsection F-701.1 to read as follows: "F-701.1 Drills. The employees or attendants of places of public assembly shall be schooled and drilled in the duties they are to perform in case of fire, panic, or other emergency in order to be of greatest service in effecting orderly exit of assemblages."

(3) Amend subsection F-701.2 to read as follows: "F-701.2 Employees or attendants of assembly occupancies shall be instructed in the proper use of portable fire extinguishers and other manual fire suppression equipment if provided. The management shall be responsible for procuring the required training. Training records shall be kept and made available to the fire code official."

(4) Amend subsection F-701.3 to read as follows: "F-701.3 In theaters, motion picture theaters, auditoriums, and other similar assembly occupancies with occupant load of 300

or more, occupancies where there are noncontinuous programs, an audible announcement shall be made prior to the start of each program to notify occupants of the location of the exits to be used in case of fire or other emergency. Exception: Assembly occupancies in schools when used for nonpublic events."

(5) Amend subsection F-701.4 to read as follows: "F-701.4 Open Flame Devices. No open flame devices shall be used in any assembly occupancy."

Exception 1. When necessary for ceremonial, religious, or demonstration purpose, the fire code official may permit open flame devices under restrictions as are necessary to avoid danger of ignition of combustible materials or injury to occupants.

Exception 2. Open flame devices may be used on stages when a necessary part of theatrical performances, provided adequate precautions satisfactory to the fire code official are taken to prevent ignition of any combustible materials.

Exception 3. Gas lights may be permitted provided adequate precautions satisfactory to the fire code official are taken to prevent ignition of any combustible materials.

Exception 4. Candles may be used on tables if securely supported on substantial noncombustible bases so located as to avoid danger of ignition of combustible materials and only if approved by the fire code official. Candle flames shall be protected.

Exception 5. As permitted in F-701.5."

(6) Create new subsection F-701.5 to read as follows: "F-701.5 Special Food Service Devices. Portable cooking equipment, not flue-connected, shall be permitted only as follows:

1. Equipment fueled by small heat sources that can be readily extinguished by water, such as candles or alcohol-burning equipment (including "solid alcohol"), may be used provided adequate precautions satisfactory to the fire code official are taken to prevent ignition of any combustible materials.

2. Candles may be used on tables used for food service if securely supported on substantial noncombustible bases so located as to avoid danger of ignition of combustible materials and only if approved by the fire code official. Candle flame shall be protected by a suitable noncombustible globe.

3. "Flaming Sword" or other equipment involving open flames and flamed dishes, such as cherries jubilee, crepes suzette, etc., may be permitted provided that necessary precautions are taken and subject to the approval of the fire code official.

(7) Create a new subsection "F-701.6 Smoking" to read as follows:

(a) "F-701.6.1 For purposes of abatement of fire, smoking in assembly occupancies shall be regulated by the fire code official of the jurisdiction."

(b) "F-701.6.2 Smoking in rooms or areas where smoking is prohibited, plainly visible "NO SMOKING" signs shall be posted."

(c) "F-701.6.3 No person shall smoke in prohibited areas that are so posted. Exception: The fire code official may permit smoking on a stage only when it is a necessary and rehearsed part of a performance and only by a regular performing member of the cast."

(d) "F-701.6.4 Where smoking is permitted, suitable ashtrays or receptacles shall be provided in convenient locations. Ashtrays shall

conform to the requirements of F-312.6."

(8) Create a new subsection "F-701.7 Furnishings, Decorations, and Stage Scenery" to read as follows:

(a) "F-701.7.1 Draperies, curtains, and other similar furnishings, decorations, and stage settings shall be in accordance with the provisions of F-306.0."

(b) "F-701.7.2 The fire code official shall impose controls on the amount and arrangement of combustible contents, including decorations, in assembly occupancies to provide an adequate level of safety to life from fire."

(c) "F-701.7.3 There shall be no exposed foamed plastics."

(9) Create a new subsection "F-701.8 Coat Racks" to read as follows: "F-701.8.1 Clothing and personal effects shall not be stored in corridors and lobbies."

(10) Create a new subsection F-701.9 to read as follows: "F-701.9 Unvented fuel fired heaters shall not be used in assembly occupancies."

(11) Amend Section F-702.1 and create paragraphs F-702.1.1 through F-702.1.7 to read as follows: "F-702.1 Drills. Exit drills shall be conducted regularly in accordance with the applicable provisions of this section and Section F-700.2."

(a) "F-702.1.1 Drills shall be executed at different hours of the day or evening; during the changing of classes; when the school is at assembly; during the recess or gymnastic periods; etc., so as to avoid distinction between drills and actual fires. If a drill is called when pupils are going up and down the stairways, as during the time classes are changing, the pupils shall be instructed to form in file and immediately proceed to the nearest available exit in an orderly manner."

(b) "F-702.1.2 Every fire exit drill shall be an exercise in school management for principal and teachers, with the chief purpose of every drill being the complete control of the class so that the teacher will form its ranks quickly and silently, may halt it, turn it, or direct it as desired. Great stress shall be laid upon the execution of each drill in a brisk, quiet, and orderly manner. Running shall be prohibited. In case there are pupils incapable of holding their places in a line moving at a reasonable speed, provisions shall be made to have them taken care of by the more sturdy pupils, who will keep them from moving independently from the regular line of march."

(c) "F-702.1.3 Monitors shall be appointed from the more mature pupils to assist in the proper execution of all drills. They shall be instructed to hold doors open in the line of march or to close doors where necessary to prevent spread of fire or smoke. There shall be at least two (2) substitutes for each appointment so as to provide for proper performance in case of absence of the regular monitors. The searching of toilet or other rooms shall be the duty of the teachers or other members of the staff. If the teachers are to search, it should be done after they have joined their classes to the preceding lines."

(d) "F-702.1.4 As all drills simulate an actual fire condition, pupils shall not be allowed to obtain clothing after the alarm is sounded, even when in home rooms, on account of the confusion that would result in forming the lines and the danger of tripping over dragging apparel."

(e) "F-702.1.5 Each class or group shall proceed to a predetermined point outside the building and remain there while a check is made to see that all are accounted for, leaving only when a recall signal is given to return to the building, or when dismissed. These points shall be sufficiently far away from the building and from each other as to avoid danger from any fire in the building, interference with fire department operations, or confusion between different classes or groups."

(f) "F-702.1.6 Where necessary for drill lines to cross roadways, signs reading "STOP! SCHOOL FIRE DRILL," or equivalent, shall be carried by monitors to the traffic intersecting points in order to stop traffic during the period of the drill."

(g) "F-702.1.7 Fire exit drills in schools shall not include any fire extinguishing operations."

(12) Create a new subsection "F-702.5 Fire Alarm Signals" to read as follows:

(a) "F-702.5.1 All fire exit drill alarms shall be sounded on the fire alarm system."

(b) "F-702.5.2 Whenever any of the school authorities determine that an actual fire exists, they shall notify the fire department using the public fire alarm system or other facilities as are available."

(c) "F-702.5.3 In order to prevent pupils from being returned to a building that is burning, the recall signal shall be one that is separate and distinct from, and cannot be mistaken for, any other signals. These signals may be given by distinctive colored flags or banners. If the recall signal is electrical, the push buttons or other controls shall be kept under lock, the key for which shall be in the possession of the principal or some other designated person in order to prevent a recall at a time when there is a fire. Regardless of the method of recall, the means of giving the signal shall be kept under a lock."

(d) "F-702.5.4 Inspection."

(e) "F-702.5.4.1 It shall be the duty of principals and teachers to inspect all exit facilities daily in order to make sure that all stairways, doors, and other exits are in proper condition."

(f) "F-702.5.4.2 Open-plan buildings require extra surveillance to ensure that exit paths are maintained clear of obstruction and are obvious."

(13) Delete Section F-703, F-704 and F-705 in their entirety.

(14) Create a new Section, "F-707.0 Residential Occupancies" to read as follows:

(a) "F-707.1 Hotel and Motel Emergency Organization."

1. "F-707.1.1 Hotel and Motel Employee Duties. All employees of hotels shall be instructed and drilled in the duties they are to perform in the event of fire, panic, or other emergency."

2. "F-707.1.2 Monthly drills. Drills of the emergency organization shall be held at monthly intervals, covering the operation and maintenance of the available first aid fire appliances, the testing of guest alerting devices, and a study of instructions for emergency duties."

3. "F-707.1.3 Emergency Duties in Hotels, Motels and Dormitories. The owner or other person in control of the premises shall take immediate action to control any fire on the premises. Upon discovery of fire, some or all of these duties will become immediately imperative,

the number and sequence depending upon the exact situation encountered:

Alarms

Notify office.

Notify public fire department.

Notify private fire brigade.

Guests

Warn guests or others who are or may become endangered.

Assist occupants to safety, with special attention to aged, infirm, or otherwise incapacitated persons.

Search rooms to be sure all occupants have escaped.

Man all elevators, including those of automatic type, with competent operators.

Extinguishment

Extinguish or control the fire using available first aid equipment.

Send messenger to meet public fire department upon arrival in order to direct latter to exact location of fire. (The public fire department is in full command upon arrival.)

Special Equipment

Fire Pumps - stand by for instant operation.

Ventilating Equipment - in case of dense smoke, stand by, operate under proper instructions to clear area affected.

Refrigerating Equipment - if machines are definitely endangered, shut them down and blow refrigerant to sewer or atmosphere to prevent explosion.

Generators and Motors - protect against water damage with tarpaulins - shut down motors not needed - keep generators operating to furnish lights, elevator power, etc.

Boilers - if necessary to abandon boiler room, extinguish or dump fire and lower steam pressure by blowing to sewer or atmosphere to prevent possible explosion.

(b) "F-707.2 Dormitory Drills."

1. "F-707.2.1 Fire exit drills shall be conducted quarterly in accordance with F-701.0."

(c) "F-707.3 Emergency instructions for Residents or Guests of Hotels, Motels or Dormitories."

1. "F-707.3.1 A floor diagram reflecting the actual floor arrangement, exit locations, and room identification shall be posted in a location and manner acceptable to the fire code official on or immediately adjacent to every guest room door in hotels and in every resident room in dormitories."

2. "F-707.3.2 Fire safety information shall be provided to allow guests to make a decision to either: evacuate to the outside; evacuate to an area of refuge; remain in place; or any combination of the three (3)."

(d) "F-707.4 Emergency Instructions for Residents of Apartment Buildings."

1. "F-707.4.1 Emergency instructions shall be provided to each living unit on a yearly basis indicating the location of alarms, exiting paths, and actions to be taken, both in response to a fire in the living unit and in response to the sounding of the alarm system."

(e) "F-707.5 Furnishings and Decorations."

1. "F-707.5.1 New draperies, curtains, and other similar furnishings and decorations in hotels and dormitories shall be in accordance with the provisions of F-306.0."

(f) "F-707.6 Unvented fuel-fired heaters shall not be used in residential occupancies."

Exception: Listed and approved unvented fuel-fired heaters in one (1) and two (2) family dwellings."

(g) "F-707.7 Gas Grills on balconies of multifamily dwellings."

1. "F-707.7.1 Gas grills with propane containers shall not be located on balconies above the first floor attached to a multifamily dwelling of three (3) or more living units located one (1) above the other. (See NFPA 58-1989, Section 3-4.9.2)"

(15) Create a new Section, "F-708.0 Mercantile Occupancies" to read as follows:

(a) "F-708.1 Training. In every mercantile store of more than 3,000 gross square feet, employees shall be regularly trained in fire exit drills."

(b) "F-708.2 Fire extinguishers. Employees of mercantile occupancies shall be instructed in the proper use of portable fire extinguishers."

(16) Create a new Section, "F-709.0 Business Occupancies" to read as follows:

(a) "F-709.1 Drills. In any building subject to occupancy by more than 500 persons or more than 100 above or below the street level, employees and supervisory personnel shall be instructed in fire exit drill procedures and shall hold practice drills periodically where practicable."

(b) F-709.2 Employees of business occupancies shall be instructed in the proper use of portable fire extinguishers."

Section 10. Articles 8 through 15 [16] are adopted in their entirety unchanged.

Section 11. Article 16. (1) Delete subsections F-1600.1 through F-1602.2 from Article 16 of the 1990 Edition of the BOCA National Fire Prevention Code in their entirety.

(2) Create a new subsection, F-1603.3, to read as follows: "F-1603.3 The storage and handling of all flammable and combustible liquids at gas or oil wells and related production facilities shall comply with the requirements of NFPA 30 [NFPA Pamphlet #30] referenced in Appendix A."

Section 12. [11.] Article 17. Delete subsection F-1700.2 in its entirety.

Section 13. [12.] Articles 18 through 26 are adopted in their entirety unchanged.

Section 14. [13.] Article 27. (1) Amend Subsection F-2700.1 to read: "'F-2700.1 Scope: See Kentucky Revised Statute 227.750 through 227.810, Title 815, Chapter 30 of Kentucky Administrative Regulations for requirements for fireworks."

(2) Delete Subsections F-2700.2 through F-2701.4 in their entirety.

Section 15. [14.] Article 28. (1) Amend Subsection F-2800.3 and create paragraphs F-2800.3.1 through F-2800.3.2 to read as follows:

(a) "F-2800.3 Permit Requirements. A permit shall be obtained as set forth in this Subsection."

(b) "F-2800.3.1 Local Permit Requirements. A permit shall be obtained from an authorized local fire code official for the following:

1. The storage or handling of Class I liquids in excess of one (1) gallon in any building of "residential occupancy," in excess of ten (10) gallons inside any other building, and in excess

of fifty (50) gallons outside of any building.

2. Storage and handling of Class II liquids in excess of ten (10) gallons in any buildings of "residential occupancy," in excess of sixty (60) gallons inside any other building, and in excess of 120 gallons outside of any building.

3. The storage and handling of Class III liquids in excess of 275 gallons inside any building, and in excess of 1,100 gallons outside of any building.

4. Quantities of paints, oil, varnishes, and similar flammable liquids in excess of those given above, for use on the premises, stored for not more than thirty (30) days. For storage exceeding thirty (30) days, a state permit shall be required.

5. Permits shall not be required for the storage and handling of crude oil on oil and gas leases."

6. Nothing in this Article shall require compliance by those oil and gas facilities regulated pursuant to KRS Chapter 353.

(c) "F-2800.3.2 State Permit Requirements for Flammable Liquids. A permit shall be obtained from the State Fire Marshal for all changes in construction, remodeling or operation of any refinery, bulk storage plant, distributing station, service station, or airports not under jurisdiction of the Kentucky Building Code."

Section 16. [15.] Article 29 is adopted in its entirety unchanged.

Section 17. [16.] Article 30. (1) Amend Subsection F-3000.2 and create paragraphs F-3000.2.1 through F-3000.2.2 to read as follows:

(a) "F-3000.2 State Permits for Liquefied Petroleum Gas. A permit shall be obtained from the State Fire Marshal prior to:"

(b) "F-3000.2.1 The transportation, selling, storing for resale, or delivering of liquefied petroleum gases, or for engaging in the business of installing or servicing liquefied petroleum gas equipment; or for persons who actually perform installations or servicing operations. Licenses issued under this section shall be in accordance with the provisions of KRS 234.120. Under this section licenses or permits are not required for storage or transportation in quantities of less than one (1) gallon where the gas is an integral part of a device for its utilization, or for use as a motor fuel while in the fuel tank of the motor vehicle."

(c) "F-3000.2.2 The construction or substantial remodeling of any plant or building containing an occupancy for which a license is required under KRS 234.120 relating to the storage and handling of liquefied petroleum gases. This requirement shall be a supplement to any Kentucky Building Code requirement."

Section 18. [17.] Articles 31 through 34 and Appendix A are adopted in their entirety unchanged, except Appendix A is amended by adding the following references: "NFPA 231, 1990; NFPA 231C, 1986; NFPA 231D, 1989; NFPA 231F, 1987; and the Kentucky Building Code as set forth in Title 815, Chapter 7 of the Kentucky administrative regulations".

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary

APPROVED BY AGENCY: December 11, 1990

FILED WITH LRC: December 13, 1990 at 10 a.m.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(As Amended)

902 KAR 2:150. Human immunodeficiency virus education, initial professional licensure.

RELATES TO: KRS 211.180, 214.020, 214.615

STATUTORY AUTHORITY: KRS 194.050, 211.090

NECESSITY AND FUNCTION: KRS 214.615 provides that as of July 1, 1991, the the Cabinet for Human Resources shall require that an educational course approved by the cabinet on the transmission, control, treatment and prevention of human immunodeficiency virus infection and AIDS be completed by prospective licensees under KRS Chapters 311, 312, 313, 314, 315, 320, 327, 333, 335.

Section 1. Definitions. (1) "Initial licensure" means the granting of a professional license under the respective KRS chapter for any person who has never been previously licensed in the Commonwealth, for any person holding an inactive license, or for any person who wishes to reinstate a lapsed license.

(2) "National accrediting body" means a council or commission which examines specific academic curricula of professional schools and certifies that these curricula are adequate for the granting of a specific professional degree or certificate.

Section 2. [1.] The educational course approved by the cabinet for initial licensure shall be either of the following:

(1) Any one of those prelicensure curricula or courses found on the official listing of the AIDS education program, CHR, which is designated as appropriate for licensed professionals. The official listing is hereby incorporated by reference and may be obtained from the AIDS Education Program, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, between 8 a.m. and 4 p.m. on Monday through Friday excluding legal holidays. Courses on the list shall be marked either as appropriate for all licensed professionals or designated as appropriate only for one (1) or more professions. Requests for inclusion on the official listing may be made by any interested party [Licensure boards, universities providing education to the professions under KRS chapters listed in the Necessity and Function of this regulation, and state and national professional organizations wishing to add courses to the list shall proffer them for approval] by submitting, to the AIDS education program, material including the title, style, (correspondence, in-person, video or other) and brief description of the course. A course-description brochure will suffice to meet this requirement; or

(2) Any HIV education program or course having received approval of a national accrediting body or a national professional accrediting organization which regularly accredits programs and courses.

Section 3. [2.] All courses shall include:

(1) Basic medical and epidemiologic information about HIV and the diseases and conditions it can cause;

(2) Information regarding the methods of transmission of HIV, methods of prevention of HIV infection, and currently recognized methods

of medical treatment for HIV infection;

(3) Basic instructions for management of HIV infection both in the health care workplace and in other commonly encountered working environments. These instructions shall be consistent with federal occupational safety and health standards;

(4) A brief review of the moral, ethical, and legal issues surrounding HIV infection;

(5) Instruction regarding appropriate attitudes and behaviors toward those persons infected or possibly infected with HIV;

(6) Instruction regarding the need for comprehensive human services for those with HIV infection.

Section 4. [3.] The minimum length of the course for each profession shall be set by its individual licensure board.

Section 5. [4.] Any course approved by the cabinet shall have been updated within no more than two (2) years of the date that it is taken by the licensee to ensure that the course material reflects contemporary scientific findings concerning HIV infection. Printed or audio visual material shall bear the production date (month and year). The month and year of production shall appear on a handout or syllabus for courses to be given in person.

Section 6. (1)(a) The cabinet shall conduct a survey of the curriculum of all prelicensure programs in Kentucky that are affected by KRS 214.615 to determine compliance with the provisions of this regulation.

(b) The survey shall be completed by July 1, 1991.

(c) The cabinet shall notify each licensure board whether its prelicensure programs comply with the provisions of this regulation.

(2)(a) Upon application, an applicant for licensure, who has graduated from a prelicensure program outside Kentucky, shall submit information to the cabinet regarding the curriculum of the program as it relates to the human immunodeficiency virus and acquired immunodeficiency syndrome.

(b) Within ten (10) working days of receipt of the information, the cabinet shall certify to the applicant and the appropriate licensing board whether the curriculum complies with the provisions of this regulation.

(c) In lieu of submitting curriculum information under paragraph (a) of this subsection, an applicant may complete a course approved pursuant to Section 1 of this regulation.

(3) Licensure boards shall notify applicants of the requirements of subsection (2) of this section.

[Section 5. The licensure boards shall apply standards regarding the qualifications of course providers and the appropriateness of specific material to the given profession. State and national quality standards shall be used, where they exist.]

Section 7. [6.] If CHR suspects a deficiency in the conduct of an approved course which is not being satisfactorily addressed by one (1) or more licensure boards, or if a licensure board so requests, CHR may inspect that course and may remove the course from the

approved list if it does not meet the quality standards of this regulation [charge the vendors a fee not to exceed seventy-five (75) dollars for the inspection].

Section 8. [7.] Each applicant [licensee] shall certify to the boards at the time of licensure either:

(1) The completion of an approved course, on a form created and distributed by CHR; or

(2) Reasonable cause for having not fulfilled the requirements of Section 1 of this regulation, on an affidavit created and distributed by the cabinet[, and submitted to the appropriate licensing board at the time of licensure application]. An affidavit of reasonable cause shall be valid for no more than six (6) months and shall be accepted from a given individual only once. A licensing board may issue a license to an individual who has submitted an affidavit of reasonable cause. If the individual does not certify fulfillment of the requirements of Section 1 of this regulation within six (6) months from the date of the affidavit, the licensing board shall take appropriate disciplinary action [taken an approved course, or an affidavit created and distributed by CHR, to his individual licensure board, as a condition of receiving a professional license under KRS 214.615. An affidavit of reasonable cause shall be valid for no more than six (6) months and shall be accepted from a given licensee only once].

(3) If an applicant [licensee] has graduated from a professional school whose AIDS education curriculum is approved under Section 1(1) or (2) of this regulation within two (2) years (five (5) years for a physician, if he has been in a residency program throughout the interim), he shall be deemed to have met the requirement of this subsection without submitting a form.

Section 9. [8.] Each licensure board shall submit to CHR by December 31 of each year, beginning in 1991, a report stating the total number of persons applying for licensure in the past twelve (12) months; and of those, the number meeting the AIDS education requirement, the number having submitted an affidavit of reasonable cause, and the number of disciplinary actions taken for failure to meet the requirements of Section 1 of this regulation at the expiration of the six (6) month period [and the number of licenses denied for failure to meet the requirement. Boards shall also report the number of licenses revoked because affidavits of reasonable cause have expired].

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: January 11, 1991
FILED WITH LRC: January 11, 1991 at 10 a.m.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(As Amended)

902-KAR 2:160. Human immunodeficiency virus education, continuing education for professionals.

RELATES TO: KRS 211.180, 214.020, 214.610
STATUTORY AUTHORITY: KRS 194.050, 211.090
NECESSITY AND FUNCTION: KRS 214.610 provides

that each licensee under KRS Chapters 311, 312, 313, 314, 315, 320, 327, 333, and 335 shall complete a Cabinet for Human Resources approved educational course as specified in the respective chapters on the transmission, control, treatment, and prevention of human immunodeficiency virus infection and AIDS for the first time by July 1, 1991 (July 1, 1992, for nursing and physical therapy) and at least once during each licensure cycle thereafter [as part of their periodic licensure renewal cycles].

Section 1. Definitions. (1) "Continuing licensure" means the renewal of an existing license as part of the periodic renewal cycle adopted by the respective licensure board.

(2) "National accrediting body" means a council or commission which examines specific curricula or courses and certifies that they are adequate for the granting of continuing education credit.

Section 2. [1.] The educational course approved by the cabinet for continuing education shall be either of the following:

(1) Any one of those courses found on the official listing of the AIDS education program, CHR, which is designated as appropriate for licensed professionals. The official listing is hereby incorporated by reference and may be obtained from the AIDS Education Program, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, between 8 a.m. and 4 p.m. on Monday through Friday excluding legal holidays. Courses on the list shall be marked either as appropriate for all licensed professionals or designated as appropriate only for one (1) or more professions. Requests for inclusion on the official listing may be made by any interested party [Licensure boards, universities providing education to the professions under KRS chapters listed in Necessity and Function of this regulation, and state and national professional organizations wishing to add courses to the list shall proffer them for approval] by submitting, to the AIDS education program, material including the title, style (correspondence, in-person, video or other) and brief description of the course. A course-description brochure will suffice to meet this requirement; or

(2) Any AIDS/HIV education program or course having received approval of a national accrediting body;

(3) Any AIDS/HIV education course which has received the approval of a national professional organization which regularly approves continuing education courses for the particular profession.

Section 3. [2.] All courses shall include:

(1) Basic medical and epidemiologic information about HIV and the diseases and conditions it can cause;

(2) Information regarding the methods of transmission of HIV, methods of prevention of HIV infection, and currently recognized methods of medical treatment for HIV infection;

(3) Basic instructions for management of HIV infection both in the health care workplace and in other commonly encountered working environments. These instructions shall be consistent with federal occupational safety and health standards;

(4) A brief review of the moral, ethical, and legal issues surrounding HIV infection;

(5) Instruction regarding appropriate attitudes and behaviors toward those persons infected or possibly infected with HIV;

(6) Instruction regarding the need for comprehensive human services for those with HIV infection.

Section 4. [3.] For professions with existing continuing education requirements, the minimum number of continuing education hours per certification cycle devoted to AIDS/HIV shall be set by the licensure board and shall be made part of the overall requirement (included within the total statutory number of hours, where those exist). For professions without the existing requirements, the minimum course length per certification cycle shall be two (2) hours.

Section 5. [4.] Any course approved by the cabinet shall have been updated within no more than two (2) years of the date that it is taken by the licensee to ensure that the course material reflects contemporary scientific findings concerning HIV infection. Printed or audio visual shall bear the production date (month and year). The month and year of production shall appear on a handout or syllabus for courses designed to be given in person.

[Section 5. The licensure boards shall apply standards regarding the qualifications of course providers and the appropriateness of specific material to the given profession. State and national quality standards shall be used, where they exist.]

Section 6. If CHR suspects a deficiency in the conduct of an approved course which is not being satisfactorily addressed by one (1) or more license boards, or a licensure board so

requests, CHR may inspect that course and may remove it from the approved list if it does not meet quality standards of this regulation [charge the vendors a fee not to exceed seventy-five (75) dollars for the inspection].

Section 7. Each licensee shall certify to the board the completion of an approved course either:

(1) On a form created and distributed by CHR; or

(2) On the general continuing education form used by his licensure board, if one exists; or

(3) In the manner by which the boards currently audit continuing education requirements, as a condition of renewed licensure under KRS 214.610.

Section 8. Each licensure board (except nursing and physical therapy) shall, by August 1, 1991, submit an interim report to CHR stating the total number of licensees, as of July 1, and of that number, the number that had met the AIDS education requirement. Each licensure board shall submit to CHR by December 31 of each year, beginning in 1991 (except nursing and physical therapy, which will submit starting in 1992) a report stating the number of license renewals applied for during the year, the number or percent of licensees [applicants] meeting the AIDS education requirement. The report shall also include a summary of disciplinary actions taken by the boards for noncompliance [, and the number of licenses denied for failure to meet the requirement].

C. HERNANDEZ, M.D., Commissioner

HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: January 11, 1991

FILED WITH LRC: January 11, 1991 at 10 a.m.

REGULATIONS AMENDED AFTER PUBLIC HEARING

GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(Amended After Hearing)

201 KAR 2:116. Drug products with therapeutic [bioinequivalence] problems.

RELATES TO: KRS 217.819

STATUTORY AUTHORITY: KRS 217.814(5), (6), (7), (8), 217.819(1)

NECESSITY AND FUNCTION: KRS 217.819 directs the Kentucky Board of Pharmacy to prepare a [nonequivalent] drug product formulary of drugs which should not be interchanged by pharmacists. This regulation lists drug products with active ingredients or dosage forms with potential bioequivalence problems, drugs characteristically possessing a narrow therapeutic index, or categories of agents for which there is either documented evidence of inequivalent therapeutic effect or a potential for it based on differences in bioavailability.

Section 1. The following have been determined by the board to be noninterchangeable: drugs, drug products, or dosage formulations considered by the United States Food and Drug Administration not to be therapeutically equivalent [to other pharmaceutically equivalent products] as published in the "Approved Drug Products with Therapeutic Equivalence Evaluations."

Section 2. [1.] The following have been determined by the board to be noninterchangeable unless the United States Food and Drug Administration considers them therapeutically equivalent as published in the [to other pharmaceutically equivalent products with no potential bioequivalency problems and are listed as such in] "Approved Drug Products with Therapeutic Equivalence Evaluations":

- (1) Digitalis glycosides; [:]
- [(a) Digoxin; and]
- [(b) Digitoxin.]
- (2) Antiepileptic drugs; [:]
- [(a) Phenytoin;]
- [(b) Primidone; and]
- [(c) Carbamazepine.]
- (3) Antiarrhythmic agents; [:]
- [(a) Quinidine; and]
- [(b) Procainamide.]
- (4) Conjugated estrogens; [:]
- [(a) Conjugated; and]
- (5) [(b)] Esterified estrogens; [.]
- (6) [(5)] Warfarin anticoagulants; [.]
- (7) [(6)] Theophylline products; and [.]
- (8) [(7)] Thyroid preparations; [:]
- [(a) Thyroglobulin, whole grain thyroid;]
- [(b) Levothyroxine; and]
- [(c) Leothyronine.]

Section 3. "Approved Drug Products with Therapeutic Equivalence Evaluations," 11th [10th] Edition, 1991 [1990, with Cumulative Supplement January-September 1990], U.S. Food and Drug Administration is incorporated by reference.

DONALD J. RUWE, President

APPROVED BY AGENCY: February 7, 1991

FILED WITH LRC: February 8, 1991 at 9 a.m.

PUBLIC PROTECTION & REGULATION CABINET
Department of Insurance
(Amended After Hearing)

806 KAR 18:040. Health insurance for students of institutions of higher education.

RELATES TO: KRS 304.18-115

STATUTORY AUTHORITY: KRS 304.2-110, 304.18-115

NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.18-115 requires the Department of Insurance, with the advice and consent of the Council on Higher Education, to issue regulations to define qualifying student health insurance programs for institutions of higher education, to establish procedures to monitor compliance, and to implement the provisions of KRS 304.18-115.

Section 1. Definitions. As used in this regulation:

(1) "Accident" means accidental bodily injury sustained by the insured person which is the direct result of the accident, independent of disease or bodily infirmity or any other cause, and occurs while the insurance is in force.

(2) "Hospital" means an institution operated pursuant to law which is primarily and continuously engaged in providing or operating, either on its premises or in facilities available to the hospital on a prearranged basis and under the supervision of a staff of duly licensed physicians, medical, diagnostic, and major surgical facilities for the medical care and treatment of sick or injured persons on an inpatient basis for which a charge is made, and provides twenty-four (24) hour nursing service by or under the supervision of registered graduate professional nurses (RNs). However, "hospital" does not include convalescent homes, convalescent, rest, or nursing facilities, facilities primarily affording custodial, educational, or rehabilitary care, facilities for the aged, drug addicts, or alcoholics, or any military or veterans hospital or soldiers home or any hospital contracted for or operated by any national government or agency thereof for the treatment of members or ex-members of the armed services, except for services rendered on an emergency basis where a legal liability exists for charges made to the individual for such services.

(3) "Mental or nervous disorders" mean neurosis, psychosis, or mental or emotional disease or disorder of any kind.

(4) "Nurse" means a registered graduate professional nurse (RN), a licensed practical nurse (LPN), or a licensed vocational nurse (LVN).

(5) "Physician" means a duly qualified and licensed physician, that is, a doctor of medicine (MD), a doctor of osteopathy (DO), a doctor of dentistry (DMD or DDS), a doctor of chiropractic, or a doctor of optometry (OD), licensed to practice as such by the governmental authority having jurisdiction over licensing of the classification of doctor in the state where the service is rendered.

(6) "Preexisting condition" means a health

condition for which medical advice was given or treatment was recommended by or received from a physician within twelve (12) months before the effective date of coverage.

(7) "Sickness" means sickness or disease of an insured person which first manifests itself after the effective date of insurance and while the insurance is in force, but excludes sicknesses or diseases for which benefits are provided under any workers' compensation, occupational disease, employers' liability, or similar law.

Section 2. Scope and Purpose of this Regulation. (1) This regulation establishes minimum standards for health insurance which institutions of higher education require of their students pursuant to KRS 304.18-115.

(2) Every health insurance policy used for the health insurance requirement of KRS 304.18-115 shall meet the minimum standards established by this regulation.

(3) Every institution of higher education shall offer a health insurance policy pursuant to KRS 304.18-115 which meets but does not exceed the minimum standards established in this regulation. However, this regulation does not prohibit institutions of higher education from offering optional health insurance policies which contain benefits greater than, or provisions which are consistent with, this regulation.

Section 3. Minimum Standards. All health insurance policies used to satisfy the requirements of KRS 304.18-115 shall meet the following minimum standards:

(1) Definitions. Health insurance policies shall not use definitions of terms defined in Section 1 of this regulation which are more restrictive than the definitions contained in Section 1 of this regulation.

(2) Eligibility requirements. Every health insurance policy shall contain a definition of students eligible for coverage. The eligibility criteria shall not be more restrictive than those set forth in KRS 304.18-115(1).

(3) Duration of coverage. A health insurance policy shall contain a provision describing the duration of coverage and the right to continue or convert coverage as described in KRS 304.18-110 and 304.18-120 or other applicable laws.

(4) Hospital inpatient services and related physician services. All health insurance policies shall include at least coverage for basic inpatient hospital services and emergency medical services as follows:

(a) Inpatient hospital care for fourteen (14) days to include room and board, general nursing care, and miscellaneous hospital charges for the use of an operating room, anesthesia, x-ray examination for diagnostic purposes, laboratory tests, drugs or medicines, therapeutic services, and supplies associated with the hospital confinement and while hospital confined.

(b) Fifty (50) percent of physician charges related to any physical illness or injury which results in admission to a hospital as an inpatient.

(c) Emergency care expenses including ambulance service and emergency room use when the emergency condition results in admission to the hospital as an inpatient.

(5) Maternity shall be treated the same as any

other sickness under the policy. Complications of pregnancy, such as spontaneous or non-elective abortions, shall also be treated as any other sickness under the policy.

(6) Termination of coverage under the policy shall be without prejudice to any continuous loss which commenced while the policy was in force, but this extension of benefits may be conditioned upon continuous total disability of the insured or payment of the maximum benefits.

(7) Usual, customary, and reasonable charges. A health insurance policy which provides for the payment of benefits based on standards described as "usual, customary, and reasonable," or similar wording, shall include a definition of these terms.

(8) Disclosure required to students. Every insurer issuing a health insurance policy will furnish to the institution of higher education for delivery to each student insured a statement in summary form of the essential features of the insurance coverage and to whom benefits are payable. If dependents are included in the coverage, one (1) statement may be issued for each family unit.

(9) The benefits required by this section may be limited to maximum dollar amounts which are consistent with the premium charged.

Section 4. Prohibited Policy Provisions. (1) A health insurance policy used to meet the requirements of KRS 304.18-115 shall not include a probationary period.

(2) A health insurance policy used to meet the requirements of KRS 304.18-115 shall not exclude coverage by type of sickness, accident, or treatment, except as follows:

(a) Services rendered by health care providers retained or employed by the institution of higher education specifically for the purpose of providing such services to enrolled students or for the use of facilities of the institution of higher education which are designed primarily for the provision of health services to students. The prohibition does not apply to institutional employees who provide in the course of their private practice health services to students or to university teaching hospitals or specialty clinics;

(b) Foot care in connection with corns, calluses, flat feet, fallen arches, weak feet, chronic foot strain, or symptomatic complaints of the feet;

(c) Illness, treatment or medical condition arising out of:

1. War or act of war (whether declared or undeclared), participation in a felony, riot, or insurrection, service in the armed forces or units auxiliary thereto; or

2. Suicide (sane or insane), attempted suicide, or intentionally self-inflicted injury;

(d) Cosmetic surgery, except that "cosmetic surgery" shall not include reconstructive surgery when the treatment is incidental to or follows surgery resulting from trauma, infection, or other diseases of the involved body part;

(e) Care in connection with the detection and correction by manual or mechanical means of structural imbalance, distortion, or subluxation of the human body for purposes of removing nerve interference and the effects thereof, where such interference is the result of or related to distortion, misalignment, or subluxation of, or in the vertebral column, except to the extent

that coverage for these services is required by law;

(f) Treatment provided in a government hospital other than university teaching hospitals, benefits provided under Medicare or other governmental program (except Medicaid), any state or federal workers' compensation, employer's liability, or occupational disease law, services rendered by employees of hospitals, laboratories, or other health care providers, services performed by a member of the covered person's immediate family, and services for which no charge is normally made in the absence of insurance;

(g) Dental care or treatment except that made necessary by injury to sound natural teeth;

(h) Eyeglasses, hearing aids, and examination for the prescription or fitting thereof;

(i) Rest cures, custodial care, transportation, and routine physical examination;

(j) Territorial limitations, except that coverage must be provided for losses incurred in any state of the United States, any territory or possession of the United States, and Canada;

(k) Preventive treatment, except when coverage is required by law; [and]

(l) Health conditions arising from practicing for, participating in, or traveling to or from interscholastic, intercollegiate, professional, or semiprofessional sports;

(m) Mental or emotional disorders, alcoholism, and drug addiction.

Section 5. Waiver for Students Certifying Participation in Health Insurance with Comparable Coverage. An institution of higher education may waive the required participation in its student health insurance program, or any portion thereof, if the student seeking waiver certifies in writing that he/she is covered by a health benefit plan (including, but not limited to, Medicaid) having coverages comparable to those required by this regulation. The institution of higher education shall require any student applying for a waiver to provide the following information as part of the certification:

(1) Name of the insurer or other entity providing benefits;

(2) The name of the policyholder or certificate holder and their relation to the student;

(3) Certificate or policy number.

Section 6. Severability. If any provision of this regulation or the application of this regulation to any person or circumstance is for any reason held to be invalid, the remainder of the regulation and the application of the provision to other persons or circumstances shall not be affected thereby.

Section 7. Effective Date. This regulation shall become effective upon completion of its review pursuant to KRS Chapter 13A.

ELIZABETH P. WRIGHT, Commissioner
THEODORE T. COLLEY, Secretary

APPROVED BY AGENCY: January 31, 1991

FILED WITH LRC: February 6, 1990 at 11 a.m.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Amended After Hearing)

902 KAR 13:120. Emergency medical technician automatic and semiautomatic defibrillation training program.

RELATES TO: KRS 211.960 to 211.968, 211.990(5)

STATUTORY AUTHORITY: KRS 211.964

NECESSITY AND FUNCTION: KRS 211.964 directs the Cabinet for Human Resources to adopt rules and regulations relating to emergency medical technicians. The function of this regulation is to establish a new emergency medical technician (EMT) procedure, automatic and semiautomatic cardiac defibrillation, and to establish requirements for training, examinations and authorization. This will be a restrictive procedure while the EMT is employed with an approved ambulance service provider; or with an authorized fire, police or rescue (i.e., public safety) organization having a written affiliation agreement with an approved ambulance service.

Section 1. Training Course Requirements. The automatic and semiautomatic defibrillation training course, utilizing automatic external or semiautomatic external defibrillation (AED/SAED) equipment, shall:

(1) Be coordinated by a licensed ambulance service that has filed an appropriate application to and has been approved by the cabinet for coordinating the training, and the ambulance service shall assume all responsibilities required for conducting the AED/SAED training course;

(2) Include the curriculum developed by the Kentucky Emergency Medical Services Advisory Committee and approved by the Emergency Medical Services Branch of the cabinet. A copy of this publication, included by reference as if fully incorporated herein, shall be on file in the office of the Emergency Medical Services Branch, Department for Health Services, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, and shall be available for public inspection between 8 a.m. and 4:30 p.m., Monday through Friday. An equivalent curriculum developed by an outside source, but meeting the course criteria established by the cabinet, may be submitted to and be considered for approval by the cabinet;

(3) Be a minimum of seven (7) hours in duration, presented in two (2) sessions over at least two (2) days;

(4) Utilize equipment, tests, and other materials approved by the cabinet;

(5) Not be started until all equipment and other materials specified are available, in proper quantities, in proper working condition, and placed in secure storage;

(6) Not share equipment between courses unless such equipment is available equally to all defibrillation classes;

(7) Be taught by an instructor, at a ratio of one (1) instructor per six (6) students, approved by the cabinet pursuant to Section 2 of this regulation;

(8) Have a medical director under written contract with the ambulance service provider, who shall review and approve all instruction curriculum and instructors, and who shall be present and participate as appropriate during

the training program course;

(9) Have an appropriate number of assistant instructors available for practice sessions so that there are no more than six (6) additional students per assistant. A person meeting the specifications described in Section 2 of this regulation, or an EMT who has completed the AED/SAED training program and is currently authorized and active in performing AED/SAED procedures, may be used as an assistant for practice sessions;

(10) Have a class certification number assigned by the cabinet;

(11) Not permit any absenteeism, or the student shall repeat the entire course;

(12) Not permit any student to be on call during training sessions; and

(13) Require the instructor at the end of each course to submit the following to the ambulance service provider and to the EMS Branch of the cabinet:

(a) A list of names, including EMT certification numbers, of those students who have successfully completed the course requirements for authorization to perform automatic and semiautomatic cardiac defibrillation; and

(b) The name of the ambulance service with which these EMTs will be working, or affiliated.

(c) The ambulance service shall notify any affiliated public safety organization in writing of each affiliated EMT who has successfully completed the course and who is authorized to perform AED/SAED procedures according to the ambulance service medical director protocols.

Section 2. Automatic and Semiautomatic Cardiac Defibrillation Instructors. No person shall hold himself out as an instructor for EMTs in automatic and semiautomatic cardiac defibrillation unless he has been approved by the cabinet to teach the course. One (1) of the following shall be eligible for such approval upon submission of appropriate documentation to the cabinet:

(1) An EMT who is a certified EMT-instructor and who is authorized and is currently active in performing AED/SAED procedures;

(2) A paramedic, registered nurse or physician, each of whom is a currently certified advanced cardiac life support (ACLS) instructor.

Section 3. Requirements for Each Eligible Trainee Applicant. Each EMT who is employed (full time, part time, paid or volunteer) with an ambulance service or affiliated fire department, police department, or rescue squad, and who responds on an ambulance, fire apparatus, police vehicle, rescue squad or designated first response unit, shall provide to the AED/SAED lead class instructor:

(1) Proof of current EMT certification. If EMT certification expires, the eligibility as an applicant for AED/SAED training also lapses until the EMT is recertified;

(2) Proof of current cardiac life support skills, (e.g., a current American Heart Association or American Red Cross CPR certification card). Included shall be the provision of an acceptable cardiopulmonary resuscitation (CPR) strip, that is signed by an EMT-instructor to verify that the strip was produced by the student applicant within thirty (30) days prior to the commencement date of the class; and

(3) Approval to enroll from the student's emergency medical (ambulance) service provider director and the emergency medical (ambulance) service medical director (EMS-MD).

Section 4. EMT Automatic and Semiautomatic Cardiac Defibrillation Training Program Examination. The cabinet shall prescribe the format and content of the authorization examination, which shall consist of two (2) parts:

(1) Written test. At the end of this course, the student shall demonstrate competency with a written test scoring eighty (80) percent or better that includes the following four (4) enabling objectives:

(a) The student shall identify the function, operation, and proper maintenance of the automatic external devices/shock advisory (semiautomatic) devices, hereafter referred to as AED/SAED.

(b) The student shall define patient assessment, and care and treatment of the sudden death victim.

(c) The student shall list safety measures when using an AED/SAED.

(d) The student shall repeat standing orders and state automatic and semiautomatic cardiac defibrillation training program requirements.

(2) Practical test. At the end of this course, the student shall pass a practical examination managing a simulated cardiac arrest patient using defibrillation that includes the following five (5) enabling objectives:

(a) The student shall demonstrate control of the simulated emergency scene and shall direct the resuscitation efforts.

(b) The student shall demonstrate correct use of standing orders in a simulated cardiac arrest by correctly defibrillating a manikin within ninety (90) seconds of arrival at the manikin's side.

(c) The student shall demonstrate safe use of the AED/SAED and answer questions about the controls, disposable supplies, maintenance, and device "trouble shooting" techniques.

(d) The student shall give an appropriate voice documentation of events at the scene.

(e) The student shall demonstrate appropriate assessment and care of the patient before, during and after defibrillation.

(3) Examiners. AED/SAED instructors approved by the cabinet pursuant to Section 2 of this regulation shall be used as examiners for AED/SAED course practical examinations. An instructor who is employed by the ambulance service for whom the AED/SAED course is conducted shall not be used as an examiner in the practical examination of the course.

(4) Failure of examination and eligibility for retesting.

(a) A student who fails one (1) component of the final examination, written or practical, may be allowed one (1) retest upon recommendation by the instructor and with the approval of the ambulance service medical director.

(b) Failure to successfully pass one (1) retest shall require that the student retake the entire training program course before becoming authorized to perform AED/SAED procedures.

Section 5. Authorization and Continuation of Authorization. (1) The ambulance service or affiliated EMT is authorized to perform AED/SAED procedures by the medical director of

the approved ambulance service.

(2) Besides having the approval of the ambulance service medical director, in order to continue the authorization for performance of AED/SAED procedures, the EMT shall during his period of authorization, provide proof to include:

(a) Current certification as an emergency medical technical;

(b) Continued employment and response as an ambulance attendant with an approved AED/SAED ambulance service provider, or a public safety organization service which has a written affiliation agreement with an approved AED/SAED ambulance service;

(c) A practical skills review every ninety (90) days to be documented by the EMS-medical director or the EMS-MD designee. This practical skills review shall address defibrillation as well as basic life support skills.

(3) The continuing medical education classes shall include, but are not limited to:

(a) Equipment drills with their specific auto or semiautomatic defibrillator; and

(b) Knowledge of current standing orders.

(4) The following are not eligible for credit as in-service training or continuing education:

(a) Ambulance runs, rescues, firefighting, emergency responses, or similar actual emergency activities;

(b) Instruction in material, techniques or procedures not approved to be performed by an EMT authorized to perform automatic and semiautomatic cardiac defibrillation.

(5) Evidence of AED/SAED continuing education shall be submitted to and maintained on file at the ambulance service with which the EMT is employed, or affiliated, subject to inspection by a representative of the Emergency Medical Services Branch of the cabinet.

(6) Each subject or training course claimed shall be signed by the instructor of the subject or course.

(7) The qualifications for instructors who may provide in-service and continuing education for the EMT authorized to perform automatic and semiautomatic defibrillation are the same as those identified under Section 2 of this regulation.

Section 6. Denial of Authorization for the EMT to Perform Automatic and Semiautomatic Defibrillation Procedures. The denial of authorization for the EMT to perform AED/SAED procedures may be put into effect by the EMS-MD or the cabinet for any of the following reasons:

(1) The medical director has removed permission for the EMT to perform AED/SAED procedures and has made it known to the ambulance service provider, with subsequent notice having been made by the ambulance service provider to the affiliated public safety organization, and to the EMS Branch of the cabinet, due to any reason that has been substantiated to be detrimental to patient care or to other emergency medical service personnel;

(2) The expiration of the individual's EMT certification;

(3) The individual has discontinued employment with an approved automatic or semiautomatic defibrillation ambulance service provider, or affiliated public safety organization;

(4) The previously approved ambulance service provider with whom the EMT works or is affiliated, has been denied approval to provide

automatic or semiautomatic defibrillation services by either having had its ambulance service license revoked, or it no longer has a medical director under written contract; or

(5) The EMT has had his EMT certification revoked, due to having committed an infraction as specified under 902 KAR 13:090, Section 1, disciplinary actions.

Section 7. Hearing Process for an EMT Denied Authorization. When an EMT has been denied authorization to perform AED/SAED procedures:

(1) At the local level by the EMS-MD, a hearing process shall be assured for the EMT in the EMS-MD/ambulance service provider contract; or

(2) At the state level due to the EMT certification being revoked by the EMS Branch of the cabinet, a hearing process for the EMT shall be in accordance with the requirements of 902 KAR 13:090, Section 2.

Section 8. Utilization of Services. No ambulance service provider or affiliated public safety organization shall employ, utilize, permit the operation of, or advertise that said provider employs an EMT authorized to perform AED/SAED procedures, unless the provider is approved by the cabinet to provide AED/SAED services. An approved AED/SAED ambulance service provider shall:

(1) Have a written agreement with a medical director to provide medical supervision and control of the AED/SAED authorized EMT who is in the employ of the provider, and the medical director shall:

(a) Be a licensed physician in the Commonwealth of Kentucky;

(b) Be familiar with ACLS standards, and by January 1, 1995 become ACLS certified;

(c) Review and approve all AED/SAED instruction curriculum, and the instructors for the training program;

(d) Participate in the AED/SAED training program, including presentation of lectures and assisting in student practice sessions as appropriate;

(e) Approve each EMT who is to be a student trainee in the AED/SAED training program;

(f) Supply written authorization to the EMTs for standing orders relating to performance of AED/SAED procedures;

(g) Supervise the continuing education and quarterly evaluations of each EMT authorized to perform AED/SAED procedures;

(h) Review patient case records as established by a quality assessment plan, to include review of written documentation and use of electronic voice and electrocardiogram (ECG) recordings of treatment (only when defibrillation machine used) performed by the authorized EMTs in the field;

(i) Exercise authority as appropriate to remove permission for EMT to perform AED/SAED procedures as referenced in Section 6(1) of this regulation, including the provision of written notice to the EMT and ambulance service involved; and

(j) Assure the provision of a hearing process in accordance with Section 7(1) of this regulation.

(2) Be licensed minimally as a basic life support ambulance service in the Commonwealth of Kentucky; and

(3) Submit required information to the EMS

Branch of the cabinet prior to the commencement of any AED/SAED training program for EMTs employed by the emergency medical services provider, and at least annually thereafter.

Section 9. Affiliated Public Safety Organization. An EMT employed (paid or volunteer) by a public safety organization shall not perform AED/SAED procedures unless the public safety organization has entered into a written affiliation agreement with an approved ambulance service.

(1) Each affiliated EMT applicant for AED/SAED training shall be approved by the ambulance service director and medical director;

(2) The affiliated EMT shall be under the medical control of and may perform AED/SAED procedures only by authorization from the ambulance service medical director;

(3) The public safety organization shall agree to comply with the requirements of this regulation and all other terms agreed upon between the public safety organization and the approved ambulance service, as specified in the written affiliation agreement;

(4) The terms in the written affiliation agreement shall specify the responsibilities each party shall assume and shall include a plan for implementation of coordinated response activities in order to maximize appropriate patient care.

C. HERNANDEZ, M.D., Commissioner

HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: February 6, 1991

FILED WITH LRC: February 6, 1991 at 11 a.m.

CABINET FOR HUMAN RESOURCES
Office of Inspector General
(Amended After Hearing)

902 KAR 20:300. Operation and services; nursing facilities.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990
STATUTORY AUTHORITY: KRS 216B.042 and 216B.105
NECESSITY AND FUNCTION: KRS 216B.042 and 216B.105 mandate that the Kentucky Cabinet for Human Resources regulate health facilities and health services. This regulation provides licensure standards for the operation and services of a nursing facility.

Section 1. Definitions. (1) "Facility" means a nursing facility licensed pursuant to this regulation and 902 KAR 20:008.

(2) "Nurse aide" means any unlicensed individual providing nursing or nursing related services, employed by the facility, to residents in a facility except unpaid volunteers.

(3) "Licensure agency" means the Division for Licensing and Regulation in the Office of Inspector General, Cabinet for Human Resources.

(4) "Responsible party" means the person who assists or signs the resident into the facility and the resident's immediate family.

Section 2. Scope of Operations. (1) A nursing facility shall be subject to the provisions of Kentucky's nursing home reform laws, KRS Chapter 216.

(2) A nursing facility shall have written policies which assure the reporting of cases of abuse, neglect or exploitation of adults and

children to the cabinet pursuant to KRS Chapters 209 and 620.

(3) Tuberculosis testing. All employees and patients shall be tested for tuberculosis in accordance with the provisions of 902 KAR 20:200, Tuberculosis testing in long-term care facilities.

Section 3. Resident Rights. The resident has a right to a dignified existence, self-determination and communication with and access to persons and services inside and outside the facility. A facility must protect and promote the rights of each resident, including each of the following rights:

(1) Exercise of rights.

(a) The resident shall have the right to exercise his or her rights as a resident of the facility and as a citizen or resident of the United States.

(b) The resident shall have the right to be free of interference, coercion, discrimination, or reprisal from the facility in exercising his or her rights.

(c) In the case of a resident adjudged incompetent under the laws of a state by a court of competent jurisdiction, the rights of the resident shall be exercised by the person appointed under state law to act on the resident's behalf.

(2) Notice of rights and services.

(a) The facility shall inform the resident both orally and in writing in a language that the resident understands of his or her rights and all rules and regulations governing resident conduct and responsibilities during the stay in the facility. Such notification shall be made prior to or upon admission and during the resident's stay. Receipt of such information, and any amendments to it, shall be documented in writing.

(b) The resident shall have the right to inspect and purchase photocopies of all records pertaining to the resident, upon written request and forty-eight (48) hours notice to the facility;

(c) The resident shall have the right to be fully informed in language that he or she can understand of his or her total health status, including but not limited to, his or her medical condition;

(d) The resident shall have the right to refuse treatment, and to refuse to participate in experimental research; and

(e) The facility shall inform each resident before, or at the time of admission, and periodically during the resident's stay, of services available in the facility and of charges for those services, including any charges for services not covered by third party payors or the facility's per diem rate.

(f) The facility shall furnish a written description of legal rights which includes:

1. A description of the manner of protecting personal funds, under paragraph (3) of this section; and

2. A statement that the resident may file a complaint with the licensure agency concerning resident abuse, neglect, and misappropriation of resident property in the facility.

(g) The facility shall inform each resident of the name, specialty and way of contacting the physician responsible for his or her care.

(h) The facility shall have available a manual and contact person to [prominently

display in the facility written information, and] provide [to] residents and potential residents oral and written information about how to apply for and use third party benefits, and how to receive refunds for previous payments covered by such benefits.

(i) Notification of changes.

1. Except in a medical emergency or when a resident is incompetent, a facility shall consult with the resident immediately and notify the resident's physician, and if known, the responsible party [the resident's legal representative or interested family member] within twenty-four (24) hours when there is:

- a. An accident involving the resident which results in injury;
- b. A significant change in the resident's physical, mental, or psychosocial status;
- c. A need to alter treatment significantly; or
- d. A decision to transfer or discharge the resident from the facility as specified in Section 4(1) of this regulation.

2. The facility shall also promptly notify the resident and, if known, the responsible party [the resident's legal representative or interested family member] when there is:

a. A change in room or roommate assignment as specified in Section 6(5)(b) of this regulation; or

b. A change in resident rights under federal or state law or regulations as specified in subsection (2)(a) of this section.

3. The facility shall record and periodically update the address and phone number of the responsible party [resident's legal representative or interested family member].

(3) Protection of resident funds.

(a) The resident shall have the right to manage his or her financial affairs and the facility shall not require residents to deposit their personal funds with the facility.

(b) Management of personal funds. Upon written authorization of a resident, or responsible party the facility shall hold, safeguard, manage and account for the personal funds of the resident deposited with the facility, as specified in paragraphs (c) through (g) of this subsection.

(c) Deposit of funds.

1. Funds in excess of fifty (50) dollars. The facility shall deposit any resident's personal funds in excess of fifty (50) dollars in an interest bearing account (or accounts) that is separate from any of the facility's operating accounts, and that credits all interest earned on the resident's account to his or her account.

2. Funds less than fifty (50) dollars. The facility shall maintain a resident's personal funds that do not exceed fifty (50) dollars in a noninterest bearing account or petty cash fund.

(d) Accounting and records. The facility shall establish and maintain a system that assures a full and complete and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the facility on the resident's behalf.

1. The system shall preclude any commingling of resident funds with facility funds or with the funds of any person other than another resident.

2. The individual financial record shall be available on request to the resident or his or her legal representative.

(e) Conveyance upon death. Upon the death of a

resident with a personal fund deposited with the facility, the facility shall convey promptly the resident's funds, and a final accounting of those funds, to the individual administering the resident's estate, or responsible party.

(f) Assurance of financial security. The facility shall purchase a surety bond, or provide self-insurance to assure the security of all personal funds of residents deposited with the facility.

(g) Limitation on charges to personal funds. The facility shall not impose a charge against the personal funds of a resident for any item or service for which payment is made by a third party payor.

(4) Free choice. The resident shall have the right to:

- (a) Choose a personal attending physician;
- (b) Be fully informed in advance about care and treatment of any changes in that care or treatment that may affect the resident's well-being; and

(c) Unless adjudged incompetent or otherwise found to be incapacitated under the laws of the state, participate in planning care and treatment or changes in care and treatment.

(5) Privacy and confidentiality of personal and clinical records. The resident shall have the right to personal privacy and confidentiality of his personal and clinical records.

(a) Personal privacy includes accommodations, medical treatment, written and telephone communications, personal care, visits, and meetings of family and resident groups, but this does not require the facility to provide a private room;

(b) Except as provided in paragraph (c) of this subsection, the resident may approve or refuse the release of personal and clinical records to any individual outside the facility;

(c) The resident's right to refuse release of personal and clinical records shall not apply when:

1. The resident is transferred to another health care institution; or

2. Record release is required by law or third-party payment contract.

(6) Grievances. A resident shall have the right to:

a. Voice grievances with respect to treatment or care that is, or fails to be furnished, without discrimination or reprisal for voicing the grievances; and

b. Prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents.

(7) Examination of survey results. A resident shall have the right to:

(a) Examine the results of the most recent survey of the facility conducted by federal or state surveyors and any plan of correction in effect with respect to the facility. The results shall be posted by the facility in a place readily accessible to residents; and

(b) Receive information from agencies acting as client advocates, and be afforded the opportunity to contact these agencies.

(8) Work. The resident shall have the right to:

(a) Refuse to perform services for the facility;

(b) Perform services for the facility, if he or she chooses, when:

1. The facility documents the need or desire

for work in the plan of care;

2. The plan specifies the nature of the services performed and whether the services are voluntary or paid;

3. Compensation for paid services is at or above prevailing rates; and

4. The resident agrees to the work arrangements described in the plan of care.

(9) The resident shall have the right to privacy in written communications, including the right to:

(a) Send and receive mail promptly that is unopened; and

(b) Have access to stationery, postage and writing implements at the resident's own expense.

(10) Access and visitation rights.

(a) The resident shall have the right and the facility shall provide immediate access to any resident by the following:

1. Any representative of the federal government;

2. Any representative of the state;

3. The resident's individual physician;

4. Any representative of the Kentucky long-term care ombudsman program;

5. The agency responsible for the protection and advocacy system for developmentally disabled individuals and for mentally ill individuals [The Kentucky Department for Public Advocacy];

6. Subject to the resident's right to deny or withdraw consent at any time, immediate family or other relatives of the resident; and

7. Subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, others who are visiting with the consent of the resident.

(b) The facility shall provide reasonable access to any resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.

(c) The facility shall allow representatives of the ombudsman, described in paragraph (a)4 of this subsection, to examine a resident's clinical records with the permission of the resident or the resident's legal representative, or responsible party and consistent with state law.

(11) Telephone. The resident shall have the right to have regular access to the private use of a telephone.

(12) Personal property. The resident shall have the right to retain and use personal possessions, including some furnishings, and appropriate clothing, as space permits, unless to do so would infringe upon the rights or health and safety of other residents.

(13) Married couples. The resident shall have the right to share a room with his or her spouse when married residents live in the same facility and both spouses consent to the arrangement.

Section 4. Admission, Transfer and Discharge Rights. (1) Transfer and discharge.

(a) Transfer and discharge requirements. The facility shall permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless:

1. The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;

2. The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the

services provided by the facility;

3. The safety of individuals in the facility is immediately endangered;

4. The health of individuals in the facility would otherwise be immediately endangered;

5. The resident has failed, after reasonable and appropriate notice, to pay for a stay at the facility; or

6. The facility ceases to operate.

(b) Documentation. When the facility transfers or discharges a resident under any of the circumstances specified in paragraphs (a)1 through 5 of this subsection, the resident's clinical record must be documented. The documentation must be made by:

1. The resident's physician when transfer or discharge is necessary under paragraph (a)1 or 2 of this subsection; and

2. A physician when transfer or discharge is necessary under paragraph (a)4 of this subsection.

(c) Notice before transfer. Before a facility transfers or discharges a resident, the facility shall:

1. Notify the resident and, if known, a family member or legal representative of the resident of the transfer or discharge and the reasons;

2. Record the reasons in the resident's clinical record; and

3. Include in the notice the items described in paragraph (e) of this subsection.

(d) Timing of the notice. Except when specified in paragraph (d)2 of this subsection, the notice of transfer or discharge required under paragraph (c) of this subsection must be made by the facility at least thirty (30) days before the resident is transferred or discharged.

2. Notice may be made as soon as practicable before transfer or discharge when:

a. The safety of individuals in the facility would be endangered, under paragraph (a)3 of this subsection;

b. The health of individuals in the facility would be endangered, under paragraph (a)4 of this subsection;

c. The resident's health improves sufficiently to allow a more immediate transfer or discharge, under paragraph (a)2 of this subsection;

d. An immediate transfer or discharge is required by the resident's urgent medical needs, under paragraph (a)1 of this subsection;

e. A resident has not resided in the facility for thirty (30) days.

(e) Contents of the notice. For nursing facilities, the written notice specified in paragraph (c) of this subsection shall include the following:

1. A statement that the resident has the right to appeal the action to the state agency designated by the state for such appeals.

2. The name, address and telephone number of the state long-term care ombudsman;

3. For nursing facility residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals;

4. For nursing facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals;

5. The reason for the transfer or discharge;

6. The effective date of transfer or discharge; and

7. The location to which the resident is transferred or discharged.

(f) Orientation for transfer or discharge. A facility shall provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

(2) Notice of bed-hold policy and readmission.

(a) Notice before transfer. Before a facility transfers a resident to a hospital or allows a resident to go on therapeutic leave, the facility shall provide written information to the resident and family member or legal representative that specifies the duration of the bed-hold policy if any, during which the resident is permitted to return and resume residence in the facility; and

(b) Notice upon transfer. At the time of transfer of a resident to a hospital or for therapeutic leave, a nursing facility shall provide written notice to the resident and a family member or legal representative, which specifies the duration of the bed-hold policy described in paragraph (a) of this subsection.

(c) Permitting resident to return to facility. A nursing facility shall establish and follow a written policy under which a resident whose hospitalization or therapeutic leave exceeds the bed hold period, is readmitted to the facility immediately upon the first availability of a bed in a semiprivate room if the resident:

1. Requires the services provided by the facility; and

2. Is eligible for nursing facility services.

(3) Equal access to quality care. A facility shall establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services for all individuals regardless of source of payment;

(4) Admissions policy.

(a) The facility shall:

1. Not require a third party guarantee of payment to the facility as a condition of admission, or expedited admission, or continued stay in the facility;

2. Not charge, solicit, accept, or receive, in addition to any amount otherwise required to be paid for services, any gift, money, donation or other consideration as a precondition of admission, expedited admission or continued stay in the facility.

(b) A facility shall:

1. Not require residents or potential residents to waive their rights to Medicare or Medicaid;

2. Not require oral or written assurance that residents or potential residents are not eligible for, or will not apply for, Medicare or Medicaid benefits.

(c) A facility may require an individual who has legal access to a resident's income or resources available to pay for facility care, to sign a contract, without incurring personal financial liability, to provide facility payment from the resident's income or resources.

(d) A nursing facility may charge a resident for items and services the resident has requested and received, and that are not covered in the facility's basic per diem rate.

(e) A nursing facility may solicit, accept or receive a charitable, religious or philanthropic contribution from an organization or from a person unrelated to the resident, or potential resident, but only to the extent that the contribution is not a condition of admission,

expedited admission, or continued stay in the facility.

Section 5. Resident Behavior and Facility Practices. (1) Restraints. The resident shall have the right to be free from any physical restraints imposed or psychoactive drug administered for purposes of discipline or convenience, and not required to treat the resident's medical symptoms.

(2) Abuse. The resident shall have the right to be free from verbal sexual, physical or mental abuse, corporal punishment, and involuntary seclusion.

(3) Staff treatment of residents. The facility shall develop and implement written policies and procedures that prohibit mistreatment, neglect or abuse of residents.

(a) The facility shall:

1. Not use verbal, mental, sexual, or physical abuse, including corporal punishment, or involuntary seclusion; and

2. Not employ individuals who have been convicted of abusing, neglecting or mistreating individuals.

(b) The facility shall have evidence that all alleged violations are thoroughly investigated, and shall prevent further potential abuse while the investigation is in progress.

(c) The results of all investigations shall be reported to the administrator or his designated representative within five (5) working days or to other officials in accordance with applicable provisions of KRS Chapter 209 or 620, if the alleged violation is verified appropriate corrective action is taken.

(d) The facility shall document alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, are reported immediately to the administrator of the facility or to other officials in accordance with KRS Chapters 209 and 620.

(e) The facility shall have evidence that all alleged violations are thoroughly investigated, and shall prevent further potential abuse while the investigation is in progress.

Section 6. Quality of Life. A facility shall care for its residents in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life.

(1) Dignity. The facility shall promote care for residents in a manner and in an environment that maintains or enhances each resident's dignity and respect in full recognition of his or her individuality.

(2) Self-determination and participation. The resident shall have the right to:

(a) Choose activities, schedules, and health care consistent with his or her interests, assessments and plans of care;

(b) Interact with members of the community both inside and outside the facility; and

(c) Make choices about aspects of his or her life in the facility that are significant to the resident.

(3) Participation in resident and family groups.

(a) A resident shall have the right to organize and participate in resident groups in the facility;

(b) A resident's family shall have the right to meet in the facility with the families of other residents in the facility;

(c) The facility shall provide a resident or

family group, if one exists, with private space;
(d) Staff or visitors may attend meetings at the group's invitation;

(e) The facility shall provide a designated staff person responsible for providing assistance and responding to written requests that result from group meetings;

(f) When a resident or family group exists, the facility shall listen to the views and act upon the grievances and recommendations of residents and families concerning proposed policy and operational decisions affecting resident care and life in the facility.

(4) Accommodation of needs. A resident shall have the right to:

(a) Reside and receive services in the facility with reasonable accommodation of individual needs and preferences, except when the health or safety of the individual or other residents would be endangered; and

(b) Receive notice before the resident's room or roommate in the facility is changed.

(5) Activities.

(a) The facility shall provide for an ongoing program of activities designed to meet, in accordance with the comprehensive assessment, the interests and the physical, mental and psychosocial well-being of each resident.

(b) The activities program shall be directed by a qualified therapeutic recreation specialist who is:

1. Eligible for certification as a therapeutic recreation specialist by a recognized accrediting body; or

2. Has two (2) years of experience in a social or recreational program within the last five (5) years, one (1) of which was full time in a patient activities program in a health care setting; or

3. Is a qualified occupational therapist or occupational therapy assistant; or

4. Has completed a training course approved by the state.

(6) Social services.

(a) The facility shall provide medically-related social services to attain or maintain the highest practicable physical, mental or psychosocial well-being of each resident.

(b) A facility with more than 120 beds shall employ a full-time qualified social worker, or an individual with a bachelor's degree in a related field.

(c) Qualifications of social worker. A qualified social worker is an individual who is licensed pursuant to KRS 335.090, [or has two (2) years experience in social work] or a degree in a related field.

(7) Environment.

(a) The facility shall provide:

1. A safe, clean, comfortable and homelike environment, allowing the resident to use his or her personal belongings to the extent possible;

2. Housekeeping and maintenance services necessary to maintain a sanitary, orderly and comfortable interior;

3. Clean bed and bath linens that are in good condition;

4. Private closet space in each resident room.

5. Adequate and comfortable lighting levels in all areas; comfortable and safe temperature levels.

6. For the maintenance of comfortable sound levels.

(b) Infection control and communicable diseases.

1. The facility shall establish policies which are consistent with the Center for Disease Control guidelines, and address the prevention of disease transmission to and from patients, visitors and employees, including:

a. Universal blood and body fluid precautions;

b. Precautions for infections which can be transmitted by the airborne route; and

c. Work restrictions for employees with infectious diseases.

d. The cleaning, disinfection, and sterilization methods used for equipment and the environment.

2. The facility shall establish an infection control program which:

a. Investigates, controls and prevents infections in the facility;

b. Decides what procedures, such as isolation, should be applied to an individual resident; and

c. Maintains a record of incidents and corrective actions related to infections.

d. Addresses the prevention of the spread of infection.

(i) When the infection control program determines that a resident needs isolation to prevent the spread of infection, the facility shall isolate the resident.

(ii) The facility shall prohibit employees with a communicable disease or infected skin lesions from direct contact with residents or their food, if direct contact will transmit the disease.

(iii) The facility shall require staff to wash their hands after each direct resident contact for which handwashing is indicated by accepted professional practice.

3. The facility shall provide in-service education programs on the cause, effect, transmission, prevention and elimination of infections for all personnel responsible for direct patient care.

4. Sharp wastes.

a. Sharp wastes, including needles, scalpels, razors, or other sharp instruments used for patient care procedures, shall be segregated from other wastes and placed in puncture resistant containers immediately after use.

b. Needles shall not be recapped by hand, purposely bent or broken, or otherwise manipulated by hand.

c. The containers of sharp wastes shall either be incinerated on or off site, or be rendered nonhazardous by a technology of equal or superior efficacy, which is approved by both the Cabinet for Human Resources and the Natural Resources and Environmental Protection Cabinet.

5. Disposable waste.

a. All disposable waste shall be placed in suitable bags or closed containers so as to prevent leakage or spillage, and shall be handled, stored, and disposed of in such a way as to minimize direct exposure of personnel to waste materials.

b. The facility shall establish specific written policies regarding handling and disposal of all wastes.

c. The following wastes shall be disposed of by incineration, autoclaved before disposal, or carefully poured down a drain connected to a sanitary sewer: blood, blood specimens, used blood tubes, or blood products.

d. Any wastes conveyed to a sanitary sewer shall comply with applicable federal, state, and local pretreatment regulations pursuant to 40 CFR 403 and 401 KAR 5:055, Section 9.

6. Patients infected with the following diseases shall not be admitted to the facility: anthrax, campylobacteriosis, cholera, diphtheria, hepatitis A, measles, pertussis, plague, poliomyelitis, rabies (human), rubella, salmonellosis, shigellosis, typhoid fever, yersiniosis, brucellosis, giardiasis, leprosy, psittacosis, Q fever, tularemia, and typhus.

7. A facility may admit a (noninfectious) tuberculosis patient under continuing medical supervision for his tuberculosis disease.

8. Patients with active tuberculosis may be admitted to the facility whose isolation facilities and procedures have been specifically approved by the cabinet.

9. If, after admission, a patient is suspected of having a communicable disease that would endanger the health and welfare of other patients, the administrator shall assure that a physician is contacted and that appropriate measures are taken on behalf of the patient with the communicable disease and the other patients.

(8) Participation in other activities. A resident shall have the right to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility.

Section 7. Resident Assessment. The facility shall conduct initially and periodically a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity.

(1) Admission orders. At the time each resident is admitted, the facility shall have physician orders for the resident's immediate care.

(2) Comprehensive assessments.

(a) The facility shall make a comprehensive assessment of a resident's needs, which describes the resident's capability to perform daily life functions and significant impairments in functional capacity.

(b) The comprehensive assessment shall include at least the following information:

1. Medically defined conditions and prior medical history;
2. Medical status measurement;
3. Functional status;
4. Sensory and physical impairments;
5. Nutritional status and requirements;
6. Special treatments or procedures;
7. Psychosocial status;
8. Discharge potential;
9. Dental condition;
10. Activities potential;
11. Rehabilitation potential;
12. Cognitive status; and
13. Drug therapy.

(c) Frequency. Assessments shall be conducted:

1. No later than fourteen (14) days after the date of admission;
2. For current residents of a facility, not later than October 1, 1991;
3. Promptly after a significant change in the resident's physical or mental condition; and
4. In no case less often than once every twelve (12) months.

(d) Review of assessments. The nursing facility shall examine each resident no less than once every three (3) months, and as appropriate, revise the resident's assessment to assure the continued accuracy of the assessment.

(e) Use. The results of the assessment are used to develop, review, and revise the

resident's comprehensive plan of care, under subsection (4) of this section.

(f) Coordination. The facility shall coordinate assessments with the Kentucky required preadmission screening and annual review program to the maximum extent practicable to avoid duplicative testing and effort.

(3) Accuracy of assessments.

(a) Coordination. Each assessment shall be conducted or coordinated by a registered nurse who signs and certifies the completion of the assessment with the appropriate participation of health professionals.

(b) Certification. Each individual who completes a portion of the assessment shall sign and certify the accuracy of that portion of the assessment.

(4) Comprehensive care plans.

(a) The facility shall develop a comprehensive care plan for each resident that includes measurable objectives and timetables to meet a resident's medical, nursing and psychosocial needs that are identified in the comprehensive assessment.

(b) A comprehensive care plan shall be:

1. Developed within seven (7) days after completion of the comprehensive assessment;
2. Prepared by an interdisciplinary team, that includes the attending physician, a registered nurse with responsibility for the resident, and other appropriate staff in disciplines as determined by the resident's needs, and with the participation of the resident, the resident's family or legal representative, to the extent practicable; and
3. Periodically reviewed and revised by a team of qualified persons after each assessment.

(c) The services provided or arranged by the facility shall:

1. Meet professional standards of quality; and
2. Be provided by qualified persons in accordance with each resident's written plan of care.

(5) Discharge summary. When the facility anticipates discharge, a resident shall have a discharge summary that includes:

- (a) A recapitulation of the resident's stay;
- (b) A final summary of the resident's status to include items in subsection (2)(b) of this section, at the time of the discharge that shall be available for release to authorized persons and agencies, with the consent of the resident or legal representative; and

(c) A postdischarge plan of care that developed with the participation of the resident and the resident's responsible party [his or her family,] which will assist the resident to adjust to his or her new living environment.

(6) Preadmission screening for mentally ill individuals and individuals with mental retardation. A nursing facility shall not admit any new resident in conflict with the Kentucky preadmission screening and annual review program.

Section 8. Quality of Care. Each resident shall receive the necessary nursing, medical and psychosocial services to attain and maintain the highest possible mental and physical functional status, as defined by the comprehensive assessment and plan of care. Each resident shall receive services and the facility must provide the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with the comprehensive assessment and

plan of care.

(1) Activities of daily living. Based on the comprehensive assessment of a resident, the facility shall ensure:

(a) A resident's abilities in activities of daily living do not diminish unless circumstances of the individual's clinical condition demonstrate that diminution was unavoidable. This includes the resident's ability to:

1. Bathe, dress and groom;
2. Transfer and ambulate;
3. Toilet;
4. Eat; and

5. To use speech, language or other functional communication systems.

(b) A resident is given the appropriate treatment and services to maintain or improve his or her abilities specified in paragraph (a) of this subsection; and

(c) A resident who is unable to carry out activities of daily living receives the necessary services to maintain good nutrition, grooming, and personal and oral hygiene.

(2) Vision and hearing. To ensure that residents receive proper treatment and assistive devices to maintain vision and hearing abilities, the facility shall, if necessary, assist the resident:

(a) In making appointments; and

(b) By arranging for transportation to and from the office of a medical practitioner specializing in the treatment of vision or hearing impairment or the office of a professional specializing in the provision of vision or hearing assistive devices.

(3) Pressure sores. Based on the comprehensive assessment of a resident, the facility shall ensure that:

(a) A resident who enters the facility without pressure sores does not develop pressure sores unless the individual's clinical condition demonstrates that they were unavoidable; and

(b) A resident having pressure sores receives necessary treatment and services to promote healing, prevent infection and prevent new sores from developing.

(4) Urinary incontinence. Based on the resident's comprehensive assessment, the facility shall ensure that:

(a) A resident who is incontinent of bladder receives the appropriate treatment and services to restore as much normal bladder functioning as possible;

(b) A resident who enters the facility without an in-dwelling catheter is not catheterized unless the resident's clinical condition demonstrates that catheterization was necessary; and

(c) A resident who is incontinent of bladder receives appropriate treatment and services to prevent urinary tract infections and to restore as much normal bladder function as possible.

(5) Range of motion. Based on the comprehensive assessment of a resident, the facility shall ensure that:

(a) A resident who enters the facility without a limited range of motion does not experience reduction in range of motion unless the resident's clinical condition demonstrates that a reduction in range of motion is unavoidable; and

(b) A resident with a limited range of motion and/or receives appropriate treatment and services to increase range of motion to prevent

further decrease in range of motion.

(6) Psychosocial functioning. Based on the comprehensive assessment of a resident, the facility shall ensure that:

(a) A resident who displays psychosocial adjustment difficulty, receives appropriate treatment and services to achieve as much remotivation and reorientation as possible; and

(b) A resident whose assessment did not reveal a psychosocial adjustment difficulty does not display a pattern of decreased social interaction and/or increased withdrawn, angry, or depressive behaviors, unless the resident's clinical condition demonstrates that such a pattern was unavoidable.

(7) Accidents. The facility shall ensure that:

(a) The resident environment remains as free of accident hazards as is possible; and

(b) Each resident receives adequate supervision and assistive devices to prevent accidents.

(8) Nutrition. Based on a resident's comprehensive assessment, the facility shall ensure that a resident:

(a) Maintains acceptable parameters of nutritional status, such as body weight and protein levels, unless the resident's clinical condition demonstrates that this is not possible; and

(b) Receives a therapeutic diet when there is a nutritional problem.

(9) Special needs. The facility shall ensure that residents receive proper treatment and care for the following special services:

(a) Injections;

(b) Parenteral and enteral fluids;

(c) Colostomy, ureterostomy or ileostomy care;

(d) Tracheostomy care;

(e) Tracheal suctioning;

(f) Respiratory care;

(g) Podiatric care; and

(h) Prostheses.

(10) Drug therapy.

(a) Unnecessary drugs. Each resident's drug regimen shall be free from unnecessary drugs.

(b) Antipsychotic drugs. Based on a comprehensive assessment of a resident, the facility shall ensure that:

1. Residents who have not used antipsychotic drugs and are not given these drugs unless antipsychotic drug therapy is necessary to treat a specific condition; and

2. Residents who use antipsychotic drugs receive gradual dose reductions, drug holidays or behavioral programming, unless clinically contraindicated in an effort to discontinue these drugs.

(11) Hydration. The facility shall provide each resident with sufficient fluid intake to maintain proper hydration and health.

(12) Naso-gastric tubes. Based on the comprehensive assessment of a resident, the facility shall ensure that:

(a) A resident who has been able to eat enough alone or with assistance is not fed by naso-gastric tube unless the resident's clinical condition demonstrates that use of a naso-gastric tube was unavoidable; and

(b) A resident who is fed by a naso-gastric or gastrostomy tube receives the appropriate treatment and services to prevent aspiration pneumonia, diarrhea, vomiting, dehydration, metabolic abnormalities, and nasal-pharyngeal ulcers and to restore, if possible, normal feeding function.

(c) Medication errors. The facility shall ensure that:

1. It is free of significant medication error rates; and
2. Residents are free of any significant medication errors.

Section 9. Nursing Services. The facility shall have sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care.

(1) Sufficient staff.

(a) The facility shall provide services by sufficient numbers of each of the following types of personnel on a twenty-four (24) hour basis to provide nursing care to all residents in accordance with resident care plans:

1. Except when waived under subsection (3) of this section, licensed nurses; and
2. Other nursing personnel.

(b) Except when waived under subsection (3) of this section, the facility shall designate a licensed nurse to serve as a charge nurse on each tour of duty.

(2) Registered nurse.

(a) Except when waived under subsection (3) or (4) of this section, the facility shall use the services of a registered nurse for at least eight (8) consecutive hours a day, seven (7) days a week.

(b) Except when waived under subsection (3) or (4) of this section, the facility must designate a registered nurse to serve as the director of nursing on a full-time basis.

(c) The director of nursing may serve as a charge nurse only when the facility has an average daily occupancy of sixty (60) or fewer residents.

(3) Licensed nurse waiver. Waiver of requirement to provide licensed nurses on a twenty-four (24) hour basis. A facility may request a waiver from the requirement that a nursing facility provide a registered nurse for at least eight (8) consecutive hours a day, seven (7) days a week, as specified in subsection (2) of this section, and the requirement that a nursing facility provide licensed nurses on a twenty-four (24) hour basis, including a charge nurse as specified in subsection (1) of this section, if the following conditions are met:

(a) The facility demonstrates to the satisfaction of the cabinet that the facility has been unable, despite diligent efforts (including offering wages at the community prevailing rate for nursing facilities), to recruit appropriate personnel;

(b) The cabinet determines that a waiver of the requirement will not endanger the health or safety of individuals staying in the facility;

(c) A waiver granted under the conditions listed in this subsection is subject to revocation if the cabinet finds that the health and safety of the residents is threatened.

(d) In granting or renewing a waiver, a facility may be required by the cabinet to use other qualified, licensed personnel.

(e) The facility shall have an on-call system which provides for an immediate response by a registered nurse or a physician for those times when licensed nursing services are not available.

(4) Registered nurse waiver. Waiver of the

requirement to provide services of a registered nurse for more than forty (40) hours a week, including a director of nursing specified in subsection (2) of this section, may be granted if the cabinet finds that the facility:

(a) Is located in a rural area and the supply of skilled nursing facility services in the area is not sufficient to meet the needs of individuals residing in the area;

(b) Has one (1) full-time registered nurse who is regularly on duty at the facility forty (40) hours a week; and

(c) Either:

1. Has only patients whose physicians have indicated (through physicians' orders or admission notes) that they do not require the services of a registered nurse or a physician for a forty-eight (48) hour period; or

2. Has made arrangements for a registered nurse or a physician to spend time at the facility, as determined necessary by the physician, to provide necessary skilled nursing services on days when the regular full-time registered nurse is not on duty.

(d) A waiver of the registered nurse requirement under paragraph (a) of this subsection is subject to revocation if the cabinet finds that the health and safety of the residents is threatened.

(5) When a waiver is granted a facility shall inform the residents, their legal representatives, and responsible party [members of their immediate family].

Section 10. Dietary service in the facility shall provide each resident with a nourishing, palatable, well-balanced diet that meets the daily nutritional and special dietary needs of each resident.

(1) Staffing. The facility shall employ a qualified dietician either full time, part time, or on a consultant basis.

(a) If a qualified dietician is not employed full time, the facility shall designate a person to serve as the director of food service.

(b) Qualified dietician means a person who has:

1.] earned at least a baccalaureate degree from a college or university which is accredited by the Southern Association of Colleges and Universities, or an accrediting agency recognized by the Southern Association of Colleges and Universities or a successor to the powers of both; and [or]

1. [2.] Successfully completed minimum academic requirements established by the Commission on Dietetic Registration, an affiliate of the National Commission for Health Certifying Agencies; or [and]

2. [3.] Successfully completed one (1) of the accredited experience options established by the Commission on Dietetic Registration, which includes but is not limited to, completion of an accredited coordinated undergraduate program, an accredited dietetic internship, and approved three (3) preplanned work experience, or a master's degree in nutrition or a related area with six (6) months of full-time or equivalent qualifying experience.

(2) Sufficient staff. The facility shall employ sufficient support personnel competent to carry out the functions of the dietary service.

(3) Menus and nutritional adequacy. Menus shall:

(a) Meet the nutritional needs of residents in

accordance with the recommended dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences;

- (b) Be prepared in advance;
- (c) Be followed.

(4) Food. Each resident shall receive and the facility shall provide:

- (a) Food prepared by methods that conserve nutritive value, flavor and appearances;
- (b) Food that is palatable, attractive and at the proper temperature;

(c) Food prepared in a form designed to meet individual needs; and

(d) Substitutes offered of similar nutritive value to residents who refuse food served.

(5) Therapeutic diets. Therapeutic diets must be prescribed by the attending physician.

(6) Frequency of meals.

(a) Each resident shall receive and the facility shall provide at least three (3) meals daily, at regular times comparable to normal mealtimes in the community.

(b) There shall be no more than fourteen (14) hours between a substantial evening meal and breakfast the following day, except as provided in paragraph (d) of this subsection.

(c) The facility shall offer snacks at bedtime daily.

(d) When a nourishing snack is provided at bedtime, up to sixteen (16) hours may elapse between a substantial evening meal and breakfast the following day if a resident group agrees to this meal span and a nourishing snack is served.

(7) Assistive devices. The facility shall provide special eating equipment and utensils for residents who need them.

(8) Sanitary conditions. The facility shall:

(a) Procure food from sources approved or considered satisfactory by federal, state or local authorities;

(b) Store, prepare, distribute, and serve food under sanitary conditions; and

(c) Dispose of garbage and refuse properly.

Section 11. Physician Services. A physician shall personally approve a recommendation that an individual be admitted to a facility. Each resident shall remain under the care of a physician.

(1) Physician supervision. The facility shall ensure that:

(a) The medical care of each resident is supervised by a physician; and

(b) Another physician supervises the medical care of residents when their attending physician is unavailable.

(2) Physician visits. The physician shall:

(a) Review the resident's total program of care, including medications and treatments, at each visit required by subsection (3) of this section;

(b) Write, sign and date progress notes at each visit; and

(c) Sign all orders.

(3) Frequency of physician visits. The resident shall be seen by a physician at least once every thirty (30) days for the first ninety (90) days after initial admission, and at least once every ninety (90) days thereafter.

(a) A physician visit is considered timely if it occurs not later than ten (10) days after the date the visit was required.

(b) Except as provided in paragraph (c) [(e)] of this subsection, all required

physician visits shall be made by the physician personally.

(c) At the option of the physician, required visits after the initial visit may alternate between personal visits by the physician and visits by a physician assistant or nurse practitioner in accordance with subsection (5) of this section.

(4) Availability of physicians for emergency care. The facility shall provide or arrange for the provision of physician services twenty-four (24) hours a day, in case of an emergency.

(5) Physician delegation of tasks.

(a) Except as specified in paragraph (b) of this subsection, a physician may delegate tasks to a physician assistant or nurse practitioner who is acting within the scope of practice as defined by state law, and is under the supervision of the physician.

(b) A physician shall not delegate a task when the regulations specify that the physician shall perform it personally, or when the delegation is prohibited under state law or by the facility's own policies.

Section 12. Specialized Rehabilitative Services. A facility shall provide or obtain rehabilitative services, such as physical therapy, speech-language pathology, and occupational therapy, to every resident it admits, as indicated by the resident's comprehensive assessment.

(1) Provision of services. If specialized rehabilitative services are required in the resident's comprehensive plan of care, the facility shall:

(a) Provide the required services; or

(b) Obtain the required services from an outside resource in accordance with Section 15(6)(a) and (b) of this regulation, from a provider of specialized rehabilitative services.

(2) Qualifications. Specialized rehabilitative services must be provided under the written order of a physician by qualified personnel.

Section 13. Dental Services. The facility shall assist residents in obtaining routine and twenty-four (24) hour emergency dental care. The facility shall provide or obtain from an outside resource, in accordance with Section 15(6)(a) and (b) of this regulation following dental services to meet the needs of each resident:

(1) Routine dental services; and

(2) Emergency dental services.

Section 14. Pharmacy Services. The facility shall provide routine and emergency drugs and biologicals to its residents, or obtain them under an agreement described in Section 15(6)(a) and (b) of this regulation.

(1) Procedures.

(a) A facility shall provide pharmaceutical services (including procedures that assure the accurate acquiring, receiving, dispensing, and administering of all drugs and biologicals) to meet the needs of each resident.

(b) Administration of medications. All medications shall be administered by licensed medical or nursing personnel in accordance with the Medical Practice Act (KRS 311.530 to 311.620) and Nurse Practice Act (KRS Chapter 314) or by personnel who have completed a state approved training program from a state approved provider. The administration of oral and topical medicines by certified medicine technicians

shall be under the supervision of licensed medical or nursing personnel. Intramuscular injections shall be administered by a licensed or registered nurse, or a physician. If intravenous injections are necessary they shall be administered by a licensed physician, registered nurse, or properly trained licensed practical nurse. Each dose administered shall be recorded in the medical record.

(2) Service consultation. The facility shall employ or obtain the services of a pharmacist licensed pursuant to KRS Chapter 315 who:

(a) Provides consultation on all aspects of the provision of pharmacy services in the facility;

(b) Establishes a system of records of receipt and disposition of all drugs in sufficient detail to enable an accurate reconciliation; and

(c) Determines that drug records are in order and that an account of all controlled drugs is maintained and periodically reconciled.

(3) Drug regimen review.

(a) The drug regimen of each resident shall be reviewed at least once a month by a licensed pharmacist.

(b) The pharmacist shall report any irregularities to the attending physician or the director of nursing, or both, and these reports shall be acted upon.

(4) Labeling of drugs and biologicals. The facility shall label drugs and biologicals in accordance with currently accepted professional principles, and include the appropriate accessory and cautionary instructions, and the expiration date.

(5) Storage of drugs and biologicals. In accordance with state and federal laws, the facility shall store all drugs and biologicals in locked compartments under proper temperature controls, and permit only authorized personnel to have access to the keys.

(6) The facility shall provide separately locked, permanently affixed compartments for storage of controlled drugs listed in Schedule II of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and other drugs subject to abuse, except when the facility uses single unit package drug distribution systems in which the quantity stored is minimal and a missing dose can be readily detected.

Section 15. Administration. A facility shall be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.

(1) Compliance with federal, state and local laws and professional standards. The facility shall operate and provide services in compliance with all applicable federal, state and local laws, regulations and codes, and with accepted professional standards and principles that apply to professionals providing services in a facility.

(2) Governing body.

(a) The facility shall have a governing body, or designated persons functioning as a governing body, that is legally responsible for establishing and implementing policies regarding the management and operation of the facility; and

(b) The governing body appoints the administrator who shall be:

1. Licensed as a nursing home administrator pursuant to KRS 216A.080; and

2. Responsible for management of the facility.

(3) Required training of nurse aides.

(a) General rules. A facility shall not use any individual working in the facility as a nurse aide for more than four (4) months, on a full-time, temporary, per diem, or other basis, unless:

1. That individual is listed on the Kentucky Nurse Aide Registry; and

2. That individual is competent to provide nursing and nursing related services.

(b) Competency. A facility shall permit an individual to serve as a nurse aide or provide services of a type for which the individual has not demonstrated competence only when:

1. The individual is currently enrolled and participating in the Kentucky Medicaid Nurse Aide Training Program; or

2. The facility has asked and not yet received a reply from the Kentucky Nurse Aide Registry for information concerning the individual.

(c) Regular in-service education. The facility shall provide regular performance review and regular in-service education to ensure that individuals used as nurse aides are competent to perform services as nurse aides. In-service education must include training for individuals providing nursing and nursing related services to residents with cognitive impairments.

(4) Proficiency of nurse aides. The facility shall ensure that nurse aides are able to demonstrate competency in skills and techniques necessary to care for residents' needs, as identified through resident assessments, and described in the plan of care.

(5) Staff qualifications.

(a) The facility shall employ on a full-time, part-time, or consultant basis those professionals necessary to carry out the provisions of this regulation.

(b) Professional staff shall be licensed, certified or registered in accordance with applicable state statutes.

(6) Use of outside resources.

(a) If the facility does not employ a qualified professional person to furnish a specific service to be provided by the facility, the facility shall have that service furnished to residents by a person or agency outside the facility.

(b) Arrangements or agreements pertaining to services furnished by outside resources shall specify in writing that the facility assumes responsibility for:

1. Obtaining services that meet professional standards and principles that apply to professionals providing services in such a facility; and

2. The timeliness of the services.

(7) Medical director.

(a) The facility shall designate a physician to serve as medical director.

(b) The medical director shall be responsible for:

1. Implementation of resident care policies; and

2. The coordination of medical care in the facility.

(8) Laboratory services.

(a) The facility shall provide or obtain clinical laboratory services to meet the needs of its residents. The facility shall be responsible for the quality and timeliness of the services.

1. If the facility provides its own laboratory

services, the services shall meet the applicable state statutes and regulations pursuant to KRS Chapter 333, or laboratory requirements for hospitals for those distinct part units within licensed hospitals.

2. If the facility provides blood bank and transfusion services, it must meet the applicable conditions for:

a. Independent laboratories licensed pursuant to KRS Chapter 333; or

b. Hospitals licensed pursuant to 902 KAR 20:016;

3. If the laboratory chooses to refer specimens for testing to another laboratory, the referral laboratory must be licensed in accordance with KRS Chapter 333, or meet the laboratory standards in 902 KAR 20:016 for hospitals.

4. If the facility does not provide laboratory services on site, it shall have an agreement to obtain these services only from a laboratory that is licensed pursuant to KRS Chapter 333 as an independent laboratory, or in accordance with 902 KAR 20:016 for hospital laboratories.

(b) The facility shall:

1. Provide or obtain laboratory services only when ordered by the attending physician;

2. Promptly notify the attending physician of the findings;

3. Assist the resident in making transportation arrangements to and from the source of service, if the resident needs assistance.

4. File in the resident's clinical record signed and dated reports of clinical laboratory services.

(9) Radiology and other diagnostic services.

(a) The nursing facility shall provide or obtain radiology and other diagnostic services to meet the needs of its residents. The facility is responsible for the quality and timeliness of the services.

1. If the facility provides its own diagnostic services, the services must meet the standards established in 902 KAR 20:016, Section 4(6).

2. If the facility does not provide diagnostic services, it shall have an agreement to obtain these services from a provider or supplier that is licensed or registered pursuant to KRS 211.842 through KRS 211.852.

(b) The facility shall:

1. Provide or obtain radiology and other diagnostic services only when ordered by the attending physician;

2. Promptly notify the attending physician of the findings;

3. Assist the resident in making transportation arrangements to and from the source of service, if the resident needs assistance; and

4. File in the resident's clinical record signed and dated reports of x-ray and other diagnostic services.

(10) Clinical records.

(a) The facility shall maintain clinical records on each resident in accordance with accepted professional standards and practices that are:

1. Complete;
2. Accurately documented;
3. Readily accessible; and
4. Systematically organized.

(b) Retention of records. After resident's death or discharge the completed medical record shall be placed in an inactive file and retained

for five (5) years, or in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

(c) The facility shall safeguard clinical record information against loss, destruction, or unauthorized use;

(d) The facility shall keep confidential all information contained in the resident's records, regardless of the form or storage method of the records, except when release is required by:

1. Transfer to another health care institution;
2. Law;
3. Third-party payment contract; or
4. The resident.

(e) The facility shall:

1. Permit each resident to inspect his or her records on request; and

2. Provide copies of the records to each resident no later than forty-eight (48) hours after a written request from a resident, at a photocopying cost not to exceed the amount customarily charged in the community.

(f) The clinical record shall contain:

1. Sufficient information to identify the resident;

2. A record of the resident's assessments;

3. The plan of care and services provided; and

4. The results of any preadmission screening conducted by the state; and

5. Progress notes.

(11) Disaster and emergency preparedness.

(a) The facility shall have detailed written plans and procedures to meet all potential emergencies and disasters, such as fire, severe weather, and missing residents.

(b) The facility shall train all employees in emergency procedures when they begin to work in the facility, periodically review the procedures with existing staff, and carry out staff drills using those procedures.

(12) Transfer agreement.

(a) The facility shall have in effect a written transfer agreement with one (1) or more licensed hospitals that reasonably assures that:

1. Residents shall be transferred from the facility to the hospital, and ensured of timely admission to the hospital when transfer is medically appropriate as determined by the attending physician; and

2. Medical and other information needed for care and treatment of residents and when the transferring facility deems it appropriate, for determining whether such residents can be adequately cared for in a less expensive setting than either the facility or the hospital, will be exchanged between the institutions.

(b) The facility shall be considered to have a transfer agreement in effect if the facility has attempted in good faith to enter into an agreement with a hospital sufficiently close to the facility to make transfer feasible.

(13) Quality assessment and assurance.

(a) A facility shall maintain a quality assessment and assurance committee consisting of:

1. The director of nursing services;
2. A physician designated by the facility; and
3. At least three (3) other members of the facility's staff.

(b) The quality assessment and assurance committee:

1. Meets at least quarterly to identify issues with respect to which quality assessment and assurance activities are necessary; and

2. Develops and implements appropriate plans

of action to correct identified quality deficiencies.

CLAY CESSNA, Inspector General

HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: February 5, 1991

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CABINET FOR HUMAN RESOURCES
Office of Inspector General
(Amended After Hearing)

902 KAR 20:310. Facility specifications; nursing facility.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1), (2)

STATUTORY AUTHORITY: KRS 216B.042, 216B.105

NECESSITY AND FUNCTION: KRS 216B.042 and 216B.105 mandate that the Kentucky Cabinet for Human Resources regulates health facilities and health services. This regulation provides licensure requirements for structural specifications for the construction, alteration and maintenance of nursing facilities.

Section 1. Definitions. (1) "Board" means the Commission for Health Economics Control in Kentucky.

(2) "License" means an authorization issued by the cabinet for the purpose of operating a nursing facility.

(3) "Licensure agency" means the Division for Licensing and Regulation in the Office of the Inspector General, Cabinet for Human Resources.

Section 2. Applicability. (1) Nursing homes, skilled or intermediate care facilities that were found to be in compliance on their last annual licensure survey will be considered to be in compliance with this licensure regulation, except for the requirements of Section 17(7)(d)3 of this regulation, or any alterations.

(2) Applications for certificate of need submitted prior to December 1, 1990 may choose to build to either these specifications or to the specifications in the licensure category requested on their certificate of need application.

Section 3. Preparation and Approval of Plans and Specifications for New Construction or Facility Alterations. (1) Before construction is begun for the erection of new buildings or alterations to existing buildings or any change in existing nursing facilities, the licensee or applicant shall submit plans to the licensure agency for approval.

(2) All architectural, mechanical and electrical drawings shall bear either the seal of an architect registered in the Commonwealth of Kentucky or the seal of a professional engineer registered in the Commonwealth of Kentucky, or both.

(3) Drawings shall not exceed thirty-six (36) by forty-six (46) inches when trimmed.

(4) All such plans and specifications must be approved by the licensure agency prior to commencement of construction of new buildings or alteration of existing buildings.

(5) Plans and specifications in specific detail as required by the Kentucky Building Code shall be submitted together with architectural and/or engineering stamps as required by KRS

Chapters 322 and 323, to the Department of Housing, Buildings and Construction for determining compliance with the Kentucky Building Code. All such plans and specifications must be approved by the Department of Housing, Buildings and Construction and appropriate local building permits shall be obtained prior to commencement of any alteration.

Section 4. Submission of Plans and Specifications. (1) First stage, schematic plans.

(a) Single line drawings of each floor shall show the relationship of the various departments or services to each other and the room arrangement in each department. The name of each room shall be noted. Drawings shall include typical patient room layouts (scaled one-fourth (1/4) inch to one (1) foot) with dimensions noted. The proposed roads and walks, service and entrance courts, parking and orientation shall be shown in a plot plan.

(b) If the project is an addition or is otherwise related to existing buildings on the site, the plans shall show the facilities and general arrangements of those buildings.

(2) Second stage, preliminary plans. Preliminary sketch plans shall include the following:

(a) Architectural: plans of basement and floors.

(b) Outline specifications.

1. General description of the construction or alteration, including interior finishes, types and locations of acoustical material, and special floor covering;

2. Description of the air-conditioning, heating, and ventilation systems and their controls, duct and piping systems; and dietary, laundry, sterilizing, and other special equipment;

3. General description of electrical service including voltage, number of feeders, and whether feeders are overhead or underground.

(a) Working drawings. Working drawings shall be complete and adequate for bid, contract, and construction purposes. Drawings shall be prepared for each of the following branches of the work: architectural, structural, mechanical, and electrical. They shall include the following:

1. Architectural drawings.

a. Approach plan showing all new topography, newly established levels and grades, existing structures on the site (if any), new building structures, roadways, walks, and parking areas;

b. Plan of each basement, floor and roof;

c. Elevations of each facade;

d. Sections through building;

e. Required scale and full-size details;

f. Schedule of doors, windows, and room finishes;

g. Layout of typical and special rooms indicating all fixed equipment and major items of movable equipment. Equipment not included in contract shall be so indicated;

h. Conveying systems. Details of construction, machine and control space necessary, size and type of equipment, and utility requirements for the following: dumbwaiters-electric, hand, hydraulic; elevators-freight, passenger, patient; loading dock devices; pneumatic tube systems.

2. Structural drawings.

a. Plans for foundations, floors, roofs, and all intermediate levels with sizes, sections, and the relative location of the various

structural members;

b. Dimensions of special openings;

c. Details of all special connections, assemblies, and expansion joints.

3. Mechanical drawings.

a. Heating, steam piping, and air-condition systems. Radiators and steam heated equipment, such as sterilizers, warmers, and steam tables; heating and steam mains and branches with pipe sizes; sizes, types, and capacities of boilers, furnaces, hot water heater with stokers; oil burners, or gas burners; pumps, tanks, boiler breeching, and piping and boiler room accessories; air-conditioning systems with required equipment, water and refrigerant piping, and ducts; supply and exhaust ventilation systems with heating/cooling connections and piping; air quantities for all room supply and exhaust ventilating duct openings.

b. Plumbing, drainage, and standpipe systems. Size and elevation of: street sewer, house sewer, house drains, street water main, and water service into the building; location and size of soil, waste, and water service with connections to house drains, clean-outs, fixtures, and equipment; size and location of hot, cold and circulating branches, and risers from the service entrance, and tanks; riser diagram of all plumbing stacks with vents, water risers, and fixture connections; gas, oxygen, and vacuum systems; standpipe and sprinkler systems where required; all fixtures and equipment that require water and drain connections.

4. Electrical drawings.

a. Electric service entrance with switches and feeders to the public service feeders, characteristics of the light and power current, transformers and their connections if located in the building;

b. Location of main switchboard, power panels, light panels, and equipment. Diagram of feeders and conduits with schedule of feeder breakers or switches;

c. Light outlets, receptacles, switches, power outlets, and circuits;

d. Telephone layout showing service entrance, telephone switchboard, strip boxes, telephone outlets, and branch conduits;

e. Nurses' call systems with outlets for beds, duty stations, door signal light, annunciators, and wiring diagrams;

f. Emergency electrical system with outlets, transfer switch, sources of supply, feeders, and circuits;

g. All other electrically operated systems and equipment.

(b) Specifications. Specifications shall supplement the drawings to fully describe types, sizes, capacities, workmanship, finishes and other characteristics of all materials and equipment and shall include:

1. Cover or title sheet;

2. Index;

3. Sections describing materials and workmanship in detail for each class of work;

4. Access to the work. Representatives of the appropriate state agencies shall have access at all reasonable times to the work wherever it is in preparation or progress, and the contractor shall provide proper facilities for such access and inspection.

Section 5. Compliance with Building Codes, Ordinances and Regulations. (1) This section may be administered independently from other sections of this regulation.

(2) General. Nothing stated herein shall relieve the sponsor from compliance with building codes, ordinances, and regulations which are enforced by city, county, or state jurisdictions.

(3) The following requirements shall apply where applicable and as adopted by the respective agency authority:

(a) Requirements for safety pursuant to 815 KAR 10:020, as amended;

(b) Requirements for plumbing pursuant to 815 KAR 20:010 through 20:190, as amended;

(c) Requirements for air contaminants for incinerators pursuant to 401 KRS 59:020 and 401 KAR 61:010;

(d) Requirements for elevators pursuant to 815 KAR 4:010; and

(e) Requirements for making buildings and facilities accessible to and usable by the physically handicapped, pursuant to KRS 198B.260 and regulations promulgated thereunder.

(4) Prior to occupancy, facility must have final approval from appropriate agencies.

(5) All facilities shall be currently approved by the Fire Marshal's Office in accordance with the Life Safety Code, before relicensure is granted by the licensure agency.

Section 6. Facility Requirements and Special Conditions. (1) Independent facilities with a capacity of fifty (50) beds or less present special problems. The sizes of the various departments will depend upon the requirements of the facilities. Some functions allotted separate spaces or rooms in these general standards may be combined provided that the resulting plan will not compromise the standards of safety and of medical and nursing practices and the social needs of patients. In other respects, the general standards set forth herein, including the area requirements, shall apply.

(2) Facilities shall be available to the public, staff, and patients who may be physically handicapped with special attention given to ramps, drinking fountain height, mirrors, etc.

(3) The number of beds in a nursing unit shall not exceed sixty (60) unless additional services are provided, as deemed necessary by the licensure agency. At least two (2) rooms per nursing unit shall be designed for single person occupancy (one (1) bed) and shall have private toilet rooms with bath. At least sixty (60) percent of the beds shall be located in rooms designed for one (1) or two (2) beds.

Section 7. Nursing Unit. (1) Patient rooms. Each patient room shall meet the following requirements:

(a) Maximum room capacity: four (4) patients;

(b) Patient rooms shall be designed to permit no more than two (2) beds side by side parallel to the window wall. Not less than a four (4) foot space shall be provided between beds, and at least a three (3) foot space between the side of a bed and the nearest wall, fixed cabinet, or heating/cooling element. A minimum of four (4) feet is required between foot of bed and opposite wall, or foot of opposite bed in multibed rooms;

(c) Window. All patient rooms must have

windows opening to the outside. Sill shall not be higher than three (3) feet above the floor and shall be above grade. Window area to be at least eight (8) percent of patient room floor area;

(d) Lavatory. In single and two (2) bed rooms with private toilet room, the lavatory may be located in the toilet room. Where two (2) patient rooms share a common toilet, a lavatory shall be provided in each patient room;

(e) Wardrobe or closet for each patient. Minimum clean dimensions: one (1) foot deep by one (1) foot and eight (8) inches wide with full length hanging space clothes rod and shelf;

(f) Cubicle curtains, or equivalent built-in devices for complete privacy for each patient in each multibed room and in tub, shower and toilet rooms;

(g) No patient room shall be located more than 120 feet from the nurses' station, the clean workroom, and the soiled workroom. No room shall be used as a patient room where the access is through another patient's room;

(2) Patient toilet rooms.

(a) A toilet room shall be directly accessible from each patient room and from each central bathing area without going through the general corridor. One (1) toilet room may serve two (2) patient rooms but not more than four (4) beds. The minimum dimensions of any room containing only a toilet shall be three (3) feet by five (5) feet;

(b) Toilets must be easily usable by wheelchair patients. Grab bars shall be provided at all toilets;

(c) At least one (1) toilet for each sex shall be provided for training purposes and access by wheelchairs. It shall be accessible from the nursing corridor, may be part of the bathing area and shall have a minimum size, of five (5) feet by six (6) feet;

(d) Doors to toilet rooms shall have a minimum width of two (2) feet and ten (10) inches to admit a wheelchair.

(3) Service areas in each nursing unit. The size of each service area will depend on the number and types of beds within the unit include:

(a) Nurses' station for nurses' charting, doctors' charting, communications, and storage for supplies and nurses' personal effects;

(b) Staff lounge area. The area shall have personal storage space and a toilet room for staff;

(c) Visitors toilet room. The facility shall provide a toilet room for visitors. The staff toilet room may serve as the visitors toilet room if marked and accessible;

(d) Clean workroom for storage and assembly of supplies for nursing procedures containing work counter, sink;

(e) Soiled workroom containing clinical sink, work counter with two (2) compartment sink, waste receptacles, and soiled linen receptacles;

(f) Medicine room adjacent to nurses' station with sink, refrigerator, locked storage, and facilities for preparation and dispensing of medication (may be designated area within clean workroom if a self-contained cabinet is provided). The controlled substances locker must be under double lock;

(g) Clean linen storage with enclosed storage space (may be a designated area within the clean workroom);

(h) Nourishment station with storage space, sink, hot plate and refrigerator for serving

between-meal nourishments (may serve one (1) nursing unit on same floor);

(i) Equipment storage room for storage of IV stands, inhalators, air mattresses, walkers, and similar bulky equipment (may serve more than one (1) nursing unit on same floor);

(j) Patient baths. One (1) shower stall or one (1) bathtub required for each fifteen (15) beds not individually served. There shall be at least one (1) freestanding bathtub in each bathroom. Grab bars or patient lift with a safety device shall be provided at all bathing fixtures. Each bathtub or shower enclosure in central bathing facilities shall provide space for a wheelchair and attendant. Showers in central bathing facilities shall not be less than four (4) feet square, without curbs, and designed to permit use from a wheelchair. Soap dishes in showers and bathrooms shall be recessed;

(k) Stretcher and wheelchair parking area or alcove;

(l) Janitor's closet for storage of housekeeping supplies and equipment. Floor receptor or service sink;

(m) Bedpan washing facilities. Separate bedpan washing closets in each nursing unit which are located so that bedpans need not be carried through lobbies, dining and recreation areas or day rooms are recommended. It will be acceptable, however, to have bedpan washing attachments for each patient room toilet. [Bedpan washing attachments are recommended for each patient room toilet. It will be acceptable, however, to have separate bedpan washing closets in each nursing unit, provided that they are so located that bedpans need not be carried through lobbies, dining and recreation areas, or day rooms.]

(4) Patient's dining, TV viewing and recreation areas.

(a) The total areas set aside for these purposes shall be not less than thirty (30) square feet per bed for the first fifty (50) beds and twenty (20) square feet per bed for all beds in excess of fifty (50). Additional space shall be provided for outpatients if they participate in a day care program.

(b) Storage shall be provided for recreational equipment and supplies (e.g., wall cabinet and closets).

Section 8. Therapy Units. (1) If the facility has a physical therapy unit the following shall be provided (depending on the program):

(a) Office (may also serve for occupational therapy office);

(b) Exercise and treatment areas with sink or lavatory and cubicle curtains around treatment areas;

(c) Hydrotherapy areas with cubicle curtains around treatment areas;

(d) Storage for supplies and equipment; and

(e) Toilet rooms located for convenient access by physical therapy patient (may also serve occupational therapy patients).

(2) If the facility has an occupational therapy unit it shall include:

(a) Office space (may be shared with physical therapy office);

(b) Therapy area with sink or lavatory;

(c) Storage for supplies and equipment;

(d) Toilet room (not required if other toilet facilities are convenient).

(3) Personal care room with space for shampoo sink and barber chair (not required in facility

of less than twenty-five (25) beds).

(4) If the facility has more than 120 beds, it shall provide the following:

- (a) Office space for a social worker;
- (b) Toilet room (not required if other toilet facilities are convenient).

Section 9. Dietary Department. If a commercial service will be used or meals will be provided by an adjacent hospital, dietary areas and equipment shall be designed to accommodate the requirements for sanitary storage, processing, and handling, otherwise the following shall be provided:

- (1) Food preparation center with a lavatory but no mirror;
- (2) Food serving facilities to accommodate patients and staff;
- (3) Dishwashing room with commercial-type and a lavatory;
- (4) Potwashing facilities;
- (5) Refrigerated storage to accommodate three (3) day supply;
- (6) Dry storage to accommodate three (3) day supply;
- (7) Cart-cleaning facilities;
- (8) Cart storage area;
- (9) Waste disposal facilities;
- (10) Can washing facilities;
- (11) Staff dining facilities;
- (12) Patient dining facilities;
- (13) Janitor's closet with storage for housekeeping supplies and equipment, floor receptor or service sink; and
- (14) Toilet room which is conveniently accessible to dietary staff with a two (2) door separation from food preparation area or dining area.

Section 10. Administration Department. The facility shall have adequate administrative, public, and staff facilities (e.g., offices, lobby, toilet facilities) to accommodate the needs of the public, patients, and staff without interfering with the provision of medical care services.

Section 11. Laundry. The following shall be included:

- (1) Soiled linen room;
 - (2) Clean linen and mending room;
 - (3) Linen cart storage;
 - (4) Lavatories accessible from soiled, clean, and processing rooms;
 - (5) Laundry processing room with commercial type equipment sufficient to take care of seven (7) days' needs within the workweek;
 - (6) Janitor's closet with storage for housekeeping supplies and equipment, floor receptor or service sink; and
 - (7) Storage for laundry supplies.
- (Subsections (5), (6) and (7) of this section need not be provided if laundry is processed outside the facility.)

Section 12. Storage and Service Areas. (1) Central storage room(s) with at least ten (10) square feet for first fifty (50) beds; and five (5) square feet per bed for eleven (11) beds over fifty (50), to be concentrated in one (1) area.

(2) Adequate secure storage space must be provided for staff and volunteer's personal belongings.

(3) Engineering service and equipment areas.

The following shall be provided:

- (a) Boiler room;
- (b) Mechanical and electrical equipment room(s) (can be combined with boiler room);
- (c) Adequate storage for building maintenance and engineering supplies;
- (d) Storage room for housekeeping equipment (need not be provided if space is available in janitor's closets or elsewhere);
- (e) Incinerator space. If the facility has an incinerator, it shall be in a separate room, in a designated area within the boiler room, or outdoors;
- (f) Yard equipment storage room for yard maintenance equipment and supplies.

Section 13. Details and Finishes. The facility shall be designed for maximum safety for the occupants to minimize the incidence of accidents. Hazards such as sharp corners shall be avoided. All details and finishes shall meet the following requirements:

- (1) Details.
 - (a) Doors to patient toilet rooms and other rooms needing access for wheelchairs shall have a minimum width of two (2) feet and ten (10) inches.
 - (b) Such items as drinking fountains, telephone booths and vending machines shall be located so that they do not project into the required width of exit corridors.
 - (c) Handrails shall be provided on both sides of corridors used by patients in facilities with a clean distance of one-half (1/2) inch between handrail and wall.
 - (d) All doors to patient-room toilet rooms and patient-room bathrooms shall swing outward or shall be equipped with hardware which will permit access in any emergency.
 - (e) All doors opening onto corridors shall be swing-type except elevator doors. Alcoves and similar spaces which generally do not require doors are excluded from this requirement.
 - (f) Thresholds and expansion joint covers, if used, shall be flush with the floor.
 - (g) Grab bars and accessories in patient toilet, shower, and bathrooms shall have sufficient strength and anchorage to sustain a load of 250 pounds for five (5) minutes.
 - (h) Lavatories intended for use by patients shall be installed to permit wheelchairs to slide under.
 - (i) The location and arrangement of lavatories and sinks with blade handles intended for handwashing purposes shall provide sixteen (16) inches clearance each side of center line of fixture.
 - (j) Mirrors shall be arranged for convenient use by patients in wheelchairs as well as by patients in standing position.
 - (k) Towel dispensers shall be provided at all lavatories and sinks used for handwashing.
- (1) If linen and refuse chutes are used, they shall be designed as follows:
 - 1. Minimum diameter of gravity-type chutes shall be two (2) feet;
 - 2. Chutes shall extend at least four (4) feet above the roof and shall be covered by a metal skylight glazed with thin plain glass or plastic.
- (m) Ceiling heights.
 - 1. The boiler room ceiling shall not be less than two (2) feet six (6) inches above the main boiler header and connecting piping with nine (9) feet headroom under piping for maintenance and access;

2. Corridors, storage rooms, patients' toilet room, and other minor rooms shall not be less than seven (7) feet and six (6) inches.

3. Ceilings in all other rooms shall not be less than eight (8) feet.

(n) Boiler room, food preparation centers, and laundries shall be insulated and ventilated to prevent any floor surface above from exceeding a temperature of eighty-five (85) degrees Fahrenheit.

(o) Noise reduction criteria. Provision shall be made to minimize sound transmission in:

1. Corridors in patient areas;
2. Nurses' stations;
3. Utility rooms;
4. Floor pantries; and
5. Lobbies and recreation areas.

(p) Special attention shall be given to sound transmission from boiler rooms, mechanical rooms, and kitchen, to patient bedroom areas.

(2) Finishes.

(a) Floors generally shall be easily cleanable and shall have the wear resistance appropriate for the location involved. Floors in kitchen and related spaces shall be waterproof and grease-proof. In all areas where floors are subject to wetting, they shall have a nonslip finish. Carpeting is not permitted in the following areas: kitchen, dishwashing room, soiled utility room, janitor's closet, soiled linen rooms, storage room, bathrooms, public toilet rooms, patient toilet rooms, hydrotherapy rooms, treatment rooms, and any other room where the floor is subject to repeated wetting or soiling.

(b) Adjacent dissimilar floor materials shall be flush with each other to provide an unbroken surface.

(c) Walls generally shall be washable and in the immediate area of plumbing fixtures, the finish shall be moisture-proof. Wall bases in dietary areas shall be free of spaces that can harbor insects.

(d) Ceilings generally shall be washable or easily cleanable. This requirement does not apply to boiler rooms, mechanical and building equipment rooms, shops and similar spaces.

Section 14. Elevators. All facilities where either patient beds or inpatient facilities such as diagnostic, recreation, patient dining or therapy rooms are located on other than the first floor, shall have electric or electrohydraulic elevators as follows:

(1) Number of elevators. All facilities with patient beds or residential facilities located on any floor other than the first floor shall have at least one (1) hospital-type elevator and such additional elevators as determined by the licensure agency from a study of the facility plan and the estimated vertical transportation requirements.

(2) Cars and platforms. Elevator cars and platforms shall be constructed of noncombustible material, except that fire-retardant-treated material may be used if all exterior surfaces of the cars are covered with metal. Cars of hospital-type elevators shall have inside dimensions that will accommodate a patient's bed and attendants and shall be at least five (5) feet wide by seven (7) feet and six (6) inches deep. Car doors shall have a clear opening of not less than three (3) feet and eight (8) inches. Cars of all other required elevators shall have a clear opening of not less than

three (3) feet.

(3) Leveling. Elevators shall have automatic leveling of the two (2) way automatic maintaining type with accuracy within plus or minus one-half (1/2) inch.

Section 15. Foundations. Foundations shall rest on natural solid ground if a satisfactory soil is available at reasonable depths. Proper soil bearing values shall be established in accordance with recognized standards. If solid ground is not encountered at practical depths, the structure shall be supported on driven piles or drilled piers designed to support the intended load without detrimental settlement.

Section 16. Mechanical Requirements. (1) General. Prior to completion of the contract and final acceptance of the facility, the architect and/or engineer shall obtain certification from the contractor that all mechanical systems have been tested and that the installation and performance of these systems conform to the requirements of the plans and specifications.

(2) Steam and hot water systems.

(a) Boilers. If boilers are used, a minimum of two (2) must be provided. The combined capacity of the boilers, based upon the published Steel Boiler Institute of Boiler and Radiator Manufacturer's net rating, must be able to supply 150 percent of the normal requirements of all systems and equipment.

(b) Covering. Boiler and smoke breeching, all steam supply piping and high pressure steam return piping, and hot water space heating supply and return piping shall be insulated.

(3) Temperatures and ventilating systems.

(a) Temperatures. A minimum temperature of seventy-one (71) degrees Fahrenheit, shall be provided for in all occupied areas in winter conditions. A maximum temperature of eighty-one (81) degrees Fahrenheit shall be provided for in occupied areas in summer conditions.

(b) Ventilation system details. All air-supply and air-exhaust systems shall be mechanically operated. All fans serving exhaust systems shall be located at the discharge end of the system. The ventilation rates shown in Section 17, Table 1 of this regulation, shall be considered as minimum acceptable rates and shall not be construed as precluding the use of higher ventilation rates if they are required to meet design conditions.

1. Outdoor ventilation air-intakes, other than for individual room units, shall be located as far away as practicable but not less than twenty-five (25) feet from the exhausts from any ventilating system or combustion equipment. The bottom of outdoor intakes serving central air systems shall be located as high as possible but not less than eight (8) feet above the ground level or, if installed through the roof, three (3) feet above roof level.

2. The ventilation systems shall be designed and balanced to provide the general pressure relationship to adjacent areas shown in Section 17, Table 1 of this regulation.

3. Room supply air inlets, recirculation, and exhaust air outlets installed in nonsensitive areas shall be located not less than three (3) inches above the floor.

4. Corridors shall not be used to supply air to or exhaust air from any room, except that exhaust air from corridors may be used to ventilate bathrooms, toilet rooms, or janitor's

closets opening directly into corridors.

5. Filters.

(a) Central systems that serve patient care areas shall be provided with filters rated at eighty (80) percent efficiency based upon the National Bureau of Standards Dust Spot Method with Atmospheric Dust.

(b) Central systems that serve only areas other than patient care areas shall be provided with filters rated at twenty-five (25) percent efficiency based upon the National Bureau of Standards Dust Spot Method with Atmospheric Dust.

6. Boiler rooms shall be provided with sufficient outdoor air to maintain combustion rates of equipment and required temperatures in the facility.

(4) Plumbing and other piping systems.

(a) Lavatories and sinks required in patient care areas shall have the water supply spout mounted so that its discharge point is a minimum distance of five (5) inches above the rim of the fixture. All fixtures used by medical and nursing staff, and all lavatories used by patients and food handlers shall be trimmed with valves which can be operated without the use of hands. Where blade handles are used for this purpose, they shall be at a distance from the center line of the sink to be operational.

(b) Clinical sinks shall have an integral trap in which the upper portion of a visible trap seal provides a water surface.

(5) Water supply system.

(a) Systems shall be designed to supply water to the fixtures and equipment on the upper floors at a minimum pressure of fifteen (15) pounds per square inch during maximum demand periods.

(b) Each water service main, branch main, riser and branch to a group of fixtures shall be valved. Stop valves shall be provided at each fixture.

(c) Hot, cold and chilled water piping and waste piping on which condensation may occur shall be insulated. Insulation of cold and chilled water lines shall include an exterior vapor barrier.

(d) Backflow preventers (vacuum breakers) shall be installed on hose bibbs and on all fixtures to which hoses or tubing can be attached such as janitor's sinks and bedpan flushing attachments.

(e) Bedpan flushing devices shall be provided.

(f) Hot water distribution systems shall be arranged to provide hot water at each fixture at all times.

(g) Plumbing fixtures which require hot water and which are intended for patient use shall be supplied with water which is controlled to provide a maximum water temperature of 110 degrees Fahrenheit at the fixture.

(h) Piping over food preparation centers, food serving facilities, food storage areas, and other critical areas shall be kept to a minimum and shall not be exposed. Special precautions shall be taken to protect these areas from possible leakage of, or condensation from, necessary overhead piping systems.

(6) Hot water heaters and tanks.

(a) The hot water heating equipment shall have sufficient capacity to supply the water at the temperature and amounts indicated below:

	Use		
	Clinical	Dietary	Laundry
Gal/hr/bed	6 1/2	4	4 1/2
Temp. F.	100-110	180*	140-180**

*Temperature may be reduced to 140 if chloritizer is used.

**If the temperature used is below 180, the facility shall utilize detergents and other additives to insure that the linens will be adequately cleaned.

(b) A hot water system which supplies fixtures utilized by patients shall be equipped with an antiscald mixing valve.

(c) Storage tank(s) shall be provided and shall be fabricated of corrosion-resistant metal, or have noncorrosive lining.

(7) Plumbing approval. Prior to final approval of the plans and specifications by the licensure agency, the plumbing plans and specifications must be approved by the Division of Plumbing, Department of Housing, Buildings and Construction.

Section 17. Electrical Requirements. (1) Electrical requirements of the Kentucky Building Code shall apply where applicable.

(2) The wiring in each facility shall be inspected by a certified electrical inspector and a certificate of approval shall be issued to the facility, prior to occupancy. However, the wiring in existing buildings shall be approved by a certified electrical inspector only when the building has not been previously so approved for health care occupancy or where the State Fire Marshal finds that a hazardous condition exists.

(3) Switchboard and power panels. All breakers and switches shall be indexed.

(4) Lighting.

(a) All spaces occupied by people, machinery, and equipment within buildings, and the approaches thereto, and parking lots shall have electric lighting.

(b) Patients' bedrooms shall have general lighting and night lighting. A reading light shall be provided for each patient. A fixed receptacle type night light mounted approximately sixteen (16) inches above the floor, shall be provided in each patient room. Patients' reading lights and other fixed lights not switched at the door shall have switch controls convenient for use at the luminaire. All switches for control of light in patient areas shall be of the quiet operating type.

(c) Lighting levels for the facility shall comply with the requirements of Section 17, Table 2 of this regulation.

(5) Receptacles. Convenience outlets.

(a) Bedroom. Each patient bedroom shall have duplex receptacles on each side of the head of each bed (for parallel adjacent beds, only one (1) receptacle is required between the beds), receptacles for luminaires television and motorized beds, if used, and one (1) receptacle on another wall.

(b) Corridors. Duplex receptacles for general use shall be installed approximately fifty (50) feet apart in all corridors and within twenty-five (25) feet of ends of corridors.

(6) Nurses' calling system. A nurses' calling station shall be installed at each patient bed and in each patient toilet, bath, and shower

room. The nurses' call in toilet, bath, or shower rooms, shall be an emergency call. All calls shall register at the nurses' station and shall actuate a visible signal in the corridor at the patients' door, in the clean workroom, soiled workroom, and nourishment station of the nursing unit. Nurses' call systems which provide two (2) way voice communications shall be equipped with an indicating light at each calling station which lights and remains lighted as long as the voice circuit is operative.

(7) Emergency electric service.

(a) General. To provide electricity during an interruption of the normal electric supply that could affect the nursing care, treatment, or safety of the occupants, an emergency source of electricity shall be provided and connected to certain circuits for lighting and power.

(b) Sources. The source of this emergency electric service shall be as follows:

1. An emergency generating set, when the normal service is supplied by one (1) or more central station transmission lines;

2. An emergency generating set or a central station transmission line, when the normal electric supply is generated on the premises.

(c) Emergency generating set.

1. The required emergency generating set, including the prime mover and generator, shall be located on the premises and shall be reserved exclusively for supplying the emergency electric system. The emergency generator set shall be sufficient kilowatt capacity to supply all electrical connections itemized in paragraph (d) of this subsection.

2. In facilities constructed prior to the effective date of this regulation which are supplied by at least two (2) dedicated and separate utility service feeders, an emergency generating set is not required.

(d) Emergency electrical connections. Emergency electric service shall be provided to circuits as follows:

1. Lighting.

a. Exitways and all necessary ways of approach thereto, including exit signs and exit direction signs, exterior of exits, exit doorways, stairways, and corridors;

b. Dining and recreation rooms;

c. Nursing station and medication preparation area;

d. Generator set location, switch-gear location, and boiler room;

e. Elevator; and

f. Night lights in patient rooms.

2. Equipment. Essential to life safety and for protection of important or vital materials:

a. Nurses' calling system;

b. Alarm system including fire alarm actuated at manual stations, water-flow alarm devices of sprinkler system if electrically operated, fire-detecting and smoke-detecting systems, paging or speaker systems if intended for issuing instructions during emergency conditions, and alarms required for nonflammable medical gas systems, if installed;

c. Fire pump, if installed;

d. Sewerage or sump-lift pump, if installed;

e. At least one (1) duplex receptacle located on the headwall in each patient room;

f. One (1) elevator, where elevators are used for vertical transportation of patients. Provide manual switch-over to operate other elevators.

g. Equipment such as burners and pumps necessary for operation of one (1) or more

boilers and their necessary auxiliaries and controls, required for heating and sterilization; and

h. Equipment necessary for maintaining telephone service.

3. Emergency heating.

a. By September 1, 1992 [July 1, 1991] an emergency heating system for the patient rooms, or the corridors of the facility designed at 150 percent efficiency, shall be required; or [.]

b. Emergency heating of patient rooms or corridors shall not be required in areas where the facility is supplied by at least two (2) utility service feeders, each supplied by separate generating sources or a network distribution system fed by two (2) or more generators, with the facility feeders so routed, connected, and protected that a fault any place between the generators and the facility will not likely cause an interruption of more than one (1) of the facility service feeders; or [.]

c. For a facility existing prior to the effective date of this regulation, an acceptable transfer agreement with another facility which meets the requirements of clause a. or b. of this subparagraph or is supplied by a separate generating source or network distribution system which is so routed, connected, and protected that a fault any place between the generator and the transferring facility would not affect the receiving facility. This receiving facility shall be within a reasonable distance and provide adequate space to assure an orderly transfer. The transfer agreement shall specify how the resident will be cared for at the receiving facility.

(e) Details. The emergency system shall be so controlled that after interruption of the normal electric power supply, the generator is brought to full voltage and frequency and connected within ten (10) seconds through one (1) or more primary automatic transfer switches to all emergency lighting, all alarms, nurses' call, equipment necessary for maintaining telephone service, and receptacles in patient corridors. All other lighting and equipment required to be connected to the emergency system shall either be connected through the above described primary automatic transfer switching or shall be subsequently connected through other automatic or manual transfer switching. Receptacles connected to the emergency system shall be distinctively marked for identification. Storage battery-powered lights shall not be used as a substitute for the requirement of a generator. Where fuel is normally stored on the site, the storage capacity shall be sufficient for twenty-four (24) hour operation of required emergency electric services. Where fuel is normally piped underground to the site from a utility distribution system, storage facilities on the site will not be required.

Section 18. Table 1 - Pressure Relationships and Ventilation of Certain Nursing Facility Areas. Table 2 - Lighting Levels for Nursing Facilities.

Table 1
Pressure Relationships and Ventilation
of Certain Nursing Facility Areas

Area Designation	Pressure Relationship to Adjacent Areas	Minimum Air Changes of Outdoor Air per Hour
Patient room	0	1
Patient room corridor	0	2
Treatment room	0	1
Physical and hydrotherapy; if applicable	N	2
Dining and recreation areas	0	2
Soiled workroom	N	2
Clean workroom	P	2
Toilet room	N	---
Bedpan room; if applicable	N	---
Bathroom	N	---
Janitor's closet	N	---
Linen and trash chute rooms	N	---
Food preparation center	0	2
Dishwashing area	N	---
Dietary dry storage	0	---
Laundry, general	0	2
Soiled linen sorting and storage	N	---
Clean linen storage	P	2

P = Positive N = Negative 0 = Equal -- = Optional

Table 1. Continued

Area Designation	Minimum Total Air Changes Per Hour	All Air Exhausted Directly to Outdoors
Patient room	4	---
Patient area corridor	4	---
Treatment room	6	Yes
Physical therapy and hydrotherapy; if applicable	6	---
Dining and recreation areas	4	---
Soiled workroom	4	Yes
Clean workroom	4	---
Toilet room	10	Yes
Bedpan room; if applicable	10	Yes
Bathroom	10	Yes
Janitor's closet	10	Yes
Linen and trash chute room	10	Yes
Food preparation center	10	Yes
Dishwashing area	10	Yes
Dietary dry storage	2	---
Laundry, general	10	Yes
Soiled linen sorting and storage	10	Yes
Clean linen storage	2	---

Table 2
Lighting Levels for Nursing Facilities

Area	Foot-candles*
Administrative and lobby areas, day	50
Administrative and lobby areas, night	20
Barber and beautician areas; if applicable	50
Corridors and interior ramps	20
Corridor night lighting	3
Dining area and kitchen	30

Doorways	10
Exit stairways and landings	5
Janitor's closet	15
Nurses' station, general, day	50
Nurses' station, general, night	20
Nurses' desk, for charts and records	70
Nurses' medicine cabinet	100
Patient care unit (or room), general	10
Patient care room, reading	30
Recreation area (floor level)	50
Stairways other than exits	30
Toilet and bathing facilities	30
Utility room, general	20
Utility room, work counter	50

*Minimum on task at anytime.

CLAY CESSNA, Inspector General

HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: February 5, 1991

FILED WITH LRC: February 6, 1991 at 11 a.m.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Amended After Hearing)

907 KAR 1:025. Payments for nursing facility and intermediate care facility for the mentally retarded services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 430, 431, 432, 433, 435, 440, 441, 442, 447, 455, 456; 42 USC 1396, a, b, c, d, g, i, l, n, o, p, r, r-2, r-3, r-5, s

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance. 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 nursing care facility services and intermediate care facility for the mentally retarded services.

Section 1. Definitions. For purpose of Sections 2 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 except for ventilator therapy services and brain injury unit services 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:

- Physical, occupational and speech therapy.
- Laboratory procedures.
- X-ray.
- Oxygen and other related oxygen supplies.
- Respiratory therapy (excluding the routine administration of oxygen).

(f) Psychological and psychiatric therapy (for intermediate care facilities for the mentally retarded only).

(g) Ventilator therapy services, subject to the coverage limitations shown in the reimbursement manual.

(3) "Nursing facility (NFs) means facilities certified to the Medicaid program by the state survey agency as meeting all nursing facility requirements and all conditions of participation in the Medicare program.

(4) "Nursing facilities with waiver (NFs/W)" means facilities certified to the Medicaid program by the state survey agency as meeting all NF requirements except the nurse staffing requirement for which an NF waiver has been granted by the survey agency.

(5) "Hospital based nursing facilities" means those nursing facilities in the same building with or attached to an acute care hospital and which share common administration, nursing staff, and ancillary services with the hospital; however, those facilities classified as hospital based skilled nursing facilities on June 30, 1989 shall remain classified as hospital based nursing facilities.

(6) "Nursing services costs" are the direct costs associated with nursing services.

(7) "All other costs" are other care-related costs, other operating costs, capital costs, and indirect ancillary costs.

(8) The "basic per diem cost" for each major cost category (nursing services costs and all other costs) is the computed rate arrived at when otherwise allowable costs are trended and adjusted in accordance with the inflation factor, the occupancy factor, and the median cost center per diem upper limits.

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

(10) "Incentive factor" means the comparison of the basic per diem cost (for facilities qualifying for a cost savings incentive) with the upper limit for the appropriate cost arrays using the cost savings incentive (CSI) percentage (and taking into consideration the maximum allowable CSI amount for each cost array) to arrive at the actual dollar amount of cost savings incentive return to be added to the basic per diem cost.

(11) "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.

(12) "Upper limit" means the maximum level at which the cabinet shall reimburse, on a facility by facility basis, for routine services.

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

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

(15) "Routine services" means the regular

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

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

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

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

(d) Items which are utilized by individual patients but which are reusable and expected to be available in an institution providing a nursing 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.)

(16) "Nursing facility with a mental retardation specialty (NF/MRS)" means a skilled nursing facility in which at least fifty-five (55) percent of the patients have demonstrated special needs relating to the diagnosis of mental retardation.

Section 2. Reimbursement for Nursing Facilities (NFs) and Intermediate Care Facilities for the Mentally Retarded (ICF-MRs). All nursing facilities (NFs) or intermediate care facilities for the mentally retarded (ICF-MRs) participating in the Medicaid 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 and the coverage requirements specified in 907 KAR 1:022, Nursing facility and intermediate care facility for the mentally retarded services. A nursing facility desiring to participate in Medicaid shall be required to participate in the Medicare program unless the nursing facility has been granted a waiver of the nursing facility nurse staffing requirement and, as a result, is prohibited from participation in Medicare. The Medicaid program does not recognize multilevel nursing facilities, and therefore all participating beds in nursing facilities (not including ICF-MRs) must participate in Medicaid as the same type of bed (i.e., NF or NF with waiver).

Section 3. Basic Principles of Reimbursement.

(1) Payment shall be on the basis of rates which are reasonable and adequate to meet the costs which are required to 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 Nursing Facility Reimbursement Manual, dated October 1, 1990 which is hereby incorporated by reference) and supplemented by the use of the Medicare reimbursement principles. The Kentucky Medical Assistance Program Nursing Facility Reimbursement Manual may be reviewed during regular working hours (8 a.m. to 4:30 p.m.) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office.

Section 4. Implementation of the Payment System. The cabinet's reimbursement system is supported by the Medicare 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 except as specified in this section, including the provisions contained in subsections (13) and (14) of this section. Prospective rates shall be cost based 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) shall be considered only if a facility's increased costs are attributable to one (1) of the following reasons: governmentally imposed minimum wage increases; the direct effect of new licensure requirements or new interpretations of existing requirements by the appropriate governmental agency as issued in regulation or written policy which affects all facilities within the class; or other governmental actions that result in an unforeseen cost increase. The amount of any prospective rate adjustment shall not exceed that amount by which the cost increase resulting directly from the governmental action exceeds on an annualized basis the inflation allowance amount included in the prospective rate for the general cost area in which the increase occurs. For purposes of this determination, costs shall 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 as applicable (except that ICF-MRs shall have no administratively set upper limit). The state shall set a uniform rate year for NFs and ICF-MRs (July 1 - June 30) by taking the latest audited or desk reviewed cost data which is available as of May 16 of each year and trending the facility costs to July 1 of the rate year. Appropriate cost report adjustments will be made for the period between July 1, 1990 and October 1, 1990 to account for the fact a

nursing facility rate adjustment related to nursing home reform shall be made effective October 1, 1990. (Unaudited, partial year, 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. 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 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.) The following specific policies shall be used with regard to determination, application, and exclusion from upper limits.

(a) Nursing facility arrays. For purposes of setting upper limits the freestanding NFs (exclusive of the NF/MRs, NF/IMDs, and NF/pediatric facilities) shall be divided into urban and rural arrays. The urban array shall include all facilities within a standard metropolitan statistical area (SMSA). The rural array shall include all facilities in non-SMSA counties. For purposes of arraying, current multilevel facilities (i.e., SNF and ICF) shall be considered as one (1) facility, and the composite or overall rate for the facility shall be paid for services rendered in either level during the period of time preceding the first survey agency occurring on or after October 1, 1990 (with separate levels ceasing to exist for Medicaid purposes at the time of the first survey). The urban and rural arrays shall be further broken down into a nursing cost center array and an "other cost center" array for each.

(b) Nursing facility upper limits. The following NF upper limits shall be applied:

1. The upper limit for nursing costs for freestanding NFs shall be set at 115 percent of the median of the array of each facility's cost per case mix unit (urban or rural as applicable). The upper limit for "other costs" for freestanding NFs shall be set at 115 percent of the median of the allowable per diem cost array for the facilities (urban or rural as applicable).

2. The upper limit for hospital based nursing facilities shall be set at 125 percent of the appropriate upper limit for freestanding facilities.

3. The upper limit for NF/MRS shall be set at 120 percent of the appropriate upper limit for freestanding facilities.

(c) Exclusions from nursing facility upper limits. The following exclusions from usual NF payment methodology and upper limits shall be applied.

1. Nursing facilities designated as institutions for mental diseases or as pediatric facilities shall be reimbursed at full reasonable and allowable prospective cost.

2. Hospital swing beds shall be paid at the average of NF payments for the preceding calendar year; the swing bed rates shall change effective January 1, 1991 and each January 1 thereafter.

3. Hospital dual licensed beds shall be paid at the hospital based facility upper limits.

4. Facilities recognized as providing ventilator dependent care shall be paid at an all-inclusive fixed rate which shall be equal to projected costs.

5. Facilities which are Medicaid certified

head injury units providing preauthorized specialized rehabilitation services for persons with brain injuries shall be paid at an all-inclusive fixed rate which shall be set at \$360 per diem.

(d) Other factors relating to costs and upper limit determination.

1. When the cabinet has made a separate rate adjustment as compensation to the facilities for minimum wage updates, the cabinet shall then adjust downward trending and indexing factors to the extent necessary to remove from the factors costs relating to the minimum wage updates already provided for by the separate rate adjustment. The purpose of the adjustment to the factors is to avoid paying the facilities twice for the same costs. When the trending and indexing factors include costs related to a minimum wage increase, the cabinet shall not make a separate rate adjustment, and the minimum wage costs shall not be deleted from the trending and indexing factors.

2. The allowable per diem cost for NFs (excluding swing beds, dual licensed hospital beds, and facilities with all inclusive rates) shall include (through June 30, 1991) thirty-eight (38) cents for nurse aide training; and one (1) dollar and thirty-eight (38) cents for implementation of universal precautions for disease control; and four (4) cents for medical director costs; these allowable cost amounts shall not be subject to adjustment or cost settlement.

3. A special access and treatment fee shall be added to the facility per diem (without regard to upper limits) for each individual identified as having care needs associated with high infectious or communicable diseases with limited treatment potential, such as hepatitis B, methicillin-resistant staphylococcus aureus (MRSA), acquired immune deficiency syndrome (AIDS), or who test positive for human immuno-deficiency virus (HIV).

4. The maximum payment amounts for the prospective uniform rate year shall be adjusted each July 1 so that the maximum payment amount in effect for the rate year shall be related to the cost reports used in setting the facility rates for the rate year.

5. 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 shall not be altered due to revisions or corrections of data except as specified in this subsection.

(3) The reasonable direct cost of ancillary services provided by the facility as a part of total care shall be compensated on a reimbursement cost basis as an addition to the prospective rate except for ventilator therapy and brain injury unit services which shall be paid on the basis of all-inclusive rates. Ancillary services reimbursement shall be subject to a year-end audit, retroactive adjustment and final settlement. Ancillary costs may be subject to maximum allowable cost limits under federal regulations. Any percentage reduction made in payment of current billed charges shall not exceed twenty-five (25) percent, except in the instance of individual facilities where the actual retroactive adjustment for a facility for the previous year reveals an overpayment by the cabinet exceeding

twenty-five (25) percent of billed charges, or where an evaluation by the cabinet of an individual facility's current billed charges shows the charges to be in excess of average billed charges for other comparable facilities serving the same area by more than twenty-five (25) percent.

(4) Interest expense used in setting the prospective rate shall be an allowable cost if permitted under Medicare 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 shall 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 relate to providing patient care. The form of such indebtedness may include, but shall not be limited to, notes, advances and various types of receivable financing;

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

(5) Compensation to owner/administrators shall be considered an allowable cost provided that it is reasonable, and that the services actually performed are a necessary function. Compensation shall include the total benefit received by the owner for the services he renders to the institution, excluding fringe benefits routinely provided to all employees and the owner/administrator. Payment for services requiring a licensed or certified professional performed on an intermittent basis shall not be considered a part of compensation. "Necessary function" means that had the owner not rendered services pertinent to the operation of the institution, the institution would have had to employ another person to perform the service. Reasonableness of compensation shall be based on total licensed beds (all levels). Compensation for owners and nonowner administrators (except for nonowner administrators of intermediate care facilities for the mentally retarded and dual licensed pediatric facilities) shall not exceed the amounts specified in the Nursing Facility Reimbursement Manual.

(6) The allowable cost for services or goods purchased by the facility from related organizations shall be the cost to the related organization, except when it can be demonstrated that the related organization is in fact equivalent to any other second party supplier, i.e., a relationship for purposes of this payment system is not considered to exist. A relationship shall be considered to exist when an individual (or individuals) possesses five (5) percent or more of ownership or equity in the facility and the supplying business; however, an exception to the relationship shall 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 nursing facilities entering into lease/rent arrangements as intermediate care facilities prior to April 22, 1976, intermediate care facilities for the mentally retarded entering into lease/rent arrangements prior to February 23, 1977, and nursing facilities entering into lease/rent arrangements as skilled nursing facilities prior to December 1, 1979, the cabinet shall determine the allowable costs of such arrangements based on the general reasonableness of such costs.

(8) Certain costs not directly associated with patient care shall not be considered allowable costs. Costs which shall not be allowable include political contributions, travel and related costs for trips outside the state (for purposes of conventions, meetings, assemblies, conferences, or any related activities), specified vehicle costs as shown in the Kentucky Medical Assistance Program Nursing Facility Reimbursement Manual, 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 unless such costs are incurred by administrators or owners.

(9) 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 shall be used for changes of ownership occurring before July 18, 1984:

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

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

(c) Gain shall be 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 shall be any bona fide transfer of legal ownership from an owner(s) to a new owner(s) for reasonable compensation, which shall usually be fair market value. Lease-purchase agreements or other similar arrangements which do not result in transfer of legal ownership from the original owner to the new owner shall not be considered sales until 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 shall be determined in the manner set forth in paragraphs (a) through (d) of this subsection.

(10) Notwithstanding the provisions contained in subsection (9) of this section, or in any other section or subsection of this regulation or the "Kentucky Medical Assistance Program 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 (9)(e) of this section) shall be determined in accordance with the methodology set forth herein for the reevaluation of assets of skilled nursing and

intermediate care facilities.

(a) No increase shall be allowed in capital costs.

(b) The allowable historical base for depreciation for the purchaser shall 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.

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

(11) Each facility shall maintain and make available any records (in a form acceptable to the cabinet) which 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 on-site access for accounting, auditing, medical review, utilization control and program planning purposes.

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

(a) The year-end cost report shall contain information relating to prior year cost, and shall 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 shall be so indicated with a description and rationale as a supplement to the cost report.

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

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

(13) The cabinet shall perform a desk review of each year-end cost report and ancillary service cost to determine the necessity for and scope of a field audit in relation to routine and ancillary service cost. If a field audit is not necessary, the report shall be settled without a field audit. Field audits shall be conducted when determined necessary. A desk review or field audit shall be used for purposes of verifying cost to be used in setting the prospective rate or for purposes of adjusting prospective rates which have been set based on unaudited data; audits may be conducted annually or at less frequent intervals. An audit of ancillary cost shall be conducted as needed.

(14) Year-end adjustments of the prospective rate and a retroactive cost settlement shall 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) A facility is sold and the funded depreciation account is not transferred to the

purchaser.

(d) The prospective rate has been set based on unaudited cost reports and the prospective rate is to be adjusted based on audited reports with the appropriate cost settlement made to adjust the unaudited prospective payment amounts to the correct audited prospective payment amounts.

(15) The cabinet may 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.

(16) 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).

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

(18) Qualifying nursing facilities (but not including swing beds, dual licensed hospital beds, IMDs, pediatric facilities, and facilities with all-inclusive rates) shall earn a cost savings incentive (CSI). Facilities qualifying for the CSI (except for NF/MRSs) shall be those facilities whose rate within the applicable cost array is not in excess of 110 percent of the median of the array. The CSI shall be computed at ten (10) percent of the difference between the facility's cost and the upper limit for the array with the CSI amount limited to not more than one (1) dollar and fifty (50) cents per day per facility for each cost array. NF/MRSs shall qualify for the CSI when the NF/MRS has costs less than the NF/MRS upper limit, and the CSI shall be ten (10) percent of the difference between the facility rate and the upper limit for the class of facility with the CSI amount limited to not more than one (1) dollar and fifty (50) cents per day per facility for each cost array.

(19) Intermediate care facilities for the mentally retarded may qualify for a cost incentive and investment factor (CIIF) allowance based on a comparison of the facility rate with the CIIF schedule shown in this subsection. No return for investment risk shall be made to nonprofit facilities, and publicly owned and operated facilities shall not receive the incentive or investment return. Cost incentive and investment schedule for intermediate care

facilities for the mentally retarded:

(Effective 10-1-90)

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
\$96.99 & below	\$1.38	\$.87
97.00 -102.99	1.29	\$.75
103.00 -108.99	1.18	\$.62
109.00 -114.99	1.06	\$.47
115.00 -120.99	.92	\$.31
121.00 -126.99	.76	\$.13
127.00 -133.49*	.53	-

*There is no maximum payment limit for intermediate care facilities for the mentally retarded.

(20) Hold harmless. The NFs (but not including swing beds or dual licensed hospital beds) shall be entitled to a "hold harmless" amount for the period from October 1, 1990 through June 30, 1992. This hold harmless amount shall be the amount, if any, by which the July 1, 1990 allowable facility rate plus an adjustment for ancillary costs shifted to routine costs (less a nurse aide training per diem allowance of one (1) dollar and twenty (20) cents) exceeds the allowable facility rate as computed on October 1, 1990 and July 1, 1991 (excluding the revised nurse aide training per diem allowance and other per diem add-ons in recognition of OBRA 87 requirements) under the revised reimbursement system. For hold harmless purposes, the July 1, 1990 rate shall be increased by an inflation allowance using the appropriate data resources, incorporated index for inflation.

(21) An adjustment shall be made to the usual rate for ICF-MRs, IMDs, and pediatric facilities to account for those medical supplies, catheters, syringes, and diapers not payable under the pharmacy program (and no longer payable as ancillaries under the nursing facility payment system) which are thus included under the routine cost category.

(22) Case-mix. The nursing costs for each facility shall be divided by the average case weight (as measured by each patient's needs with regard to activities of daily living and special needs using a standardized measurement as shown in the Nursing Facility Reimbursement Manual with a range from one (1.0) (lowest level of intensity) to 4.12 (highest level of intensity) to derive the facility average case unit cost. The average case weight for the period October 1, 1990 through June 30, 1991 shall be based on Medicaid patient level of care determinations made during the period July 1, 1990 through September 30, 1990 for each facility. (The peer review organization (PRO) shall first determine whether a patient is high-intensity, low-intensity, or neither. For patients meeting patient status (high or low-intensity), the PRO will then determine the case weight). The average case weight thereafter shall be based on all level of care determinations made during the period covered by the cost report (or as appropriate the most recent period available or a projection if a fully or partial cost report is not available). The facility nursing rate shall be adjusted for each quarter throughout the year and shall be the product of the average case unit cost (subject to upper limits and with the CSI adjustment as appropriate) times the

average case weight for the prior quarter (as determined using standard methodology and point-in-time analysis). The actual facility payment amount for nursing care shall thus be subject to adjustment each calendar quarter based on changes in facility average case weight, though the average case unit cost (based on prior year costs) remains the same.

(23) Nursing home reform costs. Effective October 1, 1990 and thereafter, facilities shall be required to request preauthorization for costs that must be incurred to meet nursing home reform costs in order to be reimbursed for the costs. The preauthorization request shall show the specific reform action that is involved and appropriate documentation of necessity and reasonableness of cost. Upon authorization by the Medicaid agency, the cost shall be allowable. A request for a payment rate adjustment may then be submitted to the Medicaid agency with documentation of actual cost incurred. The allowable additional amount shall then be added on the facility's rate (effective with the date the additional cost was incurred) without regard to upper limits or the CSI factor (i.e., the authorized nursing home reform cost shall be passed through at 100 percent of reasonable and allowable cost). Preauthorization shall not be required for nursing home reform costs incurred during the period July 1, 1990 through September 30, 1990; however, the actual costs incurred shall be subject to tests of reasonableness and necessity and shall be fully documented at time of the request for rate adjustment. Facilities may request multiple preauthorizations and rate adjustments (add-ons) as necessary for implementation of nursing home reform. Facility costs incurred prior to July 1, 1990 shall not (except for the costs previously recognized in a special manner, i.e., the universal precautions add-on and the nurse aide training add-on) be recognized as being nursing home reform costs. The special nursing home reform rate adjustment shall be requested using forms and methods specified by the agency. A nursing home rate adjustment shall be included within the cost base for the facility in the rate year following the rate year for which the adjustment was allowed. No interim rate adjustments for nursing home reform shall be allowed for periods after June 30, 1992.

Section 5. Prospective Rate Computation. The prospective rate for each facility (taking into account the factors described in this regulation and the case mix methodology shown in the Nursing Facility Reimbursement Manual) shall reflect the following:

(1) The adjusted allowable cost for the facility;

(2) Adjustments to allowable cost related to occupancy;

(3) Adjustments to allowable cost related to application of upper limits;

(4) Adjustments to allowable cost related to application of the cost savings incentive factor, or for ICF-MRs, the cost incentive and investment schedule;

(5) Rates shall be recomputed quarterly based on revisions in the case mix assessment classification which affects the nursing services component as described in the Nursing Facility Reimbursement Manual; however, the cost basis and the upper limits shall be revised annually using the latest available cost reports and assessments from each provider;

- (6) Adjustments as appropriate for costs shifted from ancillary to routine;
- (7) Nursing home reform adjustments; and
- (8) Hold harmless adjustments.

Section 6. Reimbursement Review and Appeal. Participating facilities may appeal cabinet decisions as to application of the general policies and procedures in accordance with the following:

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

(2) Second recourse shall be for the facility to request in writing to the Commissioner, Department for Medicaid Services, a review by a standing reimbursement review panel to be established by the commissioner. This request must be postmarked within twenty (20) days following notification of the decision of the Director, Division of Reimbursement Operations. Such panel shall consist of three (3) members: one (1) member from the Division of Reimbursement Operations, one (1) member from the Kentucky Association of Health Care Facilities, and one (1) member from the Department for Medicaid Services (but not within the Division of Reimbursement Operations) as designated by the Commissioner, Department for Medicaid Services, with such designated member to act as chairperson of the review panel. A date for the reimbursement review panel to convene shall be established within twenty (20) days after receipt of the written request. The panel shall issue a binding decision on the issue within thirty (30) days of the hearing of the issue, except that additional time may be taken as necessary to secure further information or clarification pertinent to the resolution of the issue. In carrying out the intent and purposes of the program the panel may take into consideration extenuating circumstances 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 7. Implementation Date. The provisions of this regulation shall be effective with regard to payments for services provided on or after October 1, 1990.

Section 8. 907 KAR 1:036, Amounts payable for skilled nursing and intermediate care facility services, is hereby repealed.

ROY BUTLER, Commissioner

HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: February 5, 1991

FILED WITH LRC: February 6, 1991 at 11 a.m.

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, FEBRUARY 15, 1991

PERSONNEL BOARD
(Proposed Amendment)

101 KAR 1:325. Probationary periods.

RELATES TO: KRS 18A.075, 18A.0751, 18A.111

STATUTORY AUTHORITY: KRS Chapter 13A, 18A.0751

NECESSITY AND FUNCTION: KRS 18A.075 requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751 specifies that the Personnel Board promulgate comprehensive administrative regulations for the classified service governing probation. KRS 18A.111 relates specifically to probationary periods.

Section 1. Initial Probationary Period. (1) The initial probationary period shall be computed from the effective date of appointment to the corresponding date in the sixth or 12th month, depending upon the length of initial probationary period, except as provided in KRS 18A.111.

(2) The following job classifications shall require an initial probationary period in excess of six (6) months:

TITLE CODE	JOB CLASSIFICATION	LENGTH OF INITIAL PROBATIONARY PERIOD
2001	Fish and Wildlife Law Enforcement Officer Trainee	12 months
2112	DES Duty Officer	12 months
2113	DES Duty Officer Senior	12 months
2306	Park Ranger	12 months
2312	Park Ranger Captain	12 months
2408	MVE Trainee	12 months
2410	MVE Officer Trainee	12 months
2435	MVE Inspector Trainee	12 months
2480	Water Patrol Officer Second Class	12 months
2481	Water Patrol Officer First Class	12 months
2493	Mounted Security Office	12 months
2494	Mounted Security Sergeant	12 months
2495	Mounted Security Captain	12 months
2496	Mounted Security Officer Trainee	12 months
3254	Boiler Inspector Trainee	12 months
3416	Financial Institution Examiner Trainee	12 months
5105	Vocational Education Instructor	12 months
5108	Industrial and Trade Instructor	12 months
5110	MSHA Instructor	12 months
5126	Teacher of Blind and/or Visually Impaired Rank III	12 months
5127	Teacher of Blind and/or Visually Impaired Rank II	12 months
5128	Teacher of Blind and/or Visually Impaired Rank I	12 months
5131	Teacher of Deaf and/or Hearing Impaired Rank III	12 months
5132	Teacher of Deaf and/or Hearing Impaired Rank II	12 months
5133	Teacher of Deaf and/or Hearing Impaired Rank I	12 months
5141	Education Teacher Rank III	12 months

5142	Education Teacher Rank II	12 months
5143	Education Teacher Rank I	12 months
7203	Forest Guard	12 months
7205	Forest Ranger	12 months
7207	Forest Ranger Unit	12 months
7209	Forest Ranger District	12 months
7213	Forestry District Equip- ment Supervisor	12 months
7215	Nursery Foreman	12 months
7217	Nursery Superintendent	12 months
7221	Forester	12 months
7222	Forester Senior	12 months
7224	Forester Chief	12 months
7226	Forester District	12 months
7228	Forester Regional	12 months
7231	Rural Fire Suppression Technical Advisor	12 months
7232	Forestry Program Specialist	12 months
7233	Forestry Program Coordinator	12 months
7235	Forestry Program Manager	12 months

(3) If the length of the initial probationary period for a job classification is changed, an employee serving an initial probationary period on the effective date of the change shall serve the shorter of the initial probationary periods. When the employee is appointed, the employee's appointing authority shall advise the employee of the period of his initial probation.

Section 2. Promotional Probationary Period.

(1) An employee who satisfactorily completes the promotional probationary period shall be granted status in the position to which he has been promoted. Unless an employee receives notice prior to the end of his promotional probationary period that he has failed to satisfactorily complete the promotional probationary period and that he is being reverted, the employee shall be deemed to have served satisfactorily and shall acquire status in the position to which he has been promoted.

(2) An employee who fails to satisfactorily complete a promotional probationary period shall be reverted to his former position or to a position in the same job classification as his former position. If an employee fails to satisfactorily complete a promotional probationary period, he shall be notified in writing at least ten (10) working days prior to the effective date of his reversion. The notification shall advise the employee of the effective date of reversion. When the employee is notified, copies of the notice of reversion shall be forwarded to the Commissioner of Personnel on the same date notice is delivered to the employee.

(3) The promotional probationary period shall be computed from the effective date of promotion to the corresponding date in the sixth month following promotion, except as provided in KRS 18A.111.

Section 3. Probationary Period Upon Reinstatement. An employee who is reinstated, except an employee ordered reinstated pursuant to KRS 18A.111(3), to a position in the classified service shall serve a promotional probationary period.

THOMAS C. GREENWELL, Commissioner
JAMES M. SHAKE, Chairman

APPROVED BY AGENCY: February 5, 1991

FILED WITH LRC: February 15, 1991 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 21, 1991 at 9:30 a.m. in Suite 28, Fountain Place, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 16, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Commonwealth of Kentucky, Personnel Board, Suite 28, Fountain Place, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Arthur Hatterick, Jr.

(1) Type and number of entities affected: All state agencies with classified employees.

(a) Direct and indirect costs or savings to those affected: No appreciable change.

1. First year: NA

2. Continuing costs or savings: NA

3. Additional factors increasing or decreasing costs (note any effects upon competition): NA

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: NA

1. First year: NA

2. Continuing costs or savings: NA

3. Additional factors increasing or decreasing costs: NA

(b) Reporting and paperwork requirements: NA

(3) Assessment of anticipated effect on state and local revenues: NA

(4) Assessment of alternative methods; reasons why alternatives were rejected: NA

(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: NA

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: NA

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. This regulation must apply equally to all classified employees and all state agencies with classified employees.

PERSONNEL BOARD (Proposed Amendment)

101 KAR 1:365. Appeal and hearing procedures.

RELATES TO: KRS 18A.075, 18A.0751, 18A.095

STATUTORY AUTHORITY: KRS Chapter 13A, 18A.0751

NECESSITY AND FUNCTION: KRS 18A.075 requires the Personnel Board to promulgate comprehensive

administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751 specifies that the Personnel Board promulgate comprehensive administrative regulations providing for the procedures to be utilized by the board in the conduct of hearings.

Section 1. General Provisions. (1) Appeals shall be filed with the Personnel Board through the office of the executive director.

(2) Appeals shall be filed within thirty (30) calendar days as specified in KRS 18A.095 and 101 KAR 1:375. When the 30th day of the filing period falls on a day when the executive director's office is closed during normal working hours, the appeal may be filed on the next regular working day.

(3) All appeals shall be heard in Frankfort, Kentucky.

(4) If the appeal form indicates that the appealing employee has retained counsel at the time of filing an appeal, notice of the scheduled hearing and all future notices, correspondence and orders regarding the appeal shall be transmitted to that attorney and all filings and motions on behalf of the appealing employee shall be submitted by that attorney.

(5) Unless otherwise directed by the board, the executive director shall assign a hearing officer or officers to each appeal. If more than one (1) hearing officer is assigned, one (1) shall be designated as chief. If the appeal is to be heard by the full board, the chairman shall serve as the chief hearing officer.

Section 2. Continuances. (1) Any party may request a continuance of a scheduled hearing for good cause. The request shall be in writing, shall state the reason for the request and include proposed dates for rescheduling. The request shall be filed with the board, through the office of the executive director, and mailed to all parties at least ten (10) days prior to the scheduled hearing.

(2) Any party objecting to a requested continuance may file a written objection stating the reason. Any objection shall be filed with the board, through the office of the executive director, within five (5) days prior to the scheduled hearing. Copies shall be mailed to all parties.

(3) A continuance may be granted in extraordinary circumstances by the hearing officer.

(4) A request for a continuance based on a bona fide personal emergency shall be granted only upon appropriate justification and may be granted without strict compliance with the requirements of this section.

(5) All requests for continuance shall be ruled on by the hearing officer. At the direction of the hearing officer, the executive director shall execute and transmit to all parties an interim order either granting or denying the continuance. If the continuance is granted, the interim order shall indicate the date on which the hearing has been rescheduled or that the hearing has been continued generally.

Section 3. Prehearing Procedures. (1) All motions, requests or filings shall be in writing, filed with the board through the office of the executive director, and served on all other parties.

(2) Any interim order by the hearing officer

shall be executed and transmitted by the executive director to all parties. Interim orders are not reviewable by the board except on final review, unless otherwise provided in the interim order.

(3) If an appealing employee retains counsel subsequent to filing his appeal, the attorney shall file a written entry of appearance. All future notices, correspondence, and orders regarding the appeal shall be transmitted to that attorney and all future filings and motions on behalf of the appealing employee shall be submitted by that attorney.

(4) An appealing employee shall notify all parties and the board in writing of any change of address.

(5) A list of witnesses who may be called to testify shall be filed by each party at least five (5) days prior to the scheduled hearing. Failure of either party to file a witness list within the prescribed time shall restrict that party to rebuttal.

(6) Subpoena forms shall be available in the office of the executive director and shall be issued by the executive director. Preparation and service of the subpoena and compliance with the subpoena are the responsibility of the party requesting the subpoena.

(7) Depositions may be taken only in extraordinary circumstances and upon authorization by the hearing officer. A request to take a deposition shall be filed at least seven (7) days prior to the scheduled hearing. Any objections shall be filed prior to the scheduled hearing.

(8) Upon agreement of all parties and approval by the hearing officer, two (2) or more appeals which involve the same or similar facts may be consolidated. Upon motion of any party, or upon his own motion, the hearing officer may join other parties as necessary to appropriately consider the matter on appeal.

(9) The hearing officer may schedule a prehearing conference to define the issues, determine which facts, if any, can be stipulated, rule on pending motions or requests, and address any other matter which will facilitate the hearing.

(10) Any agreed settlements shall be submitted in writing for the full board's review and final action.

(11) The executive director, general counsel, and board staff may participate in ex parte communication concerning pending and impending proceedings before the board relating to:

- (a) Procedural questions.
- (b) Scheduling of hearings.

Section 4. Conduct of Hearing. (1) Unless the appeal is heard by the full board, the hearing officer assigned shall hear the appeal. The hearing officer shall be empowered to make all decisions and rule on all matters concerning the conduct of the hearing. He shall require an orderly and proper decorum at the hearing, and shall be authorized to require compliance with his rulings.

(2) Failure of any party to appear at the hearing may result in an adverse ruling against that party.

(3) The rules of civil procedure do not apply.

(4) The hearing officer shall direct one of the parties to present its case first, examine witnesses and submit documentation, subject to cross examination. The opposing party shall then

present its case, examine witnesses and submit documentation, subject to cross examination.

(5) All parties shall provide three (3) copies of any exhibit which is to be introduced as evidence. Copies shall be prepared prior to the hearing.

(6) The proceedings and evidence presented shall be recorded by a court reporter.

Section 5. Findings and Recommendations; Exceptions. (1) Following completion of the hearing, the hearing officer shall prepare a recommended order, including findings of fact and recommendations, based on the evidence, facts and information presented at the hearing and contained in the record.

(2) At the direction of the hearing officer, the recommended order shall be entered and transmitted by the executive director to all parties.

(3) Any party may submit written exceptions to the findings of fact and recommendations. Exceptions shall be filed with the board through the office of the executive director within ten (10) days of entry of the recommended order, unless otherwise directed by the hearing officer at the time the recommended order is entered, and served on all parties.

(4) Any party may submit a written response to exceptions filed with the board. The response shall be filed with the board through the office of the executive director within twenty (20) days of entry of the recommended order, unless otherwise directed by the hearing officer at the time the recommended order is entered, and served on all parties.

(5) Exceptions and responses not timely filed shall be noted and made a part of the record, but shall not be considered by the board in making a final determination.

(6) In appeals where the recommended order entered by the hearing officer proposes immediate reinstatement, the appointing authority objecting to such a recommendation shall file a written request that reinstatement be stayed until appeals are exhausted. Such objection and request shall completely state the grounds relied upon by the appointing authority and be filed with the board and served upon the appellant or his counsel within fifteen (15) days of date the recommended order is entered.

Section 6. Board Review and Action. (1) The board may adopt as submitted the findings and recommendations of the hearing officer, amend the findings or recommendations based on evidence or information contained in the record prior to adoption, or order the appeal remanded to the hearing officer for further action as appropriate.

(2) Following consideration by the full board, a final order shall be entered disposing of the appeal. The order shall be prepared, executed and entered at the direction of the board by the secretary to the board. Copies of the order shall be transmitted to all parties by the executive director.

THOMAS C. GREENWELL, Commissioner
JAMES M. SHAKE, Chairman

APPROVED BY AGENCY: February 5, 1991

FILED WITH LRC: February 15, 1991 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 21, 1991 at 9:30 a.m. in Suite 28, Fountain

Place, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 16, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Commonwealth of Kentucky, Personnel Board, Suite 28, Fountain Place, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Arthur Hatterick, Jr.

(1) Type and number of entities affected: All state agencies with classified employees.

(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: Minimal

(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: 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: 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. This regulation must apply to all classified employees and all state agencies with classified employees. Further tiering has not been utilized in the administrative regulations of the Personnel Board in that the board is a quasi-judicial body and as such has no latitude not granted by statute to utilize tiering methods outlined in KRS 13A.210.

GENERAL GOVERNMENT CABINET
Board of Nursing
(Proposed Amendment)

201 KAR 20:161. Investigation and disposition of complaints.

RELATES TO: KRS 314.011(13), 314.031, 314.071(4), 314.091, 314.991(3)

STATUTORY AUTHORITY: KRS [Chapter] 314.131(1)
NECESSITY AND FUNCTION: To protect and safeguard the health and safety of the citizens of Kentucky and to provide for procedures in the receipt and disposition of complaints.

Section 1. Receipt of Complaints. (1) The board shall receive and process each complaint made against any licensee, applicant or unlicensed individual if the complaint alleges acts which may be in violation of the provisions of KRS Chapter 314.

(2) Complaints shall be received by the executive director or staff member[(s)] designated by the board to investigate complaints.

(3) All complaints shall be in writing and shall be dated and fully identify the complainant by name and address. The executive director or president of the board may file a complaint based upon information received by oral, telephone or written communications if the facts of the complaint are determined to be accurate and indicate acts which may be in violation of the provisions of KRS Chapter 314.

(4) A certified copy of a court record for a misdemeanor or felony conviction shall be considered a valid complaint.

(5) The person responsible for receiving complaints shall make an investigation to verify facts in complaints and to collect additional information. [If it is determined the facts are true and of sufficient gravity to warrant further action,] The staff may request an informal conference with the individual against whom the complaint has been made.

(6) The person responsible for receiving complaints shall evaluate information received to determine if an apparent violation of the provisions of KRS Chapter 314 has been committed, consult with legal counsel as indicated, and shall make recommendations for disposition of complaint.

(7) All preliminary information will be treated as confidential during the investigation and shall not be disclosed to board members or to the public. If a board member has participated in the investigation or has substantial knowledge of facts prior to a hearing on the complaint that could influence an impartial decision by the member, that member shall not participate in the adjudication of the complaint.

Section 2. Disposition of Complaints. (1) Administrative hearing.

(a) The board may schedule a formal administrative hearing to determine whether disciplinary action will be taken on the grounds set out in KRS 314.091.

(b) At least thirty (30) days prior to an administrative hearing, the individual shall be sent a letter of the specific charges by certified mail and shall be advised of legal rights in accordance with KRS 314.091. Service of process shall be deemed complete upon mailing

a copy of the letter of charges by certified mail to the last known address of the licensee or applicant, whether or not said letter is subsequently claimed by addressee.

(c) All subpoenas shall be issued by the executive director on behalf of the board. The person requesting the subpoenas shall bear the cost of serving the subpoenas, paying witness fees and expenses. The board shall bear the cost of witnesses subpoenaed in the board's behalf.

(2) Agreed order.

(a) The board may enter into an agreement with an applicant/licensee for voluntary surrender, suspension, probation, reinstatement, [or] limitation of license or [,] public [or private] reprimand, and[/or] to impose a civil penalty. The terms of the agreement may include other conditions or requirements to be met by applicant/licensee.

(b) The agreed order may contain terms which insure protection of public health and safety, or which serve to educate or rehabilitate the applicant/licensee.

(c) The agreed order when approved by the board will terminate the investigation of a specific complaint.

(3) Consent decree.

(a) If a nurse or applicant agrees to waive her right to a hearing and there is no evidence of intentional violation of the mandatory licensure provisions of KRS Chapter 314, the board may issue a consent decree in accordance with the provisions of KRS 314.991 to impose a civil penalty [of not more than \$1000] against a nurse or an applicant for licensure as a nurse or for registration as an advanced registered nurse practitioner who has:

1. Practiced as a nurse in the Commonwealth of Kentucky without a temporary work permit or a current, active license issued by the board prior to filing an application for licensure.

2. Practiced as an advanced registered nurse practitioner in the Commonwealth of Kentucky without current, active registration issued by the board prior to filing an application for registration.

3. Practiced as an advanced registered nurse practitioner after [notification by either the board or the certifying agency of] expiration of the current certification granted by the appropriate national organization or agency.

4. Practiced pursuant to a license or work permit obtained on the basis of a check for an application fee which was returned unpaid by the bank.

5. [Elected and] Qualified for a consent decree to cure noncompliance with continuing education requirements, as set forth in 201 KAR 20:215, Section 3.

(b) The use of a consent decree shall be restricted to only those applicants or nurses described above and who have not violated any other provision of KRS Chapter 314 or any other laws of the Commonwealth of Kentucky or of the United States.

(c) The license or registration may be issued by board staff after the applicant or nurse meets all requirements for licensure or registration and after payment of the civil penalty by applicant or nurse.

(d) Upon ratification by the board of the consent decree the investigation of the specific complaint will be terminated.

(e) If consent decree is not ratified by the board, a letter of charges may be issued

pursuant to KRS 314.091 and the matter resolved as directed therein.

Section 3. The executive director or person[(s)] responsible for receiving complaints shall notify the complainant and the person against whom the complaint was made of the final disposition of the case.

ANGELA LASLEY, President

APPROVED BY AGENCY: February 5, 1991

FILED WITH LRC: February 11, 1991 at 1 p.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on March 22, 1991 at 10 a.m. in Room 420 of the Professional Towers Building, 4010 Dupont Circle, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 17, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 4010 Dupont Circle, Louisville, Kentucky 40207.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nathan Goldman

(1) Type and number of entities affected: All RNs and LPNs licensed in Kentucky; approximately 40,000 individuals.

(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: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not 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:

(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? Tiering is not applicable.

GENERAL GOVERNMENT CABINET
Board of Nursing
(Proposed Amendment)

201 KAR 20:162. Procedures for disciplinary hearings.

RELATES TO: KRS 314.011, 314.031, 314.071(4), 314.091, 314.161, 314.991

STATUTORY AUTHORITY: KRS [Chapter] 314.131(1)

NECESSITY AND FUNCTION: To provide for the orderly conduct of hearings and to protect the due process rights of nurses and applicants.

Section 1. Purpose and Rule of Construction. The purpose of this regulation is to enable the board to conduct an orderly and reasonably expeditious search for the truth while ensuring that due process is afforded to the licensee or applicant. Accordingly, this regulation shall be liberally construed so as to aid that process.

Section 2. Composition of the Hearing Panel.

(1) Disciplinary actions shall [will] be heard by a hearing panel consisting of two (2) members of the board and a hearing officer, who may be an assistant attorney general or other attorney designated by the board [an assistant attorney general who will serve as the hearing officer].

(2) A hearing officer and one (1) member of the board may conduct a hearing for consideration of reinstatement of a revoked or suspended license and/or consideration of removal of a license from probationary status.

(3) A board member who has participated in the investigation of a disciplinary action or who has discussed the merits of an action with the agency staff or who has personal knowledge of the facts giving rise to a disciplinary action shall [will] not sit on a panel hearing that particular action.

(4) The hearing shall be transcribed by a court stenographer. [Staff members of the board, legal counsel for the board and a court stenographer will also be present for the hearing.]

Section 3. Rights of the Licensee or Applicant. The licensee or applicant shall have the right to be present and to be heard by the hearing panel, to be represented by legal counsel, to present evidence, to cross examine witnesses presented by the board, and to make both opening and closing statements. The licensee or applicant shall also have the right to have subpoenas issued in accordance with 201 KAR 20:161.

Section 4. Prehearing Disclosure of Evidence.

(1) By the board. The names, addresses and phone numbers of witnesses expected to be called by the board and copies of documents to be introduced at the hearing shall be made available upon request of the licensee or applicant. The licensee or applicant shall also be permitted to examine any items of tangible evidence in the possession of the board, upon request. [The licensee or applicant shall have the right to inspect the investigative file relating to a disciplinary action either in person or by legal counsel. The names, addresses and phone numbers of witnesses expected to be called by the board will be made available. Copies of documentary evidence may be obtained upon the payment of a reasonable charge

therefore, except documents that may not be reproduced under the provisions of state or federal law. Nothing in this section shall be construed as giving the licensee or applicant the right to examine or copy the personal notes, observations, or conclusions of the board's investigators nor shall it be construed as allowing access to the work product of legal counsel for the board. Further, appointment for the examination of an investigative file must be made upon reasonable notice, during regular office hours, and at a time convenient to all parties. The licensee or applicant shall also be permitted to examine any items of tangible evidence in the possession of the board.]

(2) By the licensee or applicant. At least ten (10) days prior to the scheduled hearing date the licensee or applicant shall furnish to the [investigator or] legal counsel for the board copies of any documents which the licensee or applicant intends to introduce at the hearing, and a list of the names, addresses, and home and work telephone numbers of any witnesses to be presented to the hearing panel by the licensee or applicant. The licensee or applicant shall also produce for inspection any items of tangible evidence within its possession or control which it intends to introduce at the hearing.

(3) At least ten (10) days prior to the scheduled hearing date the licensee or applicant shall also file with the board [a sworn (under oath)] written response to the specific allegations contained in the notice of charges. Allegations not properly answered will be deemed admitted. The panel may for good cause permit the late filing of an answer.

(4) Sanctions for failure to comply with prehearing disclosure. Should a party fail to comply with this section the panel hearing the disciplinary action may refuse to allow into evidence such items or testimony as have not been disclosed, may continue the action to allow the opposing party a fair opportunity to meet the new evidence, or may make such other order as it deems appropriate. Sanctions will be applied by the hearing officer but may be overridden by the unanimous vote of the board members of the panel.

(5) Continuing duty to disclose. After disclosure has been completed each party shall remain under an obligation to disclose any new or additional items of evidence or witnesses which may come to its attention. Such additional disclosure shall take place as soon as practicable. Failure to disclose may result in the exclusion of the new evidence or testimony from the hearing.

Section 5. Order of Proceeding. (1) The hearing officer will call the meeting to order and will identify the parties to the action and the persons present [and will read the letter of notice and charges]. The hearing officer will ask the parties to state for the record any objections or motions. The hearing officer will rule upon any objections or motions, subject to be overridden by the unanimous vote of the board members of the panel. Opening statements will then be made, with the attorney for the board proceeding first. Either side may waive its opening statement, but opening statements may not be reserved.

(2) The taking of proof will commence with the calling of witnesses on behalf of the board.

Such witnesses will be examined first by the attorney for the board, then by the licensee or applicant or that person's attorney, and finally by members of the hearing panel. Rebuttal examination of witnesses will proceed in the same order. Documents or other items may be introduced into evidence as appropriate.

(3) Upon conclusion of the case for the board the licensee or applicant will call its witnesses. Such witnesses will be examined first by the licensee or applicant or that person's attorney, then by the attorney for the board, and finally by the members of the hearing panel. Rebuttal examination of those witnesses will proceed in the same order. [Again,] Documents or other evidence may be introduced as appropriate.

(4) At the conclusion of the proof the parties will be afforded the opportunity to make a closing statement, with the attorney for the board always proceeding last. The hearing officer may impose reasonable limitations upon the time allowed for opening and closing statements.

(5) The hearing officer will also be responsible for enforcing the general rules of conduct and decorum and expediting the hearing by keeping the testimony and exhibits relevant to the case.

Section 6. Rules of Evidence. (1) The hearing panel shall not be bound by the technical rules of evidence. The hearing panel may receive any evidence which it considers to be reliable, including testimony which would be hearsay if presented in a court of law. Documentary evidence may be admitted in the form of copies or excerpts, and need be authenticated only to the extent that the panel is satisfied of its genuineness and accuracy. Tangible items may be received into evidence without the necessity of establishing a technical legal chain of custody so long as the board is satisfied that the item is what it is represented to be and that it is in substantially the same condition as it was at the time of the events under consideration.

(2) The panel retains the discretion to exclude any evidence which it considers to be unreliable, incompetent, irrelevant, immaterial or unduly repetitious. Rulings on objections to evidence will be made by the hearing officer but may be overridden by the unanimous vote of the board members of the panel.

Section 7. Recommendation by the Hearing Panel. (1) Upon the conclusion of the hearing the panel will retire into closed session for purpose of deliberations. Each board member of the panel will have one (1) vote. In case of a tie vote, the tie will be broken by the hearing officer.

(2) At the conclusion of the panel's deliberations it will propose an order based upon the evidence presented. The hearing officer shall draft a proposed decision including findings of fact and conclusions of law consistent with the panel's deliberations as well as a recommended order to be submitted to the full board. A copy of the proposed decision will be sent to the licensee or applicant by certified mail and to all members of the board as well as the attorney for the board.

Section 8. Written Arguments or Exceptions to a Proposed Decision. The licensee or applicant will have twenty (20) days from the date the

proposed decision is mailed to file with the board written arguments or exceptions to any portion of the proposed decision. The twenty (20) day period may be extended at the discretion of the board president [in unusual circumstances]. The attorney for the board shall have ten (10) days from the expiration of the period allowed to the licensee or applicant to file responses on behalf of the board, which period may be extended at the discretion of the board president.

Section 9. Decision by the Board. The board, at the next scheduled regular meeting or as soon thereafter as may be arranged, will review the proposed decision and consider the evidence presented, and, after consideration of any written arguments or exceptions which have been presented, will make a final determination as follows:

(1) Adopt the proposed decision as submitted; or

(2) Modify the proposed decision as deemed necessary; or

(3) Remand the case to the hearing panel for further evidence. The hearing panel will then schedule another hearing to obtain additional evidence. The board will then consider the findings of fact and recommendations from the original hearing and any additional hearing as well as additional written arguments or exceptions as the parties have presented and shall render its final decision in the case.

Section 10. Record to be Maintained. A transcript of the testimony taken during the hearing shall be kept by the board. A copy of that transcript shall be available to the licensee or applicant from the court stenographer or, if the stenographer is unable to furnish a copy, from the board upon request and payment of the appropriate fee. A copy of the transcript of the hearing shall be available to all board members. Any documents or exhibits introduced into evidence shall be kept with the transcript or as ordered by the hearing officer.

Section 11. Continuances; Proceedings in Absentia. It is the policy of the board not to postpone cases which have been scheduled for hearings absent good cause. A request by a licensee or applicant for a continuance may be considered if communicated to the board [staff] reasonably in advance of the scheduled hearing date and based upon good cause. The decision whether to grant a continuance will be made by the executive director [staff] of the board or his designee. However, the burden is upon the licensee or applicant to be present at a scheduled hearing. Failure to appear at a scheduled hearing for which a continuance has not been granted in advance will be deemed a waiver of the right to appear and the hearing will be held as scheduled.

Section 12. Hearing Fee. If the order of the board is adverse to a licensee or applicant, or if the hearing is scheduled at the request of a licensee or applicant, a hearing fee in an amount equal to the cost of stenographic services shall [may] be assessed against the licensee or applicant for relief from sanctions previously imposed by the board pursuant to the provisions of KRS Chapter 314. In cases of

financial hardship, the board may waive all or part of the fee.

Section 13. Copy to be Provided to Licensee or Applicant. A copy of this regulation will be provided to the licensee or applicant prior to the hearing.

ANGELA LASLEY, President

APPROVED BY AGENCY: February 5, 1991

FILED WITH LRC: February 11, 1991 at 1 p.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on March 22, 1991 at 10 a.m. in Room 420 of the Professional Towers Building, 4010 Dupont Circle, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 17, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 4010 Dupont Circle, Louisville, Kentucky 40207.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nathan Goldman

(1) Type and number of entities affected: All RNs and LPNs licensed in Kentucky; approximately 40,000 individuals.

(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: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not 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:

(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? Tiering is not applicable.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Water (Proposed Amendment)

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

RELATES TO: KRS 223.400 through 223.460, 223.991

STATUTORY AUTHORITY: KRS 223.420, 223.435, 224.020

NECESSITY AND FUNCTION: This regulation provides standards and requirements for the commercial practice of water well drilling. These requirements are necessary to ensure that the complete well provides an appropriate quality of product to the consumer while protecting the ground water resources of the Commonwealth. This regulation [furthermore] fulfills the mandate of KRS 223.435 to promulgate regulations establishing standards of practice for water well construction and of KRS 224.020 to protect water quality. [a requirement of law.]

Section 1. Definitions. The terms used in 401 KAR 6:320 and this regulation shall have the meanings given in KRS 223.400, 224.005, or in this section:

(1) "Abandoned" means a well unsuitable for its intended use that has been sealed or plugged to prevent entry of surface water and to prevent mixing of water from different aquifers.

(2) "Annular space" means the opening between a well-bore or excavation and the well casing or between a casing pipe and a liner pipe.

(3) [(2)] "Aquifer" means a water-bearing formation that transmits water in sufficient quantity to supply a well.

(4) "Bedrock" means any solid rock exposed at the surface of the earth or overlain by unconsolidated materials or soils.

[(3)] "Cabinet" means the Natural Resources and Environmental Protection Cabinet.]

(5) [(4)] "Consolidated formation" means a geological formation which is [firm, such as] bedrock.

(6) [(5)] "Construction" means all acts necessary for obtaining ground water by wells, including drilling or excavation of the well and installation or modification of casing, but excluding the installation of permanent pumps and pumping equipment.

(7) [(6)] "Driller" means water well driller as defined in KRS 223.400.

(8) [(7)] "Established ground surface" means the elevation of the ground surface at the site of the well.

(9) [(8)] "Finished ground surface" means the final or permanent elevation of the ground surface at the site of the well.

(10) "Impervious material" means any material which will not permit the passage of water at a rate greater than 1×10^{-7} centimeters per second (cm/sec) (e.g., clay).

[(11)] [(9)] "Modification" means any change, replacement, or other alteration of the water well. This includes, but is not limited to deepening of a well, replacing or repairing a casing, replacing [repair] or repairing a [replacement of] well screen, installing [installation of] a pitless adapter and any other changes of a well structure. Bailing and

pump replacement are not modifications.

(12) "Pitless adapter" means a device designed for attachment to one (1) or more openings through a well casing. It shall be constructed so as to prevent the entrance of contaminants into the well through the opening, protect the water supply lines and plumbing from freezing and provide access to water system parts within the well.

(13) "Pitless unit" means an assembly which extends the upper end of the well casing to above the finished ground surface. It shall be constructed so as to prevent the entrance of contaminants into the well, conduct water from the well, protect the water lines from freezing, and shall provide full access to the well and to water system parts within the well.

(14) [(10)] "Pumping water level" means the elevation of the water surface in a well when water is discharged during pumping.

(15) "Rig operator" means any individual under supervision of a driller for whom an application has been submitted and who has been given a rig operator card from the cabinet and who may from time to time be in charge of well construction in the driller's absence.

(16) "Rig operator card" means an identification card provided to a rig operator by the cabinet after a certified driller has submitted an application requesting a card for the rig operator.

(17) [(11)] "Static water level" means the level at [of] which water stands in a well when no water is being taken from the aquifer either by pumping or by free flow.

(18) [(12)] "Unconsolidated formation" means a geological formation [above bedrock,] such as sand or gravel, which has a tendency to cave in under natural conditions.

(19) "Well unsuitable for its intended use" means a well:

(a) The use of which has been permanently discontinued;

(b) Which is in such a state of disrepair that it cannot be used to supply groundwater;

(c) Which presents a health hazard;

(d) From which groundwater for useful purposes is not obtainable; or

(e) Bore-holes which:

1. Are dry;

2. Have caved in; or

3. Are unsuitable for further development and well construction.

Section 2. Scope. This regulation provides minimum standards for location, construction and modification of water wells [as defined in Kentucky Revised Statutes, Chapter 223]. After the effective date of this regulation, no water well or monitoring well [as defined above] shall be constructed or modified contrary to the provisions contained in this regulation. Sections 3 through 12 of this regulation apply to water wells except monitoring wells. Section 13 of this regulation applies to monitoring wells. [herein.]

Section 3. General Requirements. (1) Certified driller required. All water wells subject to this regulation shall be constructed only by persons having a valid certificate issued in accordance with KRS [under Kentucky Revised Statutes, Chapter 223, Sections] 223.400 through 223.460 and 401 KAR 6:320, or by persons under [in] the supervision [employ] of [such]

certificate holders and having a rig operator card.

(2) Reports. Within thirty (30) days after a water well has been constructed or modified, the driller shall submit a report of construction to the cabinet [on such forms as are prescribed and furnished by the cabinet]. The report shall be submitted on the form entitled Kentucky Water Well Record (DEP-4045).

(3) Variance.

(a) If conditions are believed to exist at [of] a proposed installation site which preclude compliance with the requirements of this regulation, the driller may request a variance by submitting to the cabinet a Kentucky Water Well Variance Request Form (DEP-6036) [written request] outlining a specific proposal to be used in lieu of compliance with this regulation. The request shall include a thorough description of the site (lot size, the location of sewers, septic tanks, buildings, seepage fields, and other sources of contamination on the property and adjacent property with distances shown to the proposed well), the section number and brief summary of the provisions for which a variance is requested, and a complete justification as to why [the cabinet should approve] the variance is needed and how the alternate standard ensures the protection of the quality of the groundwater and the protection of public health and safety. The driller shall give special emphasis [should be given] to ensuring the protection of the public's health and safety. The driller shall provide a description of site-specific geological and soil conditions [shall also be included]. The cabinet will notify the applicant in writing of its decision either to grant or deny the variance based upon a determination by the cabinet that the proposed variance shall ensure the protection of the quality of the groundwater and protection of the public health and safety. The driller shall request a variance and shall obtain approval [shall be requested and approved] before well construction begins. In case of an emergency, where the delay incurred due to the above-described variance procedure would cause undue hardship or loss of life to the intended user, the driller may obtain an oral variance, provided the above-listed information is provided to the cabinet within fifteen (15) days of the date such oral variance is issued.

(b) After any variance is issued regarding the location of a well with respect to various contamination sources in Section 6 of this regulation, the driller for which a variance has been issued[, the driller] shall take two (2) water samples from the well and have them analyzed for fecal coliform at a cabinet-approved laboratory. [(A listing of these laboratories is available on request. Other laboratories may be approved by the cabinet on a case-by-case basis.)] The cabinet may require analysis for other water quality parameters which may [might reasonably be expected to] exist in conjunction with the source of potential pollution as [if] necessary to protect the health or safety of potential users. At the time the variance is approved, the cabinet will notify the driller as to what these parameters will be. One (1) sample shall be taken within thirty (30) days and the second sample shall be taken within sixty (60) days, but not less than thirty (30) days, after completion of the well.

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

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

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

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

(6) The documents listed in paragraphs (a) and (b) of this subsection are adopted and filed herein by reference. Copies of these documents may be obtained from the Natural Resources and Environmental Protection Cabinet, Division of Water, 18 Reilly Road, Frankfort, Kentucky 40601. (502) 564-3410. The material is available for public inspection and copying during business hours of 8 a.m. to 4:30 p.m. at the Division of Water, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601. (502) 564-3410.

(a) Kentucky Water Well Record (DEP-4045) (September 15, 1987); and

(b) Kentucky Water Well Variance Request Form (DEP-6036) (January 1, 1991).

Section 4. Design Factors. The driller shall design [of] each well to [shall] include the following:

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

(2) Geological formations. The well construction shall be adapted to the local or site-specific geologic formations and ground water conditions [at the site].

(3) Undesirable geological formations. Water bearing formations shall be prevented from

contributing to a well [excluded] by installing casing or a liner and properly sealing when such formations contain undesirable water or when the primary purpose for the well is to withdraw water from a deeper formation.

(4) Capacity. The well shall be constructed with the capacity [Capability of the well] to produce as much quantity of the desired water [quantity] as the aquifer or aquifers can safely furnish.

(5) Durability. Construction methods and materials shall provide a durable well capable of maintaining safe water and protecting the aquifer over its useful lifetime and until the well is properly sealed and abandoned.

(6) Pitless well adapters. No well casing shall be cut off or cut into below ground surface except by a driller to install a pitless well adapter or pitless well unit. The well casing shall extend at least four (4) inches above established ground surface. If practicable, the well casing shall extend above any known conditions of flooding or run-off from the surrounding land after installation of a pitless well adapter or pitless well unit. Construction or installation of [.] pitless well adapters or pitless well units shall be done in such a manner to provide a leak-proof seal [shall comply with the requirements of the National Sanitation Foundation (NSF) Standard Number C-8, entitled Pitless Well Adapters, May 1970 edition and shall bear the NSF seal].

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

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

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

(b) When the upper formations are composed of materials with a permeability of 1×10^5 or greater, [more pervious than clay or loam,] the lateral distances in Table A shall be doubled [increased (i.e. double the distance for highly pervious gravel formation)].

(3) Flood water. The construction of wells in locations subject to flooding shall [should] be avoided. If no reasonable alternate site exists, wells may be constructed in flood zones only if water-tight construction is provided. If

practicable. [provided special protective construction is included.] the casing of the well shall [should] terminate not less than two (2) feet above the maximum known flood elevation. [In all instances, the casing shall terminate sufficiently above grade or above any known conditions of flooding by drainage or run-off from surrounding land.]

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

(a) Adjacent to building. When a well must be located adjacent to a building, it shall be so located that the center line of the well extended vertically will clear any projection from the building by not less than five (5) [two (2)] feet.

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

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

[(2) Unconsolidated formations with nonstable overburden.] In wells constructed in unconsolidated formations which extend the full depth of the well, including the screened area, the driller shall install [have] a permanent casing, [installed] governed by the pumping level in the finished well. For pumping levels greater than twenty (20) feet below the ground surface, the driller shall install casing that [shall] extends five (5) feet below the pumping level. For pumping levels twenty (20) feet or less below the ground surface, the driller shall install casing that [shall] extends ten (10) feet below the pumping level. Under no conditions shall a driller install [there be] less than twenty (20) feet of permanent casing, excluding the screened interval. The driller shall fill the annular space between the casing and the drill hole. This may be accomplished by constructing an upper drill hole having a diameter four (4) inches greater than the inner diameter of the casing to be installed and extending to a depth of at least twenty (20) feet. The driller shall seal the upper drill hole with impervious drill cuttings, native clay, bentonite, or a neat cement-bentonite slurry after the casing is in place. Cable-tool drilling may accomplish proper seal through dry bentonite application while driving casing. [installed. (See Illustration A.)]

[(3) Unconsolidated formations with stable overburden. Wells constructed in geological formations such as sand and gravel which lie below clay, glacial till or other relatively stable soil shall have a casing installed governed by the pumping level. For pumping levels greater than twenty (20) feet, the casing shall extend five (5) feet below the pumping level. For pumping levels twenty (20) feet or less, the casing shall extend ten (10) feet below the pumping level. Under no conditions shall there be less than twenty (20) feet of permanent casing installed. Since the stable overburden cannot be expected to form a continuous contact seal with the casing, sealing of the annular opening between the casing and

the drill hole must be effected. This can be accomplished by constructing an upper drill hole having a diameter four (4) inches greater than the inner diameter of the casing to be installed and extending to a depth of at least twenty (20) feet. The upper drill hole shall be sealed with drill cuttings, clay slurry or cement grout after the casing is in place. (See Illustration B.)]

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

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

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

(c) In wells designed for placement of an artificial gravel pack, the driller shall [be] provide[d] with] an adequate screen having openings sized on the basis of the grain size of the gravel. The driller shall develop the well [shall be developed] to ensure free entry of water without sediment.

(d) Under no circumstances shall the gravel pack extend to any closer than twenty (20) feet of the established ground surface.

Section 7. Drilled Well Construction in Consolidated Formations. (1) Where the soil overburden is [less than] thirty (30) feet or less in thickness, the driller [well casing] shall drive or otherwise provide a watertight seal [extend] to a depth of at least twenty (20) feet below ground level and at least ten (10) feet into [firm] bedrock. The diameter of the drill hole shall be a minimum of one and three-quarter [$1\frac{3}{4}$] [two (2)] inches greater than the inner diameter of the casing. The driller shall fill the annular space [shall be sealed] with a neat cement-bentonite slurry [grout], bentonite, native clay, impervious drill cuttings, or a mechanical packer in combination with one (1) or more of the above materials. The driller shall install plastic casing as required in subsection (7) of this section.

(2) Where the soil overburden is greater than thirty (30) feet in thickness, and the driller shall install the casing to a watertight seal, a minimum of two (2) feet into stable rock. When the casing is driven, the driller shall fit the

casing with a drive shoe and drive the casing to a watertight seal. The driller shall seal the [shall be fitted with a drive shoe, when driven, and shall be driven to a firm seat in the limestone or dolomite and the] annular space around the casing [through the soil overburden sealed] with impervious drill cuttings, native clay [slurry], bentonite, a neat [or] cement-bentonite slurry or a mechanical packer in combination with one (1) or more of the above materials. The driller shall install [grout. (See Illustration E.)] plastic casing [shall be installed] as required in subsection (7) [(5)] of this section.

(3) Where the well is drilled to obtain water from the bedrock, beneath a thick (greater than thirty (30) feet) overburden of soil or unconsolidated formations which are unstable and will settle back around the casing, the driller shall drive the well casing to a watertight seal. In instances where a temporary surface casing must be installed to stabilize the bore-hole and in order to facilitate drilling and permanent casing installation, the driller shall fill the annular space around the well casing with impervious drill cuttings, bentonite, a neat cement-bentonite slurry or native clay to a depth of at least twenty (20) feet. The driller shall not install plastic casing under these conditions.

(4) [(3)] Where the well is drilled to obtain water from a lower formation the driller shall extend the casing [shall extend] at least two (2) feet below [through] any creviced formation or fractured formation encountered and drive or install the casing watertight into stable [be seated in form] bedrock. The diameter of the drill hole through the creviced formation shall be a minimum of one and three-quarter (1 3/4) [two (2)] inches greater than the inner diameter of the casing. The driller shall seal the annular space [shall be sealed] with a neat cement-bentonite slurry [grout], bentonite, native clay, impervious drill cuttings, or a mechanical packer in combination with one (1) or more of the above materials. Where an outer casing is left in place, the driller shall seal the annular space between the casings [shall be cement grouted or the annular opening around the outer casing shall be sealed] with impervious drill cuttings, native clay [slurry], bentonite, a neat cement-bentonite slurry [grout], or a mechanical packer in combination with one (1) or more of the above materials. In instances where voids are encountered, the driller shall extend the casing a minimum of two (2) feet into stable rock [at depth, an effective seal must be installed] below the lowermost void and shall seal the annular space with impervious drill cuttings, bentonite, a neat cement-bentonite slurry, clay or a mechanical packer in combination with one (1) or more of the above materials. [(See Illustration D.)]

(5) [(4)] Flowing artesian well. All flowing artesian wells shall be shut in. The driller shall install casing [shall be installed] to eliminate flow in the annular space and shall seal the annular space [opening] between drill hole and casing [sealed] with a neat cement-bentonite slurry [grout], bentonite, native clay, impervious drill cuttings, or a mechanical packer in combination with one (1) or more of the above materials.

(6) In all wells where the casing is driven, the driller shall not use plastic casing.

(7) [(5)] Plastic casing installations. When plastic well casing is installed, the drill hole shall be a minimum of two (2) inches greater than the inner diameter of the casing. The driller shall clean the pipe spigot and socket [shall be cleaned] and treat[ed] it with a cleaner-primer. The driller shall solvent cement the joints [shall be solvent cemented] with a quick-setting cement, or thread[ed] and couple[d] the joints. Other types of joints may be evaluated and approved by the cabinet. The driller shall cement a coupling [shall be cemented] on the bottom of the casing to stabilize it in the hole or centralizers used. The driller may use a steel nipple five (5) to ten (10) feet long [may be used] on the bottom of the casing in lieu of the coupling when the well will be continued by drilling out through the bottom of the casing. In [rock] wells completed in consolidated formations, the driller shall set the casing [shall be set] into [the] bedrock a minimum of ten (10) feet where the overburden is [less than] thirty (30) feet or less in thickness and a minimum of two (2) feet where the overburden is greater than thirty (30) feet in thickness to prevent leaking around the end of the casing. In wells in bedrock where the well will be drilled to total depth before casing is installed, the driller shall install [In areas where the water is obtained at the rock surface, the casing shall be set at or just above the rock.] a watertight mechanical [formation] packer at [shall be installed just above] the bottom of the lowermost string of casing. The driller shall seal the annular space [opening] between the casing and wall of the drill hole [shall be sealed] with bentonite immediately above the packer. The driller shall fill the annular space above the bentonite seal with impervious drill cuttings, native clay, bentonite, or a neat cement-bentonite slurry. [slurry or neat cement grout.]

(8) In areas where the overburden is at least fifteen (15) feet thick and water can only be obtained at or just above the rock surface, the driller shall set the casing at or just above the rock. Under these conditions, the driller shall seal the lowermost part of the annular space between the casing and wall of the drill hole with a minimum of two (2) feet of bentonite. The driller shall fill the remaining annular space above the bottom seal to the surface with a neat cement-bentonite slurry, bentonite or impervious clay. There shall be no less than twelve (12) feet of overburden from the ground surface to the bottom of the seal. If the casing is to be slotted or a screen installed, the driller shall not extend the slotted section above the bottom of the bentonite or cement seal. If water is encountered in drilling into the rock to develop a reservoir, the driller shall choose which water source is to be used and seal off all others.

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

(2) Bored or dug well - well not finished with buried slab. Bored or dug wells that are not finished as buried slab wells shall comply with

the following [(see Illustration F)]:

(a) Annular space [opening]. The driller shall grout the open space between the excavation and the installed casing [shall be grouted] with concrete. The driller shall pour the concrete [shall be] a minimum of six (6) inches thick and [be poured] without construction joints from the ground surface to a minimum of ten (10) feet below ground level. The driller [contractor] shall be responsible for the installation of the concrete grout. The driller shall insure that the diameter of the well bore below the grouting is [shall be] a minimum of four (4) inches greater than the outside diameter of the well casing and is [shall be] filled with a [pea] gravel pack from [to] the well bottom to the water-producing formation and with impervious material from the top of the gravel pack to the bottom of the concrete grout. The driller shall not extend the gravel pack any closer than ten (10) feet of the ground surface.

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

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

2. The driller shall cast in place adequate sized pipe sleeve or sleeves [shall be cast in place] in the slab to accommodate the type of pump or pump piping proposed for the well.

(3) Bored or dug well - buried slab construction. The driller shall terminate the well casing [shall be terminated] at a depth of ten (10) feet or more below the ground surface. The driller shall use well casing meeting [shall meet] the requirements in Section 9 of this regulation. The driller shall firmly imbed or connect the casing [This casing shall be firmly imbedded in or connected] to a pipe cast in a reinforced buried concrete slab. The casing shall be a minimum of four (4) inches in diameter and extend from the concrete slab to at least eight (8) inches above finished ground surface. The driller shall fill the annular space [opening] between the casing pipe and the well bore [shall be filled] with clean impervious material [earth] thoroughly tamped to minimize settling. The driller shall make the diameter of the well bore below the buried slab [shall be] a minimum of four (4) inches greater than the outer diameter of the well casing. The driller shall fill the well bore [and shall be filled] with a [pea] gravel pack from [to] the

well bottom to the water table and with impervious material from the top of the gravel pack to the bottom of the concrete slab. The driller shall not extend the gravel pack any closer than ten (10) feet of the ground surface. [(See Illustration G.)]

(4) Driven well. The well point, drive pipe and joints shall be structurally suitable to prevent rupture or distortion during the driving of the well. The driller shall construct the top ten (10) feet of the hole to a diameter of at least two (2) inches greater than the inner diameter of the drive pipe. The driller shall fill the annular space around the drive pipe with impervious material. [If aids to driving are used, such as an augered starting hole or water jetting, the annular space around the drive pipe shall be sealed with cement grout or puddled clay.] The type of pump proposed for the well will determine how the top ten (10) feet or more of the well shall be completed. If the working barrel of a hand pump is to be located below ground surface, the driller shall enclose the upper portion of the well [shall be enclosed] in steel or iron casing pipe to a point below the barrel. So called "frost pits" curbed with stone, brick, tile, etc., shall not be installed [are prohibited].

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

Section 9. Construction Materials and Other Requirements. (1) Casing and liner pipe. In selection of casing and liner pipe, the driller shall consider [consideration shall be given to] the stress to which the pipe will be subjected during construction and the corrosiveness of the water with which it comes in contact. The driller shall install steel or plastic casing, except for bored or dug wells, which the driller shall construct in accordance with Section 8 of this regulation and except for monitoring wells, which the driller shall construct in accordance with Section 13 of this regulation. The driller shall install all pipe and casing in accordance with manufacturer's specifications. The driller shall not install used or reject casing or pipe shall not be used.

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

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

(c) The driller shall install plastic well casing and liners that are [must be] Standard

Dimension Ratio (SDR) rated, have an minimum impact classification of IC-1 [in accordance with ASTM Standard F-480-81 as a minimum], and conform to the minimum requirements given in Table C.

(2) Outer casing. The driller shall install casing, intended for construction purposes only, that is [shall be] of weight and design as necessary to be watertight and permit installation without distortion or rupture to the specified depth. The driller shall remove the outer casing [, and shall be removed] upon completion of the well.

(3) Joints. The driller shall insure that all casing and liner pipe joints are [shall be] watertight.

(4) Screens or perforated or slotted casing. The driller shall install screen or perforated or slotted casing openings that [shall] provide the maximum amount of open area consistent with strength of screen or casing and the grading of the water-bearing formation or gravel pack. The driller shall install materials with openings that [shall] permit maximum transmitting ability without clogging or jamming and are sized to provide sediment-free water to the well. Screens shall be made of noncorrosive material.

(5) Drive shoe. The driller shall equip the pipe that is to be driven [shall be equipped] with a drive shoe. The driller may use a collar or coupling for light driving. No driller shall drive plastic casing.

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

(7) Cement grout. The driller shall use the procedures and materials for preparing and placing cement grout that [shall be as] follow:

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

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

(c) Neat cement-bentonite slurry. The driller shall mix one (1) bag of cement, (ninety-four (94) pounds) to seven and one-half (7 1/2) gallons of clean water and two (2) to six (6) percent bentonite (by weight two (2) to six (6) pounds) to increase fluidity and to control shrinkage.

(d) [(c)] Application. The driller shall perform all cement grouting [shall be performed] by adding the mixture from the bottom of the annular space [opening] upward in one (1) continuous operation until the annular space [opening] is filled or to the point of pitless adapter attachment. The driller may add bentonite, aquajel, or similar materials [may be added] to the annular space [opening] in the manner indicated for grouting, prior to the cement grouting, to seal any small crevices or fissures and assure that the annular space is

open.

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

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

(9) Construction water. The driller shall obtain water used in the drilling process [shall be obtained] from a source which will not result in the introduction of pollutants into [contamination of] the well.

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

(11) Drill cuttings. The driller shall use drill cuttings to fill the annular space of a well that are impervious material to prevent surface water from percolating down the drill hole.

(12) The driller shall not use any material containing lead in constructing a water well.

Section 10. Finishing and Testing. (1) Upper terminal. The driller shall terminate the casing or riser pipe [shall be terminated] at a height above established ground surface consistent with proposed plans for a pump house and pump installation, but not less than four (4) inches above finished ground surface. If practicable, the driller shall not install casing less than two (2) feet [or] above any known conditions of flooding by drainage or run-off from the surrounding land. The driller shall fit the well with a well cap or sanitary seal upon completion of the well and prior to departure from the well site. The driller shall compact and grade the ground surface surrounding the well to drain water away from the well. [shall be capped watertight until pump installation is made.]

(2) Disinfection. For all wells except monitoring wells, the well driller shall disinfect all wells [be responsible for properly disinfecting the well] upon completion of the driller's work. The driller shall introduce sufficient chlorine [shall be introduced] to give a concentration [dosage] of at least 100 parts per million to the water in the well. (CAUTION: When working with chlorine, persons should be in [well] ventilated place. The powder or strong liquid should not come in contact with skin or clothing. Solutions are best handled in wood, plastic or crockery containers because metals are corroded by strong chlorine solutions.)

(a) Drilled wells. The driller shall disinfect the well [disinfection of drilled wells shall be accomplished] in accordance with the following:

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

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

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

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

5. Let stand for several hours, preferably overnight.

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

7. Where no pump is installed, the well shall be bailed until all chlorine odor disappears before sampling.

(b) Dug wells. The driller shall disinfect the well [disinfection of dug wells shall be accomplished] in accordance with the following:

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

1. The amount of disinfectant required is determined primarily by the amount of water in the well. Using Table E, calculate [The table above shows] the amount of chlorine that must be added [to use] for each foot of water in the well, according to its diameter.

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

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

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

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

(c) Water samples. Upon completion and disinfection of a new well or modification of an existing well, the driller shall be responsible for having the well tested for fecal coliform if the well is for potable use. The driller shall also give the owner information prepared by the cabinet explaining the importance of water well sampling, procedures for sampling, and how the water can be tested to assure a safe supply of water. The water sample shall not be taken until all chlorine has been removed from the well.

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

(2) Well pits.

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

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

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

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

[(b) [(c)] No person shall modify existing well pits. Any person modifying a well shall eliminate existing well pits. The driller shall extend the casing a minimum of four (4) inches above the finished ground surface. Any flooring and the walls [shall be modified to comply with subsection (2)(b) of this section. Existing pits which are not in compliance with subsection (2)(b) of this section shall be eliminated and the floor or one (1) wall] of the pit shall be broken and [or] removed and the pit shall be filled with compacted earth.

(3) Notification. Within thirty (30) days after modification of a well, the driller shall provide written notification of the modification to [on forms provided by] the cabinet. The notification shall be submitted on the form entitled Kentucky Water Well Record (DEP-4045), incorporated in Section 3(6) of this regulation.

Section 12. Abandoned [Abandonment of] Wells.

(1) General. In cases where a constructed water well is not suitable for its intended purpose and is to be abandoned, or where a landowner employs a driller to close a previously constructed well the driller shall completely fill the well in such a manner that the vertical movement of water within the annular space, is effectively and permanently prevented. The owner shall ensure that the abandonment procedures are implemented as soon as possible, but no later than thirty (30) calendar days after completion of the well or after the owner has made the decision that the uncompleted well or previously constructed well is not to be used. [Abandoned wells. In cases where a constructed water well is not suitable for its intended purpose and is to be abandoned, or where a land owner employs a driller to close a previously constructed and abandoned well, these abandoned water wells shall be completely filled with disinfected, dimensionally stable materials, compacted

mechanically, if necessary, to avoid later settlement. Cement grouts and concrete do not require disinfection. Disinfection of fill materials shall be accomplished by using chlorine compounds such as sodium hypochlorite or calcium hypochlorite. Fill materials shall be clean (relatively free of clays and organic materials) before placement in the well. Disinfection shall be accomplished by dissolving sufficient chlorine compound to produce a calculated concentration of at least 100 parts per million (100 ppm) available chlorine in double the volume of water in the well. The fill material shall be placed in the well after the water in the well has been so treated.]

(a) Preparation for wells to be abandoned. Before a well which is to be abandoned is sealed, the driller shall measure the depth and check to ensure that there are no obstructions within the well which may interfere with plugging operations. The driller shall pull or drill out screens, casings and liner pipes whenever possible to assure placement of an effective seal. The driller shall remove at least the upper five (5) feet of casing, liner pipe, brick, stone, metal, etc., in all wells to prevent the passage of water along the casing and entering the water-bearing strata. The driller shall pull rather than cut the top joint of all plastic or steel casing.

(b) Disinfection. The driller shall disinfect the well and fill materials by using sodium hypochlorite or calcium hypochlorite. The driller shall dissolve sufficient chlorine compound to produce a calculated concentration of at least 100 parts per million (100 ppm) available chlorine in double the volume of water in the well. The driller shall place the fill material in the well after the water in the well has been so treated. Cement grouts do not require disinfection.

(c) Fill materials. The driller shall fill the aquifer or water-bearing zones in the wells with clean (relatively free of organic matter), disinfected, and dimensionally stable materials. The driller shall mechanically pack the fill materials to avoid later settlement. Neat cement does not require disinfection. Except as specified in paragraph (e) of this subsection and subsections (2) through (5) of this section, the driller shall use only neat cement grout, a neat cement-bentonite slurry, or bentonite in plugging water wells. In all cases, clay may be used to fill the uppermost five (5) feet of the bore-hole.

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

(d) [(3)] Placement of grout. The driller shall introduce neat cement [Concrete] or neat cement-bentonite grout used as a sealing material in abandonment operations [shall be

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

(e) Permanent bridges. Permanent bridges may be used only where voids are encountered which are too large to be filled. Under these circumstances, the driller shall completely fill the well to the bottom of the void with impermeable material. The driller shall construct a permanent bridge immediately above the void. The permanent bridge shall be at least ten (10) feet thick. Permanent bridges shall be composed only of neat cement. The driller shall allow the cement to harden for at least twenty-four (24) hours, if Type I cement is used, or for at least twelve (12) hours if Type III (high early strength) cement is used, before backfilling is continued. Temporary bridges used to provide a base for the permanent bridge shall consist only of inorganic materials - except that patented devices containing expandable neoprene, plastic, and other elastomers, and specifically designed for use in well construction are acceptable. Notification shall be given to the cabinet at least twenty-four (24) hours before a permanent bridge is to be installed.

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

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

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

appropriate to the intended use of the land.]

(f) [(7)] Preexisting contamination. A [An abandoned] well unsuitable for its intended use which has been affected by salt water intrusion or any other pollutant [contaminants] shall be considered a special case. [, and] The method of filling and sealing such wells shall be submitted to the cabinet by the drillers and shall be subject to individual review and written approval by the cabinet prior to sealing. In the sealing of a double or multiple cased well, the driller shall submit a drawing of the well [thereof] with a description of the proposed procedure and materials to be used, for prior approval by the cabinet.

(g) [(8)] Well abandonment records. Before equipment is removed from the site, the exact location of the [abandoned] well or drill hole to be sealed and abandoned shall be determined and recorded, tying in the location with permanent reference points. The driller shall record all information relative to the abandonment procedures and the location of the abandoned well [shall be recorded] on forms [drillers log sheets] provided by the cabinet with copies supplied to the cabinet and the owner of the land within thirty (30) days. The information shall be submitted on the form entitled Kentucky Water Well Record (DEP-4045) incorporated by reference in Section 6(3) of this regulation.

(2) Abandonment of wells in unconsolidated formations. Drillers shall completely fill a well unsuitable for its intended use that is constructed only in unconsolidated formations and contains water under water table or atmospheric conditions. Clean, disinfected sand or gravel may be used as a fill material from the well bottom to the water table level. If the water-bearing formation consists of coarse sand or gravel and producing wells are located nearby, only sealing materials which do not adversely affect the producing wells shall be used. A driller shall not extend the sand or gravel fill any closer than ten (10) feet of the ground surface. The driller shall place a minimum of five (5) feet of neat cement grout, neat cement-bentonite slurry or bentonite above the sand or gravel fill. The driller shall fill the uppermost portion of the well above the cement or bentonite plug with clay or an impermeable material appropriate to the intended use of the land. Neat cement, a neat cement bentonite slurry, or bentonite may be used to fill the well to the ground surface.

(3) Abandonment of wells in consolidated formations. The driller shall completely fill a well unsuitable for its intended use that is constructed in consolidated formations or bedrock with neat cement, a neat cement-bentonite slurry, or bentonite, if there is no artesian flow of water in the well. The driller shall not use sand or gravel except for those wells for which a well record is on file with the cabinet. Use of sand or gravel shall be considered a special case and the method of filling and sealing such wells shall be subject to written approval by the cabinet prior to sealing. Under these conditions, the cabinet may allow the use of sand and gravel to fill through the water-producing horizon, if there is limited vertical movement of water in the formation and such movement will not adversely affect the quality or quantity of water in producing wells. The driller shall place neat cement or neat

cement-bentonite grout or bentonite, immediately above the sand and gravel fill, extending up to within five (5) feet of the ground surface. The driller shall fill the uppermost five (5) feet of the bore-hole with clay or an impermeable material appropriate to the intended use of the land. In the event the casing cannot be pulled or drilled out, the driller shall use bentonite slurry to fill the length of the casing.

(4) Abandonment of flowing artesian wells. The sealing of abandoned flowing artesian wells or wells which are unsuitable for their intended use and in which there is vertical movement of water between aquifers requires special attention. The driller shall notify the cabinet at least twenty-four (24) hours before such a well is to be sealed. The driller shall pressure cement such wells with neat cement mixed with the minimum quantity of water that well permit handling. In order to place the cement, the driller shall restrict flow. Gravel or stone aggregate not more than one-third (1/3) of the diameter of the hole may be placed through the water-bearing horizon, if its extent is known. The driller shall place a well packer, cast-iron plug, or temporary bridge at the bottom of the confining formation immediately overlying the artesian water-bearing horizon to seal off the flow. Temporary bridges shall consist only of inorganic materials - except that patented devices containing expandable neoprene, plastic, and other elastomers, and specifically designed for use in well construction are acceptable. The driller shall place the neat cement grout in one (1) continuous operation from the top of the packer, plug or bridge to five (5) feet of the surface or to the bottom of an overlying water-bearing formation. In the latter situation it may be necessary to repeat the process described in this subsection. The driller shall fill the uppermost five (5) feet of the bore-hole with clay or an impermeable material appropriate to the intended use of the land.

Section 13. Monitoring Well Construction. (1) A monitoring well means a water well constructed when the actual or intended use in whole or part is the removal of water for the purpose of sampling, measuring or test-pumping for scientific, engineering, or regulatory purposes. All monitoring wells subject to this regulation shall be constructed only by persons having a valid certificate issued in accordance with KRS 223.400 through 223.460.

(2) Drillers shall design and construct monitoring wells in such a manner as to maintain existing natural protection against the introduction of pollutants into aquifers, prevent the entry of pollutants through the bore-hole, and prevent the intermingling of groundwater from different aquifers through the bore-hole.

(3) The driller shall use materials in the construction of a monitoring well appropriate to the purpose of that well. The driller shall seal the annular space above the sampling depth with suitable material, such as cement grout or bentonite, in order to prevent the introduction of pollutants into the samples or the groundwater. The driller shall complete the well at least four (4) inches above ground level or shall install a waterproof flush mount device capable of preventing surface water run-off, pollutants and contaminants from entering the well. The driller shall label the well with a

Kentucky well tag. Within thirty (30) days after a monitoring well has been constructed or modified, the driller shall provide the well with a locking well cap.

(4) The driller shall provide the cabinet with a record of the well as specified in KRS 223.440.

(5) The report shall be submitted on the form entitled Kentucky Monitoring Well Record (DEP-8043). The following document is adopted and filed herein by reference: Kentucky Monitoring Well Record (DEP-8043) (January 1, 1991). Copies of this document may be obtained from the Natural Resources and Environmental Protection Cabinet, Division of Water, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410. The material is available for public inspection and copying during business hours of 8 a.m. to 4:30 p.m. at the Division of Water, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601.

(6) This section shall become effective on July 1, 1991.

TABLE A

Required Minimum Distances From Lateral Sources of Pollutants

Lateral Sources of Contamination	Minimum Distances for Clay and Loam Soils
Cess Pools	150 feet
Leaching Pit	100 feet
Pit Privy	75 feet
Subsurface Seepage Tile	75 feet
Lateral Fields	70 feet
Manure Piles	75 feet
Septic Tank	50 feet
Barnyard	50 feet
Sewers (noncast iron) (nonperforated)	50 feet
Sewers (cast-iron with watertight leaded or mechanical joints)	15 feet
Sewers (Schedule 40 or heavier plastic pipe with solvent cemented or elastomeric seal joints.) Pipe is solid pipe not perforated.	15 feet
Footing Drains (no connection to a sewer or a sump handling sewage)	10 feet
Pump House Floor Drain	2 feet
<u>Cemeteries</u>	<u>75 feet</u>
<u>Property Lines</u>	<u>20 feet</u>

TABLE B

Casing and Liner Pipe Weights and Dimensions

Size (inches)	External Diameter (inches)	Thickness (inches)	Weight (pounds per foot)
1	1.315	0.120	-
1 1/4	1.660	0.120	-
1 1/2	1.900	0.120	-
2	2.375	0.120	2.89
2 1/2	2.875	0.120	3.53
3	3.500	0.120	4.33
3 1/2	4.000	0.120	4.97
4	4.500	0.188	8.66
5	5.563	0.188	10.79
6	6.625	0.188	12.92

8	8.625	0.277	24.76
10	10.750	0.307	34.24
12	12.750	0.330	43.77
14	14.000	0.375	54.57
16	16.000	0.375	62.58
18	18.000	0.375	70.59
20	20.000	0.375	78.60

Pipe sizes not listed that are less than eight (8) inches in diameter shall match listed values as closely as possible.

Pipe sizes not listed that are eight (8) inches in diameter or greater shall be Schedule 30 pipe as a minimum.

TABLE C

Plastic Casing and Liner Pipe Specifications

Size (inches)	SDR	External Diameter (inches)	Minimum Wall (inches)
4	26	4.500	0.173
5	26	5.563	0.214
6	26	6.625	0.255
8	26	8.625	0.332
10	26	10.750	0.413
12	26	12.750	0.490
14	26	14.000	0.539
16	26	16.000	0.616

TABLE D

Required Amounts of Disinfectant

Diameter of Well in Inches	Volume of Water in Gallons Per Foot of Depth	Disinfectant Required for Each 100 Gallons of Water
3	0.37	Laundry Bleach (5.25% chlorine) = 3 cups
4	0.65	
5	1.0	Hypochlorite Granules (70% chlorine) = 2 ounces
6	1.5	
8	2.6	
10	4.1	
12	6.0	

1 cup = 8 ounces measuring cup
(2 cups = 1 pint; 4 cups = 1 quart)

1 ounce = 1 heaping tablespoon granules
(16 ounces = 1 pound)

TABLE E

Required Amounts of Disinfectant

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

[COMPILER'S NOTE: The illustrations shown in Volume 2 of the Kentucky Administrative Regulations Service on pages 395 through 401 are being deleted from this regulation.]

CARL H. BRADLEY, Secretary

FRANK L. DICKERSON, Commissioner

APPROVED BY AGENCY: February 15, 1991

FILED WITH LRC: February 15, 1991 at noon

PUBLIC HEARING: A hearing on this administrative regulation shall be held on March 29, 1991 at 1 p.m. local prevailing time at the Capital Plaza Tower auditorium in Frankfort, Kentucky. This regulation contains standards for construction of water wells. Individuals interested in attending this hearing shall notify this agency in writing by March 24, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Jack Wilson, Division of Water, 18 Reilly Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack A. Wilson

(1) Type and number of entities affected: Approximately 225 companies that perform water well and monitoring well drilling would be affected. Members of the public who employ water well drillers would be affected.

(a) Direct and indirect costs or savings to those affected:

1. First year: Modifications to the above regulation have been proposed in order to clarify construction practices and will not result in either greater costs or savings. References to specific American Society and National Sanitation Foundation Standards for Testing Materials specifications have been deleted since the same values are included in tables within the regulation. There are no costs or savings associated with these changes. Proper construction of monitoring wells will prevent contamination of groundwater and could

potentially save significant costs for remedial action. New standards have been added for monitoring well construction. These standards are intended to prevent contamination of aquifers. Those drillers who drill monitoring wells will be required to use materials that will prevent contamination of samples or groundwater. These practices are currently being employed by drillers. They will not incur additional costs.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Drillers of water wells, including monitoring wells, will be required to submit a report of construction to the cabinet.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Additional costs will be incurred for inspections, responding to complaints on monitoring wells and management of records and data. These costs will be partially determined by the number of inspections and complaints. It is estimated that these costs will be \$20,000 or less per year. Savings will be indirect and will result from not being required to address remedial action for cleanup of contamination. The exact costs cannot be determined.

2. Continuing costs or savings: Costs for inspections will be \$20,000 or less per year. These costs have been anticipated in the Environmental Management Plan and were funded.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Inspection reports will be required.

(3) Assessment of anticipated effect on state and local revenues: Any state or local entity that must drill water wells, including monitoring wells, would be affected. The wells would be required to be constructed to meet the standards of this regulation and the proposed amendments. Since these requirements are based upon standard well construction practices that ensure that the wells will produce the required quantity and quality of water, the requirements are not anticipated to affect the costs for state or local entities. Additionally, proper construction will ensure that waters of differing qualities are not mixed which could result in the need to clean up contaminated waters or to abandon a well.

(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) Alternative: The proposed amendments clarify that wells must be constructed to specific standards.

1. Less stringent: The option of not requiring appropriate construction of wells could result in groundwater contamination and was rejected.

2. More stringent: KRS 223.435 requires the cabinet to promulgate regulations for construction standards for wells. More stringent regulations would have been excessively restrictive.

3. Present proposal: The present proposal requires a case by case determination of the appropriate requirement for well construction based upon the type of well and, if appropriate, the suspected contaminant. The proposed requirements are the minimum that the cabinet judges will be protective of the environment.

(b) Alternative: The proposed amendments for

water wells other than monitoring wells do not substantively change requirements but clarify the construction standards.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no conflicting, overlapping, or duplicative statutes, regulations or policies.

(a) Necessity of proposed regulation if in conflict: There are no conflicts.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There are no conflicts.

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. This regulation affects water well drillers. The regulation was tiered. Different standards are established for wells that will be used as a source of drinking water and as monitoring wells.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There are no federal statutes concerning water well standards.

2. State compliance standards. This administrative regulation requires that water wells be constructed to certain minimum standards in order to prevent pollution of the groundwater.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate for water well standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There are no specific federal requirements for water well construction. These construction standards meet industry standards for safe well construction.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These requirements will help prevent the pollution of waters of the Commonwealth, as mandated by KRS 224.022. KRS 223.435 requires the cabinet to promulgate regulations establishing standards of practice for water well construction.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes X No (If yes, complete questions 2-4)

2. State what unit, part or division of local government this administrative regulation will affect. This proposed regulation would affect only those parts or divisions of local government that construct water wells. KRS 223.435 requires that the cabinet promulgate regulations establishing standards of practice for water well construction.

3. State the aspect or service of local government to which this administrative regulation relates. This proposed regulation relates to only those aspects or services of local government that construct water wells.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of

the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: For any service or activity involving the drilling of water wells including monitoring wells, the local government would be required to construct a well that met the requirements of this regulation. These requirements specify construction criteria to protect the quality of the groundwater and to protect the public's health and safety. KRS 223.435 requires the cabinet to promulgate regulations establishing standards of practice for water well construction. The proposed standards are industry standards and are currently being used; therefore, there should be no impact on local government.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Surface Mining Reclamation and Enforcement (Proposed Amendment)

405 KAR 7:020. Definitions and abbreviations.

RELATES TO: KRS Chapter 350, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 USC 1253, 1255, 1291

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.465, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 USC 1253, 1255, 1291

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 KAR Title 405, Chapters 7 through 24.

Section 1. Definitions. Unless otherwise specifically defined or otherwise clearly indicated by their context, terms in KAR 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 groundwater, fish, wildlife, vegetation or other resources protected by KRS Chapter 350 may be adversely impacted by surface coal mining and reclamation operations.

(4) "Administratively complete application" means an application for permit approval or approval for coal exploration where required, which the cabinet determines to contain information addressing each application requirement of the regulatory program and to contain all information necessary to initiate

technical processing and public review.

(5) "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 incident 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 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.

(7) "Applicant" means any person(s) seeking a permit, permit revision, permit amendment, permit renewal, or transfer, assignment, or sale of permit rights from the cabinet to conduct surface coal mining and reclamation operations or approval to conduct coal exploration operations pursuant to KRS Chapter 350 and all applicable regulations.

(8) "Application" means the documents and other information filed with the cabinet seeking issuance of permits; revisions; amendments; renewals; and transfer, assignment or sale of permit rights for surface coal mining and reclamation operations or, where required, seeking approval for coal exploration.

(9) "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 and either 405 KAR 16:100; 405 KAR 16:060, Section 10; and 405 KAR 16:210 or 405 KAR 18:100; 405 KAR 18:060, Section 10; and 405 KAR 18:220.

(10) "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.

(11) "Area" as used in KAR 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.

(12) "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.

(13) "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 run off 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 KAR 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 KAR Title 405, Chapters 7 through 24.

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

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

(16) "Cessation order" means an order for cessation and immediate compliance and any similar order issued by OSM or issued by any state pursuant to its laws or regulations under SMCRA.

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

(18) [(17)] "Coal exploration" means the field gathering of:

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

(b) Environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of KAR 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.

(19) [(18)] "Coal mine waste" means coal

processing waste and underground development waste.

(20) [(19)] "Coal processing plant" means a facility where coal is subjected to chemical or physical processing or cleaning, concentrating, crushing, sizing, screening, 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 water storage facilities; settling basins and impoundments; and coal processing and other waste disposal areas.

(21) [(20)] "Coal processing waste" means materials which are separated from the product coal during the cleaning, concentrating, or other processing or preparation of coal.

(22) [(21)] "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.

(23) [(22)] "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.

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

(25) [(24)] "Compaction" means increasing the density of a material by reducing the voids between the particles by mechanical effort.

(26) [(25)] "Complete and accurate application" means an application for permit approval or approval for coal exploration where required, which the cabinet determines to contain all information required under, and necessary to comply with, KRS Chapter 350 and Title 450, Chapters 7 through 24, in order to make decisions concerning its administrative and technical acceptability and whether a permit or exploration approval should be issued.

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

(28) [(27)] "Cumulative impact area" means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface - and groundwater systems. Anticipated mining shall include, at a minimum, the entire projected lives through bond release of:

- (a) The proposed operation;
- (b) All existing operations;
- (c) Any operation for which a permit

application has been submitted to the cabinet; and

(d) All operations required to meet diligent development requirements for leased federal coal for which there is actual mine development information available.

(29) [(28)] "Date of primacy" means the effective date of the Secretary of Interior's unconditional or conditional approval of Kentucky's permanent regulatory program under Section 503 of the 1977 Surface Mining Control and Reclamation Act (P.L. 95-87). The effective date of the subject approval was May 18, 1982.

(30) [(29)] "Day" means calendar day unless otherwise specified to be a working day.

(31) [(30)] "Department" means the Department for Surface Mining Reclamation and Enforcement.

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

(33) [(32)] "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 KAR Title 405, Chapter 10 is released.

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

(35) [(34)] "Downslope" means the land surface below the projected outcrop of the lowest coal-bed being mined along each highwall.

(36) [(35)] "Embankment" means a manmade 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.

(37) [(36)] "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.

(38) [(37)] "Excess spoil" means spoil material disposed of in a location other than the coal extraction area, provided that spoil material used to achieve the approximate original contour shall not be considered excess spoil.

(39) [(38)] "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.

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

(41) [(40)] "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.

(42) [(41)] "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.

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

(44) [(43)] "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.

(45) [(44)] "Fragile lands" means areas containing natural, ecologic, scientific, or aesthetic resources that could be significantly damaged by surface coal mining operations. Examples of fragile lands include uncommon geologic formations, paleontological sites, National Natural Landmarks, valuable habitats for fish or wildlife, areas where mining may result in flooding, critical habitats for endangered or threatened species of animals or plants, wetlands, environmental corridors containing a concentration of ecologic and aesthetic features, state-designated nature preserves and wild rivers, and areas of recreational value due to high environmental quality.

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

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

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

(49) [(48)] "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.

(50) [(49)] "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.

(51) [(50)] "Groundwater" means subsurface

water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

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

(53) [(52)] "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.

(54) [(53)] "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.

(55) [(54)] "Historic lands" means areas containing historic, cultural, or scientific resources. Examples of historic lands include properties listed on or eligible for listing on a State or National Register of Historic Places, National Historic Landmarks, archaeological sites, properties having religious or cultural significant to Native Americans or religious groups, and properties for which historic designation is pending.

(56) [(55)] "Historically used for cropland."

(a) "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) 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.

(57) [(56)] "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, run-off, evaporation, and changes in ground and surface water storage.

(58) [(57)] "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.

(59) [(58)] "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.

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

(61) [(60)] "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.

(62) [(61)] "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.

(63) [(62)] "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.

(64) [(63)] "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 run-off and groundwater discharge.

(65) [(64)] "Irreparable damage to the environment" means any damage to the environment, in violation of SMCRA, KRS Chapter 350, or KAR Title 405 Chapters 7 through 24, that cannot be corrected by actions of the applicant.

(66) [(65)] "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.

(67) [(66)] "Monitoring" means the collection of environmental data by either continuous or periodic sampling methods.

(68) [(67)] "Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing microclimatic conditions suitable for germination and growth.

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

(70) [(69)] "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, KAR 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.

(71) [(70)] "Notice of violation" means any written notification from a governmental entity of a violation of law or regulation, whether by letter, memorandum, legal or administrative pleading, or other written communication. This shall include a notice of noncompliance and order for remedial measures.

(72) [(71)] "Noxious plants" means species classified under Kentucky law as noxious plants.

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

(74) [(73)] "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.

(75) [(74)] "Operator" means any person, partnership, or corporation engaged in surface

coal mining and reclamation operations.

(76) [(75)] "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 a 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, KAR 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.

(77) [(76)] "Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

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

(79) "Owned or controlled" and "owns or controls" means any one (1) or a combination of the relationships specified in paragraphs (a) and (b) of this definition:

(a) Being a permittee of a surface coal mining operation:

2. Based on instruments of ownership or voting securities, owning of record in excess of fifty (50) percent of an entity; or

3. Having any other relationship that gives one (1) person authority directly or indirectly to determine the manner in which an applicant, an operator, or other entity conducts surface coal mining operations.

(b) The following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not in fact have the authority directly or indirectly to determine the manner in which the relevant surface coal mining operation is conducted:

1. Being an officer or director of an entity;

2. Being the operator of a surface coal mining operation;

3. Having the ability to commit the financial or real property assets or working resources of an entity;

4. Being a general partner in a partnership;

5. Based on the instruments of ownership or the voting securities of a corporate entity, owning of record ten (10) through fifty (50) percent of the entity; or

6. Owning or controlling coal to be mined by another person under a lease, sublease, or other contract and having the right to receive the coal after mining or having authority to determine the manner in which that person or another person conducts a surface coal mining operation.

(80) [(78)] "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.

(81) [(79)] "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface run-off. The term does not include "intermittent stream" or "ephemeral stream."

(82) [(80)] "Performance bond" means a surety bond, collateral bond, or a combination thereof, or bonds filed pursuant to the provisions of the Kentucky Bond Pool Program (405 KAR 10:200, KRS 350.595, and 350.700 through 350.755), by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, KAR Title 405, Chapters 7 through 24, and the requirements of the permit and reclamation plan.

(83) [(81)] "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.

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

(85) [(83)] "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.

(86) [(84)] "Permittee" means an operator or a person holding or required by KRS Chapter 350 or KAR 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 Chapter 350 and KAR Title 405, Chapters 7 through 24 are satisfied.

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

(88) [(86)] "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.

(89) [(87)] "Petitioner" means a person who submits a petition under KAR 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 KAR Title 405, Chapter 24 to terminate such a designation.

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

(91) [(89)] "Prime farmland" means those lands which are defined by the Secretary of Agriculture in 7 CFR 657 and which have historically been used for cropland as that

phrase is defined above.

(92) [(90)] "Principal shareholder" means any person who is the record or beneficial owner of ten (10) percent or more of any class of voting stock of the applicant.

(93) [(91)] "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.

(94) [(92)] "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 groundwater; the surface or groundwater flow, timing and pattern; and the stream channel conditions on the permit area and adjacent areas.

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

(96) [(94)] "Public building" means any structure that is owned or leased, and principally used by a governmental agency for public business or meetings.

(97) [(95)] "Publicly-owned park" means a public park that is owned by a federal, state, or local governmental entity.

(98) [(96)] "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.

(99) [(97)] "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.

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

(101) [(99)] "Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and run-off to infiltrate and reach the zone of saturation.

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

(103) [(101)] "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.

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

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

(106) [(104)] "Refuge 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 semiliquid

material.

(107) [(105)] "Renewable resource lands".

(a) As used in KAR Title 405, Chapter 24, "renewable resource lands" means geographic areas which contribute significantly to the long-range productivity of water supplies or of food or fiber products, such lands to include aquifers and aquifer recharge areas.

(b) As used in 405 KAR 8:040, Section 26, "renewable resource lands" means aquifers and areas for the recharge of aquifers and other undergroundwaters, areas for agricultural or silvicultural production of food and fiber, and grazing lands.

(108) [(106)] "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.

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

(110) [(108)] "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.

(111) [(109)] "Secretary" means the Secretary of the Cabinet for Natural Resources and Environmental Protection.

(112) [(110)] "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 run-off to allow suspended solids to settle out. A sedimentation pond shall not include secondary sedimentation control structures such as straw dikes, riprap, check dams, mulches, dugouts and other measures that reduce overland flow velocity, reduce run-off volume or trap sediment, to the extent that such secondary sedimentation structures drain to a sedimentation pond.

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

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

1. Is causing such harm; or

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

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

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

(115) [(113)] "Slurry mining" means the hydraulic breakdown of subsurface coal with drill-hole equipment, and the education of the resulting slurry to the surface for processing.

(116) [(114)] "Soil horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The 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 leaching 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 sequence 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.

(117) [(115)] "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.

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

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

(120) [(118)] "Steep slope" means any slope of more than twenty (20) degrees.

(121) [(119)] "Substantially disturb" means, for purposes of coal exploration, to significantly impact land or water resources by blasting; by removal of vegetation, topsoil, or overburden; by construction of roads or other access routes; by placement of excavated earth

or waste material on the natural land surface; or by other such activities, or to remove more than 250 tons of coal.

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

(123) [(121)] "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.

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

(125) [(123)] "Surface coal mining operations" means activities conducted on the surface of lands in connection with a surface coal mine and surface operations and surface impacts incident to an underground coal mine. Such activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the use of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and cleaning, concentrating, or other processing or preparation, and the loading of coal at or near the 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 sixteen 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 such activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities. This definition includes the terms "strip mining of coal" and the surface effects of underground mining of coal as defined in KRS Chapter 350.

(126) [(124)] "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.

(127) [(125)] "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).

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

(129) [(127)] "Ton" means 2,000 pounds avoirdupois (.90718 metric ton).

(130) [(128)] "Topsoil" means the A and E soil horizon layers of the four (4) master soil horizons.

(131) [(129)] "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.

(132) [(130)] "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.

(133) [(131)] "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.

(134) [(132)] "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.

(135) [(133)] "Underground 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; aboveground repair areas, storage areas, processing areas, and shipping areas; areas upon which are sited support facilities including hoist and ventilating ducts, areas utilized for the disposal and storage of waste, and areas on which materials incident to underground mining operations are placed; and

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

(136) [(134)] "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.

(137) [(135)] "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 KAR 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 KAR Title 405, Chapters 7 through 24, or permit conditions.

(138) [(136)] "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.

(139) [(137)] "Water table" means the upper surface of a zone of saturation, where the body of groundwater is not confined by an overlying impermeable zone.

(140) [(138)] "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 groundwater.

(141) [(139)] "Wetland" means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(a) "Hydric soil" means soil that, in its undrained condition, is saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation.

(b) "Hydrophytic vegetation" means a plant growing in:

1. Water; or

2. A substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content.

(142) [(140)] "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 KAR 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 KAR 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), as amended

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.

CARL H. BRADLEY, Secretary

FRANK DICKERSON, Commissioner

APPROVED BY AGENCY: January 22, 1991

FILED WITH LRC: January 23, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled for 9 a.m. (EST) Thursday, March 28, 1991 in the Department for Surface Mining Reclamation and Enforcement's Training Room (Room D-16) at the Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky. Persons who wish to testify at the hearing shall notify the contact person listed below, in writing, by March 22, 1991. The scheduled hearing may be cancelled if the contact person has not received any written notice of intent to testify by March 22, 1991, five days before the scheduled hearing date. If the hearing is held, it will be open to the public. Any person in attendance who wishes to testify on the proposed amendment will be given a fair and reasonable opportunity to do so, regardless of whether the person has given the cabinet prior written notice of his intent to testify. To assure an accurate record, the cabinet requests each person testifying at the hearing to provide the cabinet with a written copy of his testimony. The cabinet is not required to make a recording or transcript of the hearing unless someone makes a written request for it, in which case the person requesting the recording or transcript shall pay for it.

Written Comments: A person who wishes to comment on this proposed amendment but does not wish to testify at the hearing may submit written comments on the proposed amendment at any time before 4:30 p.m. (EST) on March 28, 1991. Comments received after that time will not be considered. Written comments and written notices of intent to testify at the hearing shall be submitted to: Jim Villines, Kentucky Department for Surface Mining, 2 Hudson Hollow Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jim Villines

This regulation defines terms used throughout 405 KAR Chapters 7-24. This amendment adds a definition of the terms "owned or controlled" and "owns or controls", adds a definition of the term "cessation order", and modifies the definition of the term "notice of violation." These changes are necessary to make Kentucky's regulations consistent with recent federal

regulations relating to the withholding of permits from persons who are responsible for unabated violations at other coal mining operations.

(1) Type and number of entities affected: Through other regulations which apply these terms, namely 405 KAR 8:010, 8:030 and 8:040, this amendment potentially affects all permit applicants, permittees, and operators.

(a) Direct and indirect costs or savings to those affected: There are no direct costs or savings to those affected by this amendment other than those associated with reporting and paperwork requirements discussed under (1)(b) below. There will be indirect costs to some affected entities, in that the ownership and control relationships specified in the definition will cause some entities to be linked to unabated violations or delinquent penalties or fees, which will result in permits being denied to them or withheld from them until the violations have been corrected or the penalties or fees paid. Some entities will incur indirect costs in the form of legal fees and other expenses as they attempt to rebut the presumptions of control created by the definition. All these indirect costs will be completely case-specific.

1. First year: See (1)(a) above.

2. Continuing costs or savings: See (1)(a) above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: Through the regulations that apply the definitions, applicants and permittees will be required to submit and periodically update ownership and control information in the application.

(2) Effects on the promulgating administrative body: In order to implement other regulations that use the definition of ownership and control, the cabinet must carry out a variety of administrative functions including investigations, storage and retrieval of information, verification of information, notification of affected entities, etc. These effects are further discussed in the Regulatory Impact Analysis submitted with the proposed amendment to 405 KAR 8:010, filed concurrently with this amendment.

(a) Direct and indirect costs or savings:

1. First year: See (2) above.

2. Continuing costs or savings: See (2) above.

3. Additional factors increasing or decreasing costs: See (6) below.

(b) Reporting and paperwork requirements: See (2) above.

(3) Assessment of anticipated effect on state and local revenues: No effect on state or local revenues is anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered since this amendment is necessary for conformity with the corresponding federal regulations.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations, or governmental policies which conflict with, overlap or duplicate the amendment.

(a) Necessity of proposed regulation if in

conflict: No conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(6) Any additional information or comments: Through the federal OSM Applicant Violator System (AVS) computer network, and also under the court settlement agreement in National Wildlife Federation et al. v. Miller et al., Civil Action No. 86-99, (E.D. Ky.), the federal definition of ownership and control is currently being used in Kentucky.

TIERING: Was tiering applied? No. Tiering is not applicable to this proposed amendment because, under the federal and Kentucky surface mining laws and regulations, these requirements must apply equally to all permittees under 405 KAR Chapters 7-24.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 USC 1253, 1255, 1291, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917

2. State compliance standards. The amendment at 405 KAR 7:020, Section 1(79) defines the terms "owned or controlled" and "owns or controls." It lists certain relationships that necessarily constitute, and other relationships that are presumed to constitute, control of surface coal mining operations or control of one entity by another. Under other regulations, the cabinet cannot issue a permit to an applicant if any surface coal mining operation "owned or controlled" by the applicant, or by any person who "owns or controls" the applicant, is currently in violation of SMCRA, KRS Chapter 350, regulations pursuant thereto, or certain other environmental laws and regulations. The amendment at 405 KAR 7:020, Section 1(16) defines the term "cessation order", and at Section 1(71) modifies the definition of the term "notice of violation", to clarify their meaning in relation to the withholding of permits because of unabated violations.

3. Minimum or uniform standards contained in the federal mandate. The federal definition of "owned or controlled" and "owns or controls" is given at 30 CFR 773.5. The federal definition of "violation notice" is given at 30 CFR 701.5.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment will not impose stricter or additional requirements or responsibilities than those required by the federal mandate. This amendment is different from the federal mandate in that it defines the term "cessation order", which is not expressly defined in the federal mandate, and it clarifies the term "notice of violation" as compared to its federal counterpart, "violation notice." This amendment is filed under KRS 13A.2264(2). A copy of the corresponding federal regulations is submitted in a separate binder under KRS 13A.2264(4). These federal regulations are not being incorporated by reference and are not being adopted without change.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The definition of "cessation order" is provided in order to remove any possible ambiguity about its meaning in relation to the withholding of permits

because of unabated violations. The federal regulations, Kentucky regulations, and presumably the regulations of some other states, use different terminology for the same types of orders, and the amendment clarifies that all these orders are included within the term "cessation order." The definition of "notice of violation" is modified to clarify that a violation of a regulation adopted pursuant to a law is equivalent to a violation of that law.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Surface Mining Reclamation and Enforcement (Proposed Amendment)

405 KAR 8:010. General provisions for permits.

RELATES TO: KRS 350.020, 350.055, 350.060, 350.070, 350.085, 350.090, 350.130, 350.135, 350.450, 350.465, 27 CFR 55.206, 55.218, 55.219, 55.220, 30 CFR 77.1301(c), 30 CFR Parts 730, 733, 735, 773-775, 777, 778.17, 917, 30 USC 1253, 1255-1261, 1263-1266, 1272

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.060, 350.135, 350.450, 350.465, 30 CFR Parts 730, 733, 735, 773-775, 777, 778.17, 917, 30 USC 1253, 1255-1261, 1263-1266, 1272

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. This regulation provides for permits to conduct these operations. The regulation specifies when permits are required, application deadlines, requirements for applications for permanent program permits, fees, verification of applications, public notice requirements, submission of comments on permit applications, the right to file objections, informal conferences, review of the permit applications, criteria for application approval or denial and relevant actions, term of the permits, conditions of permits, review of outstanding permits, revisions of permits and renewals, transfers, assignments, and sales of permit rights.

Section 1. Applicability. Excluding coal exploration operations, this regulation shall apply to all applications, all actions regarding permits, and all surface coal mining and reclamation operations.

Section 2. General Requirements. (1) Permanent program permits required. No person shall engage in surface coal mining and reclamation operations unless that person has first obtained a valid permanent program permit under this chapter for the area to be affected by the operations.

(2) General filing requirements for permanent program permit applications.

(a) Each person who intends to engage in surface coal mining and reclamation operations shall file a complete and accurate application for a permanent program permit which shall comply fully with all applicable requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24, and shall not begin the operations until the permit has been granted.

(b) Renewal of valid permanent program permits. An application for renewal of a permit

under Section 21 of this regulation shall be filed with the cabinet at least 120 days before the expiration of the permit.

(c) Revision of permanent program permits. A permittee may, at any time, apply for a revision of a permit, but shall not vary from the requirements of the permit until the revision has been approved by the cabinet. The term of a permit shall remain unchanged by a revision.

(d) Succession to rights granted under prior permanent program permits. An application for the transfer, sale, or assignment of rights granted under a permit may be submitted at any time. The actual transfer, sale, or assignment of permit rights, however, may not take place until written permission has been granted by the cabinet.

(e) Amendment of permanent program permits. A permittee may, at any time, apply for an amendment to a permit under Section 23 of this regulation, but shall not begin surface coal mining and reclamation operations on the areas until the amendment has been approved by the cabinet. The term of a permit shall remain unchanged by an amendment.

(3) Compliance with permits. Any person engaging in surface coal mining and reclamation operations under a permit issued pursuant to KRS Chapter 350 shall comply with the terms and conditions of the permit, including the plans and other documents submitted as part of the application and approved by the cabinet, and the applicable requirements of KRS Chapter 350 and 405 KAR.

Section 3. Coordination of Review of Permit Applications. (1) For the purposes of avoiding duplication, the cabinet shall coordinate the review and issuance of permits for surface coal mining and reclamation operations with:

(a) Any other federal or Kentucky permit process applicable to the proposed operations, as required by Section 503 of SMCRA; and

(b) Applicable requirements of the Endangered Species Act of 1973, as amended (16 USC 1531 et seq.); the Fish and Wildlife Coordination Act, as amended (16 USC 661 et seq.); the Migratory Bird Treaty Act of 1918, as amended (16 USC 703 et seq.); the National Historic Preservation Act of 1966, as amended (16 USC 470 et seq.); and the Bald Eagle Protection Act, as amended (16 USC 668a), as required by 30 CFR 773.12.

(2) This coordination shall be accomplished by providing the appropriate agencies with an opportunity to comment on permit applications as set forth in Section 8(6) and (7) of this regulation and, if necessary, by any other measures the cabinet may deem appropriate.

Section 4. Preliminary Requirements. A person desiring a permit shall submit to the cabinet a preliminary application of the form and content prescribed by the cabinet. The preliminary application shall contain pertinent information, including a map at a scale of one (1) inch equals 400 or 500 feet, marked to show the proposed permit area and adjacent areas; and the areas of land to be affected, including, but not limited to, locations of the coal seam(s) to be mined, access roads, haul roads, spoil or coal waste disposal areas, and sedimentation ponds. Areas so delineated on the map shall be physically marked at the site in a manner prescribed by the cabinet. Personnel of the cabinet shall conduct, within fifteen (15)

working days after filing, an on-site investigation of the area with the person or his or her representatives and representatives of appropriate local, state or federal agencies, after which the person may submit a permit application.

Section 5. General Format and Content of Applications. (1)(a) Applications for permits to conduct surface coal mining and reclamation operations shall be filed in the number, form and content required by the cabinet, including a copy to be filed for public inspection under Section 8(8) of this regulation.

(b) The application shall be on forms provided by the cabinet, and originals and copies of the application shall be prepared, assembled and submitted in the number, form and manner prescribed by the cabinet with attachments, plans, maps, certifications, drawings, calculations or other documentation or relevant information as the cabinet may require.

(c) The application shall be complete with respect to all information required by 405 KAR and include, at a minimum: for surface mining activities, all the applicable information required under 405 KAR 8:030; for underground mining activities, all the information required under 405 KAR 8:040; and, for special types of surface coal mining and reclamation operations, all the information required under 405 KAR 8:050. No application shall be determined to be administratively complete unless all design plans for the permit area are in detailed form.

(2) Information set forth in the application shall be current, presented clearly and concisely, and supported by appropriate references to technical and other written material available to the cabinet.

(3) The collection and analysis of all technical data submitted in the application shall be planned by or conducted under the direction of a professional qualified in the subject to be analyzed and shall be accompanied by:

(a) Names of persons or organizations which collected and analyzed the data;

(b) Dates of the collection and analyses; and

(c) Descriptions of methodology used to collect and analyze the data.

(4) The application shall state the name, address and position of officials of each private or academic research organization or governmental agency who provided information which has been made a part of the application regarding land uses, soils, geology, vegetation, fish and wildlife, water quantity and quality, air quality, and archaeological, cultural, and historic features.

(5)(a) The applicant shall designate in the permit application either himself or some other person who will serve as agent for service of notices and orders. The designation shall identify the person by full name and complete mailing address, and if a natural person, the person's Social Security number. The person shall continue as agent for service of process until a written revision of the permit has been made to designate another person as agent.

(b) The applicant may designate persons authorized by the applicant to submit modifications to the application to the cabinet. If the designation has not been made in the application, or in separate correspondence, the cabinet shall accept modifications only from the

applicant.

(6) General requirements for maps and plans.

(a) If any of the information marked on the preliminary map required under Section 4 of this regulation has changed, the application shall contain an updated USGS seven and one-half (7 1/2) minute topographic map marked as required in Section 4 of this regulation.

(b) Maps submitted with applications shall be presented in a consolidated format, to the extent possible, and shall include the types of information set forth on topographic maps of the U.S. Geological Survey of the 1:24,000 scale series. Maps of the permit area and adjacent areas shall be at a scale of 400 or 500 feet to the inch, inclusive; and the scale shall be clearly shown on the map. However, when the cabinet determines that a map scale larger than 400 feet to the inch is required to adequately show mine site details, a map of larger scale shall be provided by the applicant. The map required by 405 KAR 8:030, Section 23(1)(a) or 405 KAR 8:040, Section 23(1)(a), regarding additional areas on which permits will be sought, shall be a USGS seven and one-half (7 1/2) minute (1:24,000) topographic map.

(c) Where a map or drawing is required to be certified by a qualified registered professional engineer, the map or drawing shall bear the seal and signature of the engineer as required by KRS Chapter 322, and shall be certified in accordance with 405 KAR 7:040, Section 10.

(d) All engineering design plans submitted with applications shall be prepared by or under the direction of a qualified registered professional engineer and shall bear the engineer's seal, signature, and certification as required by KRS Chapter 322 and 405 KAR 7:040, Section 10.

(e) Maps and plans submitted with the application shall clearly identify all previously mined areas as defined at 405 KAR 16:190, Section 7(2)(c) or 405 KAR 18:190, Section 5(2)(c).

(7) Referenced materials. If used in the application, referenced materials shall either be provided to the cabinet by the applicant or be readily available to the cabinet. If provided, relevant portions of referenced published materials shall be presented briefly and concisely in the application by photocopying or abstracting and with explicit citations.

Section 6. Application and Acreage Fees. (1) Each application for a surface coal mining and reclamation permit shall be accompanied by a fee determined by the cabinet. The fee may be less than, but shall not exceed the actual or anticipated cost of reviewing, administering and enforcing the permit.

(2) The applicant shall submit an application fee of \$375 for each application, plus an additional seventy-five (75) for each acre or fraction thereof of the area of land to be affected by the operation. If the cabinet approves an incremental bonding plan submitted by the applicant, the acreage fees may be paid individually as the bond for each increment is submitted. However, no acreage fees shall be required for surface areas overlying underground or auger workings which will not be affected by surface operations and facilities.

(3) The fee shall accompany the application in the form of a cashier's check or money order payable to the Kentucky State Treasurer. No

permit application shall be processed unless the application fee has been paid.

Section 7. Verification of Application. Applications for permits; revisions; amendments; renewals; or transfers, sales, or assignments of permit rights shall be verified under oath, before a notary public, by the applicant or his authorized representative, that the information contained in the application is true and correct to the best of the official's information and belief.

Section 8. Public Notice of Filing of Permit Applications. (1) An applicant for a permit, major revision, amendment, or renewal of a permit shall place an advertisement in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located.

(2)(a) The first advertisement shall be published on or after the date the application is submitted to the cabinet. The applicant may elect to begin publication on or after the date the applicant receives the notification from the cabinet under Section 13(2) of this regulation that the application has been deemed administratively complete and ready for technical review. The advertisement shall be published at least once each week for four (4) consecutive weeks, with the final consecutive weekly advertisement being published after the applicant's receipt of written notice from the cabinet that the application has been deemed administratively complete and ready for technical review.

(b) The final consecutive weekly advertisement shall clearly state that it is the final advertisement, and that written objections to the application may be submitted to the cabinet until thirty (30) days after the date of the final advertisement.

(3) Within fifteen (15) days of the final date of publication of the advertisement, the applicant shall submit to the cabinet proof of publication of the required final four (4) consecutive weekly notices, satisfactory to the cabinet, which may consist of an affidavit from the publishing newspaper certifying the dates, place and content of the advertisements.

(4) The advertisement shall be entitled "Notice of Intention to Mine" and shall be of a form specified by the cabinet.

(5) The advertisement shall contain, at a minimum, the following information:

(a) The name and business address of the applicant; and

(b) A map or description which shall:

1. Clearly show or describe towns, rivers, streams, and other bodies of water, local landmarks, and any other information, including routes, streets, or roads and accurate distance measurements, necessary to allow local residents to readily identify the proposed permit area;

2. Clearly show or describe the exact location and boundaries of the proposed permit area;

3. State the name of the U.S. Geological Survey seven and one-half (7 1/2) minute quadrangle map(s) which contains the area shown or described; and

4. If a map is used, show the north arrow and map scale.

(c) The location where a copy of the

application is available for public inspection under subsection (8) of this section;

(d) The name and address of the cabinet to which written comments, objections, or requests for permit conferences on the application may be submitted under Sections 9, 10, and 11 of this regulation;

(e) If an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road or to relocate or close a public road; except where public notice and hearing have been previously provided for this particular part of road in accordance with 405 KAR 24:040, Section 2(6)(a) and (b); a concise statement describing the public road, the particular part to be relocated or closed, and the approximate timing and duration of the relocation or closing;

(f) If the application includes a request for an experimental practice under 405 KAR 7:060, a statement indicating that an experimental practice is requested and identifying the regulatory requirement for which a variance is requested; and

(g) The application number.

(6) Within five (5) working days after the application for a permit, major revision, amendment, or renewal of a permit has been determined to be administratively complete, the cabinet shall issue written notification of:

(a) The applicant's intention to conduct surface coal mining and reclamation operations on a particularly described tract of land;

(b) The application number;

(c) Where a copy of the application may be inspected; and

(d) Where comments on the application may be submitted under Section 9 of this regulation.

(7) The written notifications required by subsection (6) of this section shall be sent to:

(a) Local government agencies with jurisdiction over or an interest in the area of the proposed operations, including, but not limited to, planning agencies and sewage and water treatment authorities and water companies, either providing sewage or water services to users in the area of the proposed operations or having water sources or collection, treatment, or distribution facilities located in these areas; and

(b) All federal and Kentucky governmental agencies which have the authority to issue permits and licenses applicable to the proposed surface coal mining and reclamation operation and which are a part of the permit coordination process required by Section 3 of this regulation; and

(c) Those agencies with an interest in the particular proposed operation including, but not limited to:

1. The USDA Soil Conservation Service State Conservationist;
2. The local U.S. Army Corps of Engineers district engineer;
3. The National Park Service;
4. Kentucky and federal fish and wildlife agencies; and
5. The state historic preservation officer.

(8) In accordance with Section 12 of this regulation, the cabinet shall, upon receipt of the application, make the application available for public inspection and copying during all normal working hours at the appropriate regional office of the cabinet where the mining has been proposed, and shall provide reasonable

assistance to the public in the inspection and copying of the application.

Section 9. Submission of Comments or Objections by Public Agencies. (1) Written comments or objections on applications for permits, major revisions, amendments, and renewals of permits may be submitted to the cabinet by the public agencies to whom notification has been provided under Section 8(6) and (7) of this regulation with respect to the effects of the proposed mining operations on the environment within their area of responsibility.

(2) These comments or objections shall be submitted to the cabinet in the manner prescribed by the cabinet, and shall be submitted within thirty (30) calendar days after the date of the written notification by the cabinet pursuant to Section 8(6) and (7) of this regulation.

(3) The cabinet shall immediately file a copy of all comments or objections at the appropriate regional office of the cabinet for public inspection under Section 8(8) of this regulation. A copy shall also be transmitted to the applicant.

Section 10. Right to File Written Objections.

(1) Any person whose interests are or may be adversely affected or an officer or head of any federal, state, or local government agency or authority to be notified under Section 8 of this regulation shall have the right to file written objections to an application for a permit, major revision, amendment, or renewal of a permit with the cabinet, within thirty (30) days after the last publication of the newspaper notice required by Section 8(1) of this regulation.

(2) The cabinet shall, immediately upon receipt of any written objections:

(a) Transmit a copy of the objections to the applicant; and

(b) File a copy at the appropriate regional office of the cabinet for public inspection under Section 8(8) of this regulation.

Section 11. Permit Conferences. (1) Procedure for requests. Any person whose interests are or may be adversely affected by the decision on the application, or the officer or head of any federal, state or local government agency or authority to be notified under Section 8 of this regulation may, in writing, request that the cabinet hold an informal conference on any application for a permit, major revision, amendment, or renewal of a permit. The request shall:

(a) Briefly summarize the issues to be raised by the requester at the conference;

(b) State whether the requester desires to have the conference conducted in the locality of the proposed mining operations; and

(c) Be filed with the cabinet not later than thirty (30) days after the last publication of the newspaper advertisement placed by the applicant under Section 8(1) of this regulation.

(2) Except as provided in subsection (3) of this section, if a permit conference has been requested in accordance with subsection (1) of this section, the cabinet shall hold a conference within twenty (20) working days after the last date to request a conference under subsection (1)(c) of this section. The conference shall be conducted according to the

following:

(a) If requested under subsection (1)(b) of this section, the conference shall be held in the locality of the proposed mining.

(b) The date, time, and location of the conference shall be sent to the applicant and parties requesting the conference and advertised once by the cabinet in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located, at least two (2) weeks prior to the scheduled conference.

(c) If requested, in writing, by a conference requester in a reasonable time prior to the conference, the cabinet may arrange with the applicant to grant parties to the conference access to the permit area and, to the extent that the applicant has the right to grant access, to the adjacent areas prior to the established date of the conference for the purpose of gathering information relevant to the conference.

(d) The requirements of 405 KAR 7:090 shall not apply to the conduct of the conference. The conference shall be conducted by a representative of the cabinet, who may accept oral or written statements and any other relevant information from any party to the conference. An electronic or stenographic record shall be made of the conference proceedings, unless waived by all the parties. The record shall be maintained and shall be accessible to the parties of the conference until final release of the applicant's performance bond or other equivalent guarantee pursuant to 405 KAR Chapter 10.

(3) If all parties requesting the conference stipulate agreement before the requested conference and withdraw their requests, the conference need not be held.

(4) Permit conferences held in accordance with this section may be used by the cabinet as the public hearing required under 405 KAR 24:040, Section 2(6) on proposed relocation and closure of public roads.

Section 12. Public Availability of Information in Permit Applications on File with the Cabinet.
(1) General availability.

(a) The cabinet shall make an application for a permit, major or minor revision, amendment, or renewal of a permit available for the public to inspect and copy by placing a full copy of the application at the regional office for the area in which mining shall occur. The application will be made available by the cabinet for public inspection and copying, at reasonable times, in accordance with Kentucky open records statutes, KRS 61.870 to 61.884. This copy need not include confidential information exempt from disclosure under subsections (2) and (3) of this section.

(b) The application required by paragraph (a) of this subsection shall be placed at the appropriate regional office no later than the first date of newspaper advertisement of the application.

(c) The applicant shall be responsible for placing all changes in the copy of the application retained at the regional office when the changes are submitted to the Division of Permits.

(2) Information pertaining to coal seams, test borings, core samples, or soil samples in

applications shall be made available for inspection and copying to any person with an interest which is or may be adversely affected.

(3) Confidentiality. The cabinet shall provide for procedures to ensure the confidentiality of qualified confidential information. Confidential information shall be clearly identified by the applicant and submitted separately from the remainder of the application. Where a dispute arises concerning the disclosure or nondisclosure of confidential information, the cabinet shall provide notice and convene a hearing in accordance with 405 KAR 7:090. Confidential information shall be limited to the following:

(a) Information that pertains only to the analysis of the chemical and physical properties of the coal to be mined, except information on components of the coal which are potentially toxic in the environment;

(b) Information on the nature and location of archaeological resources on public land and Indian land as required under the Archaeological Resources Protection Act of 1979.

Section 13. Department Review of Applications for Permits, Revisions, Amendments, and Renewals. (1) General.

(a) The cabinet shall review the application for a permit, revision, amendment, or renewal; written comments and objections submitted; and records of any permit conference held on the application and make a written decision, within the time frames listed in Section 16(1) of this regulation, concerning approval of, requiring modification of, or concerning rejection of the application.

(b) An applicant for a permit, revision, or amendment shall have the burden of establishing that the application is in compliance with all requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(2)(a) Administrative completeness determination. Within ten (10) working days of initial receipt of the application the cabinet shall provide written notification to the applicant as to the administrative completeness of the application. If the application is determined to be incomplete, the cabinet shall notify the applicant within ten (10) working days after initial receipt of the application by certified mail, return receipt requested, or by registered mail, of the deficiencies which render the application incomplete. The applicant may submit supplemental information to correct the identified deficiencies for a period of ten (10) working days after the applicant's receipt of the initial notice of incompleteness. If, after ten (10) working days, the cabinet determines that the application is still incomplete, the cabinet shall return the incomplete application to the applicant with written notification of the reasons for the determination.

(b) A determination by the cabinet that the application is administratively complete means that the application contains the major elements required by KRS Chapter 350 and 405 KAR Chapters 7 through 24 which are necessary to allow meaningful review of the application by the cabinet. An application shall not be deemed administratively complete if one (1) or more major elements are found to be absent from the application, which, by virtue of their absence, would require that the permit be denied. A

determination that an application is administratively complete shall not mean that the application is complete in every detail, nor shall it mean that any aspect of the application is technically sufficient or approvable.

(3) Processing of the administratively complete application. Within the time periods set forth in Section 16 of this regulation, the cabinet shall either:

(a) Notify the applicant of the cabinet's decision to issue or deny the application; or

(b) Notify the applicant in writing, by certified mail, return receipt requested, or by registered mail, promptly upon discovery of deficiencies in the application and allow the application to be temporarily withdrawn for the purpose of correcting the deficiencies. Temporary withdrawal periods shall not be counted against the time available to the cabinet for consideration of the application.

(4) Review of violations.

(a) Based on available information concerning failure-to-abate cessation orders issued by OSM, Kentucky, or any other state; unabated imminent harm cessation orders issued by OSM, Kentucky, or any other state; delinquent civil penalties assessed pursuant to SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and regulations adopted pursuant thereto, or any other state's laws or regulations under SMCRA; bond forfeitures by OSM, Kentucky, or any other state where violations upon which the forfeitures were based have not been corrected; delinquent abandoned mine reclamation fees; and unabated violations of federal, Kentucky, and any other state's laws, rules and regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, the cabinet shall not issue the permit if any surface coal mining reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant is currently in violation of SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and regulations adopted pursuant thereto, any other state's laws or regulations under SMCRA, or any other law, rule, or regulation referred to in this subsection. In the absence of a failure-to-abate cessation order, the cabinet may presume that a notice of violation issued by OSM, Kentucky, or any other state pursuant to its laws and regulations under SMCRA has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation, except where evidence to the contrary is set forth in the permit application, or where the violation is for nonpayment of abandoned mine reclamation fees or civil penalties. If a current violation exists, the cabinet shall require the applicant or person who owns or controls the applicant, before issuance of the permit, to either: [If the cabinet determines from either the lists submitted as part of the application under 405 KAR 8:030, Section 3(3) or 405 KAR 8:040, Section 3(3), or from other available information, that any surface coal mining operation owned or controlled by the applicant is currently in violation of any law, rule, or regulation of the United States or any state law, rule, or regulation enacted pursuant to federal law, rule, or regulation, pertaining to air or water environmental protection, or of SMCRA or KRS Chapter 350, and regulations promulgated pursuant thereto, the cabinet shall

require the applicant, before the issuance of the permit, to either:]

1. [(a)] Submit to the cabinet proof that the current violation has been or is in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation [which is satisfactory to the cabinet and other agencies which have jurisdiction over the violation, that the violation has been or is in the process of being corrected]; or

2. Establish for the cabinet that the applicant, or any person owned or controlled by either the applicant or any person who owns or controls the applicant, has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the current violation. If the initial judicial review authority affirms the violation, then the applicant shall within thirty (30) days of the judicial action submit proof required under subparagraph 1 of this paragraph.

(b) Any permit that is issued on the basis of proof submitted under paragraph (a)1 of this subsection that a violation is in the process of being corrected, or pending the outcome of an appeal described in paragraph (a)2 of this subsection, shall be conditionally issued.

(c) If the cabinet makes a finding that the applicant, anyone who owns or controls the applicant, or the operator specified in the application, controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of KRS Chapter 350 and regulations adopted pursuant thereto of such nature and duration, and with resulting irreparable damage to the environment as to indicate an intent not to comply with those laws or regulations, no permit shall be issued. Before such a finding becomes final, the applicant or operator shall be afforded an opportunity for an adjudicatory hearing on the determination as provided for in 405 KAR 7:090, Section 5(1)(a).

[(b) Establish to the cabinet that the applicant has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of that violation. In this case, the permit shall contain a condition requiring that if the administrative or initial judicial hearing authority either denies a stay applied for in the appeal, or affirms the violation, then any surface coal mining operations being conducted under the permit shall be terminated unless and until the permittee complies with paragraph (a) of this subsection. For loss of appeal on violations of laws or regulations of the United States or states other than Kentucky, operations shall be terminated under this paragraph only when the cabinet has actual, verified notice of the loss of appeal and the subsequent failure of the permittee to correct or begin correcting the violation; and the termination shall be set aside by the cabinet only when the cabinet has actual, verified notice that the permittee has corrected the violation or is in the process of correcting the violation.]

(5) Final compliance review. After an application is approved, but before the permit is issued, the cabinet shall reconsider its decision to approve the application, based on the compliance review required by subsection (4)(a) of this section in light of any new information submitted under 405 KAR 8:030,

Sections 2(11) and 3(4), or 405 KAR 8:040, Sections 2(11) and 3(4). [No permit shall be issued if the cabinet determines that the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violation of SMCRA, KRS Chapter 350, or 405 KAR Chapters 7 through 24 of such a nature and duration and with such resulting "irreparable damage to the environment" (as defined in 405 KAR 7:020) that indicates an intent not to comply with SMCRA, KRS Chapter 350, or 405 KAR Chapters 7 through 24. Before any final determination by the cabinet pursuant to this subsection the applicant or operator shall be afforded an opportunity for an adjudicatory hearing on the determination as provided for in 405 KAR 7:090.]

Section 14. Criteria for Application Approval or Denial. No application for a permit, revision (as applicable), or amendment of a permit shall be approved unless the application affirmatively demonstrates and the cabinet finds, in writing, on the basis of information set forth in the application or from information otherwise available, which has been documented in the approval, that:

(1) The permit application is complete and accurate and in compliance with all requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(2) The applicant has demonstrated that surface coal mining and reclamation operations, as required by KRS Chapter 350 and 405 KAR Chapters 7 through 24 can be feasibly accomplished under the mining and reclamation plan contained in the application.

(3) The assessment of the probable cumulative impacts of all anticipated coal mining in the cumulative impact area on the hydrologic balance has been made by the cabinet and the operations proposed under the application have been designed to prevent material damage to the hydrologic balance outside the proposed permit area.

(4) The proposed permit area is:

(a) Not included within an area designated unsuitable for surface coal mining operations under 405 KAR 24:030;

(b) Not within an area under study for designation as unsuitable for surface coal mining operations in an administrative proceeding begun under 405 KAR 24:030, unless the applicant demonstrates that, before January 4, 1977, he or she made substantial legal and financial commitments in relation to the operation for which he or she is applying for a permit;

(c) Not on any lands subject to the prohibitions or limitations of 405 KAR 24:040, Section 2(1), (2) or (3);

(d) Not within 100 feet of the outside right-of-way line of any public road, except as provided for in 405 KAR 24:040, Section 2(6); and

(e) Not within 300 feet from any occupied dwelling, except as provided for in 405 KAR 24:040, Section 2(5).

(5)(a) The proposed operations will not adversely affect any publicly-owned parks or any places included on the National Register of Historic Places, except as provided for in 405 KAR 24:040, Section 2(4); and

(b) The cabinet has taken into account the effect of the proposed operations on properties

listed and eligible for listing on the National Register of Historic Places. This finding may be supported in part by inclusion of appropriate permit conditions or changes in the mining and reclamation plan to protect historic resources, or a documented decision that the cabinet has determined that no additional protection measures are necessary.

(6) For operations involving the surface mining of coal where the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the cabinet the documentation required under 405 KAR 8:030, Section 4(2) or 405 KAR 8:040, Section 4(2).

(7) With regard to current violations, the applicant has either:

(a) Submitted the proof required by Section 13(4)(a) of this regulation; or

(b) Made the demonstration required by Section 13(4)(b) of this regulation.

(8) The applicant has paid all reclamation fees from previous and existing operations as required by 30 CFR 870, or has entered into a payment schedule approved by OSM.

(9) The applicant or the operator, if other than the applicant, does not control and has not controlled mining operations with a demonstrated pattern of willful violations of SMCRA or KRS Chapter 350 of such a nature and duration and with such resulting "irreparable damage to the environment" (as defined in 405 KAR 7:020) as to indicate an intent not to comply with SMCRA or KRS Chapter 350.

(10) The applicant has demonstrated that any existing structure will comply with 405 KAR 8:030, Section 25 and 405 KAR 8:040, Section 25, and the applicable performance standards of KAR 405 KAR Chapters 16 and 18.

(11) The applicant has, if applicable, satisfied the requirements for approval of a long-term, intensive agricultural postmining land use.

(12) The applicant can reasonably be expected to submit the performance bond or other equivalent guarantee required under 405 KAR Chapter 10 prior to the issuance of the permit.

(13) The applicant has, with respect to prime farmland obtained either a negative determination or satisfied the requirements of 405 KAR 8:050, Section 3.

(14) The applicant has satisfied the applicable requirements of 405 KAR 8:050 regarding special categories of mining.

(15) The cabinet has made all specific approvals required under 405 KAR Chapters 16 through 20.

(16) The cabinet has found that the activities would not affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitats as determined under the Endangered Species Act of 1973 (16 USC 1531 et seq.).

(17) The applicant has not forfeited any bond under KRS Chapter 350. When the applicant has forfeited a bond, the permit may be issued if the land for which the bond was forfeited has been satisfactorily reclaimed without cost to the state or the operator or person has paid a sum that the cabinet finds is adequate to reclaim the land.

(18) The applicant has not had a permit revoked, suspended or terminated under KRS Chapter 350. If the applicant has had a permit

revoked, suspended or terminated, another permit may be issued, or a suspended permit may be reinstated, only if the applicant has complied with all of the requirements of KRS Chapter 350 or submitted proof satisfactory to the cabinet that the violation has been corrected or is in the process of being corrected, in respect to all permits issued to him or her.

(19) The operation will not constitute a hazard to or do physical damage to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, or other public property.

(20) The surface coal mining operation will not adversely affect a wild river established pursuant to KRS Chapter 146 or a state park unless adequate screening and other measures as approved by the cabinet have been incorporated into the permit application and the surface coal mining operation has been jointly approved by all affected agencies as set forth under 405 KAR 24:040.

(21) For a proposed remining operation where the applicant intends to reclaim in accordance with the requirements of 405 KAR 16:190, Section 7 or 405 KAR 18:190, Section 5, the applicant has demonstrated, to the satisfaction of the cabinet, that the site of the operation will be a previously mined area as defined in those sections.

Section 15. Criteria for Application Approval or Denial Regarding Existing Structures. No application for a permit, revision, or amendment which proposes to use an existing structure in connection with or to facilitate the proposed surface coal mining and reclamation operation shall be approved, unless the applicant demonstrates and the cabinet finds, in writing, on the basis of information set forth in the complete and accurate application, that the provisions of 405 KAR 7:040, Section 4, have been met.

Section 16. Application Approval or Denial Actions. (1) The cabinet shall take action on applications within the following time periods as appropriate:

(a)1. Except as provided for in paragraph (b) of this subsection, for a complete and accurate application submitted under Section 2(2)(a), (b), (d), and (e) of this regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application within sixty-five (65) working days after the notice of administrative completeness under Section 13(2) of this regulation, except that periods of temporary withdrawal under Section 13(3)(b) of this regulation shall not be counted against the sixty-five (65) working-day period available to the cabinet.

2. Except as provided in paragraph (b) of this subsection, for a complete and accurate application submitted under Section 2(2)(c) of this regulation of a major revision as provided in Section 20 of this regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application within forty-five (45) working days after the notice of administrative completeness under Section 13(2) of this regulation, except that periods of temporary withdrawal under Section 13(3)(b) of this regulation shall not be counted against the forty-five (45) working-day period available to

the cabinet.

3. For a complete and accurate application submitted under Section 2(2)(c) of this regulation for a minor revision as provided in Section 20 of this regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application within fifteen (15) working days after the notice of administrative completeness under Section 13(2) of this regulation, except that periods of temporary withdrawal under Section 13(3)(b) of this regulation shall not be counted against the fifteen (15) working-day period available to the cabinet.

(b) If the notice, hearing and conference procedures mandated by KRS Chapter 350 and 405 KAR prevent a decision from being made within the time periods specified in paragraph (a) of this subsection, the cabinet shall have additional time to issue its decision, but not to exceed twenty (20) days from the completion of the notice, hearing and conference procedures.

(2) The cabinet shall issue written notification of the decision to approve, modify, or deny the application, in whole or part, to the following persons and entities:

(a) The applicant;
(b) Each person who files comments or objections to the permit application;
(c) Each party to an informal permit conference, if held;

(d) The county judge-executive of the county, and the chief executive officer of any municipality, in which the permit area lies. This notice shall be sent within ten (10) days after the issuance of the permit and shall include a description of the location of the permit area; and

(e) The field office director of the Office of Surface Mining Reclamation and Enforcement.

(3) If the application has been denied, the notification required in subsection (2) of this section, for the applicant, any person filing objections to the permit and parties to an informal conference, shall include specific reasons for the denial.

(4) If the cabinet decides to approve the application, it shall require that the applicant file the performance bond before the permit is issued, in accordance with 405 KAR Chapter 10.

(5) The cabinet shall publish a summary of its decision in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located.

Section 17. Term of Permit. (1) Each permit shall be issued for a fixed term not to exceed five (5) years. A longer fixed permit term may be granted at the discretion of the cabinet only if:

(a) The application is complete and accurate for the specified longer term; and

(b) The applicant shows that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and for the opening of the operation with the need confirmed, in writing, by the applicant's proposed source for the financing.

(2)(a) A permit shall terminate, if the permittee has not begun the surface coal mining and reclamation operation covered by the permit within three (3) years of the issuance of the permit.

(b) The cabinet may grant reasonable extensions of the time for commencement of these operations, upon receipt of a written statement showing that the extensions of time are necessary, if:

1. Litigation precludes the commencement or threatens substantial economic loss to the permittee; or

2. There are conditions beyond the control and without the fault or negligence of the permittee.

(c) With respect to coal to be mined for use in a synthetic fuel facility or specified major electric generating facility, the permittee shall be deemed to have commenced surface mining operations when construction of the synthetic fuel or generating facility is initiated.

(d) Extensions of time granted by the cabinet under this subsection shall be specifically set forth in the permit and notice of the extension shall be made to the public.

(3) Permits may be suspended, revoked, or modified by the cabinet, in accordance with Section 19 of this regulation; Section 3 of 405 KAR 7:060; Sections 4, 6, and 7 of 405 KAR 8:050; and 405 KAR Chapter 12.

Section 18. Conditions of Permits. Actions by an applicant, permittee, or operator to submit an application to the cabinet, to accept a permit issued by the cabinet, or to begin operations pursuant to a permit issued by the cabinet, shall be deemed to constitute knowledge and acceptance of the conditions set forth in this section, which shall be applicable to each permit issued by the cabinet pursuant to this chapter whether or not the conditions have been set forth in the permit.

(1) General.

(a) The permittee shall comply fully with all terms and conditions of the permit and all applicable performance standards of KRS Chapter 350 and 405 KAR Chapters 7 through 24; and

(b) Except to the extent that the cabinet otherwise directs in the permit that specific actions be taken, the permittee shall conduct all surface coal mining and reclamation operations as described in the approved application; and

(c) The permittee shall conduct surface coal mining and reclamation operations only on those lands specifically designated as the permit area on the maps submitted under 405 KAR 8:030 or 405 KAR 8:040 and authorized for the term of the permit; and which are subject to the performance bond in effect pursuant to 405 KAR Chapter 10.

(2) Right of entry.

(a) Without advance notice, unreasonable delay, or a search warrant, and upon presentation of appropriate credentials, the permittee shall allow authorized representatives of the Secretary of the Interior and the cabinet to:

1. Have the rights of entry provided for in 405 KAR 12:010, Section 3; and

2. Be accompanied by private persons for the purpose of conducting a federal inspection when the inspection is in response to an alleged violation reported to the cabinet by the private person.

(b) The permittee shall allow the authorized representatives of the cabinet to be accompanied by private persons for the purpose of conducting an inspection pursuant to 405 KAR 12:030.

(3) Environment, public health, and safety.

(a) The permittee shall take all possible

steps to minimize any adverse impact to the environment or public health and safety resulting from failure to comply with any term or condition of the permit, including, but not limited to:

1. Any accelerated or additional monitoring necessary to determine the nature and extent of failure to comply and the results of the failure to comply;

2. Immediate implementation of measures necessary to comply; and

3. Warning, as soon as possible after learning of the failure to comply, any person whose health and safety is in imminent danger due to the failure to comply.

(b) The permittee shall dispose of solids, sludge, filter backwash, or pollutants removed in the course of treatment or control of waters or emissions to the air in the manner required by 405 KAR Chapters 16 through 20, and which prevents violation of any other applicable Kentucky or federal law.

(c) The permittee shall conduct its operations:

1. In accordance with any measures specified in the permit as necessary to prevent significant, imminent environmental harm to the health or safety of the public; and

2. Utilizing any methods specified in the permit by the cabinet in approving alternative methods of compliance with the performance standards of KRS Chapter 350 and 405 KAR Chapters 16 through 20, in accordance with KRS Chapter 350 and 405 KAR Chapters 16 through 20.

(4) Reclamation fees. The permittee shall pay all reclamation fees required by 30 CFR 870 for coal produced under the permit for sale, transfer, or use, in the manner required by that subchapter.

(5) Within thirty (30) days after a cessation order is issued by OSM for operations conducted under the permit or after an order for cessation and immediate compliance is issued under 405 KAR 12:020, Section 3 for operations conducted under the permit, except where a stay of the order is granted and remains in effect, the permittee shall either submit to the cabinet the following information, current to the date the order was issued, or notify the cabinet in writing that there has been no change since the immediately preceding submittal of the information:

(a) Any new information needed to correct or update the information previously submitted to the cabinet by the permittee under 405 KAR 8:030, Section 2(3) or 405 KAR 8:040, Section 2(3); or

(b) If not previously submitted, the information required from a permit applicant by 405 KAR 8:030, Section 2(3) or 405 KAR 8:040, Section 2(3).

Section 19. Review of Permits. (1)(a) The cabinet shall review each permit issued under this chapter during the term of the permit. This review shall occur not later than the middle of the permit term and as required by 405 KAR 7:060 and 405 KAR 8:050, Sections 4, 6, and 7. Issued permits shall be reevaluated in accordance with the terms of the permit and the requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24, including reevaluation of the bond.

(b) For permits of longer than five (5) year terms, a review of the permit shall be no less frequent than the permit midterm or every five (5) years, whichever is more frequent.

(2) After the review required by subsection

(1) of this section, or at any time, the cabinet may, by order, require revision or modification of the permit provisions to ensure compliance with KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(3) Copies of the decision of the cabinet shall be sent to the permittee.

(4) Any order of the cabinet requiring revision or modification of permits shall be based upon written findings and shall be subject to the provisions for administrative and judicial review of 405 KAR 7:090.

Section 20. Permit Revisions. (1) General. A revision to a permit shall be obtained:

(a) For changes in the surface coal mining and reclamation operations described in the existing application and approved under the current permit.

(b) When a revision is required by an order issued under Section 19 of this regulation.

(c) In order to continue operation after the cancellation or material reduction of the liability insurance policy, performance bond, or other equivalent guarantee upon which the original permit was issued; or

(d) As otherwise required under 405 KAR Chapters 7 through 24.

(2) Major revision.

(a) A revision is a major revision if the proposed change is of such scope and nature that the cabinet determines that public notice is necessary to allow participation in the cabinet's decision by persons who have an interest which may be adversely affected by the proposed change. Major revisions shall include, but shall not be limited to:

1. Changes in the postmining land use;

2. Enlargement or relocation of impoundments so as to increase the safety hazard classification of the impoundment;

3. Variances to approximate original contour requirements;

4. Construction or relocation of roads, where the construction or relocation could adversely affect the interests of persons other than the surface owner;

5. Changes which may adversely affect significant fish and wildlife habitats or endangered species;

6. Proposed experimental practices;

7. Changes which may cause major impacts on the hydrologic balance;

8. Incidental boundary revisions that affect new watersheds;

9. Incidental boundary revisions that include diversions of perennial streams;

10. Incidental boundary revisions that include new areas from which coal will be removed, except these revisions shall be limited to ten (10) percent of the permit area acreage or five (5) acres, whichever is less.

(b) Major revisions shall be subject to all of the requirements of Sections 5; 7 through 12; 13(1), (2), (3); 14(1) through (6), (8), (10) through (16), (19) through (21); 15; 16; 18; and 24 of this regulation; and shall be submitted on forms prescribed by the cabinet. In addition to the requirements of Section 8(5) of this regulation, the advertisement shall contain a statement that the applicant proposes to revise the existing permit and shall contain a description of the proposed change.

(3) Minor revisions.

(a) All revisions which are not determined by

the cabinet to be major revisions are minor revisions. Minor revisions shall be subject to Sections 5; 7; 12; 13(1), (2), (3); 14(1) through (6), (10) through (16), (19) through (21); 15; 16(1) through (4); 18; and 24 of this regulation, except that minor field revisions described in paragraph (d) of this subsection shall not be subject to the administrative completeness determination of Section 13(2) of this regulation, and the time frame for review in Section 16(1)(a)3 of this regulation shall begin at the time of application submittal. Minor revisions shall be submitted on forms prescribed by the cabinet.

(b) If the cabinet determines that a proposed minor revision is actually a major revision during the administrative completeness determination under Section 13 of this regulation, the cabinet shall so inform the applicant and return the application.

(c) The cabinet shall notify, in writing, those persons, if any, that the cabinet determines could have an interest that may be adversely affected by the proposed change. Those persons shall have the right to file written objections to the revision within ten (10) days of the date of the notification.

(d) The following minor revisions shall be deemed minor field revisions which may be reviewed and processed in accordance with this section by the appropriate regional office of the department. However, if the number of persons that potentially could have an interest that may be adversely affected by the proposed change is large enough that public notice by newspaper advertisement rather than individual notice by letter from the cabinet is necessary, the regional administrator shall determine that the proposed revision is a major revision and it shall not be processed under this paragraph.

1. Proposals for minor relocation of underground mine entries where:

a. There are no structures or "renewable resource lands" (as that term is defined in paragraph (b) of the definition provided in 405 KAR 7:020, Section 1) overlying the area;

b. There is no proposed change to the permit boundary; and

c. The proposed new location is on the same face-up area and coal seam as originally permitted, is within the same drainage area as the original location, is controlled by the same sedimentation pond, and there will be no additional disturbed acreage within the drainage area of that sedimentation pond.

2. Proposals for retention of concrete platforms and small buildings where:

a. There is no proposed change to the previously approved postmining land use; and

b. The application contains a notarized letter from the surface owner requesting retention of the structure.

3. Proposals to leave roads as permanent, except proposals involving roads to impoundments, excess spoil fills, coal mine waste fills, or air shafts; roads within 100 feet of an intermittent or perennial stream; and roads within areas designated unsuitable for mining under 405 KAR 24:040, Section 2, regardless of whether a previous waiver or approval has been granted. The application shall contain a notarized letter from the surface owner including a request to retain the road and a statement acknowledging that the surface owner understands that the operator has no

responsibility for maintenance of the road after the performance bond has been released pursuant to 405 KAR 10:040 for the area in which the road is located.

4. Proposals to increase the diameter of culverts used as road crossdrains, not including culverts used for stream crossings, provided that the proposed culvert is the same type of pipe as the previously approved culvert.

5. Proposals to install additional culverts used as road crossdrains (not including culverts used for stream crossings), provided that the diameter of the proposed additional culvert is equal to the diameter of the nearest downstream crossdrain and is the same type of pipe as the nearest downstream crossdrain.

6. Proposals for minor relocation of on-bench sediment control structures (dugouts only) in order to locate the structures at low spots on the same bench on which they were initially proposed, where:

a. The drainage area to the structure will remain the same as the original design;

b. The proposed location will not cause short-circuiting of the structure; and

c. There is no proposed change to the permit boundary.

7. Proposals to retain diversions of overland flow (not including stream diversions) as permanent facilities where:

a. The application contains a notarized letter from the surface owner including a request to retain the diversion and a statement accepting maintenance responsibilities for the diversions; and

b. The diversions have previously been designed to the standards for permanent diversions.

8. Proposals for relocation of topsoil storage areas where:

a. There is no proposed change to the permit boundary; and

b. The proposed new location was previously permitted as a disturbed area within the same drainage area as the original location, is controlled by the same sedimentation pond, and there will be no additional disturbed acreage within the drainage area of that sedimentation pond.

9. Proposals to substitute plant species where:

a. The proposed species is of the same vegetative type (grass, legume, tree, or shrub) as the original species;

b. The proposed species will serve the equivalent function of the original species with respect to the previously approved: revegetation plan, postmining land use plan, and the fish and wildlife protection and enhancement plan; and

c. The proposed species and its application or planting rate are compatible with the remainder of the previously approved species mixture to be planted.

10. Proposals to utilize hydroseeding for trees instead of planting trees or tree seedlings where:

a. Hydroseeding is an appropriate method for the tree species being established; and

b. No change in tree species is involved unless concurrently approved under subparagraph 9 of this paragraph.

11. Proposals to change the type of mulch to be utilized on the permit area, including a revised rate of application consistent with the different type of mulch proposed.

12. Proposals to retain small depressions in

the reclaimed area.

13. Proposals required by the cabinet to increase frequency of air blast monitoring.

14. Proposals required by the cabinet to increase frequency of air pollution monitoring.

15. Proposals to employ more effective fugitive dust controls, and proposals required by the cabinet to employ additional fugitive dust controls.

16. Proposals to add a portable coal crusher where:

a. The crusher and associated conveying equipment are a completely portable, trailer mounted unit;

b. The equipment will be utilized to crush coal only from the permit area on which it is proposed to be located;

c. The operation will not generate coal mine waste;

d. There is no proposed change to the permit boundary; and

e. The equipment will always be located in the mining pit or other location previously permitted as a disturbed area controlled by a previously approved sedimentation pond and there will be no additional disturbed acreage or delayed reclamation within the drainage area of any of the sedimentation ponds.

17. Proposals to change the time periods, or the types or patterns of warning or all-clear signals, when explosives are to be detonated.

18. Proposals to relocate an explosive storage area within the existing permit area in accordance with 27 CFR 55.206, 55.218, 55.219, 55.220, and 30 CFR 77.1301(c).

19. Approval for minor relocation of support facilities such as conveyors, hoppers, and coal stockpiles where:

a. There is no proposed change to the permit boundary; and

b. The proposed new location was previously permitted as a disturbed area within the same drainage area as the original location, is controlled by the same sedimentation pond, and there will be no additional disturbed acreage within the drainage area of that sedimentation pond.

20. Proposals for modifications of shared facilities where that modification has already been approved in a revision for one of the permittees by the Division of Permits and no additional performance bond was required for the initial revision.

21. Proposals to add a hopper to a permitted area where:

a. There is no proposed change to the permit boundary; and

b. The proposed location was previously permitted as a disturbed area controlled by a previously approved sedimentation pond and there will be no additional disturbed acreage or delayed reclamation within the drainage area of that sedimentation pond.

22. Proposals to change the brush disposal plan, not including any proposals to bury brush in the backfill area on steep slopes or in excess spoil fills or coal mine waste fills.

23. Proposals to cut berms, provided that the cuts will not cause bypassing or short circuiting of on-bench structures or other sedimentation control structures.

24. Proposals to change the basis of judging revegetation from reference areas to the technical standards established in 405 KAR Chapters 7 through 24.

25. Proposals for incidental boundary revisions for minor off-permit disturbances where:

a. The total acreage of the minor off-permit disturbances is no more than one (1) acre combined per proposal;

b. The cumulative acreage limitation established in the definition of "incidental boundary revision" in 405 KAR 7:020 is not exceeded;

c. The area to be permitted does not include any wetlands, prime farmlands, stream buffer zones, federal lands, habitats of unusually high value for fish and wildlife, areas that may contain threatened or endangered species, or areas designated unsuitable for mining under 405 KAR Chapter 24;

d. The off-permit disturbance was not a coal extraction area nor shall any future coal extraction occur on the area;

e. There are no structures such as excess spoil disposal fills, coal mine waste disposal fills or impoundments, or water impoundments involved;

f. The surface owner of the area to be permitted is a surface owner of disturbed area under the existing permit; and

g. An additional performance bond in the amount of \$5000 has been filed by the permittee.

h. If deemed necessary for any reason, the regional administrator may decline to review and process any proposal to permit an off-permit disturbance as a minor field revision and instead require that an application be submitted to the Division of Permits.

26. Except as provided below, proposals to remove sedimentation ponds previously approved as permanent impoundments where the application contains a notarized letter from the surface owner requesting the elimination of the impoundment, the application contains an acceptable plan for removal, and the criteria for sedimentation pond removal have been met. However, proposals to remove sedimentation ponds in the following situations shall not be processed as minor field revisions:

a. Where the structure has a hazard classification of B or C;

b. Where the impoundment is a developed water resource land use;

c. Where the removal or activities associated with the removal of the structure may adversely affect significant fish and wildlife habitats or threatened or endangered species;

d. Where the impoundment may be a necessary element in the achievement of the previously approved postmining land use (such as a stock pond for pastureland where no other nearby source of water is available to the livestock); or

e. Where the impoundment was originally planned to be left for the purpose, in whole or in part, of enhancing fish and wildlife and related environmental values.

27. Proposals to approve exemptions from the requirement to pass drainage through sedimentation ponds for disturbed areas that, due to unexpected field conditions, will not drain to an approved sedimentation pond where:

a. There has not been any acid drainage or drainage containing concentrations of total iron or manganese from this or nearby areas of the mine that could result in water quality violations if untreated and none is expected based on overburden analysis;

b. The application contains a justification that it is not feasible to control the drainage by a sedimentation pond;

c. The disturbed area is one (1) acre or less;

d. The application contains a plan to immediately implement alternate sedimentation control measures including, at a minimum, mulching, silt fences, straw bale dikes and establishment of a quick growing temporary vegetative cover;

e. The application contains sufficient plan views and cross sections certified by a registered professional engineer to clearly illustrate the feasibility of the proposal and the location of the alternate control methods (minimum scale one (1) inch equals 100 feet); and

f. The application contains a MRP map certified by a registered professional engineer showing the location of the disturbed area and the drainage area clearly.

(e) Proposed minor revisions which only seek to change the engineering design of impoundments and diversions of overland flow where no change in permit boundary is involved shall not be subject to the administrative completeness determination of Section 13(2) of this regulation; however, the application shall be processed in, and written notice that the application has been determined to be subject to this paragraph and is being forwarded for technical review shall be provided to the applicant within ten (10) working days. The time frame for review in Section 16(1)(a)3 of this regulation shall begin at the time of this notice.

(4) Any extensions to the area covered by a permit, except for incidental boundary revisions, shall be made by application for a new or amended permit and shall not be approved under this section.

(5) Fees. Applications for major and minor revisions shall include a basic fee of \$375, except that minor field revisions shall have no basic fee. If the revision application proposes incidental boundary revisions which would increase the acreage in the permit, an additional acreage fee of seventy-five (75) dollars per acre, or fraction thereof, shall be included with the application, except that no acreage fee shall be required for surface areas overlying underground workings which will not be affected by surface operations and facilities.

Section 21. Permit Renewals. (1) General requirements for renewal. Any valid, existing permit issued pursuant to this chapter shall carry with it the right of successive renewal, within the approved boundaries of the existing permit, upon expiration of the term of the permit.

(2) Contents of renewal applications. Applications for renewal of permits shall be submitted within the time prescribed by Section 2(2)(b) of this regulation. Renewal applications shall be in a form and with content as required by the cabinet and in accordance with this section, and shall include at a minimum:

(a) The name and address of the permittee, the term of the renewal requested and the permit number;

(b) A copy of the proposed newspaper notice and proof of publication of same under Section 8 of this regulation;

(c) Evidence that liability insurance under 405 KAR 10:030, Section 4, will be provided by

the applicant for the proposed period of renewal;

(d) A renewal fee of \$375;

(e) Evidence that the performance bond will continue in effect for any renewal requested, as well as any additional bond required by the cabinet pursuant to 405 KAR 10:020; and

(f) Any additional revised or updated information which may be required by the cabinet.

(3) Applications for renewal shall be subject to the requirements of Sections 8 through 11, 13 and 16 of this regulation.

(4) An application for renewal shall not include any proposed revisions to the permit. Revisions shall be made by separate application and shall be subject to the requirements of Section 20 of this regulation.

(5) Term of renewal. Any permit renewal shall be for a term not to exceed the period of the original permit established under Section 17 of this regulation.

(6) Approval or denial of renewal applications.

(a) The cabinet shall approve a complete and accurate application for permit renewal, unless it finds, in writing, that:

1. The terms and conditions of the existing permit are not being satisfactorily met;

2. The present surface coal mining and reclamation operations are not in compliance with the environmental protection standards under KRS Chapter 350 and 405 KAR Chapters 7 through 24;

3. The requested renewal substantially jeopardizes the applicant's continuing responsibility to comply with KRS Chapter 350 and 405 KAR Chapters 7 through 24 on existing permit areas;

4. The applicant has not provided evidence that any performance bond required for the operations will continue in effect for the proposed period of renewal, as well as any additional bond the cabinet might require pursuant to 405 KAR Chapter 10;

5. Any additional revised or updated information required by the cabinet has not been provided by the applicant; or

6. The applicant has not provided evidence of having liability insurance in accordance with 405 KAR 10:030, Section 4.

(b) In determining whether to approve or deny a renewal, the burden shall be on the opponents of renewal.

(c) The cabinet shall send copies of its decision to the applicant, any persons who filed objections or comments to the renewal, to any persons who were parties to any informal conference held on the permit renewal and to the field office director of the Office of Surface Mining Reclamation and Enforcement.

(d) Any person having an interest which is or may be adversely affected by the decision of the cabinet shall have the right to administrative and judicial review set forth in Section 24 of this regulation.

Section 22. Transfer, Assignment, or Sale of Permit Rights. (1) General. No transfer, assignment, or sale of the rights granted under any permit issued pursuant to 405 KAR shall be made without the prior written approval of the cabinet, in accordance with this section.

(2) Application requirements. An applicant (successor) for approval of the transfer, assignment, or sale of permit rights shall:

(a) Provide a complete and accurate application, on forms provided by the cabinet,

for the approval of the proposed transfer, assignment, or sale. The application shall be signed by both the existing holder of permit rights and the applicant for succession. Additionally, the following information shall be provided:

1. The name and address of the existing permittee and the permit number;

2. A brief description of the proposed action requiring approval;

3. The legal, financial, compliance, and related information required by 405 KAR 8:030, Sections 2 through 10 and 405 KAR 8:040, Sections 2 through 10; and

4. A processing fee of \$375.

(b) Advertise the filing of the application in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county where the operations are located, indicating the name and address of the applicant, the original permittee, the permit number, the geographic location of the permit, and the address to which written comments may be sent under subsection (3) of this section.

(c) Obtain sufficient performance bond coverage which will ensure reclamation of all lands affected by the permit, including areas previously affected by the existing permittee on the permit being transferred.

(3) Public participation. Any person whose interests are or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any federal, state, or local government agency, may submit written comments on the application to the cabinet within fifteen (15) days of the date of publication of the advertisement.

(4) Criteria for approval. The cabinet may allow a permittee to transfer, assign, or sell permit rights to a successor if it finds, in writing, that the successor:

(a) Is eligible to receive a permit in accordance with the criteria specified in Section 14 of this regulation;

(b) Has submitted a performance bond, in accordance with 405 KAR Chapter 10, which will ensure reclamation of all lands affected by the permit, including areas previously disturbed by the existing permittee on the permit being transferred, and which is at least equivalent to the bond of the existing permittee;

(c) Has submitted proof that liability insurance, as required by 405 KAR 10:030, Section 4, has been obtained; and

(d) Meets any other requirements specified by the cabinet in order to ensure compliance with KRS Chapter 350 or 405 KAR Chapters 7 through 24.

(5) Notice of decision. The cabinet shall notify the original permittee, the successor, any commenters or objectors, and the field office director of the Office of Surface Mining Reclamation and Enforcement of its final decision.

(6) Permit reissuance. After receiving the notice described in subsection (5) of this section, the successor shall immediately provide proof to the cabinet of the consummation of the transfer, assignment, or sale of permit rights. Upon submission of this proof, the cabinet shall reissue the original permit in the name of the successor.

(7) Rights of successor. All rights and liabilities under the original permit shall pass to the successor upon reissuance of the permit, except that the original permittee shall remain

liable for any civil penalties resulting from violations occurring prior to the date of reissuance of the permit. The cabinet shall not approve transfer of a surface coal mining permit to any person who would be ineligible to receive a new permit under KRS 350.130(3).

(8) Requirements for new permits for persons succeeding to rights granted under a permit. A successor in interest who is able to obtain appropriate bond coverage may continue surface coal mining and reclamation operations according to the approved mining and reclamation plan and permit of the original permittee. However, any successor in interest seeking to change the conditions of mining or reclamation operations, or any of the terms or conditions of the original permit shall make application for a new permit, revision, or amendment, as appropriate.

(9) Release of bond liability. The cabinet may release the prior permittee from bond liability on the permit area if the successor in interest has filed a performance bond satisfactory to the cabinet, has received written approval of the cabinet for the transfer, sale or assignment of rights, has submitted proof of execution of the agreement, and has assumed all liability under 405 KAR for reclamation of the areas affected by all prior permittees.

Section 23. Amendments. Except for incidental boundary revisions, no extensions to an area covered by a permit shall be approved under Section 20 (permit revisions) or Section 21 (permit renewals) of this regulation. All such extensions shall be made by application for another permit. However, if the permittee desires to add the new area to his existing permit in order to have existing areas and new areas under one (1) permit, the cabinet may so amend the original permit provided that the application for the new area shall be subject to all procedures and requirements applicable to applications for original permits under 405 KAR.

Section 24. Administrative and Judicial Review. (1) Following the final decision of the cabinet concerning the application for a permit, revision or renewal thereof, application for transfer, sale, or assignment of rights or concerning an application for coal exploration, the applicant, permittee or any person with an interest which is or may be adversely affected may request a hearing on the reasons for the final decision in accordance with 405 KAR 7:090.

(2) Any applicant or any person with an interest which is or may be adversely affected and who has participated in the administrative proceedings as an objector shall:

(a) Have the right to judicial review as provided in KRS 224.085 if the applicant or person is aggrieved by the decision of the cabinet in an administrative hearing requested pursuant to subsection (1) of this section; or

(b) Have the right to an action in mandamus pursuant to KRS 350.250 if the cabinet fails to act within time limits specified in KRS Chapter 350 or 405 KAR Chapters 7 through 24.

Section 25. Improvidently Issued Permits. (1) Permit review. If the cabinet has reason to believe that it improvidently issued a surface coal mining and reclamation permit, the cabinet shall review the circumstances under which the permit was issued, using the criteria in subsection (2) of this section. If the cabinet

finds that the permit was improvidently issued, the cabinet shall comply with subsection (3) of this section.

(2) Review criteria. The cabinet shall find that a surface coal mining and reclamation permit was improvidently issued if:

(a) Under the violation review criteria of the cabinet at the time the permit was issued:

1. The cabinet should not have issued the permit because of an unabated violation or a delinquent penalty or fee; or

2. The permit was issued on the presumption that a notice of violation was in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation, but a cessation order subsequently was issued; and

(b) The violation, penalty, or fee:

1. Remains unabated or delinquent; and

2. Is not the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; and

(c) Where the permittee was linked to the violation, penalty, or fee through ownership or control, under the violations review criteria of the regulatory program at the time the permit was issued an ownership or control link between the permittee and the person responsible for the violation, penalty, or fee still exists, or where the link was severed, the permittee continues to be responsible for the violation, penalty, or fee.

(3) Remedial measures. If the cabinet, under subsection (2) of this section, finds that because of an unabated violation or a delinquent penalty or fee a permit was improvidently issued, the cabinet shall use one (1) or more of the following remedial measures:

(a) Implement, with the cooperation of the permittee or other person responsible, and of the responsible agency, a plan for abatement of the violation or a schedule for payment of the penalty or fee;

(b) Impose on the permit a condition requiring that in a reasonable period of time the permittee or other person responsible abate the violation or pay the penalty or fee;

(c) Suspend the permit until the violation is abated or the penalty or fee is paid; or

(d) Rescind the permit under subsection (4) of this section.

(4) Rescission procedures. If the cabinet, under subsection (3)(d) of this section, elects to rescind an improvidently issued permit, the cabinet shall serve on the permittee a notice of proposed suspension and rescission which includes the reasons for the finding of the cabinet under subsection (2) of this section and states that:

(a) Automatic suspension and rescission. After a specified period of time not to exceed ninety (90) days the permit automatically will become suspended, and not to exceed ninety (90) days thereafter rescinded, unless within those periods the permittee submits proof, and the cabinet finds, that:

1. The finding of the cabinet under subsection (2) of this section was erroneous;

2. The permittee or other person responsible has abated the violation on which the finding was based, or paid the penalty or fee, to the satisfaction of the responsible agency;

3. The violation, penalty, or fee is the subject of a good faith appeal, or of an

abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; or

4. Since the finding was made, the permittee has severed any ownership or control link with the person responsible for, and does not continue to be responsible for, the violation, penalty, or fee;

(b) Cessation of operations. After permit suspension or rescission, the permittee shall cease all surface coal mining and reclamation operations under the permit, except for violation abatement and for reclamation and other environmental protection measures as required by the cabinet; and

(c) Right to appeal. The permittee may file an appeal for administrative review of the notice under 405 KAR 7:090, but the procedures of 405 KAR 7:090, Section 8 shall not apply to suspend the effect of the notice.

CARL H. BRADLEY, Secretary
FRANK DICKERSON, Commissioner

APPROVED BY AGENCY: January 22, 1991

FILED WITH LRC: January 23, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled for 9 a.m. (EST) Thursday, March 28, 1991 in the Department for Surface Mining Reclamation and Enforcement's Training Room (Room D-16) at the Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky. Persons who wish to testify at the hearing shall notify the contact person listed below, in writing, by March 22, 1991. The scheduled hearing may be cancelled if the contact person has not received any written notice of intent to testify by March 22, 1991, five days before the scheduled hearing date. If the hearing is held, it will be open to the public. Any person in attendance who wishes to testify on the proposed amendment will be given a fair and reasonable opportunity to do so, regardless of whether the person has given the cabinet prior written notice of his intent to testify. To assure an accurate record, the cabinet requests each person testifying at the hearing to provide the cabinet with a written copy of his testimony. The cabinet is not required to make a recording or transcript of the hearing unless someone makes a written request for it, in which case the person requesting the recording or transcript shall pay for it.

Written Comments: A person who wishes to comment on this proposed amendment but does not wish to testify at the hearing may submit written comments on the proposed amendment at any time before 4:30 p.m. (EST) on March 28, 1991. Comments received after that time will not be considered. Written comments and written notices of intent to testify at the hearing shall be submitted to: Jim Villines, Kentucky Department for Surface Mining, 2 Hudson Hollow Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jim Villines

(1) Type and number of entities affected: This amendment affects applicants who are linked by ownership or control relationships to unabated violations, delinquent civil penalties, or delinquent reclamation fees at other surface coal mining operations. These applicants will

not be issued permits until the violations are corrected or the delinquent penalties or fees are paid or until the presumed link to the violation, penalty or fee is rebutted. Some permittees will be affected when their permits are found to have been improvidently issued and are then subject to suspension or rescission. The withholding of permits for unabated violations and delinquent penalties and fees is currently required under existing law and regulations. The amendment revises the regulation to more closely reflect the corresponding federal regulation. The effect of these requirements will be more fully felt, however, as the OSM Applicant Violator System (AVS) nationwide computer network becomes fully utilized through implementation of the court settlement agreement in Save Our Cumberland Mountains, Inc., et al. v. William P. Clark, et al., D.O.C. No. 81-2134 ("Amended Order"), commonly called the "SOCM Settlement Agreement", and as the cabinet increases its activities in response to that agreement, as described in (2) below.

(a) Direct and indirect costs or savings to those affected: The potential direct and indirect costs resulting from the amendment are those associated with having permits withheld, in some cases the cost of attempting to rebut the presumption of ownership or control that leads to the withholding of the permit, and in some cases the cost of correcting the violation or paying the delinquent penalties or fees. These costs will be completely case-specific.

1. First year: See above.

2. Continuing costs or savings: See above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The amendment does not impose any routine reporting and paperwork requirements. However, it requires that permits be conditioned that within 30 days after issuance of a cessation order the permittee shall update the ownership and control information in the application.

(2) Effects on the promulgating administrative body: Under the SOCM Settlement Agreement mentioned above, OSM will enter into memorandums of agreement with the states, under which the states will assist OSM in carrying out full implementation of the "permit-blocking" provisions of Section 510(c) of SMCRRA, the federal surface mining Act. The cabinet must carry out a variety of analytical and investigative activities to fulfill its obligations under the agreement and under the ownership and control regulations. This effort will require several new specialized personnel including attorneys, paralegals, investigators, and permit reviewers, as well as several personal computers and related equipment.

(a) Direct and indirect costs or savings:

1. First year: FY 91-92 implementation costs are expected to be \$804,000, which will be 100% federally funded.

2. Continuing costs or savings: Beginning at \$804,000, the annual cost of these activities will increase by approximately 5% in each succeeding fiscal year due to salary increments and other normal inflationary factors. After the first year, these activities will be 50% federally funded, the same as the rest of the cabinet's ongoing surface mining regulatory

program.

3. Additional factors increasing or decreasing costs: There are no known additional factors increasing or decreasing costs, although such factors possibly could arise in the future under the SOCM Settlement Agreement.

(b) Reporting and paperwork requirements: The amendment does not mandate specific reporting and paperwork requirements, although considerable paperwork will likely be necessary in connection with the cabinet's investigations, and reporting to OSM will be required under the memorandum and grant.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered. Kentucky must conform to the federal requirements if it is to retain state primacy under the federal surface mining act.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 405 KAR 8:010, Section 18(5) may conflict with KRS 350.060(3)(g). The regulation requires permits to be conditioned that within 30 days after issuance of a cessation order a permittee must update the ownership and control information in the application. The statute requires the permittee to keep the information updated, and authorizes the cabinet to promulgate regulations regarding timely updating, but provides that failure to submit the updates is a violation of the statute only when the permittee fails or refuses to submit the updates on request.

(a) Necessity of proposed regulation if in conflict: 405 KAR 8:010, Section 18(5) is necessary to conform to the corresponding federal requirements.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The cabinet will examine this issue further, to determine if the regulation can be harmonized with the statute.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering is not applicable to this proposed amendment because, under the federal and Kentucky surface mining laws and regulations, these requirements must apply equally to all permittees under 405 KAR Chapters 7-24.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 USC 1253, 1255-1261, 1263-1266, 1272, 30 CFR Parts 730-733, 735, 773-775, 777, 778.17, 917.

2. State compliance standards. Revised 405 KAR 8:010, Section 13(4) requires that the cabinet not issue a permit if a surface coal mining operation owned or controlled by the applicant, or by any person who owns or controls the applicant, is currently in violation of SMCRA or KRS Chapter 350 or regulations pursuant thereto, or certain other environmental laws or regulations. It allows the cabinet to issue the permit conditionally if the violation is under appeal or is being corrected to the satisfaction of the agency with jurisdiction over the violation. With certain exceptions, it allows the cabinet to presume that the violation is being satisfactorily corrected if a cessation

order has not been issued for failure to abate the violation. It requires that a permit not be issued if the applicant, any person who owns or controls the applicant, or the operator identified in the application, has been determined (after opportunity for an adjudicatory hearing on the determination) to control or have controlled operations with demonstrated pattern of willful violations of KRS Chapter 350 and regulations pursuant thereto of such nature and duration and irreparable environmental damage as to indicate an intent not to comply with these laws and regulations.

Revised 405 KAR 8:010, Section 13(5) requires the cabinet, after approving the permit application but before issuing the permit, to reconsider its decision based on any new information regarding ownership and control or regarding unabated violations.

New 405 KAR 8:010, Section 18(5) requires the cabinet to condition permits to require that within 30 days of issuance of a federal or Kentucky cessation order on the permit, the permittee must update the permit information regarding ownership and control.

New 405 KAR Section 25 requires the cabinet to review the circumstances of issuance of a permit if it has reason to believe the permit may have been issued improvidently. It establishes criteria for determining if a permit was issued improvidently. (Generally, a permit was issued improvidently if at the time of issuance an unabated violation or delinquent penalty or fee existed which should have prevented the issuance, or if the permit was conditionally issued and the condition was subsequently breached.) It prescribes remedial measures including establishment of a plan to correct the violation, suspension of the permit until the violation is corrected, and rescission of the permit. It prescribes permit rescission procedures, including automatic suspension and rescission in certain circumstances.

3. Minimum or uniform standards contained in the federal mandate. The minimum federal standards corresponding to 405 KAR 8:010, Section 13(4) are at 30 CFR 773.15(b). The federal counterpart to Section 13(5) is at 773.15(e). The counterparts to Section 25 are at 773.20-.21.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment will not impose stricter or additional requirements or responsibilities than those in the federal mandate. 405 KAR 8:010, Section 13(4)(c) differs from 30 CFR 773.15(b)(3) in that the Kentucky regulation considers only a pattern of willful violations of KRS Chapter 350, whereas the federal regulation presumably requires consideration of violations of SMCRA anywhere in the United States and violations of Kentucky laws and regulations and those of any other state under SMCRA. This amendment is filed under KRS 13A.2264(2). A copy of the corresponding federal regulations is submitted in a separate binder under KRS 13A.2264(4). These federal regulations are not being incorporated by reference and are not being adopted without change.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. KRS 350.130(3)

restricts the cabinet to consideration of a pattern of willful violations of KRS Chapter 350.

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET**
Department for Surface Mining
Reclamation and Enforcement
(Proposed Amendment)

405 KAR 8:030. Surface coal mining permits.

RELATES TO: KRS 350.060, 350.465, 30 CFR Parts 730-733, 735, 773.13(a), 778-780, 785.17(b), (d), 917, 30 USC 1253, 1255, 1257, 1258, 1267

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.060, 350.465, 30 CFR Parts 730-733, 735, 773.13(a), 778-780, 785.17(b), (d), 917, 30 USC 1253, 1255, 1257, 1258, 1267

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to permits for surface mining activities. This regulation specifies certain information to be shown by the applicant related to legal and compliance status, environmental resources, and his mining and reclamation plan. This regulation further specifies certain showings to be made by the applicant to obtain a permit.

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

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

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

- (a) Legal, financial, compliance, and related information;
- (b) Environmental resources information; and
- (c) Mining and reclamation plan information.

Section 2. Identification of Interests. An application shall contain the following information, except that the submission of a Social Security Number is voluntary:

(1) A statement as to whether the applicant is a corporation, partnership, single proprietorship, association, or other business entity;

(2) The name, address, telephone number and, as applicable, Social Security Number and employer identification number of the:

- (a) Applicant;
- (b) Applicant's resident agent; and
- (c) Person who will pay the abandoned mine land reclamation fee.

(3) For each person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in 405 KAR 7:020, as applicable:

- (a) The person's name, address, Social Security Number, and employer identification number;
- (b) The person's ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;

(c) The title of the person's position, date position was assumed, and when submitted under 405 KAR 8:010, Section 18(5) date of departure from the position;

(d) Each additional name and identifying number, including employer identification number, federal or state permit number, and MSHA number with date of issuance, under which the person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the United States within the five (5) years preceding the date of the application; and

(e) The application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the person in any state in the United States.

(4) For any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant under the definition of "owned or controlled" and "owns and controls" in 405 KAR 7:020, the operation's:

(a) Name, address, identifying numbers, including employer identification number, federal or state permit number, and MSHA number, the date of issuance of the MSHA number, and the regulatory authority; and

(b) Ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure.

(5) [(1) Each application shall contain] The names and addresses of:

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

(a) [(b)] Every legal or equitable owner of record of the property to be mined (see the definition of "property to be mined" in 405 KAR 7:020);

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

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

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

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

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

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

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

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

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

date of application;

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

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

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

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

(8) [(6) Each application shall contain] The name of the proposed mine and all MSHA identification numbers that have been assigned for the mine and all mine associated structures that require MSHA approval [sections].

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

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

(11) After an applicant has been notified that his or her application has been approved, but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subsections (1) through (4) of this section.

(12) The applicant shall submit the information required by this section and Section 3 of this regulation in any prescribed cabinet format that is issued.

Section 3. Violation [Compliance] Information. Each application shall contain the following information:

(1) [Each application shall contain] A statement of whether the applicant, any subsidiary, affiliate, or persons controlled by or under common control with the applicant has:

(a) Had a coal mining permit of the United States or any state suspended or revoked in the [last] five (5) years preceding the date of submission of the application; or

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

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

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

(b) Identification of the authority that

suspended or revoked the [a] permit or forfeited the [a] bond and the stated reasons for that action;

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

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

(e) The current status of these proceedings.

(3) For any violation of a provision of SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and regulations adopted pursuant thereto, any other state's laws or regulations under SMCRA, any federal law, rule, or regulation pertaining to air or water environmental protection, or any Kentucky or other state's law, rule, or regulation enacted pursuant to federal law, rule, or regulation pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, a list of all violation notices received by the applicant during the three (3) year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant. For each violation notice or cessation order reported, the lists shall include the following information, as applicable: [Each application shall contain a list of each violation notice pertaining to SMCRA or KRS Chapter 350 and regulations promulgated thereto, received by the applicant in connection with any surface coal mining operation during the three (3) year period before the application date. Each application shall also contain a list of each violation notice pertaining to air or water environmental protection received by the applicant in connection with any surface coal mining operation during the three (3) year period before the application date, for violations of any law, rule or regulation of the United States, or of any state law, rule or regulation enacted pursuant to federal law, rule or regulation. The application shall also contain a statement regarding each violation notice, including:]

(a) Any identifying numbers for the operation, including the federal or state permit number and MSHA number, the dates of issuance of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department, or agency: [The date of issuance and identity of the issuing regulatory authority, department, or agency;]

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

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

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

1. The date, location, and type of any administrative or judicial proceedings initiated concerning [the fact of] the violation, including, but not limited to, proceedings initiated by any person identified in this subsection [the applicant] to obtain administrative or judicial review of the [fact of the] violation [and the current status of the

proceedings]; and

2. The current status of the proceedings and of the violation notice; and

3. [2.] The actions, if any, taken or being taken by any person identified in this subsection [the applicant] to abate the violation.

(4) After an applicant has been notified that his or her application has been approved, but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subsections (1) through (3) of this section.

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

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

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

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

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

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

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

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

total life of the permit.

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

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

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

(1) Type of permit or license;

(2) Name and address of issuing authority;

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

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

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

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

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

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

(b) The cabinet may require the applicant to identify and evaluate important historic and archaeological resources that may be eligible for listing on the National Register of Historic Places, through collection of additional information, field investigations, or other appropriate analyses.

Section 12. General Requirements for Baseline Geologic and Hydrologic Information. (1) The application shall contain baseline geologic and hydrologic information which has been collected, analyzed, and submitted in the detail and manner acceptable to the cabinet, and which shall be sufficient to:

(a) Identify and describe protective measures pursuant to Section 32(1) of this regulation which will be implemented during the mining and reclamation process to assure protection of the hydrologic balance, or to demonstrate that protection of the hydrologic balance can be assured without the design and installation of protective measures; and to design necessary protective measures pursuant to Section 32(2) of this regulation;

(b) Determine the probable hydrologic consequences of the mining and reclamation operations upon the hydrologic balance in the permit area and adjacent area pursuant to Section 32(3) of this regulation so that an assessment can be made by the cabinet pursuant to 405 KAR 8:010, Section 14(3) of the probable cumulative impacts of all anticipated mining on the hydrologic balance in the cumulative impact area;

(c) Determine pursuant to 405 KAR 8:010, Section 14(2) and (3) whether reclamation as required by 405 KAR can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance; and

(d) Design surface and groundwater monitoring systems pursuant to Section 32(4) of this regulation for the during-mining and postmining time period which, together with the baseline data collected under Sections 14(1) and 15(1) of this regulation, will demonstrate whether the mining operation is meeting applicable effluent limitations and stream standards and protecting the hydrologic balance.

(2)(a) Geologic and hydrologic information pertaining to the area outside the permit and adjacent area but within the cumulative impact assessment area shall be provided to the applicant by the cabinet:

1. If this information is needed in preparing the cumulative impact assessment; and

2. If this information is available from an appropriate federal or state agency.

(b) If this information is needed by the cabinet for conducting the cumulative impact assessment and is not available from a federal or state agency, the applicant may gather and submit this information to the cabinet as part of the permit application.

(3) Interpolation, modeling, correlation or other statistical methods, and other data extrapolation techniques may be used if the applicant can demonstrate to the satisfaction of the cabinet that the data extrapolation techniques are valid and that information obtained through the techniques meets the requirements of subsection (1) of this section.

(4) All water quality analyses performed to meet the requirements of this chapter shall be conducted according to the methodology in the fourteenth edition of "Standard Methods for the Examination of Water and Wastewater," or the methodology in 40 CFR Parts 136 and 434. All water quality sampling shall be conducted according to either methodology listed above when feasible.

Section 13. Baseline Geologic Information. (1) The application shall contain baseline geologic information collected from the permit area which shall meet the requirements of Section 12(1) of this regulation and shall include at a minimum:

(a) The results of samples obtained from continuous cores; drill cuttings; channel cuttings from fresh, unweathered, rock outcrops; or other rock or soil material which has been collected using acceptable sampling techniques.

1. The vertical extent of sampling shall include those strata from the surface down to and including the stratum immediately below the lowest coal seam to be mined; and

2. Where aquifers which are located within the permit area underlie the lowest coal seam to be mined and these aquifers may be adversely affected by the mining operation, the vertical extent of sampling shall also include those strata from the lowest coal seam to be mined down to and including the aquifers.

3. The area and vertical density of sampling shall, at a minimum, be sufficient to determine the distribution of strata which have a potential to produce acid drainage and to determine the area and vertical extent of aquifers which may be adversely affected.

4. If the vertical extent, and the area and vertical density of sampling specified in subparagraphs 1 through 3 of this paragraph are not sufficient to locate suitable strata for use as a topsoil substitute, or for other required design or analysis, additional sampling shall be conducted as necessary to furnish adequate geologic information.

(b) Chemical analyses including, but not limited to, maximum potential acidity and neutralization potential of each overburden stratum and the stratum immediately below the lowest coal seam to be mined, to identify those strata which have a potential to produce acid or toxic drainage.

(c) Chemical analyses of the coal seam to be mined to determine the potential to produce acid or toxic drainage, including the parameters of total sulfur and pyritic sulfur; except that the cabinet shall not require an analysis for pyritic sulfur if the applicant can demonstrate to the satisfaction of the cabinet that an analysis for total sulfur provides adequate information to assure protection of the hydrologic balance.

(d) Collection of geologic information from the permit area as required in this subsection may be waived in whole or in part if:

1. The applicant can demonstrate to the satisfaction of the cabinet through geologic correlation or other procedures that information collected from outside the permit area is representative of the permit area and is sufficient to meet the requirements of Section 12(1) of this regulation; or

2. Other information equivalent to that required by this subsection is available to the cabinet in a satisfactory form and is made a part of the permit application; and

3. The cabinet provides a written statement granting a waiver.

(2) The application shall contain a description of the geology of the proposed permit area and adjacent area which shall meet the requirements of Section 12(1) of this regulation and be based on the information required in subsection (1) of this section or other appropriate geologic information. The

description shall include, at a minimum, geologic logs, cross-sections, fence diagrams, or other appropriate illustrations and written descriptions depicting:

(a) Within the permit area:

1. The structural geology and lithology of overburden strata and the stratum immediately below the lowest coal seam to be mined;

2. The thickness and chemical characteristics of each overburden stratum and the stratum immediately below the lowest coal seam to be mined; and

3. Where aquifers may be adversely affected by the mining operation, the structural geology, lithology, thickness, and area extent of the aquifers; and structural geology and lithology of strata, and thickness of each stratum, from the surface down to the aquifers.

(b) Within the adjacent area, the approximate area extent and approximate thickness of aquifers which may be adversely affected by the mining operation.

(3) If determined by the cabinet to be necessary to assure adequate reclamation and protection of the hydrologic balance, the cabinet may require geologic information and description in addition to that required by subsections (1) and (2) of this section including, but not limited to, leaching tests of material from strata which may be disturbed by the operation to determine the potential for the operation to produce drainage with elevated levels of acidity, sulfate, and total dissolved solids, and the collection of information to greater depths within the proposed permit area or the collection of information for areas outside the proposed permit area.

Section 14. Baseline Ground Water Information.

(1) The application shall contain baseline groundwater information for the permit area and adjacent area which shall be collected and submitted in a manner acceptable to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this regulation.

(2) Groundwater information shall include an inventory of wells, springs, underground mines, or other similar groundwater supply facilities which are currently being used, have been used in the past, or have a potential to be used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the location, ownership, type of usage, and where possible, other relevant information such as the depth and diameter of wells and approximate rate of usage, pumpage or discharge from wells, springs, and other groundwater supply facilities.

(3) Groundwater information shall include seasonal groundwater quantity and quality data collected from monitoring wells, springs, underground mines, or other appropriate groundwater monitoring facilities, at a sufficient number of monitoring locations with adequate area distribution to meet the requirements of Section 12(1) of this regulation. Seasonal groundwater quantity and quality data shall be provided for each water transmitting zone above, and potentially impacted water transmitting zone below, the lowest coal seam to be mined including at a minimum:

(a) Groundwater levels; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25)

degrees C; pH; dissolved iron; dissolved manganese; acidity; alkalinity; and sulfate. For data collected prior to August 13, 1985, total iron and total manganese may be substituted for dissolved iron and dissolved manganese.

(4) The groundwater information described in subsection (3) of this section shall be required in whole or in part for coal seams if the coal seams to be mined are serving as water supply sources or are otherwise significant in protecting the hydrologic balance.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet may require groundwater information in addition to that described in subsections (2), (3), and (4) of this section including, but not limited to, information pertaining to aquifer storage, yield, discharge, recharge capacity, and additional water quality parameters.

Section 15. Baseline Surface Water Information. (1) The application shall contain baseline surface water information for the permit area and adjacent area which shall be collected and submitted in a manner acceptable to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this regulation.

(2) Surface water information shall include an inventory of all streams, lakes, impoundments or other surface water bodies in the permit and adjacent area which are currently being used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the name of the surface water body which is being used as a water supply source; the location, drainage area, ownership, and type of usage for the withdrawal; and where possible other relevant information such as the rate of withdrawal and seasonal variation.

(3) Surface water information shall include:

(a) The name, location, and ownership where appropriate, of all streams, lakes, impoundments, and other surface water bodies which receive run-off from watersheds which will be disturbed by the operation; and

(b) The location and description of any existing facilities located in watersheds which will be disturbed by the mining operation which may contribute to surface water pollution, such as existing or abandoned mining operations, oil wells, logging operations, or other similar facilities, including the location of any discharges which may be flowing from the facilities.

(4) Surface water information shall include seasonal quantity and quality data collected from a sufficient number of watersheds which will be disturbed by the operation with adequate area distribution to meet the requirements of Section 12(1) of this regulation and include at a minimum:

(a) Flow rates; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; total suspended solids; pH; total iron; total manganese; acidity; alkalinity; and sulfate.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the

cabinet may require surface water information in addition to that described in subsections (2), (3), and (4) of this section including, but not limited to, information pertaining to flood flows and additional water quality parameters.

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

(2) If contamination, diminution, or interruption of a surface or groundwater source may result, then the application shall identify and describe the adequacy and suitability of the alternative sources of water supply that could be developed for existing premining uses and approved postmining land uses.

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

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

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

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

(2) Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of analyses, trials, and tests as required under 405 KAR 16:050, Section 2(5).

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

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

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

Section 21. Prime Farmland Investigation. (1) The applicant shall before making application investigate the proposed permit area to

determine whether lands within the area may be prime farmland.

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

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

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

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

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

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

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

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

(b) When a soil survey for lands within the proposed permit area contains no soil map units which have been designated as prime farmland after review by the U.S. SCS, the applicant shall submit with the permit application a request for negative determination under subsection (2)(d) of this section for the nondesignated land.

(5) The cabinet shall decide to grant or deny a negative determination based upon documentation provided by the applicant and any other pertinent information, such as cropping history, available to the cabinet from other sources.

(6) The cabinet shall consult with the SCS in deciding on a request for negative determination under subsection (2)(c) of this section.

(7) The cabinet shall examine any records on crop history available from the Agriculture Stabilization and Conservation Service when deciding on a request for negative determination under subsection (2)(a) of this section.

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

(a) A map and supporting narrative of the uses of the land existing when the application is filed. If the premining use of the land was changed within five (5) years before the date of

application, the historic use of the land shall also be described.

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

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

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

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

(a) The type of mining method used;

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

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

(d) The approximate dates of past mining; and

(e) The uses of the land preceding mining.

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

(4) The application shall contain a description identifying the extent to which cities, towns, and municipalities, or parts thereof, are located within the proposed permit area.

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

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

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

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

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

(e) All boundaries of lands and names of

present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area;

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

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

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

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

(j) Each public road located in or within 100 feet of the proposed permit area;

(k) Each cemetery that is located in or within 100 feet of the proposed permit area;

(l) Other relevant information required by the cabinet.

(2) The application shall include drawings, cross sections, and maps showing:

(a) Elevations and locations of test borings and core samplings;

(b) Elevations and locations of monitoring stations or other sampling points in the permit area and adjacent areas used to gather data on water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the application, or which will be used for such data gathering during the term of the permit;

(c) Nature, depth, and thickness of the coal seams to be mined, any coal or rider seams above the seam to be mined, each stratum of the overburden, and the stratum immediately below the lowest coal seam to be mined, for the permit area;

(d) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;

(e) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit area and adjacent areas;

(f) Location and extent of subsurface water, if encountered, within the proposed permit area or adjacent areas;

(g) Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drainage patterns, and irrigation ditches within the proposed permit area and adjacent areas;

(h) Location and extent of existing or previously surface-mined areas within the proposed permit area;

(i) Location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent areas;

(j) Location and dimensions of existing areas of spoil, waste, and noncoal waste disposal, dams, embankments, other impoundments, and water treatment and air pollution control facilities within the proposed permit area;

(k) Sufficient slope measurements to adequately represent the existing land surface configuration of the proposed permit area, measured and recorded according to the following:

1. Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed or, where this is impractical, at locations and in a manner as specified by the cabinet.

2. Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances, or any other distance determined by the cabinet to be representative of the premining configuration of the land.

3. Slope measurements shall take in account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.

(3) The permit application shall include the map information specified in Sections 22(1)(a), 24(3), 24(4)(c), 24(4)(h), 27(1), 28(1), 31, 32, 33, 34, and 38 of this regulation, and 405 KAR 8:010, Section 5(6).

(4) Maps, drawings, and cross-sections included in a permit application which are required by this section shall be prepared by or under the direction of and certified by a qualified registered professional engineer, and shall be updated as required by the cabinet. The qualified registered professional engineer shall not be required to certify true ownership of property.

Section 24. Mining and Reclamation Plan; General Requirements. (1) Each application shall contain a detailed mining and reclamation plan (MRP) for the proposed permit area as set forth in this section through Section 38 of this regulation, showing how the applicant will comply with KRS Chapter 350 and 405 KAR Chapters 16 through 20.

(2) Each application shall contain a description of the mining operations proposed to be conducted within the proposed permit area, including, at a minimum, the following:

(a) A narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations; and

(b) A narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of the facilities is to be approved as necessary for postmining land use as specified in 405 KAR 16:210):

1. Dams, embankments, and other impoundments;
2. Overburden and topsoil handling and storage areas and structures;
3. Coal removal, handling, storage, cleaning, and transportation areas and structures;
4. Spoil, coal processing waste, and noncoal waste removal, handling, storage, transportation, and disposal areas and structures;
5. Mine facilities; and
6. Water and air pollution control facilities.

(3) Each application shall contain plans and maps of the proposed permit area and adjacent areas as follows:

(a) The plans and maps shall show the lands proposed to be affected throughout the operation and any change in a facility or feature to be caused by the proposed operations, if the

facility or feature was shown under Section 23 of this regulation.

(b) The following shall be shown for the proposed permit area:

1. Buildings, utility corridors and facilities to be used;

2. The area of land to be affected within the proposed permit area, according to the sequence of mining and reclamation;

3. Each area of land for which a performance bond or other equivalent guarantee will be posted under 405 KAR Chapter 10;

4. Each coal storage, cleaning and loading area;

5. Each topsoil, spoil, coal waste, and noncoal waste storage area;

6. Each water diversion, collection, conveyance, treatment, storage, and discharge facility to be used;

7. Each air pollution collection and control facility;

8. Each source of waste and each waste disposal facility relating to coal processing or pollution control;

9. Each facility to be used to protect and enhance fish and wildlife and related environmental values;

10. Each explosive storage and handling facility; and

11. Location of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, in accordance with Section 34 of this regulation, and fill area for the disposal of excess spoil in accordance with Section 27 of this regulation.

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

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

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

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

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

(d) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of 405 KAR 16:050 including a demonstration of suitability of any proposed topsoil substitutes or supplements;

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

revegetation;

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

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

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

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

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

(a) Location;

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

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

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

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

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

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

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

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

Section 26. MRP; Blasting. (1) Each application shall contain a blasting plan for the proposed permit area explaining how the applicant intends to comply with the requirements of 405 KAR 16:120. This plan shall include, at a minimum, information setting forth the limitations the permittee will meet with regard to ground vibration and airblast, the bases for the ground vibration and airblast limitations, and the methods to be applied in controlling the adverse effects of blasting operations.

(2) Each application shall contain a description of the systems to be used to monitor compliance with the standards for ground vibration and airblast including identification of the types, capabilities, and sensitivities of blast monitoring equipment and identification of the monitoring procedures and locations.

(3) Blasting operations within 500 feet of active underground mines require approval of the cabinet, MSHA, and the Kentucky Department of Mines and Minerals.

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

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

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

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

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

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

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

(3) If, under 405 KAR 16:130, Section 1(4), rock toe buttresses or key way cuts are required, the application shall include the following:

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

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

Section 28. MRP; Transportation Facilities. (1) Each application shall contain a transportation facilities plan including a description of each road, conveyor, or rail

system to be constructed, used, or maintained within the proposed permit area. The description shall include a map, appropriate cross-sections, and the following:

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

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

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

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

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

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

Section 30. MRP; Protection of Public Parks and Historic Places. (1) For any publicly-owned parks or any places listed on the National Register of Historic Places that may be adversely affected by the proposed operations, each plan shall describe the measures to be used to prevent adverse impact; or, if valid existing rights exist or joint agency approval is to be obtained under 405 KAR 24:040, Section 2(4), to minimize adverse impacts.

(2) The cabinet may require the applicant to protect historic or archaeological properties listed or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures. These measures need not be completed prior to permit issuance, but shall be completed before the properties are affected by surface mining activities.

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

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

(2) Relocating a public road.

Section 32. MRP; Protection of the Hydrologic Balance. (1) Each application shall contain a description, as set forth in this subsection, of the measures to be taken to minimize disturbances to the hydrologic balance within the permit area and adjacent area and to prevent material damage to the hydrologic balance outside the permit area.

(a) The description shall be based upon the

baseline geologic, hydrologic, and other information required by Sections 12 through 16 of this regulation and other appropriate information, shall be specific to local hydrologic conditions, and shall be prepared in a manner and detail acceptable to the cabinet.

(b) The description shall identify the protective measures to be taken to enable the operation to meet, at a minimum, each of the hydrologic requirements referenced in this paragraph, or shall demonstrate to the satisfaction of the cabinet that protective measures are not necessary for the operation to meet the requirements:

1. Meet applicable water quality statutes, regulations, standards, and effluent limitations as required by 405 KAR 16:060, Section 1(3);

2. Avoid acid or toxic drainage as required by 405 KAR 16:060, Sections 4, 5, and 6;

3. Control the discharge of sediment to streams located outside the permit area as required by 405 KAR 16:060, Section 2;

4. Control the drainage and discharge of water within the permit area as required by 405 KAR 16:060, Sections 1(4), 3, 9, and 12, and 405 KAR 16:080;

5. Restore the approximate premining recharge capacity of the permit area as required by 405 KAR 16:060, Section 5; and

6. Protect or replace the water supply of present users as required by 405 KAR 16:060, Section 8.

(c) The cabinet may require that the description include protective measures in addition to those identified under paragraph (b) of this subsection, if the cabinet determines that additional measures are needed to protect the hydrologic balance in accordance with 405 KAR 16:060.

(2) Each application shall include the design of any necessary protective measures identified under subsection (1) of this section. The design shall be prepared in a manner and detail acceptable to the cabinet including, as appropriate, calculations, maps, drawings, and written explanations as necessary to document the design.

(3) Each application shall include a determination of the probable hydrologic consequences of the mining and reclamation operations for the permit area and adjacent area.

(a) The determination shall be based upon the baseline geologic, hydrologic, and other information required by Sections 12 through 16 of this regulation and other appropriate information, and may include information statistically representative of the site.

(b) The determination shall be completed according to the parameters and in the detail required by the cabinet to enable the cabinet to prepare a cumulative impact assessment, and shall take into account the anticipated effects of protective measures required by this chapter.

(c) For surface water systems, the determination shall, at a minimum, include probable impacts on:

1. Peak discharge rates, emphasizing the potential for flooding;

2. Settleable solids at peak discharge;

3. Low-flow discharge rates, emphasizing the potential for water supply diminution;

4. Suspended solids at low flow;

5. pH, at low flow, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated

levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(d) For groundwater systems, the determination shall, at a minimum, include probable impacts on:

1. Water quantity, emphasizing water levels and the potential for water supply diminution for existing users, and dewatering of aquifers which are not currently being used for water supply but have the potential to be developed as a water supply source.

2. pH, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(e) An application for a major revision to a permit shall be reviewed by the cabinet to determine whether a new or updated determination of the probable hydrologic consequences shall be required.

(4)(a) The application shall include a plan for the collection, recording, and reporting of groundwater and surface water quantity and quality data to monitor the effects of the mining and reclamation operations on the hydrologic balance, according to 405 KAR 16:110.

(b) The monitoring plan shall be based on the geologic and hydrologic baseline information, the mining and reclamation plan, and the determination of probable hydrologic consequences; and shall:

1. Identify the quantity and quality parameters to be monitored, sampling frequency, and monitoring site locations; and

2. Describe how the data may be used to determine the impacts of the operation on the hydrologic balance.

(5) An application for a major revision to a permit shall be reviewed by the cabinet to determine whether a new or updated cumulative hydrologic impact assessment shall be made.

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

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

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

(b) Contain a description, map, and appropriate cross-sections and drawings of the structure and its location;

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

(d) Contain an assessment of the potential effect on the structure from subsidence of the

subsurface strata resulting from past underground mining operations if underground mining has occurred;

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

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

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

(2) Sedimentation ponds.

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

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

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

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

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

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

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

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

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

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

selecting the specific design parameters and construction methods.

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

- (1) An air quality monitoring program, if required by the cabinet, to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices under subsection (2) of this section to comply with applicable federal and state air quality standards; and
- (2) A plan for fugitive dust control practices, as required under 405 KAR 16:170.

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

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

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

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

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

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

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

(3) Approval of the initial postmining land use plan pursuant to this section, shall not preclude subsequent consideration and approval of a revised postmining land use plan in accordance with the applicable requirements of 405 KAR.

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

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

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

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

CARL H. BRADLEY, Secretary
FRANK DICKERSON, Commissioner

APPROVED BY AGENCY: January 22, 1991

FILED WITH LRC: January 23, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled for 9 a.m. (EST) Thursday, March 28, 1991 in the Department for Surface Mining Reclamation and Enforcement's Training Room (Room D-16) at the Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky. Persons who wish to testify at the hearing shall notify the contact person listed below, in writing, by March 22, 1991. The scheduled hearing may be cancelled if the contact person has not received any written notice of intent to testify by March 22, 1991, five days before the scheduled hearing date. If the hearing is held, it will be open to the public. Any person in attendance who wishes to testify on the proposed amendment will be given a fair and reasonable opportunity to do so, regardless of whether the person has given the cabinet prior written notice of his intent to testify. To assure an accurate record, the cabinet requests each person testifying at the hearing to provide the cabinet with a written copy of his testimony. The cabinet is not required to make a recording or transcript of the hearing unless someone makes a written request for it, in which case the person requesting the recording or transcript shall pay for it.

Written Comments: A person who wishes to comment on this proposed amendment but does not wish to testify at the hearing may submit written comments on the proposed amendment at any time before 4:30 p.m. (EST) on March 28, 1991. Comments received after that time will not be considered. Written comments and written notices of intent to testify at the hearing shall be submitted to: Jim Villines, Kentucky Department for Surface Mining, 2 Hudson Hollow Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jim Villines

(1) Type and number of entities affected: The amendment applies to all applications for permits to conduct surface coal mining operations and thus affects all applicants and permittees. It indirectly affects all owners and controllers of applicants and permittees, since the application must identify these owners and controllers and provide certain information about them and their activities in connection with other surface coal mining operations.

(a) Direct and indirect costs or savings to

those affected: There will be no direct or indirect costs to affected entities other than those associated with the submittal of information as discussed under (1)(b) below.

1. First year: See (1)(b) below.

2. Continuing costs or savings: See (1)(b) below.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The effect of the amendment is to increase reporting and paperwork requirements in degree but not in nature. The amendment broadens the current permit application requirements regarding identification of interests. It requires more detailed information regarding the owners and controllers of the applicant. It requires that the information on ownership and control be updated after the applicant is notified the application is approved but before the permit is issued. The amendment broadens the current permit application requirements regarding past violations attributable to the applicant and its owners and controllers. It requires this violation information to be updated after the applicant is notified the application is approved but before the permit is issued.

(2) Effects on the promulgating administrative body: The amendment pertains only to information which the applicant must include in the permit application. It does not place any requirements on the cabinet. Other regulations require the cabinet to act on the information in the application.

(a) Direct and indirect costs or savings: There are no direct or indirect costs or savings to the cabinet.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The amendment places no paperwork or reporting requirements on the cabinet.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered. This amendment is necessary to conform the Kentucky regulations to the corresponding federal regulations.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: The provisions of the amendment are duplicated in part in KRS 350.060(3),(4). They do not conflict.

(a) Necessity of proposed regulation if in conflict: No conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(6) Any additional information or comments: None.

TIERING: Was tiering applied? No. Tiering is not applicable to this proposed amendment because, under the federal and Kentucky surface mining laws and regulations, these requirements must apply equally to all permittees under 405 KAR Chapters 7-24.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 USC 1253, 1255, 1257, 1258, 1267, 30 CFR Parts 730-733, 735, 773.13(a), 778-780, 785.17(b),(d), 917

2. State compliance standards. The amendment at 405 KAR 8:030, Section 2 restructures and broadens the current permit application requirements regarding identification of interests. In particular, the amendment requires more detailed information regarding the owners and controllers of the applicant, including the percentage of ownership, location in the organizational structure, and date of assuming the position. The amendment further requires that the information on ownership and control be updated after the applicant is notified the application is approved but before the permit is issued. The amendment at 405 KAR 8:030, Section 3 restructures and broadens the current permit application requirements regarding past violations attributable to the applicant and its owners and controllers. The amendment further requires this violation information to be updated after the applicant is notified the application is approved but before the permit is issued.

3. Minimum or uniform standards contained in the federal mandate. The federal counterparts to 405 KAR 8:030, Section 2 (interests) are at 30 CFR 778.13. The federal counterparts to 405 KAR 8:030, Section 3 (violations) are at 30 CFR 778.14.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment will not impose stricter, additional or different requirements or responsibilities than the federal mandate. The Kentucky requirements will be equivalent to the federal requirements. This amendment is filed under KRS 13A.2264(2). A copy of the corresponding federal regulations is submitted in a separate binder under KRS 13A.2264(4). These federal regulations are not being incorporated by reference and are not being adopted without change.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This item is not applicable since the state and federal requirements are equivalent.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Surface Mining Reclamation and Enforcement (Proposed Amendment)

405 KAR 8:040. Underground coal mining permits.

RELATES TO: KRS 350.060, 350.151, 30 CFR Parts 730-733, 735, 773.13(a), 778, 783, 784, 785.17(b), (d), 917, 30 USC 1253, 1255, 1257, 1258, 1266, 1267

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.060, 350.151, 350.465, 30 CFR Parts 730-733, 735, 773.13(a), 778, 783, 784, 785.17(b), (d), 917, 30 USC 1253, 1255, 1257, 1258, 1266, 1267

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to

promulgate rules and regulations pertaining to permits for underground mining activities. This regulation recognizes the distinct differences between surface mining activities and underground mining activities. This regulation specifies certain information to be shown by the applicant related to legal and compliance status, environmental resources, and his mining and reclamation plan. This regulation further specifies certain showings to be made by the applicant to obtain a permit.

Section 1. General. (1) Applicability.

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

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

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

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

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

Section 2. Identification of Interests. An application shall contain the following information, except that the submission of a Social Security Number is voluntary:

(1) A statement as to whether the applicant is a corporation, partnership, single proprietorship, association, or other business entity;

(2) The name, address, telephone number and, as applicable, Social Security Number and employer identification number of the:

(a) Applicant;

(b) Applicant's resident agent; and

(c) Person who will pay the abandoned mine land reclamation fee.

(3) For each person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in 405 KAR 7:020, as applicable:

(a) The person's name, address, Social Security Number, and employer identification number;

(b) The person's ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;

(c) The title of the person's position, date position was assumed, and when submitted under 405 KAR 8:010, Section 18(5) date of departure from the position;

(d) Each additional name and identifying number, including employer identification number, federal or state permit number, and MSHA number with date of issuance, under which the person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the United States within the five (5) years preceding the date of the application; and

(e) The application number or other identifier

of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the person in any state in the United States.

(4) For any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in 405 KAR 7:020, the operation's:

(a) Name, address, identifying numbers, including employer identification number, federal or state permit number, and MSHA number, the date of issuance of the MSHA number, and the regulatory authority; and

(b) Ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure.

(5) [(1) Each application shall contain] The names and addresses of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) [(6) Each application shall contain] The name of the proposed mine and all MSHA identification numbers that have been assigned for the mine and all mine associated structures that require MSHA approval [sections].

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

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

(11) After an applicant has been notified that his or her application has been approved, but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subsections (1) through (4) of this section.

(12) The applicant shall submit the information required by this section and Section 3 of this regulation in any prescribed cabinet format that is issued.

Section 3. Violation [Compliance] Information. Each application shall contain the following information:

(1) [Each application shall contain] A statement of whether the applicant, any subsidiary, affiliate, or persons controlled by or under common control with the applicant has:

(a) Had a coal mining permit of the United States or any state suspended or revoked in the [last] five (5) years preceding the date of submission of the application; or

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

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

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

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

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

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

(e) The current status of these proceedings.

(3) For any violation of a provision of SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and regulations adopted pursuant thereto, any other state's laws or regulations under SMCRA, any federal law, rule, or regulation pertaining to air or water environmental protection, or any Kentucky or other state's law, rule, or regulation enacted pursuant to federal law, rule, or regulation pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, a list of all violation notices received by the applicant during the three (3) year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant. For each violation notice or cessation order reported, the lists shall include the following information, as applicable: [Each application shall contain a list of each violation notice pertaining to SMCRA or KRS Chapter 350 and regulations promulgated pursuant thereto, received by the applicant in connection with any surface coal mining operation during the three (3) year period before the application date. Each application shall also contain a list of each violation notice pertaining to air or water environmental protection received by the applicant in connection with any surface coal mining operation during the three (3) year period before the application date, for violations of any law, rule, or regulation of the United States, or of any state law, rule, or regulation enacted pursuant to federal law, rule, or regulation. The application shall also contain a statement regarding each violation notice, including:]

(a) Any identifying numbers for the operation, including the federal or state permit number and MSHA number, the dates of issuance of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department, or agency; [The date of issuance and identity of the issuing regulatory authority, department, or agency;]

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

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

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

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

2. The current status of the proceedings and of the violation notice; and

3. [2.] The actions, if any, taken or being taken by any person identified in this subsection [the applicant] to abate the violation.

(4) After an applicant has been notified that his or her application has been approved, but

before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subsections (1) through (3) of this section.

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

Section 4. Right of Entry and Right to Mine.

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

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

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

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

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

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

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

including the surface acreage overlying the underground workings, for each phase of mining and over the total life of the permit.

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

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

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

(1) Type of permit or license;

(2) Name and address of issuing authority;

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

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

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

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

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

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

(b) The cabinet may require the applicant to identify and evaluate important historic and archaeological resources that may be eligible for listing on the National Register of Historic

Places, through collection of additional information, field investigations, or other appropriate analyses.

Section 12. General Requirements for Baseline Geologic and Hydrologic Information. (1) The application shall contain baseline geologic and hydrologic information which has been collected, analyzed, and submitted in the detail and manner acceptable to the cabinet, and which shall be sufficient to:

(a) Identify and describe protective measures pursuant to Section 32(1) of this regulation which will be implemented during the mining and reclamation process to assure protection of the hydrologic balance, or to demonstrate that protection of the hydrologic balance can be assured without the design and installation of protective measures; and to design necessary protective measures pursuant to Section 32(2) of this regulation.

(b) Determine the probable hydrologic consequences of the mining and reclamation operations upon the hydrologic balance in the permit area and adjacent area pursuant to Section 32(3) of this regulation so that an assessment can be made by the cabinet pursuant to 405 KAR 8:010, Section 14(3) of the probable cumulative impacts of all anticipated mining on the hydrologic balance in the cumulative impact area;

(c) Determine pursuant to 405 KAR 8:010, Section 14(2) and (3) whether reclamation as required by 405 KAR can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance; and

(d) Design surface and groundwater monitoring systems pursuant to Section 32(4) of this regulation for the during-mining and postmining time period which, together with the baseline data collected under Sections 14(1) and 15(1) of this regulation, will demonstrate whether the mining operation is meeting applicable effluent limitations and stream standards and protecting the hydrologic balance.

(2)(a) Geologic and hydrologic information pertaining to the area outside the permit and adjacent area but within the cumulative impact assessment area shall be provided to the applicant by the cabinet:

1. If this information is needed in preparing the cumulative impact assessment; and

2. If this information is available from an appropriate federal or state agency.

(b) If this information is needed by the cabinet for conducting the cumulative impact assessment and is not available from a federal or state agency, the applicant may gather and submit this information to the cabinet as part of the permit application.

(3) Interpolation, modeling, correlation or other statistical methods, and other data extrapolation techniques may be used if the applicant can demonstrate to the satisfaction of the cabinet that the data extrapolation techniques are valid and that information obtained through the techniques meets the requirements of subsection (1) of this section.

(4) All water quality analyses performed to meet the requirements of this chapter shall be conducted according to the methodology in the fourteenth edition of "Standard Methods for the Examination of Water and Wastewater," or the methodology in 40 CFR Parts 136 and 434. All

water quality sampling shall be conducted according to either methodology listed above when feasible.

Section 13. Baseline Geologic Information. (1) The application shall contain baseline geologic information collected from the permit area which shall meet the requirements of Section 12(1) of this regulation and shall include at a minimum:

(a) The results of samples obtained from continuous cores; drill cuttings; channel cuttings from fresh, unweathered, rock outcrops; or other rock or soil material which has been collected using acceptable sampling techniques.

1. For those areas where overburden will be removed, the vertical extent of sampling shall include those strata from the surface down to and including the stratum immediately below the lowest coal seam to be mined; and

2. For those areas overlying underground workings where overburden will not be removed, the vertical extent of sampling shall include those strata above and below the coal seam to be mined which may be impacted by the mining operation.

3. Where aquifers within the permit area are located above or below the coal seam to be mined and these aquifers may be adversely affected by the mining operation, the vertical extent of sampling shall also include the aquifer and those strata which lie between the coal seam and the aquifer.

4. The areal and vertical density of sampling shall, at a minimum, be sufficient to determine the distribution of strata which have a potential to produce acid drainage and to determine the areal and vertical extent of aquifers which may be adversely affected.

5. If the vertical extent, and the areal and vertical density of sampling specified in subparagraphs 1 through 4 of this paragraph are not sufficient to locate suitable strata for use as a topsoil substitute, to determine the potential for subsidence, or for other required design or analysis, additional sampling shall be conducted as necessary to furnish adequate geologic information.

(b)1. To identify strata which have a potential to produce acid or toxic drainage for areas where overburden will be removed, chemical analyses including, but not limited to, maximum potential acidity and neutralization potential of each overburden stratum and the stratum immediately below the lowest coal seam to be mined; and

2. To identify strata which have a potential to produce acid or toxic drainage for areas overlying underground workings where overburden will not be removed, chemical analyses including, but not limited to, maximum potential acidity and neutralization potential of the strata immediately above and below the coal seam to be mined.

(c) Chemical analyses of the coal seam to be mined to determine the potential to produce acid or toxic drainage, including the parameters of total sulfur and pyritic sulfur; except that the cabinet shall not require an analysis for pyritic sulfur if the applicant can demonstrate to the satisfaction of the cabinet that an analysis for total sulfur provides adequate information to assure protection of the hydrologic balance.

(d) For standard room and pillar mining operations, the engineering properties of clays

or soft rock such as clay shale, if any, located immediately above and below each coal seam to be mined.

(e) Collection of geologic information from the permit area as required in this subsection may be waived in whole or in part if:

1. The applicant can demonstrate to the satisfaction of the cabinet through geologic correlation or other procedures that information collected from outside the permit area is representative of the permit area and is sufficient to meet the requirements of Section 12(1) of this regulation; or

2. Other information equivalent to that required by this subsection is available to the cabinet in a satisfactory form and is made a part of the permit application; and

3. The cabinet provides a written statement granting a waiver.

(2) The application shall contain a description of the geology of the proposed permit area and adjacent area which shall meet the requirements of Section 12(1) of this regulation and be based on the information required in subsection (1) of this section or other appropriate geologic information. The description shall include, at a minimum, geologic logs, cross-sections, fence diagrams, or other appropriate illustrations and written descriptions depicting:

(a) Within the permit area:

1. The structural geology and lithology of overburden strata and the stratum immediately below the lowest coal seam to be mined for those areas where overburden will be removed; and the structural geology and lithology of strata which may be impacted by the mining operation for those areas overlying underground workings where overburden will not be removed.

2. The thickness and chemical characteristics of each overburden stratum and the stratum immediately below the lowest coal seam to be mined for those areas where overburden will be removed; or the thickness and chemical characteristics of each stratum which may be impacted by the mining operation for those areas overlying underground workings where overburden will not be removed.

3. Where aquifers may be adversely affected by the mining operation, the structural geology, lithology, thickness, and areal extent of the aquifers; and structural geology and lithology of strata, and thickness of each stratum, whether located above or below the coal seam to be mined, which lie between the coal seam and the aquifers.

4. For standard room and pillar mining operations, the thickness and engineering properties of clays or soft rock such as clay shale, if any, located immediately above and below each coal seam to be mined.

(b) Within the adjacent area, the approximate areal extent and approximate thickness of aquifers which may be adversely affected by the mining operation.

(3) If determined by the cabinet to be necessary to assure adequate reclamation and protection of the hydrologic balance, the cabinet may require geologic information and description in addition to that required by subsections (1) and (2) of this section including, but not limited to, leaching tests of material from strata which may be disturbed by the operation to determine the potential for the operation to produce drainage with elevated

levels of acidity, sulfate, and total dissolved solids, and the collection of information to greater depths within the proposed permit area or the collection of information for areas outside the proposed permit area.

Section 14. Baseline Ground Water Information.

(1) The application shall contain baseline groundwater information for the permit area and adjacent area which shall be collected and submitted in a manner acceptable to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this regulation.

(2) Groundwater information shall include an inventory of wells, springs, underground mines, or other similar groundwater supply facilities which are currently being used, have been used in the past, or have a potential to be used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the location, ownership, type of usage, and where possible, other relevant information such as the depth and diameter of wells and approximate rate of usage, pumpage or discharge from wells, springs, and other groundwater supply facilities.

(3) Groundwater information shall include seasonal groundwater quantity and quality data collected from monitoring wells, springs, underground mines, or other appropriate groundwater monitoring facilities, at a sufficient number of monitoring locations with adequate areal distribution to meet the requirements of Section 12(1) of this regulation. Seasonal groundwater quantity and quality data shall be provided for each water transmitting zone above, and potentially impacted water transmitting zone below, the lowest coal seam to be mined including at a minimum:

(a) Groundwater levels; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; pH; dissolved iron; dissolved manganese; acidity; alkalinity; and sulfate. For data collected prior to August 13, 1985, total iron and total manganese may be substituted for dissolved iron and dissolved manganese.

(4) The groundwater information described in subsection (3) of this section shall be required in whole or in part for coal seams if the coal seams to be mined are serving as water supply sources or are otherwise significant in protecting the hydrologic balance.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet may require groundwater information in addition to that described in subsections (2), (3), and (4) of this section including, but not limited to, information pertaining to aquifer storage, yield, discharge, recharge capacity, and additional water quality parameters.

Section 15. Baseline Surface Water Information.

(1) The application shall contain baseline surface water information for the permit area and adjacent area which shall be collected and submitted in a manner acceptable to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this regulation.

(2) Surface water information shall include an inventory of all streams, lakes, impoundments or

other surface water bodies in the permit and adjacent area which are currently being used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the name of the surface water body which is being used as a water supply source; the location, drainage area, ownership, and type of usage for the withdrawal; and where possible other relevant information such as the rate of withdrawal and seasonal variation.

(3) Surface water information shall include:

(a) The name, location, and ownership where appropriate, of all streams, lakes, impoundments, and other surface water bodies which receive run-off from watersheds which will be disturbed by the operation; and

(b) The location and description of any existing facilities located in watersheds which will be disturbed by the mining operation which may contribute to surface water pollution, such as existing or abandoned mining operations, oil wells, logging operations, or other similar facilities, including the location of any discharges which may be flowing from the facilities.

(4) Surface water information shall include seasonal quantity and quality data collected from a sufficient number of watersheds which will be disturbed by the operation with adequate areal distribution to meet the requirements of Section 12(1) of this regulation and include at a minimum:

(a) Flow rates; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; total suspended solids; pH; total iron; total manganese; acidity; alkalinity; and sulfate.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet may require surface water information in addition to that described in subsections (2), (3), and (4) of this section including, but not limited to, information pertaining to flood flows and additional water quality parameters.

Section 16. Alternative Water Supply Information. If contamination, diminution, or interruption of an underground or surface source of water (for domestic, agricultural, industrial, or other legitimate use) within the proposed permit area or adjacent area may result from underground mining activities, then the applicant may identify, in the permit application, the alternative sources of water supply that could be developed to replace the existing sources.

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

(a) The average seasonal precipitation;

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

(c) Seasonal temperature ranges.

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

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

(2) Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of the analyses, trials and tests required under 405 KAR 18:050, Section 2(5).

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

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

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

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

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

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

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

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

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

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

(4) If the investigation indicates that lands within the proposed area to be affected by surface operations and facilities may be prime farmlands, the applicant shall contact the U.S. SCS to determine if these lands have a soil

survey and whether the applicable soil map units have been designated prime farmlands. If no soil survey has been made for these lands, the applicant shall request the SCS to conduct a soil survey.

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

(b) When a soil survey as required by this section contains no soil map units which have been designated as prime farmland, after review by the U.S. SCS, the applicant shall submit with the permit application a request for negative determination under subsection (2)(d) of this section for the nondesignated land.

(5) The cabinet shall decide to grant or deny a negative determination based upon documentation provided by the applicant and any other pertinent information, such as cropping history, available to the cabinet from other sources.

(6) The cabinet shall consult with the SCS in deciding on a request for negative determination under subsection (2)(c) of this section.

(7) The cabinet shall examine any records on crop history available from the Agriculture Stabilization and Conservation Service when deciding on a request for negative determination under subsection (2)(a) of this section.

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

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

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

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

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

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

- (a) The type of mining method used;
- (b) The coal seams or other mineral strata mined;
- (c) The extent of coal or other minerals

removed;

(d) The approximate dates of past mining; and

(e) The uses of the land preceding mining.

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

(4) The application shall contain a description identifying the extent to which cities, towns, and municipalities, or parts thereof, are located within the proposed permit area.

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

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

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

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

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

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

(f) The boundaries of land within the proposed permit area upon which, or under which, the applicant has the legal right to conduct underground mining activities. In addition, the map shall indicate the boundaries of that portion of the permit area which the applicant has the legal right to enter upon the surface to conduct surface operations.

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

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

(i) The location of all buildings in and within 1000 feet of the proposed permit area, with identification of the current use of the buildings;

(j) Each public road located in or within 100 feet of the proposed permit area;

(k) Each cemetery that is located in or within 100 feet of the proposed permit area;

(l) Other relevant information required by the cabinet.

(2) The application shall include drawings, cross-sections, and maps showing:

(a) Elevations and locations of test borings and core samplings;

(b) Elevations and locations of monitoring stations or other sampling points in the permit area and adjacent areas used to gather data on water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the application or which will be used for such data gathering during the term of the permit;

(c) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;

(d) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit area and adjacent areas;

(e) Location and extent of subsurface water, if encountered, within the proposed permit area or adjacent areas;

(f) Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drainage patterns, and irrigation ditches within the proposed permit area and adjacent areas;

(g) Location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent areas;

(h) Location and dimensions of existing coal refuse disposal areas and dams, or other impoundments within the proposed permit area;

(i) Sufficient slope measurements to adequately represent the existing land surface configuration of the area to be affected by surface operations and facilities, measured and recorded according to the following:

1. Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed or, where this is impractical, at locations and in a manner as specified by the cabinet.

2. Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances, or any other distance determined by the cabinet to be representative of the premining configuration of the land.

3. Slope measurements shall take into account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.

(3) The permit application shall include the map information specified in Sections 22(1)(a), 24(3), 24(4)(c), 24(4)(h), 26, 27(1), 28, 31, 32, 33, 34, and 38 of this regulation and 405 KAR 8:010, Section 5(6).

(4) Maps, drawings and cross-sections included in a permit application and required by this section shall be prepared by, or under the direction of and certified by a qualified registered professional engineer, and shall be updated as required by the cabinet. The qualified registered professional engineer shall not be required to certify the true ownership of property.

Section 24. Mining and Reclamation Plan; General Requirements. (1) Each application shall contain a detailed mining and reclamation plan (MRP) for the proposed permit area as set forth in this section through Section 39 of this

regulation, showing how the applicant will comply with KRS Chapter 350 and 405 KAR Chapters 16 through 20.

(2) Each application shall contain a description of the mining operations proposed to be conducted within the proposed permit area, including, at a minimum, the following:

(a) A narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations; and

(b) A narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of the facility is to be approved as necessary for postmining land use as specified in 405 KAR 18:220):

1. Dams, embankments, and other impoundments;
2. Overburden and topsoil handling and storage areas and structures;
3. Coal removal, handling, storage, cleaning, and transportation areas and structures;
4. Spoil, coal processing waste, mine development waste, and noncoal waste removal, handling, storage, transportation, and disposal areas and structures;
5. Mine facilities; and
6. Water pollution control facilities.

(3) Each application shall contain plans and maps of the proposed permit area and adjacent areas as follows:

(a) The plans, maps and drawings shall show the underground mining activities to be conducted, the lands to be affected throughout the operation, and any change in a facility or feature to be caused by the proposed operations, if the facility or feature was shown under Section 23 of this regulation.

(b) The following shall be shown for the proposed permit area:

1. Buildings, utility corridors, and facilities to be used;
2. The area of land to be affected within the proposed permit area, according to the sequence of mining and reclamation;
3. Each area of land for which a performance bond or other equivalent guarantee will be posted under 405 KAR Chapter 10;
4. Each coal storage, cleaning and loading area;
5. Each topsoil, spoil, coal preparation waste, underground development waste, and noncoal waste storage area;
6. Each water diversion, collection, conveyance, treatment, storage and discharge facility to be used;
7. Each source of waste and each waste disposal facility relating to coal processing or pollution control;
8. Each facility to be used to protect and enhance fish and wildlife related environmental values;
9. Each explosive storage and handling facility;
10. Location of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, in accordance with Section 34 of this regulation, and each disposal area for underground development waste and excess spoil, in accordance with Section 28 of this regulation;
11. Cross-sections, at locations as required by the cabinet, of the anticipated final surface

configuration to be achieved for the affected areas;

12. Location of each water and any subsidence monitoring point;

13. Location of each facility that will remain on the proposed permit area as a permanent feature, after the completion of underground mining activities.

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

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

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

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

(c) A plan for backfilling, soil stabilization, compacting and grading, with contour maps or cross-sections that show the anticipated final surface configuration of the proposed permit area, in accordance with 405 KAR 18:190;

(d) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of 405 KAR 18:050 including a demonstration of suitability of any proposed topsoil substitutes or supplements;

(e) A plan for revegetation as required in 405 KAR 18:200, including, but not limited to, descriptions of the: schedule of revegetation; species and amounts per acre of seeds and seedlings to be used; methods to be used in planting and seeding; mulching techniques; irrigation, if appropriate, and pest and disease control measures, if any; measures proposed to be used to determine the success of revegetation as required in 405 KAR 18:200, Section 6; and a soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation;

(f) A description of the measures to be used to maximize the use and conservation of the coal resource as required in 405 KAR 18:010, Section 2;

(g) A description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with 405 KAR 18:150 and 405 KAR 18:190, Section 3 and a description of the contingency plans which have been developed to preclude sustained combustion of the materials;

(h) A description, including appropriate drawings and maps, of the measures to be used to seal or manage mine openings, and to plug, case or manage exploration holes, other bore holes, wells and other openings within the proposed permit area, in accordance with 405 KAR 18:040; and

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

obtained, has applied for, or intends to apply for.

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

(a) Location;

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

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

(d) A showing, including relevant monitoring data or other evidence, whether the structure meets the performance standards of 405 KAR Chapters 16 through 20, or if the structure does not meet those performance standards, a showing whether the structure meets the interim performance standards of 405 KAR Chapter 3.

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

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

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

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

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

Section 26. MRP; Subsidence Control. (1) The application shall include a survey which shall show whether structures or renewable resource lands exist within the proposed permit area and adjacent areas and whether subsidence, if it occurred could cause material damage or diminution of reasonably foreseeable use of the structures or renewable resource lands.

(2) If the survey shows that no structures or renewable resource lands exist, or no material damage or diminution could be caused in the event of mine subsidence, and if the cabinet agrees with this conclusion, no further information need be provided in the application under this section.

(3) If the survey shows that structures or renewable resource lands exist, or that subsidence could cause material damage or diminution of value or foreseeable use of the land, or if the cabinet determines that damage or diminution could occur, the application shall include a subsidence control plan which shall contain the following information:

(a) A detailed description of the mining method and other measures to be taken which may affect subsidence, including:

1. The technique of coal removal, such as longwall mining, room and pillar with pillar removal, hydraulic mining or other methods; and

2. The extent, if any, to which planned and controlled subsidence is intended.

(b) A detailed description of the measures to be taken to prevent subsidence from causing material damage or lessening the value of reasonably foreseeable use of the surface, including:

1. The anticipated effects of planned subsidence, if any;

2. Measures, if any, to be taken in the mine to reduce the likelihood of subsidence, including measures such as backstowing or backfilling of voids; leaving support pillars of coal; and areas in which no coal removal is planned, including a description of the overlying area to be protected by leaving coal in place.

3. Measures to be taken on the surface to prevent material damage or lessening of the value or reasonably foreseeable use of the surface, including measures such as reinforcement of sensitive structures or features; installation of footers designed to reduce damage caused by movement; change of location of pipelines, utility lines or other features; relocation of movable improvements to sites outside the angle-of-draw; and monitoring, if any, to determine the commencement and degree of subsidence so that other appropriate measures can be taken to prevent or reduce material damage.

(c) A detailed description of the measures to be taken to mitigate the effects of any material damage or diminution of value or foreseeable use of lands which may occur, including one (1) or more of the following as required by 405 KAR 18:210, Section 3:

1. Restoration or rehabilitation of structures and features, including approximate land-surface contours, to premining condition;

2. Replacement of structures destroyed by subsidence;

3. Purchase of structures prior to mining and restoration of the land after subsidence to condition capable of supporting and suitable for the structures and foreseeable land uses;

4. Purchase of noncancellable insurance policies payable to the surface owner in the full amount of the possible material damage or other comparable measures.

(d) A detailed description of measures to be taken to determine the degree of material damage or diminution of value or foreseeable use of the surface, including measures such as:

1. The results of presubsidence surveys of all structures and surface features which might be materially damaged by subsidence;

2. Monitoring, if any, proposed to measure deformations near specified structures or features or otherwise as appropriate for the operation.

Section 27. MRP; Return of Coal Processing Waste to Abandoned Underground Workings. (1) Each plan shall describe the design, operation and maintenance of any proposed use of abandoned underground workings for coal processing waste disposal, including flow diagrams and any other necessary drawings and maps, for the approval of the cabinet and MSHA under 405 KAR 18:140, Section 7.

(2) Each plan shall describe the source and quality of waste to be stowed, area to be backfilled, percent of the mine void to be filled, method of constructing underground retaining walls, influence of the backfilling operation on active underground mine operations,

surface area to be supported by the backfill, and the anticipated occurrence of surface effects following backfilling.

(3) The applicant shall describe the source of the hydraulic transport mediums, method of dewatering the placed backfill, retainment of water underground, treatment of water if released to surface streams, and the effect on the hydrologic regime.

(4) The plan shall describe each permanent monitoring well to be located in the backfilled area, the stratum underlying the mined coal, and gradient from the backfilled area.

(5) The requirements of this section shall also apply to pneumatic backfilling operations, except where the operations are exempted by the cabinet from requirements specifying hydrologic monitoring.

Section 28. MRP; Underground Development Waste and Excess Spoil. Each plan shall contain descriptions, including appropriate maps and cross-section drawings, of the proposed disposal methods and sites for placing underground development waste and excess spoil according to 405 KAR 18:130, 405 KAR 18:140, and 405 KAR 18:160 as applicable. Each plan shall describe the geotechnical investigation, design, construction, operation, maintenance, and removal, if appropriate, of the structures and be prepared according to 405 KAR 8:030, Section 27 and the applicable requirements of this regulation.

Section 29. MRP; Transportation Facilities. (1) Each application shall contain a description of each road, conveyor, and rail system to be constructed, used, or maintained within the proposed permit area. The description shall include a map, appropriate cross-sections, and the following:

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

(b) A report of appropriate geotechnical analysis, where approval of the cabinet is required for alternative specifications or for steep cut slopes under 405 KAR 18:230.

(c) A description of each measure to be taken to obtain approval of the cabinet for alteration or relocation of a natural drainageway under 405 KAR 18:230.

(d) A description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for approval by the cabinet under 405 KAR 18:230.

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

Section 30. MRP; Protection of Public Parks and Historic Places. (1) For any publicly-owned parks or any places listed on the National Register of Historic Places that may be adversely affected by the proposed operations, each plan shall describe the measures to be used to prevent adverse impact; or, if valid existing rights exist or joint agency approval is to be obtained under 405 KAR 24:040, Section 2(4), to minimize adverse impacts.

(2) The cabinet may require the applicant to protect historic or archaeological properties listed or eligible for listing on the National

Register of Historic Places through appropriate mitigation and treatment measures. These measures need not be completed prior to permit issuance, but shall be completed before the properties are affected by underground mining activities.

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

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

Section 32. MRP; Protection of Hydrologic Balance. (1) Each application shall contain a description, as set forth in this subsection, of the measures to be taken to minimize disturbances to the hydrologic balance within the permit area and adjacent area and to prevent material damage to the hydrologic balance outside the permit area.

(a) The description shall be based upon the baseline geologic, hydrologic, and other information required by Sections 12 through 16 of this regulation and other appropriate information, shall be specific to local hydrologic conditions, and shall be prepared in a manner and detail acceptable to the cabinet.

(b) The description shall identify the protective measures to be taken to enable the operation to meet, at a minimum, each of the hydrologic requirements referenced in this paragraph, or shall demonstrate to the satisfaction of the cabinet that protective measures are not necessary for the operation to meet the requirements:

1. Meet applicable water quality statutes, regulations, standards, and effluent limitations as required by 405 KAR 18:060, Section 1(3);
2. Avoid acid or toxic drainage as required by 405 KAR 18:060, Sections 4, 5, and 6;
3. Control the discharge of sediment to streams located outside the permit area as required by 405 KAR 18:060, Section 2; and
4. Control the drainage and discharge of water within the permit area as required by 405 KAR 18:060, Sections 1(4), 3, 8 and 9, and 405 KAR 18:080.

(c) The cabinet may require that the description include protective measures in addition to those identified under paragraph (b) of this subsection, if the cabinet determines that additional measures are needed to protect the hydrologic balance in accordance with 405 KAR 18:060.

(2) Each application shall include the design of any necessary protective measures identified under subsection (1) of this section. The design shall be prepared in a manner and detail acceptable to the cabinet including, as appropriate, calculations, maps, drawings, and written explanations as necessary to document the design.

(3) Each application shall include a determination of the probable hydrologic consequences of the mining and reclamation operations for the permit area and adjacent area.

(a) The determination shall be based upon the

baseline geologic, hydrologic, and other information required by Sections 12 through 16 of this regulation and other appropriate information, and may include information statistically representative of the site.

(b) The determination shall be completed according to the parameters and in the detail required by the cabinet to enable the cabinet to prepare a cumulative impact assessment, and shall take into account the anticipated effects of protective measures required by this chapter.

(c) For surface water systems, the determination shall, at a minimum, include probable impacts on:

1. Peak discharge rates, emphasizing the potential for flooding;
2. Settleable solids at peak discharge;
3. Low-flow discharge rates, emphasizing the potential for water supply diminution;
4. Suspended solids at low flow;
5. pH, at low flow, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(d) For groundwater systems, the determination shall, at a minimum, include probable impacts on:

1. Water quantity, emphasizing water levels and the potential for water supply diminution for existing users, and dewatering of aquifers which are not currently being used for water supply but have the potential to be developed as a water supply source.
2. pH, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(e) An application for a major revision to a permit shall be reviewed by the cabinet to determine whether a new or updated determination of the probable hydrologic consequences shall be required.

(4)(a) The application shall include a plan for the collection, recording, and reporting of groundwater and surface water quantity and quality data to monitor the effects of the mining and reclamation operations on the hydrologic balance, according to 405 KAR 18:110.

(b) The monitoring plan shall be based on the geologic and hydrologic baseline information, the mining and reclamation plan, and the determination of probable hydrologic consequences; and shall:

1. Identify the quantity and quality parameters to be monitored, sampling frequency, and monitoring site locations; and
2. Describe how the data may be used to determine the impacts of the operation on the hydrologic balance.

(5) An application for a major revision to a permit shall be reviewed by the cabinet to determine whether a new or updated cumulative hydrologic impact assessment shall be made.

Section 33. MRP; Diversions. Each application shall contain descriptions, including maps and cross-sections, of stream channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with 405 KAR 18:080.

Section 34. MRP; Impoundments and Embankments.

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

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

(b) Contain a description, map, and appropriate cross-sections and drawings of the structure and its location;

(c) Contain all hydrologic and geologic information and computations necessary to demonstrate compliance with the design and performance standards of 405 KAR Chapter 18; and all information utilized by the applicant to determine the probable hydrologic consequences of the mining operation under Section 32(3) of this regulation;

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

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

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

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

(2) Sedimentation ponds.

(a) Sedimentation ponds, whether temporary or permanent, shall be designed in compliance with the requirements of 405 KAR 18:090. Any sedimentation pond or earthen structure which will remain on the proposed permit area as a permanent water impoundment shall also be designed to comply with the requirements of 405 KAR 18:100.

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

(3) Permanent and temporary impoundments. Permanent and temporary impoundments shall be designed to comply with the requirements of 405 KAR 18:100. Each plan shall comply with the requirements of MSHA, 30 CFR 77.216-1 and 77.216-2.

(4) Coal processing waste banks. Coal processing waste banks shall be designed to comply with the requirements of 405 KAR 18:140.

(5) Coal processing waste dams and embankments. Coal processing waste dams and embankments shall be designed to comply with the requirements of 405 KAR 18:160. Each plan shall comply with the requirements of MSHA, 30 CFR 77.216-1 and 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:

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

(b) The character of the overburden and bedrock, the proposed abutment sites, and any

adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site shall be considered.

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

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

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

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

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

(2) A plan for fugitive dust control practices, as required under 405 KAR 18:170.

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

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

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

(b) Where a land use different from the premining land use is proposed, all supporting documentation submitted for approval of the proposed use under 405 KAR 18:220;

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

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

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

(3) Approval of the initial postmining land use plan pursuant to this section, shall not preclude subsequent consideration and approval of a revised postmining land use plan in accordance with the applicable requirements of 405 KAR.

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

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

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

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

Section 39. MRP; Blasting. (1) Each application shall contain a blasting plan for the proposed permit area explaining how the applicant intends to comply with the requirements of 405 KAR 18:120. This plan shall include, at a minimum, information setting forth the limitations the permittee will meet with regard to ground vibration and airblast, the bases for the ground vibration and airblast limitations, and the methods to be applied in controlling the adverse effects of blasting operations.

(2) Each application shall contain a description of the systems to be used to monitor compliance with the standards for ground vibration and airblast including the types, capabilities, and sensitivities of blast monitoring equipment and identification of the monitoring procedures and locations.

(3) Blasting operations within 500 feet of active underground mines require approval of the cabinet, MSHA, and the Kentucky Department of Mines and Minerals.

CARL H. BRADLEY, Secretary
FRANK DICKERSON, Commissioner

APPROVED BY AGENCY: January 22, 1991

FILED WITH LRC: January 23, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled for 9 a.m. (EST) Thursday, March 28, 1991 in the Department for Surface Mining Reclamation and Enforcement's

Training Room (Room D-16) at the Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky. Persons who wish to testify at the hearing shall notify the contact person listed below, in writing, by March 22, 1991. The scheduled hearing may be cancelled if the contact person has not received any written notice of intent to testify by March 22, 1991, five days before the scheduled hearing date. If the hearing is held, it will be open to the public. Any person in attendance who wishes to testify on the proposed amendment will be given a fair and reasonable opportunity to do so, regardless of whether the person has given the cabinet prior written notice of his intent to testify. To assure an accurate record, the cabinet requests each person testifying at the hearing to provide the cabinet with a written copy of his testimony. The cabinet is not required to make a recording or transcript of the hearing unless someone makes a written request for it, in which case the person requesting the recording or transcript shall pay for it.

Written Comments: A person who wishes to comment on this proposed amendment but does not wish to testify at the hearing may submit written comments on the proposed amendment at any time before 4:30 p.m. (EST) on March 28, 1991. Comments received after that time will not be considered. Written comments and written notices of intent to testify at the hearing shall be submitted to: Jim Villines, Kentucky Department for Surface Mining, 2 Hudson Hollow Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jim Villines

(1) Type and number of entities affected: The amendment applies to all applications for permits to conduct surface coal mining operations and thus affects all applicants and permittees. It indirectly affects all owners and controllers of applicants and permittees, since the application must identify these owners and controllers and provide certain information about them and their activities in connection with other surface coal mining operations.

(a) Direct and indirect costs or savings to those affected: There will be no direct or indirect costs to affected entities other than those associated with the submittal of information as discussed under (1)(b) below.

1. First year: See (1)(b) below.

2. Continuing costs or savings: See (1)(b) below.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The effect of the amendment is to increase reporting and paperwork requirements in degree but not in nature. The amendment broadens the current permit application requirements regarding identification of interests. It requires more detailed information regarding the owners and controllers of the applicant. It requires that the information on ownership and control be updated after the applicant is notified the application is approved but before the permit is issued. The amendment broadens the current permit application requirements regarding past violations attributable to the applicant and its

owners and controllers. It requires this violation information to be updated after the applicant is notified the application is approved but before the permit is issued.

(2) Effects on the promulgating administrative body: The amendment pertains only to information which the applicant must include in the permit application. It does not place any requirements on the cabinet. Other regulations require the cabinet to act on the information in the application.

(a) Direct and indirect costs or savings: There are no direct or indirect costs or savings to the cabinet.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The amendment places no paperwork or reporting requirements on the cabinet.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered. This amendment is necessary to conform the Kentucky regulations to the corresponding federal regulations.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: The provisions of the amendment are duplicated in part in KRS 350.060(3),(4). They do not conflict.

(a) Necessity of proposed regulation if in conflict: No conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(6) Any additional information or comments: None.

TIERING: Was tiering applied? No. Tiering is not applicable to this proposed amendment because, under the federal and Kentucky surface mining laws and regulations, these requirements must apply equally to all permittees under 405 KAR Chapters 7-24.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 USC 1253, 1255, 1257, 1258, 1266, 1267, 30 CFR Parts 730-733, 735, 773.13(a), 778, 783, 784, 785.17(b),(d), 917

2. State compliance standards. The amendment at 405 KAR 8:040, Section 2 restructures and broadens the current permit application requirements regarding identification of interests. In particular, the amendment requires more detailed information regarding the owners and controllers of the applicant, including the percentage of ownership, location in the organizational structure, and date of assuming the position. The amendment further requires that the information on ownership and control be updated after the applicant is notified the application is approved but before the permit is issued. The amendment at 405 KAR 8:040, Section 3 restructures and broadens the current permit application requirements regarding past violations attributable to the applicant and its owners and controllers. The amendment further requires this violation information to be updated after the applicant is notified the application is approved but before the permit is

issued.

3. Minimum or uniform standards contained in the federal mandate. The federal counterparts to 405 KAR 8:040, Section 2 (interests) are at 30 CFR 778.13. The federal counterparts to 405 KAR 8:040, Section 3 (violations) are at 30 CFR 778.14.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment will not impose stricter, additional or different requirements or responsibilities than the federal mandate. The Kentucky requirements will be equivalent to the federal requirements. This amendment is filed under KRS 13A.2264(2). A copy of the corresponding federal regulations is submitted in a separate binder under KRS 13A.2264(4). These federal regulations are not being incorporated by reference and are not being adopted without change.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This item is not applicable since the state and federal requirements are equivalent.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Surface Mining Reclamation and Enforcement (Proposed Amendment)

405 KAR 12:020. Enforcement.

RELATES TO: KRS 350.020, 350.028, 350.050, 350.085, 350.113, 350.130, 350.151, 350.465, 350.990, 30 CFR Parts 730-733, 735, 840.13-14, 840.16, 843, 30 USC 1253, 1255, 1271

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.050, 350.130, 350.465, 30 CFR Parts 730-733, 735, 840.13-14, 840.16, 843, 30 USC 1253, 1255, 1271

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part directs the cabinet to rigidly enforce regulations promulgated to control the injurious effects of surface coal mining and reclamation operations. This regulation sets forth various kinds of notices and orders to be issued by authorized representatives of the cabinet. The regulation directs that there be issued a notice of noncompliance and order for remedial measures. The regulation requires that an order for cessation and immediate compliance be issued for failure to abate a violation during a specified abatement period or for situations of imminent harm. The regulation sets forth the general form of the notices and orders and authority to vacate, modify, or terminate such orders or notices. The regulation sets forth procedures for suspension or revocation of a permit and for a determination of whether a pattern of violations exists.

Section 1. General. (1) The secretary of the cabinet may from time to time or for a definite period designate, by written order or by other means appropriate under the circumstances, authorized representatives to perform duties pursuant to the regulations contained in Title 405, Chapters 7 through 24.

(2) Unless otherwise provided to the contrary in Title 405, Chapters 7 through 24 or unless the secretary has made a written order contrary

to the terms of this subsection, personnel authorized by the Commissioner of the Department of Surface Mining Reclamation and Enforcement are deemed the authorized representatives of the cabinet for the purposes of Sections 2, 3, and 4 of this regulation.

Section 2. Notice of Noncompliance and Order for Remedial Measures. (1) Issuance. An authorized representative of the cabinet shall issue a notice of noncompliance and order for remedial measures if, on the basis of inspection, he or she finds a violation of KRS Chapter 350; Title 405, Chapters 7 through 24; any term or condition of a permit; any term or condition of approval (for coal exploration and reclamation operations requiring cabinet approval); or any other applicable requirement.

(2) Form and content. A notice of noncompliance and order for remedial measures issued pursuant to this section shall be in writing and shall be signed by the authorized representative of the cabinet who issued it. The notice shall set forth with reasonable specificity:

(a) The nature of the violation;

(b) The remedial action required, if any, which may include accomplishment of interim steps if appropriate;

(c) A reasonable time for remedial action, if any, which may include time for accomplishment of interim steps if appropriate; and

(d) A reasonable description of the portions of the surface coal mining and reclamation operations or coal exploration and reclamation operations to which the notice applies.

(3) Service. Service of a notice of noncompliance and order for remedial measures shall be in the manner set forth in Section 5 of this regulation.

(4) Extension. An authorized representative of the cabinet may, by written notice, extend the time set for remedial action or for accomplishment of an interim step, if the failure to meet the time previously set was not caused by lack of diligence on the part of the person to whom the notice of noncompliance and order for remedial measures was issued.

(a) The total time for remedial action under such notice, including all extensions, shall not exceed ninety (90) days from the date of issuance of the notice except upon a showing by the permittee or the person conducting the coal exploration and reclamation operations that it is not feasible to abate the violation within ninety (90) calendar days due to one (1) or more of the circumstances set forth in paragraph (b) of this subsection. An abatement period exceeding ninety (90) days pursuant to this subsection shall not be granted for situations in which the permittee's failure or the failure of the person conducting the coal exploration and reclamation operations to abate within ninety (90) days has been caused by a lack of diligence or intentional delay by the permittee or the person conducting the coal exploration and reclamation operations in completing the remedial action required.

(b) Circumstances which may qualify surface coal mining and reclamation operations or coal exploration and reclamation operations for an abatement period of more than ninety (90) days, are situations in which:

1. The permittee of the ongoing surface coal mining and reclamation operations or the person

conducting the coal exploration and reclamation operations has timely applied for and diligently pursued a permit renewal or other necessary approval of designs or plans, but such permit or approval, for reasons not within the control of the permittee or the person conducting the coal exploration and reclamation operations, has not been and will not be issued prior to ninety (90) days after the valid permit or approval expires or is required;

2. There is a valid judicial order precluding abatement within ninety (90) days to which the permittee or the person conducting the coal exploration and reclamation operations has diligently pursued all rights of appeal and to which he or she has no other effective legal remedy;

3. The permittee or the person conducting the coal exploration and reclamation operations cannot abate within ninety (90) days due to a labor strike; or

4. Weather conditions preclude abatement within ninety (90) days; due to weather conditions abatement within ninety (90) days would clearly cause more environmental harm than it would prevent; or abatement within ninety (90) days requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act.

(c) Whenever an abatement period in excess of ninety (90) days is approved by the cabinet, interim abatement measures shall be imposed to the extent necessary to minimize harm to the public and the environment.

(d) If any of the conditions in paragraph (b) of this subsection exist, the permittee or the person conducting the coal exploration and reclamation operations may request the authorized representative of the cabinet to grant an abatement period exceeding ninety (90) days. The authorized representative of the cabinet shall not grant such an abatement period without the approval of the Director of the Division of Field Services or his or her designee, and the abatement period granted shall not exceed the shortest possible time necessary to abate the violation. The permittee or the person conducting the coal exploration and reclamation operations shall have the burden of establishing by clear and convincing proof that he or she is entitled to an extension under the provisions of this subsection. In determining whether or not to grant an abatement period exceeding ninety (90) days, the authorized representative of the cabinet may consider any relevant written or oral information from the permittee, the person conducting the coal exploration and reclamation operations, and any other sources. The authorized representative of the cabinet shall promptly and fully document in the applicable file his or her recommendation for granting or denying the request and the reasons therefor. The authorized representative's immediate supervisor shall review this document before approving or disapproving the extended abatement period and shall promptly and fully document the reasons for his or her approval or disapproval in the applicable file.

(e) Any determination made under paragraph (d) of this subsection shall be in writing and shall be subject to administrative and judicial review pursuant to 405 KAR 7:090.

(f) No extension granted under this subsection may exceed ninety (90) days in length. In

situations in which the condition or circumstance that prevented abatement within ninety (90) days exists at the expiration of the extension, the permittee or the person conducting the coal exploration and reclamation operations may request a further extension in accordance with the procedures of this subsection.

(5) Modification. An authorized representative of the cabinet may, by written notice, modify an order for remedial measures for good cause.

(6) Termination. An authorized representative of the cabinet shall, by issuance of a notice of inspection of noncompliance, provide written notice to the person to whom a notice of noncompliance and order for remedial measures has been issued that such notice is terminated when the authorized representative of the cabinet determines that all violations listed therein have been corrected. Such termination shall not affect the right of the cabinet to assess civil penalties for those violations pursuant to 405 KAR 7:090 or to impose any other applicable sanctions as authorized by law.

(7) Vacation. Based upon the written recommendation of the regional administrator and the authorized representative of the cabinet who issued the notice of noncompliance and order for remedial measures, the Director of the Division of Field Services may vacate a notice of noncompliance and order for remedial measures determined to have been issued in error.

Section 3. Order for Cessation and Immediate Compliance. (1) Issuance.

(a) If the person to whom a notice of noncompliance and order for remedial measures has been issued fails to comply with the terms of such notice within the time for remedial action established therein or as subsequently extended, an authorized representative of the cabinet shall immediately issue to the person an order for cessation and immediate compliance.

(b) An authorized representative of the cabinet shall immediately issue an order for cessation and immediate compliance if he or she finds, on the basis of an inspection, any condition or practice; any violation of KRS Chapter 350; any violation of Title 405, Chapters 7 through 24; or any violation of a term or condition of the applicable permit or exploration approval which:

1. Creates an imminent danger to the health or safety of the public; or
2. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(c) An authorized representative of the cabinet shall immediately issue an order for a cessation and immediate compliance if he or she finds, on the basis of an inspection, that surface coal mining and reclamation operations are being conducted by a person without a valid surface coal mining and reclamation operations permit for the activities or that coal exploration and reclamation operations are being conducted without proper notice of intention to explore or approval for such operations, as applicable, in accordance with 405 KAR 8:020.

(2) Form and content.

(a) An order for cessation and immediate compliance shall be in writing and shall be signed by the authorized representative of the cabinet who issued it. The order shall set forth with reasonable specificity:

1. The nature of the violation;
2. A reasonable description of the portions of the operations in which it applies;
3. The remedial measures, if any, necessary to abate the violation in the most expeditious manner possible; and

4. The time established for abatement, if appropriate, including the time for complying with any interim steps.

(b) At the same time that the authorized representative of the cabinet issues an order for cessation and immediate compliance pursuant to subsection (1)(b) or (c) of this section, he or she shall also issue a notice of noncompliance and order for remedial measures.

(3) Service. Service of an order for cessation and immediate compliance shall be in the manner set forth in Section 5 of this regulation.

(4) Effect.

(a) The order for cessation and immediate compliance shall require the cessation of all surface coal mining and reclamation operations, all coal exploration and reclamation operations, or the portions or operations thereof relevant to the condition, practice, or violation covered by the order. The order shall require the person to whom it is issued to take any affirmative steps which the authorized representative of the cabinet deems necessary to abate the condition, practice, or violation in the most expeditious manner possible. The order may require the use of existing or additional personnel and equipment.

(b) The order shall remain in effect until the condition, practice, or violation has been abated; until the order is vacated, modified, or terminated in writing pursuant to subsection (5) of this section; until it is vacated, modified, or terminated by a hearing officer pursuant to 405 KAR 7:090; or until the order expires pursuant to Section 6 of this regulation.

(c) Reclamation operations and other activities intended to protect public health and safety and the environment shall continue during the period of any order unless otherwise provided in the order.

(5) Modification, extension, vacation, and termination.

(a) An authorized representative of the cabinet may, by written notice, modify or terminate an order for cessation and immediate compliance issued pursuant to this section for good cause and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the person to whom it was issued.

(b) The secretary or his or her authorized representative shall terminate an order for cessation and immediate compliance, by written notice to the person to whom the order was issued, when he or she determines that all conditions, practices, and violations listed in the order have been abated. Termination shall not affect the right of the cabinet to assess civil penalties for those violations under 405 KAR 7:090 or to impose any other applicable sanctions as authorized by law.

(c) Based upon the written recommendations of the regional administrator and the authorized representative of the cabinet who issued the order for cessation and immediate compliance, the Director of the Division of Field Services may vacate an order for cessation and immediate compliance determined to have been issued in

error.

(6) Within sixty (60) days after issuing an order for cessation and immediate compliance, the cabinet shall notify in writing any person who has been identified under 405 KAR 8:010, Section 18(5) and either 405 KAR 8:030, Section 2(3) and (4) or 405 KAR 8:040, Section 2(3) and (4) as owning or controlling the permittee, that the cessation order was issued and that the person has been identified as an owner or controller.

Section 4. Notice of Inspection and Noncompliance. (1) Issuance. If an authorized representative of the cabinet issues a notice of noncompliance and order for remedial measures or an order for cessation and immediate compliance, he or she shall reinspect the areas affected by the surface coal mining and reclamation operations or the coal exploration and reclamation operations on or soon after the date given in the notice or order for completion of remedial measures. At the time of reinspection, the authorized representative of the cabinet shall issue a notice of inspection of noncompliance.

(2) Form and content. The notice of inspection of noncompliance shall set forth whether:

(a) The remedial measures have been completed, and the notice or order is therefore terminated;

(b) The remedial measures have not been completed, but the notice or order is modified or extended for good cause; or

(c) The remedial measures have not been completed. Following such a determination, the cabinet shall:

1. For the situations in which the inspection was a reinspection of a notice of noncompliance and order for remedial measures, issue an order for cessation and immediate compliance; and

2. For situations in which the inspection was a reinspection of an order for cessation and immediate compliance and if the order for cessation and immediate compliance has not been abated following the preliminary hearing, initiate a formal hearing for suspension or revocation of the permit or approval, initiate a formal hearing for bond forfeiture, or initiate administrative proceedings for other appropriate relief.

(3) Service. Service of a notice of inspection for noncompliance shall be in the manner set forth in Section 5 of this regulation.

Section 5. Service of Notices and Orders. (1) Any notice of noncompliance and order for remedial measures, order for cessation and immediate compliance, or notice of inspection of noncompliance shall be served on the person to whom it is issued or the person's designated agent promptly after issuance.

(2) Each notice of noncompliance and order for remedial measures, order for cessation and immediate compliance, and notice of inspection of noncompliance shall be served by hand, by certified mail (return receipt requested), or by registered mail to the person to whom the notice or order has been issued or to his or her designated agent for service. The notice or order shall also be served by hand to the individual who, based upon reasonable inquiry by the authorized representative, appears to be in charge at the site of the surface coal mining and reclamation operations or coal exploration and reclamation operations referred to in the

notice or order. If no such individual can be located at the site, a copy of the notice or order may be tendered to any individual at the site who appears to be an employee or agent of the person to whom the notice or order has been issued. Service, whether by hand or by mail, shall be complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept. For surface coal mining and reclamation operations, service by mail shall be addressed to the designated agent for service; to the permanent address of the permittee as identified on the permit or in the application; or, if no address is identified for the permittee in the application, to such other address as is known to the cabinet. For coal exploration and reclamation operations, service by mail shall be addressed to the designated agent for service; to the permanent address of the person conducting the coal exploration and reclamation operations as identified in the notice of intention to explore or in the application for coal exploration and reclamation approval submitted pursuant to 405 KAR 8:020; or, if no address is identified for the person conducting the coal exploration and reclamation operations in the notice or the application submitted pursuant to 405 KAR 8:020, to such other address as is known to the cabinet. If no person is present at the site of the surface coal mining and reclamation operations or the coal exploration and reclamation operations, service by mail shall by itself be sufficient notice.

(3) Designation by any person of an agent for service of notices and orders issued pursuant to this regulation and notices of hearing issued pursuant to 405 KAR 7:090 shall be made a part of the applicable permit application, notice of intention to explore, or application for coal exploration and reclamation approval. Such person shall continue as agent for service of process until such time as written revision of the permit, a notice of intention to explore, or coal exploration and reclamation approval is made which designates another person as agent.

(4) The cabinet may furnish copies of notices and orders to any person having an interest which is or may be adversely affected by the coal exploration and reclamation operations or by the surface coal mining and reclamation operations and any person having an interest in the permit or exploration area.

Section 6. Expiration. When a notice of noncompliance and order for remedial measures or an order for cessation and immediate compliance requires cessation of coal removal expressly or by implication, such notice or order shall expire thirty (30) days after it is served unless a hearing pursuant to 405 KAR 7:090 is held at or near the mine site or the exploration site within that time except that such notices and orders shall not expire if the condition, practice, or violation in question has been abated or if the person to whom the notice or order has been issued has waived the preliminary hearing or has agreed to its postponement. Expiration of the order shall not affect the rights of the cabinet to assess appropriate penalties and to impose applicable sanctions with respect to the time period during which the order was in effect for the violations for which the order was issued.

Section 7. Suspension and Revocation of Permits and Exploration Approvals. The cabinet may initiate formal hearings for suspension or revocation of permits and coal exploration and reclamation approvals, may initiate formal hearings for bond forfeitures, and may initiate formal hearings or judicial proceedings for other appropriate relief measures.

Section 8. Inability to Comply. (1) No notice or order issued pursuant to the regulations of this Title may be vacated because of inability to comply.

(2) Inability to comply may not be considered in determining whether a pattern of violations exists.

(3) Rapid compliance, good faith, diligence, and inability to comply may be considered in mitigation of proposed penalty assessments under 405 KAR 7:090.

CARL H. BRADLEY, Secretary
FRANK DICKERSON, Commissioner

APPROVED BY AGENCY: January 22, 1991

FILED WITH LRC: January 23, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled for 9 a.m. (EST) Thursday, March 28, 1991 in the Department for Surface Mining Reclamation and Enforcement's Training Room (Room D-16) at the Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky. Persons who wish to testify at the hearing shall notify the contact person listed below, in writing, by March 22, 1991. The scheduled hearing may be cancelled if the contact person has not received any written notice of intent to testify by March 22, 1991, five days before the scheduled hearing date. If the hearing is held, it will be open to the public. Any person in attendance who wishes to testify on the proposed amendment will be given a fair and reasonable opportunity to do so, regardless of whether the person has given the cabinet prior written notice of his intent to testify. To assure an accurate record, the cabinet requests each person testifying at the hearing to provide the cabinet with a written copy of his testimony. The cabinet is not required to make a recording or transcript of the hearing unless someone makes a written request for it, in which case the person requesting the recording or transcript shall pay for it.

Written Comments: A person who wishes to comment on this proposed amendment but does not wish to testify at the hearing may submit written comments on the proposed amendment at any time before 4:30 p.m. (EST) on March 28, 1991. Comments received after that time will not be considered. Written comments and written notices of intent to testify at the hearing shall be submitted to: Jim Villines, Kentucky Department for Surface Mining, 2 Hudson Hollow Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jim Villines

(1) Type and number of entities affected: The amendment at 405 KAR 12:020, Section 3(6) requires that within 60 days after issuing an order for cessation and immediate compliance the cabinet shall notify in writing any person who has been identified as owning or controlling the permittee, that the cessation order was issued

and that the person has been identified as an owner or controller. Thus the amendment is a notification requirement that directly affects the cabinet but does not directly affect any regulated entities.

(a) Direct and indirect costs or savings to those affected: None. Regulated entities are not affected.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The amendment imposes no reporting or paperwork requirements on regulated entities.

(2) Effects on the promulgating administrative body: The only effects of the amendment on the cabinet are discussed under (2)(b) below regarding reporting and paperwork requirements.

(a) Direct and indirect costs or savings:

1. First year: See (2)(b) below.

2. Continuing costs or savings: See (2)(b) below.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The amendment requires that after issuing an order for cessation and immediate compliance the cabinet shall notify in writing any person who has been identified as owning or controlling the permittee that the cessation order was issued and that the person has been identified as an owner or controller. Costs associated with the notification procedure are the costs of preparing and mailing the notices.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because the notification procedure is expressly required by the corresponding federal regulations and the court settlement agreement mentioned below.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations, or governmental policies which conflict with, overlap or duplicate the amendment.

(a) Necessity of proposed regulation if in conflict: No conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(6) Any additional information or comments: The cabinet is currently providing this notice by certified mail as required by the court settlement agreement in National Wildlife Federation et al. v. Miller et.al., Civil Action No. 86-99, (E.D. Ky.).

TIERING: Was tiering applied? No. Tiering is not applicable to this proposed amendment because, under the federal and Kentucky surface mining laws and regulations, these requirements must apply equally to all permittees under 405 KAR Chapters 7-24.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 USC 1253, 1255, 1271, 30

CFR Parts 730-733, 735, 840.13-14, 840.16, 843, 917

2. State compliance standards. The amendment at 405 KAR 12:020, Section 3(6) requires that within 60 days after issuing an order for cessation and immediate compliance the cabinet shall notify in writing any person who has been identified as owning or controlling the permittee, that the cessation order was issued and that the person has been identified as an owner or controller.

3. Minimum or uniform standards contained in the federal mandate. The corresponding and equivalent federal standards are at 30 CFR 843.11(g).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, this amendment will not impose stricter, additional or different responsibilities or requirements than those in the federal mandate. This amendment will bring Kentucky's requirements into conformity with the corresponding federal requirements. This amendment is filed under KRS 13A.2264(2). A copy of the corresponding federal regulations is submitted in a separate binder under KRS 13A.2264(4). These federal regulations are not being incorporated by reference and are not being adopted without change.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This item is not applicable since the federal and state standards will be equivalent.

CORRECTIONS CABINET **(Proposed Amendment)**

501 KAR 6:060. Northpoint Training Center.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of [by] the American Correctional Association. These regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures are incorporated by reference on February 15, 1991 [July 13, 1990] and hereinafter should be referred to as Northpoint Training Center Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

NTC 01-03-01 Organization and Assignment of Responsibilities [(Amended 7/13/90)]
NTC 01-05-01 Extraordinary Occurrence Reports
NTC 01-10-01 Legal Assistance for Staff

NTC 01-11-01 Political Activities of Merit Employees
NTC 01-15-01 Establishment of the Warden as Chief Executive Officer
NTC 01-17-01 Relationships with Public, Media and Other Agencies
NTC 02-02-02 Warden's Participation in the Agency Budgeting Process
NTC 02-03-01 Fiscal Management: Audits
NTC 02-04-01 Internal Control and Monitoring of Accounting Procedures
NTC 02-07-02 Chapel Fund
NTC 02-08-01 Inmate Canteen
NTC 02-10-01 Insurance Coverage
NTC 02-12-01 Inmate Personal Accounts
NTC 04-01-01 Training and Staff Development
NTC 04-04-01 Firearms and Chemical Agents Training
NTC 06-01-01 Offender Records
NTC 06-01-02 Records - Release of Information
NTC 06-01-03 Taking Offender Record Folders onto the Yard
NTC 08-05-01 The Fire and Safety Officer
NTC 08-05-02 Fire Procedures [(Amended 7/13/90)]
NTC 08-05-03 Fire Prevention [(Amended 2/15/91)]
NTC 08-05-04 Storage of Flammables and Dangerous Chemicals and Their Use [(Amended 7/13/90)]
NTC 08-07-01 Safety Standards
NTC 10-01-01 Special Management Inmates (SMU)
NTC 10-02-01 Security Guidelines for Special Management Inmates
NTC 10-03-01 Protective Custody
NTC 11-03-01 Food Services: General Guidelines
NTC 11-04-01 Food Service: Meals
NTC 11-04-02 Menu, Nutrition and Special Diets
NTC 11-05-02 Health Standards/Regulations for Food Service Employees
NTC 11-06-01 Inspections and Sanitation
NTC 11-07-01 Purchasing, Storage and Farm Products
NTC 12-01-01 Institutional Inspections
NTC 12-02-01 Personal Hygiene for Inmates; Clothing and Linens
NTC 12-02-02 Issuance of Personal Hygiene Products [(Amended 7/13/90)]
NTC 13-01-01 Emergency Medical Care Plan [(Amended 7/13/90)]
NTC 13-01-02 Emergency and Specialized Health Services [(Amended 7/13/90)]
NTC 13-02-01 Administration and Authority for Health Services [(Amended 7/13/90)]
NTC 13-03-01 Sick Call and Pill Call [(Amended 7/13/90)]
NTC 13-04-01 Utilization of Pharmaceutical Products [(Amended 7/13/90)]
NTC 13-05-01 Dental Services
NTC 13-05-02 Health Maintenance Dental Services [(Added 2/15/91)]
NTC 13-05-03 Dental Radiation Levels [(Added 2/15/91)]
NTC 13-05-04 Attest Steam Incubator [(Added 2/15/91)]
NTC 13-06-01 Licensure and Training Standards [(Amended 7/13/90)]
NTC 13-07-01 Provisions for Health Care Delivery [(Amended 7/13/90)]
NTC 13-08-01 Medical and Dental Records [(Amended 7/13/90)]
NTC 13-09-01 Special Diets
NTC 13-11-01 Inmate Health Screening and Evaluation [(Amended 7/13/90)]
NTC 13-12-01 Special Health Care Programs [(Amended 7/13/90)]

ADMINISTRATIVE REGISTER - 2832

NTC 13-17-01 Inmates Assigned to Health Services [(Amended 7/13/90)]

NTC 13-19-01 Mental Health Care Program [(Amended 7/13/90)]

NTC 13-19-03 Suicide Prevention and Intervention Program [(Amended 7/13/90)]

NTC 13-20-01 Infectious Disease [(Amended 7/13/90)]

NTC 13-20-02 Infection Control

NTC 13-20-03 Disposal of Biohazard Waste (Added 2/15/91)

NTC 13-21-01 Vision Care/Optomety Services [(Amended 7/13/90)]

NTC 13-22-01 Informed Consent [(Amended 7/13/90)]

NTC 13-23-01 Special Needs Inmates [(Amended 7/13/90)]

NTC 14-01-01 Legal Services Program

NTC 14-01-02 Receiving and Viewing of Video Tapes

NTC 14-02-01 Inmate Grievance Procedure

NTC 14-03-01 Inmate Rights and Responsibilities

NTC 14-03-02 Board of Claims

NTC 14-04-01 Inmate Search Policy

NTC 15-01-01 Restoration of Forfeited Good Time

NTC 15-02-01 Due Process/Disciplinary Procedures

NTC 15-02-02 Extra Duty Assignments

NTC 15-02-03 Hearing Officer

NTC 15-03-01 Rules for Inmates Assigned to Outside Detail [(Amended 7/13/90)]

NTC 15-03-02 Rules and Regulations for General Population Dormitories (Amended 2/15/91)

NTC 15-03-03 Rules and Regulations for Protective Custody Dormitories (Added 2/15/91)

NTC 15-04-01 Inmate Identification

NTC 16-01-01 Mail Regulations

NTC 16-02-01 Visiting

NTC 16-02-02 Extended and Special Visits

NTC 16-02-03 Honor Dorm Visiting

NTC 16-03-01 Inmate Furloughs

NTC 16-05-01 Telephone Use and Control

NTC 17-01-01 Personal Property Control

NTC 17-01-02 Authorized Inmate Personal Property

NTC 17-01-03 Unauthorized Inmate Property

NTC 17-01-04 Disposition of Unauthorized Property

NTC 17-01-05 State Issue and Required Inmate Clothing (Added 2/15/91)

NTC 17-03-01 Assessment/Orientation

NTC 18-01-01 Preparole Progress Report

NTC 18-02-01 Classification

NTC 18-02-02 Classification - 48 Hour Notification

NTC 18-03-01 Special Notice Form

NTC 18-05-01 Transfers of Inmates

NTC 18-05-02 Transfer of Inmates to Kentucky Correctional Psychiatric Center

NTC 19-01-01 Inmate Work Program

NTC 19-01-03 Temporary Leave from Job Assignment

NTC 19-02-01 Correctional Industries

NTC 19-02-02 Guidelines for Correctional Industries

NTC 20-01-01 Academic School Program

NTC 20-02-01 Vocational School

NTC 20-02-02 Live Work Projects in Vocational School Classes [(Amended 7/13/90)]

NTC 21-01-01 Library Services

NTC 22-03-01 Conducting Inmate Organizational Meetings and Programs

NTC 23-01-01 Religious Services

NTC 23-03-01 Marriage of Inmates (Added 2/15/91)

NTC 24-04-01 Honor Status

NTC 24-05-01 Unit Management

NTC 25-01-01 Release Preparation Program

NTC 25-01-02 Temporary Release/Community Center Release

NTC 25-01-03 Graduated Release

NTC 25-02-01 Funeral Trips and Bedside Visits

NTC 25-03-01 Inmate Release Procedure

NTC 26-01-01 Citizen Involvement and Volunteer Services Program

JOHN T. WIGGINTON, Secretary

APPROVED BY AGENCY: February 15, 1991

FILED WITH LRC: February 15, 1991 at noon

PUBLIC HEARING: A public hearing on this regulation has been scheduled for March 21, 1991 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack T. Damron and Ellen Tharpe, Office of General Counsel, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Barbara Jones

(1) Type and number of entities affected: 286 employees of the Northpoint Training Center, 883 inmates, and all visitors to state correctional institutions.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.

2. Continuing costs or savings: Same as 2(a)1.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Monthly submission of policy revisions.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

CORRECTIONS CABINET (Proposed Amendment)

501 KAR 6:130. Western Kentucky Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590 and 439.640 authorizes the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This regulation is in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures are incorporated by reference on February 15, 1991 [December 14, 1990] and hereinafter should be referred to as Western Kentucky Correctional Complex Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

WKCC 01-09-01 Duty Officers, External and Internal Inspections, and Staff Tours
 WKCC 02-01-01 Inmate Funds
 WKCC 02-01-02 Inmate Canteen [(Added 12/14/90)]
 WKCC 02-00-03 Invoice and [/] Voucher Processing (Amended 2/15/91)
 WKCC 02-00-04 Monetary Receipts During Nonbusiness Hours
 WKCC 02-00-06 Purchasing Procedures
 WKCC 02-01-01 Inmate Funds (Amended 2/15/91)
 WKCC 02-02-01 Agency Funds and Accounting Procedures (Amended 2/15/91)
 WKCC 02-08-01 Property Receipt and Inventory Procedures (Amended 2/15/91)
 WKCC 04-01-01 Travel Reimbursement for Official Business in Attendance at Professional Meetings
 WKCC 04-02-01 Employee Training and Development
 WKCC 04-04-01 Educational Assistance Program
 WKCC 05-01-01 Research, Consultants, and Student Interns (Amended 2/15/91)
 WKCC 06-00-01 Offender Records and Information Access
 WKCC 06-00-02 Court Orders, Orders of Appearance, Warrants, Detainers, Etc.
 WKCC 09-00-01 Drug Abuse and Alcohol Testing (Amended 2/15/91)
 WKCC 10-02-01 Special Management Inmates
 WKCC 11-00-02 Food Service Inmate Work Responsibilities, Evaluations, and Health Requirements (Amended 2/15/91)
 WKCC 11-00-03 Food Service Inspections, Sanitation, Purchasing, and Storage of Food [, and Corrections Cabinet Farm Products]
 WKCC 11-00-04 Food Service Security [(Amended 12/14/90)]
 WKCC 11-00-05 Food Service General Guidelines (Added 2/15/91)
 [WKCC 11-02-01 Food Service General Guidelines Deleted 2/15/91]
 WKCC 11-03-01 Food Service Meals, Menus, Nutrition and Special Diets
 WKCC 12-01-01 Inmate Clothing (Amended 2/15/91)
 WKCC 13-00-01 Special Health Programs (Amended 2/15/91)
 WKCC 13-01-01 Use of Pharmaceutical Products (Amended 2/15/91)

WKCC 13-02-01 Health Care Services (Amended 2/15/91)
 WKCC 14-00-01 Inmate Rights and Responsibilities
 WKCC 14-04-01 Legal Services Program
 WKCC 14-06-01 Inmate Grievance Procedure [(Amended 12/14/90)]
 WKCC 15-01-01 Hair and Grooming Standards [(Amended 12/14/90)]
 WKCC 15-02-01 Inmate Offenses and Penalties
 WKCC 15-03-01 Meritorious Good Time (Amended 2/15/91)
 WKCC 15-05-01 Restoration of Forfeited Good Time
 WKCC 15-06-01 Adjustment Procedures and Programs
 WKCC 16-01-01 Visiting Policy and Procedures
 WKCC 16-02-01 Inmate Correspondence (Amended 2/15/91)
 WKCC 16-03-01 Inmate Access to Telephones
 WKCC 16-04-01 Inmate Packages
 WKCC 17-01-01 Inmate Personal Property
 WKCC 17-02-01 Inmate Reception and Orientation (Amended 2/15/91)
 WKCC 18-01-01 Structure, Guidelines, and Functions of the Classification Committee (Amended 2/15/91)
 WKCC 19-03-01 Inmate Wage Program
 WKCC 19-04-01 Work/Program Assignments
 WKCC 20-03-01 Vocational Education Program[(s)] (Amended 2/15/91)
 WKCC 20-04-01 Academic Education Program[(s)] (Amended 2/15/91)
 WKCC 22-00-01 Inmate Recreation and Leisure Time Activities (Amended 2/15/91)
 WKCC 22-00-02 Inmate Clubs and [&] Organizations (Amended 2/15/91)
 WKCC 23-00-01 Religious Services (Amended 2/15/91) [(Amended 12/14/90)]
 WKCC 25-01-01 Gratuities
 WKCC 25-02-01 Inmate Release Process (Amended 2/15/91)
 WKCC 25-03-01 Prerelease Programs
 WKCC 26-01-01 Volunteer Services Program

JOHN T. WIGGINTON, Secretary

APPROVED BY AGENCY: February 15, 1991

FILED WITH LRC: February 15, 1991 at noon

PUBLIC HEARING: A public hearing on this regulation has been scheduled for March 21, 1991 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack T. Damron and Ellen Tharpe, Office of General Counsel, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Barbara Jones

(1) Type and number of entities affected: 162 employees of the Western Kentucky Farm Center, 369 inmates, and all visitors to state correctional institutions.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.

2. Continuing costs or savings: Same as 2(a)1.
3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Monthly submission of policy revisions.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

CORRECTIONS CABINET (Proposed Amendment)

501 KAR 9:025. Administration; management.

RELATES TO: KRS 441.057, 610.330, 610.340, 645.120

STATUTORY AUTHORITY: KRS 441.057

NECESSITY AND FUNCTION: KRS 441.057 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for facilities. This regulation sets forth procedures to be followed for the administration and management of facilities. [This regulation replaces 501 KAR 9:020 which expired because of an objection by the Administrative Regulation Review Subcommittee.]

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

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

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

- (a) Administration.
- (b) Fiscal management.
- (c) Personnel.
- (d) Security and control.
- (e) Sanitation and hygiene.
- (f) Medical services.
- (g) Food services.
- (h) Emergency and safety procedures.
- (i) Classification.
- (j) Juvenile programs.
- (k) Juvenile services.
- (l) Admission and release.
- (m) Rules and discipline.
- (n) Volunteers.

(4) The operations manual shall be reviewed and updated at least annually. All revisions shall be marked with the effective date and filed with the Corrections Cabinet.

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

[(2) The county attorney shall advise the

fiscal court in writing when legal representation or legal advisement to the jailer by that office is inappropriate or creates a conflict of interest. The fiscal court shall be encouraged to carry liability insurance for the facility staff and other county officials.]

Section 2. [3.] Public Information. (1) The jailer shall develop and implement a procedure for the dissemination of information about the facility to the public, to government agencies, and to the media. The public and juveniles shall have access to the procedures.

(2) Representatives of the media shall have access to the facility, consistent with the preservation of juvenile's privacy and the maintenance of order and security in the facility.

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

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

(b) Private citizens shall only be provided with information supplied to the media.

(4) No information shall be released that is detrimental to another juvenile.

Section 3. [4.] Information Systems. The jailer shall establish and maintain an information system which shall comply with the requirements of this section.

(1) Facility information and juvenile records shall be retained in written form or within computer records.

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

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

- (a) Death of an juvenile.
- (b) Attempted suicide or suicide.
- (c) Serious injury, whether accidental or self-inflicted.
- (d) Attempted escape or escape from confinement.
- (e) Fire.
- (f) Riot.
- (g) Battery, whether by a staff member or juvenile.
- (h) Sexual assaults.
- (i) Occurrence of contagious or infectious disease, or illness within the facility.
- (j) Violent acts or behavior by either mental inquest detainees held under KRS Chapter 645 or juveniles known to be or suspected to be mentally ill or mentally retarded.

(4) All facilities shall keep a log of daily activity within the facility.

(5) Each facility shall maintain records on the types and hours of training completed by each employee and shall include verification of Justice Cabinet certification. A current and accurate personnel record shall be maintained on

each employee. Each employee shall have access to his individual record.

Section 4. [5.] Juvenile Records. (1) The information required by 501 KAR 9:120 for admission and release shall be retained for each juvenile. Other information related in each juvenile's facility record shall include but not be limited to:

- (a) Court orders.
- (b) Personal property receipts.
- (c) Infraction reports.
- (d) Reports of disciplinary actions.
- (e) Program involvement.
- (f) Probation officer or case worker assigned.
- (g) Unusual occurrences and in the case of death of a juvenile, disposition of the juvenile's property and remains.

(2) Medical records shall be maintained as required by 501 KAR 9:090.

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

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

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

(5) Juvenile facility records shall be kept separate from adult facility records and shall be made available for examination only as provided in KRS 610.330 and 610.340. Upon an order of expungement, pursuant to 610.330(3) the jailer shall seal the records and the juvenile's detention shall be deemed never to have occurred.

(6) All facility records maintained on mental inquest detainees held under KRS Chapter 645 shall be kept separate from any other facility records. Mental inquest records are confidential and shall be made available for examination only as provided in KRS 610.330 [202A.091]. Upon an order of expungement pursuant to KRS 202A.091(2), the jailer shall seal the records and the mental inquest detainee's stay in the facility shall be deemed never to have occurred.

JOHN T. WIGGINTON, Secretary

APPROVED BY AGENCY: February 15, 1991

FILED WITH LRC: February 15, 1991 at noon

PUBLIC HEARING: A public hearing on this regulation has been scheduled for March 21, 1991 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: John T. Damron and Ellen Tharpe, Office of General Counsel, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron

(1) Type and number of entities affected: *See note in parenthesis 6 on this regulatory impact analysis.

(a) Direct and indirect costs or savings to those affected:

- 1. First year: None
- 2. Continuing costs or savings: None
- 3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

- 1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.

- 2. Continuing costs or savings: Same as 2(a)1.
- 3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Monthly submission of policy revisions.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: *Note: This regulation is being amended to correct the deficiencies found by the Administrative Regulation Review Subcommittee on January 3, 1991.

TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

TRANSPORTATION CABINET Department of Highways Division of Maintenance (Proposed Amendment)

603 KAR 5:066. Weight limits for trucks.

RELATES TO: KRS 189.222

STATUTORY AUTHORITY: KRS 174.080, 189.222

NECESSITY AND FUNCTION: KRS 189.222 authorizes the Secretary of Transportation to establish reasonable weight limits for trucks using the state maintained highway system. This regulation prescribes the maximum weight limits for each classification of roads in accordance with [amended] state and federal laws.

[Section 1. General. The Secretary of Transportation, in respect to highways which are a part of the State Maintained System, by Official Order, has determined that an increase to the maximum gross weight prescribed in KRS 189.221, on designated highways or portions thereof, is justified by the strength, safety, and durability of the designated highways, and said highways do not appear susceptible to unreasonable and unusual damage by reason of such increases and said secretary is authorized to establish reasonable classification of such roads and to fix a different maximum for each classification. Provided, however, that any increase shall not, in any way, exceed the federal law or regulations thereunder or jeopardize the allotment or qualification for federal aid funds of the Commonwealth of

Kentucky or exceed the weights as specified hereinafter.]

Section 1. Highway Classifications and Truck Types [2. Definitions]. (1) Trucking highways. All state maintained roads are assigned a classification in 603 KAR 5:096. The maximum allowable gross weight for each classification is as follows:

(a) Class "AAA" designates a maximum allowable gross weight of 80,000 pounds.

(b) Class "AA" designates a maximum allowable gross weight of 62,000 pounds.

(c) Class "A" designates a maximum allowable gross weight of 44,000 pounds.

(2) Truck types. For the purpose of posting bridges at the site and for listing bridge weight restrictions in these regulations, the following truck types have been established:

(a) Type 1. This is a single unit truck consisting of two (2) single axles.

(b) Type 2. This is a single unit truck consisting of one (1) steering axle and two (2) axles in tandem arrangement.

(c) Type 3. This is a truck consisting of one (1) steering axle and three (3) axles in tridem arrangement.

(d) Type 4. This is a tractor-semitrailer combination truck consisting of five (5) or more axles.

(e) There are numerous other axle combinations not covered in these basic truck types that are restricted by weight based on their axle spacing and weight distribution per axle.

[(3) "Ocean transport container" means an article of transport equipment:]

[(a) Of a permanent character and accordingly strong enough to be suitable for repeated use;]

[(b) Specially designed to facilitate the carriage of goods by one (1) or more modes of transport, without intermediate reloading;]

[(c) Fitted with the devices permitting its ready handling, particularly its transfer from one (1) mode of transport to another;]

[(d) So designed as to be easy to fill and empty; and]

[(e) Having an internal volume of thirty-five and three-tenths (35.3) cubic feet or more. These containers include neither vehicles nor conventional packing.]

Section 2. [3.] "AAA" Highways Except Interstates. The maximum weight limits for trucks using Class "AAA" highways, except the Interstate System, shall be as follows:

(1) Gross weight, including load, shall not [to] exceed 80,000 pounds. Gross axle weight for a single axle shall not [to] exceed 20,000 pounds (with axles less than forty-two (42) inches apart to be considered as a single axle).

(2) Gross weight shall not [to] exceed 34,000 pounds on two (2) axles in tandem arrangement which are spaced forty-two (42) inches or more apart and less than ninety-six (96) inches apart; 48,000 [50,000] pounds on three (3) axles in tridem arrangement which are spaced forty-two (42) inches or more apart but less than 120 inches apart. In no event shall the load on any single axle in any arrangement exceed 20,000 pounds.

(3) Tire weight. The weight transmitted to the pavement shall not exceed the product of 600 pounds times the [per inch of] aggregate width in inches established from the manufacturer's stamped tire measurement for all tires.

(4) On Class "AAA" highways if a structure[s] or bridge has [on Class "AAA" highways which have] a posted load limit of less than 80,000 pounds, the posted limit shall not be exceeded.

Section 3. [4.] Interstate Highways. The maximum weight limits for trucks using Class "AAA" highways which are a part of the Interstate System shall be as follows:

(1) Gross weight, including load, shall not [to] exceed 80,000 pounds. Gross axle weight for a single axle shall not [to] exceed 20,000 pounds (with axles less than forty-two (42) inches apart to be considered as a single axle).

(2) Gross weight shall not [to] exceed 34,000 pounds on two (2) axles in tandem arrangement which are spaced forty-two (42) inches or more apart and less than ninety-six (96) inches apart; 48,000 [50,400] pounds on three (3) axles in tridem arrangement which are spaced forty-two (42) inches or more apart but less than 120 inches apart, or as determined by formula in subsection (3) below, whichever is greater. In no event shall the load on any single axle in any arrangement exceed 20,000 pounds.

(3) The maximum gross weight for a truck consisting of two (2) single axles which exceeds 37,800 pounds gross weight, and for a truck consisting of one (1) single axle and two (2) axles in tandem arrangement which exceeds 52,500 pounds gross weight, or for a truck which consists of three (3) single axles which exceeds 56,700 pounds gross weight, and for a truck consisting of one (1) single axle and three (3) axles in tridem arrangement which exceeds 69,300 pounds gross weight, and for a truck consisting of two (2) single axles and two (2) axles in tandem arrangement which exceeds 71,400 pounds gross weight, or for any truck with any combination of axles which exceed 73,280 pounds gross weight shall be determined by the following formula:

$$W = 500 (LN/N-1 + 12N + 36)$$

Where W equals gross weight, L equals distance in feet between the extreme axles of the group of consecutive axles under consideration and N equals the number of axles in the group, except that two (2) consecutive sets of tandem axles may carry 34,000 pounds each, providing that the distance between the first and last axles of such consecutive sets of axles is thirty-six (36) feet or more [or providing that until September 1, 1988 the distance between the first and last axles of such consecutive sets of axles of five (5) axle combination vehicles consisting of a truck tractor and tank trailer, dump trailer or trailer for ocean transport containers shall be thirty (30) feet or more. On September 1, 1988 the distance between the first and last axles of all vehicles shall be thirty-six (36) feet or more]. In no event shall the load on any axle in any arrangement exceed 20,000 pounds nor the gross weight exceed 80,000 pounds.

(4) Tire weight. The weight transmitted to the pavement shall not exceed the product of 600 pounds times the [per inch of] aggregate width in inches established from the manufacturer's stamped tire measurement of all tires.

(5) On Class "AAA" highways which are part of the interstate system if a structure[s] or bridge has [on Class "AAA" highways which have] a posted load limit of less than 80,000 pounds,

the posted limit shall not be exceeded.

(6) There shall be no tolerance allowed on gross weight, axle weight, or combinations of axle weights on vehicles operating over a Class "AAA" highway which is a part of the Interstate System.

Section 4. [5.] "AA" Highways. The maximum weight for trucks using Class "AA" highways shall be as follows:

(1) Gross weight, including load, shall not [to] exceed 62,000 pounds.

(2) Gross axle weight for a single axle shall not [to] exceed 20,000 pounds (with axles less than forty-two (42) inches apart to be considered as a single axle).

(3) Gross weight shall not [to] exceed 34,000 pounds on two (2) axles in tandem arrangement which are spaced forty-two (42) inches or more apart and less than ninety-six (96) inches apart; 48,000 [50,000] pounds on three (3) axles in tridem arrangement which are spaced forty-two (42) inches or more apart but less than 120 inches apart. In no event shall the load on any single axle in any arrangement exceed 20,000 pounds.

(4) Tire weight. The weight transmitted to the pavement shall not exceed 600 pounds times the [per inch of] aggregate width in inches established from the manufacturer's stamped tire measurement of all tires.

(5) On [structures on] Class "AA" highways if a structure or bridge has [which have] a posted load limit of less than 62,000 pounds, the posted limit shall not be exceeded.

Section 5. [6.] "A" Highways. The maximum weight limit for trucks using Class "A" highways shall be as follows:

(1) Gross weight, including load, shall not [to] exceed 44,000 pounds.

(2) Gross axle weight for a single axle shall not [to] exceed 20,000 pounds (with axles less than forty-two (42) inches apart to be considered as a single axle).

(3) Gross weight shall not [to] exceed 34,000 pounds on two (2) axles in tandem arrangement which are spaced forty-two (42) inches or more apart and less than ninety-six (96) inches apart.

(4) Tire weight. The weight transmitted to the pavement shall not exceed the product of 600 pounds times the [per inch of] aggregate width in inches established from the manufacturer's stamped tire measurement of all tires.

(5) On [structures on] Class "A" highways if a structure or bridge has [which have] a posted load limit of less than 44,000 pounds, the posted limit shall not be exceeded.

Section 6. [7.] Tolerance. There shall be no tolerance allowed on gross weight, however, a tolerance of not more than five (5) percent shall be allowed on axle weight on all state-maintained highways which are not a part of the interstate system.

Section 7. [8.] As long as any highway remains a part of the state-maintained system, as defined by regulation 603 KAR 3:030, the classification of that highway in administrative regulation 603 KAR 5:096 constitutes a designation by the Secretary of Transportation as contemplated by KRS 189.280, [and] City ordinances which impose less stringent limits than this administrative regulation shall not

apply to the [such] state-maintained highways, including bridges, unless specific relinquishment of this responsibility to a city is made by the Secretary of Transportation.

JEROME L. LENTZ, Acting Commissioner
O. GILBERT NEWMAN, State Highway Engineer
MILO D. BRYANT, Secretary

APPROVED BY AGENCY: January 31, 1991

FILED WITH LRC: February 7, 1991 at 3 p.m.

PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on March 22, 1991 at 9 a.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by March 17, 1991 so notify this agency. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is cancelled, written comments will only be accepted until March 17, 1991. Send written notification of intent to attend the public hearing or written comments on the administrative regulation to: Sandra G. Pullen, Executive's Staff Advisor, Transportation Cabinet, 10th Floor State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen

(1) Type and number of entities affected: 700,000 trucks operating in Kentucky.

(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: The only part of the amendment that is a true change is in Sections 2(2), 3(2) and 4(3). The 50,000 pounds shown as allowed on a tandem axle exceeded both state and federal law. The change is necessitated to insure that all parties involved realize that the state and federal law limits are in place in Kentucky.

(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: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None, now.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation

with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. Tiering is applied to both the size and weight of the trucks and the strength and capacity of the highway.

**TRANSPORTATION CABINET
Department of Highways
Division of Planning and Maintenance
(Proposed Amendment)**

603 KAR 5:230. Bridge weight limits on the extended weight coal or coal by-products haul road system.

RELATES TO: KRS 177.9771, 189.230

STATUTORY AUTHORITY: KRS 177.9771

NECESSITY AND FUNCTION: KRS 177.9771(2) requires the Secretary of the Transportation Cabinet to certify those public highways which meet certain criteria as the extended weight coal or coal by-products haul road system. KRS 189.230 provides that the Department of Highways may prescribe gross vehicle weight limits for bridges lower than the limits prescribed in KRS 177.9771 on any bridge which may be damaged or destroyed to the point of catastrophic failure if gross vehicle weights exceed certain limits. This regulation identifies the extended weight coal or coal by-products haul road system and the bridges on the system which the Department of Highways has judged may be so damaged and prescribes the maximum weight limit for each of these bridges. Further, KRS 177.9771(9) requires the Transportation Secretary to meet with certain local governing bodies and give consideration to their concerns before adding to or deleting from the extended weight coal or coal by-products haul road system and establishes procedures to be followed by local governing bodies requesting this consideration.

Section 1. Definitions. The following terms when used in this administrative regulation shall have the following meanings:

(1) "TY I" means a single unit truck consisting of two (2) single axles.

(2) "TY II" means a single unit truck consisting of one (1) steering axle and two (2) axles in tandem arrangement.

(3) "TY III" means a single unit truck consisting of one (1) steering axle and three (3) axles in tridem arrangement.

(4) "TY IV" means a tractor-semitrailer combination with five (5) or more axles.

(5) "KY" means a state numbered highway maintained by the Kentucky Department of Highways.

(6) "US" means a United States numbered highway maintained by the Kentucky Department of Highways.

(7) "I" means an interstate and defense highway maintained by the Kentucky Department of Highways.

(8) "CR" means a public highway, road, or street not maintained by the Kentucky Department of Highways.

(9) "MP" means milepoint.

(10) "FROM" means the beginning milepoint and terminus of a road segment on the extended weight coal haul road system.

(11) "TO" means the ending milepoint and terminus of a road segment on the extended

weight coal haul road system.

(12) "Catastrophic failure" means a failure that is marked by sudden or unpredictable damage ranging from extreme misfortune to utter ruin.

(13) "AASHTO" means the American Association of State Highway and Transportation Officials.

(14) "CO" means county.

(15) "LN" means line.

(16) "Mpt." means milepoint.

(17) "PKWY" means parkway.

(18) "Local governing body" means the fiscal court, of any county, the city council or commission of a city of the first through fourth classes or the council of an urban county government.

(19) "Coal by-products" means any of the following: fly ash, bottom ash, wet bottom boiler slag, scrubber sludge, burned coal waste (red dog), coal slag, and coal cinders.

Section 2. (1) The Department of Highways shall determine the bridges on the extended weight coal or coal by-products haul road system which may be damaged or destroyed to the point of catastrophic failure by motor vehicles operating at the weights authorized by KRS 177.9771. This determination shall be based upon an analysis of the bridges in accordance with the guidelines and ratings set forth in the AASHTO Manual for Maintenance Inspection of Bridges, 1983 edition and 1984 and 1985 Interim Revisions. The load factor method of analysis may be used only when a bridge is known to have been designed by that method. When the allowable stress method of analysis is used the maximum allowable stress in steel members shall not exceed sixty-nine (69) percent of the yield strength of the steel.

(2) When the analysis specified in subsection (1) of this section cannot be applied to a bridge, the Department of Highways shall determine if any bridge may be damaged or destroyed to the point of catastrophic failure in accordance with the AASHTO Manual for Maintenance Inspection of Bridges, 1983 edition and 1984 and 1985 Interim Revisions. Before making such a determination the Department of Highways shall conduct an on-site inspection to determine whether the bridge shows appreciable signs of deterioration or distress or otherwise poses a significant hazard to the traveling public.

Section 3. When the Department of Highways determines that a bridge on the extended weight coal or coal by-products haul road system may be damaged or destroyed to the point of catastrophic failure, the department may adopt a weight limit for the bridge in accordance with the guidelines set forth in the AASHTO Manual for Maintenance Inspection Bridges, 1983 edition and 1984 and 1985 Interim Revisions.

Section 4. The following highways, or portions of these highways, are certified as meeting the criteria of and are designated as the extended weight coal and coal by-products haul road system. Further, the Department of Highways has determined that the bridges listed beneath the highways on the extended weight coal or coal by-products haul road system may be damaged or destroyed to the point of catastrophic failure as provided in Section 2 of this administrative regulation and has established a weight limit for each as set forth in Section 3 of this administrative regulation:

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ANDERSON COUNTY

ROAD	FROM	TO
* Bluegrass Pkwy	44.8 Washington County Line	52.3 Mercer County Line
Weight Limit - Bridge over Cheeselick Road @ milepoint 51.84		
TY I = 20 tons, TY II = 44 tons, TY III = 46 tons, TY IV = 60 tons		61.9 Woodford County Line
	56.3 Mercer County Line	

BATH COUNTY

ROAD	FROM	TO
* KY 11	0.0 Montgomery CO LN	12.8 Fleming CO LN
Weight Limit - Bridge over Hinkston Creek @ milepoint 0.01		
TY I = 20 tons, TY II = 40 tons, TY III = 39 tons, TY IV = 54 tons		

BELL COUNTY

ROAD	FROM	TO
* US 25E	0.0 Virginia State LN	19.5 Knox CO LN
Weight Limit - Bridge over Little Yellow Creek @ milepoint 2.17		
TY I = 20 tons, TY II = 37 tons, TY III = 39 tons, TY IV = 43 tons		
Weight Limit - Bridge over L & N R.R. @ milepoint 7.52		
TY I = 20 tons, TY II = 43 tons, TY III = 44 tons, TY IV = 56 tons		
Weight Limit - Bridge over Greasy Creek @ milepoint 18.14		
TY I = 20 tons, TY II = 34 tons, TY III = 35 tons, TY IV = 48 tons		
* US 119	0.0 US 25E	15.8 Harlan CO LN
Weight Limit - Bridge over Cumberland River @ milepoint 0.02		
TY I = 20 tons, TY II = 30 tons, TY III = 32 tons, TY IV = 39 tons		
* KY 66	0.0 US 25E	10.1 Buffalo Creek RD
Weight Limit - Bridge over Cumberland River @ milepoint 0.33		
TY I = 20 tons, TY II = 49 tons, TY III = 49 tons, TY IV = 54 tons		
Weight Limit - Bridge over Left Fork Straight Creek @ milepoint 3.95		
TY I = 20 tons, TY II = 32 tons, TY III = 33 tons, TY IV = 44 tons		
Weight Limit - Bridge over Sims Fork @ milepoint 7.16		
TY I = 20 tons, TY II = 39 tons, TY III = 41 tons, TY IV = 60 tons		
	11.9 Straight Creek Road	15.1 Mines
	18.2 KY 2011	18.7 Clay CO LN
* KY 72	1.0 Mine	3.4 Harlan CO LN
* KY 74	0.0 Tennessee State LN	0.9 KY 535
	9.8 Mine	16.1 KY 2079
Weight Limit - Bridge over L & N R.R. @ milepoint 11.56		
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
Weight Limit - Bridge over Stoney Fork @ milepoint 13.07		
TY I = 20 tons, TY II = 43 tons, TY III = 45 tons, TY IV = 60 tons		
Weight Limit - Bridge over Yellow Creek Bypass Canal @ milepoint 14.21		
TY I = 20 tons, TY II = 43 tons, TY III = 45 tons, TY IV = 60 tons		
* KY 92	0.0 Whitley CO LN	10.8 US 25E
* KY 186	2.2 Appollo Tipple	3.1 KY 74
Weight Limit - Bridge over Bennett's Fork @ milepoint 2.41		
TY I = 20 tons, TY II = 38 tons, TY III = 40 tons, TY IV = 60 tons		
* KY 188	2.8 KY 988	4.1 Cranes Creek RD
Weight Limit - Bridge over Clear Fork Creek @ milepoint 2.80		
TY I = 20 tons, TY II = 29 tons, TY III = 30 tons, TY IV = 49 tons		
* KY 217	0.0 KY 988	8.8 KY 987
Weight Limit - Bridge over Clear Fork Creek @ milepoint 0.20		
TY I = 20 tons, TY II = 45 tons, TY III = 46 tons, TY IV = 58 tons		
Weight Limit - Bridge over Clear Fork Creek @ milepoint 1.22		
TY I = 20 tons, TY II = 31 tons, TY III = 32 tons, TY IV = 38 tons		
Weight Limit - Bridge over Brownies Creek @ milepoint 8.77		
TY I = 20 tons, TY II = 29 tons, TY III = 30 tons, TY IV = 49 tons		
* KY 221	0.0 KY 66	12.6 Harlan CO LN
Weight Limit - Bridge over Right Fork Straight Creek @ milepoint 4.16		
TY I = 20 tons, TY II = 38 tons, TY III = 40 tons, TY IV = 60 tons		
Weight Limit - Bridge over Stoney Fork Creek @ milepoint 9.23		
TY I = 20 tons, TY II = 35 tons, TY III = 37 tons, TY IV = 60 tons		
* KY 441	4.5 KY 2079	4.9 US 25E
Weight Limit - Bridge over Yellow Creek @ milepoint 4.62		
TY I = 20 tons, TY II = 38 tons, TY III = 40 tons, TY IV = 59 tons		
* KY 535	0.0 KY 74	0.6 Clear Fork RD
* KY 987	9.4 Hen Wilder RD	13.5 KY 217
* KY 988	1.2 KY 217	1.7 KY 188
* KY 1344	0.0 KY 217	2.1 Wolfpen Branch RD
* KY 2011	8.6 Beverly Tipple	9.0 KY 66
* KY 2012	0.0 Private Haul RD	0.1 Hen Wilder RD
* KY 2014	0.0 US 25E	2.7 Lewis Coal Mine RD
Weight Limit - Bridge over Cumberland River @ milepoint 0.63		
TY I = 15 tons, TY II = 15 tons, TY III = 15 tons, TY IV = 15 tons		
* KY 2079	2.4 Ashbury Avenue	3.2 KY 441

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* Hen Wilder RD		
CR 5001	0.0 KY 987	2.0 KY 2012
* Cow Fork Road		
CR 5032	0.0 KY 2011	2.6 Mine
* Straight Creek Road		
CR 5040	0.0 KY 66	0.6 Knox CO LN
* Cranes Creek Road		
CR 5260	0.0 KY 188	0.2 Mountain Drive Tipple
* Hignite Creek Road		
CR 5219	0.0 KY 74	2.3 Mine Access RD
Weight Limit - Bridge over Hignite Creek		
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
* Clear Fork Road		
CR 5227	0.0 KY 535	0.6 Mine Access RD
* Lewis Mine Road		
CR 5330	0.0 KY 2014 @ PONTA	0.5 Min-Dora Tipple
Weight Limit - Bridge over Fourmile Creek		
TY I = 20 tons, TY II = 45 tons, TY III = 51 tons, TY IV = 53 tons		
* Little Creek Road		
CR 5358	0.0 KY 66	0.2 Little Creek Tipple
* Fitzpatrick Avenue (Middlesboro)		
	0.0 Ashbury Avenue	0.4 Old R B S Tipple
* Ashbury Avenue (Middlesboro)		
	0.2 KY 2079	0.3 Fitzpatrick Avenue

BOURBON COUNTY

ROAD	FROM	TO
* US 27	8.3 US 460	15.4 Harrison CO LN
Weight Limit - Bridge over Cooper Creek @ milepoint 11.82		
TY I = 20 tons, TY II = 41 tons, TY III = 42 tons, TY IV = 59 tons		
Weight Limit - Bridge over Townsend Creek @ milepoint 15.4		
TY I = 20 tons, TY II = 41 tons, TY III = 43 tons, TY IV = 60 tons		
* US 68	2.4 US 68X	10.8 Nicholas CO LN
Weight Limit - Bridge over Hinkston Creek @ milepoint 9.41		
TY I = 20 tons, TY II = 36 tons, TY III = 38 tons, TY IV = 50 tons		
* US 68X	1.4 KY 627	2.8 US 68 (East)
Weight Limit - Bridge over Stoner Creek @ milepoint 2.0		
TY I = 20 tons, TY II = 39 tons, TY III = 40 tons, TY IV = 48 tons		
* US 460	7.7 US 27	9.2 US 68X
[Weight Limit - Bridge over L & N RR @ milepoint 7.99]		
[TY I = 10 tons, TY II = 10 tons, TY III = 10 tons, TY IV = 10 tons]		
Weight Limit - Bridge over Houston Creek @ milepoint 8.95		
TY I = 20 tons, TY II = 37 tons, TY III = 39 tons, TY IV = 57 tons		
* KY 627	0.0 Clark CO LN	9.5 US 68X
Weight Limit - Bridge over Strodes Creek Mill Race @ milepoint 0.75		
TY I = 20 tons, TY II = 44 tons, TY III = 46 tons, TY IV = 60 tons		

BOYD COUNTY

ROAD	FROM	TO
* US 23	0.0 Lawrence CO LN	21.1 Greenup CO LN
Weight Limit - Bridge over I-64 @ milepoint 10.56		
TY I = 20 tons, TY II = 45 tons, TY III = 46 tons, TY IV = 60 tons		
Weight Limit - Bridge over C & O R.R. @ milepoint 19.31		
TY I = 20 tons, TY II = 30 tons, TY III = 31 tons, TY IV = 39 tons		
Weight Limit - Bridge over C & O R.R. & Armco Rd. @ milepoint 19.34		
TY I = 20 tons, TY II = 44 tons, TY III = 45 tons, TY IV = 52 tons		
* US 23S	0.0 US 60	0.5 Ohio State LN
Weight Limit - Northbound Bridge over Ohio River @ milepoint 0.03		
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
Weight Limit - Southbound Bridge over Ohio River @ milepoint 0.05		
TY I = 20 tons, TY II = 28 tons, TY III = 33 tons, TY IV = 36 tons		
* US 23X	1.4 US 60	2.0 US 23
* US 60	0.0 Carter CO LN	12.4 US 23
Weight Limit - Bridge over C & O R.R. at Princess @ milepoint 2.69		
TY I = 20 tons, TY II = 40 tons, TY III = 42 tons, TY IV = 60 tons		
* US 60Z	0.0 US 23	0.2 US 60
* KY 5	0.0 US 60	1.5 Straight Creek RD
Weight Limit - Bridge over Williams Creek @ milepoint 0.92		
TY I = 20 tons, TY II = 38 tons, TY III = 40 tons, TY IV = 60 tons		
* KY 757	6.2 US 23	10.2 US 23
* Straight Creek Road		
CR 5288	0.0 KY 5	0.6 Buena Vista RD
Weight Limit - Bridge over Straight Creek		
TY I = 14 tons, TY II = 14 tons, TY III = 14 tons, TY IV = 14 tons		

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* County Line Tipple Road		
CR 5300	0.0 US 23	0.3 County Line Tipple
* Buena Vista Road		
CR 5493	0.0 Straight Creek RD	0.7 Mine Access RD
* 15th Street (Ashland)		
	0.0 US 23	0.2 Mansbach Dock
* 53rd Street (Ashland)		
	0.0 US 23	0.1 53rd ST Dock

BOYLE COUNTY

ROAD	FROM	TO
* US 127	7.5 US 127 Bypass	9.7 Mercer CO LN
Weight Limit - Bridge over Mocks Branch @ milepoint 9.74		
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
* US 127B	0.0 US 127	5.3 US 127
Weight Limit - Bridge over Southern RR @ milepoint 0.93		
TY I = 20 tons, TY II = 44 tons, TY III = 45 tons, TY IV = 54 tons		
* US 150	16.8 US 150 Bypass	18.9 Lincoln CO LN
* US 150B	0.0 US 127	2.3 US 150

BRACKEN COUNTY

ROAD	FROM	TO
* KY 8	0.0 Pendleton CO LN	19.0 Mason CO LN
Weight Limit - Bridge over Holts Creek at Foster @ milepoint 1.20		
TY I = 20 tons, TY II = 29 tons, TY III = 30 tons, TY IV = 39 tons		
Weight Limit - Bridge over Snag Creek @ milepoint 4.18		
TY I = 20 tons, TY II = 32 tons, TY III = 33 tons, TY IV = 40 tons		
Weight Limit - Bridge over Locust Creek @ milepoint 7.04		
TY I = 20 tons, TY II = 41 tons, TY III = 42 tons, TY IV = 57 tons		
Weight Limit - Bridge over Big Bracken Creek @ milepoint 13.93		
TY I = 20 tons, TY II = 38 tons, TY III = 39 tons, TY IV = 53 tons		

BREATHITT COUNTY

ROAD	FROM	TO
* KY 15	0.0 Perry CO LN	27.5 Wolfe CO LN
Weight Limit - Bridge over Lost Creek @ milepoint 0.48		
TY I = 20 tons, TY II = 39 tons, TY III = 38 tons, TY IV = 51 tons		
Weight Limit - Bridge over Lost Creek @ milepoint 3.07		
TY I = 20 tons, TY II = 39 tons, TY III = 38 tons, TY IV = 51 tons		
Weight Limit - Bridge over Lost Creek @ Milepoint 3.80		
TY I = 20 tons, TY II = 38 tons, TY III = 40 tons, TY IV = 51 tons		
Weight Limit - Bridge over Lost Creek @ milepoint 6.48		
TY I = 20 tons, TY II = 38 tons, TY III = 39 tons, TY IV = 49 tons		
Weight Limit - Bridge over Lost Creek @ milepoint 6.69		
TY I = 20 tons, TY II = 39 tons, TY III = 40 tons, TY IV = 50 tons		
Weight Limit - Bridge over Troublesome Creek @ Milepoint 7.64		
TY I = 20 tons, TY II = 39 tons, TY III = 40 tons, TY IV = 50 tons		
Weight Limit - Bridge over Quicksand Creek @ milepoint 14.73		
TY I = 20 tons, TY II = 38 tons, TY III = 39 tons, TY IV = 47 tons		
Weight Limit - Bridge over Frozen Creek @ milepoint 23.27		
TY I = 20 tons, TY II = 45 tons, TY III = 49 tons, TY IV = 57 tons		
* KY 28	5.7 Perry CO LN	7.4 Perry CO LN
* KY 30	14.1 Elkatawa Tipple	14.8 KY 15 (North)
* KY 476	0.0 Perry CO LN	11.4 KY 15
Weight Limit - Bridge over Troublesome Creek @ milepoint 7.02		
TY I = 20 tons, TY II = 35 tons, TY III = 36 tons, TY IV = 50 tons		
* KY 542	9.2 Quicksand Creek RD	18.6 Magoffin CO LN
* KY 1098	0.0 KY 15	20.7 Knott CO LN
Weight Limit - Bridge over South Fork Quicksand Creek @ milepoint 5.27		
TY I = 20 tons, TY II = 27 tons, TY III = 30 tons, TY IV = 49 tons		
Weight Limit - Bridge over Quicksand Creek @ milepoint 17.98		
TY I = 20 tons, TY II = 43 tons, TY III = 44 tons, TY IV = 59 tons		
* KY 1110	15.2 Haddix Tipple	15.7 KY 15
Weight Limit - Bridge over North Fork Kentucky River @ milepoint 15.55		
TY I = 20 tons, TY II = 34 tons, TY III = 36 tons, TY IV = 51 tons		
* KY 1111	0.0 KY 10.98	2.2 Big Lovely RD
* Quicksand Creek RD		
CR 5028	0.0 KY 542	1.0 Mine
* Big Lovely Road		
CR 5030	0.0 KY 1111	2.1 Knott CO LN
* Springsfork Road		
CR 5032	0.0 KY 542	1.4 Mine Access
* Slusher Road		
CR 5067	0.0 KY 542	2.5 Mine

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* Buckhorn Creek RD
CR 5135 0.0 KY 476 0.3 Mine
Weight Limit - Bridge over Laurel Pad Branch Creek
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons
Weight Limit - Bridge over Buckhorn Creek Northeast of Noble
TY I = 4 tons, TY II = 4 tons, TY III = 4 tons, TY IV = 4 tons

BULLITT COUNTY

ROAD	FROM	TO
* US 31E	0.0 Spencer CO LN	5.5 Jefferson CO LN
Weight Limit - Bridge over Hough Run @ milepoint 1.73		
TY I = 20 tons, TY II = 28 tons, TY III = 31 tons, TY IV = 40 tons		
Weight Limit - Bridge over Mulberry Creek @ milepoint 1.98		
TY I = 20 tons, TY II = 28 tons, TY III = 31 tons, TY IV = 40 tons		

BUTLER COUNTY

ROAD	FROM	TO
* Green River Parkway	18.2 Warren CO LN	35.1 Ohio CO LN
Weight Limit - Bridge over Green River @ milepoint 32.64		
TY I = 20 tons, TY II = 42 tons, TY III = 46 tons, TY IV = 54 tons		
* US 231	8.6 KY 1468	8.9 Green River PKWY
	11.5 KY 70 (South)	18.9 Ohio CO LN
Weight Limit - Bridge over Green River @ milepoint 12.26		
TY I = 20 tons, TY II = 37 tons, TY III = 38 tons, TY IV = 51 tons		
Weight Limit - Bridge over Indian Camp Creek @ milepoint 16.32		
TY I = 20 tons, TY II = 39 tons, TY III = 40 tons, TY IV = 51 tons		
Weight Limit - Bridge over West Fork Indian Camp Creek @ milepoint 17.1		
TY I = 20 tons, TY II = 39 tons, TY III = 40 tons, TY IV = 51 tons		
* KY 70	0.0 Muhlenberg CO LN	14.4 US 231
Weight Limit - Bridge over Panther Creek @ milepoint 4.19		
TY I = 20 tons, TY II = 37 tons, TY III = 39 tons, TY IV = 60 tons		
	14.4 US 231	25.3 KY 411
Weight Limit - Bridge over Welch Creek @ milepoint 20.37		
TY I = 20 tons, TY II = 39 tons, TY III = 41 tons, TY IV = 60 tons		
* KY 79	13.4 KY 70	15.2 Possum Hollow School RD
* KY 411	0.0 KY 70	6.1 Mine
* KY 1328	8.4 Pyramid Mine Access RD	11.7 KY 70
* KY 1468	0.0 KY 70	1.1 US 231
* Old Greenwich School Road		
CR 5015	0.0 KY 1328	0.7 KY 70
* Jolertown Ridge Road		
CR 5027	0.0 KY 70	0.3 Pyramid Mine
* New Cut Road (South)		
CR 5243	0.0 KY 70	0.3 C Crabtree MN
* Possum Hollow School Road		
CR 5355	0.0 KY 79	0.7 Mine
Weight Limit - Bridge over East Prong of Indian Creek		
TY I = 18 tons, TY II = 18 tons, TY III = 18 tons, TY IV = 18 tons		

CALDWELL COUNTY

ROAD	FROM	TO
Western Kentucky Parkway	5.6 Lyon CO LN	21.8 Hopkins CO LN
Weight Limit - Bridge over I. C. R.R. @ milepoint 11.36		
TY I = 20 tons, TY II = 38 tons, TY III = 40 tons, TY IV = 57 tons		
Weight Limit - Bridge over Tradewater River @ milepoint 21.75		
TY I = 20 tons, TY II = 42 tons, TY III = 44 tons, TY IV = 58 tons		

CALLOWAY COUNTY

ROAD	FROM	TO
* US 641	0.0 Tennessee State LN	17.4 Marshall CO LN
Weight Limit - Bridge over Clark's River @ milepoint 1.10		
TY I = 20 tons, TY II = 30 tons, TY III = 31 tons, TY IV = 44 tons		
Weight Limit - Bridge over Bee Creek @ milepoint 8.92		
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
Weight Limit - Bridge over Rockhouse Creek @ milepoint 15.65		
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		

CARTER COUNTY

ROAD	FROM	TO
* US 60	24.1 KY 1 and KY 7	24.8 KY 1
	29.7 Fighting Fork RD	35.0 Boyd CO LN
* KY 1	0.0 Lawrence CO LN	10.6 US 60
Weight Limit - Bridge over Dry Fork Creek @ milepoint 0.46		

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TY I = 20 tons, TY II = 42 tons, TY III = 43 tons, TY IV = 60 tons
 Weight Limit - Bridge over Dry Fork Creek @ milepoint 0.83
 TY I = 20 tons, TY II = 42 tons, TY III = 43 tons, TY IV = 60 tons
 Weight Limit - Bridge over Dry Fork Creek @ milepoint 1.12
 TY I = 20 tons, TY II = 41 tons, TY III = 43 tons, TY IV = 60 tons
 Weight Limit - Bridge over Little Fork Little Sandy River @ milepoint 2.40
 TY I = 20 tons, TY II = 43 tons, TY III = 44 tons, TY IV = 59 tons
 Weight Limit - Bridge over Little Fork Little Sandy River @ milepoint 4.13
 TY I = 20 tons, TY II = 41 tons, TY III = 43 tons, TY IV = 60 tons
 Weight Limit - Bridge over Little Fork Little Sandy River @ milepoint 4.75
 TY I = 20 tons, TY II = 41 tons, TY III = 43 tons, TY IV = 60 tons
 Weight Limit - Bridge over Little Fork Little Sandy River @ milepoint 5.41
 TY I = 20 tons, TY II = 42 tons, TY III = 43 tons, TY IV = 60 tons
 Weight Limit - Bridge over Little Fork Little Sandy River @ milepoint 5.77
 TY I = 20 tons, TY II = 33 tons, TY III = 34 tons, TY IV = 45 tons
 Weight Limit - Bridge over Little Fork Little Sandy River @ milepoint 7.70
 TY I = 20 tons, TY II = 40 tons, TY III = 41 tons, TY IV = 55 tons
 10.6 US 60 11.5 I-64
 Weight Limit - Bridge over I-64 @ milepoint 11.50
 TY I = 20 tons, TY II = 42 tons, TY III = 44 tons, TY IV = 60 tons
 * KY 7 0.0 Elliott CO LN 10.9 KY 1
 Weight Limit - Bridge over Clifty Creek near Sophie @ milepoint 1.64
 TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons
 Weight Limit - Bridge over Little Sandy River @ milepoint 10.12
 TY I = 20 tons, TY II = 45 tons, TY III = 49 tons, TY IV = 56 tons
 * KY 207 0.0 US 60 2.3 Greenup CO LN
 * Fighting Fork RD
 CR 5034 0.0 US 60 0.9 Mine

CHRISTIAN COUNTY

ROAD	FROM	TO
* Pennyrile PKWY	2.4 US 68	21.1 KY Hopkins CO LN
* US 41	28.5 KY 1296	31.6 Hopkins CO LN
Weight Limit - Bridge over Campbells Creek @ milepoint 29.51		
TY I = 20 tons, TY II = 39 tons, TY III = 39 tons, TY IV = 60 tons		
Weight Limit - Bridge over L & N RR @ milepoint 30.88		
TY I = 20 tons, TY II = 35 tons, TY III = 37 tons, TY IV = 50 tons		
* KY 1296	2.7 Campbell Cemetery RD	5.2 US 41
* Campbell Cemetery Road		
CR 5418	0.0 KY 1296	2.0 Mine

CLARK COUNTY

ROAD	FROM	TO
* Mountain Parkway (KY 402)	0.0 I-64	11.9 Powell CO LN
Weight Limit - Bridge over I-64 @ milepoint 0.13		
TY I = 20 tons, TY II = 39 tons, TY III = 40 tons, TY IV = 47 tons		
Weight Limit - Bridge over C & O RR @ milepoint 3.65		
TY I = 20 tons, TY II = 42 tons, TY III = 43 tons, TY IV = 55 tons		
* US 60	0.0 Fayette CO LN	6.7 KY 627
	7.0 KY 89	7.2 KY 15
* KY 15	0.0 Powell CO LN	13.1 US 60
Weight Limit - Bridge over Lulbegrud Creek @ milepoint 0.01		
TY I = 15 tons, TY II = 15 tons, TY III = 15 tons, TY IV = 15 tons		
Weight Limit - Bridge over Upper Howard's Creek @ milepoint 2.98		
TY I = 21 tons, TY II = 21 tons, TY III = 24 tons, TY IV = 38 tons		
Weight Limit - Bridge over Big Stoner Creek @ milepoint 7.00		
TY I = 20 tons, TY II = 21 tons, TY III = 24 tons, TY IV = 38 tons		
Weight Limit - Bridge over C&O Railroad @ milepoint 11.08		
TY I = 20 tons, TY II = 20 tons, TY III = 22 tons, TY IV = 28 tons		
* KY 89	15.9 US 60	16.0 KY 627
* KY 418	5.7 KY 1924	5.8 KY 627
* KY 627	0.0 Madison CO LN	6.4 KY 1958
Weight Limit - Bridge over Kentucky River @ Boonesboro @ milepoint 0.01		
TY I = 20 tons, TY II = 36 tons, TY III = 37 tons, TY IV = 47 tons		
	7.8 US 60	8.1 KY 89
	9.3 I-64	14.8 Bourbon CO LN
Weight Limit - Bridge over Woodruff Creek @ milepoint 13.20		
TY I = 20 tons, TY II = 28 tons, TY III = 31 tons, TY IV = 40 tons		
* KY 1924	0.0 Dale Power Plant	1.8 KY 418
* KY 1958	0.0 KY 627	2.8 I-64

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CLAY COUNTY

ROAD	FROM	TO
* Daniel Boone Parkway	10.6 Laurel CO LN	35.9 Leslie CO LN
Weight Limit - Bridge over Little Goose Creek Rd. @ milepoint 10.81		
TY I = 20 tons, TY II = 42 tons, TY III = 44 tons, TY IV = 60 tons		
Weight Limit - Bridge over Urban Road @ milepoint 13.90		
TY I = 20 tons, TY II = 42 tons, TY III = 44 tons, TY IV = 60 tons		
Weight Limit - Bridge over Hooker Road @ milepoint 16.14		
TY I = 20 tons, TY II = 41 tons, TY III = 43 tons, TY IV = 60 tons		
Weight Limit - Bridge over Ham Branch Rd. & Goose Creek @ milepoint 21.67		
TY I = 20 tons, TY II = 45 tons, TY III = 46 tons, TY IV = 57 tons		
Weight Limit - Bridge over Red Bird River @ milepoint 33.58		
TY I = 20 tons, TY II = 42 tons, TY III = 42 tons, TY IV = 56 tons		
* US 421	0.0 Leslie CO LN	32.8 Jackson CO LN
Weight Limit - Bridge over Horse Creek @ milepoint 16.58		
TY I = 20 tons, TY II = 36 tons, TY III = 38 tons, TY IV = 60 tons		
Weight Limit - Bridge over Little Goose Creek @ milepoint 18.59		
TY I = 20 tons, TY II = 35 tons, TY III = 36 tons, TY IV = 48 tons		
Weight Limit - Bridge over Island Creek @ milepoint 20.49		
TY I = 20 tons, TY II = 28 tons, TY III = 31 tons, TY IV = 43 tons		
Weight Limit - Bridge over Branch of Island Creek @ milepoint 21.20		
TY I = 20 tons, TY II = 28 tons, TY III = 32 tons, TY IV = 53 tons		
Weight Limit - Bridge over Laurel Creek @ milepoint 23.97		
TY I = 20 tons, TY II = 28 tons, TY III = 31 tons, TY IV = 43 tons		
Weight Limit - Bridge over Sexton Creek @ milepoint 28.41		
TY I = 20 tons, TY II = 28 tons, TY III = 32 tons, TY IV = 52 tons		
* KY 11	0.0 Knox CO LN	8.9 US 421 (South)
Weight Limit - Bridge over Collins Fork - Goose Creek @ milepoint 2.91		
TY I = 20 tons, TY II = 41 tons, TY III = 43 tons, TY IV = 60 tons		
Weight Limit - Bridge over Collins Fork - Goose Creek @ milepoint 5.38		
TY I = 20 tons, TY II = 40 tons, TY III = 42 tons, TY IV = 60 tons		
	8.9 US 421 (North)	26.6 Owsley CO LN
Weight Limit - Bridge over Wildcat Creek @ milepoint 15.57		
TY I = 20 tons, TY II = 42 tons, TY III = 44 tons, TY IV = 60 tons		
* KY 66	0.0 Bell CO LN	1.8 Beverly Tipple
* KY 80	4.8 New Truckers Tipple	7.5 US 421
* KY 1524	0.0 US 421	1.1 KY 2000
* KY 2000	0.0 KY 1524	4.6 Sand Hill RD
* KY 2432	0.0 Sester Road	1.4 Panama SCH RD
* KY 2438	0.0 US 421	0.1 KY 2432
Weight Limit - Bridge over Goose Creek & L & N RR @ milepoint 0.01		
TY I = 20 tons, TY II = 41 tons, TY III = 42 tons, TY IV = 50 tons		
* Sand Hill Road		
CR 5129	0.0 KY 2000	0.2 Mine
* Sevier Road		
CR 5180	0.0 US 421	0.2 Tipple Access RD
Weight Limit - Bridge over Goose Creek		
TY I = 20 tons, TY II = 32 tons, TY III = 33 tons, TY IV = 60 tons		
* Sester Road (Manchester)		
CR 5227AA	0.0 KY 2432	0.2 Tipple Access
* Panama School Road		
CR 5341	0.0 Littleton Road	0.8 Steele RD
* Steele Road		
CR 5342	0.0 Panama School RD	0.9 Mine Access

CLINTON COUNTY

ROAD	FROM	TO
* KY 90	9.8 Poplar Mountain Road	12.8 Wayne CO LN
* Poplar Mountain Road		
CR 5058	0.0 KY 90	3.4 Mine

DAVISS COUNTY

ROAD	FROM	TO
* Green River Parkway	59.5 Ohio CO LN	70.7 US 60 Bypass
Weight Limit - Bridge over Owensboro Beltline @ milepoint 70.18		
TY I = 20 tons, TY II = 45 tons, TY III = 47 tons, TY IV = 55 tons		
* US 60	10.2 US 60 Bypass	28.0 Hancock CO LN
Weight Limit - Bridge over L & N Railroad @ milepoint 11.78		
TY I = 20 tons, TY II = 34 tons, TY III = 35 tons, TY IV = 44 tons		
Weight Limit - Westbound Bridge over L & N RR @ milepoint 16.66		
TY I = 20 tons, TY II = 40 tons, TY III = 42 tons, TY IV = 60 tons		
Weight Limit - Eastbound Bridge over Power Plant Entrance @ milepoint 16.66		
TY I = 20 tons, TY II = 37 tons, TY III = 38 tons, TY IV = 53 tons		

ADMINISTRATIVE REGISTER - 2845

Weight Limit - Bridge over Pup Creek @ milepoint 20.31		
TY I = 20 tons, TY II = 39 tons, TY III = 41 tons, TY IV = 45 tons		
* US 60B	0.0 US 60	10.2 US 60
Weight Limit - Bridge over US 431 @ milepoint 4.22		
TY I = 20 tons, TY II = 42 tons, TY III = 42 tons, TY IV = 48 tons		
Weight Limit - Bridge over L & N Railroad @ milepoint 4.84		
TY I = 20 tons, TY II = 37 tons, TY III = 38 tons, TY IV = 49 tons		
Weight Limit - Bridge over Sutherland Road @ milepoint 5.08		
TY I = 20 tons, TY II = 40 tons, TY III = 42 tons, TY IV = 60 tons		
Weight Limit - Bridge over Horse Fork Creek @ milepoint 5.65		
TY I = 20 tons, TY II = 35 tons, TY III = 37 tons, TY IV = 60 tons		
Weight Limit - Bridge over I C RR @ milepoint 7.71		
TY I = 20 tons, TY II = 37 tons, TY III = 37 tons, TY IV = 48 tons		
Weight Limit - Bridge over L&N RR & KY 2710 @ milepoint 9.77		
TY I = 20 tons, TY II = 37 tons, TY III = 38 tons, TY IV = 43 tons		
* US 231	0.0 Ohio CO LN	11.3 US 60 Bypass
Weight Limit - Bridge over Panther Creek @ milepoint 3.91		
TY I = 20 tons, TY II = 41 tons, TY III = 43 tons, TY IV = 60 tons		
Weight Limit - Bridge over Panther Creek @ milepoint 8.84		
TY I = 20 tons, TY II = 44 tons, TY III = 45 tons, TY IV = 60 tons		
Weight Limit - Bridge over overflow @ milepoint 8.94		
TY I = 20 tons, TY II = 42 tons, TY III = 44 tons, TY IV = 60 tons		
Weight Limit - Bridge over overflow @ milepoint 9.22		
TY I = 20 tons, TY II = 42 tons, TY III = 44 tons, TY IV = 60 tons		
Weight Limit - Bridge over Owensboro Beltline @ milepoint 11.29		
TY I = 20 tons, TY II = 39 tons, TY III = 39 tons, TY IV = 60 tons		
* KY 81	0.0 McLean CO LN	11.9 US 60 Bypass
Weight Limit - Bridge over Panther Creek @ milepoint 6.50		
TY I = 20 tons, TY II = 27 tons, TY III = 28 tons, TY IV = 43 tons		
* KY 144	0.0 US 60	11.9 Flora RD
Weight Limit - Bridge over L & N RR @ milepoint 0.16		
TY I = 20 tons, TY II = 43 tons, TY III = 46 tons, TY IV = 50 tons		
* KY 331	0.0 US 60 (East)	1.9 Mine
(Via Industrial Dr. & Medley-Roost Rd.)		
* KY 554	1.9 Mine	4.8 KY 81
* KY 951	0.0 KY 144	2.9 Mine
* Floral Road		
CR 5035	0.0 KY 144	1.4 Mine
* St Lawrence Road		
CR 5036	1.6 Mine	1.8 Indian Hill Rd
* Indian Hill Road		
CR 5038	0.0 KY 951	0.5 St. Lawrence RD
* Iceland Road		
ELLIOTT COUNTY		
ROAD	FROM	TO
* KY 7	17.1 KY 409	19.3 Carter CO LN
FAYETTE COUNTY		
ROAD	FROM	TO
* US 60	0.0 Woodford CO LN	4.7 KY 4 (West)
Weight Limit - Bridge over South Elkhorn Creek @ milepoint 1.30		
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
10.2 KY 4 (East)		
Weight Limit - Bridge over New Circle Road (KY 4) @ milepoint 10.19		
TY I = 20 tons, TY II = 43 tons, TY III = 44 tons, TY IV = 58 tons		
* US 68	0.0 Jessamine CO LN	3.1 KY 4
Weight Limit - Bridge over South Elkhorn Creek @ milepoint 0.74		
TY I = 20 tons, TY II = 41 tons, TY III = 43 tons, TY IV = 60 tons		
* KY 4	2.2 US 68 (South)	12.7 US 60 (East)
Weight Limit - Bridge over US 60, Versailles Road @ milepoint 4.61		
TY I = 20 tons, TY II = 43 tons, TY III = 44 tons, TY IV = 58 tons		
Weight Limit - Bridge over Viley Pike @ milepoint 5.48		
TY I = 20 tons, TY II = 43 tons, TY III = 45 tons, TY IV = 60 tons		
Weight Limit - Bridge over Southern RR @ milepoint 8.03		
TY I = 20 tons, TY II = 39 tons, TY III = 40 tons, TY IV = 51 tons		
* KY 922	1.0 KY 4	2.9 I-75
FLEMING COUNTY		
ROAD	FROM	TO
* US 68	0.0 Robertson CO LN	5.4 Mason CO LN
* KY 11	0.0 Bath CO LN	17.2 Mason CO LN
Weight Limit - Bridge over Fleming Creek @ milepoint 7.80		
TY I = 20 tons, TY II = 40 tons, TY III = 39 tons, TY IV = 54 tons		

ADMINISTRATIVE REGISTER - 2846

Weight Limit - Bridge over Cassidy Creek @ milepoint 8.77
 TY I = 20 tons, TY II = 38 tons, TY III = 40 tons, TY IV = 60 tons

FLOYD COUNTY

ROAD	FROM	TO
* US 23	0.0 Pike CO LN	15.7 KY 114
Weight Limit - Bridge over Levisa Fork Big Sandy River @ milepoint 10.76		
TY I = 20 tons, TY II = 45 tons, TY III = 49 tons, TY IV = 56 tons		
Weight Limit - Bridge over C&O RR @ milepoint 10.95		
TY I = 20 tons, TY II = 45 tons, TY III = 48 tons, TY IV = 57 tons		
* US 23	16.8 KY 1428	24.1 Johnson CO LN
* KY 3	0.0 US 23 & KY 80	2.3 Blackhawk Tipple
* KY 7	0.0 Knott CO LN	6.5 KY 80
* KY 80	0.0 Knott CO LN	14.4 US 23 & KY 3
* KY 114	0.0 Magoffin CO LN	11.4 US 23
Weight Limit - Bridge over Middle Creek @ milepoint 4.12		
TY I = 20 tons, TY II = 44 tons, TY III = 46 tons, TY IV = 60 tons		
Weight Limit - Bridge over C&O RR @ milepoint 10.41		
TY I = 20 tons, TY II = 44 tons, TY III = 46 tons, TY IV = 56 tons		
Weight Limit - Bridge over Middle Creek @ milepoint 10.60		
TY I = 20 tons, TY II = 43 tons, TY III = 44 tons, TY IV = 55 tons		
* KY 122	8.5 KY 80	21.1 Spewing Camp Branch RD
	24.3 Mine	31.6 KY 466
* KY 194	9.0 Addington Mine	12.2 Pike CO LN
Weight Limit - Bridge over Brushy Creek @ milepoint 12.15		
TY I = 20 tons, TY II = 40 tons, TY III = 42 tons, TY IV = 60 tons		
* KY 404	0.0 Magoffin CO LN	3.1 KY 850
	4.2 KY 1210	8.1 KY 114
Weight Limit - Bridge over Middle Creek @ milepoint 8.07		
TY I = 20 tons, TY II = 40 tons, TY III = 42 tons, TY IV = 60 tons		
* KY 466	2.3 Caleb FK RD	4.1 KY 122
Weight Limit - Bridge over Left Fork of Beaver Creek @ milepoint 2.58		
TY I = 16 tons, TY II = 18 tons, TY III = 21 tons, TY IV = 37 tons		
Weight Limit - Bridge over Left Fork of Beaver Creek @ milepoint 2.90		
TY I = 15 tons, TY II = 15 tons, TY III = 15 tons, TY IV = 15 tons		
* KY 550	0.0 Knott CO LN	0.2 KY 7
Weight Limit - Bridge over Right Fork of Beaver Creek @ milepoint 0.06		
TY I = 20 tons, TY II = 37 tons, TY III = 38 tons, TY IV = 48 tons		
* KY 680	0.0 KY 122	0.9 KY 1929
	1.6 Joseph Mining Tipple	5.4 KY 979
* KY 777	6.5 Mine	9.1 KY 80
* KY 850	3.0 Mine	7.5 KY 404
* KY 979	0.0 KY 122	19.3 US 23
Weight Limit - Bridge over Toler Creek @ milepoint 17.43		
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
* KY 1091	0.0 Knott CO LN	1.2 KY 122
Weight Limit - Bridge over Left Fork of Beaver Creek @ milepoint 1.20		
TY I = 20 tons, TY II = 39 tons, TY III = 41 tons, TY IV = 60 tons		
* KY 1101	0.0 KY 122	0.1 Stonecoal Branch RD
Weight Limit - Bridge over Left Fork of Beaver Creek @ milepoint 0.90		
TY I = 20 tons, TY II = 42 tons, TY III = 44 tons, TY IV = 59 tons		
* KY 1210	0.0 KY 80	0.6 Mines
	7.1 Nerco-Hiller Tipple	7.8 KY 404
Weight Limit - Bridge over Middle Creek @ milepoint 7.76		
TY I = 20 tons, TY II = 34 tons, TY III = 36 tons, TY IV = 59 tons		
* KY 1426	0.0 Pike CO LN	6.6 KY 979
	6.6 KY 979	9.5 Justice BR RD
	10.9 Mine	14.3 US 23
Weight Limit - Bridge over Levisa Fork of Big Sandy River @ milepoint 14.09		
TY I = 20 tons, TY II = 49 tons, TY III = 49 tons, TY IV = 55 tons		
* KY 1428	6.2 US 23	8.8 KY 194
	14.1 Uptown Mining Mine	15.6 US 23
Weight Limit - Bridge over Little Paint Creek @ milepoint 14.85		
TY I = 20 tons, TY II = 34 tons, TY III = 35 tons, TY IV = 44 tons		
* KY 1498	0.0 Knott CO LN	4.6 KY 122
Weight Limit - Bridge over Left Fork of Beaver Creek @ milepoint 4.59		
TY I = 20 tons, TY II = 39 tons, TY III = 38 tons, TY IV = 60 tons		
* KY 1928	2.0 Ned FK RD	4.5 KY 680
* KY 2030	0.0 KY 122	7.8 KY 1426
Weight Limit - Bridge over Left Fork of Beaver Creek @ milepoint 0.10		
TY I = 20 tons, TY II = 42 tons, TY III = 43 tons, TY IV = 56 tons		
* KY 2557	0.0 Betsy Layne BR RD	0.3 US 23
* KY 3188	0.8 Kanawha Mine	1.3 KY 80
* KY 3379	0.0 Left Fork/Tinker Fork RD	7.0 KY 979
* KY 3380	0.0 KY 979	0.6 Andy Branch RD

ADMINISTRATIVE REGISTER - 2847

* Powell Branch Road		
CR 5022	0.0 Justell Bridge RD	0.3 Camp BR Branch RD
* Justell Bridge Road		
CR 5024F	0.0 US 23	0.1 Powell Branch RD
* Ivy Creek RD		
CR 5032	0.0 US 23	2.1 Mine
* Bushy Fork Road		
CR 5046	0.0 KY 194	0.8 Pike CO LN
* Wolf Branch Road		
CR 5046A	0.0 Bushy Fork Road	1.0 Martin CO LN
* Bull Creek Road		
CR 5055	0.0 KY 3	0.5 Cabin Coal Tipple
* Camp Branch Road		
CR 5078	0.0 Powell Branch RD	0.9 Right FK/Camp BR RD
* Right Fork/Camp Branch Road		
CR 5078A	0.0 Camp Branch RD	0.2 Prater Creek Mine
* Transcontinental Road (Excluding Bridge)		
CR 5083	0.0 Transcontinental Tip	0.8 US 23
* Justice Branch Road		
CR 5107	0.0 KY 1426	0.4 Right Fork Justice BR RD
* Right Fork of Justice Branch RD		
CR 5107A	0.0 Justice Branch RD	0.3 Island Creek Mine
* Frog Branch Road		
CR 5110	0.0 KY 2030	1.0 Maple Ridge Mine
* Betsy Layne Branch Road		
CR 5111	0.0 KY 2557	0.9 Somerset Coal Mine
* Cedar Hill Road		
CR 5118	0.0 KY 1426	0.2 Mine
* Hamilton Branch RD		
CR 5127	0.0 KY 1426	0.2 Bebe Mine
Weight Limit - Bridge over Toler Creek		
TY I = 20 tons, TY II = 20 tons, TY III = 23 tons, TY IV = 35 tons		
* Parsons Branch Road		
CR 5128	0.0 KY 979	0.2 Transcontinental Mine
Weight Limit - Bridge over Mud Creek		
TY I = 20 tons, TY II = 36 tons, TY III = 36 tons, TY IV = 36 tons		
* Frasure Branch Road		
CR 5134	0.0 KY 979	1.0 Joseph Mining Mine
* Mink Branch Road		
CR 5138	0.0 KY 979	1.2 Mine
Weight Limit - Bridge over Big Mud Creek		
TY I = 22 tons, TY II = 22 tons, TY III = 22 tons, TY IV = 22 tons		
* Dry Branch/Mud Creek Road		
CR 5139	0.0 KY 979	1.1 Joseph Mining Mine
* Ned Fork Road		
CR 5140	0.0 KY 1929	1.1 Premium Elkhorn Shannon Mine
* Branham Creek Road		
CR 5142	0.0 KY 3379	0.6 Pike CO LN
* Barn Branch Road		
CR 5146	0.0 Branham Creek RD	0.3 Phyllis Coal Mine
* Left Fork/Tinker Fork Road		
CR 5147	0.0 Branham Creek RD	0.2 Wellmore Kodiak Mine
* Andy Branch Road		
CR 5148	0.0 Tinker Fork RD	0.5 Ensol Mine
* Red Morg Branch Road		
CR 5153	0.0 KY 979	0.9 Turner Elkhorn Mine
* Buzzard Rock Road		
CR 5157	0.2 Apache Mining Mine	0.5 Pike CO LN
* Caleb Fork RD		
CR 5175	0.0 KY 466	0.7 Pike County Haul RD
* Spewing Camp Branch		
CR 5190	0.0 KY 122	1.8 Mine
Weight Limit - Bridge over Left Fork of Beaver Creek		
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
* Little Muddy Creek Road		
CR 5197	0.0 KY 2030	3.0 Bebe Mine
* Upper Wolfpen Branch Road		
CR 5197B	0.0 Little Muddy Creek RD	0.7 Prater Creek Mine
* Hite Road		
CR 5220	1.8 Hite RD-KY 122	1.9 Hite Prep Plant Connector RD
* Hite Road-KY 122 Connector Road		
CR 5220A	0.0 KY 122	0.1 Hite RD
* Stonecoal Branch Road		
CR 5234	0.0 KY 1101	1.6 Mine

ADMINISTRATIVE REGISTER - 2848

* Goose Creek Road		
CR 5273	0.0 Gosling Branch RD	0.6 Transcontinental T&H Mine
* Gosling Branch Road		
CR 5274	0.0 KY 80	0.1 Goose Creek RD
* Vine Street (Eastern)		
CR 5283C	0.0 KY 80	0.1 May I Tipple
Weight Limit - Bridge over Right Fork of Beaver Creek		
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
* Johnson Fork-Conley Fork Road		
CR 5409	0.0 KY 1210	0.2 Amber Prep Plant

FRANKLIN COUNTY

ROAD	FROM	TO
* US 60	0.0 Shelby CO LN	6.5 US 127 (West)
Weight Limit - Bridge over Benson Creek @ milepoint 0.01		
TY I = 20 tons, TY II = 28 tons, TY III = 31 tons, TY IV = 40 tons		
Weight Limit - Bridge over South Benson Creek @ milepoint 2.72		
TY I = 20 tons, TY II = 23 tons, TY III = 26 tons, TY IV = 40 tons		
	12.1 US 421 (East)	14.0 KY 676
Weight Limit - Bridge over L & N Railroad @ milepoint 12.12		
TY I = 20 tons, TY II = 28 tons, TY III = 31 tons, TY IV = 40 tons		
* US 127	5.3 KY 676	6.2 US 60
* KY 676	0.0 US 127	5.3 US 60

GREENUP COUNTY

ROAD	FROM	TO
* US 23	0.0 Boyd CO LN	11.6 KY 2541
Weight Limit - Bridge over Little Sandy River @ milepoint 11.41		
TY I = 20 tons, TY II = 41 tons, TY III = 43 tons, TY IV = 57 tons		
* KY 1	11.4 KY 207	17.3 US 23
* KY 207	0.0 Carter CO LN	0.5 Logtown Hollow RD
	8.3 Woods RD	9.2 KY 1
* Logtown Hollow Road		
CR 5168	0.0 KY 207	0.5 Mine
* Stepp Drive		
CR 5216	0.0 KY 207	0.3 Mine
* Schultz Branch Road		
CR 5250	0.0 KY 2	1.0 Mine

HANCOCK COUNTY

ROAD	FROM	TO
* US 60	0.0 Daviess CO LN	5.0 Mine

HARLAN COUNTY

ROAD	FROM	TO
* US 119	0.0 Bell CO LN	39.7 Letcher CO LN
Weight Limit - Bridge over Poore Fork Cumberland River @ milepoint 31.12		
TY I = 20 tons, TY II = 45 tons, TY III = 46 tons, TY IV = 53 tons		
Weight Limit - Bridge over Poore Fork Cumberland River @ milepoint 33.32		
TY I = 20 tons, TY II = 47 tons, TY III = 47 tons, TY IV = 55 tons		
Weight Limit - Bridge over Clover Lick Creek @ milepoint 33.74		
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
Weight Limit - Bridge over Poor Fork @ milepoint 35.56		
TY I = 20 tons, TY II = 45 tons, TY III = 47 tons, TY IV = 60 tons		
Weight Limit - Bridge over Poor Fork @ milepoint 38.91		
TY I = 20 tons, TY II = 25 tons, TY III = 27 tons, TY IV = 35 tons		
Weight Limit - Bridge over Poor Fork @ milepoint 39.61		
TY I = 20 tons, TY II = 30 tons, TY III = 31 tons, TY IV = 44 tons		
* US 421	0.0 Virginia State LN	17.6 US 119 (West)
Weight Limit - Bridge over Cranks Creek @ milepoint 2.70		
TY I = 20 tons, TY II = 29 tons, TY III = 30 tons, TY IV = 42 tons		
Weight Limit - Bridge over Fork of Crummies Creek @ milepoint 7.36		
TY I = 20 tons, TY II = 31 tons, TY III = 32 tons, TY IV = 40 tons		
Weight Limit - Bridge over KY 840, L&N RR, Clover Fork @ milepoint 17.51		
TY I = 20 tons, TY II = 42 tons, TY III = 43 tons, TY IV = 49 tons		
	17.6 US 119 (East)	27.4 Leslie CO LN
* KY 38	0.0 US 421	13.3 Shields SCH RD
Weight Limit - Bridge over Clover Fork Cumberland River @ milepoint 8.21		
TY I = 20 tons, TY II = 44 tons, TY III = 45 tons, TY IV = 53 tons		
Weight Limit - Bridge over Yocum Creek @ milepoint 8.60		
TY I = 20 tons, TY II = 26 tons, TY III = 27 tons, TY IV = 38 tons		
Weight Limit - Bridge over Clover Fork @ milepoint 12.90		
TY I = 20 tons, TY II = 45 tons, TY III = 46 tons, TY IV = 60 tons		
	16.7 Conveyor Dump Point	17.0 KY 179

ADMINISTRATIVE REGISTER - 2849

* KY 72	0.0 Bell CO LN	1.3 Mill Branch RD
	1.9 KY 2005	4.9 Rockhouse BR RD
Weight Limit - Bridge over Puckett Creek @ milepoint 4.73		
TY I = 20 tons, TY II = 26 tons, TY III = 27 tons, TY IV = 40 tons		
Weight Limit - Bridge over Puckett Creek @ milepoint 4.84		
TY I = 20 tons, TY II = 35 tons, TY III = 37 tons, TY IV = 60 tons		
	10.2 Mine	11.3 US 421
Weight Limit - Bridge over Clover Fork Cumberland River @ milepoint 11.19		
TY I = 20 tons, TY II = 28 tons, TY III = 31 tons, TY IV = 31 tons		
* KY 215	0.0 KY 38	0.2 Yocum Tipple
Weight Limit - Bridge over Yocum Creek @ milepoint 1.06		
TY I = 20 tons, TY II = 29 tons, TY III = 30 tons, TY IV = 49 tons		
* KY 221	0.0 Bell CO LN	8.9 US 421 (South)
	8.9 US 421 (North)	21.6 KY 2008
* KY 987	10.4 Wilder Branch RD	18.5 US 421
Weight Limit - Bridge over Martins Fork Lake @ milepoint 12.72		
TY I = 20 tons, TY II = 44 tons, TY III = 45 tons, TY IV = 55 tons		
Weight Limit - Bridge over Martins Fork @ milepoint 15.07		
TY I = 20 tons, TY II = 37 tons, TY III = 38 tons, TY IV = 60 tons		
Weight Limit - Bridge over Crummies Creek @ milepoint 18.52		
TY I = 20 tons, TY II = 29 tons, TY III = 34 tons, TY IV = 41 tons		
* KY 990	0.0 US 421	1.3 Coalgood Tipple
* KY 1137	0.0 US 421	3.2 Mine Access RD
* KY 2005	2.6 Lick Branch Culvert	5.1 KY 72
Weight Limit - Bridge over Yocum Creek @ milepoint 5.08		
TY I = 20 tons, TY II = 38 tons, TY III = 40 tons, TY IV = 60 tons		
* KY 2006	0.7 Mine	4.6 Arch of KY Tipple
* KY 2008	0.0 Leslie CO LN	1.4 KY 221
* KY 2009	0.0 KY 221	2.7 Leslie CO LN
Weight Limit - Bridge over Fork of Laurel Fork Creek @ milepoint 1.51		
TY I = 20 tons, TY II = 34 tons, TY III = 36 tons, TY IV = 59 tons		
Weight Limit - Bridge over Laurel Fork Creek @ milepoint 2.72		
TY I = 20 tons, TY II = 45 tons, TY III = 46 tons, TY IV = 58 tons		
* KY 3449	0.0 Forester's Creek RD	1.1 Kentucky Harlan Tipple
* KY 3451	1.4 Mine	2.2 US 119
* KY 3457	0.0 KY 38	0.5 Mine
* KY 3462	0.0 US 421	0.8 Mine
* KY 3465	0.0 KY 221	3.9 Leslie CO LN
* Totz Road		
CR 5007B	0.0 Haul RD	0.1 Totz Washer
* Slack Cemetery Road		
CR 5140	0.0 US 421 (North)	0.4 Tipple
* Barn Branch Road		
CR 5142	0.0 US 421	0.4 Mine Access RD
* Grays Branch Road		
CR 5206K	0.0 US 421 @ Grays Knob	0.4 Tipple
Weight Limit - Bridge over Martins Fork		
TY I = 20 tons, TY II = 20 tons, TY III = 20 tons, TY IV = 20 tons		
* Foresters Creek Road		
CR 5238	0.0 KY 3449	1.7 Mine Access RD
* Rockhouse Branch Road		
CR 5256	0.0 KY 72	0.2 R B Tipple
* Gabes Branch Road		
CR 5326E	0.0 KY 38	0.1 Brookside Tipple
* Ages Creek Road		
CR 5326M	0.0 KY 38	0.3 Mine
Weight Limit - Bridge over Ages Branch		
TY I = 20 tons, TY II = 27 tons, TY III = 33 tons, TY IV = 53 tons		
* Big Run Hollow Road		
CR 5344	2.1 Mine Access Road	2.6 Bell CO LN

HARRISON COUNTY

ROAD	FROM	TO
* US 27	0.0 Bourbon CO LN	19.5 Pendleton CO LN
Weight Limit - Bridge over South Fork Licking River @ milepoint 5.65		
TY I = 20 tons, TY II = 42 tons, TY III = 44 tons, TY IV = 57 tons		
Weight Limit - Bridge over L&N RR @ milepoint 6.28		
TY I = 20 tons, TY II = 35 tons, TY III = 36 tons, TY IV = 45 tons		
Weight Limit - Bridge over Indian Creek @ milepoint 7.09		
TY I = 20 tons, TY II = 43 tons, TY III = 45 tons, TY IV = 58 tons		
Weight Limit - Bridge over Sycamore Creek @ milepoint 9.09		
TY I = 20 tons, TY II = 45 tons, TY III = 47 tons, TY IV = 60 tons		
Weight Limit - Bridge over Two Lick Creek @ milepoint 10.40		
TY I = 20 tons, TY II = 40 tons, TY III = 39 tons, TY IV = 57 tons		
Weight Limit - Bridge over Curry Creek @ milepoint 13.27		

ADMINISTRATIVE REGISTER - 2850

TY I = 20 tons, TY II = 31 tons, TY III = 35 tons, TY IV = 50 tons
 Weight Limit - Bridge over Richland Creek @ milepoint 19.18
 TY I = 20 tons, TY II = 37 tons, TY III = 39 tons, TY IV = 60 tons

HENDERSON COUNTY

ROAD	FROM	TO
* Pennyrile PKWY	61.4 KY 416	69.3 KY 425
	(Extended weight provision restricted to use by Type IV vehicles only.)	
* US 41	0.0 Webster CO LN	13.0 KY 812
	Weight Limit - Bridge over King Creek @ milepoint 0.65	
	TY I = 20 tons, TY II = 41 tons, TY III = 44 tons, TY IV = 60 tons	
	Weight Limit - Bridge over East Fork of Cane Creek @ milepoint 6.20	
	TY I = 20 tons, TY II = 41 tons, TY III = 44 tons, TY IV = 60 tons	
	Weight Limit - Bridge over Dredged Ditch @ milepoint 6.32	
	TY I = 20 tons, TY II = 41 tons, TY III = 44 tons, TY IV = 60 tons	
* KY 416	7.8 Pennyrile Parkway	8.0 KY 2096
	(Extended weight provision restricted to use by Type IV vehicles only.)	
* KY 425	4.7 US 41	5.5 Pennyrile PKWY
	(Extended weight provision restricted to use by Type IV vehicles only.)	
* KY 812	5.6 Mine	7.4 US 41
* KY 2096	0.0 KY 416	3.1 KY 2097
	(Extended weight provision restricted to use by Type IV vehicles only.)	
* KY 2097	0.0 US 41	0.9 Bill Givens RD
* Bill Givens Road		
CR 5142	0.0 Webster CO LN	0.1 KY 2097

HOPKINS COUNTY

ROAD	FROM	TO
* Western Kentucky Parkway	21.8 Caldwell CO LN	43.4 Muhlenberg CO LN
	Weight Limit - Bridge over Tradewater River Overflow @ milepoint 22.00	
	TY I = 20 tons, TY II = 45 tons, TY III = 47 tons, TY IV = 60 tons	
	Weight Limit - Bridge over I.C. RR @ milepoint 24.89	
	TY I = 20 tons, TY II = 45 tons, TY III = 47 tons, TY IV = 60 tons	
	Weight Limit - Bridge over KY 112 & Copperas Creek @ milepoint 28.35	
	TY I = 20 tons, TY II = 45 tons, TY III = 46 tons, TY IV = 52 tons	
	Weight Limit - Bridge over Oak Hill Rd. & I.C. RR @ milepoint 33.87	
	TY I = 20 tons, TY II = 45 tons, TY III = 47 tons, TY IV = 60 tons	
	Weight Limit - Bridge over Pennyrile Parkway @ milepoint 38.31	
	TY I = 20 tons, TY II = 40 tons, TY III = 42 tons, TY IV = 56 tons	
* Pennyrile Parkway (Nontoll Segment) and US 41	22.6 US 41 (South)	38.2 Begin Toll Segment @ US 41(N)
	Weight Limit - Bridge on exit ramp to U.S. 41 @ milepoint 45.2	
	TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons	
* Pennyrile Parkway (Toll Segment)	38.2 End Nontoll Segment @ US 41 (North)	48.0 Webster CO LN
	Weight Limit - Bridge over KY 138 @ milepoint 54.07	
	TY I = 20 tons, TY II = 40 tons, TY III = 41 tons, TY IV = 56 tons	
* US 41	0.0 Christian CO LN	2.3 Pennyrile Parkway (South)
	Weight Limit - Bridge over Drakes Creek @ milepoint 0.49	
	TY I = 20 tons, TY II = 31 tons, TY III = 36 tons, TY IV = 53 tons	
	US 41 & Pennyrile Parkway (Nontoll Segment) included with Pennyrile Parkway Listing	
	2.3 Pennyrile Parkway (North)	11.8 Webster CO LN
	Weight Limit - Bridge over Otter Creek @ milepoint 6.13	
	TY I = 20 tons, TY II = 39 tons, TY III = 41 tons, TY IV = 60 tons	
* US 41A	0.0 US 41	29.4 Webster CO LN
	Weight Limit - Bridge over Crab Orchard Creek @ milepoint 0.82	
	TY I = 20 tons, TY II = 35 tons, TY III = 36 tons, TY IV = 56 tons	
	Weight Limit - Bridge over IC RR & Pleasant Run Creek @ milepoint 3.42	
	TY I = 20 tons, TY II = 35 tons, TY III = 36 tons, TY IV = 48 tons	
	Weight Limit - Bridge over L&N RR @ milepoint 6.59	
	TY I = 20 tons, TY II = 28 tons, TY III = 28 tons, TY IV = 34 tons	
	Weight Limit - Bridge over Pond Creek @ milepoint 22.86	
	TY I = 20 tons, TY II = 23 tons, TY III = 27 tons, TY IV = 43 tons	
* US 62	1.7 KY 109	21.3 Sextet Mine & Tipple
	Weight Limit - Bridge over Copperas Creek @ milepoint 5.70	
	TY I = 20 tons, TY II = 37 tons, TY III = 39 tons, TY IV = 60 tons	
	Weight Limit - Bridge over Cane Run Creek @ milepoint 7.94	
	TY I = 20 tons, TY II = 37 tons, TY III = 39 tons, TY IV = 60 tons	
	Weight Limit - Bridge over Pleasant Run @ milepoint 12.51	
	TY I = 20 tons, TY II = 40 tons, TY III = 40 tons, TY IV = 60 tons	
	Weight Limit - Bridge over L&N RR, Fork Pleasant Run @ milepoint 14.89	
	TY I = 20 tons, TY II = 38 tons, TY III = 39 tons, TY IV = 58 tons	
	Weight Limit - Bridge over US 41 @ milepoint 15.64	
	TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons	

ADMINISTRATIVE REGISTER - 2851

	Weight Limit - Bridge over Pleasant Run Creek @ milepoint 16.39	
	TY I = 20 tons, TY II = 40 tons, TY III = 40 tons, TY IV = 60 tons	
	Weight Limit - Bridge over Drakes Creek @ milepoint 16.72	
	TY I = 20 tons, TY II = 40 tons, TY III = 39 tons, TY IV = 54 tons	
* KY 70	4.5 Peter Howton Road	18.7 US 41A
	Weight Limit - Bridge over Richland Creek @ milepoint 11.77	
	TY I = 20 tons, TY II = 38 tons, TY III = 40 tons, TY IV = 60 tons	
	Weight Limit - Bridge over ICG RR NE of Richland @ milepoint 13.09	
	TY I = 20 tons, TY II = 27 tons, TY III = 27 tons, TY IV = 34 tons	
	Weight Limit - Bridge over Sugar Creek @ milepoint 13.45	
	TY I = 20 tons, TY II = 38 tons, TY III = 40 tons, TY IV = 60 tons	
	Weight Limit - Bridge over L&N RR @ milepoint 18.53	
	TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons	
	18.7 US 41A	26.4 Muhlenberg CO LN
	Weight Limit - Bridge over Pond River @ milepoint 26.32	
	TY I = 20 tons, TY II = 44 tons, TY III = 45 tons, TY IV = 60 tons	
* KY 109	2.1 US 62	17.2 KY 814
	Weight Limit - Bridge over Western Kentucky Parkway @ milepoint 3.81	
	TY I = 20 tons, TY II = 39 tons, TY III = 41 tons, TY IV = 54 tons	
	Weight Limit - Bridge over IC RR @ milepoint 4.50	
	TY I = 20 tons, TY II = 40 tons, TY III = 42 tons, TY IV = 58 tons	
	Weight Limit - Bridge over IC RR @ milepoint 6.49	
	TY I = 20 tons, TY II = 40 tons, TY III = 42 tons, TY IV = 58 tons	
	Weight Limit - Bridge over Lick Creek @ milepoint 7.24	
	TY I = 20 tons, TY II = 39 tons, TY III = 41 tons, TY IV = 60 tons	
* KY 112	3.5 Mine Access RD	9.8 US 41A
	Weight Limit - Bridge over Finley Ditch @ milepoint 5.85	
	TY I = 20 tons, TY II = 26 tons, TY III = 27 tons, TY IV = 46 tons	
	Weight Limit - Bridge over Unnamed Stream @ milepoint 8.06	
	TY I = 20 tons, TY II = 26 tons, TY III = 27 tons, TY IV = 46 tons	
	Weight Limit - Bridge over Unnamed Stream @ milepoint 8.26	
	TY I = 20 tons, TY II = 26 tons, TY III = 27 tons, TY IV = 46 tons	
* KY 262	0.0 KY 630	2.6 Bean Cemetery RD
	Weight Limit - Bridge over Pogue Creek @ milepoint 0.92	
	TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons	
* KY 281	0.0 US 41A	0.7 Pennyryle Parkway
	Weight Limit - Bridge over L&N RR @ milepoint 0.25	
	TY I = 20 tons, TY II = 43 tons, TY III = 44 tons, TY IV = 56 tons	
* KY 336	3.2 McLeod RD	5.8 US 41A
* KY 454	0.0 US 62	2.3 KY 112
	Weight Limit - Bridge over Western KY PKWY @ milepoint 1.02	
	TY I = 20 tons, TY II = 36 tons, TY III = 37 tons, TY IV = 49 tons	
* KY 630	0.0 KY 262	2.0 US 41A
* KY 813	0.8 Claude Young RD	2.8 US 62
* KY 813	10.2 Mortons Gap-WH CTY RD	12.3 US 41A
* KY 814	0.0 KY 109	1.4 Webster CO LN
* KY 879	0.0 KY 112	0.2 Southard Church Road
	(Extended weights shall be available only for Types III and IV vehicles.)	
* KY 1751	0.0 US 41A	1.4 US 41
	Weight Limit - Bridge over L&N RR @ milepoint 1.14	
	TY I = 20 tons, TY II = 40 tons, TY III = 42 tons, TY IV = 58 tons	
* KY 2086	0.0 Walnut Grove RD	1.2 KY 109
* KY 2273	0.0 KY 109	0.2 Ferguson Town Spur RD
* KY 2663	0.0 Mine Access RD	0.6 KY 2655
* Old Hanson-Slaughters Road		
CR 5073	0.0 Jasper Reynolds RD	0.4 KY 2655
* Jasper Reynolds RD		
CR 5081	0.0 US 41	0.4 Old Hanson RD
* Herbert Brown RD		
CR 5082	0.0 Old Hanson RD	0.1 KY 2655
* McLeod Road		
CR 5140	0.0 KY 3361)	0.3 Mine & Tipple
* Mortons Gap-White City Road		
CR 5153	0.0 KY 813	1.8 Mine
* Claude Young Road		
CR 5169	0.0 KY 813	1.7 Orton Bridge RD
* Orton Bridge Road		
CR 5170	1.0 Claude Young RD	1.3 Private Haul Road
* Wells Road		
CR 5212	7.9 Barnsley Loop RD	8.7 Mine
* Barnsley Loop Road		
CR 5217	0.0 US 41A	1.5 Wells Road
* Leonard Jackson Road		
CR 5262	0.0 Dawson Daylight RD	1.0 Private Haul RD

ADMINISTRATIVE REGISTER - 2852

* Walnut Grove Road			
CR 5301	0.0 Mine		0.6 KY 2086
* Dawson Daylight Road			
CR 5305	0.0 KY 109		2.4 Leonard Jackson RD
* Ferguson Town Spur Road			
CR 5311	0.0 Ferguson Town RD		0.1 Roberts Bros Tipple
* Peter Howton Road			
CR 5330	0.0 KY 70		0.3 Mine
* Bean Cemetery Road			
CR 5396	0.4 Mine		2.9 KY 262
Weight Limit - Bridge over Greasy Creek			
TY I = 11 tons, TY II = 11 tons, TY III = 11 tons, TY IV = 11 tons			

JACKSON COUNTY

ROAD	FROM	TO
* US 421	0.0 Clay CO LN	6.3 Andrews RD
Weight Limit - Bridge over Flat Lick Creek @ milepoint 6.26		
TY I = 20 tons, TY II = 33 tons, TY III = 35 tons, TY IV = 56 tons		
* KY 30	0.0 Laurel CO LN	12.5 US 421 (South)
Weight Limit - Bridge over Moores Creek @ milepoint 0.59		
TY I = 20 tons, TY II = 34 tons, TY III = 35 tons, TY IV = 49 tons		
Weight Limit - Bridge over Pond Creek @ milepoint 2.64		
TY I = 20 tons, TY II = 34 tons, TY III = 35 tons, TY IV = 49 tons		
	12.5 US 421 (North)	20.9 Owsley CO LN
* Andrews Road		
CR 5122	0.0 US 421	0.6 Begley Road
* Begley Road		
CR 5245	0.8 Andrews Road	0.9 Mine

JEFFERSON COUNTY

ROAD	FROM	TO
* US 31E	0.0 Bullitt CO LN	5.5 KY 1065
Weight Limit - Bridge over Floyd's Fork Creek @ milepoint 0.58		
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
	16.7 US 42	17.8 US 31W @ Second Street
* US 31W	3.2 Kosmos Cement CO	22.1 US 31E @ Second Street
* US 42	0.0 US 31E	0.8 US 60
Weight Limit - Bridge over Beargrass Creek @ milepoint 0.23		
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
* US 60	0.0 US 42 (Westbound)	17.4 Shelby CO LN
Weight Limit - Bridge over Floyd's Fork @ milepoint 13.56		
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
Weight Limit - Bridge over Longrun Creek @ milepoint 15.79		
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
* KY 841	0.0 US 31W	6.1 KY 1865
* KY 864	4.3 KY 1065 (East)	4.4 KY 1065 (West)
* KY 1065	1.0 KY 1865	10.0 KY 864
Weight Limit - Bridge over Northern Ditch @ milepoint 1.40		
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
Weight Limit - Bridge over I-65 @ milepoint 4.75		
TY I = 20 tons, TY II = 40 tons, TY III = 42 tons, TY IV = 60 tons		
	10.0 KY 864	11.9 US 31E
* KY 1865	0.9 KY 841	1.3 KY 1065
* KY 1934	5.5 Ralph AVE	8.4 US 31W
* <u>KY 2051</u>	<u>5.2 Ralph AVE</u>	<u>6.4 KY 1934</u>
* KY 2056	0.4 B.F. Goodrich Plant	1.1 I-264
* Ralph Avenue (Louisville)		
	0.9 KY 1934	1.8 Dupont Plant

JESSAMINE COUNTY

ROAD	FROM	TO
* US 68	0.0 Mercer CO LN	12.1 Fayette CO LN

JOHNSON COUNTY

ROAD	FROM	TO
* US 23	0.0 Floyd CO LN	18.4 Lawrence CO LN
Weight Limit - Bridge over C&O RR & Levisa Fork @ milepoint 3.53		
TY I = 20 tons, TY II = 28 tons, TY III = 33 tons, TY IV = 38 tons		
Weight Limit - Bridge over Paint Creek @ milepoint 8.68		
TY I = 20 tons, TY II = 43 tons, TY III = 44 tons, TY IV = 55 tons		
* US 460	0.0 Magoffin CO LN	8.3 US 23
* KY 3	3.1 Lacker Branch RD	4.7 Martin CO LN
* KY 40	7.2 KY 172	8.7 US 460
	8.7 US 23	13.3 Deadfall Branch RD

ADMINISTRATIVE REGISTER - 2853

* KY 172	6.9 Joe Salyers Branch RD	12.4 KY 40
Weight Limit - Bridge over Mudlick Creek @ milepoint 11.91		
TY I = 20 tons, TY II = 37 tons, TY III = 39 tons, TY IV = 55 tons		
* KY 302	2.8 KY 2381	6.5 KY 3
* KY 2381	0.0 US 23	2.2 KY 302
* Deadfall Branch Road		
CR 5139	0.0 KY 40	0.6 Mine Access Road
KNOTT COUNTY		
ROAD	FROM	TO
* KY 7	2.5 KY 1498	16.0 Floyd CO LN
Weight Limit - Bridge over Beaver Fork @ milepoint 6.10		
TY I = 20 tons, TY II = 40 tons, TY III = 41 tons, TY IV = 60 tons		
* KY 15	0.0 Letcher CO LN	9.4 Perry CO LN
Weight Limit - Bridge over Carr Fork Reservoir @ milepoint 2.82		
TY I = 20 tons, TY II = 45 tons, TY III = 49 tons, TY IV = 55 tons		
Weight Limit - Bridge over Carr Fork Lake @ milepoint 5.64		
TY I = 20 tons, TY II = 39 tons, TY III = 42 tons, TY IV = 60 tons		
* KY 80	0.0 Perry CO LN	21.1 Floyd CO LN
* KY 160	0.0 KY 15	8.8 Cave Branch RD
Weight Limit - Bridge over Carr Fork Lake @ milepoint 1.74		
TY I = 20 tons, TY II = 45 tons, TY III = 46 tons, TY IV = 56 tons		
8.2 KY 1393		
* KY 550	23.8 Big Springs RD	13.9 Patsy Jayne Mine
Weight Limit - Bridge over Jones Fork @ milepoint 25.30		
TY I = 20 tons, TY II = 30 tons, TY III = 31 tons, TY IV = 44 tons		
* KY 899	7.7 National Mines Mine	26.6 Floyd CO LN
Weight Limit - Bridge over Caney Creek @ milepoint 8.74		
TY I = 20 tons, TY II = 34 tons, TY III = 35 tons, TY IV = 44 tons		
Weight Limit - Bridge over Caney Creek @ milepoint 11.82		
TY I = 20 tons, TY II = 40 tons, TY III = 40 tons, TY IV = 60 tons		
* KY 1087	1.4 KY 3209	3.4 Mountain Clay Mine
9.6 C & D Coal Mine		
* KY 1088	3.9 Young's Fork RD	14.1 KY 80
Weight Limit - Bridge over Yellow Creek @ milepoint 9.12		
TY I = 20 tons, TY II = 36 tons, TY III = 38 tons, TY IV = 60 tons		
Weight Limit - Bridge over Carr Creek @ milepoint 9.36		
TY I = 20 tons, TY II = 38 tons, TY III = 39 tons, TY IV = 56 tons		
* KY 1091	0.0 KY 7	9.4 KY 15
Weight Limit - Bridge over Right Fork of Beaver Creek @ milepoint 0.01		
TY I = 20 tons, TY II = 41 tons, TY III = 43 tons, TY IV = 60 tons		
* KY 1098	0.0 Breathitt CO LN	2.2 Floyd CO LN
Weight Limit - Bridge over Laurel Fork Quicksand Creek @ milepoint 6.94		
TY I = 20 tons, TY II = 29 tons, TY III = 30 tons, TY IV = 49 tons		
* KY 1102	1.1 Sandlick Branch RD	12.0 KY 1087
* KY 1231	0.0 KY 15	6.94
* KY 1393	2.8 KY 899	2.7 KY 80
* KY 1410	0.0 KY 160	1.2 Flax Patch Branch RD
Weight Limit - Bridge over Carr Fork @ milepoint 0.01		
TY I = 20 tons, TY II = 44 tons, TY III = 45 tons, TY IV = 55 tons		
* KY 1498	0.5 KY 7	4.9 KY 160
* KY 3209	0.0 KY 80	4.7 Letcher CO LN
Weight Limit - Bridge over Ball Fork @ milepoint 0.05		
TY I = 20 tons, TY II = 40 tons, TY III = 42 tons, TY IV = 60 tons		
* KY 3391	0.0 KY 1231	1.5 Floyd CO LN
* Potato Branch RD		0.4 KY 1087
CR 5005	0.0 KY 7	1.7 Madden Creek RD
Weight Limit - Bridge over Right Fork of Beaver Creek		
TY I = 20 tons, TY II = 23 tons, TY III = 26 tons, TY IV = 44 tons		
* Patten Branch of Beaver Creek Road		1.1 Wheelwright Mine
CR 5009	0.0 KY 7	
* Big Springs Branch Road		0.2 National Mines Mine
CR 5032	0.0 KY 550	0.9 National Mines Mine
Weight Limit - Bridge over Jones Fork		
TY I = 19 tons, TY II = 20 tons, TY III = 23 tons, TY IV = 39 tons		
* Triplett Branch Road		
CR 5033	0.0 KY 550	0.8 National Mines Mine
* Rock Fork (Bolyne) Road		
CR 5037	0.0 KY 80	0.8 Consolidation Mine
* Bates Branch Road		
CR 5117	0.0 KY 7	1.4 Wheelwright Mine
* Perkins Branch-Lick Branch Road		
CR 5145	0.0 KY 15	0.4 Southeast Coal Mine
* Runnells Branch Road		
CR 5156	0.0 KY 160	0.5 Left FK Runnells BR RD

ADMINISTRATIVE REGISTER - 2854

* Left Fork of Runnells Branch Road CR 5156A	0.0 Runnells Branch RD	0.3 Golden Oak Mine
* Irishman Creek Road CR 5203	0.0 KY 1231	0.8 R J F Coal Mine
* Flax Patch Branch Road CR 5208	0.0 KY 1231	0.5 Allied Coals Mine
* Defeated Creek Road CR 5212	0.0 KY 15	3.2 Meade & Shepherd Mine
* Young's Fork Road CR 5226	0.0 KY 1088	1.3 Kentucky Prince Mine
* Middle Fork of Quicksand Creek Road CR 5312	0.0 Decoy-Spring Fork RD	1.0 Big Branch of Quicksand Creek RD
* Big Branch of Quicksand Creek Road CR 5314	0.0 Miller Branch Mine	1.2 Middle Fork of Quicksand Creek RD
* Decoy-Spring Fork Road CR 5315	0.0 Breathitt CO LN	1.1 Middle Fork of Quicksand Creek Road
* Sandlick Branch Road CR 5336	0.0 KY 1102	0.9 McCoy Coal Mine

KNOX COUNTY

ROAD	FROM	TO
* US 25E	0.0 Bell CO LN	26.6 Laurel CO LN
Weight Limit - Bridge over Cumberland River @ milepoint 0.85 TY I = 20 tons, TY II = 33 tons, TY III = 33 tons, TY IV = 40 tons		
Weight Limit - Bridge over L&N RR @ milepoint 1.54 TY I = 20 tons, TY II = 40 tons, TY III = 42 tons, TY IV = 51 tons		
Weight Limit - Bridge over Stinking Creek @ milepoint 3.70 TY I = 20 tons, TY II = 37 tons, TY III = 38 tons, TY IV = 48 tons		
Weight Limit - Bridge over Turkey Creek @ milepoint 4.81 TY I = 20 tons, TY II = 35 tons, TY III = 36 tons, TY IV = 51 tons		
* KY 6	0.0 Whitley CO LN	14.7 KY 11
Weight Limit - Bridge over Lynn Camp Creek @ milepoint 0.23 TY I = 20 tons, TY II = 29 tons, TY III = 30 tons, TY IV = 49 tons		
Weight Limit - Bridge over Stewards Creek @ milepoint 0.83 TY I = 20 tons, TY II = 38 tons, TY III = 40 tons, TY IV = 60 tons		
Weight Limit - Bridge over Indian Creek @ milepoint 6.15 TY I = 20 tons, TY II = 39 tons, TY III = 41 tons, TY IV = 60 tons		
Weight Limit - Bridge over Tributary of Indian Creek @ milepoint 6.85 TY I = 20 tons, TY II = 39 tons, TY III = 41 tons, TY IV = 60 tons		
Weight Limit - Bridge over Indian Creek @ milepoint 8.37 TY I = 20 tons, TY II = 39 tons, TY III = 41 tons, TY IV = 60 tons		
* KY 11	0.0 Whitley CO LN	10.1 US 25E
Weight Limit - Bridge over Little Poplar Creek @ milepoint 2.17 TY I = 20 tons, TY II = 37 tons, TY III = 38 tons, TY IV = 51 tons		
10.1 US 25E		
Weight Limit - Bridge over Little Richland Creek @ milepoint 13.00 TY I = 20 tons, TY II = 38 tons, TY III = 40 tons, TY IV = 60 tons		
Weight Limit - Bridge over Little Richland Creek @ milepoint 13.39 TY I = 20 tons, TY II = 40 tons, TY III = 42 tons, TY IV = 60 tons		
Weight Limit - Bridge over Little Richland Creek @ milepoint 13.57 TY I = 20 tons, TY II = 40 tons, TY III = 42 tons, TY IV = 60 tons		
* KY 225	5.9 Kayjay Mine	15.0 US 25E
* KY 312	0.0 Whitley CO LN	1.3 US 25E
* KY 930	0.0 KY 225	4.1 US 25E
Weight Limit - Bridge over Stinking Creek @ milepoint 1.77 TY I = 20 tons, TY II = 31 tons, TY III = 33 tons, TY IV = 50 tons		
* KY 1809	0.0 Whitley CO LN	6.3 KY 11
* KY 2421	0.0 KY 225	0.9 KY 11
* Alex Creek Road CR 5031	1.7 Straight Creek RD	2.2 Mine
* Straight Creek Road CR 5032	0.0 Bell CO LN	0.8 Alex Creek RD
* Little Brush Creek Road CR 5166	0.0 KY 225	1.6 Lay Branch RD
Weight Limit - Bridge over Brush Creek TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
* Lay Branch Road CR 5169	0.0 Little Brush CK RD	0.8 Mine
* Swan Pond Road CR 5209	0.0 KY 11	1.9 Mine
* Stoney Fork Road CR 5210	0.0 KY 1809	1.0 Mine

ADMINISTRATIVE REGISTER - 2855

* Hubbs Road CR 5214	0.0 KY 1809	1.5 Girdner #1 Mine
Weight Limit - Bridge over Hubbs Creek east of Bryant's Store		
TY I = 20 tons, TY II = 24 tons, TY III = 28 tons, TY IV = 47 tons		
Weight Limit - Bridge over Hubbs Creek @ Bain Branch		
TY I = 3 tons, TY II = 3 tons, TY III = 3 tons, TY IV = 3 tons		
* Sugartree Road CR 5216	0.0 Hubbs RD	0.5 Terco #1 Mine
Weight Limit - Bridge over Hubbs Creek		
TY I = 4 tons, TY II = 4 tons, TY III = 4 tons, TY IV = 4 tons		
* Davis Branch Road CR 5224	0.0 KY 1809	0.1 Mine
* Dowis Road CR 5248	0.0 KY 6	0.9 Mosley Branch RD
* Middle Fork Richland Creek Road CR 5311	0.9 Higgins Road	1.2 H & P Mine
* Higgins Road CR 5323	0.0 US 25E	0.8 Richland Creek RD

LAUREL COUNTY

ROAD	FROM	TO
* Daniel Boone Parkway	0.0 US 25 & KY 80	10.6 Clay CO LN
Weight Limit - Bridge over L&N RR @ milepoint 0.85		
TY I = 20 tons, TY II = 45 tons, TY III = 48 tons, TY IV = 55 tons		
Weight Limit - Bridge over Little Laurel River @ milepoint 3.40		
TY I = 20 tons, TY II = 39 tons, TY III = 39 tons, TY IV = 60 tons		
Weight Limit - Bridge over Sallys Branch Rd. @ milepoint 4.18		
TY I = 20 tons, TY II = 43 tons, TY III = 45 tons, TY IV = 60 tons		
Weight Limit - Bridge over KY 1305 @ milepoint 6.42		
TY I = 20 tons, TY II = 39 tons, TY III = 39 tons, TY IV = 48 tons		
Weight Limit - Bridge over Lick Creek Road @ milepoint 7.64		
TY I = 20 tons, TY II = 39 tons, TY III = 39 tons, TY IV = 48 tons		
Weight Limit - Bridge over KY 488 @ milepoint 8.57		
TY I = 20 tons, TY II = 41 tons, TY III = 42 tons, TY IV = 60 tons		
* US 25	0.0 US 25E & US 25W	10.4 KY 192
Weight Limit - Bridge over Robinson Creek @ milepoint 3.28		
TY I = 20 tons, TY II = 36 tons, TY III = 37 tons, TY IV = 49 tons		
Weight Limit - Bridge over Laurel River at Lily @ milepoint 4.14		
TY I = 20 tons, TY II = 45 tons, TY III = 47 tons, TY IV = 60 tons		
Weight Limit - Bridge over L&N RR @ milepoint 7.19		
TY I = 20 tons, TY II = 36 tons, TY III = 37 tons, TY IV = 48 tons		
Weight Limit - Bridge over Little Laurel River @ milepoint 8.44		
TY I = 20 tons, TY II = 37 tons, TY III = 39 tons, TY IV = 60 tons		
13.6 KY 80 & Daniel Boone Parkway		
* US 25E	0.0 Knox CO LN	23.1 KY 909
* KY 30	1.4 KY 490	0.3 US 25 & US 25W
Weight Limit - Bridge over Rockcastle River @ milepoint 9.08		
TY I = 20 tons, TY II = 45 tons, TY III = 47 tons, TY IV = 59 tons		
* KY 80	0.0 Pulaski CO LN	9.8 Jackson CO LN
Weight Limit - Bridge over I-75 @ milepoint 10.59		
TY I = 20 tons, TY II = 34 tons, TY III = 36 tons, TY IV = 43 tons		
* KY 192	18.2 I-75	11.1 US 25 & Daniel Boone PKWY
Weight Limit - Bridge over I-75 @ milepoint 18.24		
TY I = 20 tons, TY II = 32 tons, TY III = 34 tons, TY IV = 42 tons		
* KY 229	0.0 Knox CO LN	22.0 D Boone PKWY
Weight Limit - Bridge over Laurel River @ milepoint 6.85		
TY I = 20 tons, TY II = 38 tons, TY III = 38 tons, TY IV = 60 tons		
Weight Limit - Bridge over Little Laurel River @ milepoint 10.63		
TY I = 20 tons, TY II = 39 tons, TY III = 41 tons, TY IV = 60 tons		
* KY 490	0.0 US 25	11.5 KY 192
Weight Limit - Bridge over L&N RR @ milepoint 0.10		
TY I = 20 tons, TY II = 31 tons, TY III = 32 tons, TY IV = 44 tons		
0.9 KY 30		

LAWRENCE COUNTY

ROAD	FROM	TO
* US 23	0.0 Johnson CO LN	30.2 Boyd CO LN
* KY 1	0.0 KY 3	5.0 Ollioville-Coal Branch RD
12.8 KY 201		14.1 Carter CO LN
* KY 3	0.0 Martin CO LN	15.5 US 23
Weight limit - Bridge over Levisa & Tug Forks @ milepoint 14.87		
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
24.4 KY 1398		24.7 KY 1

ADMINISTRATIVE REGISTER - 2856

* KY 35	0.0 KY 3	0.1 West Virginia State LN
Weight Limit - Bridge over Levisa & Tug Forks @ milepoint 0.01		
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
* KY 32	8.5 Lower Laurel Creek RD	28.9 US 23
Weight Limit - Bridge over Cains Creek @ milepoint 9.53		
TY I = 20 tons, TY II = 42 tons, TY III = 44 tons, TY IV = 60 tons		
Weight Limit - Bridge over Blaine Creek @ milepoint 10.10		
TY I = 20 tons, TY II = 31 tons, TY III = 32 tons, TY IV = 54 tons		
Weight Limit - Bridge over Hood Creek @ milepoint 10.85		
TY I = 20 tons, TY II = 36 tons, TY III = 37 tons, TY IV = 60 tons		
Weight Limit - Bridge over Brushy Creek @ milepoint 16.05		
TY I = 20 tons, TY II = 32 tons, TY III = 33 tons, TY IV = 54 tons		
Weight Limit - Bridge over Rich Creek @ milepoint, 18.39		
TY I = 20 tons, TY II = 37 tons, TY III = 39 tons, TY IV = 59 tons		
Weight Limit - Bridge over Blaine Creek @ milepoint 22.55		
TY I = 20 tons, TY II = 35 tons, TY III = 37 tons, TY IV = 60 tons		
Weight Limit - Bridge over Russey Branch @ milepoint 23.46		
TY I = 20 tons, TY II = 35 tons, TY III = 37 tons, TY IV = 60 tons		
* KY 201	5.0 KY 32	18.2 KY 1
Weight Limit - Bridge over Dry Fork Creek @ milepoint 18.13		
TY I = 20 tons, TY II = 22 tons, TY III = 22 tons, TY IV = 22 tons		
* KY 645	0.0 US 23	5.2 Martin CO LN
* KY 1690	1.5 KY 645	1.7 KY 2033
* KY 1760	0.0 US 23	2.8 Georges Creek RD
* KY 2033	1.3 KY 1690	3.3 Richardson Mine
* KY 3398	0.0 US 23	2.3 KY 3
Donithon Branch Road		
CR 5118	0.0 KY 3	1.6 Lockworth Mine
Georges Creek Road		
CR 5156	0.0 KY 1760	1.5 Left FK Brushy CR RD
Left Fork Brushy Creek Road		
CR 5203	0.0 Georges Creek Road	0.8 Mine
Lower Laurel Creek Road		
CR 5221	0.0 KY 32	1.7 Black Wells Mine
Weight Limit - Bridge over Lower Laurel Creek		
TY I = 5 tons, TY II = 5 tons, TY III = 5 tons, TY IV = 5 tons		
Weight Limit - Bridge over Lower Laurel Creek		
TY I = 10 tons, TY II = 10 tons, TY III = 10 tons, TY IV = 10 tons		
* Olivville-Coal Branch Road		
CR 5311	0.0 KY 1	0.3 Mine

LESLIE COUNTY

ROAD	FROM	TO
* Daniel Boone Parkway	35.9 Clay CO LN	51.0 Perry CO LN
* US 421	0.0 Harlan CO LN	6.3 Mine
	20.6 KY 2431	22.6 KY 18
	26.8 Wet Rockhouse Branch	35.4 Clay CO LN
* KY 80	0.0 US 421	9.7 Perry CO LN
Weight Limit - Bridge over Cutshin Creek @ milepoint 5.15		
TY I = 20 tons, TY II = 27 tons, TY III = 28 tons, TY IV = 43 tons		
Weight Limit - Bridge over Wooton Creek @ milepoint 6.12		
TY I = 20 tons, TY II = 29 tons, TY III = 30 tons, TY IV = 46 tons		
Weight Limit - Bridge over MacIntosh Creek @ milepoint 8.84		
TY I = 20 tons, TY II = 25 tons, TY III = 26 tons, TY IV = 42 tons		
* KY 118	0.0 US 421	3.5 Daniel Boone PKWY
* KY 699	0.0 KY 80	13.6 Old Big Rock RD
Weight Limit - Bridge over Cutshin Creek @ milepoint 1.96		
TY I = 20 tons, TY II = 35 tons, TY III = 36 tons, TY IV = 43 tons		
Weight Limit - Bridge over Maggard Creek @ milepoint 8.14		
TY I = 20 tons, TY II = 22 tons, TY III = 22 tons, TY IV = 22 tons		
	15.2 Mine	16.0 Perry CO LN
* KY 1807	0.0 KY 80	3.6 Mine Access RD
* KY 2008	0.0 KY 2009	3.0 Mine Access RD
	5.2 Mine	8.2 Harlan CO LN
* KY 2009	0.0 Harlan CO LN	5.4 Bledsoe Tipple
Weight Limit - Bridge over Greasy Creek @ milepoint 3.58		
TY I = 8 tons, TY II = 8 tons, TY III = 8 tons, TY IV = 8 tons		
* KY 2057	0.0 KY 699	3.1 Bear BR RD
* KY 2431	0.0 US 421	0.1 High School
Weight Limit - Bridge over Middle Fork Kentucky River @ milepoint 0.01		
TY I = 20 tons, TY II = 27 tons, TY III = 28 tons, TY IV = 32 tons		
Wendover Road		
CR 5001	0.0 KY 2431	1.6 Hurricane Creek RD

ADMINISTRATIVE REGISTER - 2857

* Hurricane Creek Road		
CR 5002	2.2 Camp Creek RD	3.3 Wendover RD
* Camp Creek Road		
CR 5005	0.0 Hurricane Creek RD	0.7 Tipple Access
* Bear Branch Road		
CR 5018	0.0 KY 2057	1.4 Mine & Perry CO LN
* Bailey Branch Road		
CR 5027	0.0 KY 1807	0.6 Mine
* Long Branch Road		
CR 5118	0.0 KY 699	0.2 Mine
* Old Big Rock Road		
CR 5126	0.0 KY 699	0.6 Right Fork of Cutshin RD
Weight Limit - Bridge over Cutshin Creek		
TY I = 18 tons, TY II = 18 tons, TY III = 18 tons, TY IV = 18 tons		
* Right Fork of Cutshin Road		
CR 5128	0.0 Old Big Rock RD	3.7 Mine
* Abner Branch Road		
CR 5133	0.0 Harlan CO LN	1.3 KY 2008
* White Oak Road		
CR 5135	0.0 KY 2008	0.8 Mine
* Phillips Fork Road		
CR 5225	5.0 Mine RD	5.2 Mine RD

LETCHER COUNTY

ROAD	FROM	TO
* US 23	0.0 Virginia State LN	7.1 Pike CO LN
Weight Limit - Bridge over Elkhorn Creek @ milepoint 5.83		
TY I = 20 tons, TY II = 37 tons, TY III = 38 tons, TY IV = 48 tons		
* US 119	0.0 Harlan CO LN	7.0 Scotia Mine Tipple
	20.7 KY 1862	27.7 US 23
* KY 7	0.0 Perry CO LN	25.2 KY 317
Weight Limit - Bridge over Line Fork @ milepoint 0.17		
TY I = 20 tons, TY II = 25 tons, TY III = 29 tons, TY IV = 34 tons		
Weight Limit - Bridge over North Fork Kentucky River @ milepoint 2.61		
TY I = 20 tons, TY II = 32 tons, TY III = 33 tons, TY IV = 48 tons		
Weight Limit - Bridge over Elk Creek @ milepoint 5.28		
TY I = 20 tons, TY II = 36 tons, TY III = 38 tons, TY IV = 60 tons		
Weight Limit - Bridge over Gaudill Branch @ milepoint 8.04		
TY I = 20 tons, TY II = 41 tons, TY III = 44 tons, TY IV = 60 tons		
Weight Limit - Bridge over Rockhouse Creek @ milepoint 22.31		
TY I = 20 tons, TY II = 39 tons, TY III = 39 tons, TY IV = 60 tons		
Weight Limit - Bridge over Rockhouse Creek @ milepoint 24.78		
TY I = 20 tons, TY II = 35 tons, TY III = 37 tons, TY IV = 48 tons		
* KY 15	2.7 KY 931	9.2 KY 7
	9.2 KY 7	10.7 Knott CO LN
* KY 160	13.4 Lucky Branch RD	21.8 KY 15
Weight Limit - Bridge over Kings Creek @ milepoint 14.73		
TY I = 20 tons, TY II = 32 tons, TY III = 33 tons, TY IV = 51 tons		
* KY 317	0.0 KY 805	0.4 Mine
	1.0 KY 343	8.9 KY 7
* KY 343	0.0 KY 317	1.5 #2 Hollow Road
Weight Limit - Bridge over Yount's Fork Creek @ milepoint 0.08		
TY I = 20 tons, TY II = 22 tons, TY III = 22 tons, TY IV = 22 tons		
Weight Limit - Bridge over Wright's Fork @ milepoint 0.46		
TY I = 20 tons, TY II = 22 tons, TY III = 22 tons, TY IV = 22 tons		
Weight Limit - Bridge over Wright's Fork @ milepoint 0.65		
TY I = 20 tons, TY II = 22 tons, TY III = 22 tons, TY IV = 22 tons		
* KY 588	3.7 Tolson Loading	5.0 KY 160
	5.0 KY 160	11.0 Mine
* KY 805	0.0 US 119	3.1 KY 317
* KY 931	7.7 Hampton Branch RD	*
	16.4 Clay Hollow	18.4 KY 7
* KY 1103	6.0 Private Haul RD	8.2 Tolby Branch RD
* KY 1410	0.0 Knott CO LN	1.6 KY 7
* KY 1862	1.2 KY 3410	1.7 US 119
	6.4 Mine	9.9 KY 931
* KY 3410	0.0 Cram Creek-Pert Creek RD	1.1 KY 1862
* Clay Hollow Road		
CR 5010	0.0 KY 931	0.2 Golden Oak Mine
* Beaverdam Branch Road		
CR 5047	0.0 KY 7	2.7 Mine
* Bottom Fork Road		
CR 5068L	0.2 Tammy Ann Mine	0.7 #2 Hollow Road
* #2 Hollow Road		
CR 5068M	0.0 Bottom Fork Road	0.6 KY 343

ADMINISTRATIVE REGISTER - 2858

* Marshall Branch Road		
CR 5103	0.0 Pike CO LN	0.3 Pike CO LN
* Cram Creek Road		
CR 5169	0.9 Wampler Bros Mine	1.4 KY 3410
* Kingdom Come Creek Road		
CR 5229	0.0 Ky 588	1.2 Lake Coal Mine
Weight Limit - Bridge over Kingdom Come Creek		
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
* Big Branch-Tolson Branch Road		
CR 5258	0.0 KY 588	1.4 Lake Coal Mine
* Whitaker Branch Road		
CR 5259	1.4 Mine	2.5 Big BR-Tolson BR RD
* Defeated Creek Road		
CR 5265	5.1 Southeast Mine	5.6 KY 1103
Weight Limit - Bridge over Line Fork Creek		
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
* Lucky Branch Road		
CR 5272	0.0 KY 160	0.4 Lake Coal Mine
* Johnson Branch Road		
CR 5309	0.0 KY 160	0.3 Whitaker Mine
* Bee Tree Branch Road		
CR 5311	0.0 KY 160	1.0 Lake Coal Mine
* Hollybush Branch Road		
CR 5312	0.0 KY 160	0.4 Golden Oak Mine
* Stamper's Branch Road		
CR 5335	0.0 KY 7	0.8 Whitaker Mine
* Hicks Branch Road		
CR 5338	0.0 KY 7	0.1 Isom #2 Tipple
Weight Limit - Bridge over Rockhouse Creek		
TY I = 9 tons, TY II = 9 tons, TY III = 9 tons, TY IV = 9 tons		
* Caudill Creek Road		
CR 5354	0.0 KY 7	2.3 Golden Oak Mine

LINCOLN COUNTY

ROAD	FROM	TO
* US 27	17.2 US 150	18.0 US 150 Bypass
* US 150	0.0 Boyle CO LN	4.3 US 150 Bypass
Weight Limit - Bridge over Hanging Fork Creek @ milepoint 1.81		
TY I = 20 tons, TY II = 43 tons, TY III = 44 tons, TY IV = 58 tons		
	6.4 US 27	19.7 Rockcastle CO LN
Weight Limit - Bridge over Logans Creek @ milepoint 7.04		
TY I = 20 tons, TY II = 36 tons, TY III = 38 tons, TY IV = 60 tons		
Weight Limit - Bridge over L&N RR @ milepoint 18.62		
TY I = 20 tons, TY II = 36 tons, TY III = 39 tons, TY IV = 60 tons		
Weight Limit - Bridge over Turkey Creek @ milepoint 19.35		
TY I = 20 tons, TY II = 42 tons, TY III = 44 tons, TY IV = 60 tons		
* US 150B	0.0 US 150	1.1 US 27

LIVINGSTON COUNTY

ROAD	FROM	TO
* US 62	0.0 Marshall CO LN	2.9 Lyon CO LN
Weight Limit - Bridge over Kentucky Lake Dam Lock @ milepoint 0.31		
TY I = 20 tons, TY II = 37 tons, TY III = 38 tons, TY IV = 55 tons		
Weight Limit - Bridge over I.C. Gulf R.R. @ milepoint 0.64		
TY I = 20 tons, TY II = 39 tons, TY III = 38 tons, TY IV = 51 tons		
Weight Limit - Bridge over Reed's Haul Road @ milepoint 0.97		
TY I = 20 tons, TY II = 43 tons, TY III = 44 tons, TY IV = 54 tons		
Weight Limit - Bridge over Cumberland River @ milepoint 2.78		
TY I = 20 tons, TY II = 26 tons, TY III = 29 tons, TY IV = 38 tons		
* KY 453	0.5 B R T Dock	2.8 US 62
Weight Limit - Bridge over IC RR @ milepoint 1.92		
TY I = 20 tons, TY II = 46 tons, TY III = 47 tons, TY IV = 60 tons		

LOGAN COUNTY

ROAD	FROM	TO
* US 68	11.2 US 79 & KY 100	26.6 Warren CO LN
* US 79	0.0 Todd CO LN	12.9 US 68
Weight Limit - Bridge over Vick's Branch @ milepoint 2.91		
TY I = 20 tons, TY II = 40 tons, TY III = 40 tons, TY IV = 60 tons		
Weight Limit - Bridge over Branch of Whippoorwill Creek @ milepoint 4.64		
TY I = 20 tons, TY II = 38 tons, TY III = 40 tons, TY IV = 60 tons		
Weight Limit - Bridge over Dry Fork @ milepoint 5.93		
TY I = 20 tons, TY II = 37 tons, TY III = 38 tons, TY IV = 54 tons		

ADMINISTRATIVE REGISTER - 2859

LYON COUNTY	ROAD	FROM	TO
* Western Kentucky Parkway			5.6 Caldwell CO LN
		3.7 US 62	12.2 Western Kentucky Parkway
* US 62		0.0 Livingston CO LN	

McCREARY COUNTY	ROAD	FROM	TO
* US 27		0.0 Tennessee State LN	22.7 Pulaski CO LN
* KY 92		17.3 Railroad DR	28.4 Whitley CO LN
Weight Limit - Bridge over Marsh Creek @ milepoint 25.42			
TY I = 20 tons, TY II = 37 tons, TY III = 39 tons, TY IV = 59 tons			
* KY 1673		0.0 Whitley CO LN	0.6 Whitley CO LN
* Railroad Drive			0.3 Revelo Prep Plant
CR 5203		0.0 KY 92	
* Bauer Road			3.8 Pulaski CO LN
CR 5333		0.0 US 27	

McLEAN COUNTY	ROAD	FROM	TO
* KY 81		12.8 KY 1792	18.3 Daviess CO LN
* KY 136		11.1 KY 1792	12.9 KY 81
Weight Limit - Bridge over Long Falls Creek @ milepoint 11.26			
TY I = 20 tons, TY II = 38 tons, TY III = 40 tons, TY IV = 56 tons			
* KY 140		0.0 KY 256	0.1 KY 1792
* KY 256		5.6 Mine	5.9 KY 140
* KY 1792		0.0 KY 140	2.6 KY 136
Weight Limit - Bridge over Porters Drainage Ditch @ milepoint 0.92			
TY I = 20 tons, TY II = 28 tons, TY III = 30 tons, TY IV = 48 tons			

MADISON COUNTY	ROAD	FROM	TO
* KY 627		0.1 I-75	6.2 Clark CO LN
Weight Limit - Bridge over I-75 @ milepoint 0.11			
TY I = 20 tons, TY II = 44 tons, TY III = 45 tons, TY IV = 60 tons			

MAGOFFIN COUNTY	ROAD	FROM	TO
* Mountain PKWY (KY 402)			75.6 US 460
		71.7 KY 30	
Weight Limit - Bridge over Licking River @ milepoint 74.51			
TY I = 20 tons, TY II = 39 tons, TY III = 40 tons, TY IV = 50 tons			
* US 460		0.0 Morgan CO LN	20.4 Johnson CO LN
Weight Limit - Bridge over Licking River @ milepoint 1.75			
TY I = 20 tons, TY II = 37 tons, TY III = 38 tons, TY IV = 42 tons			
Weight Limit - Bridge over State Road Fork Creek @ milepoint 11.35			
TY I = 20 tons, TY II = 32 tons, TY III = 33 tons, TY IV = 44 tons			
* KY 7		3.2 Mine Access RD	23.9 Mountain Parkway (KY 402)
Weight Limit - Bridge over Licking River @ milepoint 5.79			
TY I = 20 tons, TY II = 33 tons, TY III = 35 tons, TY IV = 57 tons			
* KY 30		4.5 Mine Access RD	8.9 Mountain Parkway (KY 402)
Weight Limit - Bridge over Middle Fork @ milepoint 7.55			
TY I = 20 tons, TY II = 37 tons, TY III = 38 tons, TY IV = 48 tons			
* KY 114		0.0 US 460	5.0 Floyd CO LN
* KY 404		0.0 KY 7	2.7 Floyd CO LN
* KY 542		0.0 Breathitt CO LN	5.8 KY 7
* KY 867		4.0 Mine Access RD	5.7 KY 7
		5.7 KY 7	7.4 Hickory Tipple
* KY 1471		0.0 Big Half Mountain RD	4.3 KY 7
Weight Limit - Bridge over Licking River @ milepoint 3.96			
TY I = 15 tons, TY II = 15 tons, TY III = 15 tons, TY IV = 15 tons			
* KY 1635		0.0 Tiptop-Bettsmann RD	5.7 KY 867
* Brushy Fork Road			1.0 Mine
CR 5132		0.0 KY 7	
* Bull Creek Road			0.4 Mine
CR 5140		0.0 KY 7	
* Jake Wireman Road			1.0 Mines
CR 5144		0.0 KY 1502	
* Beetree Branch Road			0.7 Mine
CR 5145		0.0 KY 7	
* Big Half Mountain Road			0.5 KY 1471
CR 5148		0.0 Mine	
Weight Limit - Bridge over Big Half Mountain Creek			
TY I = 5 tons, TY II = 5 tons, TY III = 5 tons, TY IV = 5 tons			

ADMINISTRATIVE REGISTER - 2860

* Wright Oakley Creek Road
CR 5221 0.0 KY 1635 0.3 Mine
Weight Limit - Bridge over Oakley Creek
TY I = 6 tons, TY II = 6 tons, TY III = 6 tons, TY IV = 6 tons]

* Tiptop-Bettsmann Branch Road
CR 5225B 0.0 Breathitt CO LN 0.7 KY 1635

MARSHALL COUNTY

ROAD	FROM	TO
* US 62	7.2 KY 95	12.1 Livingston CO LN
Weight Limit - Bridge over KY 282 @ milepoint 8.67		
TY I = 20 tons, TY II = 40 tons, TY III = 39 tons, TY IV = 53 tons		
Weight Limit - Bridge over Cypress Drainage Ditch @ milepoint 9.48		
TY I = 20 tons, TY II = 40 tons, TY III = 40 tons, TY IV 53 tons		
Weight Limit - Bridge over Tennessee River Dam Gates @ milepoint 11.94		
TY I = 20 tons, TY II = 35 tons, TY III = 37 tons, TY IV 48 tons		
* US 68	9.7 US 641 (North)	10.1 US 641 (South)
* US 641	0.0 Calloway CO LN	12.9 US 68 (Southeast)
Weight Limit - Bridge over Town Creek @ milepoint 7.94		
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
Weight Limit - Bridge over Town Creek @ milepoint 7.95		
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV 40 tons		
	12.9 US 68 (Northwest)	19.4 US 62
* KY 95	4.1 US 62	7.3 KY 1523
Weight Limit - Bridge over Cypress Creek @ milepoint 6.32		
TY I = 20 tons, TY II = 45 tons, TY III = 47 tons, TY IV 60 tons		

MARTIN COUNTY

ROAD	FROM	TO
* KY 3	0.0 Johnson CO LN	11.6 KY 645 (North)
	18.5 Rockcastle BR RD	23.2 Lawrence CO LN
* KY 40	5.3 KY 1224	9.1 KY 645 (West)
Weight Limit - Bridge over Rockcastle Fork @ milepoint 6.95		
TY I = 20 tons, TY II = 35 tons, TY III = 36 tons, TY IV = 53 tons		
	10.8 KY 645 (East)	20.3 West Virginia ST LN
* KY 292	0.0 Pike CO LN	13.2 KY 40
Weight Limit - Bridge over Wolfe Creek @ milepoint 11.99		
TY I = 20 tons, TY II = 35 tons, TY III = 36 tons, TY IV = 43 tons		
	28.5 Mine	28.9 KY 3
* KY 645	0.0 Lawrence CO LN	6.6 KY 3 (North)
	6.6 KY 3 (South)	7.6 KY 40 (East)
* KY 1224	1.3 Mine	5.2 KY 40
Weight Limit - Bridge over Rockcastle Fork @ milepoint 4.32		
TY I = 20 tons, TY II = 39 tons, TY III = 39 tons, TY IV = 55 tons		
* KY 1439	0.0 Pike CO LN	11.2 KY 1714
Weight Limit - Bridge over Wolfe Creek @ milepoint 1.83		
TY I = 20 tons, TY II = 31 tons, TY III = 32 tons, TY IV = 45 tons		
* KY 1714	3.6 KY 1439	9.2 KY 292
* KY 2032	0.0 KY 1439	4.0 KY 40
* Emily Branch Road		
CR 5105	3.1 Private Haul RD	3.2 Private Haul RD 1.0 miles SW of Oppy
* Emily-Long Branch RD		
CR 5107	0.9 Private Haul RD	1.0 Private Haul RD
* Laurel Fork-Wolf Creek Road		
CR 5202	0.0 KY 1439	7.8 Private Access Road
* Middle Fork of Wolf Creek Road		
CR 5205	0.0 Middle Fork of Rockcastle Creek RD	3.7 Mine
* Middle Fork of Rockcastle Creek Road		
CR 5206	0.0 KY 3	0.2 Mid FK Wolf CK RD
* Mudlick Branch Road		
CR 5210	0.0 KY 3	0.8 Mine
* Peter Cave Branch Road		
CR 5315	0.0 KY 3	0.5 Mine
* Rockcastle Branch Road		
CR 5317	0.0 KY 3	0.5 Mine

MASON COUNTY

ROAD	FROM	TO
* US 62	12.7 US 68	17.4 KY 10 (West)
* US 68	0.0 Fleming CO LN	11.9 US 62
* KY 8	0.0 Bracken CO LN	11.0 KY 10
Weight Limit - Bridge over Phillips Creek @ milepoint 7.11		
TY I = 20 tons, TY II = 32 tons, TY III = 33 tons, TY IV = 39 tons		

ADMINISTRATIVE REGISTER - 2861

* KY 10	9.7 US 68	15.9 Spring Creek RD
Weight Limit - Bridge over L&N RR @ milepoint 9.79		
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
Weight Limit - Bridge over Bull Fork @ milepoint 13.30		
TY I = 20 tons, TY II = 40 tons, TY III = 40 tons, TY IV = 60 tons		
* KY 11	0.0 Fleming CO LN	11.3 US 62
Weight Limit - Bridge over Mill Creek @ milepoint 0.16		
TY I = 20 tons, TY II = 37 tons, TY III = 39 tons, TY IV = 59 tons		
* Spring Creek Road		1.8 Cabin Creek PK
CR 5012	0.0 KY 10	
Weight Limit - Bridge over Spring Creek 1.2 miles east of Plumville		
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
Weight Limit - Bridge over Spring Creek @ Cabin Creek Pike		
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
* Cabin Creek Pike		0.7 Dravo Lime CO
CR 5013	0.0 Spring Creek RD	

MERCER COUNTY

ROAD	FROM	TO
* Bluegrass PKWY	52.3 Anderson CO LN	56.3 Anderson CO LN
Weight Limit - Bridge over Salt River @ milepoint 56.27		
TY I = 20 tons, TY II = 42 tons, TY III = 43 tons, TY IV = 54 tons		
* US 127	0.0 Boyle CO LN	4.4 US 68

MONTGOMERY COUNTY

ROAD	FROM	TO
* US 460	7.3 KY 11 (North)	8.3 KY 686 (North)
* KY 11	0.0 Powell CO LN	9.2 KY 686 (South)
Weight Limit - Bridge over Lulbebrud Creek @ milepoint 3.92		
TY I = 20 tons, TY II = 40 tons, TY III = 42 tons, TY IV = 58 tons		
Weight Limit - Bridge over Lulbebrud Creek @ milepoint 5.38		
TY I = 20 tons, TY II = 39 tons, TY III = 41 tons, TY IV = 60 tons		
	10.0 US 460 (North)	15.4 Bath CO LN
* KY 686	0.0 US 460 (North)	2.7 KY 11 (South)

MORGAN COUNTY

ROAD	FROM	TO
* US 460	20.1 Malone-Jones Creek RD	28.8 Magoffin CO LN
Weight Limit - Bridge over Licking River @ milepoint 23.74		
TY I = 17 tons, TY II = 24 tons, TY III = 25 tons, TY IV = 40 tons		
* KY 172	21.0 Cindas Creek RD	22.3 KY 1614
* Malone-Jones Creek Road		2.0 Mine
CR 5175	0.0 KY 7	

MUHLENBERG COUNTY

ROAD	FROM	TO
* Western Kentucky Parkway	43.4 Hopkins CO LN	57.9 US 431
Weight Limit - Bridge over Pond River Relief @ milepoint 43.60		
TY I = 20 tons, TY II = 39 tons, TY III = 39 tons, TY IV = 60 tons		
Weight Limit - Bridge over KY 175-IC RR - Unnamed Creek @ milepoint 48.05		
TY I = 20 tons, TY II = 41 tons, TY III = 42 tons, TY IV = 60 tons		
Weight Limit - Bridge over KY 181 @ milepoint 52.52		
TY I = 20 tons, TY II = 38 tons, TY III = 39 tons, TY IV = 55 tons		
Weight Limit - Bridge over IC RR @ milepoint 55.51		
TY I = 20 tons, TY II = 42 tons, TY III = 43 tons, TY IV = 59 tons		
Weight Limit - Bridge over L&N RR, Branch Little Cypress Creek @ milepoint 57.58		
TY I = 20 tons, TY II = 45 tons, TY III = 46 tons, TY IV = 60 tons		
* US 62	1.3 Henry Oates RD	10.5 KY 176
Weight Limit - Bridge over Branch of Thompson Creek @ milepoint 3.68		
TY I = 20 tons, TY II = 28 tons, TY III = 31 tons, TY IV = 40 tons		
Weight Limit - Bridge over I.C. & Gulf R.R. @ milepoint 5.40		
TY I = 20 tons, TY II = 42 tons, TY III = 43 tons, TY IV = 57 tons		
	19.2 KY 604	26.0 Ohio CO LN
Weight Limit - Bridge over I.C. RR @ milepoint 24.71		
TY I = 20 tons, TY II = 28 tons, TY III = 28 tons, TY IV = 36 tons		
* US 431	11.5 KY 176	25.5 Mine
Weight Limit - Bridge over Pond Creek @ milepoint 12.45		
TY I = 20 tons, TY II = 39 tons, TY III = 41 tons, TY IV = 60 tons		
Weight Limit - Bridge over Western KY Parkway @ milepoint 17.48		
TY I = 20 tons, TY II = 44 tons, TY III = 46 tons, TY IV = 60 tons		
* KY 70	0.0 Hopkins County Line	14.7 KY 189
(Extended weights shall be available only for TY IV vehicles.)		
23.6 Barge Dock		23.8 Butler CO LN

ADMINISTRATIVE REGISTER - 2862

Weight Limit - Bridge over Mud River @ milepoint 23.75
 TY I = 20 tons, TY II = 38 tons, TY III = 39 tons, TY IV = 46 tons
 * KY 176 0.0 US 62 12.5 T V A Paradise Plant
 Weight Limit - Bridge over Pond Creek @ milepoint 4.29
 TY I = 20 tons, TY II = 40 tons, TY III = 40 tons, TY IV = 60 tons
 * KY 189 6.0 Mine Access 8.8 US 62 (South Junction)
 14.0 US 62 15.3 KY 70 (North Junction)
 (Extended weights shall be available only for TY IV vehicles.)
 * KY 277 2.6 KY 602 3.8 KY 1379
 * KY 602 0.0 KY 277 0.7 US 431
 * KY 604 0.0 US 431 1.0 US 62
 Weight Limit - Bridge over Western Kentucky Parkway @ milepoint 0.34
 TY I = 20 tons, TY II = 28 tons, TY III = 29 tons, TY IV = 39 tons
 * KY 1379 0.0 KY 277 0.5 Prep Plant Access
 Weight Limit - Bridge over Unnamed Stream @ milepoint 0.25
 TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons
 * Wilcox Cemetery Road
 CR 5003 0.0 US 421 0.6 Mine
 * Green River Power Plant Road
 CR 5045 0.0 US 431 0.7 KY Utilities Plant
 * Henry Oates Road
 CR 5392 0.0 US 62 2.3 Mine

NELSON COUNTY

ROAD	FROM	TO
* Bluegrass PKWY	33.3 KY 55	39.3 Washington CO LN
Weight Limit - Bridge over Chaplin River @ milepoint 39.25		
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
* US 31E	15.4 KY 245	27.6 Spencer CO LN
Weight Limit - Bridge over Powell Run @ milepoint 26.99		
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
* US 62	15.9 KY 245	25.0 KY 55
Weight Limit - Bridge over East Fork of Simpson Creek @ milepoint 24.96		
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
* KY 55	3.1 Bluegrass Parkway	3.8 US 62
Weight Limit - Bridge over East Fork of Simpson Creek @ milepoint 3.77		
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
* KY 245	0.0 US 62	1.0 US 31E

NICHOLAS COUNTY

ROAD	FROM	TO
* US 68	0.0 Bourbon CO LN	12.2 Robertson CO LN
Weight Limit - Bridge over Stony Creek @ milepoint 9.72		
TY I = 20 tons, TY II = 36 tons, TY III = 38 tons, TY IV = 60 tons		

OHIO COUNTY

ROAD	FROM	TO
* Western KY PKWY	74.6 US 231	76.8 Green River Parkway
Weight Limit - Bridge over US 231 @ milepoint 74.56		
TY I = 20 tons, TY II = 43 tons, TY III = 45 tons, TY IV = 60 tons		
Weight Limit - Bridge over Arnold-Butler Road @ milepoint 85.72		
TY I = 20 tons, TY II = 42 tons, TY III = 44 tons, TY IV = 60 tons		
* Green River PKW	35.1 Butler CO LN	59.5 Daviess CO LN
Weight Limit - Bridge over Rough River @ milepoint 49.34		
TY I = 20 tons, TY II = 44 tons, TY III = 45 tons, TY IV = 54 tons		
* US 62	0.0 Muhlenberg CO LN	19.0 Horton-MT Pleasant RD
Weight Limit - Bridge over Green River @ milepoint 0.01		
TY I = 20 tons, TY II = 27 tons, TY III = 32 tons, TY IV = 38 tons		
Weight Limit - Bridge over Lewis Creek @ milepoint 1.45		
TY I = 20 tons, TY II = 32 tons, TY III = 32 tons, TY IV = 57 tons		
Weight Limit - Bridge over Branch of Three Lick Fork @ milepoint 11.91		
TY I = 20 tons, TY II = 33 tons, TY III = 35 tons, TY IV = 49 tons		
Weight Limit - Bridge over Three Lick Fork @ milepoint 12.03		
TY I = 20 tons, TY II = 36 tons, TY III = 38 tons, TY IV = 60 tons		
Weight Limit - Bridge over Muddy Creek @ milepoint 12.30		
TY I = 20 tons, TY II = 37 tons, TY III = 39 tons, TY IV = 59 tons		
Weight Limit - Bridge over Elmlick Creek @ milepoint 14.95		
TY I = 20 tons, TY II = 37 tons, TY III = 38 tons, TY IV = 53 tons		
* US 231	0.0 Butler CO LN	10.0 US 62 (South)
	10.0 US 62 (North)	24.3 Daviess CO LN
Weight Limit - Bridge over North Fork Muddy Creek @ milepoint 12.30		
TY I = 20 tons, TY II = 34 tons, TY III = 36 tons, TY IV = 59 tons		
Weight Limit - Bridge over Barnett Creek @ milepoint 20.30		
TY I = 20 tons, TY II = 42 tons, TY III = 44 tons, TY IV = 60 tons		

ADMINISTRATIVE REGISTER - 2863

* KY 69	6.9 Mine	7.6 KY 85 (South)
	13.7 US 231 (South)	15.4 Country Club Road
* KY 85	7.2 KY 69 (East)	11.3 US 62
	Weight Limit - Bridge over Branch West Fork Lewis Creek @ milepoint 9.62	
	TY I = 20 tons, TY II = 33 tons, TY III = 35 tons, TY IV = 56 tons	
* KY 1414	14.0 Sugar Grove RD	15.7 KY 54
* KY 1903	0.0 US 62	0.9 Lewis Creek Dock
* Sunnydale Road		
CR 5076	8.3 Sugar Grove RD	8.4 Sugar Grove RD
* Sugar Grove Road		
CR 5077	0.0 KY 1414	1.5 Sunnydale RD
	1.5 Sunnydale RD	2.0 Mine
* Horton-Mount Pleasant Road		
CR 5125	0.0 US 62	0.1 Southwind Tipple
	Weight Limit - Bridge over Pigeon Creek	
	TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons	
* Whoopee Hill Road		
CR 5356	0.0 US 231	1.5 Rone RD
* Rone Road		
CR 5356A	0.0 Whoopee Hill RD	0.5 Mine
* Maple Lake Road (Old Martin-Dodson Cemetery Road)		
CR 5373	0.1 US 231	0.7 Mine

OWSLEY COUNTY

ROAD	FROM	TO
* KY 11	0.0 Clay CO LN	10.8 KY 1938
	Weight Limit - Bridge over Sexton Creek @ milepoint 1.80	
	TY I = 20 tons, TY II = 39 tons, TY III = 40 tons, TY IV = 53 tons	
	Weight Limit - Bridge over Island Creek @ milepoint 4.02	
	TY I = 20 tons, TY II = 41 tons, TY III = 42 tons, TY IV = 56 tons	
	Weight Limit - Bridge over White Oak Creek @ milepoint 6.18	
	TY I = 20 tons, TY II = 34 tons, TY III = 35 tons, TY IV = 49 tons	
* KY 30	0.0 Jackson CO LN	10.8 KY 847
	Weight Limit - Bridge over Little Sturgeon Creek @ milepoint 3.42	
	TY I = 20 tons, TY II = 39 tons, TY III = 41 tons, TY IV = 60 tons	
	Weight Limit - Bridge over Little Sturgeon Creek @ milepoint 4.88	
	TY I = 20 tons, TY II = 39 tons, TY III = 41 tons, TY IV = 60 tons	
	Weight Limit - Bridge over Little Sturgeon Creek @ milepoint 5.15	
	TY I = 20 tons, TY II = 29 tons, TY III = 30 tons, TY IV = 49 tons	
* KY 847	4.3 Bowman Branch RD	7.2 KY 30
	Weight Limit - Bridge over Buck Creek @ milepoint 6.34	
	TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons	
* Hurricane Branch Road		
CR 5301	0.0 Bowman Branch Road	1.1 Denham & Lewis Mine
* Bowman Branch Road		
CR 5303	0.0 KY 847	0.3 Hurricane Branch RD

PENDLETON COUNTY

ROAD	FROM	TO
* US 27	0.0 Harrison CO LN	19.4 Campbell CO LN
	Weight Limit - Bridge over Blanket Creek near Four Oak @ milepoint 4.41	
	TY I = 20 tons, TY II = 40 tons, TY III = 43 tons, TY IV = 60 tons	
	Weight Limit - Bridge over L&N RR @ milepoint 7.57	
	TY I = 20 tons, TY II = 31 tons, TY III = 33 tons, TY IV = 54 tons	
	Weight Limit - Bridge over South Fork of Licking River @ milepoint 8.18	
	TY I = 20 tons, TY II = 45 tons, TY III = 46 tons, TY IV = 60 tons	
	Weight Limit - Bridge over L&N RR-CR 5011-Kennedy Br. @ milepoint 15.78	
	TY I = 20 tons, TY II = 39 tons, TY III = 40 tons, TY IV = 60 tons	
* KY 8	2.2 Black River Lime	4.3 Bracken CO LN

PERRY COUNTY

ROAD	FROM	TO
* Daniel Boone Parkway		
	51.0 Leslie CO LN	59.1 KY 15
* KY 7	0.0 KY 15	13.6 Letcher CO LN
	Weight Limit - Bridge over Maces @ milepoint 2.44	
	TY I = 20 tons, TY II = 39 tons, TY III = 40 tons, TY IV = 53 tons	
* KY 15	0.0 Knott CO LN	25.2 Breathitt CO LN
	Weight Limit - Bridge over Main Street, Carr Fork, & L&N RR @ milepoint 0.20	
	TY I = 20 tons, TY II = 40 tons, TY III = 42 tons, TY IV = 55 tons	
	Weight Limit - Bridge over Carr Fork & L&N RR @ milepoint 3.37	
	TY I = 20 tons, TY II = 45 tons, TY III = 48 tons, TY IV = 55 tons	
	Weight Limit - Bridge over L&N RR @ milepoint 13.17	
	TY I = 20 tons, TY II = 45 tons, TY III = 50 tons, TY IV = 55 tons	
	Weight Limit - Bridge over KY 80, N Fork KY River @ milepoint 13.57	

ADMINISTRATIVE REGISTER - 2864

TY I = 20 tons, TY II = 44 tons, TY III = 45 tons, TY IV = 49 tons
 Weight Limit - Bridge over First Creek & L&N RR @ milepoint 15.95
 TY I = 20 tons, TY II = 41 tons, TY III = 42 tons, TY IV = 56 tons
 * KY 28 3.5 Buckhorn-Breathitt RD 6.0 Breathitt CO LN
 6.0 Breathitt CO LN 18.1 KY 15
 Weight Limit - Bridge over Grapevine Creek @ milepoint 15.02
 TY I = 20 tons, TY II = 39 tons, TY III = 41 tons, TY IV = 60 tons
 * KY 80 0.0 Leslie CO LN 7.9 KY 15 Underpass
 Weight Limit - Bridge over Right Fork of Big Creek @ milepoint 1.57
 TY I = 20 tons, TY II = 25 tons, TY III = 28 tons, TY IV = 46 tons
 Weight Limit - Bridge over Big Creek @ mile point 5.27
 TY I = 20 tons, TY II = 27 tons, TY III = 30 tons, TY IV = 44 tons
 Weight Limit - Bridge over L & N R.R. & Kentucky River @ milepoint 7.09
 TY I = 20 tons, TY II = 37 tons, TY III = 39 tons, TY IV = 43 tons
 7.9 D Boone Parkway & KY 15 15.9 Knott CO LN
 * KY 451 5.0 Mine 7.7 Daniel Boone Parkway
 7.7 Daniel Boone PKWY 7.8 KY 80
 7.8 KY 80 10.9 KY 2021
 * KY 463 1.4 Jackson Fork RD 6.5 KY 699
 Weight Limit - Bridge over Leatherwood Creek @ milepoint 6.34
 TY I = 20 tons, TY II = 42 tons, TY III = 44 tons, TY IV = 60 tons
 * KY 476 2.0 KY 550 2.4 Black Gold Tipple
 Weight Limit - Bridge over Lotts Creek @ milepoint 2.07
 TY I = 20 tons, TY II = 19 tons, TY III = 20 tons, TY IV = 30 tons
 Weight Limit - Bridge over Lotts Creek @ milepoint 2.22
 TY I = 20 tons, TY II = 21 tons, TY III = 22 tons, TY IV = 29 tons
 2.9 KY 1088 18.1 Mine
 Weight Limit - Bridge over Jake's Creek @ milepoint 3.65
 TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons
 Weight Limit - Bridge over Troublesome Creek @ milepoint 8.72
 TY I = 20 tons, TY II = 24 tons, TY III = 27 tons, TY IV = 38 tons
 Weight Limit - Bridge over Ball Fork @ milepoint 12.36
 TY I = 20 tons, TY II = 37 tons, TY III = 38 tons, TY IV = 54 tons
 22.2 Buckhorn Creek Road 22.3 Breathitt CO LN
 * KY 550 0.0 KY 15 & KY 80 2.5 KY 476
 Weight Limit - Bridge over Big Leather Creek @ milepoint 2.4
 TY I = 20 tons, TY II = 35, TY III = 36 tons, TY IV = 48 tons
 * KY 699 0.0 Leslie CO LN 4.8 KY 463
 Weight Limit - Bridge over Leatherwood Creek @ milepoint 4.75
 TY I = 20 tons, TY II = 33 tons, TY III = 35 tons, TY IV = 57 tons
 6.5 Beech Fork RD 12.5 KY 7
 Weight Limit - Bridge over Leatherwood Creek @ milepoint 8.01
 TY I = 20 tons, TY II = 38 tons, TY III = 38 tons, TY IV = 60 tons
 Weight Limit - Bridge over Big Leather Creek @ milepoint 10.77
 TY I = 20 tons, TY II = 41 tons, TY III = 42 tons, TY IV = 60 tons
 * KY 1087 0.0 KY 476 0.7 Lick Branch RD
 * KY 1088 0.0 KY 476 1.1 Mine
 * KY 1095 0.4 Emmons Tipple 2.9 KY 15
 Weight Limit - Bridge over Carr Fork @ milepoint 2.55
 TY I = 18 tons, TY II = 19 tons, TY III = 22 tons, TY IV = 31 tons
 * KY 1096 0.0 KY 80 4.0 Whitaker Tipple
 Weight Limit - Bridge over Big Creek @ milepoint 0.02
 TY I = 20 tons, TY II = 40 tons, TY III = 38 tons, TY IV = 46 tons
 Weight Limit - Bridge over Big Creek @ milepoint 3.55
 TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons
 * KY 1146 2.2 Jakes Fork Tipple 2.7 KY 476
 Weight Limit - Bridge over Trace Fork @ milepoint 2.69
 TY I = 20 tons, TY II = 28 tons, TY III = 31 tons, TY IV = 31 tons
 2.7 KY 476 4.0 KY 80
 4.0 KY 80 4.6 Buckhorn Prep Plant
 * KY 2021 1.1 Beech Oak Branch 3.4 KY 451
 * KY 3196 0.0 Beech Fork RD 0.1 KY 699
 Weight Limit - Bridge over Leatherwood Creek @ milepoint 0.01
 TY I = 20 tons, TY II = 36 tons, TY III = 38 tons, TY IV = 60 tons
 * KY 3348 0.1 Little Leatherwood Creek RD 3.9 KY 699
 Weight Limit - Bridge over Little Leatherwood Creek @ milepoint 1.44
 TY I = 20 tons, TY II = 22 tons, TY III = 22 tons, TY IV = 22 tons
 Weight Limit - Bridge over Little Leatherwood Creek @ milepoint 2.32
 TY I = 20 tons, TY II = 22 tons, TY III = 22 tons, TY IV = 22 tons
 * Wayne Davidson Road
 CR 5005 0.3 Cumberland Elk Tipple 0.5 KY 15
 * Dwarf-Engle Fork Road
 CR 5032 0.0 KY 476 0.1 Highland Coal Mine
 * Coates Branch Road
 CR 5044 0.0 Ky 476 0.5 Ball Branch Mine

ADMINISTRATIVE REGISTER - 2865

* Lick Branch Road CR 5045	0.0 KY 1087	0.6 Star Fire Mine
* Buckhorn Creek Road CR 5070	0.0 KY 476	0.1 Breathitt CO LN
Weight Limit - Bridge over Troublesome Creek TY I = 16 tons, TY II = 16 tons, TY III = 16 tons, TY IV = 16 tons		
* Old KY 15 Loop #1 Road CR 5102	0.0 KY 15	0.2 Kentucky Prince Tipple
* Oakwood Avenue-Stacy Branch Road CR 5117	0.0 Main ST (Vicco)	1.3 Chester Tipple
* Main Street (Vicco) CR 5118B	0.0 KY 1095	0.2 Oakwood Ave-Stacey Branch RD
* Kelly Fork Road CR 5119	0.0 KY 1095	0.4 Emmons Tipple
* Straight Fork Road CR 5140	0.0 Little Leatherwood Creek RD	0.5 Mine
* Beech Fork Road CR 5146	0.0 KY 3196	3.0 Lee Mine
* Jackson Fork Road CR 5152	0.0 KY 463	0.4 Blue Diamond Mine
* Beech Oak Branch Road CR 5213	0.0 KY 2021	0.9 Mine
* Sam Campbell Branch Road (Old Pigeon Roose-Hull School RD) CR 5319	0.0 KY 15	4.8 Dun Raven Tipple
* Clear Fork Road CR 5320	0.0 KY 28	2.3 Sam Campbell BR RD
* Barwick Road CR 5330	0.0 KY 28	0.8 Breathitt CO LN
* Right Fork Spencer Creek Road CR 5332	0.0 Spencer Creek-Napfor BR RD	1.0 Vires Coal Mine
* Spencer Creek-Napfor Branch Road CR 5333	0.0 KY 28	1.9 Pine Branch Mine
* Buckhorn-Breathitt County Line Road CR 5349	0.0 KY 28	0.4 Mine

PIKE COUNTY

ROAD	FROM	TO
* US 23	0.0 Letcher CO LN	39.6 Floyd CO LN
(Via Old US 23 at Pikeville, Does not include new cut through)		
Weight Limit - Bridge over Shelby Creek @ milepoint 17.23 TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
Weight Limit - Bridge over Little Creek @ milepoint 18.12 TY I = 20 tons, TY II = 34 tons, TY III = 33 tons, TY IV = 60 tons		
Weight Limit - Bridge over Shelby Creek @ milepoint 19.75 TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
Weight Limit - Bridge over C&O RR & Levisa Fork @ milepoint 22.00 TY I = 20 tons, TY II = 30 tons, TY III = 31 tons, TY IV = 47 tons		
* New US 23 (Pikeville Cut Through)	0.0 US 23 (South)	2.7 US 23 NW of Pikeville
* US 119	0.0 US 23 (North of Pikeville)	29.7 W. Va. State LN
Weight Limit - Bridge over Raccoon Creek @ milepoint 6.61 TY I = 18 tons, TY II = 20 tons, TY III = 23 tons, TY IV = 40 tons		
Weight Limit - Bridge over John's Creek @ milepoint 7.94 TY I = 20 tons, TY II = 21 tons, TY III = 24 tons, TY IV = 37 tons		
Weight Limit - Bridge over Bent Branch @ milepoint 9.99 TY I = 20 tons, TY II = 35 tons, TY III = 37 tons, TY IV = 60 tons		
Weight Limit - Bridge over Bent Branch @ milepoint 10.23 TY I = 13 tons, TY II = 13 tons, TY III = 13 tons, TY IV = 13 tons		
Weight Limit - Bridge over Bent Branch @ milepoint 10.88 TY I = 12 tons, TY II = 12 tons, TY III = 12 tons, TY IV = 12 tons		
Weight Limit - Bridge over Bent Branch @ milepoint 11.25 TY I = 20 tons, TY II = 35 tons, TY III = 36 tons, TY IV = 60 tons		
Weight Limit - Bridge over Bent Branch @ milepoint 11.40 TY I = 20 tons, TY II = 20 tons, TY III = 23 tons, TY IV = 40 tons		
Weight Limit - Bridge over Bent Branch @ milepoint 11.63 TY I = 11 tons, TY II = 11 tons, TY III = 11 tons, TY IV = 11 tons		
Weight Limit - Bridge over Fork of Big Creek @ milepoint 16.41 TY I = 20 tons, TY II = 35 tons, TY III = 36 tons, TY IV = 60 tons		
Weight Limit - Bridge over Big Creek @ milepoint 17.06 TY I = 20 tons, TY II = 23 tons, TY III = 24 tons, TY IV = 27 tons		
Weight Limit - Bridge over Reed Fork @ milepoint 18.48 TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
Weight Limit - Bridge over Big Creek @ milepoint 20.13 TY I = 20 tons, TY II = 24 tons, TY III = 28 tons, TY IV = 47 tons		

ADMINISTRATIVE REGISTER - 2866

Weight Limit - Bridge over Tug River @ West Virginia State Line @ milepoint 29.7
 TY I = 20 tons, TY II = 45 tons, TY III = 45 tons, TY IV = 52 tons

* Old US 119 0.0 US 23 @ Ferguson Creek 2.8 US 119 West of Zebulon
 * US 460 0.0 US 23 24.0 Virginia State LN

Weight Limit - Bridge over Levisa Fork @ milepoint 4.26
 TY I = 20 tons, TY II = 38 tons, TY III = 39 tons, TY IV = 46 tons

* KY 80 0.0 US 460 6.9 Virginia State LN

Weight Limit - Bridge over Russell Fork of Big Sandy @ milepoint 3.07
 TY I = 20 tons, TY II = 41 tons, TY III = 42 tons, TY IV = 57 tons

Weight Limit - Bridge over Russell Fork & Clinchfield R.R. @ milepoint 3.60
 TY I = 20 tons, TY II = 37 tons, TY III = 39 tons, TY IV = 57 tons

* KY 122 3.3 Arnold Fork Road Mine 10.4 US 23

Weight Limit - Bridge over Robinson Creek @ milepoint 6.75
 TY I = 20 tons, TY II = 36 tons, TY III = 37 tons, TY IV = 53 tons

Weight Limit - Bridge over Bear Fork north of Jones Chapel @ milepoint 8.28
 TY I = 20 tons, TY II = 36 tons, TY III = 39 tons, TY IV = 60 tons

* KY 194 0.0 Floyd CO LN 16.8 US 119 (South)
 16.8 US 119 (North) 27.8 Mine

Weight Limit - Bridge over John's Creek @ milepoint 25.62
 TY I = 20 tons, TY II = 28 tons, TY III = 30 tons, TY IV = 48 tons

29.6 KY 3418 40.0 KY 1499
 52.4 Prater Branch RD 55.7 KY 632 @ Phelps
 67.3 Mine 67.7 KY 2062
 69.6 KY 2059 73.2 Virginia State LN

* KY 195 0.0 KY 197 11.6 US 460

Weight Limit - Bridge over Brushy Branch @ milepoint 3.27
 TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons

Weight Limit - Bridge over Wolf Pit Branch @ milepoint 9.93
 TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons

Weight Limit - Bridge over Russell Fork @ milepoint 11.44
 TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons

* KY 197 9.8 KY 195 16.6 KY 80

Weight Limit - Bridge over Sycamore Creek @ milepoint 6.70
 TY I = 20 tons, TY II = 32 tons, TY III = 38 tons, TY IV = 46 tons

Weight Limit - Bridge over Elkhorn Creek @ milepoint 13.91
 TY I = 20 tons, TY II = 38 tons, TY III = 40 tons, TY IV = 56 tons

* KY 199 8.2 KY 1056 11.6 US 119

Weight Limit - Bridge over Pond Creek @ milepoint 8129
 TY I = 20 tons, TY II = 39 tons, TY III = 39 tons, TY IV = 58 tons

Weight Limit - Bridge over Pond Creek @ milepoint 8.72
 TY I = 20 tons, TY II = 34 tons, TY III = 35 tons, TY IV = 44 tons

Weight Limit - Bridge over Pond Creek @ milepoint 11.34
 TY I = 20 tons, TY II = 41 tons, TY III = 42 tons, TY IV = 59 tons

* KY 292 0.0 Goody-AFLX-BURNWL RD 4.8 US 119 (South)
 4.8 US 119 (North) 12.7 Martin CO LN

* KY 319 0.0 US 119 7.0 KY 1056 @ Ransom

Weight Limit - Bridge over Blackberry Fork North of Hardy
 TY I = 3 tons, TY II = 3 tons, TY III = 3 tons, TY IV = 3 tons

* KY 468 0.0 US 119 13.6 KY 292

* KY 610 0.0 US 23 2.6 Myra Tipple

Weight Limit - Bridge over Beefhide Creek @ Myra @ milepoint 1.60
 TY I = 20 tons, TY II = 38 tons, TY III = 39 tons, TY IV = 60 tons

8.1 KY 1460 8.9 KY 122

* KY 611 0.0 KY 195 3.5 Henry Clay Mine

4.3 Little Fork-Left Fork RD 6.0 US 23

* KY 612 0.0 KY 468 3.6 Mine

6.6 Mine 8.4 KY 292

* KY 632 0.0 KY 194 @ Kimper 15.0 KY 194 @ Phelps

Weight Limit - Bridge over Johns Creek @ milepoint 1.19
 TY I = 20 tons, TY II = 40 tons, TY III = 42 tons, TY IV = 60 tons

Weight Limit - Bridge over Peter Creek @ milepoint 14.96
 TY I = 20 tons, TY II = 44 tons, TY III = 46 tons, TY IV = 60 tons

* KY 881 0.0 US 119 3.0 Brushy Fork Road

* KY 1056 0.0 KY 199 11.6 W.Vir. ST LN

Weight Limit - Bridge over Blackberry Creek @ milepoint 6.52 @ Ransom
 TY I = 20 tons, TY II = 43 tons, TY III = 45 tons, TY IV = 60 tons

Weight Limit - Bridge over Blackberry Creek @ Nampa
 TY I = 20 tons, TY II = 43 tons, TY III = 45 tons, TY IV = 60 tons

Weight Limit - Bridge over Tug Fork Big Sandy River @ milepoint 11.5
 TY I = 20 tons, TY II = 44 tons, TY III = 45 tons, TY IV = 53 tons

* KY 1373 4.8 Card Creek-Card Knob Road 6.7 US 460

* KY 1384 0.0 US 23 @ Boldman 6.1 KY 3417

* KY 1426 0.0 Floyd CO LN 4.9 US 23

* KY 1441 0.0 KY 1789 3.9 Mine

4.4 Standard Elkhorn Mine 10.1 US 119

ADMINISTRATIVE REGISTER - 2867

Weight Limit - Bridge over Pompey Creek @ milepoint 0.21
 TY I = 20 tons, TY II = 22 tons, TY III = 22 tons, TY IV = 22 tons

Weight Limit - Bridge over Raccoon Creek @ milepoint 4.79
 TY I = 20 tons, TY II = 45 tons, TY III = 46 tons, TY IV = 60 tons

Weight Limit - Bridge over Raccoon Creek @ milepoint 6.04
 TY I = 20 tons, TY II = 22 tons, TY III = 22 tons, TY IV = 22 tons

Weight Limit - Bridge over Raccoon Creek @ milepoint 7.96
 TY I = 20 tons, TY II = 45 tons, TY III = 46 tons, TY IV = 60 tons

Weight Limit - Bridge over Burning Fork Creek @ milepoint 10.00
 TY I = 20 tons, TY II = 39 tons, TY III = 41 tons, TY IV = 58 tons

* KY 1469 4.5 KY 3414 14.5 US 23
 * KY 1499 0.0 US 460 6.1 KY 194

Weight Limit - Bridge over Levisa Fork @ milepoint 6.03
 TY I = 15 tons, TY II = 25 tons, TY III = 28 tons, TY IV = 41 tons

* KY 1758 6.8 Daugherty Tipple 7.8 KY 632
 * KY 1789 0.0 US 460 1.1 KY 1441
 * KY 2059 0.0 KY 194 0.3 Private Haul Road
 1.6 Private Haul Road 2.3 Lower Elk Creek RD
 * KY 2061 0.0 US 23 7.1 KY 194

Weight Limit - Bridge over Cowpen Creek @ milepoint 0.81
 TY I = 18 tons, TY II = 19 tons, TY III = 22 tons, TY IV = 36 tons

Weight Limit - Bridge over Caney Fork of Johns Creek @ milepoint 6.72
 TY I = 10 tons, TY II = 10 tons, TY III = 10 tons, TY IV = 10 tons

Weight Limit - Bridge over Johns Creek @ milepoint 7.11
 TY I = 20 tons, TY II = 36 tons, TY III = 38 tons, TY IV = 60 tons

* KY 2062 0.0 KY 194 @ Jamboree 3.1 KY 194 @ Stopover
 * KY 2552 0.0 US 23 0.3 Shelbiana RD

Weight Limit - Bridge over Shelby Creek @ milepoint 0.01
 TY I = 20 tons, TY II = 31 tons, TY III = 32 tons, TY IV = 39 tons

* KY 3154 0.0 Meathouse Branch RD 2.7 US 119
 * KY 3226 0.0 Rockhouse Creek-Greasy RD 3.3 US 460
 * KY 3227 0.0 US 23 1.0 Coal Run Tipple
 * KY 3414 2.4 Mine 3.4 KY 1469
 * KY 3415 0.0 Robinson Creek RD 2.8 KY 122

Weight Limit - Bridge over Robinson Creek @ milepoint 0.4
 TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons

Weight Limit - Bridge over Robinson Creek @ milepoint 0.6
 TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons

* KY 3416 0.0 Island Creek RD 1.7 KY 1426
 * KY 3417 0.0 KY 1426 1.1 KY 1384
 * KY 3418 7.4 Hurricane Creek RD 10.1 KY 194
 * KY 3419 4.9 KY 632 6.0 Kentucky Carbon Scales
 10.5 Mine 12.0 KY 1056

Weight Limit - Bridge over Left Fork of Blackberry Creek @ milepoint 11.47
 TY I = 20 tons, TY II = 29 tons, TY III = 31 tons, TY IV = 46 tons

Weight Limit - Bridge over Blackberry Creek @ milepoint 12.01
 TY I = 20 tons, TY II = 37 tons, TY III = 48 tons, TY IV = 60 tons

* Frozen Creek Road
 CR 5004 0.0 KY 1441 2.4 Mine

* Winn Branch Road
 CR 5011 0.0 US 119 1.3 Chloe Creek Dev Mine

Weight Limit - Bridge over Little Ratliff Creek
 TY I = 20 tons, TY II = 22 tons, TY III = 22 tons, TY IV = 22 tons

* Varney Branch Road
 CR 5021 0.0 KY 194 South of Deskin 0.4 Utility Tipple

* Meathouse Fork Road
 CR 5022 0.0 KY 194 @ Deskin 0.8 Callahan Branch-Dix Fork RD

* Callahan Branch-Dix Fork Road
 CR 5023 0.0 Meathouse Fork RD 1.0 Mine

* Meathouse Branch Road
 CR 5025 0.0 KY 3154 0.6 Mine

* Peg Branch Road
 CR 5043 0.0 US 119 0.6 Eastern Coal Mine

* Goody-Aflex-Burnwell Road
 CR 5050 0.0 KY 292 0.8 Mine

* Bent Branch Road
 CR 5074 0.0 KY 468 1.1 Gex Tipple

Weight Limit - Bridge over Big Creek
 TY I = 18 tons, TY II = 18 tons, TY III = 20 tons, TY IV = 32 tons

* Swinge Camp Branch Road
 CR 5075 0.0 KY 468 0.4 H Mar/Island Mines

Weight Limit - Bridge over Big Creek
 TY I = 3 ton, TY II = 3 ton, TY III = 3 ton, TY IV = 3 ton

* Halfway Branch Road
 CR 5077 0.0 KY 468 0.5 Island Creek Mine

ADMINISTRATIVE REGISTER - 2868

* Rockhouse Fork Road CR 5078	0.0 KY 468	0.4 Island Creek Mine
Weight Limit - Bridge over Big Creek		
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
* Brushy Fork Road CR 5095	0.0 KY 881	0.5 Addington Mine
Weight Limit - Bridge over Left Fork of Brushy Fork		
TY I = 20 tons, TY II = 26 tons, TY III = 26 tons, TY IV = 26 tons		
	16.1 Big Branch/Meathouse Creek RD	16.8 Floyd CO LN
* Big Branch/Meathouse Creek Road CR 5111	2.4 Mine	4.2 Brushy Fork RD
* Miller Creek Road CR 5123	3.6 Miller Creek Tipple	5.1 KY 194
Weight Limit - Bridge over Johns Creek		
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
* Lick Branch Road CR 5141	0.0 KY 468	0.8 Jex Big Hill Mine
* Hurricane Creek Road CR 5162	2.5 Wellmore Mine	3.7 KY 3418
* Dicks Fork Road CR 5163	0.0 KY 194 @ Phyllis	0.6 Big Fist #4 Mine
* Lane Branch Road CR 5168	0.0 KY 632	1.2 McCoy Elkhorn Mine
* Hatfield Branch Road CR 5210	0.0 KY 319	0.8 Blackberry CR Mine
* Lower Elk Creek Road CR 5241	0.0 KY 2059	0.6 Race Fork Mine
* Prater Branch Road CR 5253	0.0 KY 194	0.8 Majestic Mine
* Old Mouth Card-Feds Creek Road CR 5282	0.0 US 460	0.3 Flannary Branch RD
* Flannary Branch Road CR 5283	0.0 Old Mouth Card-Feds CR RD	0.2 Mouth Card Mines
* Card Creek-Card Knob Road CR 5285	0.0 KY 1373	0.7 Clark Elkhorn Mine
	1.6 Wellmore Mine	4.6 US 460
* Island Creek Road CR 5287	0.0 Bane Tipple	0.6 Island Creek-Grapevine RD
* Island Creek-Grapevine Road CR 5288	0.0 Island Creek Road	1.8 Millers CR RD
* Left Fork/Island Creek Road CR 5289	0.0 Island Creek-Grapevine RD	0.2 Flannary Coal Mine
* Millers Creek Road CR 5290	0.0 Island Creek-Grapevine RD	2.4 Flannary Coal Mine
* Hopkins Creek Road CR 5322	0.0 US 460	1.0 Hopkins Creek Tipple
Weight Limit - Bridge over Levisa Fork		
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
* Daniel Branch Road CR 5326	0.0 US 460	0.4 Mine
* Biggs Creek Road CR 5327	0.0 US 460	1.9 Mine
* Little Fork of Harless Creek Road CR 5329	0.0 Harless Creek RD	1.0 Mine
* Harless Creek Road CR 5330	0.0 US 460	1.5 Wellmore Mine
* Jimmie Creek Road CR 5341	0.0 US 460	0.6 Wellmore Mine
* Old US 460 Loop #2 Road CR 5353	0.3 Potter Coal Mine	0.8 US 460
* Shortridge Fork Road CR 5355	0.4 Wellmore Mine	0.9 Wellmore Private RD
* Abes Fork Road CR 5356	0.0 Virginia State LN	0.4 Potter Prep Plant
* Ohio Street (Elkhorn City) CR 5361T	0.0 KY 80	0.5 Potter Processing
* Old Bridge Street (Elkhorn City) CR 5361Z	0.0 KY 80	0.1 Private Access Road
* John Moore Branch Road CR 5363	0.0 KY 197	0.9 Federal Tipple
* Jackson Branch Road CR 5371	0.0 KY 197	1.9 Mine
* Brushy Branch Road CR 5379	0.0 KY 195	0.8 Ratliff Elkhorn Mine

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* Marrowbone Creek Road CR 5381 0.0 KY 195 Weight Limit - Bridge over Marrowbone Creek TY I = 18 tons, TY II = 18 tons, TY III = 18 tons, TY IV = 18 tons	2.1 Lad/Prospect Mine
* Bowling Fork Road CR 5384 0.0 KY 195	1.7 Nats Fork RD
* Marshall Branch Road CR 5399 0.0 US 23 0.3 Letcher CO LN	0.3 Letcher CO LN 0.8 Mine
* Little Fork/Left Fork Road CR 5416 0.0 KY 611	0.2 Henry Clay Mine
* Rockhouse Creek/Greasy Road CR 5422 0.0 KY 195 Weight Limit - Bridge over Marrowbone Creek 5.3 Joe Brown RD	2.6 Mine 6.3 KY 3226
* Joe Brown Road CR 5429 0.0 Rockhouse Creek Greasy RD	0.3 Mine
* Prichard Branch Road CR 5430 0.0 Wolfpit Branch-Gardiner Fork RD TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons	0.5 Mine
* Wolfpit Branch-Gardiner Fork Road CR 5433 5.1 Prichard Branch RD	6.3 KY 3226
* Wolfpen Branch Road CR 5444 0.0 KY 80	0.8 Wellmore Mine
* Shelbiana Road CR 5473 0.0 KY 2553	0.5 Coalmac Shelby Tipple
* Marion Branch Road CR 5478 0.0 KY 1426	1.6 Chapperal Tipple
* Tollage Creek Road CR 5496 0.0 US 23	1.0 Coal Run Mine
* Harmond Branch Road CR 5505 0.0 US 23	0.9 Amber #9 Mine
* Dog Fork/Hurricane Creek Road CR 5522 0.0 KY 1384	1.3 Peter Fork Joline Mine
* Hoopwood Branch Road CR 5529 0.0 KY 1426	0.7 Stillhouse Mine
* Raccoon Branch Road CR 5531 0.0 KY 1426	1.3 Jet/Cimaron Mine
* Island Creek Road CR 5535 0.0 KY 1426	3.3 Mine
* Ray Branch Road CR 5537 0.0 Island Creek RD	0.7 Mine
* Bear Fork - Tinker Fork Road CR 5547 0.0 Bear Fork Branch RD	1.1 Floyd CO LN
* L Robinson - Floyd County Road CR 5550 0.0 Robinson Creek RD	0.6 Floyd CO LN
* Little Fork/Robinson Road CR 5553 0.0 KY 3415	1.6 Apache Mining Mine
* Robinson Creek Road CR 5554 0.0 KY 3415	1.3 Mine
* Arnold Fork Road CR 5555 0.0 KY 122	0.3 Apache Mining Mine
* Lizzie Fork Road CR 5590 0.0 US 23 Weight Limit - Bridge over Caney Creek TY I = 20 tons, TY II = 22 tons, TY III = 22 tons, TY IV = 22 tons	1.0 Mine
* Rob Fork Road CR 5593 0.0 US 23	0.5 Damron Fork Tipple
* Gillespie Branch Road CR 5606 0.0 KY 3226	0.9 Mine
* Lucy Branch Road CR 5607 0.0 KY 3226	0.3 Mine
* Sugar Camp Branch Road CR 5611 0.0 KY 122	1.5
* Bear Fork Branch Road CR 5616 0.0 KY 122	1.5 Bear FK-Tinker FK RD

POWELL COUNTY
ROAD

FROM

TO

* Mountain Parkway (KY 402) 11.9 Clark CO LN Weight Limit - Bridge over Lulbegrud Creek @ milepoint 11.90 TY I = 20 tons, TY II = 37 tons, TY III = 38 tons, TY IV = 45 tons Weight Limit - Bridge over Red River @ milepoint 18.22 TY I = 20 tons, TY II = 37 tons, TY III = 37 tons, TY IV = 45 tons	36.0 Wolfe CO LN
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ADMINISTRATIVE REGISTER - 2870

Weight Limit - Bridge over Red River @ milepoint 24.83
 TY I = 20 tons, TY II = 39 tons, TY III = 40 tons, TY IV = 50 tons
 Weight Limit - Bridge over Cane Creek @ milepoint 26.12
 TY I = 20 tons, TY II = 44 tons, TY III = 46 tons, TY IV = 60 tons
 Weight Limit - Bridge over KY 613 @ milepoint 27.38
 TY I = 20 tons, TY II = 44 tons, TY III = 46 tons, TY IV = 60 tons
 Weight Limit - Bridge over North Fork Red River @ milepoint 27.94
 TY I = 20 tons, TY II = 44 tons, TY III = 45 tons, TY IV = 55 tons
 Weight Limit - Bridge over Middle Fork Red River @ milepoint 31.96
 TY I = 20 tons, TY II = 37 tons, TY III = 38 tons, TY IV = 46 tons
 Weight Limit - Bridge over KY 11 & 15 @ milepoint 32.08
 TY I = 20 tons, TY II = 42 tons, TY III = 43 tons, TY IV = 54 tons
 * KY 11 21.0 KY 15 @ Clay City 25.0 Montgomery CO LN
 * KY 15 3.5 KY 11 4.1 Mountain PKW (KY 402) @ KY 82
 Weight Limit - Bridge over Mountain Parkway @ milepoint 4.08
 TY I = 20 tons, TY II = 45 tons, TY III = 47 tons, TY IV = 60 tons
 4.1 Mountain Parkway (KY 402) @ KY 82 8.9 Clark CO LN

PULASKI COUNTY

ROAD	FROM	TO
* US 27	0.0 McCreary CO LN	16.9 KY 80 Bypass
Weight Limit - Bridge over Cumberland River @ milepoint 9.19		
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
Weight Limit - Bridge over Pitman Creek @ milepoint 10.06		
TY I = 20 tons, TY II = 39 tons, TY III = 38 tons, TY IV = 59 tons		
* KY 80	21.6 KY 80 Bypass	40.4 Laurel CO LN
Weight Limit - Bridge over Buck Creek @ milepoint 31.55		
TY I = 20 tons, TY II = 45 tons, TY III = 47 tons, TY IV = 55 tons		
* KY 80B	0.0 US 27	2.3 KY 80
* KY 90	0.0 Wayne CO LN	4.2 US 27
Weight Limit - Bridge over Cumberland River @ milepoint 3.07		
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
* KY 192	0.0 KY 80 Bypass	15.0 Old Whitley RD
Weight Limit - Bridge over Pitman Creek @ milepoint 4.13		
TY I = 20 tons, TY II = 40 tons, TY III = 39 tons, TY IV = 58 tons		
Weight Limit - Bridge over Buck Creek @ milepoint 10.57		
TY I = 20 tons, TY II = 37 tons, TY III = 38 tons, TY IV = 48 tons		
* KY 790	0.0 Wayne CO LN	5.7 KY 90
* KY 1247	0.0 US 27	5.5 KY 1580
Weight Limit - Bridge over Southern RR @ milepoint 0.08		
TY I = 20 tons, TY II = 40 tons, TY III = 41 tons, TY IV = 52 tons		
Weight Limit - Bridge over Pitman Creek @ milepoint 3.40		
TY I = 20 tons, TY II = 31 tons, TY III = 32 tons, TY IV = 52 tons		
* KY 1580	0.0 Ferguson Tipple	0.5 KY 1247
* KY 1642	4.7 US 27	6.3 KY 1247
* KY 1675	5.7 Acorn-Lick Creek RD	10.5 KY 80
Weight Limit - Bridge over Branch of Short Creek @ milepoint 9.48		
TY I = 20 tons, TY II = 39 tons, TY III = 40 tons, TY IV = 53 tons		
* Acorn-Lick Creek Road		
CR 5016	0.0 KY 1675	1.7 Ano RD
* Bolthouse Ridge Road		
CR 5017	0.0 Ano RD	0.9 Ikerd Bandy Mine
* Ano Road		
CR 5018	0.0 Acorn-Lick Creek RD	1.4 Bolthouse Ridge RD
* Old Whitley Road		
CR 5216	0.0 KY 192	3.8 Cumberland River RD
* Cumberland River Road		
CR 5225	0.0 Old Whitley RD	0.8 Mine
* Bauer Road		
CR 5232	0.0 McCreary CO LN	0.8 Mine
* Cooper Power Plant Road		
CR 5349	0.0 KY 1247	0.6 E KY Power Plant

ROBERTSON COUNTY

ROAD	FROM	TO
* US 68	0.0 Nicholas CO LN	1.4 Fleming CO LN

ROCKCASTLE COUNTY

ROAD	FROM	TO
* US 25	11.8 I-75	13.9 US 150
* US 150	0.0 Lincoln CO LN	10.5 US 25

ADMINISTRATIVE REGISTER - 2871

SHELBY COUNTY

ROAD	FROM	TO
* US 60	0.0 Jefferson CO LN	23.0 Franklin CO LN
Weight Limit - Bridge over L & N R.R. @ milepoint 2.64		
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
Weight Limit - Bridge over Little Bullskin Creek @ milepoint 5.02		
TY I = 20 tons, TY II = 21 tons, TY III = 25 tons, TY IV = 43 tons		
Weight Limit - Bridge over Clear Creek @ milepoint 11.17		
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
Weight Limit - Bridge over Guist Creek @ milepoint 13.93		
TY I = 20 tons, TY II = 27 tons, TY III = 28 tons, TY IV = 44 tons		

SIMPSON COUNTY

ROAD	FROM	TO
* US 31W	0.0 Warren County Line	3.2 KAEC Gasahol Plant
(Extended weights shall be available only to TY IV vehicles with a gross weight of 90,000 pounds or less.)		
	3.2 KAEC Gasahol Plant	6.5 KY 100 in Franklin
	6.5 KY 100 in Franklin	14.0 Tennessee State LN
(Extended weights shall be available only to TY IV vehicles with a gross weight of 90,000 pounds or less.)		

SPENCER COUNTY

ROAD	FROM	TO
* US 31E	0.0 Nelson CO LN	2.4 Bullitt CO LN

TODD COUNTY

ROAD	FROM	TO
* US 79	0.0 Tennessee State LN	10.6 Logan CO LN
Weight Limit - Bridge over L & N R.R. @ milepoint 1.94		
TY I = 20 tons, TY II = 34 tons, TY III = 35 tons, TY IV = 51 tons		
Weight Limit - Bridge over Elk Fork Creek @ milepoint 7.61		
TY I = 20 tons, TY II = 32 tons, TY III = 34 tons, TY IV = 47 tons		

UNION COUNTY

ROAD	FROM	TO
* US 60	1.4 KY 109	9.2 Mine
Weight Limit - Bridge over Branch of Cypress Creek @ milepoint 3.66		
TY I = 20 tons, TY II = 38 tons, TY III = 39 tons, TY IV = 55 tons		
* KY 109	0.0 Webster CO LN	1.5 US 60 (West)
	1.5 US 60 (East)	4.9 KY 492
* KY 492	1.9 Davis Mine RD	2.5 KY 109
* KY 1508	0.0 KY 109	2.7 Pyro Dock
	5.3 Canipe Dock	6.0 Private Haul Road
Weight Limit - Bridge over Unnamed Stream @ milepoint 5.61		
TY I = 20 tons, TY II = 34 tons, TY III = 36 tons, TY IV = 59 tons		
* Davis Mine Road		
CR 5227	0.0 KY 109	0.3 Private Haul Road

WARREN COUNTY

ROAD	FROM	TO
* Green River Parkway	0.0 I-65	18.2 Butler CO LN
Weight Limit - Bridge over I-65 @ milepoint 0.01		
TY I = 20 tons, TY II = 45 tons, TY III = 46 tons, TY IV = 52 tons		
Weight Limit - Bridge over US 31-W @ milepoint 3.57		
TY I = 20 tons, TY II = 44 tons, TY III = 45 tons, TY IV = 59 tons		
* US 31W	0.0 Green River Parkway	9.0 Simpson County LN
(Extended weights shall be available only to TY IV vehicles with a gross weight of 90,000 pounds or less.)		
* US 68	0.0 Logan CO LN	8.2 Green River Parkway

WASHINGTON COUNTY

ROAD	FROM	TO
* Bluegrass Parkway	39.3 Nelson CO LN	44.8 Anderson CO LN
Weight Limit - Bridge over Chaplin River @ milepoint 42.08		
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		

WAYNE COUNTY

ROAD	FROM	TO
* KY 90	0.0 Clinton CO LN	25.2 Pulaski CO LN
Weight Limit - Bridge over Beaver Creek @ milepoint 8.65		
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
Weight Limit - Bridge over Meadow Creek @ milepoint 19.51		

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TY I = 20 tons, TY II = 43 tons, TY III = 44 tons, TY IV = 56 tons
 * KY 776 7.5 KY 790 9.8 Brammer Hill Ridge RD
 * KY 790 1.3 KY 776 10.5 Pulaski CO LN
 Weight Limit - Bridge over Sinking Creek @ milepoint 2.02
 TY I = 20 tons, TY II = 30 tons, TY III = 31 tons, TY IV = 41 tons
 * Brammer Hill Ridge Road
 CR 5023 0.0 KY 776 4.1 Jonesville Cemetery RD
 * Denny Creek Road
 CR 5024 0.0 KY 776 1.7 Shamrock Mine
 * Brammer Hill-Delta Road
 CR 5030 0.0 KY 790 2.2 Brammer Hill Ridge RD
 * Jones Cemetery #2 Road
 CR 5031 0.0 Brammer Hill Ridge RD 2.4 Mine
 * Sizemore Road
 CR 5155 0.0 Denny Creek RD 1.1 Mine

WEBSTER COUNTY

ROAD	FROM	TO
* Pennyrile PKWY	48.0 Hopkins CO LN	55.6 KY 56
* US 41	0.0 Hopkins CO LN	12.1 Henderson CO LN
* US 41A	0.0 Hopkins CO LN	19.5 KY 56
* KY 56	5.3 US 41A	12.5 US 41 (South)
Weight Limit - Bridge over Branch @ milepoint 12.42		
TY I = 20 tons, TY II = 38 tons, TY III = 40 tons, TY IV = 60 tons		
	12.5 US 41 (North)	14.4 Old Eastwood Ferry RD
* KY 109	2.9 KY 670	14.7 Union CO LN
Weight Limit - Bridge over Crab Orchard Creek @ milepoint 7.33		
TY I = 20 tons, TY II = 37 tons, TY III = 38 tons, TY IV = 51 tons		
Weight Limit - Bridge over Caney Fork @ milepoint 10.72		
TY I = 20 tons, TY II = 37 tons, TY III = 38 tons, TY IV = 51 tons		
* KY 132	23.6 Mine	25.9 KY 494
* KY 270	8.4 Mine	13.2 US 41A
* KY 494	0.0 KY 132	2.2 US 41
* KY 670	0.0 KY 109	2.7 US 41A
* KY 814	0.0 Hopkins CO LN	0.6 US 41A
* KY 1525	0.8 Mine Entrance	2.6 KY 109
* Old Eastwood Ferry Road		
CR 5034	0.0 KY 56	0.1 Sebree Dock
* Quinns Landing Road		
CR 5036	0.0 Henderson CO LN	0.2 Big Rivers Plant

WHITLEY COUNTY

ROAD	FROM	TO
* US 25T	0.0 US 25W	0.7 US 25W
* US 25W	1.7 Kensee Creek Rd	14.1 KY 26 (South)
Weight Limit - Bridge over Clear Creek @ milepoint 5.04		
TY I = 20 tons, TY II = 30 tons, TY III = 32 tons, TY IV = 39 tons		
Weight Limit - Bridge over Clear Fork Creek @ milepoint 6.23		
TY I = 20 tons, TY II = 30 tons, TY III = 32 tons, TY IV = 39 tons		
Weight Limit - Bridge over L&N RR @ milepoint 11.02		
TY I = 20 tons, TY II = 38 tons, TY III = 40 tons, TY IV = 60 tons		
	32.1 KY 26 (North)	32.8 US 25T (South)
* KY 6	0.8 KY 1064	1.6 Knox CO LN
Weight Limit - Bridge over Corn Creek @ milepoint 1.64		
TY I = 20 tons, TY II = 29 tons, TY III = 30 tons, TY IV = 49 tons		
* KY 11	0.0 KY 92	2.6 Knox CO LN
* KY 26	0.0 US 25W (South)	14.3 US 25W (North)
* KY 92	0.0 McCreary CO LN	11.3 US 25W (South)
Weight Limit - Bridge over Pleasant Run @ milepoint 0.23		
TY I = 20 tons, TY II = 34 tons, TY III = 36 tons, TY IV = 58 tons		
Weight Limit - Bridge over Pleasant Run @ milepoint 1.51		
TY I = 20 tons, TY II = 31 tons, TY III = 33 tons, TY IV = 46 tons		
Weight Limit - Bridge over Jellico Creek @ milepoint 2.99		
TY I = 20 tons, TY II = 25 tons, TY III = 28 tons, TY IV = 40 tons		
Weight Limit - Bridge over Briar Creek @ milepoint 8.39		
TY I = 14 tons, TY II = 14 tons, TY III = 14 tons, TY IV = 14 tons		
Weight Limit - Bridge over I-75 @ milepoint 11.00		
TY I = 20 tons, TY II = 40 tons, TY III = 39 tons, TY IV = 51 tons		
	11.3 US 25W (North)	33.4 Bell CO LN
Weight Limit - Bridge over Cumberland River @ milepoint 22.02		
TY I = 20 tons, TY II = 28 tons, TY III = 30 tons, TY IV = 42 tons		
Weight Limit - Bridge over Golden Fork @ milepoint 26.66		
TY I = 20 tons, TY II = 34 tons, TY III = 36 tons, TY IV = 50 tons		
Weight Limit - Bridge over Harpes Creek @ milepoint 27.89		
TY I = 20 tons, TY II = 38 tons, TY III = 38 tons, TY IV = 60 tons		

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* KY 312	2.5 US 25W	2.6 Knox CO LN
* KY 628	1.7 Mine	5.2 US 25W
Weight Limit - Bridge over Possum Creek @ milepoint 3.91		
TY I = 20 tons, TY II = 38 tons, TY III = 40 tons, TY IV = 60 tons		
Weight Limit - Bridge over I-75 @ milepoint 4.91		
TY I = 20 tons, TY II = 39 tons, TY III = 39 tons, TY IV = 48 tons		
* KY 779	6.3 KY 1064 (East)	12.7 KY 11
Weight Limit - Bridge over Cumberland River @ milepoint 11.83		
TY I = 15 tons, TY II = 15 tons, TY III = 15 tons, TY IV = 15 tons		
* KY 904	0.0 KY 92 @ Suttons Mill	13.5 KY 92 @ Siler
Weight Limit - Bridge over Cumberland River @ milepoint 0.09		
TY I = 15 tons, TY II = 15 tons, TY III = 15 tons, TY IV = 15 tons		
Weight Limit - Bridge over Poplar Creek @ milepoint 13.44		
TY I = 20 tons, TY II = 40 tons, TY III = 42 tons, TY IV = 60 tons		
* KY 1064	0.0 KY 904 @ Dixie	5.1 KY 92 @ Louden
Weight Limit - Bridge over Cumberland River @ Louden		
TY I = 12 tons, TY II = 12 tons, TY III = 12 tons, TY IV = 12 tons		
Weight Limit - Bridge over Unnamed Stream 0.79 miles North of Louden		
TY I = 10 tons, TY II = 10 tons, TY III = 10 tons, TY IV = 10 tons		
	9.3 KY 779	17.1 KY 6
* KY 1595	3.0 Mine	4.6 KY 92
Weight Limit - Bridge over Poplar Creek @ milepoint 4.49		
TY I = 20 tons, TY II = 28 tons, TY III = 30 tons, TY IV = 52 tons		
* KY 1673	0.0 KY 92	0.4 McCreary CO LN
	0.4 McCreary CO LN	1.2 Ball Branch RD
* KY 1809	0.0 KY 92	1.4 Knox CO LN
Weight Limit - Bridge over Golden Creek @ milepoint 0.21		
TY I = 20 tons, TY II = 37 tons, TY III = 39 tons, TY IV = 53 tons		
* Mosley Road		
CR 5038	0.0 KY 1064	0.9 Mine
* McNeil Hollow-Corn Creek Road		
CR 5045	2.4 Brenda Mine	3.6 KY 1064
* Doc Siler Road		
CR 5223	0.0 Tennessee ST LN	0.1 Skaggs Branch RD
* Skaggs Branch Road		
CR 5224	0.0 Doc Siler RD	0.7 Bowlin Mine
* Keswick-Gatliff Road		
CR 5227	3.3 Upper Cane Creek RD	8.0 KY 904
Weight Limit - Bridge over Bennetts Branch		
TY I = 20 tons, TY II = 28 tons, TY III = 33 tons, TY IV = 56 tons		
* Upper Cane Creek Road		
CR 5230	0.0 Keswick-Gatliff RD	0.5 Mine
* Jordan Hollow Road		
CR 5321	0.0 KY 628 (East)	0.3 Mine
* Kensee Creek Road		
CR 5326	0.0 US 25W	0.8 Mine
* Ryans Creek Road		
CR 5335	0.0 KY 1898	4.3 McCreary CO LN
* Ball Branch Road		
CR 5338	0.0 KY 1673	0.6 Mine
Weight Limit - Bridge over Pleasant Run Creek		
TY I = 12 tons, TY II = 12 tons, TY III = 12 tons, TY IV = 12 tons		

WOLFE COUNTY

ROAD	FROM	TO
* Mountain PKWY (KY 402)		
	36.0 Powell CO LN	42.7 KY 155
* KY 15	0.0 Breathitt CO LN	10.3 KY 651
Weight Limit - Bridge over Holly Creek @ milepoint 1.79		
TY I = 20 tons, TY II = 45 tons, TY III = 47 tons, TY IV = 60 tons		
	13.4 Mountain PKWY (KY 402)	14.0 KY 715
* KY 155	0.0 KY 15	1.1 Mountain PKWY (KY 402)
Weight Limit - Bridge over Mountain Parkway @ milepoint 1.05		
TY I = 20 tons, TY II = 45 tons, TY III = 47 tons, TY IV = 58 tons		
* KY 651	2.0 KY 3355	2.1 KY 15
* KY 715	2.6 KY 2016	5.8 KY 15
* KY 2016	0.2 Mine	4.5 KY 715
* KY 3355	0.0 KY 651	0.9 Mullins Point RD
* Mullins Point Road		
CR 5218	0.0 KY 3355	1.6 Mine

WOODFORD COUNTY

ROAD	FROM	TO
* Bluegrass Parkway		
	61.9 Anderson CO LN	71.1 US 60

* US 60	0.0 Franklin CO LN	13.0 Fayette CO LN
* US 60X	1.0 US 62 in Versailles	1.8 US 60 East of Versailles
* US 62	0.1 K.U. Tyrone Power Plant	7.1 US 60X in Versailles

Weight Limit - Bridge under Southern R.R. @ Tyrone @ milepoint 0.1
 TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons

Section 5. No person shall operate, or knowingly cause to be operated, on any bridge listed in Section 4 of this administrative regulation any vehicle whose gross vehicle weight exceeds the weight limits specified for that bridge.

Section 6. In accordance with KRS 189.230(3), the Department of Highways shall post the gross vehicle weight limits for each bridge listed in Section 4 of this administrative regulation.

Section 7. No person shall operate, or knowingly cause to be operated, on any bridge on the extended weight coal haul road system any vehicle whose gross vehicle weight exceeds the limits specified by a notice posted pursuant to KRS 189.230(3).

Section 8. Resolutions of local governing bodies issued pursuant to KRS 177.9771(9) making recommendations to the Secretary of Transportation shall be submitted to: Secretary of Transportation, Transportation Cabinet, State Office Building, Frankfort, Kentucky 40622. The resolution shall set forth a specific description of the road or road segments under consideration. The resolution shall further set forth with specificity those conditions which give rise to inherent and definite hazards or create special conditions which the Secretary of the Transportation Cabinet needs to consider.

Section 9. A copy of the AASHTO Manual for Maintenance Inspection of Bridges, 1983 edition and 1984 and 1985 Interim Revisions is hereby incorporated by reference as part of this administrative regulation. A copy of the AASHTO Manual for Maintenance Inspection of Bridges, 1983 edition and 1984 and 1985 Interim Revisions may be viewed at the Transportation Cabinet, Department of Highways, Division of Maintenance, Frankfort, Kentucky. Copies of the AASHTO Manual for Maintenance Inspection of Bridges, 1983 edition and 1984 and 1985 Interim Revisions may be obtained from the American Association of State Highway and Transportation Officials, 444 North Capitol Street, N.W., Suite 225, Washington, D.C. 20001.

O. GILBERT NEWMAN, State Highway Commissioner
 MILO D. BRYANT, Secretary

APPROVED BY AGENCY: January 24, 1991

FILED WITH LRC: February 7, 1991 at 3 p.m.

PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on March 22, 1991 at 9:30 a.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by March 17, 1991 so notify this agency. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public comment hearing will not be made unless a

written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is cancelled, written comments will only be accepted until March 17, 1991. Send written notification of intent to attend the public hearing or written comments on the administrative regulation to: Sandra G. Pullen, Executive's Staff Advisor, Transportation Cabinet, 10th Floor State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen

(1) Type and number of entities affected: 6,000 coal transporters.

(a) Direct and indirect costs or savings to those affected: Savings incurred as a result of being allowed to transport coal at extended weights over more roads.

1. First year: No more than 100 trucks are likely to take advantage of the new road segment in the extended weight system, but each should have a savings of several thousand dollars.

2. Continuing costs or savings: Same

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: The road segment added to the extended weight system will require more maintenance. However, the change will pull the heavy trucks from a heavily traveled road and divert them to a road with much less traffic.

(a) Direct and indirect costs or savings:

1. First year: \$13,000

2. Continuing costs or savings: \$13,000

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: The resolution submitted by the Jefferson County Fiscal Court could have been accepted as submitted or rejected. It was accepted in order to provide a more direct and less-traveled route for use by extended weight coal trucks.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. The entire administrative regulation is a tiering of weight and axles allowed on certain roads.

**SCHOOL FACILITIES CONSTRUCTION COMMISSION
(Proposed Amendment)**

750 KAR 1:010. Commission procedures.

RELATES TO: KRS Chapter 157

STATUTORY AUTHORITY: KRS 157.617, 157.622

NECESSITY AND FUNCTION: The School Facilities [Facility] Construction Commission for the purpose of assisting local school districts to meet the school construction needs of the state. The General Assembly has appropriated funds for administrative support and debt service to allow the commission to implement its program. This regulation describes the procedures the School Facilities [Facility] Construction Commission will utilize in determining eligibility, determining the level of participation of each local school district, making the offer of assistance to the local school districts, determining allowable expenditure of funds, and cumulating credit for those districts that maintain their eligibility, but do not have sufficient funds to complete their first priority project. This amendment redistributes the maximum amount of fees authorized by the commission to be paid to financial advisors for services performed for commission and local school board bond issues, and corrects the name of the commission referenced in the regulation to comply with statutory language contained in KRS 157.617.

Section 1. Eligibility. (1) The School Facilities [Facility] Construction Commission shall use the statement of need, and available local revenue as certified by the State Board of Education in determining the rate of participation of each school district in any given biennium. Eligibility for participation as established in KRS 157.620(1) shall be certified by the State Board of Education.

(2) A school district retaining capital outlay funds in its current expense general fund under the provisions of KRS 157.420 in the year preceding the biennium in which funds are available or during the biennium shall be ineligible to participate in the SFCC Program during such funding period.

Section 2. Rate of Participation. The rate of participation of each eligible district shall be determined by dividing the unmet needs of such respective district by the total unmet needs of all eligible districts and multiplying that fraction times the total new debt service budgeted for the biennium. In the event there are insufficient funds budgeted in the first year of the biennium to fund all the requests, bond sales will be scheduled in the order in which the School Facilities [Facility] Construction Commission receives requests for approval of bond sales. All bond sales may proceed after January 1 of the first year of the biennium.

Section 3. Offer of Assistance. Upon certification of the rate of participation by the School Facilities [Facility] Construction Commission, the Executive Director of the School Facilities [Facility] Construction Commission shall notify each eligible district of its entitled rate of participation and the requirements that must be met if it wishes to accept the offer of assistance. These

requirements shall include the amount of local revenue to be expended as certified by the State Board of Education, the priority order of facilities to be built as certified by the State Board of Education, and the sequence of events and deadlines to be met if the local school district accepts the offer of assistance.

Section 4. Acceptance of Offer of Assistance. (1) Within thirty (30) days of receipt of the offer of assistance the local board of education shall notify the School Facilities [Facility] Construction Commission of acceptance or rejection of the offer of assistance. The local district response shall indicate the amount of the offer it plans to commit to construction or renovation immediately and/or the amount it wishes to hold in its escrow account. A district not responding within thirty (30) days shall be declared ineligible and the offer of assistance withdrawn and redistributed to the eligible recipients. In extenuating circumstances and upon written request within the original thirty (30) day period, a single thirty (30) day extension may be granted by the Executive Director of the School Facilities [Facility] Construction Commission.

(2) Within ninety (90) days of the offer of assistance the local district shall provide the School Facilities [Facility] Construction Commission with a copy of the project BG-1 form approved by the Department of Education, an Architects Contract; Construction Managers Contract, if applicable; and a letter of approval from the Department of Education approving the financial plan for the projects to be completed. These contracts shall be negotiated by the local board of education; however, any fees in which the School Facilities [Facility] Construction Commission participates shall not exceed the fee schedules listed in Section 6(2) of this regulation.

(3) Within 120 days of the offer of assistance the local district shall provide the School Facilities [Facility] Construction Commission with an executed deed, Title Opinion, and Certificate of Title Insurance for the project site. If the site acquisition process is in litigation, an extension may be granted by the School Facilities [Facility] Construction Commission upon written request of the local board of education. Under no circumstances will the extension go beyond the biennium in which the offer was made.

Section 5. Review of Building Plans. The review and approval of building plans shall be the responsibility of the Kentucky Department of Education.

Section 6. Allowable Expenditures of Funds. (1) All funds available from "available local revenue" as defined by KRS 157.615 shall be expended before funds generated by bond sales authorized by the SFCC are expended. All funds available for a project shall be expended for the purpose of major renovation and/or construction of the identified project except that the balance of funds remaining after the completion of the project may be expended on the next project on the approved facilities [facility] plan of the respective districts. Such cost may include site acquisition, providing architectural and engineering services, financial and legal services, and

equipment. The site acquisition cost shall be limited to the lesser of the actual cost of acquiring a site or the fair market value of the site as determined by qualified appraisal obtained by the School Facilities [Facility] Construction Commission and charged to the project account. In no case shall School Facilities [Facility] Construction Commission funds or funds from the restricted account be used to purchase a site greater than that required by state board regulations for construction of the approved project. In no case shall School Facilities [Facility] Construction Commission funds or funds from the restricted account be used to reimburse the local board of education for a site acquired before enactment of KRS 157.611. Construction cost may include the cost of fixed equipment and movable equipment, but may not include the cost of supplies as defined by "Kentucky School Financial Accounting System" Instruction Manual.

(2) The fees of architects and engineers shall be limited to the following fee schedule if the School Facilities [Facility] Construction Commission participates in the payment of such fees:

Cost of Construction	Basic Fee
Up to \$25,000	12.0%
\$25,000 to \$50,000	10.4%
\$50,000 to \$75,000	9.4%
\$75,000 to \$100,000	8.7%
\$100,000 and under \$200,000	8.0%
\$200,000 and under \$300,000	7.4%
\$300,000 and under \$400,000	7.1%
\$400,000 and under \$500,000	6.8%
\$500,000 and under \$600,000	6.5%
\$600,000 and under \$700,000	6.3%
\$700,000 and under \$800,000	6.2%
\$800,000 and under \$900,000	6.1%
\$900,000 and under \$1,000,000	5.9%
\$1,000,000 and under \$1,250,000	5.8%
\$1,250,000 and under \$1,500,000	5.7%
\$1,500,000 and under \$1,750,000	5.6%
\$1,750,000 and under \$2,000,000	5.5%
\$2,000,000 and under \$2,250,000	5.4%
\$2,250,000 and under \$2,500,000	5.3%
\$2,500,000 and under \$2,750,000	5.2%
\$2,750,000 and under \$3,000,000	5.1%
\$3,000,000 and over	5.0%
Repetitive Design Project	75% of Basic Fee
Renovation Project	125% of Basic Fee

Section 7. Bond Issuance Procedures. (1) Upon acceptance of an offer of assistance by a local school district, the School Facilities [Facility] Construction Commission shall determine whether the local school district will issue the bonds or the SFCC will issue the bonds. Local school districts may request authority from the SFCC to issue the bonds through the local fiscal court or municipal government. Such a request shall be submitted to the commission at the time the local school district accepts the offer of assistance.

(2) If the commission grants permission to issue bonds at the local level, the procedures for issuing the bonds shall be as follows:

(a) The local board of education shall obtain the services of a financial advisor;

(b) The contract with the financial advisor shall be submitted to the School Facilities [Facility] Construction Commission for final approval after signature by the local school

district and the financial advisor;

(c) The local board of education shall obtain the services of a trustee, paying agent, and registrar. Such institution shall meet eligibility criteria provided by the School Facilities [Facility] Construction Commission.

(3) In situations where the size of the bond issues is small (less than \$500,000) or there is no local participation in the repayment, the School Facilities [Facility] Construction Commission may determine that it is in the best interests of the School Facilities [Facility] Construction Commission and the local school board for the School Facilities [Facility] Construction Commission to manage the bond sale procedures. In cases where this determination is made, the following shall apply:

(a) The bonds will be sold in the name of the School Facilities [Facility] Construction Commission;

(b) The School Facilities [Facility] Construction Commission shall obtain the services of a financial advisor;

(c) At the discretion of the School Facilities [Facility] Construction Commission, multiple projects may be combined into single bond issues. These will generally be limited to small projects and projects where the respective construction bid dates are contemporaneous;

(d) The School Facilities [Facility] Construction Commission shall obtain the services of a trustee, paying agent, and registrar. Such institution shall meet the eligibility criteria provided by the School Facilities [Facility] Construction Commission.

(4) The following procedures shall be followed by all participating districts:

(a) The School Facilities [Facility] Construction Commission's portion of the bond sale shall be limited to a twenty (20) year issue, with level repayment schedule. The maximum annual repayment amounts shall not exceed the offer of assistance from the School Facilities [Facility] Construction Commission;

(b) The local school district's portion of the bond sale shall be structured to meet the unique financial needs of the district. Debt service on the bonds issued shall include the minimum amount required for eligibility to participate in the program as certified by the State Board of Education. The minimum term of the local bond issue to meet eligibility criteria shall be twenty (20) years. At the discretion of the local board of education, the bond issue may include a local contribution to debt service in excess of the minimum required, and the length of the local portion of the repayment schedule may exceed twenty (20) years;

(c) Interest collected and accrued on funds derived from the bond sale will be credited to the debt service schedules of the school district and the School Facilities [Facility] Construction Commission in the same proportions as its respective participation in the bond issue;

(d) The proceeds of the bond sale shall be continually invested until expended on the project or until the project is completed. Any remaining proceeds or investment income received after completion of the project shall be applied to the debt service. Credit against the district's and the commission's debt service schedule shall be applied in the same percentage as the participation in the bond issue or, if permitted by the bond resolution or indenture,

excess funds may be applied to an approved project next in order priority;

(e) A certificate of project completion shall be filed with the School Facilities [Facility] Construction Commission by the local school district. The certification shall summarize the application of the bond proceeds, investment earnings, and any remaining funds from either source. The certificate shall also verify the use of cash contribution as may be required for eligibility by the local school district;

(f) Fees paid to a financial advisor shall be in accordance with the following fee schedule. Fees exceeding this schedule shall be paid by the local board of education.

Maximum Fee Schedule

Services and Expenses of Fiscal Agent

- = \$11 per \$1,000 on the first \$1 million
- = \$10 per \$1,000 on the second million
- = \$4 per \$1,000 all over \$2 million
- [- 1% or \$3,000 whichever is greater for up to \$1,000,000
- The next \$1,000,000 at \$6.50 per thousand
- The next \$1,000,000 at \$6.00 per thousand
- The next \$1,000,000 at \$5.50 per thousand
- All over \$4,000,000 at \$5.00 per thousand]

Fee is based upon the amount of bonds actually issued.

Fee to include attorney fees, printing of bonds and official statements, advertising the bond issue, travel of the fiscal agent, and other normal expenses related to the bond closing.

Fee not to include title search or rating service.

Section 8. Cumulative Credit. Any eligible district which fails in any budget period to receive an allocation of state funds that is sufficient to fund the first priority project on the approved facilities [facility] plan of the district may request the approval of the School Facilities [Facility] Construction Commission to accumulate credit subject to the availability of funds, for its unused state allocation for a period not to exceed four (4) years. Districts which receive funds in excess of those required to complete the first project may apply those funds to the next priority project on their approved facilities [facility] plan. In the event there are insufficient funds to complete the next project, those funds may accumulate as previously outlined. All fund credit accumulated in this manner shall be forfeited at any time that the local district fails to meet the eligibility criteria.

JOE WALTERS, Chairman

APPROVED BY AGENCY: February 6, 1991

FILED WITH LRC: February 13, 1991 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 27, 1991 at 9 a.m. in Room 285, Capitol Annex Building, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 22, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed

administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Woody Barwick, Executive Director, School Facilities Construction Commission, Room 463, Capitol Annex Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Woody Barwick

(1) Type and number of entities affected: Participating local school districts and the School Facilities Construction Commission.

(a) Direct and indirect costs or savings to those affected: There are increased costs on smaller bond sales and decreased costs on larger bond sales.

1. First year: \$20,667 estimated costs.

2. Continuing costs or savings: \$16,568 estimated savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The formula allows increased costs to smaller issues and decreased costs to larger issues.

(b) Reporting and paperwork requirements: No change in reporting or paperwork requirements by SFCC or local school boards.

(2) Effects on the promulgating administrative body: There are no effects on the SFCC.

(a) Direct and indirect costs or savings: There are increased costs to districts with smaller bond sales.

1. First year: \$20,667

2. Continuing costs or savings: \$16,568

3. Additional factors increasing or decreasing costs: There are no additional factors.

(b) Reporting and paperwork requirements: No change in reporting or paperwork requirements by SFCC or local school boards.

(3) Assessment of anticipated effect on state and local revenues: There are no effects on state or local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: There was a committee that evaluated the proposed fee changes and recommended the SFCC adopt a fair change in the fee schedule. The SFCC adopted the lowest proposed fee schedule change.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no conflicting statutes, administrative regulations, or governmental policy.

(a) Necessity of proposed regulation if in conflict: See above.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: See above.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes

PUBLIC PROTECTION & REGULATION CABINET
Department of Housing, Buildings & Construction
Division of Plumbing
(Proposed Amendment)

815 KAR 20:030. License application; qualifications for examination, examination requirements, expiration, renewal, revival or reinstatement of licenses.

RELATES TO: KRS Chapter 318

STATUTORY AUTHORITY: KRS 318.010, 318.020, 318.040, 318.050, 318.054

NECESSITY AND FUNCTION: KRS 318.040 requires the department to conduct examinations for master and journeyman plumber applicants. This regulation relates to those requirements and the fees required. It also relates to the time, place and methods of examinations. This amendment is necessary to bring the regulation into technical compliance with KRS Chapter 13A. No other substantive changes were made.

Section 1. Applications for Examination for Master or Journeyman Plumber's Licenses. Applications for examination for master or journeyman plumber's licenses shall be submitted to the Department of Housing, Buildings and Construction on forms furnished by the department. Each application shall be properly notarized and accompanied by a fee of \$100 [if] for a master plumber's license or twenty-five (25) dollars [if] for a journeyman plumber's license. A signed photograph of the applicant not less than two (2) inches square nor larger than four (4) inches square taken within two (2) years shall accompany each application. Application fees shall be submitted at least two (2) weeks prior to the date of examination and remitted by post office or express money order, bank draft or certified check payable to the Kentucky State Treasurer.

Section 2. Examinations for Master or Journeyman Plumber's Licenses. (1) Examination of applicants. Regular examination of applicants for master or journeyman plumber's licenses shall be conducted during the months of February, May, August and November of each year. Special examinations may be conducted at other [such] times as the Department of Housing, Buildings and Construction [may] directs.

(2) Time and place of examination. Notice of the time and place of examination shall be given by [the] United States mail at least one (1) week prior to the date of examination to all persons having applications on file.

(3) Materials required for journeyman plumbers' examinations. Applicants for journeyman plumber's licenses shall furnish the materials required for the practical examination.

(4) The testing requirements shall be designed by the State Plumbing Examining Committee and shall be more complex for the master's examination.

Section 3. Renewals of Master and Journeyman Plumber's Licenses. (1) Renewal fees. The annual license renewal fee shall be \$150 for master plumbers and thirty (30) dollars for journeyman plumbers.

(2) Remittance of renewal fees. Renewal fees shall be remitted by post office or express money order, bank draft, or certified check payable to the Kentucky State Treasurer.

Section 4. Expiration, Renewal or Reinstatement of License. All licenses issued under KRS 318.040 shall expire on June 30 as prescribed in KRS 318.054.

Section 5. Examination Requirements for Master Plumber Applicants. Examination for applicants desiring to become licensed as a master plumber shall consist of:

(1) Answering ten (10) oral questions pertaining to basic principles of plumbing and the State Plumbing Law, Regulation and Code.

(2) Answering not more than fifty (50) written questions giving essay type answers as required pertaining to basic principles of plumbing and the State Plumbing Law, Regulation and Code.

(3) Preparing a drawing from a sheet of instruction that describes the number and type of fixtures on each floor. The applicant shall [is to] draw all stacks, wastes and vents and insert the proper pipe size required [thereon]. Oversized piping shall [will] be counted off the same as undersized.

(4) The passing grade for master plumbers shall be eighty (80) percent.

Section 6. Examination Requirements for Journeyman Plumber Applicants. Examination for applicants desiring to become licensed as a journeyman plumber shall consist of:

(1) Answering ten (10) oral questions pertaining to basic principles of plumbing and the State Plumbing Law, Regulation and Code.

(2) Answering not more than fifty (50) written questions giving essay type answers as required pertaining to basic principles of plumbing and the State Plumbing Law, Regulation and Code.

(3) Preparing a drawing from a sheet of instruction that describes the number and type of fixtures on each floor. The applicant shall [is to] draw all stacks, wastes and vents and insert the proper pipe size required [thereon]. Oversized piping shall [will] be counted off the same as undersized.

(4) Completing a practical section in which the applicant shall [will] properly caulk a cast iron soil pipe spigot into a cast iron hub. Soldering six (6) one-half (1/2) inch copper solder connections and either making a quarter segment of a shower pan, from a detailed drawing, to dimension, that shall [must] fit into a template or wiping by hand a solder joint connecting three (3) inch lead to a brass caulking ferrule or a three (3) inch to two (2) inch lead wye branch.

(5) The passing grade for journeyman plumbers shall be seventy-five (75) percent.

Section 7. All Master Plumbers and Journeyman Plumbers shall notify the department of the name of their business and its address, their employer and his address and any time a change of employment is made.

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary

APPROVED BY AGENCY: January 15, 1991

FILED WITH LRC: January 28, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on March 26, 1991 at 10 a.m. in the office of the Department of Housing, Buildings and Construction, U.S. 127 South, Frankfort, Kentucky. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed

administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is received. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, U.S. 127 South, Frankfort, Kentucky 40601. If no written requests to appear at the public hearing are received by March 21, 1991, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

- (1) Type and number of entities affected:*
- (a) Direct and indirect costs or savings to those affected:
 - 1. First year:
 - 2. Continuing costs or savings:
 - 3. Additional factors increasing or decreasing costs (note any effects upon competition):
- (b) Reporting and paperwork requirements:
- (2) Effects on the promulgating administrative body:
 - (a) Direct and indirect costs or savings:
 - 1. First year:
 - 2. Continuing costs or savings:
 - 3. Additional factors increasing or decreasing costs:
 - (b) Reporting and paperwork requirements:
 - (3) Assessment of anticipated effect on state and local revenues:
 - (4) Assessment of alternative methods; reasons why alternatives were rejected:
 - (5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
 - (a) Necessity of proposed regulation if in conflict:
 - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
 - (6) Any additional information or comments:

*Because these amendments are made at the request of the Interim Committee on Cities and there are no substantial changes, the answer to the above questions is "none".

TIERING: Was tiering applied? No

PUBLIC PROTECTION & REGULATION CABINET
Department of Housing, Buildings & Construction
Division of Plumbing
(Proposed Amendment)

815 KAR 20:040. Truck identification.

RELATES TO: KRS 318.170

STATUTORY AUTHORITY: KRS 318.130

NECESSITY AND FUNCTION: The department is directed by KRS 318.170 to enforce the provisions of the state plumbing laws and code. It is difficult to maintain adequate surveillance for persons who are installing or constructing plumbing systems without their trucks being properly identified. Identification as set forth in this regulation would greatly assist the department in carrying out this function. This amendment is necessary to bring the regulation into technical compliance with

KRS Chapter 13A. No other substantive changes were made.

Section 1. Truck Identification. All trucks used in the operation of a plumbing business shall be properly identified. The equipment shall bear the name of the company and the master plumber's Kentucky license number. All the [such] identification shall be in letters not smaller than three (3) inches high and shall [must] be kept legible at all times.

CHARLES A. COTTON, Commissioner
 THEODORE T. COLLEY, Secretary

APPROVED BY AGENCY: January 15, 1991

FILED WITH LRC: January 28, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on March 26, 1991 at 10 a.m. in the office of the Department of Housing, Buildings and Construction, U.S. 127 South, Frankfort, Kentucky. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is received. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, U.S. 127 South, Frankfort, Kentucky 40601. If no written requests to appear at the public hearing are received by March 21, 1991, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

- (1) Type and number of entities affected:*
- (a) Direct and indirect costs or savings to those affected:
 - 1. First year:
 - 2. Continuing costs or savings:
 - 3. Additional factors increasing or decreasing costs (note any effects upon competition):
- (b) Reporting and paperwork requirements:
- (2) Effects on the promulgating administrative body:
 - (a) Direct and indirect costs or savings:
 - 1. First year:
 - 2. Continuing costs or savings:
 - 3. Additional factors increasing or decreasing costs:
 - (b) Reporting and paperwork requirements:
 - (3) Assessment of anticipated effect on state and local revenues:
 - (4) Assessment of alternative methods; reasons why alternatives were rejected:
 - (5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
 - (a) Necessity of proposed regulation if in conflict:
 - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
 - (6) Any additional information or comments:

*Because these amendments are made at the request of the Interim Committee on Cities and there are no substantial changes, the answer to

the above questions is "none".

TIERING: Was tiering applied? No

PUBLIC PROTECTION & REGULATION CABINET
Department of Housing, Buildings & Construction
Division of Plumbing
(Proposed Amendment)

815 KAR 20:050. Installation permits.

RELATES TO: KRS Chapter 318

STATUTORY AUTHORITY: KRS 318.010, 318.134

NECESSITY AND FUNCTION: The department is directed by KRS 318.134 to adopt a reasonable schedule of fees and charges to be paid for plumbing installation permits and the necessary inspections incident thereto. This regulation is to assure uniformity of fees and charges for plumbing installation permits throughout the state. This amendment is necessary to bring the regulation into technical compliance with KRS Chapter 13A. No other substantive changes were made.

Section 1. Issuance of Permits. (1) [Except as otherwise provided by subsection (3) of this section,] Permits to construct, install or alter plumbing, sewerage or drainage shall be issued only to licensed master plumbers except as provided by subsection (3) of this section.

(2) Journeyman plumbers shall not construct, install or alter plumbing, sewerage or drainage unless [except when] the work is performed [done] under the supervision of a licensed master plumber.

(3) Permits to construct, install or alter plumbing, sewerage or drainage may be issued to homeowners who desire to install plumbing in homes actually occupied by them or in a home to be constructed by them for their own personal residential use, if all the following requirements are met [provided]:

(a) Application is made for the permit prior to the beginning of the work; and

(b) The homeowner files with his application an affidavit stating that he will abide by the terms of this section; and

(c) All work shall be [is] performed in compliance with the state plumbing [law and] code [and the rules and regulations thereunder promulgated]; and

(d) All the work shall be [is] personally performed by the owner; and

(e) Only one (1) homeowner permit for construction of a new home shall be issued to an individual in a five (5) year period. This requirement may be waived by the department if the applicant is actually installing the plumbing for his own use [for good cause shown].

(4) No permit shall be required for the repairing of leaks, cocks, valves, or for cleaning out waste or sewer pipes.

Section 2. When a Permit is Required. A plumbing installation [construction] permit shall be required for the following:

(1) For all new plumbing installations.

(2) For all existing plumbing installations if [where] a fixture, soil [and/or] waste opening or conductor is to be moved or relocated.

(3) For each individual unit of a multistory building if [where] there is more than one (1) unit.

(4) For each individual building. (Buildings

shall be deemed separate if the connection between them is not a necessary part of the structure of either building, or if they are not under a continuous roof.)

(5) For a new house sewer and for a house sewer that is to be replaced.

(6) For a new water service and for a water service that is to be replaced.

(7) For a new water heater installation and for a water heater installation that is to be replaced.

(8) For any other installation which constitutes "plumbing" within the meaning of KRS Chapter 318 and the state plumbing code.

Section 3. Plumbing Installation Permit Fees.

(1) The fee for each plumbing installation permit for residential, one (1) and two (2) family units, shall be fifteen (15) dollars plus:

(a) Four (4) dollars for each plumbing fixture or appliance or plumbing fixture opening or appliance opening left in the soil or waste pipe system including openings left for future fixtures or appliances.

(b) Four (4) dollars for each domestic water heater.

(2) The fee for each plumbing installation permit for other than residential, one (1) and two (2) family units, shall be fifteen (15) dollars plus;

(a) Five (5) dollars for each plumbing fixture or appliance or plumbing fixture opening or appliance opening left in the soil or waste pipe system including openings left for future fixtures or appliances;

(b) Five (5) dollars for each domestic water heater.

(c) Five (5) dollars for each conductor opening.

(3) If [In the event] only a new domestic water heater is installed or replaced, the fee for the plumbing installation permit shall be ten (10) dollars.

(4) If [In the event] only a new water service is constructed or replaced, the fee for the plumbing installation [construction] permit shall be fifteen (15) dollars.

(5) If [In the event] only a new house sewer is constructed or replaced, the fee for a plumbing installation [construction] permit shall be fifteen (15) dollars.

(6) All persons securing plumbing permits shall be entitled to three (3) plumbing inspections at no additional cost, [; provided, however, that] All plumbing inspections in excess of three (3), shall be charged at the rate of three (3) dollars per inspection.

(7) All plumbing installation permits issued under this regulation shall expire one (1) year after date of issuance, [thereof; provided, however,] If construction is begun within one (1) year after date of issuance, the permit shall not expire until completion of the planned plumbing installation.

(8) Plumbing fixtures may be replaced without procuring a plumbing installation permit if [provided] the county plumbing inspector is notified of the installation.

Section 4. Plumbing Inspection Fees for Public Buildings. The schedule of fees for inspection of the construction, installation or alteration of plumbing in public buildings shall be the same as specified in Section 3 of this regulation.

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary

APPROVED BY AGENCY: January 15, 1991

FILED WITH LRC: January 28, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on March 26, 1991 at 10 a.m. in the office of the Department of Housing, Buildings and Construction, U.S. 127 South, Frankfort, Kentucky. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is received. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, U.S. 127 South, Frankfort, Kentucky 40601. If no written requests to appear at the public hearing are received by March 21, 1991, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

- (1) Type and number of entities affected:
 - (a) Direct and indirect costs or savings to those affected:
 1. First year:
 2. Continuing costs or savings:
 3. Additional factors increasing or decreasing costs (note any effects upon competition):
 - (b) Reporting and paperwork requirements:
 - (2) Effects on the promulgating administrative body:
 - (a) Direct and indirect costs or savings:
 1. First year:
 2. Continuing costs or savings:
 3. Additional factors increasing or decreasing costs:
 - (b) Reporting and paperwork requirements:
 - (3) Assessment of anticipated effect on state and local revenues:
 - (4) Assessment of alternative methods; reasons why alternatives were rejected:
 - (5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
 - (a) Necessity of proposed regulation if in conflict:
 - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
 - (6) Any additional information or comments:

*Because these amendments are made at the request of the Interim Committee on Cities and there are no substantial changes, the answer to the above questions is "none".
- TIERING: Was tiering applied? No

PUBLIC PROTECTION & REGULATION CABINET
Department of Housing, Buildings & Construction
Division of Plumbing
(Proposed Amendment)

815 KAR 20:055. Water heater devices.

RELATES TO: KRS Chapter 318
STATUTORY AUTHORITY: KRS 318.200

NECESSITY AND FUNCTION: The 1984 General Assembly enacted KRS 318.200 which requires that all retailers, wholesalers and installers forward a list of names and addresses of purchasers along with the serial numbers of the appropriate agency every thirty (30) days. This regulation is to assure the submittal of the information in a format compatible with operating procedures of the department. This regulation applies only to sales in first and second class cities and urban county government. This amendment is necessary to bring the regulation into technical compliance with KRS Chapter 13A. No other substantive changes were made.

Section 1. Manufacturers. Manufacturers shall submit to the Department of Housing, Buildings and Construction, Division of Plumbing, the required information if [when] they act in the capacity of a retailer by selling their product directly to the end user. The required information shall be submitted on Form PLB-90 format as shown or other form as authorized by the department.

WATER HEATER REPORT FOR THE COMMONWEALTH OF KENTUCKY MANUFACTURER

Manufacturer _____
Address _____
City _____ State _____ Zip Code _____
Name _____
Make (Gas) _____ (Electric) _____
(Oil) _____ (Other Fuels) _____
Size (Gallons) _____ Serial No. _____ Model No. _____
Purchaser _____
Address _____
City _____ State _____ Zip Code _____
Date Sold _____

Section 2. Wholesalers. Distributors shall submit to the Department of Housing, Buildings and Construction, Division of Plumbing, the required information on Form PLB-91 format as shown.

WATER HEATER REPORT FOR THE COMMONWEALTH OF KENTUCKY DISTRIBUTOR

Manufacturer _____
Name _____
Make (Gas) _____ (Electric) _____
(Oil) _____ (Other Fuels) _____
Size (Gallons) _____ Serial No. _____ Model No. _____
Distributor _____
Address _____
City _____ State _____ Zip Code _____
Purchaser _____
Address _____
City _____ State _____ Zip Code _____
Date Sold _____

Section 3. Retailers and Installing Contractors. Retailers and installing contractors shall submit to the Department of Housing, Buildings and Construction, Division of Plumbing, the required information on Form PLB-92 format as shown.

WATER HEATER REPORT FOR
THE COMMONWEALTH OF KENTUCKY
RETAILER OR INSTALLING CONTRACTOR

Manufacturer _____
Name _____
Make (Gas) _____ (Electric) _____
(Oil) _____ (Other Fuels) _____
Size (Gallons) _____ Serial No. _____ Model No. _____
Retailer or Installing Contractor _____
Address _____
City _____ State _____ Zip Code _____
Buyer _____
Address _____
City _____ State _____ Zip Code _____
Date Sold _____

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary

APPROVED BY AGENCY: January 15, 1991

FILED WITH LRC: January 28, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on March 26, 1991 at 10 a.m. in the office of the Department of Housing, Buildings and Construction, U.S. 127 South, Frankfort, Kentucky. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is received. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, U.S. 127 South, Frankfort, Kentucky 40601. If no written requests to appear at the public hearing are received by March 21, 1991, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

(1) Type and number of entities affected:*

(a) Direct and indirect costs or savings to those affected:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:
*Because these amendments are made at the request of the Interim Committee on Cities and there are no substantial changes, the answer to the above questions is "none".

TIERING: Was tiering applied? No

PUBLIC PROTECTION & REGULATION CABINET
Department of Housing, Buildings & Construction
Division of Plumbing
(Proposed Amendment)

815 KAR 20:060. Quality and weight of materials.

RELATES TO: KRS Chapters 198B, 318
STATUTORY AUTHORITY: KRS 13A.120,
198B.040(10), 318.130

NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This regulation relates to quality and weights of materials that will be used in the installation of plumbing systems and is necessary to establish minimum standards for this quality and weight and to conform to accepted practices. This amendment is necessary to bring the regulation into technical compliance with KRS Chapter 13A. No other substantive changes were made.

Section 1. Definition of Terms. (1) "ABS" means [-] acrylonitrile-butadiene-styrene.

(2) "ASSE" means [-] American Society of Sanitary Engineers and copies of standards may be obtained by writing the American Society of Sanitary Engineers, P.O. Box 40362, Bay Village, Ohio 44140.

(3) "ASTM" means [-] American Society for Testing and Materials and copies of standards may be obtained by writing the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

(4) "Drain pipe" means [-] any pipe which carries wastewater or waterborne wastes in a building drainage system.

(5) "Drainage System" means [- includes] all the piping within a public or private premises which conveys sewage, rain water or other liquid wastes to a point of disposal. It does not include the mains of public sewer systems or a private or public sewage treatment or disposal plant.

(6) "DWV pipe" means [-] an abbreviated term for drain, waste and vent piping, including aluminum, as used in common plumbing practice.

(7) "Plumbing system" means [- includes] the water supply and distribution pipes; plumbing fixtures and traps; soil, waste and vent pipes; and sanitary and storm sewers and building drains; including their respective connections, devices and appurtenances within a building or premises.

(8) "Potable water" means [-] water free from impurities present in amounts sufficient to cause disease or harmful physiological effects and conforming in its bacteriological and chemical quality to the requirements of the Public Health Service Drinking Water Standards or the regulations of the public health authority having jurisdiction.

(9) "PVC" means [-] polyvinyl chloride.

(10) "Stack" means [- a general term for] any vertical line of soil, waste, vent, or inside

conductor piping, except vertical vent branches which do not extend through the roof and which pass through less than two (2) stories before being reconnected to a vent stack or stack vent.

(11) "Trap" means [-] a fitting or device which provides a liquid seal to prevent the emission of sewer gases without materially affecting the flow of sewage or wastewater through it.

(12) "Vent system" means [-] a pipe or pipes installed to provide a flow of air to or from a drainage system, or to provide a circulation of air within the [such] system to protect trap seals from siphonage and back pressure.

(13) "Waste pipe" means [-] a pipe which conveys only waste.

Section 2. Materials, Quality of. All materials used in any drainage or plumbing system or part of a system [thereof,] shall be free of defects.

Section 3. Label, Cast or Stamped. Each length of pipe, fitting, trap, fixture and device used in a plumbing or drainage system shall be stamped or indelibly marked with the weight or quality [thereof,] and, with the maker's mark or name.

Section 4. Vitrified Clay Pipe, Concrete Pipe, Truss Pipe, Extra Heavy SDR 35 Sewer Piping, Polyethylene Sewer Piping, Polyethylene and Corrugated Polyethylene Subsoil Drainage Tubing.

(1) Vitrified clay pipe shall conform to ASTM Standard Specifications C-200.

(2) Concrete pipe shall conform to ASTM Standard Specifications C-14.

(3) Truss pipe shall conform to ASTM Standard Specifications D-2680-74. (Solid wall shall conform to ASTM Standard Specifications D-2751-74.)

(4) Extra heavy SDR 35 sewer piping shall conform to ASTM Standard Specifications D-3033-74 and D-3034-74.

(5) Polyethylene sewer piping shall conform to ASTM D-3350 and shall be used only between a septic tank and a distribution box or boxes.

(6) Polyethylene and corrugated polyethylene subsoil drainage tubing shall conform to ASTM Standard Specifications F-405-74 and shall bear the NSF seal of approval. No pipe or fittings shall be used unless the manufacturer of the [such] material submits to the department a sample of the pipe and fittings that will be used, along with an analysis of the material from a private testing laboratory approved by the department. The [Such a] report shall [must] be submitted to the department on an annual basis as of July 1, of each year. Polyvinyl Chloride subsoil drainage tubing shall conform to ASTM D-2729. The tubing [They] shall have two (2) rows of three-fourths (3/4) inch holes within an arch of 120 degrees of circumference of the piping and shall be on four (4) inch centers. The [Such] tubing shall be visibly marked with the name of the manufacturer and the commercial standard number at ten (10) feet intervals.

Section 5. Cast-iron Pipe. (Hub and Spigot and No-hub). (1) Extra heavy. Extra heavy cast-iron pipe and fittings shall conform to ASTM A74-82.

(2) Service-weight. Service-weight cast-iron pipe and fittings shall conform to ASTM A74-82.

(3) Coating. Cast-iron pipe and fittings for

underground use shall be coated with asphaltum, coal tar pitch or using a coating conforming to ASTM A-174

Section 6. Wrought-iron Pipe. All wrought-iron pipe shall conform to the latest ASTM "standard specifications for welded wrought iron pipe."

Section 7. Mild-steel Pipe. All steel pipe shall conform to the latest ASTM "standard specifications for welded and seamless steel pipe."

Section 8. Brass pipe; Copper Pipe; and Brass Tubing. Brass pipe, copper pipe and brass tubing shall conform respectively to the latest standard specifications of ASTM for "brass pipe, copper pipe, and brass tubing, standard sizes."

Section 9. Aluminum Drain, Waste and Vent (DWV) Pipe with End Cap Components. All aluminum, drain, waste and vent pipe with end cap adapters shall conform to the requirements of American Society of Sanitary Engineering (ASSE) Standard No. 1045.

Section 10. Borosilicate Pipe. (1) Borosilicate pipe shall conform to the latest ASTM standards.

(2) Plastic pipe. All plastic piping used in a drainage, waste and vent system shall be schedule 40 or 80, Type 1, Grade 1, polyvinyl chloride compounds as defined and described in tentative specifications for rigid polyvinyl chloride (PVC) (ASTM Designation: D 1784-75), or Schedule 40 or 80 acrylonitrile-butadiene-styrene compound as defined and described in standard specification for acrylonitrile-butadiene-styrene (ABS) (ASTM Designation: D 1788-73). Pipe and fittings shall be produced and labeled in accordance with the provisions of Commercial Standard ASTM-D-2665-76, as amended, for PVC and ASTM-D-2661-76 for ABS, and both shall bear the NSF seal of approval. Copies of NSF standards may be obtained by writing the National Sanitation Foundation, 3475 Plymouth Road, P.O. Box 1468, Ann Arbor, MI 48106. All pipe and fittings shall bear the ASTM designation together with the NSF seal, the manufacturer's identification and the size. The use of plastic pipe and fittings (PVC or ABS) as outlined here[in] shall be restricted to buildings if [where] the soil [and/or] waste and vent stack do not exceed forty-five (45) feet in height, the vertical distance from the base of the stack to its terminus through the roof of the building.

(3) Stainless steel tubing. Stainless steel tubing for hot and cold water piping shall be Grade H conforming to ASTM A268-68. Stainless steel tubing for the soil, waste and vent system shall [must] be either Grade G or H conforming to ASTM A-268-68.

(4) Polyethylene pipe. Polyethylene pipe used in acid waste systems shall conform to ASTM D-1204-62T.

(5) Polypropylene pipe. Polypropylene pipe used in acid waste systems shall conform to ASTM D-2146-65T.

Section 11. Lead Pipe, Diameter, Weights. (1) Lead soil, waste and vent pipes shall be in accordance with the standards of the Lead Industries Association and Federal Specifications WW-P-325, which are identical in

substance, and shall not be lighter than the following weights:

Size Inside Diameter Inches	Commercial Designation "D" or "XL"	Wall Thick- ness Inches	Weight Pounds	Per Foot Ounces
1 1/2	D	XL	0.138	3
2	D	XL	0.142	4
3	D	XL	0.125	6
4	D	XL	0.125	8

(2) All lead bends and lead traps shall be of the weight known as extra heavy (XH) and shall have at least one-eighth (1/8) inch wall thickness. Weights for lead water service or supply pipes shall be according to the maximum working pressure in pounds per square inch as given in federal specifications WW-P-325.

Section 12. On roofing systems requiring integral flashings, a flashing material which is part of the manufactured roofing system and [which is] required by the roofing manufacturer [in order] to guarantee or warranty the roofing system, shall [may] be used.

Section 13. Sheet Lead. Sheet lead for shower pans shall not weigh [not] less than four (4) lbs. per sq. ft. and shall not weigh [not] less than three (3) lbs. per sq. ft. for vent pipe flashings.

Section 14. Sheet Copper or Brass. Sheet copper or brass shall not be lighter than No. 18 B. & S. gauge, except [that for] local and interior ventilating pipe [it] shall not be lighter than No. 26 B. & S. gauge.

Section 15. Threaded Fittings. (1) Plain screwed fittings shall be either cast-iron, malleable iron, or brass of standard weight and dimensions.

(2) Drainage fittings shall be either cast-iron, malleable iron, or brass, with smooth interior waterway, with threads tapped out of solid metal.

(3) All cast-iron fittings used in a water supply distribution shall be galvanized.

(4) All malleable iron fittings shall be galvanized.

Section 16. Caulking Ferrules. Caulking ferrules shall be of red brass and shall be in accordance with the following table:

Pipe Sizes Inches	Inside Diameter Inches	Length Inches	Minimum Weight Each
2	2 1/4	2 1/2	1 lb. 0 oz.
3	3 1/4	4 1/2	1 lb. 12 oz.
4	4 1/4	4 1/2	2 lb. 8 oz.

Section 17. Soldering Nipples. Soldering nipples shall be recessed red cast brass, iron pipe size. When cast, they shall be full bore and of minimum weight.

Section 18. Floor Flanges for Water Closets and Service Sinks or Similar Fixtures. Floor flanges shall either be hard lead, brass, cast iron, galvanized malleable iron, ABS or PVC. Hard lead and brass flanges shall not be [not]

less than one-eighth (1/8) inch thick. Cast iron and galvanized malleable iron shall not be [not] less than one-fourth (1/4) inch thick and shall have a two (2) inch caulking depth.

Section 19. The use of lead (defined as solders and flux containing more than two-tenths (0.2) percent lead, and pipes and pipe fittings containing more than eight (8.0) percent lead) in the installation or repair of any public or private water system providing potable water for human consumption shall not be used.

Section 20. New Materials. Any material other than that specified in this code is prohibited unless the [such] material is specifically approved by the State Plumbing Code Committee and the Department of Housing, Buildings and Construction as being equal to or better than the material specified in the code. It shall be the responsibility of any person or company seeking the approval of a material not included in this code to prove to the satisfaction of these [such] agencies that the material is equal to or better than the material [for] which it is intended to replace. Procedural requirements for approval of new parts and materials are set forth in 815 KAR 20:020.

CHARLES A. COTTON, Commissioner

THEODORE T. COLLEY, Secretary

APPROVED BY AGENCY: January 15, 1991

FILED WITH LRC: January 28, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on March 26, 1991 at 10 a.m. in the office of the Department of Housing, Buildings and Construction, U.S. 127 South, Frankfort, Kentucky. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is received. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, U.S. 127 South, Frankfort, Kentucky 40601. If no written requests to appear at the public hearing are received by March 21, 1991, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

(1) Type and number of entities affected:*

(a) Direct and indirect costs or savings to those affected:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: *Because these amendments are made at the request of the Interim Committee on Cities and there are no substantial changes, the answer to the above questions is "none".

TIERING: Was tiering applied? No

PUBLIC PROTECTION & REGULATION CABINET
Department of Housing, Buildings & Construction
Division of Plumbing
(Proposed Amendment)

815 KAR 20:072. Installation standards for cast iron soil pipe and fittings.

RELATES TO: KRS Chapter 318

STATUTORY AUTHORITY: KRS 318.130

NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This regulation relates to the proper installation of cast iron soil pipe and fittings. This amendment is necessary to bring the regulation into technical compliance with KRS Chapter 13A. No other substantive changes were made.

Section 1. The installation of cast iron soil pipe and fittings shall [should] be made according to recommended procedures, since care taken in installing will assure the satisfactory performance of the plumbing drainage system.

Section 2. Instructions for Cutting Cast Iron Soil Pipe. (1) During installation assembly, pipe and fittings shall [must] be inserted into the hub or into the gasket and firmly seated against the bottom of the hub or against the center rib or shoulder of the gasket. [In order] To provide a sound joint with field cut lengths of pipe, it is necessary to have the ends cut square and as smooth as possible with metal cutting saw or snap type cutters.

(2) Cast iron soil pipe, which may vary somewhat in toughness and resiliency, shall [may] be cut with a twin-lever snap cutter or a ratchet type cutter equipped with a chain which contains equally spaced beveled cutting wheels. The following cutting procedure has been found to produce consistently good cuts:

(a) Position chain around pipe so that a maximum number of wheels are in contact with the pipe. Excessive space between the first and last wheel in contact with the pipe is almost certain to produce a poor quality cut.

(b) Score the pipe before final pressure is applied to complete the cut. Apply only enough pressure to the lever or ratchet handle to make the cutter wheels indent the pipe.

(c) Release the pressure and rotate tool a few degrees; then apply a quick final pressure to complete the cut. If a piece of pipe is

unusually tough, score the pipe several times and a good cut can be made. If the cutter wheels become flattened or dull, it will be very difficult (if not impossible) to obtain a satisfactory cut. The life of the chain can be extended by reversing the chain to obtain equal use of all the wheels. The mechanical features of a cutter shall [must] be kept in good working order.

Section 3. General Installation Instructions.

(1) Vertical piping.

(a) Secure vertical piping at sufficiently close intervals to keep the pipe in alignment and to support the weight of the pipe and its contents. Support stacks at their bases and at sufficient floor intervals to meet the requirements of local codes. Approved metal clamps or hangers shall [should] be used for this purpose.

(b) If vertical piping is to stand free of any support or if no structural element is available for support and stability during construction, secure the piping in its proper position by means of adequate stakes or braces fastened to the pipe.

(2) Horizontal piping, suspended.

(a) Support ordinary horizontal piping and fittings at sufficiently close intervals to maintain alignment and prevent sagging or grade reversal. Support each length of pipe by an approved hanger located not more than eighteen (18) inches from the joint.

(b) Support terminal ends of all horizontal runs or branches and each change of direction or alignment by an approved hanger.

(c) Closet bends installed above ground shall [should] be firmly secured.

(3) Horizontal piping, underground.

(a) When trenches are dug too deep, support the piping with approved grillage laid on firm ground as denoted in 815 KAR 20:130[, Section 13]. To maintain proper alignment during backfilling, stabilize the pipe in proper position by partial backfilling and cradling.

(b) Piping laid on grade shall [should] be adequately secured to prevent misalignment when the slab is poured.

(c) Closet bends installed under slabs shall [should] be adequately secured.

Section 4. Lead and Oakum Joint Installation.

(1) Insert the spigot into the hub which has been properly cleaned.

(2) An oakum strand shall [should] be inserted into the joint which is of a diameter that can be pressed into the joint by hand and sufficiently long to make three (3) turns around the pipe. Drive the strand of oakum to the bottom of the joint using a yarning iron. [Then] Pack the oakum solidly and evenly using a packing iron and hammer.

(3) Place additional strands of oakum into the joint until it fills the hub to within one-half (1/2) inch of the top, and [then] using a packing iron and hammer, pack this oakum until it forms a uniform surface one (1) inch from the top of the hub.

(4) Pour molten lead into the joint at one (1) spot between the hub and spigot until it arches up slightly above the top of the hub.

(5) When the lead has cooled, drive it down at four (4) points around the hub using a caulking iron [in order] to insure uniform caulking.

(6) Caulk the joint on the inside and outside

edges using a sixteen (16) ounce ball peen hammer and appropriate caulking irons.

Section 5. Compression Joint Installation. (1) Fold and insert the one (1) piece rubber gasket into the hub which has been properly cleaned.

(2) Apply special gasket lubricant to the spigot and inside of the neoprene gasket.

(3) Push, draw or drive the spigot into the gasketed hub with a pulling tool or suitable device.

Section 6. No-hub Joint Installation. (1) Clamp and gasket installation. The following procedures shall [must] be taken to insure a proper joint:

(a) Place the gasket on the end of one (1) pipe and the stainless steel or cast iron clamp assembly on the end of the other pipe.

(b) Firmly seat the pipe ends against the integrally molded shoulder inside the neoprene gasket.

(c) Slide the clamp assembly into position over the gasket and tighten the bands or clamps as described below.

(2) Torquing bands. A properly calibrated torque wrench, set at sixty (60) inch pounds shall [must] be used. The following procedure for applying torque to the band assembly shall [must] be used: The stainless steel bands shall [must] be tightened alternately and firmly to sixty (60) inch pounds of torque.

(a) Step 1. The inner bands shall [are to] be tightened alternately and firmly to sixty (60) inch pounds of torque.

(b) Step 2. The outer bands shall [are to] be tightened alternately and firmly to sixty (60) inch pounds of torque.

(3) Torquing clamps. A properly calibrated torque wrench, set at 175 inch pounds shall [must] be used. The following procedure for applying torque to the clamp assembly shall [must] be used: The stainless steel bolts shall [must] be tightened alternately, gradually and firmly to 175 inch pounds torque.

CHARLES A. COTTON, Commissioner

THEODORE T. COLLEY, Secretary

APPROVED BY AGENCY: January 15, 1991

FILED WITH LRC: January 28, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on March 26, 1991 at 10 a.m. in the office of the Department of Housing, Buildings and Construction, U.S. 127 South, Frankfort, Kentucky. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is received. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, U.S. 127 South, Frankfort, Kentucky 40601. If no written requests to appear at the public hearing are received by March 21, 1991, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

(1) Type and number of entities affected:*

(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:

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(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict:

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(6) Any additional information or comments: *Because these amendments are made at the request of the Interim Committee on Cities and there are no substantial changes, the answer to the above questions is "none".

TIERING: Was tiering applied? No

PUBLIC PROTECTION & REGULATION CABINET Department of Housing, Buildings & Construction Division of Plumbing (Proposed Amendment)

815 KAR 20:073. Installation standards for water and waste piping material of types K, L, M and DWV copper; types R-K, R-L, R-DWV brass tubing and seamless stainless steel tubing, G or H.

RELATES TO: KRS Chapter 318

STATUTORY AUTHORITY: KRS 318.130

NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This regulation relates to the proper installation of copper pipe and fittings. This amendment is necessary to bring the regulation into technical compliance with KRS Chapter 13A. No other substantive changes were made.

Section 1. The installation of copper, brass and seamless stainless steel tubing water and waste piping shall [should] be made according to recommended procedures, since care taken in installing will assure the satisfactory performance of the plumbing water distribution and drainage systems.

Section 2. Cutting, Reaming and Sizing. (1) Tube shall [should] be cut to exact length with a square cut using tube cutters, hacksaw blade or abrasive saw.

(2) Tube shall have burrs and slivers removed

by using a reamer or other appropriate tool.

(3) Tube shall be brought to true dimensions and roundness by using a sizing tool which consists of a plug and ring.

Section 3. Cleaning. Surfaces to be joined shall [must] be clean and free from oil, grease and heavy oxides. Clean the end of the tube a distance slightly more than is required to enter the socket of the fitting with fine sand cloth or special wire brushes.

Section 4. Jointing Techniques. (1) Soldered joints. After cleaning, cover the surfaces with a thin film of mildly corrosive liquid or petroleum based pastes that contain chlorides of zinc and ammonium. No "so-called" self-cleaning flux shall [is to] be used in lieu of cleaning pipe as outlined in Section 3 of this regulation. Wipe off excess flux in fitting socket. Insert tube end into socket, making sure the tube is firmly seated against the end of the socket. Remove excess flux with a rag. Apply heat to the fitting and then move in order to heat as large an area as possible. Do not overheat. When the joint is hot enough, the solder will melt on contact with the pipe and will flow by capillary attraction into joint. Remove heat and allow to cool before moving (refer to 815 KAR 20:060[, Section 17]).

(2) Brazed joints. After cleaning, cover the surface of the tube end and the fitting socket with a thin film of flux in accordance with the recommendations of the manufacturer of the brazing filler metal being used. Avoid getting flux inside the tube itself. Flux may be omitted when joining copper tube to wrought copper fittings with copper-phosphorus alloys (B-cup Series) which are self fluxing on copper. Insert tube end into socket hard against the stop and turn if possible. Apply heat to parts to be joined, heating the tube first, then the fitting at the base of the cup. Apply brazing wire, rod or strip where tube enters the socket of the fitting. Remove heat and allow to cool.

(3) Flared joints; impact tools.

(a) See Sections 2 and 3 of this regulation.

(b) Slip the coupling nut over the end of the tube.

(c) Insert flaring tool into the tube end and drive the flaring tool by hammer strokes expanding the end of the tube to the desired flare.

(d) Place the fitting squarely against the flare. Engage the coupling nut with the fitting threads. Tighten with two (2) wrenches, one (1) on the nut and one (1) on the fitting.

(4) Screw type flaring block.

(a) Follow subsection (3)(a) and (b) of this section for impact flaring.

(b) Clamp the tube in the flaring block so that the tube is slightly above the block. Place the yoke of the flaring tool on the block so that the beveled end of the compression cone is over the tube end. Turn the compressor screw down firmly, forming the flare between the chamber in the flaring block and the beveled compressor cone. Remove the flaring tool and assemble as in subsection (3)(d) of this section.

(5) Mechanically formed tee connection.

(a) For use in domestic hot and cold water distribution systems above ground only.

(b) Mechanically extracted collars shall be formed in a continuous operation consisting of drilling a pilot hole and drawing out the tube

surface to form a collar having a height of not less than three (3) times the thickness of the tube wall. The collaring device shall be fully adjustable so to insure proper tolerance and complete uniformity of the joint.

(c) The joining branch tube shall be no less than one (1) pipe size smaller than the main and shall be notched and dimpled in a single process [so as] to set the proper penetration of the branch tube into the fitting to assure a free flow joint.

(d) All joints shall be brazed in accordance with subsection (2) of this section and the Copper Development Association, Copper Tube Handbook using B-cup filler metal. A copy of this standard may be obtained by writing the Association at Greenwich Office Park #2, Box 1840, Greenwich, CT 06836. NOTE: Soldered joints shall [will] not be permitted.

Section 5. Hangers and Supports. Hangers, anchors and supports shall be of material of sufficient strength to support the piping and its contents. Hangers, anchors and supports shall be securely attached to the building construction at sufficiently close intervals to support the piping and its contents. Provisions shall be made to allow for expansion, contraction, structural settlement and vibrations.

(1) Vertical piping. Copper tubing shall be supported at each story for piping one and one-half (1 1/2) inches and larger in diameter. For piping one and one-quarter (1 1/4) inches and smaller in diameter, it shall be supported at each story and not more than ten (10) foot intervals. Supports shall be of copper material of sufficient strength which will not adversely react with the piping material.

(2) Horizontal piping. Copper tubing shall be supported at six (6) foot intervals for one (1) inch and smaller in diameter and ten (10) foot intervals for one and one-quarter (1 1/4) inch and larger. Supports shall be of copper material of sufficient strength which will not adversely react with the piping material.

CHARLES A. COTTON, Commissioner

THEODORE T. COLLEY, Secretary

APPROVED BY AGENCY: January 15, 1991

FILED WITH LRC: January 28, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on March 26, 1991 at 10 a.m. in the office of the Department of Housing, Buildings and Construction, U.S. 127 South, Frankfort, Kentucky. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is received. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, U.S. 127 South, Frankfort, Kentucky 40601. If no written requests to appear at the public hearing are received by March 21, 1991, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

(1) Type and number of entities affected:*

(a) Direct and indirect costs or savings to those affected:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:
*Because these amendments are made at the request of the Interim Committee on Cities and there are no substantial changes, the answer to the above questions is "none".

TIERING: Was tiering applied? No

PUBLIC PROTECTION & REGULATION CABINET

Department of Housing, Buildings & Construction

Division of Plumbing

(Proposed Amendment)

815 KAR 20:074. Installation standards for steel and wrought iron pipe.

RELATES TO: KRS Chapter 318

STATUTORY AUTHORITY: KRS 318.130

NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This regulation relates to the proper installation of steel and wrought iron pipe and fittings. This amendment is necessary to bring the regulation into technical compliance with KRS Chapter 13A. No other substantive changes were made.

Section 1. Materials. All steel pipe shall conform to the latest ASTM standard specifications for welded wrought iron pipe or ASTM standard specifications for welded and seamless steel pipe. Schedule 40 shall be the minimum weight. For water distribution or soil, waste and vent, only galvanized shall be used.

Section 2. Cutting and Reaming. (1) Pipe shall be cut to length with a square cut using pipe cutters, hacksaw or abrasive saw.

(2) All cut-to-length pipe which is to be threaded or prepared for a mechanical connection shall [must] be reamed to the full inner diameter of the pipe.

Section 3. Jointing Techniques. (1) Screw joints. All screw joints shall be made by the use of a properly cut thread inserted into the female part of the fitting after applying the recommended pipe joint compound sparingly to the male threads. Tighten hand-tight to check for alignment and then tighten enough to insure a tight leak-proof joint. Do not overtighten.

(2) Mechanical joints. Mechanical joints for hot and cold water shall not [may] be used above ground unless [provided] the couplings are galvanized and the gaskets conform to ASTM D-735-61, Grade N-R-615 BZ and are limited to 2 in size and above. Lubricate the pipe ends with approved lubricant and slip the gasket completely over one (1) pipe end. Bring pipe ends together and slide the gasket back into central spanning position. Put housing clamps over gasket, insert bolts and nuts with a socket wrench, draw nuts down equally and tightly.

Section 4. Hangers and Supports. (1) Hangers, anchors and supports shall be of material of sufficient strength to support the piping and its contents. Hangers, anchors and supports shall be securely attached to the building construction at sufficiently close intervals to support the piping and its contents. Provisions shall be made to allow for expansion, contraction, structural settlement and vibration.

(2) Vertical piping.

(a) Screwed piping shall be supported at every other story height with supports of ferrous metal.

(b) Mechanical joint piping shall be supported at every story height with supports of ferrous metal.

(3) Horizontal piping. Horizontal piping shall be supported at sufficiently close intervals to keep the piping in alignment and prevent sagging. Screwed and mechanical joint pipe one and one-half (1 1/2) inches and over shall be supported at each twelve (12) foot interval; one and one-quarter (1 1/4) inch and smaller shall be supported at each eight (8) foot interval. Support shall be of ferrous metal.

CHARLES A. COTTON, Commissioner

THEODORE T. COLLEY, Secretary

APPROVED BY AGENCY: January 15, 1991

FILED WITH LRC: January 28, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on March 26, 1991 at 10 a.m. in the office of the Department of Housing, Buildings and Construction, U.S. 127 South, Frankfort, Kentucky. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is received. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, U.S. 127 South, Frankfort, Kentucky 40601. If no written requests to appear at the public hearing are received by March 21, 1991, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

(1) Type and number of entities affected:*

(a) Direct and indirect costs or savings to those affected:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

*Because these amendments are made at the request of the Interim Committee on Cities and there are no substantial changes, the answer to the above questions is "none".

TIERING: Was tiering applied? No

PUBLIC PROTECTION & REGULATION CABINET
Department of Housing, Buildings & Construction
Division of Plumbing
(Proposed Amendment)

815 KAR 20:075. Installation recommendations for polybutylene tubing for hot and cold water distribution systems.

RELATES TO: KRS Chapter 318

STATUTORY AUTHORITY: KRS 318.130

NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This regulation shall govern the installation of polybutylene (PB) tubing in potable hot and cold water distribution systems within buildings. Installation, materials and inspections shall comply with the current edition of the Kentucky State Plumbing Code and with this standard. This amendment is necessary to bring the regulation into technical compliance with KRS Chapter 13A. No other substantive changes were made.

Section 1. Definitions. (1) "ASTM" means [-] American Society of Testing Materials and copies of standards may be obtained by writing the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

(2) "KSPCC" means [-] Kentucky State Plumbing Code Committee.

(3) "NSF" means [-] National Sanitation Foundation and copies of standards may be obtained by writing the National Sanitation Foundation, 3475 Plymouth Road, P.O. Box 1468,

Ann Arbor, Michigan 48106.

(4) "PB" means [-] polybutylene.

(5) "SDR" means [-] standard dimension ratio.

(6) "Approved" means [-] by the Commonwealth of Kentucky, Division of Plumbing.

Section 2. (1) Material. Tubing shall be [is] polybutylene (PB).

(2) Tubing shall conform to ASTM D-3309-85b.

(3) Fittings shall be metal or plastic compression or insert type.

(a) Compression fittings shall utilize brass nuts and shall be approved for use with PB tubing.

(b) Insert fittings. Refer to 815 KAR 20:120, [Section 9,] Water Supply Pipes and Materials.

NOTE 1. Manufacturers of fittings shall recommend assembly procedures.

NOTE 2. Manufacturers shall provide test data from an independent testing laboratory acceptable to the KSPCC, that their PB system or their PB tubing, together with recommended fittings, has a short term working pressure and temperature rating (STWP) or 150 psi (1033 kPa) at 210 degrees Fahrenheit (410 degrees Centigrade) for forty-eight (48) hours or more.

Section 3. Markings. (1) Tubing. Tubing shall be legibly marked at intervals of not more than five (5) feet (1.5m) with at least the following:

(a) Manufacturer's name or trademark.

(b) ASTM D3309.

(c) Tube size, "tubing" or "copper tubing size (CTS)".

(d) PB 2110.

(e) SDR 11.

(f) Pressure rating, 100 psi, at 180 degrees Fahrenheit (690 Mpa at eighty-two (82) degrees Centigrade).

(g) NSF seal or marking or other KSPCC acceptable agency.

(h) Manufacturer's date and material code.

(2) Fittings. Fittings shall be marked with at least the following:

(a) Manufacturer's name or trademark or other acceptable markings.

(b) Plastic fittings shall be labeled with the NSF seal or marking of other KSPCC acceptable agency.

(3) Position of markings. When practical, markings shall be visible for inspection.

Section 4. Protection of Tubing. (1) Abrasion. Tubing passing through drilled metal studs, joists, or hollow masonry walls shall be protected from abrasion or sharp edges by elastomeric or plastic sleeves, grommets or other approved means.

EXCEPTION: Straight runs may have protection only at beginning and end at maximum three (3) feet (0.9m) intervals.

(2) Puncture. Steel plate protection shall be installed when required by this regulation or other regulations of the department [the administrative authority].

(3) Exposed tubing.

(a) Attic opening. Tubing closer than six (6) feet (1.83m) to an attic opening shall be protected.

(b) General. Exposed tubing shall be protected from mechanical damage.

(4) Freezing. In areas where PB must be drained to protect the system from freezing, horizontal tubing shall be graded to drain.

(5) Storage. Tubing shall be stored in a way

to protect the system from mechanical damage (slitting, puncturing, etc.). Tubing shall [should] be stored undercover to keep it clean and avoid long term exposure to sunlight. Exposure to sunlight during normal construction periods is not harmful.

(6) Thermal expansion. General. The linear expansion rate for PB is approximately ten (10) inches (600 mm) per 100 feet (10,000 mm) of tube per 100 degrees Fahrenheit (fifty (50) degrees Centigrade) change in temperature. When installing runs of tubing, one-eighth (1/8) inch (three (3) mm) longitudinal clearance per foot (300 mm) of run shall be provided to accommodate thermal expansion. A vertical branch being connected to a horizontal main shall be made by loop, or a twelve (12) inch (300 mm) minimum horizontal offset to allow for expansion and construction in both sections of the tubing. Examples of expansion methods are shown in Figure 1.

NOTE: Radius of bends shall comply with Section 10(1) of this regulation.

NOTE: Expansion rate is independent of size of tube.

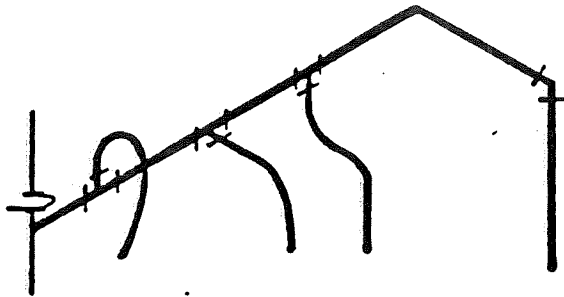


Figure 1

(7) Clearance. Adequate clearance shall be provided between tubing and structure (such as bored holes and sleeves) to allow free longitudinal movement.

Section 5. Hangers and Supports. (1) Vertical tubing. Vertical tubing shall be supported at each floor. Tubing shall have a midstory guide.

(2) Horizontal tubing. Horizontal tubing shall be supported at maximum thirty-two (32) inch[es] (810 mm) intervals. If continuously supported, hangers or supports may be placed at six (6) feet (1800 mm) intervals.

(3) Hangers and anchors. Tubing shall not be anchored rigidly to a support; but shall be secured with smooth hangers or straps that provide for a degree of movement and that prevents damage to the tubing. Do not use hangers or straps with sharp or abrasive edges. Do not use hangers that pinch the tubing. Metal hangers or straps shall be insulated to prevent abrasion.

Section 6. Joints and Connections. (1) Procedure. Tubing shall [should] be cut with a tubing cutter, equipped with a thin cutting wheel designed specifically for plastics. Tubing shall be cut square, i.e., perpendicular to the length. If other cutting methods are used, care shall [must] be taken to remove any excess material, flashing or burrs.

(2) Tools.

(a) Compression fittings. Follow manufacturers recommendations.

(b) Insert fittings -- only approved crimping tools shall [should] be used with PB insert fitting systems. Tools shall be calibrated three (3) times daily and used in conjunction with approved insert fittings. Crimp rings shall be of wrought copper only. For specific crimping procedures, follow manufacturer's recommendations.

(c) Socket-fused joints.

1. Cut pipe or tubing end square.

2. Chamfer the outside corner of the pipe end for pipe one and one-quarter inch (1 1/4") iron pipe size (IPS) and larger with proper chamfering tool.

3. Clean pipe or tubing end. (Pipe shall [must] be free of dirt or grease.)

4. Place depth gauge on pipe or tubing end, thereby preventing [This prevents] pipe from bottoming out on the fitting.

5. Clamp cold ring around pipe with one (1) side contacting the depth gauge. (Cold ring rounds the pipe end, and limits the depth that the heater face and socket fitting slide over pipe end.)

6. With one-half inch (1/2") and three-fourths inch (3/4") pipe, use insert stiffener to insure pipe or tubing roundness.

7. Clean fitting. (Socket shall [must] be free of dirt or grease.)

8. Heating tool shall [should] be cleaned after each fusion.

9. Place pipe or tubing end and fitting adjacent to heater elements.

10. Temperature of heating tool shall be no less than 500 degrees Fahrenheit nor shall it exceed 526 degrees Fahrenheit.

11. Push pipe or tubing end, heater and fitting together with an even pressure.

12. Use the following chart or manufacturer's recommendations for heating and cooling times.

Size	Heating Time	Cooling Time
1/2"	5 - 7 Seconds	20 Sec. Minimum
3/4"	7 - 9 Seconds	20 Sec. Minimum
1"	8 - 10 Seconds	20 Sec. Minimum
1 1/4"	10 - 12 Seconds	20 Sec. Minimum
1 1/2"	10 - 12 Seconds	20 Sec. Minimum
2"	12 - 15 Seconds	30 Sec. Minimum

13. Make certain that joint is intact and formed properly.

Section 7. Transition Joints. (1) Fittings. Transitions for PB tubing to metal piping valves shall be made only with approved transition fittings intended to this purpose.

(2) Threaded joints. Female threaded plastic fittings shall not be installed unless specifically approved for this purpose. Only approved thread tape or thread lubricant intended for use with plastic fittings shall be used. Conventional pipe thread compounds, putty, mineral oil, linseed oil base products, and unknown mixtures shall not be used. DO NOT OVERTIGHTEN.

Section 8. Materials Location. Fittings shall NOT be installed in or under a concrete floor slab resting on the ground within a building or structure or parts thereof. The term "building or structure or part thereof" shall include structures such as porches and steps, roofed porte-cocheres, roofed patios, carports, covered

driveways, and similar structures or appurtenances.

Section 9. Pressure Relief Drains. Drain lines. Tubing shall not be used as a pressure relief valve drain pipe.

Section 10. Installation. (1) Bends. Tubing shall be installed using bends with a minimum radius of twelve (12) times the nominal tubing diameter.

(2) Damage. Kinked or buckled tubing shall be removed.

(3) Finished nipples. It is permissible to stub through a finished wall, floor or ceiling surface with nipples connected to drip ear elbows or other fittings designed to be fastened to structure to prevent rotation. Finish nipples shall be of conventional metallic materials or be nonmetallic code approved nipples.

(4) Hose bibbs. Hose bibbs shall not be directly connected to PB tubing. The metal piping directly connected to any hose bibb shall be anchored so that the loads on the hose bibb shall [will] not strain the PB tubing.

(5) Recess light fixtures. PB tubing shall not be installed within twelve (12) inches (.30m) of a recessed light fixture.

(6) PB tubing installed in fire resistive construction. Where tubing is installed and penetrates required fire resistive construction, the fire resistive integrity of the construction shall be maintained. Methods for maintaining the integrity of the fire resistive construction shall be as required by the building code; or where not established by the building code, by qualified testing methods approved by the Division of Plumbing [and Building Department]. Approval shall be obtained prior to installing any [such] tubing.

(7) Heated joints. Brazed, soldered or welded joints within eighteen (18) inches (500 mm) of PB tubing shall be made before connecting to PB tubing. DO NOT apply flame to tubing.

(8) Vents. Tubing shall not be installed within six (6) inches (fifteen and one-tenth (15.1) mm) of a gas appliance single wall vent connector or within a confined space (such as stud cavity) containing any appliance vent.

(9) Working pressure and temperature. Working pressure shall not exceed eighty (80) psi (552 kPa) and working temperature shall not exceed 180 degrees Fahrenheit (eighty-two (82) degrees Centigrade).

(10) Exposure to sunlight. PB tubing shall not be installed so as to be subjected to direct sunlight after installation, and shall not be installed on the surface of the building.

(11) Water heaters. Tubing shall not be installed downstream from any instantaneous type (coil or immersion) water heater or closer than six (6) inches (fifteen (15) mm) developed length upstream. It shall not be installed in the vertical runs of a water heater and downstream six (6) inches horizontally.

(12) Identification. A permanent sign with the legible words "This building has nonmetallic interior water piping" shall [may] be fastened on or inside the main electric service panel.

(13) Water hammer arresters. A PB hot water system will withstand repeated pressure surges, well in excess of its rated pressure, but water hammer arresters may be advisable when solenoid valves or other quick closing devices are used in the system. In designing for these devices,

[such situations it is advisable to consult] the pipe or fitting manufacturer's [for] recommended surge pressure limits shall be utilized.

(14) Only approved metal fittings shall be used in hot water circulating lines.

(15) The system shall be tested in accordance with the Kentucky Plumbing Code. A PB distribution system shall [can] be pressure tested immediately after installation.

CHARLES A. COTTON, Commissioner

THEODORE T. COLLEY, Secretary

APPROVED BY AGENCY: January 15, 1991

FILED WITH LRC: January 28, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on March 26, 1991 at 10 a.m. in the office of the Department of Housing, Buildings and Construction, U.S. 127 South, Frankfort, Kentucky. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is received. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, U.S. 127 South, Frankfort, Kentucky 40601. If no written requests to appear at the public hearing are received by March 21, 1991, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

(1) Type and number of entities affected:*

(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:

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(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: *Because these amendments are made at the request of the Interim Committee on Cities and there are no substantial changes, the answer to the above questions is "none".

TIERING: Was tiering applied? No

PUBLIC PROTECTION & REGULATION CABINET
Department of Housing, Buildings & Construction
Division of Plumbing
(Proposed Amendment)

815 KAR 20:077. Storage and installation of aluminum soil, waste vent and storm water piping and fittings.

RELATES TO: KRS Chapter 318

STATUTORY AUTHORITY: KRS Chapter 13A, 318.130

NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This regulation relates to the storage, handling and installation of aluminum soil, waste, vent and storm drain pipe and fittings. This amendment is necessary to bring the regulation into technical compliance with KRS Chapter 13A. No other substantive changes were made.

Section 1. All aluminum pipe and fittings shall conform to American Society of Sanitary Engineering (ASSE) Standard #1045, performance standard and installation procedures for aluminum drain, waste and vent pipe with end cap components.

Section 2. General. (1) The installation of aluminum drain, waste, and vent (DWV) with end cap components for both sanitary and storm use shall be installed as per these requirements.

(2) Handling instructions, installation instructions, special environmental conditions, workmanship, and assembly for aluminum drain, waste and vent (DWV) systems, as defined, shall be followed by the installer.

Section 3. Shipping, Storage and Handling. (1) Pipe shall be shipped and stored on a flat, clean surface, free of nails, rocks, or other sharp objects which could potentially damage the pipe or coating (if supplied) or both. Pipe shall not be stacked more than ten (10) pieces high, unless strapped in bundles as received from the supplier, nor shall one (1) pipe rest unwrapped within another, which is not a recommended practice for any lined material. Pipe shall be supported on flat supports having a bearing face approximately four (4) inches wide, at intervals not greater than five (5) feet and at each end of the pipe.

(2) Unless suitably crated, mechanical handling of pipe and accessories shall not be performed. Manual handling shall be used on all sizes of pipe.

(3) All pipe and joint components shall be stored away from extreme heat and from the danger of mechanical damage.

(4) Strict attention shall be paid to all safety regulations for handling and storage of pipe, fittings and accessories.

Section 4. Installation. (1) Before starting the installation, all pipe, fittings, and joint components shall be examined. All [Any] materials that are bent, crushed, severely dented, or otherwise damaged shall not be used.

(2) Pipe shall be cut square and all ragged or burred edges, inside and out shall [should] be removed taking care not to disturb [neither] the alcladding or [nor] the internal lining. Pipe shall [should] be cut with a circular saw equipped with a mitre box or guide to ensure a

square cut. A twelve (12) or fourteen (14) inch diameter, semi or high speed steel, fine toothed, hollow ground, metal cutting blade shall [will] be satisfactory. Tungsten carbide tipped blades that give a longer blade life are available. A solid or liquid blade lubricant shall [should] be used.

(3) Assembly procedure.

(a) Slip the Alcan Adapter Ring (complete with mastic seal) over the cut end of the Alcan Aluminum DWV Pipe.

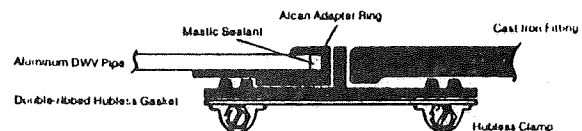
(b) Slip the hubless clamp over the aluminum pipe and out of the way until required.

(c) Insert the aluminum DWV pipe with adapter ring into the double-ribbed gasket.

(d) Insert the cast iron fitting into the other end of the double-ribbed hubless gasket.

(e) Slide the hubless clamp over the gasket. Torque the screws alternately to sixty (60) in./lb.

(f) The joint is now complete.



(4) Open clearance. Opening through walls, partitions, and floors shall be sufficient in size to allow free passage of pipe, fittings, and joint components. Openings shall be smooth and free of harmful surfaces and projections.

(5) Sealed. If openings through walls, partitions, and floors require sealing, they shall [may] be sealed with mortar, concrete, or other sealants compatible with aluminum. Care shall be taken to ensure that aluminum drain, waste and vent (DWV) pipe is not in contact with reinforcing steel embedded in concrete. If required by regulations or deemed necessary by the installing plumber, the pipe shall [may] be wrapped in suitable plastic or rubber tape over the area passing through the wall or floor, or coated with good quality bituminous paint.

NOTE: If a sealant containing magnesium oxychloride is used, the pipe shall be provided with additional protection.

(6) Service penetration firestops. Service penetration firestop assemblies shall be in accordance with local fire or building codes.

Section 5. Joints. (1) Coupled. Joints shall be made in accordance with the manufacturer's instructions, including end cap protection and other component details.

(2) Transition to other piping. Adapter fittings are available for joining aluminum drain, waste and vent (DWV) pipe to other types of pipe. Only adapter fittings approved for the specific transition shall be used.

Section 6. Supports. (1) Hangers. If [Where] a hanger or support for aluminum drain, waste and vent (DWV) pipe is of a metal other than aluminum and if [where] chlorides or other electrolytes are present or likely to be present, the hanger shall [should] be suitably separated and electrically isolated from the pipe. Supports and hangers shall [should] have a broad support base and shall [should] be free of burrs and rough edges to prevent abrasion of the pipe.

(2) Spacing. Horizontal pipe shall [should] be

supported at intervals not greater than ten (10) feet, at all joints, at all branch ends, and at all points where there is a change in direction. Trap arms shall [should] be supported as close to the trap as possible. Vertical pipe shall [should] be supported at intervals not greater than ten (10) feet.

Section 7. Buried Pipe. Only aluminum drain, waste and vent (DWV) pipe having a factory-applied external coating and marked "UGRD" shall be used underground. Joints shall be protected from corrosion by applying a tape wrap or shrink sleeve. The pipe shall be protected from mechanical damage by suitable structural shielding, if deemed necessary.

Section 8. Drain, Waste and Vent [DWV] Systems Subject to Freezing. In servicing an aluminum drain, waste and vent (DWV) system to protect trap and fixtures from freezing, a glycol-water solution made up of sixty (60) percent by mass of glycol mixed in water shall be used. Alcohol antifreeze shall not be used, because [as the] alcohol will evaporate and lose its effectiveness.

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary

APPROVED BY AGENCY: January 15, 1991

FILED WITH LRC: January 28, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on March 26, 1991 at 10 a.m. in the office of the Department of Housing, Buildings and Construction, U.S. 127 South, Frankfort, Kentucky. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is received. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, U.S. 127 South, Frankfort, Kentucky 40601. If no written requests to appear at the public hearing are received by March 21, 1991, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

(1) Type and number of entities affected:*

(a) Direct and indirect costs or savings to those affected:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: *Because these amendments are made at the request of the Interim Committee on Cities and there are no substantial changes, the answer to the above questions is "none".

TIERING: Was tiering applied? No

PUBLIC PROTECTION & REGULATION CABINET Department of Housing, Buildings & Construction Division of Plumbing (Proposed Amendment)

815 KAR 20:100. Joints and connections.

RELATES TO: KRS 198B.040(7), 198B.050(2), Chapter 318
STATUTORY AUTHORITY: KRS 13A.120, 198B.040(10), 318.130

NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This regulation relates to the methods that shall [must] be used in joining certain types of piping materials together as well as denoting the methods that shall [must] be used in securing plumbing fixtures to waste piping outlets. This amendment is necessary to bring the regulation into technical compliance with KRS Chapter 13A. No other substantive changes were made.

Section 1. Water and Airtight Joints. All joints and connections shall be made permanently gas and water tight.

Section 2. Vitrified Pipe Joints; Concrete Pipe Joints; House Sewers - Combined Sewers. Joints in vitrified clay pipe shall conform to ASTM specification C-425. Joints in concrete pipe shall conform to ASTM specifications C-443. When it is necessary to use piping in other than standard lengths hot poured joints may be used. Joints between cast iron pipe and vitrified clay pipe or concrete pipe shall be made either of hot poured bitumastic compound or by a preformed elastomeric ring. The ring shall completely fill the annular space between the cast iron spigot and the vitrified clay or concrete pipe hub. Joints in pipe and fittings of not more than two (2) pipe sizes between vitrified clay, acrylonitrile-butadiene-styrene or polyvinyl chloride to cast iron pipe and fittings or the joining of either material to the other may be made with proper fittings by the use of a dispersion grade polyvinyl chloride ring conforming to ASTM C-443, C-425, C-594, C-564 and D-1829 or elastomeric polyvinyl chloride coupling.

Section 3. Caulked Joints. All caulk joints shall be firmly packed with oakum or hemp and shall have at least one (1) inch of pure lead properly caulked. No paint, varnish or putty

shall [will] be permitted until tests have been performed.

Section 4. (1) Screw joints. All screw joints shall be American Standard screw joints and all burrs or cuttings shall be removed.

(2) Mechanical joint couplings for hot and cold water. Mechanical joint couplings for hot and cold water shall not [may] be used above ground unless [provided] the couplings are galvanized and the gaskets conform to ASTM D-735-61, grade N-R-615 BZ, or other material on approved parts or materials list.

(3) Mechanical joint couplings for storm water piping. Mechanical joint couplings for storm water piping shall not [may] be used above ground unless [provided] the couplings are either black iron or galvanized and the gaskets conform to ASTM D-735-61, grade N-R-615 BZ.

(4) Joints in PVC and ABS Schedule 40 or 80 pipe and fittings. Joints in polyvinyl chloride schedule 40 or 80 pipe and fittings shall be solvent welded joints and shall conform to ASTM D-2665-69.

Joints in acrylonitrile-butadiene-styrene pipe and fittings shall be solvent welded joints and shall conform to ASTM D-2661-69. Acrylonitrile-butadiene-styrene and polyvinyl chloride sewer piping that conforms to ASTM 3033 and 3034 shall be joined by solvent cement conforming to ASTM D-2661-69 for acrylonitrile-butadiene-styrene and ASTM D-2665-69 for polyvinyl chloride or with an elastomeric joint conforming to ASTM D-3212-73.

(5) Copper pipe, brass and stainless steel yubing joints. Copper pipe, brass and stainless steel tubing joints shall be soldered joints.

(6) Expansion. Every expansion joint shall be of approved type and its material shall conform with the type of piping in which it is installed.

(7) Brazed joints. Brazed joints shall be made by first cleaning the surfaces to be joined down to the base metal, applying flux approved for the [such] joints and for the filler metal to be used, and making the joint by heating to a temperature sufficient to melt the approved brazing filler metal on contact.

(8) Elastomeric polyvinyl chloride coupling. Elastomeric polyvinyl chloride couplings shall [may] be used for connecting cast iron, vitrified clay, concrete, or plastic pipe or the combination of these pipe materials for use on house sewers and combination sewers only. This coupling shall be provided with #305 stainless steel clamps.

(9) Joints in corrugated polyethylene subsoil drainage tubing. Joints in corrugated polyethylene subsoil drainage tubing shall be made by slip joints using appropriate fittings.

(10) Joints in aluminum pipe shall be made by use of an adaptor ring (complete with mastic seal) over the cut end of the pipe and the use of an approved elastomeric sealing sleeve with a corrosion resistant clamping device.

Section 5. Cast Iron Soil Pipe Joints. (1) Joints in cast iron shall either be caulked, screwed, or joints made with the use of neoprene gaskets. Neoprene gaskets shall conform to either ASTM C-564-70 or CS 301-72. Joints that conform to commercial standard 301-69T shall have a stainless steel clamp.

(2) Cast iron coupling for joining hubless cast iron pipe shall consist of neoprene gasket conforming to ASTM C-564, cast iron clamps

conforming to ASTM A-48 and stainless steel bolts and nuts conforming to ANSI B-18.2.1 and ANSI B-18.2.2.

Section 6. Borosilicate Joints. Joints and gaskets used for borosilicate pipe shall be made in a manner approved by the department.

Section 7. (1) Steel, brass and copper connections to cast iron pipe. Steel, brass and copper joints when connected to cast iron pipe shall be either screwed or caulked joints. All caulked joints shall be made by the use of a caulking spigot.

(2) PVC and ABS pipe and fitting connections to steel, brass, copper and cast iron pipe. Polyvinyl chloride and acrylonitrile-butadiene-styrene pipe and fitting connections to steel, brass, copper or cast iron pipe shall either be a screwed or caulk joint. Joints between Schedule 40 PVC or ABS pipe and cast iron pipe may be made by the use of a neoprene gasket stamped [conforming to] ASTM C-564-70. All caulk joints shall be made with the use of either a polyvinyl chloride or acrylonitrile-butadiene-styrene or cast iron caulking spigot.

(3) Stainless steel tubing to cast iron pipe to galvanized steel pipe and to copper tubing. Stainless steel tubing to cast iron pipe shall be made by caulking spigot. Stainless steel tubing to galvanized steel pipe or copper pipe shall be made by the use of an adaptor.

(4) Joints in acid waste piping. Joints in vitreous glazed piping shall be made in a manner and of a material approved by the department. Joints in polyethylene and polypropylene piping shall [must] be made by the heat fusion process. Joints in polypropylene shall [may] also be made with a union joint. Joints in borosilicate pipe shall [may] be a stainless steel mechanical joint. Joints between silicon iron pipe shall [may] be either caulk joint or stainless steel mechanical joint.

Section 8. Lead Pipe. Joints in lead pipe or between lead pipe and brass or copper pipes, ferrules, soldering nipples, or trap, shall be full-wiped joints, with an exposed surface of the solder at each side of the joint of not less than three-quarters (3/4) of an inch. The minimum thickness of the thickest part of the joint shall be at least as thick as the material being used. If [In the event] lead pipe is used for acid waste lines, the pipe may be joined by burning.

Section 9. Lead Pipe to Cast Iron, Steel, or Wrought Iron Pipe. The joints between lead to cast iron, steel or wrought iron shall be made by means of a caulking ferrule or a soldering nipple.

Section 10. Wall or Floor Flange Joints. Wall or floor flange joints shall be made by using a lead ring or brass flange and shall be properly soldered.

Section 11. Soil Pipe, Iron Pipe, Copper Pipe; Tubular Trap Joints. Joints between soil pipe, iron pipe, copper pipe and tubular traps shall be made by the use of a heavy red cast brass adaptor. Tubular traps shall be soldered to the adaptor in a manner approved by the department.

Section 12. Slip Joints. Slip joints shall be permitted only on the inlet side of a trap.

Section 13. Unions. Unions shall be ground faced and shall not be concealed or enclosed.

Section 14. Roof Joints. The joint of the roof shall be made watertight by use of copper, lead or other approved flashing or flashing material. It shall extend not less than six (6) inches from the pipe in all directions and shall extend upward twelve (12) or more inches and turn down into the pipe. A hub flashing may be used if [provided] it is constructed so it can be caulked into a hub above the roof.

Section 15. Increases and Reducers. When different size pipes or pipes and fittings are to be concealed, the proper size increaser or reducer pitched at an angle of forty-five (45) degrees between the two (2) sizes, shall be used. This section does not apply to nonmetallic installations.

Section 16. Prohibited Joints and Connections. Any fitting or connection which has an enlargement chamber, or recess with a ledge shoulder, or reduction of the pipe area in the direction of the flow is prohibited.

Section 17. Hangers and Supports. All piping and fixtures shall be adequately supported by hangers or anchors securely attached to the building construction.

Section 18. Welded Pipe for Soil, Waste and Vent Systems. Mild steel pipe may be welded for a soil waste and vent system if [provided] the welds are mechanically sound and the bore of the piping is smooth throughout its length. The welded piping shall be covered with a metallic continuous coating. Written permission shall be secured from the department for this type [such a] system.

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary

APPROVED BY AGENCY: January 15, 1991

FILED WITH LRC: January 28, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on March 26, 1991 at 10 a.m. in the office of the Department of Housing, Buildings and Construction, U.S. 127 South, Frankfort, Kentucky. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is received. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, U.S. 127 South, Frankfort, Kentucky 40601. If no written requests to appear at the public hearing are received by March 21, 1991, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

(1) Type and number of entities affected:*

(a) Direct and indirect costs or savings to those affected:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: *Because these amendments are made at the request of the Interim Committee on Cities and there are no substantial changes, the answer to the above questions is "none".

TIERING: Was tiering applied? No

PUBLIC PROTECTION & REGULATION CABINET Department of Housing, Buildings & Construction Division of Plumbing (Proposed Amendment)

815 KAR 20:170. Mobile home park waste systems and connections.

RELATES TO: KRS Chapter 318

STATUTORY AUTHORITY: KRS 318.130

NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This regulation relates to mobile home park waste systems and connections and it specifies the material as well as the method that shall [will] be used in installing the necessary plumbing to serve mobile homes. This amendment is necessary to bring the regulation into technical compliance with KRS Chapter 13A. No other substantive changes were made.

Section 1. Materials. All materials shall conform to other sections of this code.

Section 2. Sewers. The main and branch sewers for the connections of mobile homes shall be laid at a uniform grade and alignment and all joints shall be water tight. Clean-outs shall be provided at intervals not to exceed 100 feet for main and branch sewers in sizes six (6) inches and smaller. They shall be extended to the grade with cast-iron soil pipe and shall be provided with a brass clean-out plug. A four (4) inch concrete pad, eighteen (18) inches square, shall

be provided around each clean-out. All main and branch sewers eight (8) inches and larger shall [will] not require clean-outs but shall [will] require standard manholes at intervals not to exceed 400 feet as well as in all changes in direction. Each mobile home shall be provided with a four (4) inch sewer. A three (3) inch waste connection shall be provided and extended one (1) inch above the grade with cast-iron pipe using a cast-iron ferrule with a three (3) inch standard thread. A four (4) inch concrete pad twenty-four (24) inches square shall be provided around the waste opening. A three (3) inch screw plug shall be fastened by a chain to the concrete pad which shall [must] be used when the mobile home opening is not in use. The waste pipe connection between the mobile home and the sewer waste opening shall be a waterproof connection constructed of either cast-iron, schedule 40 steel pipe, copper pipe or schedule 40 ABS or PVC piping.

Section 3. Individual Residential Mobile Home Waste System and Connection. An individual residential mobile home shall either be connected to a municipal sewer system or to an approved private sewage disposal system in accordance with other sections of this code. Each mobile home shall [must] be provided with at least a three (3) inch cast-iron soil pipe waste connection to the house sewer. All piping that does not have at least an eighteen (18) inch cover shall be cast-iron pipe. Waste connections between the permanent cast-iron piping and the mobile home waste connection shall [must] be a waterproof connection constructed of either cast-iron, schedule 40 steel pipe, copper pipe or schedule 40 ABS or PVC piping.

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary

APPROVED BY AGENCY: January 15, 1991

FILED WITH LRC: January 28, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on March 26, 1991 at 10 a.m. in the office of the Department of Housing, Buildings and Construction, U.S. 127 South, Frankfort, Kentucky. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is received. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, U.S. 127 South, Frankfort, Kentucky 40601. If no written requests to appear at the public hearing are received by March 21, 1991, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

(1) Type and number of entities affected:*

(a) Direct and indirect costs or savings to those affected:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:
*Because these amendments are made at the request of the Interim Committee on Cities and there are no substantial changes, the answer to the above questions is "none".

TIERING: Was tiering applied? No

PUBLIC PROTECTION & REGULATION CABINET

Department of Housing, Buildings & Construction

Division of Plumbing

(Proposed Amendment)

815 KAR 20:180. Special connections.

RELATES TO: KRS Chapter 318

STATUTORY AUTHORITY: KRS 318.310

NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This regulation concerns itself with waste other than sanitary wastes. This amendment is necessary to bring the regulation into technical compliance with KRS Chapter 13A. No other substantive changes were made.

Section 1. Community Laundry Wastes. Waste from commercial and institutional washing machines and extractors shall not [may] discharge into an open trench, unless [provided] the trench is drained into at least a four (4) inch trap, with a full-size vent. The trench shall be constructed of a material resistant to alkaline waste.

Section 2. Semicommercial Laundries (Automatic). Waste from semicommercial laundries shall discharge into a four (4) inch waste line for washing machines only. The waste line shall have a full-size vent and the base of the stack shall be washed by either a washing machine or starch sink. A four (4) inch trap shall be provided in the waste line to serve not more than two (2) washing machines. Floor drains may be placed in the waste line. If they are the pump type, a stand pipe shall be provided to the height of the machine. Each four (4) inch trap shall constitute four (4) fixture units. In no instance shall [such] washing machines [be permitted to] discharge into a trench.

Section 3. Washing Machines, Automatic, Residential (New Buildings). When an automatic washing machine is installed in a new building, it shall have a two (2) inch trap and shall be vented in accordance with other sections of this code. The trap shall be installed twelve (12) inches above the floor with a two (2) inch stand pipe extended to the height of the washer. If a washing machine discharges into a private disposal system, fifty (50) feet additional lateral shall [must] be added to the sewage system.

Section 4. Washing Machines, Automatic, Residential (Old Buildings). When an automatic washing machine is installed in an old building, it shall [may] be connected to the house sewer by the use of a four (4) inch cast-iron P-trap, placed on the outside of the building on the opposite side of the wall of the washing machine. The trap shall have a vented cover extending three (3) inches above the grade line. A four (4) inch by two (2) inch tee shall be installed in the inlet side of the trap with a two (2) inch waste pipe extending into the building through the floor to the height of the washing machine. All waste piping shall conform with other sections of this code.

Section 5. Air Conditioning Equipment. (1) Air conditioning equipment installed with a water supply and waste shall conform with the other sections of this code. No evaporative cooler, air washer, air handling or similar air conditioning equipment shall have any drain pipe in connection therewith directly connected to any soil, waste or vent pipe. The [Such] equipment shall be drained by means of indirect waste pipe. The indirect waste shall discharge through an air gap or air break into an open floor sink, floor drain, or other approved type receptor which is properly connected to the drainage system, except that an air gap shall be [is] required where the indirect waste pipe may be under vacuum.

(2) The condensate or waste pipe from an air conditioning unit shall be classified as a plumbing fixture only if directly connected to the plumbing system.

Section 6. Garage Sand Trap. A garage sand trap shall be constructed of concrete with a heavy cover or grate. The minimum size shall be two (2) feet by four (4) feet and it shall have sufficient depth so that there is at least a ten (10) inch vertical distance between the bottom of the outlet ell and the bottom of the trap. Sand traps shall be provided with a four (4) inch vent.

Section 7. Inflammable Waste. Liquid waste from buildings using gasoline, benzene, naphtha or other inflammable oils or compounds shall comply with the requirements of the Department for Natural Resources and shall discharge into a separator before it enters a sanitary sewer. The waste line receiving the [such] waste shall [must] be trapped and vented in accordance with other sections of this code. The separator shall be provided with a three (3) inch vent.

Section 8. Hot Water, Steam Blow-offs or Exhaust. Hot water or steam or exhaust blow-offs shall discharge into a tank or basin before entering the house drain or sewer. The tank or

basin shall have an airtight cover and be provided with a four (4) inch vent independent of any other venting system.

Section 9. Stable Manure Pits. All liquid waste from barns, stable manure pits and stable yard drains shall discharge through a separator before entering the house sewer.

CHARLES A. COTTON, Commissioner

THEODORE T. COLLEY, Secretary

APPROVED BY AGENCY: January 15, 1991

FILED WITH LRC: January 28, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on March 26, 1991 at 10 a.m. in the office of the Department of Housing, Buildings and Construction, U.S. 127 South, Frankfort, Kentucky. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is received. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, U.S. 127 South, Frankfort, Kentucky 40601. If no written requests to appear at the public hearing are received by March 21, 1991, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

(1) Type and number of entities affected:*

(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:

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(3) Assessment of anticipated effect on state and local revenues:

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(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:

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(6) Any additional information or comments: *Because these amendments are made at the request of the Interim Committee on Cities and there are no substantial changes, the answer to the above questions is "none".

TIERING: Was tiering applied? No

PUBLIC PROTECTION & REGULATION CABINET
Department of Housing, Buildings & Construction
Office of State Fire Marshal
(Proposed Amendment)

815 KAR 35:015. Certification of electrical inspectors.

RELATES TO: KRS Chapter 227
 STATUTORY AUTHORITY: KRS 12.080, 227.489, 227.830

NECESSITY AND FUNCTION: The Commissioner of Housing is required by KRS 227.489 to certify electrical inspectors based on standards of the National Electrical Code. This regulation is needed to establish the procedures for achieving and maintaining the [such] certification. This amendment is necessary to bring the regulation into technical compliance with KRS Chapter 13A. No other substantive changes were made.

Section 1. Definitions. The following words and terms, when used in this regulation shall have the meanings indicated:

(1) "Applicant" means the person seeking to be certified as an electrical inspector.

(2) "Authority having jurisdiction" as used in the National Electrical Code means the Department of Housing, Buildings and Construction.

(3) "Certified electrical inspector" means any person who has met the criteria established by the commissioner, has satisfactorily passed the examination as required by this regulation, and has received a certificate attesting thereto. The categories are:

(a) One (1) and two (2) family - persons who have passed the NCPCCI examination and persons classified as residential inspectors on the effective date of this regulation. These inspectors are deemed qualified to perform electrical inspections and approve electrical installations related to one (1) and two (2) family dwellings and mobile homes only.

(b) General - persons who have passed the NCPCCI examination of the same name and persons classified as commercial inspectors on the effective date of this regulation. These inspectors are deemed qualified to inspect and approve all types of residential, commercial, industrial and other properties which require electrical inspection.

(4) "Code" means the National Electrical Code (NEC) and any amendments thereto which are adopted by the department.

(5) "Commissioner" means the Commissioner of Housing, Buildings and Construction.

(6) "Department" means the Department of Housing, Buildings and Construction.

(7) "Electrical" means the installation of wires and conduits for the purpose of transmitting electricity, and the installation of fixtures and equipment in connection therewith.

(8) "Electrical industry" means those engaged in the generation, transmission and distribution of electricity; the design, manufacture, construction, installation, alteration or repair of electrical wiring facilities and apparatus for the utilization of electricity.

(9) "Employee" means one who is employed on a full-time, part-time, or contractual basis.

(10) "Temporary certification" means a certificate issued by the department which is valid for a limited period of time. The

department shall [may] issue [such] temporary certification to qualified persons under the conditions of Section 4 of this regulation.

(11) "NCPCCI" means National Certification Program for Construction Code Inspectors and are examinations developed by national code enforcement organizations in collaboration with the Educational Testing Service for the purpose of providing nationally recognized evidence of competence and professionalism in construction code enforcement.

Section 2. Applicability. This regulation shall apply to all electrical inspectors in the Commonwealth of Kentucky, and to applicants for certification as electrical inspectors.

Section 3. Responsibilities of the Commissioner of Housing, Buildings and Construction. (1) The Commissioner of Housing shall require inspectors to be certified. Examinations shall be based on the National Electrical Code.

(2) The commissioner shall administer this regulation and provide for continuing education of certified electrical inspectors and schedule examinations at regular intervals.

(3) It shall be the duty of the commissioner to investigate all complaints of alleged misconduct of any electrical inspector as certified under this regulation when, in the opinion of the commissioner, there is sufficient evidence to suggest that [such] misconduct exists.

Section 4. Applications Requirements for Temporary Certification. Prior to being examined by the commissioner for "temporary certification" as an electrical inspector, the applicant shall meet the following requirements:

(1) An applicant for temporary certification: "one (1) and two (2) family dwelling" shall meet the following requirements:

(a) Applicant shall either have had not less than five (5) years of current experience in the installation and/or design, of all types of residential wiring systems, installed in accordance with the National Electrical Code; or he shall be a registered professional electrical engineer, and shall have been registered and engaged in the practice of his profession for not less than three (3) years.

EXCEPTION: In circumstances where an applicant cannot show the precise experience required above, the applicant may request to appear before the electrical advisory committee to establish his background in electrical construction familiarity through other means. The electrical advisory committee shall review the [such] documentation and approve the applicant under this section if it is satisfied that the level of exposure to construction practices is substantially equivalent.

(b) The applicant shall possess the ability to read and write the English language and possess a general educational level satisfactory to perform his duties.

(c) The applicant shall submit a duly notarized application, which shall be supplied by the department on request, wherein all pertinent personal information and experience shall be stated. Application shall [must] be received by the department at least thirty (30) days prior to the next scheduled electrical advisory committee meeting.

(d) Application for temporary certification shall be accompanied by a written statement of need for [such] certification from the local official responsible for the electrical or building inspection program.

(e) A fee of twenty-five (25) dollars shall accompany the application, consisting of a check or money order payable to the Treasurer, Commonwealth of Kentucky.

(2) An applicant for temporary certification: "general" shall meet the following requirements:

(a) Applicant shall either have not less than five (5) years of current experience in the installation and/or design of all types residential, commercial and industrial wiring systems installed in accordance with the National Electrical Code; or he shall be a registered professional electrical engineer, and shall have been engaged in his profession for not less than three (3) years.

EXCEPTION: In circumstances where an applicant cannot show the precise experience required above, the applicant may request to appear before the electrical advisory committee to establish his background in electrical construction familiarity through other means. The electrical advisory committee shall review the [such] documentation and approve the applicant under this section if it is satisfied that the level of exposure to construction practices is substantially equivalent.

(b) The applicant shall possess the ability to read and write the English language and possess a general educational level satisfactory to perform his duties.

(c) The applicant shall submit a duly notarized application, which shall be supplied by the department on request, wherein all pertinent personal information and experience shall be stated. Application shall [must] be received by the department at least thirty (30) days prior to the next scheduled electrical advisory committee meeting.

(d) Application for temporary certification shall be accompanied by a written statement of need for [such] certification from the local official responsible for the electrical or building inspection program.

(e) A fee of twenty-five (25) dollars shall accompany the application, consisting of a check or money order payable to the Treasurer, Commonwealth of Kentucky.

(3) Any applicant shall [may] receive credit earned for any electrical courses satisfactorily completed from any accredited vocational school or college on a year-for-year basis. Credit for education to replace applicant's experience requirements shall be limited to a total of two (2) years.

(4) The electrical advisory committee shall [will] review all applicants to determine their eligibility to sit for the examination.

(5) Temporary certification shall expire at the end of eighteen (18) months from the time of initial certification and shall not be reissued after that period of time has expired.

Section 5. Examinations for Temporary Certification. (1) Following the review and acceptance of the applicant's qualifications by the electrical advisory committee, the applicant shall [must] pass the department's written examination for the class of temporary certification.

(2) Examinations for qualified applicants

shall be administered within thirty (30) days after acceptance by the electrical advisory committee. Examinations required under this section shall [will] be administered at the department's office in Frankfort, Kentucky, unless another location is specifically designated.

(3) Examinations shall be based on the National Electrical Code and shall be open book.

(4) A grade of seventy (70) percent shall be considered passing. An applicant, otherwise qualified, who fails to make a passing score shall, upon request, be scheduled for the next examination date upon payment of an additional fee of ten (10) dollars.

Section 6. Requirements for Full Certification as an Electrical Inspector: General and One (1) and Two (2) Family. (1) The applicant shall possess the ability to read and write the English language and possess a general educational level satisfactory to perform his duties.

(2) Applicant shall either have had not less than five (5) years of current experience in the installation and/or design, of all types of residential, commercial and industrial wiring systems installed in accordance with the National Electrical Code; or he shall be a registered professional electrical engineer, and shall have been engaged in his profession for not less than three (3) years.

EXCEPTION: In circumstances where an applicant cannot show the precise experience required by this subsection, the applicant may request to appear before the electrical advisory committee to establish his background in electrical construction familiarity through other means. The electrical advisory committee shall review the [such] documentation and approve the applicant under this section if it is satisfied that the level of exposure to electrical construction practices is substantially qualitatively equivalent.

(3) The applicant shall submit a duly notarized application, which shall be supplied by the department on request, wherein all pertinent personal information and experience shall be stated. Application shall [must] be received by the department at least thirty (30) days prior to the next scheduled electrical advisory committee meeting.

(4) A fee of twenty-five (25) dollars shall accompany the application, consisting of a check or money order payable to the Treasurer, Commonwealth of Kentucky.

(5) Applicant shall provide proof of successful completion of the NCPCCI examination for electrical inspector general or the NCPCCI examination for electrical inspector one (1) and two (2) family.

(6) Following review and approval of the applicant's qualifications and examination results by the electrical advisory committee, the department shall issue certification for the appropriate electrical inspector classification and the inspector shall be authorized to conduct inspections as specified in Section 1(3) of this regulation.

(7) Certificates issued pursuant to this section shall run from July 1 to June 30.

(8) Fully certified inspectors shall [may], upon request, be placed on "inactive" status upon payment of fees and otherwise complying with this regulation. The [Such] "inactive"

certificate shall be converted to "active" in order to be authorized to make electrical inspections.

(9) All certified electrical inspectors holding a valid certification under previous law shall be exempt from the testing requirements of this regulation.

Section 7. Renewals of General and One (1) and Two (2) Family Certificates. (1) Certification shall [will] be issued to individuals and not to corporations, partnerships, companies or any other entities.

(2) All electrical inspector certifications, except temporary certificates, shall expire on June 30 every year. The department shall mail to each certified inspector, prior to the date of expiration, a renewal application form and the certification shall be renewed subject to the terms and conditions of this regulation.

(3) A renewal fee in the sum of twenty-five (25) dollars shall be paid by each certified electrical inspector. The [Such] fee shall be paid before June 30 in each succeeding year in order to maintain certification.

Section 8. Duties and Responsibilities of a Certified Electrical Inspector. (1) Each certified electrical inspector shall attend at least one (1) continuing education program each year. These [Such] programs shall be acceptable only if approved by the electrical advisory committee.

(2) All electrical inspections shall be made in compliance with the National Electrical Code, the Kentucky Building Code and any amendments to the [such] code as may be adopted by the department.

(3) In addition to the National Electrical Code, the electrical inspector shall familiarize himself with the applicable building codes or fire safety codes governing buildings in the area where he/she performs inspections, to the extent that it is necessary to determine the occupancy load of a facility.

(4) The electrical inspector shall make a minimum of two (2) inspections.

(a) When an inspector makes a rough-in inspection, he/she shall attach a sticker with his/her signature and certification number on the main service equipment or at some other appropriate location.

(b) When an inspector approves a final inspection, he/she shall attach a sticker to the main service equipment with his signature and certification number, name of the project and location, stating that the system is in compliance with the National Electrical Code. The inspector shall also provide the owner or the owner's agent with a certificate of compliance.

(5) All stickers and certificates of compliance to be used by the electrical inspector shall be issued or approved by the department.

(6) Each electrical inspector shall make and retain for a minimum of three (3) years a complete record of each inspection. These [Such] records shall contain, as a minimum, sufficient information to identify the location of the structure inspected, the date of the inspection, the type of structure, whether residential, commercial, industrial or other, the designation of any required permits and the agency(s) granting same, the size and complexity of the

structure, and deficiencies in meeting code requirements and any action required to comply, and any other pertinent information considered necessary to allow for a review of the inspection.

(7) These [Such] records shall be available for examination by any authorized representative of the department upon request.

Section 9. Complaints and Grievances Procedures. (1) Any person who believes that any act or omission of any electrical inspector certified by the commissioner has worked an undue hardship on him as a result of alleged misconduct in the performance of his/her duties, shall [may] file a complaint against the inspector.

(2) All complaints or allegations of misconduct shall be submitted in writing to the commissioner, and shall include the nature of the alleged misconduct, with specific details as to acts, names, dates and witnesses and specify the action desired on the part of the commissioner.

(3) After any investigation, the commissioner may, at his discretion, cause the matter to be heard and a recommendation rendered by the electrical advisory committee, or he may set the matter for public hearing or take any other appropriate action to resolve or correct the matter.

Section 10. Suspension and Revocation of Certification. The commissioner shall [may] revoke, suspend or refuse to renew the certificate of an electrical inspector who is determined by the commissioner, after a departmental hearing, to have:

(1) Engaged as an electrical contractor, worked as an electrician or engaged in any other activity in the electrical industry or has pecuniary or associational interests therein which constitutes a conflict of interest.

(2) Engaged in fraud, deceit or misrepresentation in obtaining certification.

(3) Been guilty of negligence, incompetence, or misconduct, as set forth by this regulation, in the field of electrical inspection.

(4) Affixed or caused to be affixed a seal of approval of issuing certificates of approval for any electrical installation subject to his/her inspection when he/she has not personally inspected the [such] installation and found it to be satisfactory in accordance with the code.

(5) Operated as an electrical inspector in any locality where a court of competent jurisdiction has adjudged him to be in conflict with state or local laws, ordinances, or regulations.

(6) Knowingly overruled the proper findings of another electrical inspector or attempted to supplant, overrule or otherwise invalidate the judgment of another electrical inspector without first obtaining express written consent from the original inspector.

(7) Maintained inaccurate or inadequate recordkeeping as required by Section 8 of this regulation.

Section 11. Electrical Inspections by State Employed Certified Electrical Inspectors. (1) All state-owned and state-leased property including all buildings being constructed by the state under the authority of the Department of Finance shall be inspected by a certified electrical inspector who is an employee of the

Department of Housing, Buildings and Construction.

(2) State inspectors shall [may] also inspect, for a fee, wherever a certified electrical inspector has not been made available by the local government.

(3) State employed certified electrical inspectors shall [may] assert jurisdiction for the electrical inspection of any project subject to state plan review under the Kentucky Building Code.

Section 12. Interpretations. Where any provision of the National Electrical Code can be shown to be clearly unreasonable or impractical as applied to a particular installation and if deviation from strict compliance would not create a safety hazard because of a particular use or condition, any person may request to appear before the electrical advisory committee of the Department of Housing, Buildings and Construction. After advice from the committee, the department shall render its decision in the matter and said decision shall be appealable to the Board of Housing, Buildings and Construction where appropriate.

CHARLES A. COTTON, Commissioner

THEODORE T. COLLEY, Secretary

APPROVED BY AGENCY: January 15, 1991

FILED WITH LRC: January 28, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on March 26, 1991 at 10 a.m. in the office of the Department of Housing, Buildings and Construction, U.S. 127 South, Frankfort, Kentucky. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is received. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, U.S. 127 South, Frankfort, Kentucky 40601. If no written requests to appear at the public hearing are received by March 21, 1991, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

(1) Type and number of entities affected:*

(a) Direct and indirect costs or savings to those affected:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: *Because these amendments are made at the request of the Interim Committee on Cities and there are no substantial changes, the answer to the above questions is "none".

TIERING: Was tiering applied? No

CABINET FOR HUMAN RESOURCES

Department for Social Insurance

Division of Management & Development

(Proposed Amendment)

904 KAR 2:016. Standards for need and amount; AFDC.

RELATES TO: KRS 205.200(2), 205.210(1), 42 CFR 435.831, 45 CFR 233, 250.33, 255, 256, PL 101-508

STATUTORY AUTHORITY: KRS 194.050, 205.200(2)

NECESSITY AND FUNCTION: The Cabinet for Human Resources is required to administer the public assistance programs. KRS 205.200(2) and 205.210(1) require that the secretary establish the standards of need and amount of assistance for the Aid to Families with Dependent Children Program, referred to as AFDC, in accordance with federal regulations and Title IV-A of the Social Security Act. This regulation sets forth the standards by which the need for and the amount of an AFDC assistance payment is established.

Section 1. Definitions. (1) "Approved JOBS activities" means participation in component, precomponent, component preparation, preemployment, transitional extension or self-initiated JOBS activities which have been determined by the Department for Social Insurance to be consistent with employment goals.

(2) "Assistance group" means a group composed of one (1) or more children and may include as specified relative any person specified in 904 KAR 2:006, Section 3. The assistance group shall include the dependent child, child's eligible parent, and all eligible siblings living in the home with the needy child. Additionally, if the dependent child's parent is a minor living in the home with his eligible parent, the minor's parent shall also be included in the assistance group if the minor's parent applied for assistance. The incapacitated or unemployed natural or adoptive parent of the child who is living in the home shall be included as second parent if the technical eligibility factors are met.

(3) "Beyond the control" means:

(a) Loss or theft of the money;

(b) The individual to whom the lump sum was designated no longer lives in the household, making the lump sum income inaccessible;

(c) Expenditure of the lump sum income to meet extraordinary expenses, that are not included in the AFDC Standard of Need.

(4) "Certified child care providers" means a small family day care in a provider's home serving fewer than four (4) children. This

provider has voluntarily registered with the Cabinet for Human Resources, Department for Social Services. Standards for certification are contained in 905 KAR 2:070.

(5) "Claimant" means the individual responsible for an overpayment.

(6) "Combination programs" means any educational program which includes as its basis literacy or GED. This program must also include life skills, skills training or job readiness training.

(7) "Component" means services and activities such as education, job skills training, job readiness, job development and placement, job search, on-the-job training, work supplementation or community work experience program activities available under the Job Opportunities and Basic Skills (JOBS) program. Each individual component is described in 904 KAR 2:006.

(8) "Component preparation" means the period in which assessment, testing, development of the employability plan and referrals for removal of barriers takes place.

(9) "Full-time employment" means employment of thirty (30) hours per week or 130 hours per month or more.

(10) "Full-time school attendance" means a workload of at least:

(a) The number of hours required by the individual program for participation in a General Educational Development (GED) program; or

(b) Twelve (12) semester hours or more in a college or university; or six (6) semester hours or more during the summer term; or the equivalent in a college or university if other than a semester system is used; or

(c) The number of hours required by the individual high school/vocational school to fulfill their definition of full time; or

(d) Eight (8) clock hours per month in a literacy program.

(e) Twenty-five (25) clock hours per week in combination programs.

(11) "Gross income limitation standard" means 185 percent of the sum of the assistance standard, as set forth in Section 7 of this regulation.

(12) "Licensed child care providers" means day care centers serving twelve (12) or more children, or day care in a provider's home serving four (4) to twelve (12) children, which are licensed by the Division of Licensing and Regulation, Office of the Inspector General, as provided in 905 KAR 2:010.

(13) "Lump sum income" means income that does not occur on a regular basis, and does not represent accumulated monthly income received in a single sum.

(14) "Minor" means any person who is under the age of eighteen (18) or under the age of nineteen (19) in accordance with 45 CFR 233.90(b)(3). EXCEPTION: For the purpose of deeming income, a minor parent [or legal guardian] is considered any person under the age of eighteen (18).

(15) "Part-time employment" means employment of less than thirty (30) hours per week or 130 hours per month or not employed throughout the entire month.

(16) "Part-time school attendance" means a workload of anything less than "full-time school attendance."

(17) "Precomponent" means a waiting period between the dates of component assignment and

component commencement.

(18) "Preemployment" means a waiting period between the dates of hiring and employment commencement.

(19) "Prospective budgeting" means computing the amount of assistance based on income and circumstances which will exist in the month(s) for which payment is made.

(20) "Recoupment" means recovery of overpayments of assistance payments.

(21) "Retrospective budgeting" means computing amount of assistance based on actual income and circumstances which existed in the second month prior to the payment month.

(22) "Sanctioned individual" means any person who is required to be included in the assistance group but who is excluded from the assistance group due to failure to fulfill an eligibility requirement.

(23) "Self-initiated" means approved participation in which education or training activities are initiated by the client and determined to meet agency criteria. Specific criteria is contained in 904 KAR 2:006.

(24) "Transitional extension" means a period of up to ninety (90) days subsequent to the discontinuance of the AFDC case in which supportive service payments may continue if:

(a) The case is not eligible for transitional child care, as described in Section 9 of this regulation;

(b) The case is not discontinued due to fraudulent activity; and

(c) The case is not discontinued due to failure to comply with procedural requirements; and

(d) The JOBS participant elects to continue the approved component activity in which she is engaged at the time of discontinuance.

(25) "Unavailable" means that the income is not accessible to the AFDC benefit group for use toward basic food, clothing, shelter, and utilities.

(26) "Unregulated child care providers" means private providers, such as friends or relatives, who are not required to be certified or licensed.

Section 2. Resource Limitations. (1) Real and personal property owned in whole or in part by an applicant or recipient including a sanctioned individual and his parent, even if the parent is not an applicant or recipient, if the applicant or recipient is a dependent child living in the home of the parent, shall be considered.

(2) The amount that can be reserved by each assistance group shall not be in excess of \$1,000 equity value excluding those items specifically listed in subsection (1) of this section as follows:

(3) Excluded resources. The following resources shall be excluded from consideration:

(a) One (1) owner-occupied home;

(b) Home furnishings, including all appliances;

(c) Clothing;

(d) One (1) motor vehicle, not to exceed \$1,500 equity value;

(e) Farm machinery, livestock or other inventory, and tools and equipment other than farm, used in a self-employment enterprise;

(f) Items valued at less than fifty (50) dollars each;

(g) One (1) burial plot or space per family member;

(h) Funeral agreements not to exceed maximum equity of \$1,500 per family member;

(i) Real property which the assistance group is making a good faith effort to sell. This exemption shall not exceed a period of nine (9) months and is contingent upon the assistance group agreeing to repay AFDC benefits received beginning with the first month of the exemption. Any amount of AFDC paid during that period that would not have been paid if the disposal of property had occurred at the beginning of the period is considered an overpayment. The amount of the repayment shall not exceed the net proceeds of the sale. If the property has not been sold within the nine (9) months, or if eligibility stops for any other reason, the entire amount of assistance paid during the nine (9) month period shall be treated as an overpayment;

(j) Other items or benefits mandated by federal regulations.

(4) Disposition of resources.

(a) An applicant or recipient shall not have transferred or otherwise divested himself of property without fair compensation in order to qualify for assistance.

(b) If the transfer was made expressly for the purpose of qualifying for assistance and if the uncompensated equity value of the transferred property, when added to total resources, exceeds the resource limitation, the household's application shall be denied, or assistance discontinued.

(c) The time period of ineligibility shall be based on the resulting amount of excess resources and begins with the month of transfer.

(d) If the amount of excess transferred resources does not exceed \$500, the period of ineligibility shall be one (1) month; the period of ineligibility shall be increased one (1) month for every \$500 increment up to a maximum of twenty-four (24) months.

Section 3. Income Limitations. In determining eligibility for AFDC the following shall apply:

(1) Gross income test.

(a) The total gross non-AFDC income of the assistance group, as well as income of parent, sanctioned individual and amount deemed available from the parent [or legal guardian] of a minor parent [or legal guardian] living in the home with such assistance group, and amount deemed available from a stepparent living in the home, and amount deemed available from an alien's sponsor and sponsor's spouse if living with the sponsor, shall not exceed the gross income limitation standard.

(b) Disregards specified in Section 4(1) of this regulation shall apply.

(c) If total gross income exceeds the gross income limitation standard, the assistance group is ineligible.

(2) Applicant eligibility test.

(a) An applicant eligibility test shall be applied if:

1. The gross income is below the gross income limitation standard; and

2. The assistance group has not received assistance during the four (4) months prior to the month of application.

(b) The total gross income after application of exclusions or disregards set forth in Section 4(1) and (2) of this regulation shall be compared to the assistance standard set forth in Section 7 of this regulation.

(c) If income exceeds this standard, the assistance group is ineligible.

(d) For assistance groups who meet the gross income test but who have received assistance any time during the four (4) months prior to the application month, the applicant eligibility test shall not apply.

(3) Benefit calculation.

(a) If the assistance group meets the criteria set forth in subsections (1) and (2) of this section, benefits shall be determined by applying disregards in Section 4(1), (2), and (3) of this regulation.

(b) If the assistance group's income, after application of appropriate disregards, exceeds the assistance standard, the assistance group is ineligible.

(c) Amount of assistance for the initial two (2) months of eligibility shall be determined prospectively and for subsequent months retrospectively.

(4) Ineligibility period.

(a) A period of ineligibility shall be established for an applicant or recipient whose income in the month of application or during any month for which assistance is paid exceeds the limits as set forth in subsections (2) or (3) of this section due to receipt of lump sum income.

(b) The ineligibility period shall be recalculated if any of the following circumstances occur:

1. The standard of need increases and the amount of grant the assistance group would have received also changes.

2. Income, which caused the calculation of the ineligibility period, has become unavailable for reasons that were beyond the control of the benefit group.

3. The assistance group incurs and pays necessary medical expenses not reimbursable by a third party.

Section 4. Excluded or Disregarded Income. All gross non-AFDC income received or anticipated to be received by the assistance group, natural parent and parent [or legal guardian] of a minor parent [or legal guardian] living in the home with such assistance group and stepparent living in the home, shall be considered with the applicable exclusions or disregards as set forth below:

(1) Gross income test. All incomes listed below shall be excluded or disregarded:

(a) Disregards applicable to stepparent income or income of the parent [or legal guardian] of a minor parent [or legal guardian] living in the home with the assistance unit, as set forth in Section 5 of this regulation;

(b) Disregards applicable to alien sponsor's income, as set forth in Section 6 of this regulation;

(c) Disregards applicable to self-employment income;

(d) Earnings received by a dependent child from participation in the Summer Youth Program, Work Experience Program, Limited Work Experience Program, and Tryout Employment Program under the Job Training Partnership Act (JTPA) for a period not to exceed six (6) months within a given calendar year, effective March 1, 1988;

(e) Unearned income received by a dependent child from participation in a JTPA program;

(f) Value of the monthly allotment of food stamp coupons or value of United States Department of Agriculture (USDA) donated foods;

(g) Nonemergency medical transportation payments;

(h) Payments from complementary programs if no duplication exists between the other assistance and the assistance provided by the AFDC program;

(i) Educational grants, loans, scholarships, including payments for actual educational costs made under the GI Bill, obtained and used under conditions that preclude their use for current living costs and all education grants and loans to any undergraduate made or insured under any program administered by the United States Commissioner of Education;

(j) Highway relocation assistance;

(k) Urban renewal assistance;

(l) Federal disaster assistance and state disaster grants;

(m) Home produce utilized for household consumption;

(n) Housing subsidies received from federal, state or local governments;

(o) Receipts distributed to members of certain Indian tribes by the federal government under 25 USC 459, 1261 and 1401 [which are referred to in Section 5 of Public Law 94-114 that became effective October 17, 1975];

(p) Funds distributed per capita to or held in trust for members of any Indian tribe by the federal government under 25 USC 459, 1261 and 1401 [under Public Law 92-254, Public Law 93-134 or Public Law 94-540];

(q) Benefits received from the [under Title VII,] Nutrition Program for the Elderly, under 42 USC 3001 [of the Older Americans Act of 1965, as amended];

(r) Payments for supporting services or reimbursement of out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE) and any other programs under 42 USC 5001 and 5011 [Titles II and III, pursuant to Section 418 of Public Law 93-113];

(s) Payments to "Volunteers in Service to America" (VISTA) participants under 42 USC 1451 [volunteers under Title I of Public Law 93-113 pursuant to Section 404(g) of Public Law 93-113] except when the value of such payments when adjusted to reflect the number of hours volunteers are serving is the same as or greater than the minimum wage under state or federal law, whichever is greater;

(t) The value of supplemental food assistance received under 42 USC 1771 [the Child Nutrition Act of 1966, as amended], and the special food service program for children under 42 USC 1755 [the National School Lunch Act], as amended;

(u) Payments from the Cabinet for Human Resources, Department for Social Services, for child foster care, adult foster care, or subsidized adoption;

(v) Payments made under the Low Income Home Energy Assistance Program [Act] (LIHEAP) under 42 USC 8621, and other energy assistance payments which are made to an energy provider or provided in-kind;

(w) The first fifty (50) dollars of child support payments collected in a month which represents the current month's support obligation and is returned to the assistance group;

(x) For a period not to exceed six (6) months within a given year, earnings of a dependent child in full-time school attendance;

(y) Nonrecurring gifts of thirty (30) dollars or less received per calendar quarter for each

individual included in the assistance group; and

(z) Effective January 3, 1989, loans.

(aa) Effective June 1, 1989, up to \$12,000 to Aleuts and \$20,000 to individuals of Japanese ancestry for payments made by the United States Government to compensate for hardships experienced during World War II.

(bb) Effective June 1, 1989, the essential person's portion of the SSI check.

(cc) Income of an individual receiving mandatory or optional state supplementary payments.

(dd) The advance payment or refund of earned income tax credit (EITC).

(ee) [(dd)] Other benefits mandated by federal regulations or legislation.

(2) Applicant eligibility test. The exclusions or disregards set forth in subsection (1) of this section and those listed below shall be applied:

(a) Earnings received from participation in the Job Corps Program under JTPA by an AFDC child;

(b) Earnings of a dependent child in full-time school attendance for a period not to exceed six (6) months within a given year;

(c) Standard work expense deduction of ninety (90) dollars for full-time and part-time employment; and

(d) Child care, for a child or incapacitated adult living in the home and receiving AFDC, is allowed as a work expense is allowed not to exceed \$175 per month per individual for full-time employment or \$150 per month per individual for part-time employment, or \$200 per month per individual for child under age two (2). [; and]

[(e) The advance payment or refund of earned income tax credit (EITC).]

(3) Benefit calculation. After eligibility is established, exclude or disregard all incomes listed in subsections (1) and (2) of this section as well as:

(a) Child support payments assigned and actually forwarded or paid to the department; and

(b) First thirty (30) dollars and one-third (1/3) of the remainder of each individual's earned income not already disregarded, if that individual's needs are considered in determining the benefit amount. The one-third (1/3) portion of this disregard shall not be applied to an individual after the fourth consecutive month it has been applied to his earned income. The thirty (30) dollar portion of this disregard shall be applied concurrently with the one-third (1/3) disregard, however, it shall be extended for an additional eight (8) months following the four (4) months referenced in the preceding sentence. These disregards shall not be available to the individual until he has not been a recipient for twelve (12) consecutive months; and

(c) Earnings of a child in full-time school attendance or earnings of a child in part-time school attendance, if not working full-time.

(4) Exceptions. Disregards from earnings in subsections (2)(c) and (d) and (3)(b) of this section shall not apply for any month in which the individual:

(a) Reduces, terminates, or refuses to accept employment within the period of thirty (30) days preceding such month, unless good cause exists as follows:

1. The individual is unable to engage in such employment or training for mental or physical

reasons; or

2. The individual has no way to get to and from the work site or the site is so far removed from the home that commuting time would exceed three (3) hours per day; or

3. Working conditions at such job or training would be a risk to the individual's health or safety; or

4. A bona fide offer of employment at a minimum wage customary for such work in the community was not made; or

5. Effective February 1, 1988, the child care arrangement is terminated through no fault of the client; or

6. Effective February 1, 1988, the available child care does not meet the needs of the child, for example, handicapped or retarded children.

(b) Fails to make a timely report of earnings unless good cause exists as follows:

1. The assistance group moved and reported the move timely, however, the move resulted in a delay in receiving or failure to receive the mandatory monthly report form; or

2. An immediate family member living in the home was institutionalized or died during the filing period; or

3. The specified relative was out of town during the entire filing period; or

4. The assistance group has been directly affected by a natural disaster (for example, fire, flood, storm, earthquake).

(c) Requests assistance be terminated for the primary purpose of evading the four (4) month limitation on the deduction in subsection (3)(b) of this section.

(5) Sanction exception. The earned income of sanctioned individuals shall be counted without providing the exclusions or disregards in either subsections (2) and (3) of this section.

Section 5. Income and Resources. Income and resources of a stepparent living in the home with a dependent child and parent [or legal guardian] living in the home with a minor parent [or legal guardian] but whose needs are not included in the grant are considered as follows:

(1) Income. The gross income is considered available to the assistance group, subject to the following exclusions or disregards:

(a) The first seventy-five (75) dollars of the gross earned income;

(b) An amount equal to the AFDC assistance standard for the appropriate family size, for the support of the stepparent or parent [or legal guardian] of a minor parent [or legal guardian] and any other individuals living in the home but whose needs are not taken into consideration in the AFDC eligibility determination and are or may be claimed by the stepparent or parent [or legal guardian] of a minor parent [or legal guardian] as dependents for purposes of determining his federal personal income tax liability;

(c) Any amount actually paid by the stepparent or parent [or legal guardian] of a minor parent [or legal guardian] to individuals not living in the home who are or may be claimed by him as dependents for purposes of determining his personal income tax liability;

(d) Payments by the stepparent and parent [or legal guardian] of a minor parent [or legal guardian] for alimony or child support with respect to individuals not living in the household; and

(e) Income of a stepparent and parent [or

legal guardian] of a minor parent [or legal guardian] receiving Supplemental Security Income (SSI) [under Title XVI].

(2) Sanction exception. The needs of any sanctioned individual are not eligible for the exclusions listed in this section.

(3) Resources. Resources which belong solely to the stepparent and parent [or legal guardian] of a minor parent [or legal guardian] are not considered in determining eligibility of the parent or the assistance group.

Section 6. Alien Income and Resources. (1) For the purposes of this section the alien's sponsor and sponsor's spouse (if living with the sponsor) shall be referred to as sponsor.

(2) The gross non-AFDC income and resources of an alien's sponsor shall be deemed available to the alien, subject to disregards as set forth below, for a period of three (3) years following entry into the United States.

(3) If an individual is sponsoring two (2) or more aliens, the income and resources shall be prorated among the sponsored aliens.

(4) A sponsored alien is ineligible for any month in which adequate information on the sponsor or sponsor's spouse is not provided.

(5) If an alien is sponsored by an agency or organization, which has executed an affidavit of support, that alien is ineligible for benefits for a period of three (3) years from date of entry into the United States, unless it is determined that the sponsoring agency or organization is no longer in existence or does not have the financial ability to meet the alien's needs.

(6) The provisions of this section shall not apply to those aliens identified in subsection (5) of this section.

(a) Income. The gross income of the sponsor is considered available to the assistance group subject to the following disregards:

1. Twenty (20) percent of the total monthly gross earned income, not to exceed \$175;

2. An amount equal to the AFDC assistance standard for the appropriate family size of the sponsor and other persons living in the household who are or may be claimed by the sponsor as dependents in determining his federal personal income tax liability, and whose needs are not considered in making a determination of eligibility for AFDC;

3. Amounts paid by the sponsor to nonhousehold members who are or may be claimed as dependents in determining his federal personal tax liability;

4. Actual payments of alimony or child support paid to nonhousehold members; and

5. Income of a sponsor receiving SSI or AFDC.

(b) Resources. Resources deemed available to the alien shall be the total amount of the resources of the sponsor and sponsor's spouse determined as if he were an AFDC applicant in this state, less \$1,500.

Section 7. Payment Maximum. (1) The AFDC payment maximum includes amounts for food, clothing, shelter, and utilities.

(2) Countable income is deducted in determining eligibility for and the amount of the AFDC assistance payment, as follows:

Effective July 1, 1989		
Number of Eligible Persons	Payment Maximum	Standard of Need
1 child	\$162	\$394
2 persons	\$196	\$460
3 persons	\$228	\$526
4 persons	\$285	\$592
5 persons	\$333	\$658
6 persons	\$376	\$724
7 or more persons	\$419	\$790

(3) Since the payment maximum does not meet full need, effective July 1, 1989, a forty-five (45) percent ratable reduction shall be applied to the deficit between the family's countable income and the standard of need for the appropriate family size.

(4) The assistance payment shall be fifty-five (55) percent of the deficit or the payment maximum, whichever is the lesser amount.

Section 8. Job Opportunities and Basic Skills (JOBS) Child Care and Supportive Services. (1) Individuals participating in the JOBS program shall be entitled to payment of:

- (a) Child care;
- (b) Transportation; and

(c) Other supportive service costs necessary for participation in an approved JOBS activity, as described in subsection (10) of this section.

(2) JOBS activities are described in 904 KAR 2:006, Section 9.

(3) Child care eligibility in JOBS components. Child care shall be paid for a child meeting the criteria specified in Section 9(1) of this regulation. Child care shall be provided in the following situations:

- (a) Precomponent;
- (b) Component preparation;
- (c) Component participation;
- (d) Preemployment;
- (e) Transitional extension; or
- (f) On-the-job training (OJT) participants discontinued due to earned income or employment of 100 hours a month or more of the principal wage earner (PWE) in an AFDC-unemployed parent (AFDC-UP) case.

(4) Child care eligibility in self-initiated activities.

(a) Child care shall be provided in the same situations as in JOBS components with the following exceptions:

- 1. Transitional extension;
- 2. OJT participants discontinued due to increased earnings or hours of employment;
- 3. Component preparation; and
- 4. Precomponent, for persons waiting to enter self-initiated activities for the first time.

(b) Child care shall be provided only for approved self-initiated activities.

(5) Child care limitations.

(a) Child care payments shall be made directly to the provider, in an amount equal to the actual cost, up to a payment maximum based on local market rates.

(b) Payments shall not be made to a provider if the provider is:

- 1. The parent;
- 2. The legal guardian;
- 3. A member of the AFDC assistance unit which includes the child needing care;
- 4. Not meeting applicable standards of state and local law; or
- 5. Not allowing parental access.

(c) Local market rates shall be determined by:

- 1. The type of provider;
- 2. The age of the child;
- 3. The special needs of the child. Special needs shall be verified by:

- a. Entitlement to disability benefits; or
- b. Written statement from a physician or professional from a service agency such as Comprehensive Care, or the Department for Social Services;

4. The amount of time care is needed; and

5. The geographical boundaries of the fifteen (15) area development districts.

(d) Full-time (FT) and part-time (PT) attendance shall be determined by the provider.

(e) FT and PT maximum payment levels shall be established for the following groups of dependent children:

1. "Special needs" includes children in no certain age group;

2. "Infants" includes children under age one (1);

3. "Toddlers" includes children from age one (1) up to age three (3);

4. "Preschool" includes children from age three (3) up to age five (5);

5. "School-age" includes children age five (5) and over.

(f) Child care maximum payments shall be made as follows:

PURCHASE AREA DEVELOPMENT DISTRICT #1

	Special Needs		Infants		Toddlers	
	FT	PT	FT	PT	FT	PT
Licensed	\$10	10	10	7	10	7
Certified	\$9	9	9	6	9	6
Unregulated	\$8	8	8	5	8	5
	Preschool		School-age			
	FT	PT	FT	PT		
Licensed	\$10	7			10	7
Certified	\$9	6			9	6
Unregulated	\$8	5			8	5

PENNYRILE AREA DEVELOPMENT DISTRICT #2

	Special Needs		Infants		Toddlers	
	FT	PT	FT	PT	FT	PT
Licensed	\$10	10	10	7	9	6
Certified	\$9	9	9	6	8	5
Unregulated	\$8	8	8	5	7	4
	Preschool		School-age			
	FT	PT	FT	PT		
Licensed	\$9	6			9	6
Certified	\$8	5			8	5
Unregulated	\$7	4			7	4

GREEN RIVER AREA DEVELOPMENT DISTRICT #3

	Special Needs		Infants		Toddlers	
	FT	PT	FT	PT	FT	PT
Licensed	\$10	10	9	6	9	6
Certified	\$9	9	8	5	8	5
Unregulated	\$8	8	7	4	7	4

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	Preschool		School-age	
	FT	PT	FT	PT
Licensed	\$ 9	6	8	5
Certified	\$ 8	5	7	4
Unregulated	\$ 7	4	6	3

BARREN RIVER AREA DEVELOPMENT DISTRICT #4

	Special Needs		Infants		Toddlers	
	FT	PT	FT	PT	FT	PT
Licensed	\$12	12	12	9	10	7
Certified	\$11	11	11	8	9	6
Unregulated	\$10	10	10	7	8	5

	Preschool		School-age	
	FT	PT	FT	PT
Licensed	\$10	7	10	7
Certified	\$ 9	6	9	6
Unregulated	\$ 8	5	8	5

LINCOLN TRAIL AREA DEVELOPMENT DISTRICT #5

	Special Needs		Infants		Toddlers	
	FT	PT	FT	PT	FT	PT
Licensed	\$10	10	10	7	9	6
Certified	\$ 9	9	9	6	8	5
Unregulated	\$ 8	8	8	5	7	4

	Preschool		School-age	
	FT	PT	FT	PT
Licensed	\$ 9	6	8	5
Certified	\$ 8	5	7	4
Unregulated	\$ 7	4	6	3

KENTUCKIANA REGIONAL PLANNING AND DEVELOPMENT AGENCY AREA DEVELOPMENT DISTRICT #6

	Special Needs		Infants		Toddlers	
	FT	PT	FT	PT	FT	PT
Licensed	\$13	13	13	10	13	10
Certified	\$12	12	12	9	12	9
Unregulated	\$11	11	11	8	11	8

	Preschool		School-age	
	FT	PT	FT	PT
Licensed	\$11	8	11	8
Certified	\$10	7	10	7
Unregulated	\$ 9	6	9	6

NORTHERN KENTUCKY AREA DEVELOPMENT DISTRICT #7

	Special Needs		Infants		Toddlers	
	FT	PT	FT	PT	FT	PT
Licensed	\$12	12	12	9	12	9
Certified	\$11	11	11	8	11	8
Unregulated	\$10	10	10	7	10	7

	Preschool		School-age	
	FT	PT	FT	PT
Licensed	\$12	9	11	8
Certified	\$11	8	10	7
Unregulated	\$10	7	9	6

BUFFALO TRACE AREA DEVELOPMENT DISTRICT #8

	Special Needs		Infants		Toddlers	
	FT	PT	FT	PT	FT	PT
Licensed	\$10	10	8	5	8	5
Certified	\$ 9	9	7	4	7	4
Unregulated	\$ 8	8	6	3	6	3

	Preschool		School-age	
	FT	PT	FT	PT
Licensed	\$ 8	5	8	5
Certified	\$ 7	4	7	4
Unregulated	\$ 6	3	6	3

GATEWAY AREA DEVELOPMENT DISTRICT #9

	Special Needs		Infants		Toddlers	
	FT	PT	FT	PT	FT	PT
Licensed	\$10	10	8	5	8	5
Certified	\$ 9	9	7	4	7	4
Unregulated	\$ 8	8	6	3	6	3

	Preschool		School-age	
	FT	PT	FT	PT
Licensed	\$ 8	5	8	5
Certified	\$ 7	4	7	4
Unregulated	\$ 6	3	6	3

FIVCO AREA DEVELOPMENT DISTRICT #10

	Special Needs		Infants		Toddlers	
	FT	PT	FT	PT	FT	PT
Licensed	\$10	10	10	7	10	7
Certified	\$ 9	9	9	6	9	6
Unregulated	\$ 8	8	8	5	8	5

	Preschool		School-age	
	FT	PT	FT	PT
Licensed	\$10	7	9	6
Certified	\$ 9	6	8	5
Unregulated	\$ 8	5	7	4

BIG SANDY AREA DEVELOPMENT DISTRICT #11

	Special Needs		Infants		Toddlers	
	FT	PT	FT	PT	FT	PT
Licensed	\$10	10	10	7	10	7
Certified	\$ 9	9	9	6	9	6
Unregulated	\$ 8	8	8	5	8	5

	Preschool		School-age	
	FT	PT	FT	PT
Licensed	\$10	7	10	7
Certified	\$ 9	6	9	6
Unregulated	\$ 8	5	8	5

KENTUCKY RIVER AREA DEVELOPMENT DISTRICT #12

	Special Needs		Infants		Toddlers	
	FT	PT	FT	PT	FT	PT
Licensed	\$11	11	11	8	11	8
Certified	\$10	10	10	7	10	7
Unregulated	\$9	9	9	6	9	6
	Preschool		School-age			
	FT	PT	FT	PT		
Licensed	\$9	6			9	6
Certified	\$8	5			8	5
Unregulated	\$7	4			7	4

CUMBERLAND VALLEY AREA DEVELOPMENT DISTRICT #13

	Special Needs		Infants		Toddlers	
	FT	PT	FT	PT	FT	PT
Licensed	\$10	10	10	7	10	7
Certified	\$9	9	9	6	9	6
Unregulated	\$8	8	8	5	8	5
	Preschool		School-age			
	FT	PT	FT	PT		
Licensed	\$9	6			10	7
Certified	\$8	5			9	6
Unregulated	\$7	4			8	5

LAKE CUMBERLAND AREA DEVELOPMENT DISTRICT #14

	Special Needs		Infants		Toddlers	
	FT	PT	FT	PT	FT	PT
Licensed	\$10	10	9	6	9	6
Certified	\$9	9	8	5	8	5
Unregulated	\$8	8	7	4	7	4
	Preschool		School-age			
	FT	PT	FT	PT		
Licensed	\$9	6			9	6
Certified	\$8	5			8	5
Unregulated	\$7	4			7	4

BLUEGRASS AREA DEVELOPMENT DISTRICT #15

	Special Needs		Infants		Toddlers	
	FT	PT	FT	PT	FT	PT
Licensed	\$12	12	12	9	12	9
Certified	\$11	11	11	8	11	8
Unregulated	\$10	10	10	7	10	7
	Preschool		School-age			
	FT	PT	FT	PT		
Licensed	\$11	8			11	8
Certified	\$10	7			10	7
Unregulated	\$9	6			9	6

(g) Child care payments shall be limited as follows:

1. Six (6) semesters (three (3) years) for a two (2) year postsecondary program;
2. Eight (8) semesters (nine (9) with good cause) for a four (4) year postsecondary program; or

3. No restrictions on other education and training activities.

(h) These limits apply to both full-time and part-time enrollment.

(i) In preemployment or precomponent, child care payments shall be limited to a period of two (2) weeks up to one (1) month if necessary to guarantee the child care arrangement shall not be lost.

(j) Child care payments shall not be made if:

1. An AFDC-UP qualifying parent is participating; and

2. The nonparticipating parent is not incapacitated.

(6) Authorization of child care payment.

(a) Child care payments shall be authorized upon the receipt of appropriate verification of the cost of care.

(b) Departmental forms required for verification are incorporated by reference in this regulation.

(c) Payments shall be authorized in accordance with 904 KAR 2:050.

(7) Restrictions on authorization of child care payments. Payment shall not be made if:

(a) Verification is not returned by the end of the month following the month in which the cost was incurred;

(b) The participant is sanctioned for noncompliance with JOBS activities, as specified in 904 KAR 2:006; or

(c) A fair hearing decision is pending on an issue of noncompliance with JOBS.

(8) Transportation payments in JOBS components. Transportation reimbursement shall be paid in the following situations:

(a) Precomponent;

(b) Component preparation;

(c) Component participation;

(d) Transitional extension; or

(e) On-the-job training (OJT) participants discontinued due to earned income or employment of 100 hours a month or more of the PWE in an AFDC-UP case.

(9) Transportation payments in self-initiated activities.

(a) Transportation shall be provided in the same situations as in JOBS components, with the exceptions of:

1. Transitional extension;

2. OJT participants discontinued due to increased earnings or hours of employment;

3. Component preparation; and

4. Precomponent, for persons waiting to enter self-initiated activities for the first time.

(b) Reimbursement shall be paid only for approved self-initiated activities.

(10) Transportation payment amount and authorization.

(a) A standard rate of three (3) dollars per day shall be paid for individuals participating in approved JOBS activities.

(b) Transportation reimbursement shall be made after receipt of appropriate verification. Departmental forms required for verification are incorporated by reference. Payments shall be made as specified in 904 KAR 2:050.

(c) Transportation payments shall be limited in the same manner as child care payments, as described in subsection (4)(g) of this section.

(d) In precomponent, transportation payments are limited to two (2) weeks up to one (1) month if necessary to guarantee that the arrangements shall not be lost.

(11) Restrictions on authorization of

transportation payments. Payments shall not be made if:

(a) Appropriate verification is not returned by the end of the month following the month in which the cost was incurred;

(b) The participant is sanctioned for noncompliance with JOBS activities, as specified in 904 KAR 2:006; or

(c) A fair hearing decision is pending on an issue of noncompliance with JOBS.

(12) Other supportive services in JOBS components.

(a) Nonrecurring services shall be provided if necessary for participation in the approved JOBS activities of:

1. Component preparation;
2. Component participation;
3. Transitional extension;
4. Preemployment; or

5. OJT participants discontinued due to earned income or increased hours of employment.

(b) These services shall be approved by the case manager as defined in 904 KAR 2:006.

(c) Examples of services which may be approved are the purchase of:

1. Remedial health care items or services not covered under the Medicaid program;
2. Necessary clothing; or
3. Any other item identified by a referral agency, the case manager, or the participant as being necessary for participation.

(13) Other supportive services in self-initiated activities. Nonrecurring services shall be provided in the same situations as in JOBS components, with the following exceptions:

- (a) Transitional extension;
- (b) OJT participants discontinued due to increased earnings or hours of employment; or
- (c) Component preparation.

(14) Limitations on other supportive services.

(a) A cumulative limit of \$300 in a twelve (12) month period, beginning with the first day of the month in which the first supportive service payment is made, shall be in effect for any participant in these approved JOBS activities:

1. Component preparation;
2. Component-related;
3. Transitional extension; or
4. OJT participants discontinued due to increased earnings or hours of employment.

(b) A separate \$300 limit, per job, for preemployment supportive services may be paid.

(c) Other supportive services shall be limited in the same manner as child care payments, as described in subsection (4)(g) of this section.

(15) Restrictions on authorization of supportive service payments. Payments shall not be made for the period during which:

(a) Verification is not returned by the service provider;

(b) The participant is sanctioned for noncompliance with JOBS activities, as specified in 904 KAR 2:006; or

(c) A fair hearing decision is pending on an issue of noncompliance with JOBS.

Section 9. Transitional Child Care (TCC). (1) Effective April 1, 1990, child care assistance shall be provided by the state to families whose eligibility for AFDC assistance has ceased due to:

(a) Increased hours of, or earnings from, employment; or

(b) As a result of the loss of income

disregards due to the expiration of the time limits at Section 4(3)(b) of this regulation.

(2) TCC shall be administered by the Cabinet for Human Resources, Department for Social Insurance through an interagency agreement with the Department for Social Services.

(3) Child care assistance shall be provided for children if the criteria in subsection (4) of this section are met.

(4) Technical eligibility. The following requirements shall be met during any month for which TCC is paid:

(a) The child(ren) is under age thirteen (13); or

1. Physically or mentally incapable of caring for himself, as verified by the state based on a determination of a physician or a licensed or certified psychologist; or

2. A dependent child under court supervision (if needy); or

3. Would be a dependent child except for the receipt of benefits under SSI under Title XVI or foster care under Title IV-E.

(b) Child care must be necessary in order to permit a member of an AFDC family to accept or retain employment;

(c) Payments are not made for care provided by parents, legal guardians or members of the assistance unit (including essential persons);

(d) The family shall have ceased to be eligible for AFDC as a result of increased hours of, or increased income from, employment or the loss of income disregards due to the time limitations at Section 4(3)(b) of this regulation;

(e) The family shall have received AFDC;

1. In at least three (3) of the six (6) months preceding the first month of ineligibility; and

2. At least one (1) of the three (3) months was received in the state of Kentucky.

(f) The family requests TCC benefits, provides the information necessary for determining eligibility and fees, and meets application requirements;

(g) The family ceased to be eligible for AFDC on or after April 1, 1990.

(5) Time limitations.

(a) Eligibility for TCC begins with the first month for which the family is ineligible for AFDC and continues for a period of twelve (12) consecutive months when the family requests assistance for TCC.

(b) Families may begin to receive child care in any month during the twelve (12) month eligibility period.

(6) Notification of eligibility. A family shall be notified of their potential eligibility for TCC when their AFDC benefits are terminated.

(7) Sanctions. The family is not eligible for TCC for any remaining portion of the twelve (12) month period if the caretaker relative:

(a) Terminates employment unless good cause exists as follows:

1. The individual is personally providing care for a child under age six (6) and employment will require the individual to work more than twenty (20) hours per week.

2. Child care is necessary for the individual to participate in the program or accept employment and such care is not available or the available child care does not meet the special needs of the child, e.g., handicapped or retarded child.

3. The individual is unable to engage in employment or training for mental or physical

reasons including participation in a drug and alcohol rehabilitation program.

4. Unavailability of transportation with no readily accessible alternative means of transportation available.

5. Travel time to the work site exceeds two (2) hours daily.

6. Illness of another household member requiring the presence of the participant.

7. Temporary incarceration.

8. Discrimination by an employer based on age, race, sex, color, handicap, religious beliefs, national origin or political beliefs.

9. Work demands or conditions that render continued employment unreasonable, such as consistently not being paid on schedule or work presents a risk of the individual's health or safety.

10. Wage rates are decreased subsequent to acceptance of employment.

11. Acceptance of a better job which, because of circumstances beyond the control of the recipient, does not materialize.

12. Employment would result in a net loss of cash income.

(b) Fails to cooperate with the state IV-A agency in establishing payments and enforcing child support obligations, per 904 KAR 2:006, Section 11.

(8) Notices and hearings. Notices of adverse action, hearings, and appeals shall comply with the provisions of 904 KAR 2:046 and 904 KAR 2:055.

(9) Fee requirements. Each family receiving TCC shall be required to contribute toward the payment for child care based on the family's income.

(a) A minimum fee of one (1) percent of the family's gross income shall be charged for families who fall below the federal poverty income guidelines. A fee equivalent to seven and five-tenths (7.5) percent of gross income shall be charged for child care when the gross income exceeds the federal poverty guidelines as defined in 905 KAR 3:010 and 905 KAR 3:020.

(b) Individuals who fail to cooperate in paying required fees may, subject to notices and hearing requirements, lose eligibility for TCC for the period of time back fees are owed, unless satisfactory arrangements are made to make full payment.

(10) Recoupment. The following provisions apply to overpayments in TCC:

(a) Necessary action shall be taken promptly by the state IV-A agency to correct and recoup any overpayments.

(b) Overpayments, including assistance paid pending hearing decisions, shall be recovered from:

1. The responsible party;
2. The family unit which was overpaid;
3. The provider who was responsible for the overpayment;

4. Individuals who were members of the family when overpaid; or

5. Families which include members of a previously overpaid family.

(c) Overpayments shall be recovered through:

1. Repayment by the individual or child care provider to the cabinet; or

2. Reduction in child care payments; or

3. Reduction of AFDC benefits only upon a voluntary request of the recipient family.

(d) Repayment by the individual shall allow the recipient family to retain, for any month, a

reasonable amount of funds.

(e) Underpayments and overpayments may be offset against each other in adjusting incorrect payments.

(f) Benefits shall not be suspended, reduced, discontinued or terminated until a decision is rendered after a hearing as specified in 904 KAR 2:055 requested within the timely notice period.

Section 10. Recoupment. The following provisions are effective for all overpayments discovered on or after April 1, 1982, regardless of when the overpayment occurred.

(1) Necessary action will be taken promptly to correct and recoup any overpayments.

(2) Overpayments, including assistance paid pending hearing decisions, shall be recovered:

(a) The claimant;

(b) The overpaid assistance unit;

(c) Any assistance unit of which a member of the overpaid assistance unit has subsequently become a member; or

(d) Any individual member of the overpaid assistance unit whether or not currently a recipient.

(3) Overpayments shall be recovered through:

(a) Repayment by the individual to the cabinet; or

(b) Reduction of future AFDC benefits, which shall result in the assistance group retaining, for the payment month, family income and liquid resources of not less than ninety (90) percent of the amount of assistance paid to a like size family with no income in accordance with Section 7 of this regulation; or

(c) Civil action in the court of appropriate jurisdiction.

(4) In cases which have both an overpayment and an underpayment, the cabinet shall offset one against the other in correcting the payment to current recipients.

(5) Neither reduction in future benefits nor civil action shall be taken except after notice and an opportunity for a fair hearing as specified in 904 KAR 2:055 is given and the administrative and judicial remedies have been exhausted or abandoned in accordance with Title 904, Chapter 2.

Section 11. Provisions contained in this regulation shall become effective February 1, 1991 [October 1, 1990].

Section 12. Material Incorporated by Reference. (1) Forms necessary for verification of child care and supportive service payments in the JOBS program are incorporated effective October 1, 1990.

(2) These forms may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

MIKE ROBINSON, Commissioner

HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: January 24, 1991

FILED WITH LRC: February 4, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 21, 1991 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 16, 1991, five days prior to hearing,

of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James E. Randall

(1) Type and number of entities affected:

Legal guardians - the department does not maintain statistics specifying the inclusion of legal guardian income in AFDC cases. It is not possible to identify the number of entities.

Earned income tax credit payments - this amendment has the potential to affect 9,261 employed AFDC recipients.

Transitional child care - the department has no means of predicting the number of households that will move to Kentucky, receive AFDC, and then become eligible to receive (TCC) payments.

AFDC-UP in JOBS - this amendment has the potential to affect the qualifying parent in 4,933 AFDC-UP cases. That is the total number of AFDC-UP cases as of December 1990.

(a) Direct and indirect costs or savings to those affected:

1. First year:

Legal guardians - there is no way to speculate the cost or savings to those affected by this change as there is no way to determine how many cases involve inclusion of legal guardian income in AFDC cases.

Earned income tax credit payments - there is no way to determine how many AFDC employed recipients will qualify for these payments which are excluded as income and excluded as a resource in the month received and the following month.

Transitional child care - there is no way to speculate the cost or savings to this change as there is no way of knowing how many households will move into this state.

AFDC-UP in JOBS - there is no way to speculate the cost or savings to this change as there is no way of knowing how many qualifying parents will volunteer and how many will qualify for child care payments.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Legal guardians - none. Earned income tax credit payments - none. Transitional child care - none. AFDC-UP in JOBS - participants shall submit verification of expenses related to JOBS child care and supportive services needs for the Department for Social Insurance to provide payment. Department forms required for this verification are incorporated by reference in this administrative regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: As stated under entities and direct and indirect cost or savings to those affected under first year, it is not possible to determine cost or savings to the administration either, for the same reasons.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Legal guardians - none. Earned income tax credit payments - none. Transitional child care - none. AFDC-UP in JOBS - monthly monitoring shall be accomplished through the agency computer system to generate information to be reported quarterly to the federal government.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: None. This is a federally mandated change.

(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. Eligibility conditions for AFDC must be applied on a consistent and equitable basis in accordance with federal regulations at 45 CFR 233.10(a)(1).

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 CFR 250.33, 45 CFR 256, PL 101-508.

2. State compliance standards. The state compliance standards are the same as the federal minimum requirements.

3. Minimum or uniform standards contained in the federal mandate.

Deletion of the term "legal guardian" with respect to consideration of income and resources when the parent is under 18 years old and has a dependent child.

Exclusion of earned income tax credit payments. Requirements for households receiving transitional child care when moving from one state to another.

Allowance of qualifying parents in AFDC-UP program to volunteer for participation in the JOBS program with child care payments allowed in particular situations.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:013. Payments for hospital inpatient services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050; 20 CFR 405.402 through 405.488; 42 CFR 440.10, 440.140, 447.250 through 447.280; 42 USC 1396a, b, d, r-4

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

Section 1. Acute Care Hospital, Rehabilitation Hospital and Mental Hospital (Including Psychiatric Facility) Inpatient Services. The Department for Medicaid Services shall [state agency will] pay for inpatient hospital services provided to eligible recipients of Medical Assistance through the use of rates that are reasonable and adequate to meet the costs that are required to be incurred by efficiently and economically operated hospitals to provide services in conformity with applicable state and federal laws, regulations, and quality and safety standards.

Section 2. Establishment of Payment Rates. The policies, methods, and standards to be used by the cabinet in setting payment rates are specified in the cabinet's "Inpatient Hospital Reimbursement Manual" revised February 1, 1991 [July 1, 1990], and amended August 1, 1990, which is incorporated by reference in this regulation. For any reimbursement issue or area not specified in the manual, the cabinet shall [will] apply the Medicare standards and principles [described in 20 CFR Sections 405.402 through 405.488] (excluding the Medicare inpatient routine nursing salary differential). The Kentucky Medical Assistance Program Inpatient Hospital Reimbursement Manual may be reviewed during regular working hours (8 a.m. to 4:30 p.m.) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office.

[Section 3. Compliance with Federal Medicaid Requirements. The cabinet will comply with the requirements shown in 42 CFR 447.250 through 447.280.]

Section 3. [4.] General Description of the Payment System. (1) Use of prospective rates. Each hospital shall [will] be paid using a prospective payment rate based on allowable Medicaid costs and Medicaid inpatient days. The prospective rate shall [will] be all inclusive in that both routine and ancillary cost shall [will] be reimbursed through the rate. For universal rate years prior to January 1, 1985 the prospective rate shall [will] not be subject to retroactive adjustment except to the extent that an audited cost report alters the basis for

the prospective rate or the projected inflation index utilized in setting the individual rate is different from actual inflation as determined by the index being used. For universal rate years beginning on or after January 1, 1985, the prospective rate shall [will] not be subject to retroactive adjustment except to the extent that facilities with a rate based on unaudited data shall [will] have their rate appropriately revised for the rate year when the audited cost report is received from the fiscal intermediary. However, total prospective payments shall not exceed the total customary charges in the prospective year. Overpayments shall [will] be recouped by payment from the provider to the cabinet of the amount of the overpayment, or alternatively, by the withholding of the overpayment amount by the cabinet from future payments otherwise due the provider.

(2) Use of a uniform rate year. A uniform rate year shall [will] be set for all facilities, with the rate year established as January 1 through December 31 of each year. The first uniform rate year for mental hospitals shall be July 1, 1985 through June 30, 1986; however, effective January 1, 1986 the mental hospital rate year shall be reestablished and shall be January 1 through December 31 of each year thereafter. Changes of rates throughout the rate year as a result of policy changes shall not change the rate year, although the facility rates may change. Hospitals are not required to change their fiscal years.

(3) Trending of cost reports. Allowable Medicaid cost as shown in cost reports on file in the cabinet, both audited and unaudited, shall [will] be trended to the beginning of the rate year so as to update Medicaid costs. When trending, capital costs and return on equity capital are excluded. The trending factor to be used shall [will] be the Data Resources, Inc. rate of inflation for the period being trended.

(4) Indexing for inflation. After allowable costs have been trended to the beginning of the rate year, an indexing factor shall be [is] applied so as to project inflationary cost in the uniform rate year. The forecasting index currently in use is prepared by Data Resources, Inc. This policy shall be effective August 3, 1985.

(5) Peer grouping. Acute care hospitals (but not including those considered to be primarily rehabilitative in nature) shall [will] be peer grouped according to bed size. The peer groupings for the payment system shall [will] be: 0-50 beds, 51-100 beds, 101-200 beds, 201-400 beds, and 401 beds and up (except that the designated state teaching hospitals affiliated with or a part of the University of Kentucky and the University of Louisville shall not be included in the array for facilities with 401 beds and up unless such facility's primary characteristics are considered essentially the same as the peer group's, and the facility, although not a university teaching hospital as such, is treated in such a manner as to recognize the presence of the major pediatric teaching component existing outside the state university hospitals). No facility in the 201-400 peer group shall have its operational per diem reduced below that amount in effect in the 1982 rate year as a result of the establishment of a peer grouping of 401 beds and up. Mental hospitals shall [will] not be peer grouped but shall [will] have a separate array

of mental hospitals only. Rehabilitation hospitals and acute care hospitals considered to be primarily rehabilitative in nature shall [will] not be peer grouped or arrayed.

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

(7) Use of a reduced depreciation allowance. The allowable amount for depreciation on building and fixtures (not including major movable equipment) shall be sixty-five (65) percent of the reported depreciation amount as shown in the hospital's cost reports. The use of a reduced depreciation allowance is not applicable with regard to mental hospitals.

(8) Use of upper limits with regard to services provided on or after July 1, 1990.

(a) For acute care hospitals, an upper limit shall [will] be established on all costs (except Medicaid capital cost) at the weighted median per diem cost for hospitals in each peer group, using the most recent Medicaid cost report available as of December 1 of each year. For mental hospitals, an upper limit shall [will] be established on all costs (except Medicaid capital cost) at the weighted median per diem cost for hospitals in the array. A mental hospital designated by the cabinet as a primary referral and services resource for children in the custody of the cabinet shall be exempt from the upper limit for the array and shall be paid at actual projected cost with no year end settlement to actual cost; the projected cost may be adjusted for usual cost of living increases using the Data Resources, Incorporated Index. Upon being set, the arrays and upper limits shall [will] not be altered due to revisions or corrections of data; however the arrays or upper limits may be changed as a result of changes of agency policy. Hospitals participating in the Hospital Indigent Care Assurance Program (HICAP) shall also receive, in addition to regular program payments, amounts which are payable under HICAP. The HICAP payments shall be the product of the ratio of each hospital's Medicaid patient days compared to total Medicaid patient days as applied to total available HICAP funds (which are the hospital assessments paid minus administrative expense, hold-harmless amounts, and the contingency reserve amount and taking into consideration available federal Medicaid matching funds). For hospitals which are disproportionate share hospitals the limitations shown in paragraph (b) of this subsection and subsection (9) of this section shall be applicable for HICAP payments. If a hospital which is a nondisproportionate share hospital is determined by the cabinet to be a nonparticipant in HICAP, the amounts otherwise payable under HICAP to the hospital shall not be made.

(b) The following upper limits and payment principles shall apply to disproportionate share hospitals as defined in subsection (9) of this section.

1. Acute care hospitals with Medicaid utilization of twenty (20) percent or higher, and hospitals having twenty-five (25) percent or

more nursing days resulting from Medicaid covered deliveries as compared to the total number of paid Medicaid days, shall have an upper limit set at 120 percent of the weighted median per diem cost for hospitals in the array. In addition to the per diem amount computed in this manner, the hospitals shall be paid (as appropriate) additional amounts for services to infants under age one (1) (as shown in subsection (9)(b)2 of this section). The hospitals shall also be entitled to amounts payable under HICAP (as shown in subsection (9)(b)3 of this section) or the disproportionate share minimum adjustment amount shown in subsection (9)(b)1 of this section if greater.

2. Designated state teaching hospitals and major affiliated pediatric teaching hospitals (i.e., those affiliated with or a part of the University of Kentucky and the University of Louisville) shall have an upper limit set at 126 percent of the weighted median per diem cost for all other hospitals of comparable size (401 beds and up). The pediatric teaching hospitals shall also be paid, in addition to the facilities' base rate, an amount which is equal to two (2) percent of the base for each one (1) percent of Medicaid occupancy but this amount shall not exceed the prospective reasonably determined uncompensated Medicaid cost to the facility. In addition to the per diem amount computed using the limits specified in this subparagraph, the hospitals shall be paid (as appropriate) additional amounts for services to infants under age one (1) (as shown in subsection (9)(b)2 of this section). The hospitals shall also be entitled to amounts payable under HICAP (as shown in subsection (9)(b)3 of this section) or the disproportionate share minimum adjustment amount shown in subsection (9)(b)1 of this section if greater.

3. Mental hospitals with Medicaid utilization of thirty-five (35) percent or higher shall have an upper limit set at 115 percent of the weighted median per diem cost for hospitals in the array. The per diem amount shall be computed using this upper limit or by using the disproportionate share minimum payment amount shown in subsection (9)(b)1 of this section if doing so [will] results in a higher per diem amount.

4. All other disproportionate share acute care hospitals shall have their upper limit set at the weighed median per diem of the cost for hospitals in the array. In addition to the per diem amount computed in this manner, the hospitals shall be paid (as appropriate) additional amounts for services to infants under age one (1) (as shown in subsection (9)(b)2 of this section). The hospitals shall also be entitled to amounts payable under HICAP (as shown in subsection (9)(b)3 of this section) or the disproportionate share minimum adjustment amount shown in subsection (9)(b)1 of this section if greater.

(9) Disproportionate share hospitals.

(a) Disproportionate share hospitals are those hospitals meeting the criteria specified in 42 USC 1396r-4(b) [Section 4112(b)] and (d) [of the Omnibus Budget Reconciliation Act of 1987 (OBRA 87)] and those hospitals which may not meet such criteria but meet the criteria specified in 42 USC 1396r-4(d) [Section 4112(d) of OBRA 87] and meet this additional criteria:

1. Acute care hospitals with Medicaid utilization of twenty (20) percent or higher and

mental hospitals with Medicaid utilization of thirty-five (35) percent or higher;

2. Hospitals which are designated state teaching hospitals;

3. Hospitals which are designated major pediatric teaching hospitals;

4. Hospitals having twenty-five (25) percent or more nursery days resulting from Medicaid covered deliveries as compared to the total number of paid Medicaid days; and

5. Effective with regard to services provided on or after July 1, 1990, hospitals not meeting the additional criteria specified in subparagraphs 1 through 4 of this paragraph but with Medicaid utilization of five (5) percent or higher.

(b) The upper limit for payments for hospitals in Kentucky shall be [is] set at the lower of allowable Medicaid cost or the median of the facility array of allowable cost with payment adjustments allowed for hospitals deemed disproportionate share hospitals in accordance with subsections (8) and (9) of this section. For compliance with 42 USC 1396r-4(c) [Section 4112(c) of OBRA 1987], the minimum payment adjustment and actual payment adjustment shall [will] be computed in the following manner:

1. All hospitals determined to be disproportionate share hospitals shall be entitled to a minimum payment adjustment equal to one (1) dollar as an addition to the hospital payment rate computed using usual upper limits; and for hospitals with Medicaid utilization in excess of one (1) standard deviation above the mean Medicaid inpatient utilization rate for hospitals receiving Medicaid payments in the state, a further payment adjustment which is equal to ten (10) cents for each one (1) percent of Medicaid utilization in the hospital which is in excess of utilization at the one (1) standard deviation level.

2. Effective with regard to medically necessary hospital inpatient services provided by all Kentucky disproportionate share hospitals on or after July 1, 1990 to infants under the age of one (1) with exceptionally high costs or long lengths of stay (defined as being those costs and days of stay which for newborns are after thirty (30) days beyond the date of discharge for the mother of the child and for all other infants are after thirty (30) days from the date of admission), the payment rate shall be set at 110 percent of the per diem payment rate, without regard to length of stay or number of admissions of the infants.

3. Effective with regard to services provided on or after July 1, 1990 any hospital which is participating in the Hospital Indigent Care Assurance Program (HICAP) shall receive disproportionate share payments under HICAP. HICAP assessments and payments are described in 907 KAR 1:017, Hospital indigent care assurance program. If a hospital is determined by the cabinet to be a nonparticipant in the HICAP program, the hospital shall be entitled to the minimum adjustment shown in subparagraph 1 of this paragraph.

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

(11) Hospitals whose general characteristics are not those of an acute care or mental hospital (i.e., because they are rehabilitation hospitals or acute care hospitals considered to

be primarily rehabilitative in nature) are not subject to the operating cost upper limits.

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

Section 4. [5.] Payments to Participating Out-of-state Hospitals. (1) Effective with regard to services provided on or after July 1, 1990 participating out-of-state hospitals shall be reimbursed for covered inpatient services rendered eligible Kentucky Medicaid recipients at the rate of seventy-five (75) percent of usual and customary charges, up to the in-state per diem upper limit for a comparable size hospital, except as specified in subsection (2) of this section.

(2) Effective with regard to medically necessary hospital inpatient services provided on or after July 1, 1990 to infants under the age of one (1), for days of stay which for newborns are after thirty (30) days beyond the date of discharge for the mother of the child and for all other infants are after thirty (30) days from the date of admission, participating out-of-state disproportionate share hospitals (determined in the same manner as for in-state hospitals except that out-of-state hospitals are not included in facility arrays) shall be paid at the rate of eighty-five (85) percent of usual and customary actual billed charges up to 110 percent of the per diem upper limit for the in-state peer group for comparably sized hospitals in recognition of exceptionally high costs and lengths of stay related to infants under the age of one (1), without regard to length of stay or number of admissions of the infants.

(3) Professional costs (i.e., physician fees) for all covered days of stay shall be paid at seventy-five (75) percent of [on the basis of] the usual and customary charges of the provider.

Section 5. Effective Date. The amendments to this regulation shall be effective with regard to services provided on or after February 1, 1991.

ROY BUTLER, Commissioner

HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: January 28, 1991

FILED WITH LRC: February 5, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 21, 1991 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 16, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed

administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler

(1) Type and number of entities affected: All out-of-state hospitals participating in Medicaid that bill professional component costs directly.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$95,000 (savings)

2. Continuing costs or savings: \$95,000 (savings)

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(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. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

PROPOSED REGULATIONS RECEIVED BY NOON, FEBRUARY 15, 1991

LEGISLATIVE RESEARCH COMMISSION
Capital Planning Advisory Board

1 KAR 6:010. Policies and procedures.

RELATES TO: KRS Chapter 7A

STATUTORY AUTHORITY: KRS 7A.140

NECESSITY AND FUNCTION: KRS 7A.140 authorizes the Capital Planning Advisory Board to adopt any administrative regulations necessary to carry out its planning and advisory functions. The purpose of this regulation is to establish the policies and procedures for the capital planning process.

Section 1. The Governor, the Chief Justice, and the Legislative Research Commission shall provide:

(1) Statements of the type and amount of space currently occupied by their respective agencies in Franklin, Fayette, Jefferson, Boone, Kenton, and Campbell counties; and

(2) Projections of future space needs in those counties through FY 1996.

Section 2. State agencies, other than institutions of higher education, shall submit information specified by the board in the document titled "State Agencies Six-Year Capital Plan Instructions." This document, dated February 1, 1991, is incorporated by reference and may be reviewed or obtained at the Office of the Capital Planning Advisory Board, Room 2A, Capitol Annex, Frankfort, Kentucky 40601, Monday through Friday from 8 a.m. to 4:30 p.m. (EST).

Section 3. Institutions of higher education shall submit information specified by the board in the document titled "Higher Education Institutions Six-Year Capital Plan Instructions." This document, dated February 1, 1991, is incorporated by reference and may be reviewed or obtained at the Office of the Capital Planning Advisory Board, Room 2A, Capitol Annex, Frankfort, Kentucky 40601, Monday through Friday from 8 a.m. to 4:30 p.m. (EST).

Section 4. Agencies providing information to the Kentucky Information Systems Commission pursuant to KRS 61.950 shall not be required to provide that information to the board.

(1) The Kentucky Information Systems Commission shall provide the board with the following information:

(a) List and approval or disapproval status of all submitted computing and communications items;

(b) List of the selected computing items on which the Kentucky Information Systems Commission places high value; and

(c) List of selected high-value communications items, primarily those related to a statewide network.

(2) The board may utilize the information received from the Kentucky Information Systems Commission in the formulation of the board's statewide six-year capital improvement plan.

Section 5. The board shall exclude road projects from its information request for the 1991 planning period, and accept, for review only, the Highway Biennial Construction and Preconstruction Program developed pursuant to

KRS 176.440 by the Transportation Cabinet as reviewed by the General Assembly's Interim Joint Committee on Transportation.

Section 6. In providing the information required by KRS 7A.120, state agencies and institutions of higher education shall include any lease of real property where the estimated cost of purchasing the real property is \$200,000 or more, separately in the forms required by Sections 2 and 3 of this regulation, as appropriate.

Section 7. An agency providing any information to the board on behalf of another agency shall submit written notice to the board by May 15, 1991, specifying the type of information to be provided and the date by which it shall be provided.

REP. MARSHAL LONG, Chairman

APPROVED BY AGENCY: February 1, 1991

FILED WITH LRC: February 6, 1991 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 22, 1991 at 10 a.m. at Room 105, Capitol Annex Building, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 17, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ed Sergent, Administrator, Capital Planning Advisory Board, Room 2A, Capitol Annex, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ed Sergent

(1) Type and number of entities affected: All state agencies and universities as defined by KRS 7A.010.

(a) Direct and indirect costs or savings to those affected: Not applicable.

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: State agencies and universities are required to submit specified information on their projected capital needs, to be used by the Capital Planning Advisory Board in developing a statewide 6-year capital improvement plan.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Not applicable.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Not applicable.

(3) Assessment of anticipated effect on state and local revenues: Not applicable.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Not applicable.

(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 administrative regulation merely specifies the details of the statutory requirements for the information to be submitted by state agencies and universities. There is no fiscal or programmatic impact added by the regulation.

TIERING: Was tiering applied? Yes. The instructions and forms incorporated by reference into the regulation are tailored to address the technical distinctions between state agencies and universities.

STATE BOARD OF ELECTIONS

31 KAR 4:060. Biennial purge.

RELATES TO: KRS 116.112

STATUTORY AUTHORITY: KRS 116.112(1)

NECESSITY AND FUNCTION: To provide a schedule to conduct a purge of ineligible and deceased voters in every even-numbered year beginning with the July 1, 1990 fiscal year.

Section 1. (1) Notice to registered voters to be purged as ineligible or deceased shall begin January 1, 1991, and shall be completed no later than the close of registration books for the primary election, April 29, 1991.

(2) The board elects to use the United States Postal Service Address Information System (AIS) to determine voters to whom notice shall be mailed.

Section 2. The board shall notify a county clerk of the:

(1) Names of voters in his county to whom purgation notices have been mailed; and

(2) Date the purgation notices were mailed.

Section 3. The purgation notice required by KRS 116.112(4) is hereby incorporated by reference.

BREMER EHRLER, Chairman

APPROVED BY AGENCY: February 7, 1991

FILED WITH LRC: February 7, 1991 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 21, 1991 at 10 a.m. in Room 105 of the Capitol Annex, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 16, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given

an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: George Russell, Executive Director, State Board of Elections, Room 71, State Capitol, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Russell

(1) Type and number of entities affected: County clerks.

(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): There are no costs or savings that are not covered by the funds appropriated by the 1990 Regular Session of the General Assembly.

(b) Reporting and paperwork requirements: Routine paperwork.

(2) Effects on the promulgating administrative body: Collecting and mailing data for the purge.

(a) Direct and indirect costs or savings: \$300,000 cost, appropriated by the 1990 Regular Session of the General Assembly.

1. First year: None

2. Continuing costs or savings: \$300,000 every biennium.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Routine paperwork.

(3) Assessment of anticipated effect on state and local revenues: None. County clerks will perform normal function of purging ineligible voters. County board of elections can conduct hearings at their normal meetings.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The requirements of KRS 116.112 are mandatory and are uniform.

(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: No TIERING: Was tiering applied? No. Tiering is inapplicable because KRS 116.112 prescribes a single standard to be applied to all affected persons and entities. There is only one class of persons or entities affected.

OFFICE OF THE ATTORNEY GENERAL

40 KAR 4:010. Disbursement of asset forfeiture receipts.

RELATES TO: KRS 218A.435(7)(a)

STATUTORY AUTHORITY: KRS 218A.435(8)

NECESSITY AND FUNCTION: KRS 218A.435(7)(a) provides that a portion of the asset forfeiture

trust fund shall be allocated to the United Prosecutorial System to be disbursed by the Attorney General (through the Prosecutors Advisory Council) to Commonwealth's attorneys or county attorneys. This regulation establishes the application mechanism.

Section 1. Commonwealth's attorneys or county attorneys who are entitled to payment under KRS 218A.435(7)(a) shall apply in writing for payment from the trust fund through the Office of Attorney General, Prosecutors Advisory Council.

Section 2. When applying, a copy of the final order of forfeiture shall be forwarded to the Office of the Attorney General, Prosecutors Advisory Council, 909 Leawood Drive, Frankfort, Kentucky 40601.

Section 3. Subject to applicable statutes county and Commonwealth's attorneys shall expend money allocated from the fund for personnel, operating, equipment, training and education programs related to criminal justice.

Section 4. Property purchased with money allocated from the fund shall be deemed property of the Commonwealth of Kentucky.

FREDERIC J. COWAN, Attorney General

APPROVED BY AGENCY: February 15, 1991

FILED WITH LRC: February 15, 1991 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held at 10 a.m. on March 21, 1991, at the Office of the Attorney General, Second Floor Conference Room, 909 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by March 16, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Pat Arnold, Prosecutors Advisory Council Staff, 909 Leawood Drive, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Pat Arnold

(1) Type and number of entities affected: County attorneys, Commonwealth's attorneys, Prosecutors Advisory Council.

(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: Minimal reporting to Prosecutors Advisory Council including copy of final order of forfeiture.

(2) Effects on the promulgating administrative

body:

(a) Direct and indirect costs or savings: None, administration is being absorbed by the Prosecutors Advisory Council staff.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Tracking final orders of forfeiture, preparation and maintenance of financial and accounting records.

(3) Assessment of anticipated effect on state and local revenues: Unknown, depends upon number of criminal cases resulting in forfeiture.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method available.

(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 statutes apply equally to all county and Commonwealth's attorneys.

GENERAL GOVERNMENT CABINET Board of Respiratory Care

201 KAR 29:010. Definition of activities under limited mandatory certification.

RELATES TO: KRS 314A.110

STATUTORY AUTHORITY: KRS 314A.205(3)

NECESSITY AND FUNCTION: This regulation clarifies the types of activities which are permissible by persons holding limited mandatory certification.

Section 1. "Continuous mechanical or physiological ventilatory support" as used in KRS 314A.110(1)(d) means the establishment, management, or termination of mechanical ventilation. A person holding a limited mandatory certificate shall be prohibited from performing these functions, as well as arterial puncture and blood gas analysis. Persons holding a limited mandatory certificate may perform any other respiratory care procedure or function for which they have received training, provided they are done under the supervision of an individual holding mandatory certification by this board.

JAMES E. RAVENCRAFT, Chairman

APPROVED BY AGENCY: February 15, 1991

FILED WITH LRC: February 15, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Thursday, March 21, 1991 at 10 a.m., at the offices of the Division of Occupations and Professions located in the Berry Hill Annex, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 16, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an

opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: David Nicholas, Director, Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: David Nicholas

(1) Type and number of entities affected: Student respiratory care practitioners. Unknown since board newly created and registration not required until 7-13-91.

(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: 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: None

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: None appropriate.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Phrase in KRS 314A.110(1)(d) being defined.

(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 student respiratory care practitioners being treated equally.

CABINET FOR HUMAN RESOURCES
Office of Inspector General

906 KAR 1:080. Standards for utilization review.

RELATES TO: KRS 211.461 to 211.466, 211.990, 304.17-412, 304.18-045, 304.32-147, 304.32-330, 304.38-225, 311.131 to 311.139, 311.990,

STATUTORY AUTHORITY: KRS 194.050, 216B.042

NECESSITY AND FUNCTION: KRS 216B.042 mandates that the Kentucky Cabinet for Human Resources regulate health facilities and health services. KRS 211.464 and 311.133 mandate that the Kentucky Cabinet for Human Resources promulgate regulations to implement the program necessary to register private review agents.

Section 1. Definitions. (1) "Dispute resolution" is a procedure to resolve

utilization review disputes between private review agents and health care providers and patients.

(2) "Board" means the American Boards of Medical Specialists.

(3) "Utilization review procedures" means a professionally developed set of objective standards used to evaluate proposed or delivered medical services not including descriptions and names of review criteria, the release of which is governed by KRS 311.133(2).

(4) "Policies and procedures" means the principles that are involved in the overall administration of the utilization review program, the release of which is governed by KRS 211.464(3).

(5) "Qualified personnel" means licensed physician, registered nurse, licensed practical nurse, medical records technician, or other personnel who through training and experience shall render consistent decisions based on the review criteria.

Section 2. Applicability. Private review agents shall not conduct utilization review unless issued a certificate of registration by the cabinet. All private review agents shall comply with the certification requirements within ninety (90) days after the effective date of this regulation.

Section 3. Certificates Required; Transferability, and Reporting Requirements. (1) Certification required pursuant to Section 2 of this regulation shall be renewed every two (2) years.

(2) The cabinet shall issue a certificate of registration to an applicant that has met all statutory provisions and the requirements of this regulation.

(3) A certificate issued under this regulation is not transferable.

(4) An applicant seeking certification or certificate holder seeking renewal shall:

(a) Submit an application on forms that the cabinet requires; and

(b) Pay an application fee of \$500.

(5) An application for certification shall be accompanied by the required documentation listed in Section 4 of this regulation.

Section 4. Application Process. (1) Each private review agent shall file an application with the cabinet which shall meet the requirements established by KRS 211.464-465 and 311.135 including the following specific information:

(a) A utilization review plan that includes the statutory provisions in KRS 211.464, 311.135 and the following elements of review:

1. Information utilized for preadmission, admission or readmission;

2. Information utilized for preauthorization; and

3. Information utilized for continued stay authorization.

4. Utilization review procedures and policies and procedures for each of the above listed elements of review used to evaluate proposed or delivered medical services including:

a. Time frames for review;

b. A written summary describing the review process and required forms;

c. Documentation of qualifications of personnel who developed the specific utilization

review procedures relating to specialty and subspecialty areas;

d. Descriptions and names of review criteria upon which utilization review decisions are based; and

e. Additional standards, if any, for the consideration of special circumstances.

5. A description of instances, if any, in which utilization review may be delegated to a hospital utilization review program.

6. The manner in which the private review agent provides notice of denial, including:

a. Time frames for issuing decisions;

b. The provision of a written notice following any telephone notifications; and

c. The content of notices, including:

(i) Form used; and

(ii) Reasons for denial.

7. A summary or abstract of the procedure by which patients and providers can appeal adverse decisions including:

a. Time frames for conducting review of initial decision and for issuing reconsideration decision;

b. Procedures for expediting appeals for hospitalized patients awaiting treatment; and

c. Qualifications of the person or persons conducting reconsideration of initial decision.

(b) Types and qualifications of personnel performing utilization review including:

1. A list of three (3) individuals responsible for the operation of the private review agency;

2. Names, addresses, and telephone numbers of persons to contact for various elements and aspects of review; and

3. Qualification of personnel employed directly or under contract by various job category.

(c) Assurances that a toll free line will be provided for patients, hospitals, and physicians to contact the private review agent and policies and procedures to assure that a representative of the private review agent shall be reasonably accessible at least five (5) days/week, forty (40) hours/week during normal business hours in this state which shall include:

1. The manner in which the private review agent may be contacted in the case of emergency admissions if preauthorization by the private review agency is required for emergency admissions; and

2. The manner in which the private review agent may be contacted to review weekend admissions if preauthorization is required by the private review agency on weekends.

(d) Policies and procedures to protect confidentiality of patient information.

(e) A copy of the form materials designed to inform applicable patients and providers of the requirements of the utilization review plan, including:

1. Materials that explain requirements that patients must meet and specific penalties for noncompliance;

2. Requirements for review of emergency admissions and the procedure for obtaining such review;

3. Telephone numbers and hours of operation of the private review agent and how to contact the agency for a review determination after normal business hours if required by the private review agency; and

4. Appeal rights to challenge denials.

(f) A listing of the third party payors for which the private review agent is performing

utilization review in this state.

(2) Application review procedure. Upon receipt of an application for issuance or renewal of a certificate of registration the cabinet shall:

(a) Notify applicant by letter of receipt of the application and inform the applicant that supplemental information is or is not needed;

(b) Review the application and material required by KRS 311.135 and 211.464 and this regulation; and

(c) Approve or deny issuance or renewal of certificate of registration within sixty (60) days.

Section 5. Evidence of Compliance. In taking action to approve applications for registration or renewal, the cabinet shall determine whether the applicant has demonstrated evidence of compliance with statutory or regulatory requirements including the following:

(1) In determining whether a private review agent has available sufficient and appropriate staff with appropriate supervision to conduct utilization review, the following shall be deemed evidence of compliance:

(a) Only qualified personnel shall approve positive utilization review decisions;

(b) Only licensed physicians shall issue denials; and

(c) Only licensed physicians shall supervise personnel conducting case review.

(2) In determining whether a private review agent's procedures will effect timely reconsideration or appeal, the following shall be evidence of compliance:

(a) Reconsideration shall only be conducted by a licensed physician who did not participate in the initial review and denial. However, in the case of a review involving a medical or surgical specialty or subspecialty, if the denial is upheld upon reconsideration without the use of a board eligible or certified physician in the appropriate specialty or subspecialty area, a patient or provider may request that the utilization review agent utilize a board eligible or certified physician in the appropriate specialty or subspecialty area before the final denial is issued;

(b) Those portions of the medical record that are relevant to the reconsideration, if authorized by the patient and in accordance with state or federal law, shall be considered and providers given the opportunity to present additional information; and

(c) An expedited appeals process shall provide for hospitalized patients awaiting treatment with decisions rendered no later than three (3) working days after the request for the expedited appeal.

(3) In determining the adequacy of the manner in which private review agents provide notice of denials, the following shall be evidence of compliance:

(a) Notice of review decisions shall be provided to the patient, hospital, and physician in accordance with the time frames set out in KRS 211.463; and

(b) Notices of denials shall contain an abstract of the reasons for denial including the following:

1. For medical necessity denials, a statement of the medical reasons, name, state of licensure and medical license number of the reviewer, and appeal rights; and

2. For technical (contractual) denials, the reason, and appeal rights.

Section 6. Denial/Revocation Hearing Procedure. Before the cabinet denies an application for issuance or renewal of a certificate of registration, or revokes an existing certificate of registration, it shall:

(1) Give written notice of its proposed action and advise the applicant or certificate holder that a written request for a hearing may be filed within seven (7) calendar days of the cabinet's notice;

(2) Upon receipt of the written request, the cabinet shall appoint an impartial hearing officer;

(3) Notice of hearing shall be mailed to the applicant or certificate holder not less than fourteen (14) days prior to the commencement of the hearing. The notice of hearing shall contain the information necessary to conduct the hearing and the initial reasons for the action. The notice of hearing shall be delivered by certified mail;

(4) The hearing must be held within thirty (30) calendar days from the receipt of the written request for a hearing;

(5) The applicant or certificate holder and the cabinet may be represented by counsel and make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of such actions. The cabinet shall have the authority to request any relevant information from the utilization review agent including any criteria utilized for review. No depositions shall be permitted for the purpose of discovery, however, the hearing officer may authorize depositions of witnesses who, in his opinion for good cause shown cannot be present at the hearing. A hearing officer shall preside at the hearing, shall keep order, administer oaths, may issue subpoenas and may admit relevant and probative evidence and shall conduct the hearing in accordance with reasonable administrative practice;

(6) All testimony at the hearing shall be recorded but need not be transcribed unless requested. The person or organization requesting a transcript shall bear the cost of such transcript;

(7) The hearing officer shall make a written recommendation to the cabinet including findings of fact and conclusions of law. With the recommendation, the hearing officer shall forward to the cabinet the record consisting of all documents, exhibits and recorded testimony introduced in the hearing;

(8) The cabinet shall issue a final determination within thirty (30) days of the receipt of the recommendation of the hearing officer;

(9) The cabinet may also order a monetary penalty in accordance with KRS 211.990 and KRS 311.990; and

(10) Any party aggrieved by the final decision may appeal that decision to the Franklin Circuit Court in accordance with KRS 311.138.

Section 7. Complaint Process. (1) Within ten (10) days of the receipt of a written complaint, a copy will be sent to the private review agency which will have ten (10) days to document that the complaint has or has not been reconciled through the internal appeal/grievance process. If the cabinet does not receive such

documentation or the complaint has not been reconciled then a copy of the complaint and a letter from the cabinet will be sent to the private review agent requiring the following:

(a) A request for a written reply within ten (10) days;

(b) A statement of the incident or problem;

(c) Any pertinent information including any criteria directly relating to the incident or problem; and

(d) Corrective actions, if any, with time frames.

(2) Within ninety (90) days of receipt of a written complaint, the cabinet will investigate the complaint, and shall present a written response to the complainant and the private review agent. This response shall include the following:

(a) A statement of the original complaint;

(b) A determination of findings by the cabinet;

(c) Corrective actions, if any, on the part of the private review agent which the cabinet finds appropriate; and

(d) A monetary penalty, if any, in accordance with KRS 211.990 and 311.990; and

(e) A time frame in which any corrective actions are to be completed.

Section 8. Dispute Resolution Procedure. (1) The cabinet is charged with responsibility to establish a process to resolve utilization review disputes between private review agents and health care providers and patients;

(2) Upon receipt of written notice of a dispute, the cabinet shall appoint an impartial hearing officer;

(3) Notice of hearing shall be mailed not less than fourteen (14) days prior to the commencement of the hearing. The notice of hearing shall contain the information necessary to conduct the hearing. The notice of hearing shall be delivered by certified mail;

(4) The hearing must be held within thirty (30) calendar days from the receipt of a written request for a hearing;

(5) The parties may be represented by counsel and make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of such actions. The cabinet shall have the authority to request any relevant information from the review agent including any criteria which directly relates to the dispute. No depositions shall be permitted for the purpose of discovery, however, the hearing officer may authorize depositions of witnesses who, in his opinion for good cause shown cannot be present at the hearing. A hearing officer shall preside at the hearing, shall keep order, administer oaths, may issue subpoenas and may admit relevant and probative evidence and shall conduct the hearing in accordance with reasonable administrative practice;

(6) All testimony at the hearing shall be recorded but need not be transcribed unless requested. The person or organization requesting a transcript shall bear the cost of such transcript;

(7) The hearing officer shall make a written recommendation to the cabinet including findings of fact and conclusions of law. With the recommendation, the hearing officer shall forward to the cabinet the record consisting of all documents, exhibits and recorded testimony introduced in the hearing; and

(8) The cabinet shall issue a final

determination within thirty (30) days of the receipt of the recommendation of the hearing officer.

Section 9. Reporting Requirements. All private review agents shall, as a condition of registration, submit reasonable and pertinent reports as required by the cabinet. Completed reports shall be submitted within forty-five (45) days of the date of the request.

CLAY CESSNA, Inspector General
HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: February 6, 1991

FILED WITH LRC: February 15, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for March 21, 1991 at 9 a.m. in the Department for Employment Services, Second Floor, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by March 16, 1991 of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ralph Von Derau or Eric Friedlander

(1) Type and number of entities affected: Indeterminable, but the scope of the enabling statutes encompasses a wide variety of health care providers.

(a) Direct and indirect costs or savings to those affected: \$500 for registration fees for each entity.

1. First year: Administrative costs associated with regulatory promulgation and logistics costs of implementation of the statutes.

2. Continuing costs or savings: Staffing and other overhead expenses; costs related to appeals and maintenance of certification list of

private review agents.

3. Additional factors increasing or decreasing costs (note any effects upon competition): No additional factors.

(b) Reporting and paperwork requirements: There will be extensive requirements of this nature relating to materials required in applications for a certificate.

(2) Effects on the promulgating administrative body: Additional office space and staff needs will have a substantial impact on costs.

(a) Direct and indirect costs or savings:

1. First year: Estimated administrative costs could be in the range of \$300,000.

2. Continuing costs or savings: Each year's administrative cost should be approximately the same as the first year.

3. Additional factors increasing or decreasing costs: No additional requirements.

(b) Reporting and paperwork requirements: Issuance of a certificate for registered agents and maintenance of a list of certified agents.

(3) Assessment of anticipated effect on state and local revenues: Registration fees should approach the anticipated costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Statutes required the cabinet to issue regulations concerning this issue.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: KRS 211.464 and KRS 311.133.

(a) Necessity of proposed regulation if in conflict: Both statutes were products of the 1990 GA and both mandated that CHR promulgate regulations to implement the program.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Yes

(6) Any additional information or comments: No
TIERING: Was tiering applied? No. These are minimum standards for certification and as such will apply to all affected utilization review agents.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of the February 7 & 8, 1991 Meeting

The February meeting of the Administrative Regulation Review Subcommittee was held on Thursday, February 7, 1991 at 10 a.m. in Room 109 of the Capitol Annex and on Friday, February 8, 1991 at 10 a.m. in Room 109 of the Capitol Annex. Representative Bruce nominated Representative Kerr as Chairman. Senator Huff moved that that Representative Kerr be elected by acclamation. Motion was seconded and passed. Chairman Tom Kerr called the meeting to order, and the secretary called the roll. The minutes of the January 3 and 4, 1991 meeting were approved.

Present were:

Members: Representative Tom Kerr, Chairman; Senators Gene Huff, Pat McCuiston and Bill Quinlan; Representatives Woody Allen, Jim Bruce and James Yates.

Guests: Ray Kring, Scott Akers, Revenue Cabinet; Richard L. Ross, Kentucky Board of Pharmacy; Neal Turner, Jim Huff, Bob Roberts, George G. Sirk, Jr., Julius A. Wise, Linda Poliskie, James P. Daniels, John Ackman, Real Estate Commission; Roger Nesbitt, Carl Dilles, Department of Agriculture; Pat Haight, James Hale, Linda Stacy, Betty Beshoar, Division of Waste Management; Mike Bradley, Ellen Tharpe, John Damron, Corrections Cabinet; Sandy Pullen, Transportation Cabinet; Gary Bale, Terry Vance, Perry Watson, Jim Judge, H. M. Snodgrass, Gary Steinhilber, Jeri J. Oberg, Paul McElwain, Rita Osborne, Ron Moubray, Department of Education; Catherin Staib, Department of Alcoholic Beverage Control; Patrick Watts, Department of Insurance; Judy Walden, Department of Housing, Buildings and Construction; Doris Davis Goldstein, Eric Friedlander, Ben Yandell, Danise Newton, Michael Cheek, Cindy Brown, Libby Bruks, Theresa Clore, Paul Gibson, Judy Trigg, David Crane, Ralph Von Derau, Elliott Jones, Barbara Coleman, Reginald Finger, Mel Counts, Ked Fitzpatrick, Anita Moore, Cabinet for Human Resources; Carol McGuire, Kentucky Board of Nursing; Carole Wilson, Kentucky Board of Medical Licensure; Nancy Brinly, Richard Carroll, Kentucky Board of Physical Therapy; Robert L. Barnett, Jr., Kentucky Pharmacists Association; Darlene Eakin, Kentucky Optometric Association; Michael F. Duffy, City of Louisville; John Poundstone, Lexington/Fayette County Health Department; Jim Judy, KAHCF; Sylvia Hefner, Ed Dolson, Don Kepple, ERA Real Estate; Emily Mills, APIC; Joseph Valvona, Jr., Alliant Health System; Sarah S. Nicholson, Nancy Galvagni, Kentucky Hospital Association; Susan B. Turner, Long-term Care Facilities; Judy Greenwell.

LRC Staff: Susan Wunderlich, Joe Hood, Gregory Karambellas, Peggy Jones, Donna Pierce, and Susan Eastman.

The Subcommittee determined that the following administrative regulations did not comply with KRS Chapter 13A:

Education and Humanities Cabinet: Department of Education: Office of Instruction: Student Services

704 KAR 7:055 (Corporal punishment of pupils.) On questioning by Senator Huff, it was pointed out that the authority for corporal punishment has been based on Kentucky case law. Since statutory law relating to this subject has not

been amended to change that case law, Senator Huff moved that a letter of objection be attached to this regulation based on a lack of statutory authority to change this longstanding policy. Motion was seconded and passed.

Cabinet for Human Resources: Department for Health Services: State Health Plan

902 KAR 17:010 (State health plan.) Objections had been raised that the current State Health Plan was not the comprehensive key planning resource for health services in Kentucky required by existing statutes and legislative enactments during the 1990 Regular Session; had been restricted to the Certificate of Need review criteria; a review of the health system, including numbers and needs relating to hospitals, doctors, care facilities, nurses, etc., was not included; and a description of the state health system, including medical technology and equipment, existing and needed, had not been done. In addition, Senate Bill 265, 1990 Regular Session, required a statistically valid method for determining long-term care bed needs. Objections had been raised that the method used to determine the plan's conclusion appeared to be inconsistent with the intent of Senate Bill 265. House Bill 799, 1990 regular session, appropriated funds for psychiatric residential treatment facilities. An objection had been raised that the plan appeared insufficient in its definition of this service, because it did not appear to comply with legislative intent for treatment in a noninstitutionalized setting and for the control of construction costs.

Susan Turner representing various long-term care facilities, Nancy Galvagni representing the Kentucky Hospital Association, and Joseph Valvona representing the Alliant Health System, spoke against this regulation. It was pointed out that, contrary to KRS 13A.280(1), (4)(d)-(g), all comments were not noted or summarized, and were not responded to, in the Statement of Consideration filed by the Cabinet. It was explained to those testifying against the regulation that since the format of the Statement of Consideration was correct and since the Statement was filed within the prescribed time limits, the Regulations Compiler was required to accept it for filing. Whether or not the administrative body would be required to withdraw an administrative regulation for failure to comply with the substantive requirements of KRS 13A.280 was a decision to be made by the Subcommittee.

KRS 13A.190(4) provides that an emergency administrative regulation shall not be renewed for a period of nine months "after it has been initially filed." This regulation (with an emergency) was previously filed in November, 1990. The agency subsequently held a public hearing. The agency failed to file the Statement of Consideration within fifteen days following the scheduled public hearing. Because of this, the ordinary regulation was considered withdrawn, and the emergency expired under KRS 13A.190(10)(b). This regulation (and emergency) were filed in December, 1990. Ms. Turner stated that this regulation was not properly before the Subcommittee. It was explained that the Subcommittee could:

(1) Determine that KRS 13A.190(4) prohibits the:

(a) Filing of this emergency regulation; or
(b) Review of this emergency regulation by the Subcommittee; or

(2) Determine that the second filing was appropriate under the circumstances; or

(3) Determine that:

(a) The second filing was inappropriate; and

(b) Approve a motion finding the emergency regulation deficient is appropriate.

Additional objections reiterated previous objections to the failure to consider alternatives; the failure to base priorities on a statewide basis; the failure to consider actual needs in counties; and the improper use of geographical divisions, such as area development districts, that gave a misleading statistical picture of need and priorities in a number of counties and regions of the state. The prior State Health Plan required that the review of transplant services be conducted as separate reviews of the various types of transplant services, because it was recognized that the various transplant services would require different considerations and requirements; and that qualification in one area did not automatically mean qualification in other transplant services. It was stated that this health plan did not appear to require such review. Under the prior State Health Plan, certain exemptions were restricted to members and enrollees of a health maintenance organization covered by the exemption. It was stated that it was unclear whether or not these restrictions would be retained. Objections were raised as to the role of Cabinet personnel with regard to the development of the State Health Plan; the public hearing and Statement of Consideration relating to the Plan; and other actions that appeared to disregard the separate functions of the Cabinet and the Commission, the independent role assigned the Commission, and the conflict of interest that could arise from such actions.

The Subcommittee approved a motion that this regulation did not comply with statutory authority.

The Subcommittee determined that the following administrative regulations, as amended, complied with KRS Chapter 13A:

General Government Cabinet: Real Estate Commission

Amendments were made to the following regulations to correct the citation of statutes in the "RELATES TO" and "STATUTORY AUTHORITY" lines. Also, amendments relating to grammar and language were made in order to comply with the drafting requirements of KRS 13A.222. Finally, portions of the regulations were reworded or reorganized to: clarify meaning, incorporate forms, and to add language inadvertently omitted.

201 KAR 11:011 (Definitions.)

201 KAR 11:095 (Closing statements; rental management agreements.)

201 KAR 11:105 (Owner's consent and authorization.)

201 KAR 11:121 (Improper conduct.)

Representatives of the Electronic Realty Associates, Inc. (ERA), objected to Section 6, regulating advertising by licensees. Some licensees advertise that they will buy a client's home, if they cannot sell it

(hereinafter, "seller's security plan"). This section would require that the conditions under which a licensee will buy a house, and the manner in which the purchase price will be calculated, be disclosed in the advertisement.

Representatives of ERA stated that the advertising slogan spelled out in this section is a phrase which ERA has filed with the U.S. Patent and Trademark Office and is a registered service mark of ERA. As written, it would appear that this section restricts only ERA. Such a restriction raised questions relating to ERA's right to equal protection under the 14th Amendment. ERA representatives submitted a memorandum discussing this constitutional issue, and infringement of First Amendment right of (commercial) free speech. They reviewed the approach taken by Utah, Missouri, California and other states, in which regulations did not restrict the advertisement, so long as statements clearly informed sellers that eligibility, costs, and other conditions and restrictions applied. They submitted copies of ERA advertisements in which legal disclaimers or notices that conditions and limitations applied appeared on the advertisement. They stated that Section 6 was unworkable because the actual price that would be paid was, in each case, subject to market value and other conditions that could not be determined prior to the time the client's home would be eligible for purchase by ERA. They stated that clients are informed of the details of the "seller's security plan" under which the offer to buy is made, and provided with sample copies and explanatory brochures prior to entering the agreement. They stated that they do not oppose full disclosure; and that the plan, as outlined, provides such disclosure. They stated that Section 6 would, in effect, operate as an outright ban on advertising related to the "seller's security plan".

Members of the Commission stated that Section 6 was required in order to protect consumers, and that the procedures implemented by licensees that would be governed by Section 6 did not adequately inform or protect the consumer. They also stated that the restrictions relating to purchase price, appraisal and price at which the home will be bought under the "seller's security plan", and restrictions relating to purchase of another home by seller, were inadequately conveyed to clients or prospective clients.

Senator McCuiston moved that this regulation be approved; Representative Bruce seconded the motion. Motion passed.

201 KAR 11:170 (Private school approval.)

201 KAR 11:175 (Instructor approval procedures and guidelines.)

201 KAR 11:210 (Licensing, education and testing requirements.)

201 KAR 11:230 (Mandatory continuing education.)

201 KAR 11:245 (Property management procedures and guidelines.)

201 KAR 11:250 (Listing and purchase contracts - provisions required.)

201 KAR 11:300 (Use of facsimile transmissions.)

Education and Humanities Cabinet: Department of Education: Office of Superintendent

701 KAR 5:080 (Application for approval of alternative school-based decision making model.) This regulation was amended by deleting Section

2 which required submittal by May 31 of an application for implementation of alternative school-based decision making for the following school year. This requirement is not in the statutes.

**Office of School Administration and Finance:
General Administration**

702 KAR 1:005 (Textbook program plan.) This regulation was amended by changing "30%" on Form FI-21 to "35%". Also, Section 23 was amended by deleting the phrase "to the extent of state textbook funds available," as applied to grades K-8. This phrase limited the statutory requirement that provides that free textbooks shall be provided to pupils in grades kindergarten through eight, without exception.

School District Finance

702 KAR 3:240 (School council funding formula.) Section 1(1) of this regulation was amended to comply with drafting requirements of KRS 13A.222(4)(d) and (e) and to clarify language.

Buildings and Grounds

The following four regulations were technically amended to identify by title and date the forms required.

702 KAR 4:010 (Construction project application.)

702 KAR 4:020 (Plans and specifications for construction.)

702 KAR 4:030 (Local board's contract with architect, engineer.)

702 KAR 4:040 (Contract completion; changes; retainage.)

Pupil Transportation

702 KAR 5:080 (Bus drivers' qualifications; responsibilities.) This regulation was technically amended to correctly incorporate the required form by reference, and to change "must" to "shall" in Section 6.

**Office of Education for Exceptional Children:
Exceptional and Handicapped Program**

707 KAR 1:110 (Kentucky School for the Blind; admission policies.) This regulation was amended to add the words "and obtained" after the word "requested" in Section 2.

**Public Protection and Regulation Cabinet:
Department of Housing, Buildings and
Construction: Standards of Safety**

815 KAR 10:040 (Fire prevention code.) This regulation was amended to conform to the drafting requirements in KRS 13A.222. In addition, Section 15(1)(b) was amended by adding a new clause as follows: "6. Nothing in this Article shall require compliance by those oil and gas facilities regulated pursuant to KRS Chapter 353."

Plumbing

815 KAR 20:020 (Parts or materials list.) This regulation was amended to comply with the drafting requirements of KRS 13A.222.

**Cabinet for Human Resources: Department for
Health Services: Communicable Diseases**

Representatives of the Kentucky Board of Nursing appeared before the Subcommittee to present objections to various sections of both regulations. Objections had been raised to the absence of an official list of educational courses for HIV and AIDS which the Cabinet would have to approve and offer to professional boards in order to meet the educational requirements of KRS 214.615. It was pointed out to Cabinet personnel that KRS Chapter 13A requires that the

official listing of approved courses be incorporated by reference in these administrative regulations; that it be updated by amending the incorporated course list; that the amendment be accomplished by amending the regulations.

The following two regulations were amended to insert definition sections to clarify what was meant by initial and continuing licensure, and national accrediting body; and to incorporate the official list of approved HIV and AIDS courses by reference.

902 KAR 2:150 (Human immunodeficiency virus education, initial professional licensure.) Section 5 was amended to delete proposed language and to insert new language to clarify how Kentucky prelicensure programs would be surveyed to determine compliance with KRS 214.615; to establish a deadline for the survey; to require the submission of information of educational courses relating to HIV and AIDS by out-of-state applicants seeking licensure in Kentucky, in order to determine compliance with KRS 214.615; to provide a time limit for certification to applicants and boards by the Cabinet of such compliance; and to provide alternative methods for compliance with this regulation by out-of-state licensure applicants. Finally, additional amendments were made to Section 7 to clarify intent and procedure.

902 KAR 2:160 (Human immunodeficiency virus education, continuing education for professionals.) Section 5 was deleted in its entirety. The authority of the Cabinet is to approve or disapprove HIV and AIDS courses by determining whether they comply with KRS 214.615 and regulations promulgated thereunder. The respective professional boards have the authority to establish qualifications for course providers, to determine whether course material is appropriate to a profession, and to impose quality standards. In any case, Section 5 was redundant and unnecessary.

Health Services and Facilities

902 KAR 20:320 (Psychiatric residential treatment facility operation and services.) This regulation was amended to list the definitions in alphabetical order.

Department for Social Services: Child Welfare

905 KAR 1:300 (Standards for child-caring facilities.) This regulation was amended to list the definitions in alphabetical order. In addition, incorrect cross-references were corrected.

905 KAR 1:310 (Standards for child-placing agencies.) This regulation was amended to list the definitions in alphabetical order. In addition, incorrect cross-references and numbering were corrected.

The Subcommittee determined that the following regulations complied with KRS Chapter 13A:

Revenue Cabinet: Department of Administrative Services

103 KAR 17:081 (Repeal of 103 KAR 17:080.)

103 KAR 18:100 (Exemption certificates.)

103 KAR 30:020 (Prescription medicines, prosthetic devices and physical aids.)

General Government Cabinet: Board of Pharmacy

201 KAR 2:111 (Repeal of 201 KAR 2:110.)

Commerce Cabinet: Department of Agriculture: Amusement Rides

302 KAR 16:070 (Amusement rides.)

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division of Waste Management: Solid Waste Facilities

401 KAR 47:132E (Moratorium on new and modified permits.)

401 KAR 47:134 (Limitations on amount of waste accepted by residential landfills.)

401 KAR 47:136 (Diversion of waste.)

Corrections Cabinet: Office of the Secretary

501 KAR 6:020 (Corrections policies and procedures.)

501 KAR 6:030 (Kentucky State Reformatory.)

501 KAR 6:090 (Frankfort Career Development Center.)

501 KAR 6:130 (Western Kentucky Correctional Complex.)

Transportation Cabinet: Department of Vehicle Regulation: Division of Motor Carriers

601 KAR 1:170 (Transportation of financial documents, information, or materials.)

Motor Vehicle Tax

601 KAR 9:145 (Fraternal Order of Police special license plates.)

Education and Humanities Cabinet: Department of Education: Food Service Programs

702 KAR 6:090 (Competitive food and beverage sales and service requirements.)

Office of Instruction: Instructional Services

704 KAR 3:340 (Commonwealth diploma program.)

Health and Physical Education Programs

704 KAR 4:020 (Comprehensive school health.)

Student Services

704 KAR 7:050 (Student discipline guidelines.)

704 KAR 7:080 (Ride to the Center for the Arts Program Fund.)

Office of Education for Exceptional Children: Exceptional and Handicapped Program

707 KAR 1:100 (Kentucky School for the Deaf; admission policy.)

Public Protection and Regulation Cabinet: Department of Insurance: Unauthorized Insurers' Prohibitions, Process and Advertising

806 KAR 11:020 (Multiple employer welfare arrangements.)

Department of Housing, Buildings and Construction: Plumbing

815 KAR 20:120 (Water supply and distribution.)

Cabinet for Human Resources: Department for Health Services: Health Services and Facilities

902 KAR 20:330 (Psychiatric residential treatment facilities.)

Department for Medicaid Services

907 KAR 1:430 (Incorporation by reference of the home health services manual.)

The following regulations were deferred at the promulgating agency's request:

Justice Cabinet: Asset Forfeiture

500 KAR 9:010 (Definitions.)

500 KAR 9:015 (Model policy for forfeiture of assets by law enforcement agencies.)

500 KAR 9:040 (Grants.)

Cabinet for Human Resources: Department for Social Insurance: Public Assistance

904 KAR 2:116 (Low income home energy assistance program.)

The following regulations were withdrawn at the promulgating agency's request:

General Government Cabinet: Real Estate Commission

201 KAR 11:110 (Exclusive authority retained by original broker.)

201 KAR 11:115 (Auction obligations.)

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

OTHER BUSINESS

Public Protection and Regulation Cabinet: Alcoholic Beverage Control Board

804 KAR 5:040 (Minors; definitions.)

At the January 4, 1991 meeting, the Subcommittee approved a motion that this regulation be reconsidered at the February meeting with regard to the question of whether minors under 18 years of age are permitted to enter and remain in licensed premises where alcoholic beverages are served or sold.

On February 8, 1991, Catherine Staib, Counsel for the Department, appeared to answer questions raised by the Subcommittee. Michael Duffy, city of Louisville, testified that allowing minors over 18 but under 21 in bars subjected those minors to all kinds of negative influences. He also stated it caused a tremendous enforcement problem for police officers. Representative Kerr requested that this regulation be deferred to the March meeting, and requested that material relevant to local ordinances and lawsuits relating to the subject of this regulation be submitted prior to the meeting. Agency personnel agreed to the deferral. Catherine Staib questioned the Subcommittee as to which portions of the regulation were under consideration. Subcommittee members responded that the entire regulation was being considered.

Senator Huff asked whether an agency could propose an amendment at a Subcommittee meeting if there had been no public hearing, or if the subject matter of the amendment had not been discussed at a public hearing. Subcommittee staff explained that KRS 13A.320 restricted the scope of amendments that may be offered by an administrative body at a meeting of the Subcommittee. They stated that the subject matter of an amendment must be related to the regulation filed with LRC; considered at an agency public hearing; or raised by the Subcommittee itself. If these requirements were not met, such an amendment could not be offered. In response to a question relating to the public hearing held by agencies, Subcommittee staff explained that, pursuant to KRS 13A.280(4)-(7), an agency is required to respond to written and oral comments received, whether at the agency's public hearing or otherwise, in the Statement of Consideration filed with LRC after the public hearing and before Subcommittee consideration of the regulation.

The Subcommittee adjourned at 11:15 a.m. until March 5, 1991 at 2 p.m. in Room 327 of the Capitol

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

**INTERIM JOINT COMMITTEE ON HEALTH & WELFARE
Meeting of January 23, 1991**

The Interim Joint Committee on Health and Welfare met on Wednesday, January 23, 1991, and submits this report about administrative regulations under review.

With regard to 902 KAR 8:030, relating to the regulation of the merit system for local health departments, the proposed regulation would eliminate any reference to four different pay plans for local health departments and allow the Local Health Department Merit System Council "greater flexibility in developing other approaches to compensation", allow employees to convert accumulated sick leave at the end of a calendar year, and allow employees to share sick leave with employees who have exhausted their sick leave but require extended medical leaves.

Senator Bailey asked why the changes were needed? The agency spokesman said there are now

four pay plans for local health departments and the Merit System Council wanted one pay plan. Senator Bailey asked if the changes in pay plan could result in increased costs. The agency spokesman said that was possible in the future. Senator Bailey asked where the funds would come from. The spokesman said either local funds or state general funds. Senator Bailey said the proposed changes to 902 KAR 8:030 would make the local health department personnel system too liberal; the proposed changes were major in nature; the Cabinet had not discussed the regulation prior to the meeting with the Committee; and no one affected by the proposed changes had alerted him to problems with the current personnel system. The Committee found the regulation to be deficient.

The Committee voted to approve 904 KAR 2:026, relating to child support enforcement, and 906 KAR 1:070, relating to licensure of a health care delivery network.

CUMULATIVE SUPPLEMENT

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LOCATOR INDEX -- EFFECTIVE DATES

NOTE: Emergency regulations expire 120 days from publication or upon replacement or repeal.

VOLUME 16

Emergency Regulation	16 Ky.R. Page No.	Effective Date	Regulation	16 Ky.R. Page No.	Effective Date
902 KAR 17:020E Replaced	2646	4-17-90 9-13-90	201 KAR 22:053 201 KAR 22:101 Amended	2616 2441	(See 17 Ky.R.) 8-17-90
Regulation	16 Ky.R. Page No.	Effective Date	201 KAR 22:110 Amended	2443	8-17-90
201 KAR 2:074 Amended	1713 2150	(See 17 Ky.R.)	808 KAR 12:020 810 KAR 1:003 Amended	2811 2744	10-14-90 8-17-90
201 KAR 22:052 Amended	2440	8-17-90	810 KAR 1:006 Amended	2748	8-17-90

VOLUME 17

Emergency Regulation	17 Ky.R. Page No.	Effective Date	Emergency Regulation	17 Ky.R. Page No.	Effective Date
1 KAR 6:010E	2599	2-7-91	101 KAR 2:045E	881	8-3-90
11 KAR 5:030E	5	5-21-90	Replaced	1968	12-6-90
Replaced	256	9-13-90	101 KAR 2:055E	885	8-3-90
11 KAR 5:130E	7	5-21-90	Replaced	1971	12-6-90
Replaced		8-9-90	101 KAR 2:065E	886	8-3-90
11 KAR 5:140E	7	5-21-90	Replaced	1243	12-6-90
Replaced		8-9-90	101 KAR 2:075E	887	8-3-90
11 KAR 5:160E	9	5-21-90	Replaced	1245	12-6-90
Replaced		8-9-90	101 KAR 2:095E	888	8-3-90
11 KAR 6:010E	11	5-21-90	Replaced	1972	12-6-90
Replaced		8-9-90	101 KAR 3:045E	889	8-3-90
11 KAR 8:010E	13	5-21-90	Replaced	2173	12-6-90
Replaced		8-9-90	103 KAR 30:095E	183	6-20-90
11 KAR 8:020E	14	5-21-90	Replaced	581	9-27-90
Replaced		8-9-90	103 KAR 44:040E	1321	9-14-90
11 KAR 8:030E	16	5-21-90	Replaced	1632	11-21-90
Replaced		8-9-90	105 KAR 1:010E	891	8-1-90
11 KAR 8:040E	18	5-21-90	Replaced	276	10-10-90
Replaced		8-9-90	105 KAR 1:040E	184	6-28-90
11 KAR 11:010E	20	5-21-90	Replaced	99	9-12-90
Replaced		8-9-90	201 KAR 2:111E	2144	12-11-90
11 KAR 11:020E	20	5-21-90	201 KAR 2:116E	2144	12-11-90
Replaced		8-9-90	201 KAR 14:100E	893	7-23-90
11 KAR 11:030E	21	5-21-90	Replaced	1139	11-29-90
Replaced		8-9-90	201 KAR 14:130E	893	7-23-90
11 KAR 11:040E	23	5-21-90	Replaced	1139	11-29-90
Replaced		8-9-90	201 KAR 14:140E	894	7-23-90
11 KAR 11:050E	23	5-21-90	Replaced	1140	11-29-90
Replaced		8-9-90	201 KAR 20:390E	1954	10-29-90
30 KAR 2:010E	24	6-13-90	Replaced	2428	2-7-91
Replaced	155	9-13-90	301 KAR 2:044E	1322	8-23-90
31 KAR 4:010E	870	7-26-90	Replaced	1531	11-15-90
Replaced	1229	12-7-90	301 KAR 2:220E	1955	10-18-90
31 KAR 4:020E	871	7-26-90	Replaced	1800	12-19-90
Replaced	1229	12-7-90	302 KAR 1:055E	894	7-27-90
31 KAR 4:030E	871	7-26-90	Replaced	157	8-22-90
Replaced	1230	12-7-90	302 KAR 1:070E	896	7-27-90
31 KAR 4:040E	877	7-26-90	Replaced	1060	8-22-90
Replaced	1231	12-7-90	302 KAR 20:220E	2145	11-21-90
31 KAR 4:050E	877	7-26-90	Replaced	2087	2-7-91
Replaced	1232	12-7-90	401 KAR 6:320E	898	7-20-90
31 KAR 4:060E	2600	2-6-91	Replaced	1421	11-15-90
101 KAR 2:035E	878	8-3-90	401 KAR 8:010E	899	7-19-90
Replaced	2171	12-6-90	Replaced	1422	11-15-90

ADMINISTRATIVE REGISTER - I3

Emergency Regulation	17 Ky.R. Page No.	Effective Date	Emergency Regulation	17 Ky.R. Page No.	Effective Date
401 KAR 8:020E	902	7-19-90	501 KAR 6:070E	1964	10-18-90
Replaced	1425	11-15-90	Replaced	1811	1-6-91
401 KAR 8:030E	906	7-19-90	501 KAR 6:080E	950	7-19-90
Replaced	1428	11-15-90	Replaced	415	10-14-90
401 KAR 8:040E	909	7-19-90	501 KAR 6:090E	951	7-19-90
Replaced	1432	11-15-90	Replaced	415	10-14-90
401 KAR 8:050E	911	7-19-90	501 KAR 6:120E	952	7-19-90
Replaced	599	11-15-90	Replaced	417	10-14-90
401 KAR 8:060E	912	7-19-90	501 KAR 6:130E	2379	12-18-90
Replaced	601	11-15-90	Withdrawn		2-14-91
401 KAR 8:070E	914	7-19-90	501 KAR 6:150E	25	5-18-90
Replaced	1433	11-15-90	Replaced		8-9-90
401 KAR 8:100E	918	7-19-90	501 KAR 6:160E	1668	9-20-90
Replaced	1977	11-15-90	Replaced	1648	12-9-90
401 KAR 8:150E	920	7-19-90	501 KAR 9:025E	2147	11-20-90
Replaced	1717	11-15-90	Replaced	2095	2-7-91
401 KAR 8:200E	921	7-19-90	501 KAR 11:010E	954	7-19-90
Replaced	1440	11-15-90	Replaced	690	10-14-90
401 KAR 8:250E	924	7-19-90	502 KAR 45:050E	1965	11-8-90
Replaced	619	11-15-90	Replaced	2441	2-7-91
401 KAR 8:300E	926	7-19-90	601 KAR 1:005E	2655	1-24-91
Replaced	622	11-15-90	601 KAR 1:029E	26	6-14-90
401 KAR 8:350E	928	7-19-90	Replaced	1062	9-4-90
Replaced	1443	11-15-90	601 KAR 1:160E	27	6-14-90
401 KAR 8:400E	929	7-19-90	Replaced	1063	9-4-90
Replaced	626	11-15-90	601 KAR 11:010E	2657	1-24-91
401 KAR 8:420E	930	7-19-90	601 KAR 11:040E	2658	1-24-91
Replaced	628	11-15-90	601 KAR 13:070E	1323	8-28-90
401 KAR 8:440E	934	7-19-90	Replaced	1991	12-4-90
Replaced	633	11-15-90	603 KAR 5:110E	954	8-2-90
401 KAR 8:500E	935	7-19-90	Replaced	1736	12-4-90
Replaced	635	11-15-90	603 KAR 5:111E	956	8-2-90
401 KAR 8:550E	938	7-19-90	Replaced	1737	12-4-90
Replaced	639	11-15-90	603 KAR 5:112E	1668	10-1-90
401 KAR 8:600E	939	7-19-90	Replaced	2203	2-7-91
Replaced	641	11-15-90	603 KAR 5:230E	958	7-31-90
401 KAR 8:650E	940	7-19-90	Replaced	1739	12-4-90
Replaced	643	11-15-90	603 KAR 5:240E	995	7-19-90
401 KAR 8:700E	941	7-19-90	Replaced	1352	10-2-90
Replaced	645	11-15-90	702 KAR 1:130E	996	7-19-90
401 KAR 47:132E	1960	10-19-90	Replaced	692	10-14-90
401 KAR 47:134E	1962	10-19-90	704 KAR 3:304E	996	7-19-90
401 KAR 47:136E	1963	10-19-90	Replaced	458	10-14-90
405 KAR 7:020E	2600	1-29-91	704 KAR 7:100E	997	7-19-90
405 KAR 8:010E	2609	1-29-91	Replaced	705	10-14-90
405 KAR 8:030E	2623	1-29-91	781 KAR 1:010E	186	7-3-90
405 KAR 8:040E	2636	1-29-91	Expired		12-1-90
405 KAR 10:040E	2649	1-22-91	781 KAR 1:020E	188	7-3-90
405 KAR 12:020E	2651	1-29-91	Expired		12-1-90
500 KAR 6:210E	942	7-18-90	781 KAR 1:030E	192	7-3-90
Replaced	1262	12-7-90	Expired		12-1-90
500 KAR 6:220E	944	7-18-90	781 KAR 1:040E	194	7-3-90
Replaced	1264	12-7-90	Replaced	789	10-14-90
500 KAR 9:010E	944	7-19-90	781 KAR 1:050E	195	7-3-90
Replaced	162	9-13-90	Replaced	791	10-14-90
500 KAR 9:020E	945	7-19-90	781 KAR 1:060E	198	7-3-90
Replaced	1061	9-13-90	Replaced	794	10-14-90
500 KAR 9:030E	945	7-19-90	781 KAR 1:070E	199	7-3-90
Replaced	164	9-13-90	Replaced	796	10-14-90
500 KAR 9:040E	946	7-19-90	781 KAR 2:010E	200	7-3-90
Replaced	1062	9-13-90	Expired		12-1-90
500 KAR 9:050E	946	8-7-90	781 KAR 2:020E	202	7-3-90
Expired		10-9-90	Expired		12-1-90
500 KAR 9:060E	947	8-7-90	806 KAR 11:020E	2149	11-21-90
Expired		10-9-90	806 KAR 12:092E	998	7-17-90
501 KAR 6:020E	947	7-19-90	Replaced	1503	11-15-90
Replaced	410	10-14-90	806 KAR 12:094E	1000	7-17-90
Resubmitted	2377	12-18-90	Replaced	1505	11-15-90
501 KAR 6:030E	1666	9-20-90	806 KAR 17:066E	1004	7-17-90
Replaced	1536	12-9-90	Replaced	1298	10-14-90
501 KAR 6:060E	949	7-19-90	806 KAR 18:040E	2380	12-14-90
Replaced	413	10-14-90			

ADMINISTRATIVE REGISTER - I4

Emergency Regulation	17 Ky.R. Page No.	Effective Date	Emergency Regulation	17 Ky.R. Page No.	Effective Date
901 KAR 5:050E	28	6-12-90	904 KAR 2:116E	2167	12-6-90
Replaced	121	9-13-90	904 KAR 3:035E	1690	10-9-90
902 KAR 10:021E	28	5-16-90	Replaced	1867	12-18-90
Replaced		7-18-90	905 KAR 2:010E	225	6-21-90
902 KAR 10:030E	29	5-16-90	Replaced	140	9-13-90
Replaced		7-18-90	907 KAR 1:004E	1042	7-19-90
902 KAR 10:040E	1016	7-19-90	Replaced	535	9-19-90
Replaced	1372	9-19-90	Resubmitted	2670	1-17-91
902 KAR 10:060E	3Q	5-16-90	907 KAR 1:006E	1052	7-19-90
Replaced		7-18-90	Replaced	546	9-19-90
902 KAR 10:121E	30	5-16-90	907 KAR 1:010E	232	7-11-90
Replaced		7-18-90	Replaced	1518	12-7-90
902 KAR 10:130E	30	5-16-90	907 KAR 1:011E	1053	7-19-90
Replaced		7-18-90	Replaced	549	9-19-90
902 KAR 11:010E	204	6-21-90	Resubmitted	2681	1-17-91
Replaced	129	9-13-90	907 KAR 1:013E	234	7-11-90
902 KAR 15:010E	1021	7-19-90	Replaced	1520	12-7-90
Replaced	1392	9-19-90	Resubmitted	2686	2-6-91
902 KAR 15:020E	1024	7-19-90	907 KAR 1:014E	237	7-11-90
Replaced	500	9-19-90	Replaced	557	9-19-90
902 KAR 17:010E	1670	10-4-90	907 KAR 1:015E	238	7-11-90
Expired*		12-6-90	Replaced	1944	12-7-90
Resubmitted	2382	12-18-90	907 KAR 1:016E	238	7-11-90
902 KAR 20:006E	1028	7-19-90	Replaced	559	9-19-90
Replaced	1724	12-7-90	907 KAR 1:017E	1058	8-7-90
902 KAR 20:008E	205	6-21-90	Replaced	1295	12-7-90
Replaced	133	9-13-90	907 KAR 1:019E	1694	10-9-90
902 KAR 20:116E	1966	10-15-90	Replaced	1871	12-18-90
Expired*		12-6-90	907 KAR 1:020E	1695	10-9-90
902 KAR 20:133E	1035	7-19-90	Expired*		12-6-90
Replaced	834	9-19-90	Resubmitted		12-17-90
902 KAR 20:135E	207	6-21-90	Withdrawn		12-28-90
Replaced	135	9-13-90	Resubmitted	2412	12-28-90
902 KAR 20:300E	1670	10-5-90	907 KAR 1:022E	1697	10-5-90
Expired*		12-6-90	Expired*		12-6-90
Resubmitted	2383	12-18-90	Resubmitted	2414	12-17-90
902 KAR 20:310E	1681	10-5-90	907 KAR 1:025E	1701	10-5-90
Expired*		12-6-90	Expired*		12-6-90
Resubmitted	2394	12-18-90	Resubmitted	2418	12-17-90
902 KAR 20:320E	2150	11-19-90	907 KAR 1:027E	239	7-11-90
902 KAR 20:330E	2163	11-19-90	Replaced	561	9-19-90
902 KAR 45:005E	207	7-11-90	907 KAR 1:036E	241	7-11-90
Replaced	1395	9-19-90	Withdrawn		9-10-90
902 KAR 45:110E	31	5-16-90	Resubmitted	1342	9-10-90
Replaced	222	7-11-90	Replaced	1414	9-19-90
Resubmitted	222	7-11-90	907 KAR 1:039E	248	7-11-90
Replaced	526	9-19-90	Replaced	572	9-19-90
902 KAR 45:120E	32	5-16-90	907 KAR 1:040E	249	7-11-90
Replaced	222	7-11-90	Replaced	573	9-19-90
Resubmitted	222	7-11-90	907 KAR 1:045E	250	7-11-90
Replaced	528	9-19-90	Replaced	574	9-19-90
902 KAR 55:010E	32	5-30-90	907 KAR 1:061E	1708	10-5-90
Replaced	136	9-13-90	Replaced	1880	12-18-90
903 KAR 1:010E	223	6-21-90	907 KAR 1:102E	1710	10-9-90
Replaced	137	9-13-90	Expired*		12-6-90
903 KAR 5:270E	224	6-21-90	Resubmitted	2425	12-17-90
Replaced	138	9-13-90	907 KAR 1:104E	1711	10-9-90
904 KAR 2:006E	1325	9-14-90	Expired*		12-6-90
Replaced	1608	12-9-90	Resubmitted	2426	12-17-90
Resubmitted	2401	1-2-91	907 KAR 1:150E	2427	1-11-91
904 KAR 2:015E	1035	8-2-90	907 KAR 1:280E	251	7-11-90
Replaced	1731	12-7-90	Replaced	579	9-19-90
Resubmitted	2408	1-4-91	908 KAR 1:020E	252	6-21-90
904 KAR 2:016E	1331	9-14-90	Replaced	151	9-13-90
Replaced	1616	12-9-90	908 KAR 1:160E	253	6-21-90
Resubmitted	2661	2-11-91	Replaced	153	9-13-90
904 KAR 2:035E	1040	7-19-90	*Emergency expired; ordinary regulation died because Statement of Consideration was not filed 15 days following public hearing. (KRS 13A.190(10)(b))		
Replaced	532	9-19-90			
904 KAR 2:050E	1041	7-19-90			
Replaced	1412	9-19-90			
904 KAR 2:110E	1688	10-4-90			
Replaced	1864	12-19-90			

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Regulation	17 Ky.R. Page No.	Effective Date	Regulation	17 Ky.R. Page No.	Effective Date
1 KAR 6:010	2916		102 KAR 1:130		
11 KAR 5:030			Amended	2476	
Amended	256	9-13-90	102 KAR 1:135		
11 KAR 7:010			Amended	2476	
Amended	2007	2-7-91	102 KAR 1:140		
11 KAR 7:020			Amended	2477	
Amended	2010	2-7-91	102 KAR 1:154	2562	
13 KAR 1:020	2552		102 KAR 1:160		
13 KAR 2:020			Amended	2478	
Amended	2466		102 KAR 1:162		
13 KAR 2:045	2557		Amended	2479	
30 KAR 2:010	155	9-13-90	102 KAR 1:165		
31 KAR 4:010	1229	12-7-90	Amended	2479	
31 KAR 4:020	1229	12-7-90	102 KAR 1:180		
Amended	2470		Amended	2480	
31 KAR 4:030	1230	12-7-90	102 KAR 1:185		
31 KAR 4:040	1231	12-7-90	Amended	2481	
31 KAR 4:050	1232	12-7-90	102 KAR 1:195		
31 KAR 4:060	2917		Amended	2483	
40 KAR 4:010	2917		102 KAR 1:210		
101 KAR 1:325			Amended	2484	
Amended	1114	11-14-90	103 KAR 1:010		
Amended	2755		Amended	1126	11-21-90
101 KAR 1:335			103 KAR 5:010		
Amended	95	9-12-90	Expired		7-13-90
101 KAR 1:365			103 KAR 5:015		
Amended	2756		Expired		7-13-90
101 KAR 1:375			103 KAR 5:020		
Amended	97	9-12-90	Repealed	2081	2-7-91
101 KAR 1:400	156	9-12-90	103 KAR 5:021	2081	2-7-91
101 KAR 2:030			103 KAR 5:050		
Expired		7-13-90	Expired		7-13-90
101 KAR 2:035	1233		103 KAR 5:070		
As amended	2171	12-6-90	Expired		7-13-90
101 KAR 2:040			103 KAR 5:080		
Expired		7-13-90	Repealed	2081	2-7-91
101 KAR 2:045	1236	12-6-90	103 KAR 5:090		
As Amended	1968		Expired		7-13-90
101 KAR 2:050			103 KAR 5:110		
Expired		7-13-90	Expired		7-13-90
101 KAR 2:055	1241		103 KAR 5:130		
As Amended	1971	12-6-90	Expired		7-13-90
101 KAR 2:060			103 KAR 5:140		
Expired		7-13-90	Expired		7-13-90
101 KAR 2:065	1243	12-6-90	103 KAR 8:020		
101 KAR 2:070			Expired		7-13-90
Expired		7-13-90	103 KAR 8:030		
101 KAR 2:075	1245	12-6-90	Expired		7-13-90
101 KAR 2:090			103 KAR 8:070		
Expired		7-13-90	Expired		7-13-90
101 KAR 2:095	1246		103 KAR 16:040		
As Amended	1972	12-6-90	Expired		7-13-90
101 KAR 2:100			103 KAR 16:050		
Amended	1115	12-6-90	Expired		7-13-90
101 KAR 3:010			103 KAR 16:070		
Amended	1121	12-6-90	Expired		7-13-90
101 KAR 3:040			103 KAR 16:080		
Expired		7-13-90	Expired		7-13-90
101 KAR 3:045	1248		103 KAR 16:090		
As Amended	2173	12-6-90	Expired		7-13-90
102 KAR 1:035			103 KAR 17:030		
Amended	2471		Expired		7-13-90
102 KAR 1:050			103 KAR 17:040		
Amended	2472		Expired		7-13-90
102 KAR 1:057			103 KAR 17:041	1250	11-21-90
Amended	2472		103 KAR 17:070		
102 KAR 1:060			Expired		7-13-90
Amended	2473		103 KAR 17:080		
102 KAR 1:100			Amended	2012	
Amended	2474		Withdrawn		11-26-90
102 KAR 1:125			103 KAR 17:081	2293	
Amended	2475				

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Regulation	17 Ky.R. Page No.	Effective Date	Regulation	17 Ky.R. Page No.	Effective Date
103 KAR 18:100			103 KAR 35:030		
Amended	2209		Expired		7-13-90
103 KAR 18:110			103 KAR 43:070		
Amended	1524	11-21-90	Expired		7-13-90
103 KAR 25:010			103 KAR 43:080		
Expired		7-13-90	Expired		7-13-90
103 KAR 25:020			103 KAR 43:130		
Expired		7-13-90	Expired		7-13-90
103 KAR 25:030			103 KAR 43:210		
Expired		7-13-90	Expired		7-13-90
103 KAR 25:040			103 KAR 43:230		
Expired		7-13-90	Expired		7-13-90
103 KAR 25:080			103 KAR 43:240		
Expired		7-13-90	Expired		7-13-90
103 KAR 25:081	1251	11-21-90	103 KAR 43:250		
103 KAR 25:090			Expired		7-13-90
Expired		7-13-90	103 KAR 43:270		
103 KAR 25:091	1252	11-21-90	Expired		7-13-90
103 KAR 25:100			103 KAR 43:290		
Expired		7-13-90	Expired		7-13-90
103 KAR 26:040			103 KAR 43:300		
Expired		7-13-90	Expired		7-13-90
103 KAR 26:070			103 KAR 44:010		
Amended	1128	11-21-90	Expired		7-13-90
103 KAR 27:010			103 KAR 44:040	1632	11-21-90
Expired		7-13-90	105 KAR 1:010		
103 KAR 27:090			Amended	276	10-10-90
Expired		7-13-90	105 KAR 1:040		
103 KAR 27:100			Amended	99	9-12-90
Amended	1130	11-21-90	201 KAR 1:068		
103 KAR 28:051			Amended	1525	
Amended	1130	11-21-90	As Amended	1975	11-29-90
103 KAR 28:070			201 KAR 1:100		
Expired		7-13-90	Amended	1528	11-29-90
103 KAR 28:100			201 KAR 2:074		
Expired		7-13-90	As Amended	2175	12-14-90
103 KAR 28:110			201 KAR 2:111	2293	
Expired		7-13-90	201 KAR 2:116		
103 KAR 28:120			Amended	2212	
Expired		7-13-90	Amended	2725	
103 KAR 30:020			201 KAR 5:010		
Amended	2201		Amended	2485	
103 KAR 30:090			201 KAR 5:030		
Expired		7-13-90	Amended	2486	
103 KAR 30:091	1254		201 KAR 5:037		
As Amended	1973	11-21-90	Amended	2488	
103 KAR 30:095	581	9-27-90	201 KAR 5:040		
103 KAR 30:130			Amended	2490	
Expired		7-13-90	201 KAR 5:050		
103 KAR 30:140	1134	11-21-90	Amended	2492	
103 KAR 30:200			201 KAR 5:060	2563	
Amended	1136	11-21-90	201 KAR 5:070	2564	
103 KAR 30:225			201 KAR 5:080	2564	
Expired		7-13-90	201 KAR 5:090	2565	
103 KAR 31:010			201 KAR 8:140		
Expired		7-13-90	Amended	1777	2-7-91
103 KAR 31:011	1256	11-21-90	201 KAR 8:285		
103 KAR 31:060			Amended	1778	12-14-90
Expired		7-13-90	201 KAR 9:300	1633	
103 KAR 31:080			Withdrawn		11-5-90
Amended	1137	11-21-90	201 KAR 9:305	1634	
103 KAR 31:100			Withdrawn		12-19-90
Expired		7-13-90	201 KAR 11:011	2294	
103 KAR 31:110			As Amended	2690	
Expired		7-13-90	201 KAR 11:095		
103 KAR 31:111	1257	11-21-90	Amended	2213	
103 KAR 31:120			As Amended	2690	
Expired		7-13-90	201 KAR 11:105		
103 KAR 31:140			Amended	2214	
Expired		7-13-90	As Amended	2690	
103 KAR 31:150					
Expired		7-13-90			

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Regulation	17 Ky.R. Page No.	Effective Date	Regulation	17 Ky.R. Page No.	Effective Date
201 KAR 11:110			201 KAR 20:310		
Amended	2214		Amended	280	9-14-90
Withdrawn		2-7-91	201 KAR 20:390	2082	
201 KAR 11:115			As Amended	2428	2-7-91
Amended	2215		201 KAR 22:031		
Withdrawn		2-7-91	Amended	1141	11-29-90
201 KAR 11:121	2295		201 KAR 22:053		
As Amended	2691		As Amended	34	
201 KAR 11:170			As Amended	1350	8-17-90
Amended	2216		201 KAR 26:160		
As Amended	2691		Amended	101	8-17-90
201 KAR 11:175	2296		201 KAR 29:010	2918	
As Amended	2692		301 KAR 1:015		
201 KAR 11:210			Amended	1793	12-19-90
Amended	2217		301 KAR 1:056	1884	12-19-90
As Amended	2692		301 KAR 1:057		
201 KAR 11:230	2297		Repealed	1884	12-19-90
As Amended	2693		301 KAR 1:075		
201 KAR 11:245	2299		Amended	1795	12-19-90
As Amended	2695		301 KAR 1:122		
201 KAR 11:250	2300		Amended	1796	12-19-90
As Amended	2696		301 KAR 1:150		
201 KAR 11:300	2301		Amended	1797	12-19-90
As Amended	2697		301 KAR 1:200		
201 KAR 14:100			Amended	1799	12-19-90
Amended	1139	11-29-90	301 KAR 2:044		
201 KAR 14:130			Amended	1531	11-15-90
Amended	1139	11-29-90	301 KAR 2:047		
201 KAR 14:140			As Amended	35	6-27-90
Amended	1140	11-29-90	Amended	2492	
201 KAR 18:140			301 KAR 2:110		
Amended	278		Amended	102	8-22-90
Withdrawn		9-4-90	301 KAR 2:140		
201 KAR 19:005			Amended	1533	11-15-90
Amended	1779	12-14-90	301 KAR 2:170		
201 KAR 19:025			Amended	54	7-11-90
Amended	1779		301 KAR 2:180		
As Amended	2177	12-14-90	Repealed	1259	11-15-90
201 KAR 19:030			301 KAR 2:185	1259	11-15-90
Amended	1780		301 KAR 2:220		
As Amended	2178	12-14-90	Amended	1800	12-19-90
201 KAR 19:035			301 KAR 2:250		
Amended	1781		Amended	2497	
As Amended	2178	12-14-90	302 KAR 1:055	157	8-22-90
201 KAR 19:040			302 KAR 1:070	160	
Amended	1785	12-14-90	As Amended	1060	8-22-90
201 KAR 19:050			302 KAR 1:080	2084	2-7-91
Amended	1786		302 KAR 15:010		
As Amended	2182	12-14-90	Amended	1143	
201 KAR 19:055			As Amended	1712	11-15-90
Repealed	1884	12-14-90	302 KAR 16:070	2302	
201 KAR 19:056	1884	12-14-90	302 KAR 20:220	2087	2-7-91
201 KAR 19:060			302 KAR 38:010	1261	
Amended	1787	12-14-90	As Amended	1715	11-15-90
201 KAR 19:070			304 KAR 1:050	2090	
Amended	1788	12-14-90	As Amended	2429	2-7-91
201 KAR 19:075			401 KAR 5:085		
Repealed	1884	12-14-90	Expired		7-13-90
201 KAR 19:085			401 KAR 6:015		
Amended	1788		Expired		7-13-90
As Amended	2182	12-14-90	401 KAR 6:020		
201 KAR 19:095			Repealed		7-19-90
Amended	1790	12-14-90	401 KAR 6:040		
201 KAR 19:100			Expired		7-13-90
Amended	1792	12-14-90	401 KAR 6:060		
201 KAR 19:105			Repealed		7-19-90
Amended	1793	12-14-90	401 KAR 6:300		
201 KAR 20:161			Expired		7-13-90
Amended	2758		401 KAR 6:310		
201 KAR 20:162			Amended	2762	
Amended	2760		401 KAR 6:320	581	
			Amended	1421	11-15-90

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Regulation	17 Ky.R. Page No.	Effective Date	Regulation	17 Ky.R. Page No.	Effective Date
401 KAR 8:010	584		401 KAR 36:070		
Amended	1422	11-15-90	Amended	357	9-25-90
401 KAR 8:020	588		401 KAR 37:010		
Amended	1425	11-15-90	Amended	359	9-25-90
401 KAR 8:030	592		401 KAR 37:030		
Amended	1428	11-15-90	Amended	365	9-25-90
401 KAR 8:040	597		401 KAR 37:040		
Amended	1432	11-15-90	Amended	367	9-25-90
401 KAR 8:050	599	11-15-90	401 KAR 37:050		
401 KAR 8:060	601	11-15-90	Amended	370	9-25-90
401 KAR 8:070	604		401 KAR 37:110	656	9-25-90
Amended	1433	11-15-90	401 KAR 38:010		
401 KAR 8:100	609		Amended	372	9-25-90
Amended	1437		401 KAR 38:040		
As Amended	1715		Amended	376	
As Amended	1977	11-15-90	Amended	1453	
401 KAR 8:150	612		As Amended	1978	11-15-90
Amended	1439		401 KAR 38:050		
As Amended	1717	11-15-90	Amended	381	9-25-90
401 KAR 8:200	614		401 KAR 38:060		
Amended	1440	11-15-90	Amended	385	9-25-90
401 KAR 8:250	619	11-15-90	401 KAR 38:070		
401 KAR 8:300	622	11-15-90	Amended	391	9-25-90
401 KAR 8:350	624		401 KAR 38:090		
Amended	1443	11-15-90	Amended	394	9-25-90
401 KAR 8:400	626	11-15-90	401 KAR 38:100		
401 KAR 8:420	628	11-15-90	Amended	399	9-25-90
401 KAR 8:440	633	11-15-90	401 KAR 38:230	658	
401 KAR 8:500	635	11-15-90	Amended	1456	11-15-90
401 KAR 8:550	639	11-15-90	401 KAR 38:500		
401 KAR 8:600	641	11-15-90	Amended	401	9-25-90
401 KAR 8:650	643	11-15-90	401 KAR 39:010		
401 KAR 8:700	645	11-15-90	Expired		7-13-90
401 KAR 32:030			401 KAR 39:020		
Amended	281		Expired		7-13-90
Amended	1444	11-15-90	401 KAR 39:030		
401 KAR 32:050			Expired		7-13-90
Amended	284	9-25-90	401 KAR 39:070		
401 KAR 34:020			Expired		7-13-90
Amended	287	9-25-90	401 KAR 42:010		
401 KAR 34:050			Repealed	1635	12-19-90
Amended	292	9-25-90	401 KAR 42:011	1635	12-19-90
401 KAR 34:060			401 KAR 42:020	1637	
Amended	295	9-25-90	Amended	1994	12-19-90
401 KAR 34:070			401 KAR 42:030	1638	12-19-90
Amended	304	9-25-90	401 KAR 42:040	1640	12-19-90
401 KAR 34:090			401 KAR 42:050	1641	12-19-90
Amended	310	9-25-90	401 KAR 42:060	1643	12-19-90
401 KAR 34:100			401 KAR 42:070	1645	
Amended	319	9-25-90	Amended	1994	12-19-90
401 KAR 34:120			401 KAR 42:090	1646	12-19-90
Amended	328		401 KAR 42:200	660	9-25-90
Amended	1445	11-15-90	401 KAR 47:134	2091	
401 KAR 34:130			Amended	2447	
Amended	333	9-25-90	401 KAR 47:136	2093	
401 KAR 34:165			Amended	2448	
Amended	334	9-25-90	401 KAR 50:005		
401 KAR 34:250	646		Recodified to 401 KAR 50:012		7-31-90
Amended	1448	11-15-90	401 KAR 50:010		
401 KAR 34:360	648	9-25-90	Amended	403	
401 KAR 35:010			Amended	1457	11-15-90
Amended	337	9-25-90	401 KAR 50:012		
401 KAR 35:020			Recodified from 401 KAR 50:005		7-31-90
Amended	340	9-25-90	401 KAR 50:036		
401 KAR 35:120			Expired		7-13-90
Amended	343		401 KAR 51:010		
Amended	1450	11-15-90	Amended	407	11-15-90
401 KAR 35:130			401 KAR 59:021	662	
Amended	347	9-25-90	Amended	1460	
401 KAR 35:190			As Amended	1982	11-15-90
Amended	349	9-25-90	401 KAR 59:023	672	
			Amended	1470	
			As Amended	2430	2-7-91

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Regulation	17 Ky.R. Page No.	Effective Date	Regulation	17 Ky.R. Page No.	Effective Date
401 KAR 61:011	681		502 KAR 45:050		
Amended	1478	11-15-90	Amended	2013	
401 KAR 61:013	686		As Amended	2441	2-7-91
Amended	1481		600 KAR 1:050		
As Amended	2437	2-7-91	Expired		7-13-90
405 KAR 7:020			600 KAR 3:010		
Amended	2774		Amended	1812	1-6-91
405 KAR 8:010			600 KAR 4:010		
Amended	2784		Amended	1540	12-4-90
405 KAR 8:030			601 KAR 1:005		
Amended	2800		Amended	2504	
405 KAR 8:040			601 KAR 1:025		
Amended	2812		Amended	105	9-4-90
405 KAR 10:040			601 KAR 1:029		
Amended	2499		Amended	165	
405 KAR 10:050			As Amended	1062	9-4-90
Reprint	1654	12-13-88	601 KAR 1:035		
405 KAR 12:020			Expired		7-13-90
Amended	2826		601 KAR 1:150		
500 KAR 6:210	1262	12-7-90	Expired		7-13-90
500 KAR 6:220	1264	12-7-90	601 KAR 1:160	167	
500 KAR 8:010	1885		As Amended	1063	9-4-90
Amended	2203		601 KAR 1:170	2306	
As Amended	2440	2-7-91	601 KAR 9:074		
500 KAR 9:010	162	9-13-90	Amended	1146	11-12-90
Amended	2218		601 KAR 9:125		
500 KAR 9:015	2303		Amended	419	10-2-90
500 KAR 9:020	163		601 KAR 9:140		
As Amended	1061	9-13-90	Amended	1150	11-12-90
500 KAR 9:030	164	9-13-90	601 KAR 9:145	2307	
500 KAR 9:040	165		601 KAR 11:010	2566	
As Amended	1062	9-13-90	601 KAR 11:020	2567	
Amended	2219		601 KAR 11:030	2568	
500 KAR 9:050	1265		601 KAR 11:040	2570	
Withdrawn		10-9-90	601 KAR 11:050	2573	
500 KAR 9:060	1265		601 KAR 11:060	2574	
Withdrawn		10-9-90	601 KAR 13:020		
501 KAR 6:020			Expired		7-13-90
Amended	410	10-14-90	601 KAR 13:070	1649	
Amended	1807	1-6-91	As Amended	1991	12-4-90
Amended	2221		601 KAR 14:010		
501 KAR 6:030			Amended	108	9-4-90
Amended	103	9-13-90	603 KAR 5:025		
Amended	1536	12-9-90	Amended	1832	1-6-91
Amended	1809	1-6-91	603 KAR 5:066		
Amended	2223		Amended	2835	
501 KAR 6:040			603 KAR 5:070		
Amended	412	10-14-90	Amended	1834	2-7-91
Amended	1538	12-9-90	603 KAR 5:071		
501 KAR 6:060			Amended	1838	
Amended	413	10-14-90	As Amended	2442	2-7-91
Amended	2831		603 KAR 5:075		
501 KAR 6:070			Amended	1839	1-6-91
Amended	1811	1-6-91	603 KAR 5:105	1266	11-12-90
501 KAR 6:080			603 KAR 5:110		
Amended	415	10-14-90	Amended	1151	
501 KAR 6:090			Amended	1736	12-4-90
Amended	415	10-14-90	603 KAR 5:111	1267	
Amended	2225		Amended	1737	12-4-90
501 KAR 6:120			603 KAR 5:112	1886	
Amended	417	10-14-90	Amended	2203	2-7-91
501 KAR 6:130			603 KAR 5:230		
Amended	2226		Amended	1153	
Amended	2832		Amended	1739	12-4-90
501 KAR 6:160	1648	12-9-90	Amended	2838	
501 KAR 9:020			603 KAR 5:240	691	
Expired		7-13-90	As Amended	1352	10-2-90
501 KAR 9:025	2095	2-7-91	605 KAR 1:180	2308	
Amended	2834		Withdrawn		2-8-91
501 KAR 11:010	690	10-14-90	605 KAR 1:190	2575	
			701 KAR 5:020		
			Amended	421	10-14-90

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Regulation	17 Ky.R. Page No.	Effective Date	Regulation	17 Ky.R. Page No.	Effective Date
701 KAR 5:050			702 KAR 3:200		
Amended	422	10-14-90	Amended	109	
701 KAR 5:080	2311		As Amended	1064	9-13-90
As Amended	2697		702 KAR 3:210		
702 KAR 1:005			Repealed	169	9-13-90
Amended	2227		702 KAR 3:211	169	9-13-90
As Amended	2698		702 KAR 3:220	1651	
702 KAR 1:010			Amended	1994	1-6-91
Amended	2014	2-7-91	702 KAR 3:230	1652	12-9-90
702 KAR 1:025			702 KAR 3:240	2097	
Repealed	168	9-13-90	As Amended	2704	
702 KAR 1:026	168	9-13-90	702 KAR 4:005		
702 KAR 1:035			Amended	2021	2-7-91
Amended	423	10-14-90	702 KAR 4:010		
702 KAR 1:040			Amended	2234	
Amended	2015	2-7-91	702 KAR 4:020		
702 KAR 1:070			Amended	2235	
Amended	2017	2-7-91	702 KAR 4:030		
702 KAR 1:080			Amended	2237	
Amended	424	10-14-90	702 KAR 4:040		
702 KAR 1:100			Amended	2238	
Amended	425	10-14-90	702 KAR 4:050		
702 KAR 1:115			Amended	2022	2-7-91
Amended	2017	2-7-91	702 KAR 4:060		
702 KAR 1:120			Amended	2024	2-7-91
Repealed	2096	2-7-91	702 KAR 4:070		
702 KAR 1:121	2096	2-7-91	Amended	2026	2-7-91
702 KAR 1:130	692	10-14-90	702 KAR 4:080		
702 KAR 3:010			Amended	2028	2-7-91
Amended	1544	12-9-90	702 KAR 4:090		
702 KAR 3:020			Amended	2029	2-7-91
Amended	1545	12-9-90	702 KAR 4:100		
702 KAR 3:030			Amended	2030	2-7-91
Amended	426		702 KAR 4:110		
As Amended	1352	10-14-90	Amended	2031	2-7-91
702 KAR 3:040			702 KAR 4:120		
Amended	1547	12-9-90	Amended	2032	2-7-91
702 KAR 3:045			702 KAR 4:130		
Amended	1548	12-9-90	Amended	2033	2-7-91
702 KAR 3:050			702 KAR 5:010		
Amended	1548	12-9-90	Amended	431	10-14-90
702 KAR 3:060			Amended	2035	2-7-91
Amended	1549	12-9-90	702 KAR 5:020		
702 KAR 3:070			Amended	432	10-14-90
Amended	1550	12-9-90	702 KAR 5:030		
702 KAR 3:075			Amended	435	
Amended	1552	12-9-90	As Amended	1354	10-14-90
702 KAR 3:080			Amended	2036	2-7-91
Amended	1552	12-9-90	702 KAR 5:040		
702 KAR 3:090			Amended	2037	2-7-91
Amended	1553	12-9-90	702 KAR 5:050		
702 KAR 3:100			Amended	2038	2-7-91
Amended	1554		702 KAR 5:060		
As Amended	1993	12-9-90	Amended	436	10-14-90
702 KAR 3:110			702 KAR 5:080		
Amended	1555		Amended	2239	
As Amended	1993	12-9-90	702 KAR 5:090		
702 KAR 3:120			Amended	437	10-14-90
Amended	427	10-14-90	702 KAR 5:100		
702 KAR 3:130			Amended	438	10-14-90
Amended	428		702 KAR 5:110		
As Amended	1353	10-14-90	Amended	439	
702 KAR 3:135			As Amended	1355	10-14-90
Amended	2019	2-7-91	702 KAR 5:120		
702 KAR 3:150			Amended	441	10-14-90
Amended	2020	2-7-91	702 KAR 5:130		
702 KAR 3:170			Amended	442	10-14-90
Amended	1556	12-9-90	702 KAR 5:140		
702 KAR 3:190			Amended	443	10-14-90
Amended	429	12-7-90	702 KAR 5:150	693	12-7-90
			702 KAR 6:010		
			Amended	2040	2-7-91

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Regulation	17 Ky.R. Page No.	Effective Date	Regulation	17 Ky.R. Page No.	Effective Date
702 KAR 6:020			704 KAR 3:360		
Amended	2040	2-7-91	Expired		7-13-90
702 KAR 6:030			704 KAR 3:365		
Amended	2041	2-7-91	Amended	2055	2-7-91
702 KAR 6:040			704 KAR 3:380	170	
Amended	2042	2-7-91	As Amended	1065	9-13-90
702 KAR 6:045			704 KAR 3:390	695	10-14-90
Amended	2043	2-7-91	704 KAR 3:400	698	10-14-90
702 KAR 6:050			704 KAR 3:410	701	
Amended	2044	2-7-91	Amended	1487	12-9-90
702 KAR 6:060			704 KAR 4:010		
Amended	2045	2-7-91	Amended	2056	2-7-91
702 KAR 6:070			704 KAR 4:020		
Expired		7-13-90	Amended	2245	
702 KAR 6:075	694		704 KAR 5:050		
As Amended	1356	10-14-90	Amended	119	9-13-90
702 KAR 6:090			704 KAR 5:060		
Amended	2046		Amended	2057	2-7-91
702 KAR 7:010			704 KAR 7:010		
Amended	444	10-14-90	Repealed	2099	2-7-91
702 KAR 7:020			704 KAR 7:011	2099	2-7-91
Amended	446	10-14-90	704 KAR 7:020		
702 KAR 7:030			Repealed	2099	2-7-91
Amended	447	10-14-90	704 KAR 7:030		
702 KAR 7:040			Repealed	2099	2-7-91
Amended	448	10-14-90	704 KAR 7:040		
702 KAR 7:050			Repealed	2099	2-7-91
Amended	449	12-7-90	704 KAR 7:050		
702 KAR 7:060			Amended	2058	
Repealed	695	10-14-90	704 KAR 7:055	2100	
702 KAR 7:061	695	10-14-90	704 KAR 7:070		
702 KAR 7:065			Amended	2059	2-7-91
Amended	451		704 KAR 7:080		
Amended	1484	12-7-90	Amended	2247	
702 KAR 7:070			704 KAR 7:090		
Expired		7-13-90	Amended	2061	2-7-91
702 KAR 7:080			704 KAR 7:100	705	10-14-90
Amended	452	10-14-90	704 KAR 10:050		
702 KAR 7:090			Amended	2063	2-7-91
Amended	453	10-14-90	704 KAR 15:015		
702 KAR 7:100	1269	12-7-90	Amended	459	10-14-90
704 KAR 3:035			704 KAR 20:005		
Amended	455		Amended	460	10-14-90
Amended	1485	12-7-90	705 KAR 1:001	172	9-13-90
704 KAR 3:265			705 KAR 1:010		
Repealed	2098	2-7-91	Repealed	172	9-13-90
704 KAR 3:266	2098		705 KAR 1:020		
704 KAR 3:285			Repealed	172	9-13-90
Amended	111	9-13-90	705 KAR 2:120		
704 KAR 3:292			Amended	2065	2-7-91
Amended	2047	2-7-91	705 KAR 3:010		
704 KAR 3:304			Repealed	172	9-13-90
Amended	112		705 KAR 3:030		
Withdrawn		7-12-90	Repealed	172	9-13-90
Amended	458	10-14-90	705 KAR 3:040		
704 KAR 3:305			Repealed	172	9-13-90
Amended	113	9-13-90	705 KAR 3:075		
704 KAR 3:307			Repealed	172	9-13-90
Amended	2050	2-7-91	705 KAR 3:080		
704 KAR 3:320			Repealed	172	9-13-90
Repealed	169	9-13-90	705 KAR 3:110		
704 KAR 3:321	169	9-13-90	Repealed	172	9-13-90
704 KAR 3:325			705 KAR 3:120		
Amended	114	9-13-90	Repealed	172	9-13-90
704 KAR 3:335			705 KAR 3:140	2101	2-7-91
Amended	2051	2-7-91	705 KAR 4:010		
704 KAR 3:340			Repealed	172	9-13-90
Amended	2243		705 KAR 4:040		
704 KAR 3:345			Amended	2066	2-7-91
Amended	116	9-13-90	705 KAR 4:050		
704 KAR 3:355			Amended	2067	2-7-91
Expired		7-13-90			

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Regulation	17 Ky.R. Page No.	Effective Date	Regulation	17 Ky.R. Page No.	Effective Date
705 KAR 4:080			707 KAR 1:055		
Amended	2068	2-7-91	Amended	1202	12-7-90
705 KAR 4:210			707 KAR 1:056		
Repealed	172	9-13-90	Amended	1204	12-7-90
705 KAR 4:220			707 KAR 1:057		
Repealed	172	9-13-90	Amended	1206	12-7-90
705 KAR 4:230	2103	2-7-91	707 KAR 1:058		
705 KAR 5:020			Amended	1209	12-7-90
Repealed	172	9-13-90	707 KAR 1:059		
705 KAR 5:040			Amended	1211	12-7-90
Repealed	172	9-13-90	707 KAR 1:060		
705 KAR 5:060			Amended	2069	2-7-91
Repealed	172	9-13-90	707 KAR 1:070		
705 KAR 5:070			Amended	1212	12-7-90
Repealed	172	9-13-90	707 KAR 1:080		
705 KAR 5:080			Amended	1214	12-7-90
Repealed	172	9-13-90	707 KAR 1:090		
705 KAR 5:090			Amended	2070	2-7-91
Repealed	172	9-13-90	707 KAR 1:100		
705 KAR 5:100			Amended	2071	
Repealed	172	9-13-90	Amended	2448	
705 KAR 5:110			707 KAR 1:110		
Repealed	172	9-13-90	Amended	2073	
705 KAR 5:130			707 KAR 1:120		
Repealed	172	9-13-90	Amended	2077	2-7-91
705 KAR 5:140			707 KAR 1:130		
Repealed	172	9-13-90	Amended	2078	2-7-91
705 KAR 6:010			707 KAR 1:140		
Repealed	172	9-13-90	Amended	1566	
705 KAR 11:010			Amended	1995	1-6-91
Repealed	172	9-13-90	708 KAR 1:001	2104	2-7-91
705 KAR 11:020			708 KAR 1:010		
Repealed	172	9-13-90	Repealed	2104	2-7-91
705 KAR 11:030			708 KAR 1:020		
Repealed	172	9-13-90	Repealed	2104	2-7-91
705 KAR 11:040			708 KAR 1:030		
Repealed	172	9-13-90	Repealed	2104	2-7-91
706 KAR 1:001	706	10-14-90	708 KAR 1:040		
706 KAR 1:010			Repealed	2104	2-7-91
Repealed		1-12-90	708 KAR 1:050		
706 KAR 1:020			Repealed	2104	2-7-91
Repealed	706	10-14-90	708 KAR 1:060		
706 KAR 1:050			Repealed	2104	2-7-91
Repealed		1-12-90	708 KAR 1:070		
706 KAR 1:060			Repealed	2104	2-7-91
Repealed	706	10-14-90	708 KAR 1:080		
706 KAR 1:070			Repealed	2104	2-7-91
Repealed	706	10-14-90	708 KAR 1:090		
706 KAR 1:080			Repealed	2104	2-7-91
Repealed	706	10-14-90	708 KAR 1:100		
706 KAR 1:090			Repealed	2104	2-7-91
Repealed	706	10-14-90	708 KAR 1:110		
706 KAR 1:100			Repealed	2104	2-7-91
Repealed	706	10-14-90	709 KAR 1:001	707	10-14-90
706 KAR 1:110			709 KAR 1:010		
Repealed	706	10-14-90	Repealed	707	10-14-90
707 KAR 1:003			709 KAR 1:020		
Repealed		8-9-90	Repealed	707	10-14-90
707 KAR 1:041			709 KAR 1:030		
Amended	1191	12-7-90	Repealed	707	10-14-90
707 KAR 1:045			709 KAR 1:040		
Amended	1192	12-7-90	Repealed	707	10-14-90
707 KAR 1:051			709 KAR 1:060		
Amended	1557		Repealed	172	9-13-90
As Amended	2183	1-6-91	709 KAR 1:070		
707 KAR 1:052			Repealed	172	9-13-90
Amended	1195	12-7-90	709 KAR 1:090		
707 KAR 1:053			Repealed	707	10-14-90
Amended	1198	12-7-90	709 KAR 1:100		
707 KAR 1:054			Repealed	707	10-14-90
Amended	1200	12-7-90	709 KAR 1:110		
			Repealed	707	10-14-90

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Regulation	17 Ky.R. Page No.	Effective Date	Regulation	17 Ky.R. Page No.	Effective Date
709 KAR 1:120			780 KAR 3:090	742	10-14-90
Repealed	707	10-14-90	780 KAR 3:100	743	10-14-90
709 KAR 1:130			780 KAR 3:110	745	10-14-90
Repealed	707	10-14-90	780 KAR 3:120	746	10-14-90
709 KAR 1:140			780 KAR 3:130	748	10-14-90
Repealed	707	10-14-90	780 KAR 3:140	749	10-14-90
720 KAR 1:010			780 KAR 3:150	750	10-14-90
Recodified to 782 KAR 1		7-5-90	780 KAR 4:010	751	10-14-90
720 KAR 1:020			780 KAR 4:020	754	10-14-90
Recodified to 782 KAR 1		7-5-90	780 KAR 5:010	755	10-14-90
720 KAR 1:030			780 KAR 5:020	755	10-14-90
Recodified to 782 KAR 1		7-5-90	780 KAR 5:030	756	10-14-90
720 KAR 1:040			780 KAR 5:040	757	10-14-90
Recodified to 782 KAR 1		7-5-90	780 KAR 5:050	757	10-14-90
720 KAR 1:050			780 KAR 6:010	1276	12-9-90
Recodified to 782 KAR 1		7-5-90	780 KAR 6:020	1277	12-9-90
723 KAR 1:005			780 KAR 6:030	1278	12-9-90
Implied Repeal		6-30-86	780 KAR 6:040	1279	12-9-90
723 KAR 1:010			780 KAR 6:050	1279	12-9-90
Implied Repeal		6-30-86	780 KAR 6:060	1280	12-9-90
723 KAR 1:015			780 KAR 6:070	1285	12-9-90
Implied Repeal		6-30-86	780 KAR 6:080	1286	12-9-90
723 KAR 1:025			780 KAR 6:090	1287	12-9-90
Implied Repeal		6-30-86	780 KAR 6:100	1287	12-9-90
723 KAR 1:035			780 KAR 7:010	758	10-14-90
Implied Repeal		6-30-86	780 KAR 7:020	760	10-14-90
723 KAR 1:045			780 KAR 7:030	761	10-14-90
Implied Repeal		6-30-86	780 KAR 7:040	762	10-14-90
723 KAR 1:055			780 KAR 7:050	762	10-14-90
Implied Repeal		6-30-86	780 KAR 7:060	763	10-14-90
725 KAR 1:060	2105		780 KAR 7:070	764	10-14-90
Withdrawn		1-31-91	780 KAR 8:010	765	10-14-90
750 KAR 1:010			780 KAR 9:010	766	10-14-90
Amended	2875		780 KAR 9:020	767	10-14-90
765 KAR 1:010	708	10-14-90	780 KAR 9:030	768	10-14-90
765 KAR 1:020	709	10-14-90	780 KAR 9:040	769	10-14-90
765 KAR 1:030	709	10-14-90	780 KAR 9:050	771	10-14-90
765 KAR 1:040	710	10-14-90	780 KAR 9:060	774	10-14-90
765 KAR 1:050	711	10-14-90	780 KAR 9:070	776	10-14-90
765 KAR 1:060	712	10-14-90	780 KAR 9:080	776	10-14-90
765 KAR 1:070	712	10-14-90	780 KAR 9:090	778	10-14-90
775 KAR 1:010	1270	12-7-90	781 KAR 1:010	779	
775 KAR 1:020	1271	12-7-90	Amended	1491	12-7-90
775 KAR 1:030	1272	12-7-90	781 KAR 1:020	782	
775 KAR 1:040	1273	12-7-90	Amended	1493	12-7-90
775 KAR 1:050	1274	12-7-90	781 KAR 1:030	787	
775 KAR 1:060	1275	12-7-90	Amended	1497	
780 KAR 1:010	713	10-14-90	As Amended	1718	12-7-90
780 KAR 2:010	714	10-14-90	781 KAR 1:040	789	10-14-90
780 KAR 2:020	715	10-14-90	781 KAR 1:050	791	10-14-90
780 KAR 2:030	716	10-14-90	781 KAR 1:060	794	10-14-90
780 KAR 2:040	717	10-14-90	781 KAR 1:070	796	10-14-90
780 KAR 2:045	1888		781 KAR 2:010	797	
As Amended	2192	1-6-91	Amended	1499	12-7-90
780 KAR 2:050	718	10-14-90	781 KAR 2:020	800	
780 KAR 2:060	719	10-14-90	Amended	1501	12-7-90
780 KAR 2:070	720	10-14-90	782 KAR 1:010		
780 KAR 2:080	721	10-14-90	Recodified from 720 KAR 1		7-5-90
780 KAR 2:090	722	10-14-90	782 KAR 1:020		
780 KAR 2:100	723	10-14-90	Recodified from 720 KAR 1		7-5-90
780 KAR 2:110	725	10-14-90	782 KAR 1:030		
780 KAR 2:120	726	10-14-90	Recodified from 720 KAR 1		7-5-90
780 KAR 2:130	727	10-14-90	782 KAR 1:040		
780 KAR 2:140	728	10-14-90	Recodified from 720 KAR 1		7-5-90
780 KAR 3:010	730	10-14-90	782 KAR 1:050		
780 KAR 3:020	731	10-14-90	Recodified from 720 KAR 1		7-5-90
780 KAR 3:030	732	10-14-90	803 KAR 2:303		
780 KAR 3:040	733	10-14-90	Amended	1842	1-6-91
780 KAR 3:050	734	10-14-90	803 KAR 2:305		
780 KAR 3:060	735	10-14-90	Amended	1843	1-6-91
780 KAR 3:070	736	10-14-90	803 KAR 2:306		
780 KAR 3:080	741	10-14-90	Amended	1845	1-6-91

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Regulation	17 Ky.R. Page No.	Effective Date	Regulation	17 Ky.R. Page No.	Effective Date
803 KAR 2:307			815 KAR 10:040		
Amended	1847	1-6-91	Amended	257	
803 KAR 2:313			As Amended	1068	8-22-90
Amended	1849	1-6-91	Amended	2248	
803 KAR 2:316			As Amended	2704	
Amended	1851	1-6-91	815 KAR 15:020		
803 KAR 2:317			As Amended	1085	8-22-90
Amended	1852	1-6-91	815 KAR 20:010		
803 KAR 2:318			As Amended	1092	8-22-90
Amended	1854	1-6-91	815 KAR 20:020		
803 KAR 2:320			Amended	472	10-14-90
Amended	1855	1-6-91	Amended	2266	
803 KAR 2:413			815 KAR 20:030		
Amended	1858	1-6-91	Amended	2878	
804 KAR 2:007			815 KAR 20:040		
Amended	461	9-14-90	Amended	2879	
804 KAR 3:090			815 KAR 20:050		
Repealed	1889	12-14-90	Amended	2880	
804 KAR 3:091			815 KAR 20:055		
804 KAR 4:015			Amended	2881	
Amended	1860		815 KAR 20:060		
As Amended	2192	12-14-90	Amended	2882	
804 KAR 4:110			815 KAR 20:071		
Amended	1569	11-29-90	As Amended	1098	8-22-90
804 KAR 4:250			815 KAR 20:072		
Amended	1861		Amended	2885	
As Amended	2193	12-14-90	815 KAR 20:073		
804 KAR 5:010			Amended	2886	
Repealed	1889	12-14-90	815 KAR 20:074		
804 KAR 5:040			Amended	2888	
Amended	1861	12-14-90	815 KAR 20:075		
804 KAR 7:040			Amended	2889	
Repealed	1889	12-14-90	815 KAR 20:076		
806 KAR 9:220	803	10-14-90	As Amended	1099	8-22-90
806 KAR 11:020	2311		815 KAR 20:077		
806 KAR 12:090			Amended	2892	
Expired		7-13-90	815 KAR 20:100		
806 KAR 12:092	806		Amended	2893	
Amended	1503	11-15-90	815 KAR 20:120		
806 KAR 12:094	809		As Amended	1100	8-22-90
Amended	1505	11-15-90	Amended	2269	
806 KAR 12:130			815 KAR 20:130		
Expired		7-13-90	As Amended	1108	8-22-90
806 KAR 12:131	2579		815 KAR 20:170		
806 KAR 17:065			Amended	2895	
Expired		7-13-90	815 KAR 20:180		
806 KAR 17:066	813		Amended	2896	
Reprinted	1298	10-14-90	815 KAR 30:050		
806 KAR 18:040	2313		Expired		7-13-90
Amended	2725		815 KAR 30:060	1890	
807 KAR 5:041			Amended	2205	
Amended	2507		As Amended	2442	2-7-91
807 KAR 5:061			815 KAR 35:015		
Amended	2515		Amended	2898	
807 KAR 5:058	1289		815 KAR 35:030	172	
As Amended	1720		As Amended	1111	8-22-90
808 KAR 1:050			815 KAR 45:070		
Amended	1571	12-9-90	Expired		7-13-90
808 KAR 1:070			901 KAR 5:050		
As Amended	1066	9-13-90	Amended	121	9-13-90
808 KAR 3:020			901 KAR 5:070		
Amended	1572	12-9-90	Amended	122	9-13-90
815 KAR 7:010			901 KAR 5:110		
Amended	462		Expired		7-13-90
As Amended	1356	10-14-90	902 KAR 2:130	174	
815 KAR 7:020			Withdrawn		7-20-90
Repealed	1365	10-14-90	902 KAR 2:140	175	9-13-90
815 KAR 7:025	827		902 KAR 2:150	2107	
As Amended	1365	10-14-90	Amended	2450	
			As Amended	2722	
			902 KAR 2:160	2109	
			Amended	2451	
			As Amended	2723	

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Amended	480		902 KAR 45:150		
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902 KAR 11:010			As Amended	1409	9-19-90
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902 KAR 13:050			Amended	136	9-13-90
Amended	130	9-13-90	902 KAR 100:010		
902 KAR 13:080			As Amended	39	6-27-90
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902 KAR 13:120			Amended	1215	12-7-90
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902 KAR 20:026			Amended	1628	12-9-90
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907 KAR 1:102	1941	
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KRS Section	Regulation	KRS Section	Regulation
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	704 KAR 3:304		707 KAR 1:056
	704 KAR 3:340		707 KAR 1:057
156.074	702 KAR 3:170		707 KAR 1:058
156.076	702 KAR 3:135		707 KAR 1:059
156.095	704 KAR 3:035	157.200-157.290	707 KAR 1:060
156.0951	704 KAR 3:035		707 KAR 1:080
156.100	702 KAR 6:075	157.220	707 KAR 1:041
156.101	704 KAR 3:325		707 KAR 1:052
	704 KAR 3:345		707 KAR 1:053
	704 KAR 3:400		707 KAR 1:054
156.105	701 KAR 5:050		707 KAR 1:055
156.132	702 KAR 5:060		707 KAR 1:056
156.152	702 KAR 5:060		707 KAR 1:057
156.153	702 KAR 5:060		707 KAR 1:058
156.154	701 KAR 5:080		707 KAR 1:059
156.160	702 KAR 3:075	157.224	704 KAR 3:285
	702 KAR 3:110		707 KAR 1:041
	702 KAR 3:120		707 KAR 1:051
	702 KAR 4:020		707 KAR 1:052
	702 KAR 4:030		707 KAR 1:053
	702 KAR 4:040		707 KAR 1:054
	702 KAR 4:050		707 KAR 1:056
	702 KAR 4:060		707 KAR 1:057
	702 KAR 4:070		707 KAR 1:058
	702 KAR 4:080		707 KAR 1:059
	702 KAR 4:090	157.226	702 KAR 5:150
	702 KAR 4:110	157.230	704 KAR 3:285
	702 KAR 4:120		707 KAR 1:041
	702 KAR 4:130		707 KAR 1:051
	702 KAR 5:010		707 KAR 1:052
	702 KAR 5:030		707 KAR 1:053
	702 KAR 5:040		707 KAR 1:054
	702 KAR 5:050		707 KAR 1:056
	702 KAR 5:060		707 KAR 1:057
	702 KAR 5:080		707 KAR 1:058
	702 KAR 5:090		707 KAR 1:059
	702 KAR 5:100	157.250	707 KAR 1:140
	702 KAR 5:130	157.270	707 KAR 1:051
	702 KAR 6:045		707 KAR 1:055
	702 KAR 6:060	157.280	702 KAR 5:120
	702 KAR 6:090		707 KAR 1:051
	702 KAR 7:100		707 KAR 1:070
	704 KAR 3:304	157.285	707 KAR 1:051
	704 KAR 3:305	157.3175	702 KAR 5:150
	704 KAR 3:307		704 KAR 3:410
	704 KAR 3:340	157.320	702 KAR 3:070
	704 KAR 3:410		702 KAR 3:211
	704 KAR 4:010		702 KAR 7:050
	704 KAR 4:020		704 KAR 5:050
	704 KAR 5:050	157.360	702 KAR 3:190
	704 KAR 7:055		702 KAR 7:050
	704 KAR 10:050		704 KAR 5:050
156.200	702 KAR 3:020		704 KAR 7:011
	702 KAR 3:120	157.370	707 KAR 1:051
	702 KAR 3:130		702 KAR 5:010
	702 KAR 6:075		702 KAR 5:020
	702 KAR 6:090		702 KAR 5:100
156.210	701 KAR 5:050		702 KAR 5:110
	702 KAR 3:020		702 KAR 5:140
156.230	702 KAR 1:070	157.390	702 KAR 3:070
156.265	702 KAR 3:150		702 KAR 3:100
156.400-156.476	702 KAR 1:005	157.420	702 KAR 1:010
156.476	707 KAR 1:045		702 KAR 3:010
156.480	702 KAR 6:075		702 KAR 3:100
Chapter 157	750 KAR 1:010		702 KAR 4:010
157.060	702 KAR 3:110	157.510-157.540	702 KAR 7:040
157.100-157.190	702 KAR 1:005	157.605	704 KAR 7:080
157.200	704 KAR 3:285	157.606	704 KAR 7:080
	707 KAR 1:041	157.620	702 KAR 4:110
	707 KAR 1:051		702 KAR 4:120
	707 KAR 1:052		702 KAR 4:130
	707 KAR 1:053	157.622	702 KAR 1:010

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158.030	702 KAR 7:050	161.555	102 KAR 1:130
	704 KAR 5:050	161.560	102 KAR 1:125
158.060	702 KAR 7:010		102 KAR 1:195
	702 KAR 7:020		102 KAR 1:210
	702 KAR 7:061	161.580	102 KAR 1:135
158.070	702 KAR 7:010	161.600	102 KAR 1:162
	702 KAR 7:020	161.605	102 KAR 1:035
	702 KAR 7:040	161.608	102 KAR 1:185
	704 KAR 3:035	161.620	102 KAR 1:154
	704 KAR 3:390	161.630	102 KAR 1:160
158.148	704 KAR 7:050	161.661	102 KAR 1:140
	704 KAR 7:070	161.675	102 KAR 1:100
158.240	702 KAR 7:050	161.705	102 KAR 1:135
158.6451	704 KAR 3:304		102 KAR 1:160
	704 KAR 7:055	161.780	702 KAR 1:040
158.750	704 KAR 3:321	161.790	707 KAR 1:130
158.780	702 KAR 3:200	161.800	707 KAR 1:130
158.785	702 KAR 3:200	162.010	702 KAR 4:050
159.010	704 KAR 5:060	162.060	702 KAR 4:020
159.020	704 KAR 5:060		702 KAR 4:040
159.030	707 KAR 1:055		702 KAR 4:050
159.035	702 KAR 7:050		702 KAR 4:060
159.051	704 KAR 7:100		702 KAR 4:070
159.170	702 KAR 7:030		702 KAR 4:080
159.250	702 KAR 7:030		702 KAR 4:110
160.041	702 KAR 1:100		702 KAR 4:120
160.045	702 KAR 1:080		702 KAR 4:130
160.105	702 KAR 3:030	162.070	702 KAR 4:040
160.180	702 KAR 1:115	162.080-162.100	702 KAR 3:020
	702 KAR 1:121	162.120-162.290	702 KAR 3:020
160.290	702 KAR 6:020	162.300	702 KAR 3:020
	704 KAR 3:304	163.032	707 KAR 1:120
160.291	702 KAR 3:060		707 KAR 1:130
160.293	702 KAR 4:005	163.140	706 KAR 1:001
160.330	702 KAR 3:220	163.160	706 KAR 1:001
160.340	702 KAR 3:150	164.020	13 KAR 2:020
160.345	701 KAR 5:080		13 KAR 2:045
	702 KAR 3:240	164.2871	103 KAR 17:081
160.380	702 KAR 6:020	164.2893	201 KAR 20:310
	702 KAR 6:050	164.768	11 KAR 7:010
160.450	702 KAR 3:060		11 KAR 7:020
160.550	702 KAR 3:050	164.945	13 KAR 1:020
160.560	702 KAR 3:040	164.946	13 KAR 1:020
	702 KAR 3:080	164.947	13 KAR 1:020
160.570	702 KAR 3:090	164.992	13 KAR 1:020
160.599	702 KAR 4:100	164A.410	765 KAR 1:060
161.010	702 KAR 7:090		775 KAR 1:060
161.020	702 KAR 6:020	164A.560	765 KAR 1:010
	704 KAR 15:010		765 KAR 1:020
	704 KAR 20:005		775 KAR 1:010
161.025	704 KAR 15:015		775 KAR 1:020
	704 KAR 20:005	164A.565	765 KAR 1:010
161.030	702 KAR 3:211		765 KAR 1:020
	704 KAR 5:050		775 KAR 1:010
	704 KAR 15:015		775 KAR 1:020
	704 KAR 20:005	164A.570	765 KAR 1:030
161.044	702 KAR 7:090		775 KAR 1:030
161.140	702 KAR 6:050	164A.575	765 KAR 1:020
161.152	707 KAR 1:120		765 KAR 1:040
161.154	707 KAR 1:120		775 KAR 1:020
161.158	702 KAR 1:035		775 KAR 1:040
161.159	702 KAR 1:026	164A.580	765 KAR 1:020
161.180	702 KAR 7:090		765 KAR 1:040
161.200	702 KAR 7:050	164A.585	765 KAR 1:020
161.210	702 KAR 3:060		765 KAR 1:040
161.220	102 KAR 1:130	164A.590	765 KAR 1:020
161.430	102 KAR 1:154		765 KAR 1:040
	102 KAR 1:180	164A.595	765 KAR 1:020
161.440	102 KAR 1:135		765 KAR 1:040
161.470	102 KAR 1:060	164A.600	765 KAR 1:020
161.507	102 KAR 1:057		765 KAR 1:040
161.515	102 KAR 1:050	164A.605	765 KAR 1:050
161.520	102 KAR 1:165		775 KAR 1:050

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KRS Section	Regulation	KRS Section	Regulation
164A.610	765 KAR 1:070	Chapter 197 (cont'd)	501 KAR 6:070
164A.620	765 KAR 1:020		501 KAR 6:080
	765 KAR 1:060		501 KAR 6:090
	775 KAR 1:020		501 KAR 6:120
	775 KAR 1:060		501 KAR 6:130
167.015	707 KAR 1:120		501 KAR 6:160
	707 KAR 1:130	Chapter 198B	815 KAR 7:010
167.150	707 KAR 1:090		815 KAR 7:025
	707 KAR 1:100		815 KAR 10:040
	707 KAR 1:110		815 KAR 20:060
167.170	707 KAR 1:090	198B.040	815 KAR 20:100
167.210	707 KAR 1:041	198B.050	815 KAR 20:100
168.100	702 KAR 3:170	199.011	905 KAR 1:300
Chapter 171	725 KAR 1:060		905 KAR 1:310
Chapter 174	600 KAR 4:010	199.555	905 KAR 1:050
174.400-174.435	601 KAR 1:025	199.640	905 KAR 1:310
Chapter 176	600 KAR 4:010	199.640-199.670	905 KAR 1:300
Chapter 177	600 KAR 4:010	199.650	905 KAR 1:310
177.220	603 KAR 5:025	199.660	905 KAR 1:310
177.230	603 KAR 5:025	199.670	905 KAR 1:310
177.300	603 KAR 5:025	199.890-199.896	905 KAR 2:010
177.9771	603 KAR 5:230	Chapter 202A	908 KAR 3:080
Chapter 183	600 KAR 4:010		908 KAR 3:180
Chapter 186	601 KAR 9:125	Chapter 202B	908 KAR 3:080
	601 KAR 9:140		908 KAR 3:180
186.440	601 KAR 13:070	Chapter 205	904 KAR 2:022
	704 KAR 7:100	205.010	904 KAR 2:006
186.450	601 KAR 13:070	205.200	904 KAR 2:006
186.470	601 KAR 13:070		904 KAR 2:016
186.560	601 KAR 13:070		904 KAR 2:035
186.565	500 KAR 8:010	205.201	905 KAR 8:140
186.1723	601 KAR 9:145	205.204	905 KAR 8:140
Chapter 186A	601 KAR 9:140	205.210	904 KAR 2:016
189.190	603 KAR 5:025	205.220	904 KAR 2:050
189.222	603 KAR 5:066	205.245	904 KAR 2:015
	603 KAR 5:070		904 KAR 2:035
	603 KAR 5:071	205.460-205.465	905 KAR 8:140
	603 KAR 5:075	205.520	904 KAR 2:035
189.230	603 KAR 5:230		907 KAR 1:004
189.265	603 KAR 5:071		907 KAR 1:005
189.270	603 KAR 5:075		907 KAR 1:006
	603 KAR 5:105		907 KAR 1:010
	603 KAR 5:110		907 KAR 1:011
	603 KAR 5:111		907 KAR 1:013
	603 KAR 5:112		907 KAR 1:014
189.285	601 KAR 14:010		907 KAR 1:015
189.340	603 KAR 5:025		907 KAR 1:016
189.540	702 KAR 5:010		907 KAR 1:017
	702 KAR 5:030		907 KAR 1:019
	702 KAR 5:040		907 KAR 1:020
	702 KAR 5:050		907 KAR 1:022
	702 KAR 5:080		907 KAR 1:025
	702 KAR 5:090		907 KAR 1:027
189.735	603 KAR 5:071		907 KAR 1:031
190.010-190.990	605 KAR 1:180		907 KAR 1:036
	605 KAR 1:190		907 KAR 1:039
194.050	904 KAR 2:110		907 KAR 1:040
	904 KAR 2:116		907 KAR 1:045
	904 KAR 3:035		907 KAR 1:060
Chapter 196	501 KAR 6:020		907 KAR 1:061
	501 KAR 6:030		907 KAR 1:095
	501 KAR 6:040		907 KAR 1:102
	501 KAR 6:060		907 KAR 1:104
	501 KAR 6:070		907 KAR 1:150
	501 KAR 6:080		907 KAR 1:280
	501 KAR 6:090		907 KAR 1:330
	501 KAR 6:120		907 KAR 1:430
	501 KAR 6:130		907 KAR 1:470
	501 KAR 6:160	205.560	907 KAR 1:010
Chapter 197	501 KAR 6:020	205.715-205.800	904 KAR 2:026
	501 KAR 6:030	Chapter 210	908 KAR 3:080
	501 KAR 6:040		908 KAR 3:180
	501 KAR 6:060	210.610-210.680	908 KAR 1:160

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KRS Section	Regulation	KRS Section	Regulation
Chapter 211	401 KAR 8:650	218A.435	40 KAR 4:010
211.060-211.968	902 KAR 13:050	500 KAR 9:015	
211.170	902 KAR 8:030	500 KAR 9:020	
211.180	902 KAR 2:140	500 KAR 9:040	
	902 KAR 2:150	500 KAR 9:050	
	902 KAR 2:160	500 KAR 9:060	
	902 KAR 10:010	501 KAR 11:010	
	902 KAR 10:040	500 KAR 9:030	
	902 KAR 10:120	218A.440	902 KAR 45:120
	902 KAR 45:150	219.031	902 KAR 45:120
211.461-211.466	906 KAR 1:080	219.041	902 KAR 15:010
211.842-211.852	902 KAR 100:058	219.310-219.410	902 KAR 15:020
211.960-211.968	902 KAR 13:080	219.330	902 KAR 45:120
	902 KAR 13:120	219.350	902 KAR 45:120
211.990	902 KAR 10:120	219.991	902 KAR 15:010
	902 KAR 13:050		902 KAR 15:020
	902 KAR 13:080	222.210	902 KAR 20:086
	902 KAR 13:120	222.210-222.310	908 KAR 1:020
	902 KAR 100:058	Chapter 223	401 KAR 8:010
	906 KAR 1:080		401 KAR 8:020
212.170	902 KAR 8:030		401 KAR 8:030
212.210	902 KAR 45:150	223.400-223.460	401 KAR 6:310
212.870	902 KAR 8:030	223.991	401 KAR 6:310
212.990	902 KAR 45:150		401 KAR 6:320
214.020	902 KAR 2:150	Chapter 224	401 KAR 6:310
	902 KAR 2:160		401 KAR 6:320
214.610	902 KAR 2:160		401 KAR 8:010
214.615	902 KAR 2:150		401 KAR 8:020
216.900-216.915	906 KAR 1:070		401 KAR 8:030
216B.010-216B.130	902 KAR 20:006		401 KAR 8:040
	902 KAR 20:008		401 KAR 8:050
	902 KAR 20:116		401 KAR 8:060
	902 KAR 20:300		401 KAR 8:070
	902 KAR 20:310		401 KAR 8:100
	902 KAR 20:320		401 KAR 8:150
	902 KAR 20:330		401 KAR 8:200
216B.010-216B.131	902 KAR 20:026		401 KAR 8:250
	902 KAR 20:048		401 KAR 8:300
	902 KAR 20:051		401 KAR 8:350
	902 KAR 20:086		401 KAR 8:400
	902 KAR 20:133		401 KAR 8:420
	902 KAR 20:135		401 KAR 8:440
	902 KAR 20:290		401 KAR 8:500
216B.040	902 KAR 17:010		401 KAR 8:550
216B.990	902 KAR 20:006		401 KAR 8:600
	902 KAR 20:008		401 KAR 8:650
	902 KAR 20:026		401 KAR 8:700
	902 KAR 20:048		401 KAR 47:132E
	902 KAR 20:051		401 KAR 47:134
	902 KAR 20:086		401 KAR 47:136
	902 KAR 20:116	224.033	401 KAR 34:020
	902 KAR 20:132		401 KAR 34:050
	902 KAR 20:135		401 KAR 34:060
	902 KAR 20:290		401 KAR 34:070
	902 KAR 20:300		401 KAR 34:090
	902 KAR 20:310		401 KAR 34:100
	902 KAR 20:320		401 KAR 34:120
	902 KAR 20:330		401 KAR 34:130
Chapter 217	201 KAR 2:111		401 KAR 34:165
217.005-217.215	902 KAR 45:005		401 KAR 34:250
217.025	902 KAR 45:110		401 KAR 34:360
217.035	902 KAR 45:110		401 KAR 35:010
217.037	902 KAR 45:110		401 KAR 35:020
217.125	902 KAR 45:110		401 KAR 35:120
217.811	902 KAR 45:110		401 KAR 35:130
217.819	201 KAR 2:116		401 KAR 35:190
217.992	902 KAR 45:005		401 KAR 36:070
Chapter 218	901 KAR 5:050		401 KAR 37:010
	901 KAR 5:070		401 KAR 37:030
Chapter 218A	902 KAR 55:010		401 KAR 37:040
218A.410	500 KAR 9:010		401 KAR 37:050
	500 KAR 9:030		401 KAR 37:110
			401 KAR 38:010

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224.033 (cont'd)	401 KAR 38:040	224.087 (cont'd)	401 KAR 38:230
	401 KAR 38:050		401 KAR 38:500
	401 KAR 38:060	224.2201-224.2215	401 KAR 38:500
	401 KAR 38:070	224.320	401 KAR 50:010
	401 KAR 38:090		401 KAR 51:010
	401 KAR 38:100		401 KAR 59:021
	401 KAR 38:230		401 KAR 59:023
	401 KAR 38:500		401 KAR 61:011
	401 KAR 42:011		401 KAR 61:013
	401 KAR 42:020	224.330	401 KAR 50:010
	401 KAR 42:030		401 KAR 51:010
	401 KAR 42:040		401 KAR 59:021
	401 KAR 42:050		401 KAR 59:023
	401 KAR 42:060		401 KAR 61:011
	401 KAR 42:070		401 KAR 61:013
	401 KAR 42:090	224.340	401 KAR 50:010
	401 KAR 42:200		401 KAR 51:010
224.036	401 KAR 38:010		401 KAR 59:021
	401 KAR 38:040		401 KAR 59:023
	401 KAR 38:050		401 KAR 61:011
	401 KAR 38:060		401 KAR 61:013
	401 KAR 38:070	224.810	401 KAR 42:200
	401 KAR 38:090	224.814	401 KAR 42:011
	401 KAR 38:100		401 KAR 42:020
	401 KAR 38:230		401 KAR 42:030
	401 KAR 38:500		401 KAR 42:040
224.060	401 KAR 34:020		401 KAR 42:050
	401 KAR 34:050		401 KAR 42:060
	401 KAR 34:060		401 KAR 42:070
	401 KAR 34:070		401 KAR 42:090
	401 KAR 34:250		401 KAR 42:200
	401 KAR 34:360		815 KAR 30:060
	401 KAR 37:010	224.820	815 KAR 30:060
	401 KAR 37:030	224.830-224.877	401 KAR 32:030
	401 KAR 37:040		401 KAR 32:050
	401 KAR 37:050		401 KAR 34:020
	401 KAR 37:110		401 KAR 34:050
224.071	401 KAR 32:030		401 KAR 34:060
	401 KAR 32:050		401 KAR 34:070
	401 KAR 34:020		401 KAR 34:090
	401 KAR 34:050		401 KAR 34:100
	401 KAR 34:060		401 KAR 34:120
	401 KAR 34:070		401 KAR 34:130
	401 KAR 34:090		401 KAR 34:165
	401 KAR 34:100		401 KAR 34:250
	401 KAR 34:120		401 KAR 34:260
	401 KAR 34:130		401 KAR 35:010
	401 KAR 34:165		401 KAR 35:020
	401 KAR 34:250		401 KAR 35:120
	401 KAR 34:360		401 KAR 35:130
	401 KAR 35:120		401 KAR 35:190
	401 KAR 35:130		401 KAR 36:070
	401 KAR 37:010		401 KAR 37:010
	401 KAR 37:030		401 KAR 37:030
	401 KAR 37:040		401 KAR 37:040
	401 KAR 37:050		401 KAR 37:050
	401 KAR 37:110		401 KAR 37:110
	401 KAR 38:010		401 KAR 38:010
	401 KAR 38:040		401 KAR 38:040
	401 KAR 38:050		401 KAR 38:050
	401 KAR 38:060		401 KAR 38:060
	401 KAR 38:070		401 KAR 38:070
	401 KAR 38:090		401 KAR 38:090
	401 KAR 38:100		401 KAR 38:100
	401 KAR 38:230		401 KAR 38:230
	401 KAR 38:500		401 KAR 38:500
224.087	401 KAR 38:010	224.994	401 KAR 32:030
	401 KAR 38:040		401 KAR 32:050
	401 KAR 38:050		401 KAR 34:020
	401 KAR 38:060		401 KAR 34:050
	401 KAR 38:070		401 KAR 34:060
	401 KAR 38:090		401 KAR 34:070
	401 KAR 38:100		401 KAR 34:090

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	401 KAR 34:130	304.12-220	806 KAR 12:092
	401 KAR 34:165		806 KAR 12:094
	401 KAR 34:250	304.12-230	806 KAR 12:092
	401 KAR 34:360		806 KAR 12:094
	401 KAR 35:010	304.12-235	806 KAR 12:092
	401 KAR 35:020		806 KAR 12:094
	401 KAR 35:120	304.12-240	806 KAR 12:131
	401 KAR 35:130	304.14-400	806 KAR 12:094
	401 KAR 35:190	304.14-500-304.14-550	806 KAR 17:066
	401 KAR 36:070	304.17-305	806 KAR 17:066
	401 KAR 37:010	304.17-318	806 KAR 17:066
	401 KAR 37:030	304.17-412	906 KAR 1:080
	401 KAR 37:040	304.18-036	806 KAR 17:066
	401 KAR 37:050	304.18-045	906 KAR 1:080
	401 KAR 37:110	304.18-095	806 KAR 17:066
	401 KAR 38:010	304.18-115	806 KAR 18:040
	401 KAR 38:040	304.20-070	806 KAR 12:094
	401 KAR 38:050	304.20-150-304.20-180	806 KAR 12:094
	401 KAR 38:060	304.29-341	806 KAR 12:092
	401 KAR 38:070	304.32-147	906 KAR 1:080
	401 KAR 38:090	304.32-157	806 KAR 17:066
	401 KAR 38:100	304.32-165	806 KAR 17:066
	401 KAR 38:230	304.32-270	806 KAR 12:092
Chapter 227	815 KAR 10:040		806 KAR 17:066
	815 KAR 35:015	304.32-330	906 KAR 1:080
227.450-227.500	815 KAR 35:030	304.38-193	806 KAR 17:066
243.020	804 KAR 4:110	304.38-196	806 KAR 17:066
243.030	804 KAR 4:015	304.38-200	806 KAR 12:092
	804 KAR 4:110		806 KAR 17:066
243.040	804 KAR 4:015	304.38-225	906 KAR 1:080
	804 KAR 4:110	304.43-130	806 KAR 12:092
243.090	804 KAR 4:110	311.131-311.139	906 KAR 1:080
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 tion; 401 KAR 42:050
 Release response, corrective action; 401 KAR
 42:060
 Waste Management Facilities
 Spent lead-acid batteries; 401 KAR 36:070

WATER

Public Water Supply
 Bottled water; 401 KAR 8:700 & E
 Corrosivity monitoring; 401 KAR 8:350 & E
 Definitions; 401 KAR 8:010 & E
 Disinfection, filtration; 401 KAR 8:150 & E
 Disinfection by-products; 401 KAR 8:500 & E
 Fees; 401 KAR 8:050 & E
 General provisions; 401 KAR 8:020 & E
 Inorganic chemical; 401 KAR 8:250 & E
 Laboratory certification; 401 KAR 8:040 & E
 Lead; 401 KAR 8:300 & E
 Monitoring, microbiological, turbidity; 401
 KAR 8:200 & E
 New or modified facilities; 401 KAR 8:100 & E
 Organic chemicals; 401 KAR 8:400 & E
 Public notification; 401 KAR 8:070 & E
 Radionuclides; 401 KAR 8:550 & E
 Secondary standards; 401 KAR 8:600 & E
 Supplemental fluoridation; 401 KAR 8:650 & E
 Synthetic organic chemicals; 401 KAR 8:440 & E

WATER (cont'd)

Treatment, distribution systems; 401 KAR 8:030
 & E
 Variances, exemptions; 401 KAR 8:060 & E
 Volatile organic chemicals; 401 KAR 8:420 & E
 Sanitary Engineering
 Water well construction; 401 KAR 6:310
 Water well drillers; 401 KAR 6:320 & E

WORKFORCE DEVELOPMENT

Adult and Technical Education
 Adult education; 780 KAR Chapter 9
 Facilities and equipment; 780 KAR Chapter 7
 General administration; 780 KAR Chapter 1
 Instructional programs; 780 KAR Chapter 4
 Management of the Kentucky tech system; 780
 KAR Chapter 2
 Personnel system for certified and equivalent
 employees; 780 KAR Chapter 3
 Unclassified personnel; 780 KAR Chapter 6
 Veteran's approval agency; 780 KAR Chapter 5
 Vocational & teacher education; 780 KAR
 Chapter 8
 Vocational Rehabilitation
 Administration; 781 KAR Chapter 1
 Independent living rehabilitation; 781 KAR
 Chapter 2

WORKPLACE STANDARDS

(See Occupational Safety and Health)

YOUTH CAMPS

(See Health Services)