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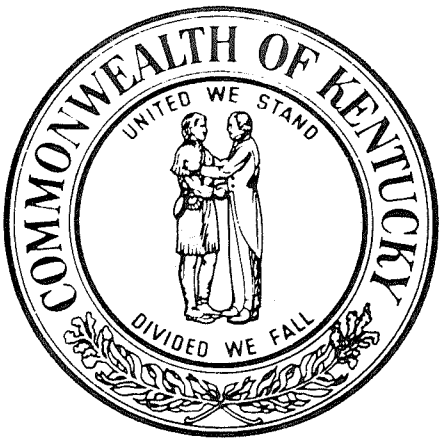




MEETING NOTICE: The next meeting of the Administrative Regulation Review Subcommittee is **tentatively** scheduled on August 5-6, 1991. See **tentative** agenda on pages 253-255 in this Administrative Register.

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 1991 Edition of **KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE.**

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

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

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**ADMINISTRATIVE REGISTER OF KENTUCKY**
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## ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
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**Board for Proprietary Education**

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

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**Medicaid Services**
907 KAR 1:045. Payments for mental health center services.
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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
101 KAR 1:325E

This emergency regulation is necessary to establish twelve month initial probationary periods for certain classifications of employees to be used by the Department of Education beginning July 1, 1991. In accordance with the legislative mandate in KRS 156.016 requiring a comprehensive study of the Department of Education, the Commissioner of Education has determined that this amendment is immediately necessary to bring the initial probationary period to be served by new hires in mid to upper management classifications into parity with the remainder of the reconstituted educational system. Unless this amendment is implemented immediately, the Commissioner of Education's ability to properly evaluate performance in the designated positions will be adversely affected. This emergency regulation shall be replaced by an ordinary administrative regulation which shall be filed with the Regulations Compiler on June 13, 1991.

WALLACE G. WILKINSON, Governor
JAMES M. SHAKE, Chairman

### PERSONNEL BOARD

**101 KAR 1:325E. Probationary periods.**

RELATES TO: KRS 18A.075, 18A.0751, 18A.111
STATUTORY AUTHORITY: KRS Chapter 13A, 18A.0751
EFFECTIVE: June 21, 1991
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 Conservation 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 |
| 2435 | MVE Inspector Trainee | 12 months |
| 2480 | Water Patrol Officer | 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 |
| 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 Equipment 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.

(4) Effective July 1, 1991, the following job classifications in the Department of Education shall require an initial probationary period in excess of six (6) months:

| TITLE CODE | JOB CLASSIFICATION | LENGTH OF INITIAL PROBATIONARY PERIOD |
|---|---|---|
| 5303 | Exceptional Children Consultant I | 12 months |
| 5304 | Exceptional Children Consultant II | 12 months |
| 5305 | Exceptional Children Program Manager I | 12 months |
| 5306 | Exceptional Children Program Manager II | 12 months |
| 5309 | Education Academic Program Consultant I | 12 months |
| 5310 | Education Academic Program Consultant II | 12 months |
| 5311 | Education Academic Program Manager I | 12 months |
| 5312 | Education Academic Program Manager II | 12 months |
| 5313 | Education Administration Program Consultant I | 12 months |
| 5314 | Education Administration Program Consultant II | 12 months |
| 5315 | Education Administration Program Manager I | 12 months |

| | | |
|---|---|---|
| 5316 | Education Administration Program Manager II | 12 months |
| 5321 | Education Facilities Program Consultant | 12 months |
| 5323 | Education Facilities Program Manager | 12 months |
| 5324 | Education Instructional Services Advisor | 12 months |
| 5325 | School Accreditation Evaluator | 12 months |
| 5327 | School Accreditation Evaluation Manager | 12 months |
| 5329 | School Food Services Program Consultant | 12 months |
| 5330 | School Food Services Program Coordinator | 12 months |
| 5331 | School Food Services Program Manager | 12 months |
| 5337 | Education Financial Analyst | 12 months |
| 5341 | Education Health/P.E. Program Consultant I | 12 months |
| 5342 | Education Health/P.E. Program Consultant II | 12 months |
| 5343 | Education Reading Program Consultant I | 12 months |
| 5344 | Education Reading Program Consultant II | 12 months |
| 5345 | Education Social Studies Program Consultant I | 12 months |
| 5346 | Education Social Studies Program Consultant II | 12 months |
| 5347 | Education Science Program Consultant I | 12 months |
| 5348 | Education Science Program Consultant II | 12 months |
| 5349 | Education Language Arts Program Consultant I | 12 months |
| 5350 | Education Language Arts Program Consultant II | 12 months |
| 5351 | Education Math Program Consultant I | 12 months |
| 5352 | Education Math Program Consultant II | 12 months |
| 5353 | Education Primary Program Consultant I | 12 months |
| 5354 | Education Primary Program Consultant II | 12 months |
| 5355 | Education Vocational Program Consultant I | 12 months |
| 5356 | Education Vocational Program Consultant II | 12 months |

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.

JAMES M. SHAKE, Chairman
APPROVED BY AGENCY: June 7, 1991
FILED WITH LRC: June 21, 1991 at 1:20 p.m.

STATEMENT OF EMERGENCY
500 KAR 8:010E

The DUI legislation enacted by the General Assembly in the 1991 Extraordinary Session will take effect on July 1, 1991. That legislation requires any breath test given to be valid must be administered by peace officer holding a certificate as an operator of a breath analysis instrument, issued by the Secretary of the Justice Cabinet. Currently only the Department of Criminal Justice Training provides the training necessary for such certification. Due to the necessity to have sufficient numbers of certified operators prior to July 1, 1991, this regulation also permitting the Kentucky State Police to provide such training to its own personnel is necessary. This regulation will be replaced by an ordinary administrative regulation which was filed with the Regulations Compiler on June 20, 1991.

WALLACE G. WILKINSON, Governor
RAY CORNS, Secretary of Justice

**JUSTICE CABINET**
**Office of the Secretary**

**500 KAR 8:010E. Certification of operators.**

RELATES TO: KRS 189A.103(3)(6) [15A.070, 186.565]
STATUTORY AUTHORITY: KRS 15A.160
EFFECTIVE: July 1, 1991
NECESSITY AND FUNCTION: [KRS 186.565 provides that the state shall supply each county with one (1) breath analysis and simulating unit. KRS 15A.070 authorizes the Secretary of Justice to establish, supervise, and coordinate training programs for law enforcement personnel.] This regulation establishes the certification of breath analysis operators as required by KRS 189A.103(3)(6).

Section 1. (1)(a) To become certified to operate a breath alcohol analysis instrument, the person shall successfully complete the training program of the Department of Criminal Justice Training or the Department of State Police.

(b) The Department of State Police shall not provide training on operation of breath alcohol analysis instruments to any law enforcement

officers other than its own employees.

(2) Successful completion shall mean receiving a passing score on a standardized written examination as provided by the department providing the training and the satisfactory completion of a standardized practical proficiency examination administered by a certified instructor or an intoxilyzer service technician employed by the department providing the training.

(3) The examinations shall be included in a minimum of forty (40) hours of instruction which shall also include the demonstration of physiological effects of alcohol in the human body, general instrumentation theory, and operation of approved instruments which measure alcohol concentration.

Section 2. (1) Operator certification shall be valid for a period of two (2) years from the date of issuance.

(2) Certification shall be terminated if it is not renewed with a two (2) year period or the operator ceases to be employed by a criminal justice agency.

(3) An operator whose certification has been revoked pursuant to this section shall be eligible for recertification pursuant to Section 4 of this regulation for six (6) months following revocation.

Section 3. The employer of a certified operator shall notify the Department of Criminal Justice Training which issued the certificate in writing within two (2) weeks of the change in the event of change of employment to a different criminal justice agency or termination of employment with a criminal justice agency.

Section 4. To obtain recertification, a certified operator shall review standards and procedures for a minimum of four (4) hours of recertification instruction.

Section 5. (1) The following are grounds for revocation of certification to operate a breath analysis instrument:

(a) Misuse of the instrument by the operator in violation of law;

(b) Refusal or failure to perform procedures in an acceptable manner;

(c) Failure to testify at any judicial proceeding under KRS Chapter 189A [an administrative revocation hearing held pursuant to KRS 186.570] without just cause; and

(d) Dismissal of an operator from his employment with a criminal justice agency.

(2) Revocation will be held only following a hearing conducted by the Commissioner of the Department of Criminal Justice Training which issued the certificate, or his designee, following written notice to the certified operator of the basis for revocation.

Section 6. A person who has received training from the Department of Criminal Justice Training, the Department of State Police, or the Lexington-Fayette Urban County Government Division of Police in breath analysis instrument operation before January 1, 1991, shall be exempt from the requirements of Section 1 of this regulation. Each person who has not received this training more recently than January 1, 1989, shall comply with Section 4 of this regulation.

RAY CORNS, Secretary
APPROVED BY AGENCY: June 19, 1991
FILED WITH LRC: July 1, 1991 at 4 p.m.

STATEMENT OF EMERGENCY
500 KAR 8:020E

The DUI legislation enacted by the General Assembly in the 1991 Extraordinary Session will take effect on July 1, 1991. That legislation permits multiple tests of breath, blood, or urine to determine alcohol concentration. Before these tests are valid, KRS 189A.103(3)(a) mandates they must be performed pursuant to the regulations of the Justice Cabinet. In order to avoid a lapse in enforcement of KRS Chapter 189A, it is imperative these regulations take effect immediately. This regulation will be replaced by an ordinary administrative regulation which was filed with the Regulations Compiler on June 20, 1991.

WALLACE G. WILKINSON, Governor
RAY CORNS, Secretary

**JUSTICE CABINET**
**Office of the Secretary**

**500 KAR 8:020E. Breath alcohol analysis instruments.**

RELATES TO: KRS 189A.300
STATUTORY AUTHORITY: KRS 15A.160, 189A.103(3)(a)
EFFECTIVE: July 1, 1991
NECESSITY AND FUNCTION: This regulation establishes procedures for providing breath alcohol analysis instruments as mandated by KRS 189A.300.

Section 1. (1) The Forensic Laboratory Section, Department of State Police, shall be responsible for standards relating to the purchase of breath alcohol analysis instruments and related units.

(2) All breath alcohol analysis instruments and related units owned by the state used pursuant to KRS Chapter 189A shall be assigned to the Department of State Police, Forensic Laboratories Section.

(3) The Forensic Laboratory Section, Department of State Police, shall establish standards and procedures for the maintenance and calibration of breath and blood alcohol analysis instruments and related units used pursuant to KRS Chapter 189A.

(4) All breath alcohol analysis instruments used pursuant to KRS Chapter 189A shall be listed in the "Qualified Products List of Evidential Breath Alcohol Measuring Devices" prepared by the National Highway Traffic Safety Administration of the United States Department of Transportation.

(5) Any breath alcohol analysis instruments and related units used pursuant to KRS Chapter 189A shall meet the minimum qualifications for maintenance and calibration as set forth by the Forensic Laboratory Section, Department of State Police.

Section 2. (1) An instrument must be accurate within plus or minus 0.005 alcohol concentration units reading to be certified. To determine accuracy of instruments, a certified technician

shall perform analyses using a certified reference sample at regular intervals.
(2) All breath alcohol analysis instruments shall be examined by a certified technician prior to being placed into operation and after repairs of any malfunctions.

RAY CORNS, Secretary
APPROVED BY AGENCY: June 19, 1991
FILED WITH LRC: July 1, 1991 at 4 p.m.

STATEMENT OF EMERGENCY
500 KAR 8:020E

The DUI legislation enacted by the General Assembly in the 1991 Extraordinary Session will take effect on July 1, 1991. That legislation permits multiple tests of breath, blood, or urine to determine alcohol concentration. Before these tests are valid, KRS 189A.103(3)(a) mandates they must be performed pursuant to the regulations of the Justice Cabinet. In order to avoid a lapse in enforcement of KRS Chapter 189A, it is imperative these regulations take effect immediately. This regulation will be replaced by an ordinary administrative regulation which was filed with the Regulations Compiler on June 20, 1991.

WALLACE G. WILKINSON, Governor
RAY CORNS, Secretary

**JUSTICE CABINET**
**Office of the Secretary**

**500 KAR 8:030E. Administration of chemical analysis tests.**

RELATES TO: KRS 189A.103
STATUTORY AUTHORITY: KRS 15A.160, 189A.103
EFFECTIVE: July 1, 1991
NECESSITY AND FUNCTION: This regulation establishes procedures for administering chemical analysis tests pursuant to KRS 189A.103.

Section 1. The following procedures shall apply to breath alcohol tests:
(1) A certified operator shall have continuous control of the person by present sense perception for at least twenty (20) minutes prior to the breath alcohol analysis. During that period the subject shall not have oral or nasal intake of substances which will affect the test.
(2) A breath alcohol concentration test shall consist of the following steps in this sequence:
(a) Ambient air analysis;
(b) Alcohol simulator analysis;
(c) Ambient air analysis;
(d) Subject breath sample analysis; and
(e) Ambient air analysis.
(3) Each ambient air analysis performed as part of the breath alcohol testing sequence shall be less than 0.010 alcohol concentration units.

Section 2. The following procedures shall apply regarding chemical tests of blood for alcohol or other substances:
(1) The blood sample shall be collected in the presence of the arresting officer or a representative of the arresting officer's agency who can authenticate the sample.
(2) The blood sample shall be collected by a person authorized to do so by KRS 189A.103(6).
(3) Collection of the blood sample shall be by the following method:
(a) No alcohol or other volatile organic substance shall be used to clean the skin where a sample is to be collected.
(b) All samples shall be collected with needles and syringes or vacuum-type collecting containers approved by the licensing agency of the collector.
(c) Blood collecting containers shall not contain an anticoagulant or preservative which will interfere with the intended analytical method.
(d) Individual containers shall be appropriate and securely labeled to provide the following information:
1. Name of person giving sample;
2. Date and time of collection;
3. Collector's name and agency identification;
4. Requesting officer's name and agency identification;
5. Complete uniform citation number; and
6. Officer present during collection of sample.
(4) The blood sample shall be delivered to a laboratory for analysis.

Section 3. The following procedures shall apply regarding chemical analysis of urine for alcohol or other substances:
(1) Urine samples shall be collected at two (2) separate times in the presence of the arresting officer, or another person at the direction of the officer, who can authenticate the samples. The witnessing person shall be of the same sex as the person providing the sample.
(2) The subject person shall empty his bladder and this first sample shall be tested for substances of abuse other than alcohol.
(3) Thirty (30) minutes following the initial emptying of the bladder, the subject person shall be requested to again empty his bladder and this second sample shall be tested for alcohol and may be tested for substances of abuse other than alcohol.
(4) Samples shall be collected in clean, dry containers. No preservatives shall be used. Each container shall be securely sealed.
(5) Each container shall be appropriately and securely labeled to provide the following information:
(a) Name of person giving the sample;
(b) Date and time of collection;
(c) Collecting attendant's name and agency identification;
(d) Complete uniform citation number; and
(e) Requesting officer's name and agency identification.
(6) The urine samples shall be delivered to the laboratory for analysis.

RAY CORNS, Secretary
APPROVED BY AGENCY: June 19, 1991
FILED WITH LRC: July 1, 1991 at 4 p.m.

STATEMENT OF EMERGENCY
702 KAR 1:001E

This emergency regulation is necessary in order to complete facility plans for approximately 170 school districts implementing changes due to the passage of HB 940. These facility plans will be the basis of need for School Facility Construction Commission funding

in 1992. Also included are the formulas for calculating the needs statement which is to be completed by October 15, 1991, in accord with KRS 157.620. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on July 8, 1991.

WALLACE G. WILKINSON, Governor
JOSEPH W. KELLY, Chairman

**EDUCATION AND HUMANITIES CABINET**
**Department of Education**
**Office of School Administration and Finance**

**702 KAR 1:001E. School facilities manual.**

RELATES TO: KRS 157.420, 157.622
STATUTORY AUTHORITY: KRS 156.070, 157.420
EFFECTIVE: July 11, 1991
NECESSITY AND FUNCTION: KRS 157.420(3) requires that the capital outlay allotment from the public school fund be used by school districts for capital outlay projects approved by the chief state school officer in accordance with requirements of law and based on a survey made in accordance with regulations of the State Board for Elementary and Secondary Education; and KRS 157.622 sets forth certain requirements for school facilities plans relative to participation in funding by the School Facilities Construction Commission. This regulation provides for the development and adoption of a written plan describing construction and use of school facilities to guide school administrators in meeting the needs of the district, and it repeals appropriate regulations.

Section 1. The chief state school officer shall conduct or cause to be conducted a facilities survey of each school district every four (4) years, except for requested and justified amendments approved by the state board, and shall deliver to the local board of education the state board-approved report which contains an assessment of existing conditions and a facilities plan which designates an organizational pattern, classification of school centers, and a priority schedule for construction and renovation needs.

Section 2. Each school district's facilities plan, and requested amendments thereto, shall be developed in accordance with the standards and hearing procedures contained in the "School Facilities Manual", July 1991, which is hereby adopted and incorporated by reference. Copies of this document may be inspected, copied, and obtained from the Division of Facilities Management, Department of Education, 15th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

Section 3. The facilities plan shall remain in effect until any changes have been approved by the State Board for Elementary and Secondary Education.

Section 4. The adopted facilities plan shall become the facilities plan of the local school district and shall be implemented to the extent that the financial ability of the district shall permit as determined by the chief state school officer and the School Facilities Construction Commission. The scope of any construction project recommended in the facilities plan shall remain in effect until any changes have been approved by the state board.

Section 5. 702 KAR 1:010, Facilities surveys and plans; 702 KAR 4:110, Program space; space allocation; 702 KAR 4:120, Square foot costs and maximum budget; and 702 KAR 4:130, Increase in financial budget are hereby repealed.

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).

THOMAS C. BOYSEN, Commissioner

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: July 5, 1991
FILED WITH LRC: July 11, 1991 at 10 a.m.

STATEMENT OF EMERGENCY
704 KAR 3:006E

KRS 158.650 to 158.710 requires annual performance reports and State Board for Elementary and Secondary Education – adopted standards of student, program, service, and operational performance for state assistance and intervention. Such is an interim method of motivating and assessing educational improvement and becomes null and void on June 30, 1996. Since the implementation of the Kentucky Education Reform of 1990, extensive work has been done to develop standards to replace those currently found in 704 KAR 3:005 and found at least somewhat lacking in previous court action. This emergency regulation is necessary in order to get new standards and performance report requirements in place with sufficient notice to local school districts to be applied to the 1991-92 school year. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on July 8, 1991.

WALLACE G. WILKINSON, Governor
JOSEPH W. KELLY, Chairman

**EDUCATION AND HUMANITIES CABINET**
**Department of Education**
**Office of Instruction**

**704 KAR 3:006E. Annual performance reports and standards of student, program, service, and operational performance.**

RELATES TO: KRS 158.650 to 158.710
STATUTORY AUTHORITY: KRS 158.650, 158.685
EFFECTIVE: July 11, 1991
NECESSITY AND FUNCTION: KRS 158.650 to 158.710 mandate a program of annual performance reports, educational improvement plans, performance standards, and assistance and various sanctions by the Department of Education pursuant to regulations of the State Board for Elementary and Secondary Education. This regulation implements the state board duty to promulgate administrative regulations.

Section 1. (1) The annual performance report which KRS 158.650 requires each local school district to publish shall be submitted to the State Board for Elementary and Secondary Education by September 15 of each year and shall be published in the newspaper with the largest circulation in the county by October 1. The purpose of the October 1 publishing requirement is to inform the public in each school district regarding the operation and performance of each school district.

(2) The annual performance report shall include local district data for the following factors:

(a) Student data. Results of the biennial state-mandated testing program; results of Scholastic Aptitude Test and American College Board Test; dropout rate; retention rate; percentage of average daily attendance; number and percentage of students entering the workforce, military service, going to college or other postsecondary training; number and percentage of students with disabilities receiving specially designed instruction and related services according to individual education programs; and percentage of enrollment classified as economically deprived shall be reported and published.

(b) Staff data. Percentage of attendance by professional staff; student/teacher ratio; teacher/administrator ratio; salary data by rank; the number of teachers teaching out of their field of specialty and the number of classes taught by teachers out of their field of specialty; and average cost per professional staff for staff development activities shall be reported and published.

(c) Management data. Transportation cost per pupil transported; current expenses per pupil in average daily attendance; cost per pupil for instruction; cost per pupil for administration; percentage of district revenue received from local, state and federal sources; local revenue per child in average daily attendance; assessed property value per child in average daily attendance; and district goals for the succeeding year shall be reported and published.

Section 2. Each local district board of education shall achieve and maintain minimum performance standards established by the State Board for Elementary and Secondary Education in student, program, service and operational performance, as follows:

(1) Program and service performance standards. A local school district shall have a deficiency in program and service performance when one (1) or more of the following standards are not met:

(a) The local school district and each school within the district shall be in compliance with all applicable federal and state statutes and regulations and with federal, state, and local ordinances pertaining to the health and safety of pupils, faculty, and staff of the school district.

(b) Each local district board of education shall adopt and implement, by September 1, 1991, a continuous student assessment program designed to monitor student progress toward attaining the valued outcomes as defined by the state board.

(c) The local school district and schools within that district providing vocational education programs shall meet the requirements as established in 705 KAR 4:230, general program standards for secondary vocational education programs, and shall meet any additional requirements imposed by federal or state law.

(d) The local school district and schools within that district shall have special education programs and related services for children and youth who have educational disabilities. These programs and services shall meet the requirements of 707 KAR Chapter 1 programs for exceptional children, and shall meet any additional requirements imposed by federal or state law.

(e) The local school district and each school within the district shall, by July 1, 1992, have policies and procedures to assist in the reduction of physical and mental health barriers to learning. The policies and procedures shall provide for:

1. Systematic efforts to define and identify physical and mental health barriers to learning which may impede the successful attainment of the goals and capacities specified in KRS 158.645 and 158.6451;

2. Systematic screening of students to identify physical and mental health barriers impacting the learning of individual students;

3. Referral of students for medical, educational, social, mental health, and family support services, including prevention, evaluation and intervention, to in-school and district programs and public and nonpublic agencies;

4. Coordination with existing community, regional, and state resources for provision of services to students; and

5. Development of a written plan to assist in reducing physical and mental health barriers to learning which includes:

a. A systematic needs assessment process to provide current data for long-term and annual planning, including data on the service needs of the district and its schools' student population;

b. Strategies and activities designed to reduce physical and mental health barriers to learning; and

c. Evaluation of the implementation of the plan and effectiveness of the activities and strategies for reducing the identified physical and mental health barriers to learning.

(2) Student performance standards. The determination of district performance and individual school performance within the district shall be based on data collected through an individual student identification system. A local school district shall have a deficiency in student performance when one (1) or more of the following standards are not met, after any applicable percentage figures are rounded to the nearest one-tenth (.1) of one (1) percent:

(a) Academic performance. Academic performance shall be based on student performance, and standards shall be established by administrative regulation, based on the Council on School Performance Standards' definition of the statutory goals in measurable terms under KRS 158.6451, once that task is completed.

(b) Attendance standard. The percentage of attendance shall be calculated by dividing the aggregate days attendance by the aggregate days membership. The local school district shall achieve an annual attendance rate of ninety-four (94) percent or above.

(c) Dropout standard. The dropout rate shall be defined as the annual percentage of students leaving school prior to graduation in grades

7-12 and include withdrawals in attendance accounting codes W6 (child turns sixteen (16) years of age and drops out), W10 (pupil discharged), W11 (drop out on account of marriage), and W14 (drop out on account of birth of child). The local school district shall achieve an annual dropout percentage equal to or less than five (5) percent.

(d) Completion rate. The percentage of first grade students completing the 12th grade, with this standard to be established by administrative regulation after the implementation of an individual student identification system.

(e) Retention rate. The percentage of the schools' pupils who are retained shall decrease each year until the percentage retained in the district does not exceed four (4) percent.

(f) Transition to work, postsecondary education and military. The annual percentage of the district's students completing a program of studies who enter the workforce, postsecondary training, or military service shall equal seventy-five and four-tenths (75.4) percent or above.

(3) Operational performance standards. A local school district shall have a deficiency in operational performance when one (1) or more of the following standards are not met:

(a)1. The total cost of maintenance and operation of a school district, less the cost of salaries, shall not have a deviation of more than one and one-tenth (1.1) standard deviation above the average per pupil per year costs as compared to the statewide average for comparably sized school districts.

2. Line item codes, excluding salaries that deviate significantly (more than one and one-tenth (1.1)) above state averages for comparably sized school districts shall be reason for the state department to provide consultation to assist the district in eliminating the line item deviation.

3. The following average daily attendance ranges shall constitute the size groups within which county and independent districts are placed for comparative deviation analysis:

| County Districts | Independent Districts |
|---|---|
| 10,000 and up | 16,000 and up |
| 5,000 to 9,999 | 900 to 1,599 |
| 3,000 to 4,999 | 500 to 899 |
| 2,200 to 2,299 | 0 to 499 |
| 1,500 to 2,199 | |
| 0 to 1,499 | |

4. Approval for major deviations (more than one and one-tenth (1.1) standard deviation) due to renovations, improvements, and additional programs with long-range planning requirements may be authorized annually by the Commissioner of Education.

(b)1. The adjusted total cost of transportation of a school district, as defined in 702 KAR 5:020 shall not have a deviation of more than one and one-tenth (1.1) standard deviations above the per pupil per year cost of transported pupils as compared with the statewide average for comparable density school districts.

2. Line item codes, excluding salaries that deviate significantly (more than one and one-tenth (1.1) standard deviations) in a district above the applicable state average shall be cause to be provided Department of Education consultation to promote efficiency.

3. The buses in operation in a school district, less the spare units, shall have a load capacity of students that shall not vary more than one and one-tenth (1.1) standard deviations as compared with statewide comparable density averages. Approval shall be authorized by the Commissioner of Education for contract buses prior to the beginning of each school year.

4. The following transported pupil density per square mile of area served shall constitute the size groups within which county and independent districts are placed for comparative deviation analysis:

| County Districts | Independent Districts |
|---|---|
| 0 - 4.0 | 0 - 15.0 |
| 4.1 - 5.0 | 15.1 - 30.0 |
| 5.1 - 6.0 | 30.1 - 50.0 |
| 6.1 - 7.0 | 50.1 - 70.0 |
| 7.1 - 9.0 | 70.1 -100.0 |
| 9.1 - 12.0 | 100.0 - 150.0 |
| 12.1 - 16.0 | 150.1 - 200.0 |
| 16.1 - 40.0 | All over 200 |
| 40.1 - 75.0 | |
| All over 75 | |

5. Approval for major deviations (more than one and one-tenth (1.1) standard deviations), due to major single year improvements of equipment or vehicles, or implementation of new, expanded or required programs, may be authorized annually by the Commissioner of Education.

Section 3. (1) The Kentucky Department of Education shall identify and present to the state board for formal declaration those districts failing to meet minimum student, program, service or operational standards as defined in Section 2 of this regulation.

(2) The performance of districts failing to meet minimum standards and such other information as may be required by this regulation shall be reviewed by the Educational Improvement Advisory Committee quarterly.

Section 4. (1) The State Board for Elementary and Secondary Education shall declare a school district to be educationally deficient when, in any school year, the district fails to meet any of the minimum student, program, service, or operational standards as defined in Section 2 of this regulation.

(2) Each local school district declared educationally deficient by the State Board for Elementary and Secondary Education shall submit a district improvement plan for approval to the state board, within thirty (30) working days from the date of declaration. The district improvement plan as adopted by the local board shall address each deficiency area in accordance with KRS 158.650, 158.685, and 158.710. The initial plan shall address a period of not less than twelve (12) months.

Section 5. The Commissioner of Education shall determine the extent of and provide appropriate consultation and assistance to any school district which has been declared educationally deficient by the State Board for Elementary and Secondary Education. These services shall be provided in accordance with KRS 158.685(3) and shall be included in the contract of services required in KRS 158.685(3).

Section 6. Failure by an educationally deficient school district to meet the process goals, interim performance goals, or timelines set in the district improvement plan shall constitute grounds for the Commissioner of Education to initiate action in accordance with KRS 158.685(4).

Section 7. 704 KAR 3:005, Educational Improvement Act, is hereby repealed.

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: July 3, 1991
FILED WITH LRC: July 11, 1991 at 10 a.m.

STATEMENT OF EMERGENCY
704 KAR 20:580E

This emergency regulation is necessary to enable the Education Professional Standards Board to hold revocation hearings in late July and early August. The board's intent is to ensure that the hearings, and any revocation actions taken by the board as a result of the hearings, occur prior to the opening of schools in Kentucky in August 1991 so that persons whose certificates are revoked will not be in the classroom at the start of the school year. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on March 21, 1991.

WALLACE G. WILKINSON, Governor
JANICE WEAVER, Chairperson

**EDUCATION PROFESSIONAL STANDARDS BOARD**

**704 KAR 20:580E. Certification revocation procedures.**

RELATES TO: KRS 161.120, 335B.010 to 335B.070
STATUTORY AUTHORITY: KRS 161.028, 161.120
EFFECTIVE: June 17, 1991
NECESSITY AND FUNCTION: KRS 161.120 provides that any Kentucky certification for school personnel may be revoked or suspended by the Education Professional Standards Board. This regulation identifies the conditions for initiating revocation proceedings and the procedures to be followed, including the rules governing revocation hearings.

Section 1. (1) **In addition to those grounds provided in KRS 161.120,** action to revoke any Kentucky certificate may be initiated by the Education Professional Standards Board upon receiving one (1) or more of the following:

[(a) Report from district school superintendent, as required in KRS 161.120, on a certified school employee whose contract is terminated or not renewed for grounds set forth in KRS 161.120(1); who resigns from, or otherwise leaves, a position under threat of contract termination, or nonrenewal for grounds set forth in KRS 161.120(1); who is convicted in a criminal prosecution; or who is otherwise known to have engaged in such actions or conduct as might reasonably be expected to warrant consideration for certificate revocation. The duty to report shall exist without regard to any disciplinary action, or lack thereof, by the superintendent, and the required report shall be submitted within thirty (30) days of the event giving rise to the duty to report.]

**(a)** (b)] Report of criminal prosecution for persons who are not employed in a professional school position, but who hold a Kentucky certificate.

**(b)** (c)] Report of certificate revocation or suspension from another state.

**(c)** (d)] Report received from a school superintendent resulting from an unsatisfactory criminal records check as required by KRS 160.380.

**(d)** (e)] Report from the chief state school officer or local board of education of conduct of the superintendent which might reasonably be construed as grounds for revocation as set forth in KRS 161.120(1).

(2) Failure to report by the superintendent as outlined in **KRS 161.120** [subsection (1)(a) and (d) of this section] may constitute grounds for revocation of the superintendent's certificate.

Section 2. (1) Upon receiving a report as identified in Section 1 of this regulation, the Executive Secretary of the Education Professional Standards Board shall, on behalf of the board, secure available documentation and information relating to the cause for certificate revocation. [In the case of a certified school employee, the Education Professional Standards Board shall provide a copy of the report to the certified employee and inform him of the right to file a written rebuttal with the executive secretary within thirty (30) days of receipt of notice.]

(2) The Education Professional Standards Board, or its designee, shall make the determination that the report warrants or does not warrant a hearing for certificate revocation. In making this determination, the board or its designee, shall take into account the conditions outlined in Section 3 of this regulation.

(3) If the Education Professional Standards Board, or its designee, makes the determination that a hearing is not warranted based on reports identified in Section 1(1)(a) and (d), the certified employee shall be informed of the decision not to initiate revocation proceedings.

(4)**(a)** Upon determination to initiate revocation proceedings the Education Professional Standards Board, through its designee, shall inform the certificate holder by certified mail of the decision to initiate proceedings and **by informing him in writing of the specific detailed** [the] charges against him and set a time and date for a hearing. [The hearing shall take place no less than twenty (20) days nor more than forty-five (45) days after the certificate holder receives the statement of charges.]

**(b) A continuance requested by the certificated employee may be granted for good cause shown, including, but not limited to, pending criminal charges making it inadvisable for the employee to testify at any administrative hearing, and late entry of an attorney into the case on behalf of the employee. Objections to a continuance request by the school district involved shall be considered on a case-by-case basis.**

(5) The hearing [may be public or private at the discretion of the certificate holder, who may be represented by counsel, and] shall be

conducted by a quorum of the Education Professional Standards Board.

[(6) Upon completion of the hearing, the Education Professional Standards Board may by a majority vote render its decision or may defer its action for no more than five (5) days. A certificate may be revoked for a specific minimum period or for an indefinite period.]

[(7) If the Education Professional Standards Board takes action to revoke, the certificate holder shall be notified by certified mail of the revocation action, the duration of the revocation, and procedure to apply for reissuance of the certificate as provided in KRS 161.120(1).]

(6) [(8)] All Kentucky school superintendents, state directors of teacher education and certification, and the NASDTEC-CAA Clearinghouse operated by the National Association of State Directors of Teacher Education and Certification shall be notified of the certificate revocation action. Information of certificate revocation shall be entered into the teacher certification record of the certificate holder including the computer data bank maintained by the Division of Teacher Education and Certification.

Section 3. Revocation proceedings shall be automatically initiated on receipt of a report on a certificate holder under the following conditions:

(1) Conviction of a felony.

(2) Conviction on any charge involving sexual misconduct.

(3) Conviction on any charge involving child abuse.

(4) Conviction on any misdemeanor where a student is involved.

(5) Providing false information on a certificate application **which affects the eligibility of the applicant for a Kentucky certificate** and/or forged transcripts of credits.

(6) Dismissal on grounds of willful neglect of duty, misconduct in office, or immorality.

(7) Revocation or denial of a certificate by another state for reasons and through procedures that are the same as, or substantially equivalent to, those permitting similar action in Kentucky.

(8) Admission of criminal conduct, such as that exemplified in plea bargaining. **For purposes of this subsection, criminal conduct shall not mean actions in the nature of minor traffic violations, alcohol related misdemeanor convictions where no student or school related activity is involved or other conduct of similar nature.**

Section 4. **When the board has not been able to notify a certificate holder of a scheduled hearing** [In all cases where the Education Professional Standards Board is unable, after reasonable diligence, to notify a certificate holder of a scheduled hearing on pending charges, the hearing shall be continued generally until the individual can be notified or presents himself for hearing.] such charges shall not be dropped in the interim, and the fact of pending revocation charges shall be appropriately noted in the individual's certification record and shall be communicated to all Kentucky school superintendents and to all state directors of teacher education and certification.

Section 5. [(1) Any individual whose certificate is revoked may apply for reissuance of the Kentucky certificate when satisfactory evidence can be furnished of good moral character, mental and physical health, and such other evidence as the Education Professional Standards Board may deem necessary to establish the applicant's fitness for reissuance. When the board's order of revocation sets forth a specific minimum period of revocation, an individual may not apply for reissuance prior to the end of the minimum revocation period.

(2)] Applicants for reissuance of a revoked certificate must, in addition **to meeting the requirement of KRS 161.120(5)**, satisfy all current educational requirements for the certificate.

Section 6. Rules for Hearings. (1) The Education Professional Standards Board delegates to its executive secretary the authority to grant or deny motions to postpone, and similar prehearing motions.

(2) Except in extraordinary circumstances, the executive secretary shall not rule on prehearing motions to dismiss and similar motions which can be deferred until the time of the hearing.

(3) [The presence of witnesses may be required upon subpoenas issued by the chief state school officer at the request of the Chairman of the Education Professional Standards Board or the certified employee. Each witness shall be required to take an oath or affirmation prior to testimony.] Witnesses appearing pursuant to **KRS 161.120(3)(b)** [subpoena] shall receive fees and mileage as prescribed by law for witnesses in civil action.

(4) Discovery.

(a) On petition of any party, the Executive Secretary of the Educational Professional Standards Board may order that the testimony of any material witness may be taken by deposition in the manner prescribed by law for depositions and civil actions.

(b) Depositions may also be taken by the use of audio or audio-visual recordings. The petition shall set forth the name and address of the witness whose testimony is desired, a showing of the materiality of the testimony of the witness, and the request for an order that the testimony of such witness be taken before an officer named in the petition for that purpose. If the witness resides in this state and is unwilling to appear, the chief state school officer may issue a subpoena requiring the appearance of the witness.

(c) The certificate holder or the Education Professional Standards Board may request that the other party produce for inspection or provide copies of any designated documents or any tangible things which are relevant to the proceeding and are not otherwise exempt from disclosure. A party may charge a fee to reimburse for the actual cost of producing or copying documents.

(5) Evidence.

(a) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, but [erroneous] rulings **constituting "harmless error" in the admission of** [on] evidence shall not preclude Education Professional Standards Board action on the record unless

shown to have substantially prejudiced the rights of a party. All other evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs shall be admissible. Objections to evidentiary offers may be made and shall be noted in the record. Any part of the evidence **which is otherwise admissible** may be received in written form.

(b) All evidence shall be offered and made a part of the record in the case, except for matters stipulated to and except as provided in subsection (d) of this section. No other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. The burden of presenting evidence to support **the revocation of a certificate** [a fact or position] rests on the **party or agency attempting to revoke the certificate** [opponent fact or position].

(c) The certificate holder and the **Education Professional Standards Board, or the officer prosecuting the action,** [other party] shall have the right of cross-examination of witnesses who testify and shall have the right to submit rebuttal evidence.

(d) The Education Professional Standards Board may take notice of judicially cognizable facts, and the Education Professional Standards Board may take official notice of general, technical, or scientific facts. **Members of** the Education Professional Standards Board may utilize **their** [its] experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to them.

(e) The executive secretary shall have discretion to require the parties to submit prior to the hearing date documents which may be introduced as evidence, names and addresses of witnesses, and other information to facilitate the hearing. The Education Professional Standards Board shall have discretion to require the parties to submit proposed findings of fact and conclusions of law.

Section 7. 704 KAR 20:450 is hereby repealed.

JANICE WEAVER, Chairman
APPROVED BY AGENCY: March 18, 1991
FILED WITH LRC: June 17, 1991 at 9 a.m.

STATEMENT OF EMERGENCY
903 KAR 5:270E

Under KRS 341.380 the administrative body is required to implement this regulation in order to have sufficient authority for the declaring of a maximum weekly benefit rate. Therefore, in order to properly establish a maximum weekly unemployment insurance rate for the year beginning July 1, 1991, the Cabinet for Human Resources needs to implement this emergency regulation. An ordinary administrative regulation will not suffice because the correct weekly benefit amount would not be declared in a timely manner. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS 13A. The ordinary administrative regulation will be filed with the Regulations Compiler prior to June 15, 1991.

WALLACE G. WILKINSON, Governor
HARRY J. COWHERD, M.D., Secretary

**CABINET FOR HUMAN RESOURCES**
**Department for Employment Services**
**Division of Unemployment Insurance**

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

RELATES TO: KRS 341.380
STATUTORY AUTHORITY: KRS 194.050, 341.380
EFFECTIVE: June 17, 1991
NECESSITY AND FUNCTION: KRS 341.380 requires the Secretary for Human Resources to determine the average weekly wage for insured employment. Fifty-five (55) percent of this amount adjusted to the nearest multiple of one (1) dollar constitutes the maximum weekly unemployment insurance benefit rate for those workers whose benefit year commences on or after July 1, 1991 [1990], and prior to July 1, 1992 [1991]. This regulation applies the mathematical computation required by statute and contains the determination of the maximum weekly benefit rate.

Section 1. The secretary finds the following to exist:

(1) The "total monthly employment" reported by subject employers for the calendar year of 1990 [1989] was 16,400,301 [15,976,767];

(2) The "average monthly employment," obtained by dividing the total monthly employment by twelve (12), was 1,366,692 [1,331,397];

(3) The "total wages" reported by subject employers for the calendar year of 1990 [1989] was $27,005,770,439 [25,064,324,258];

(4) The "average weekly wage" for the calendar year of 1990 [1989] for insured employment, obtained by dividing the average monthly employment into total wages for such year and dividing by fifty-two (52), was $380 [362.03];

(5) Fifty-five (55) percent of the average weekly wage of $380 [362.03] for the calendar year of 1990 [1989] was $209 [199.12].

Section 2. On the basis of the above findings, and in accordance with KRS 341.380(3), the maximum weekly benefit rate for those workers whose benefit year commences on or after the first day of July, 1991 [1990], and prior to the first day of July, 1992 [1991], is determined to be $199.

DARVIN ALLEN, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: May 28, 1991
FILED WITH LRC: June 17, 1991 at 9 a.m.

STATEMENT OF EMERGENCY
907 KAR 1:010E

This emergency administrative regulation is being amended to increase reimbursement for services provided by physicians on or after July 1, 1991 as follows: for outpatient services the fixed upper limits are increased to 100 percent of the median billed charge using 1989 calendar year billed charges; for inpatient services the fixed upper limits are increased to seventy-five (75) percent of the median billed charge using 1989 calendar year billed charges; and for specified obstetrical services the fixed fee is increased to $900. The regulation is also being amended to reflect the correct inpatient

delivery-related anesthesia services titles and to bring the regulation into compliance with KRS Chapter 13A drafting requirements. This action must be taken on an emergency basis to implement the changes in a timely manner and ensure adequate reimbursement for physicians. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler on or about July 1, 1991.

WALLACE G. WILKINSON, Governor
HARRY J. COWHERD, M.D., Secretary

**CABINET FOR HUMAN RESOURCES**
**Department for Medicaid Services**

**907 KAR 1:010E. Payment for physicians' services.**

RELATES TO: KRS 205.550[, 205.560]
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.50, 42 CFR 447 Subpart B, 42 USC 1396a-d
EFFECTIVE: July 1, 1991
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer a 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. [under Title XIX of the Social Security Act. KRS 205.550 and 205.560 require that the secretary prescribe the methods for determining costs for vendor payments for medical care services.] This regulation sets forth the method for establishing payments for physician services.

Section 1. Definition. For purposes of determination of payment, "usual and customary charge refers to the uniform amount the individual physician charges in the majority of cases for a specific medical procedure or service.

Section 2. Reimbursement. Payment for covered services rendered to eligible medical assistance recipients on or after July 1, 1991 [1990] shall be based on the physicians' usual and customary actual billed charges up to the fixed upper limit per procedure established by the cabinet at 100 [sixty-five (65)] percent of the median billed charge for outpatient services and seventy-five (75) [fifty (50)] percent of the median billed charge for inpatient services using 1989 calendar year billed charges. If there is no median available for a procedure, or the cabinet determines that available data relating to the median for a procedure is unreliable, the cabinet shall set a reasonable fixed upper limit for the procedure consistent with the general array of fixed upper limits for the type of service. Fixed upper limits not determined in accordance with the principle shown in this subsection of the regulation (if any) due to consideration of other factors (such as recipient access) shall be specified in the regulation.

Section 3. Reimbursement Exceptions. (1) Effective with regard to services provided on or after October 1, 1988, physicians shall [will] be allowed to secure drugs for specified immunizations identified in 907 KAR 1:009 free from the Department for Health Services to provide immunizations for Medicaid recipients, with reimbursement for the cost of the drugs made from the Department for Medicaid Services to the Department for Health Services upon receipt of notice from the physicians that the drugs were used to provide immunizations to Medicaid recipients.

(2) Effective with regard to services provided on or after October 1, 1988, physicians shall [will] be allowed to purchase drugs for specified immunizations identified in 907 KAR 1:009 in the open market to provide immunizations for Medicaid recipients and the Department for Medicaid Services shall [will] reimburse the physician the same amounts that would have been paid to the Department for Health Services if the drugs had been obtained through that agency upon receipt of appropriate notice that the drugs were used to provide immunizations to Medicaid recipients.

(3) Payments for specified obstetrical services provided on or after July 1, 1991 [1990], shall be at the lower of the actual billed charge or at $900 [650].

(4) For inpatient delivery-related anesthesia services provided on or after July 1, 1991 [December 1, 1988], a physician shall [will] be reimbursed the lesser of the actual billed charge or a standard fixed fee paid by type of procedure. Those procedures and standard fixed fees are:

| | |
|---|---|
| Vaginal [Normal] delivery | $200 |
| [Low cervical c-section | 270] |
| [Classic c-section | 320] |
| Epidural single | 315 |
| Epidural continuous | 335 |
| [Extraperitoneal c-section | 320] |
| [C-section with hysterectomy, subtotal | 320] |
| Cesarean section | 320 |
| [C-section with hysterectomy, total] | |

(5) Payment for individuals eligible for coverage under Medicare [Title XVIII], Part B[, Supplementary Medical Insurance,] is made in accordance with Sections 1 and 2 of this regulation and subsections (1) through (4) and subsection (6) of this section within the individual's deductible and coinsurance liability.

(6) For services provided on or after July 1, 1990, family practice physicians practicing in geographic areas with no more than one (1) primary care physician per 5,000 population, as reported by the United States Department of Health and Human Services, shall be reimbursed at the physicians' usual and customary actual billed charges up to 125 percent of the fixed upper limit per procedure established by the cabinet.

(7) For services provided on or after July 1, 1990, physician laboratory services shall be reimbursed based on the Medicare allowable payment rates. For laboratory services with no established allowable payment rate, the payment shall be sixty-five (65) percent of the usual and customary actual billed charges.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 24, 1991
FILED WITH LRC: July 1, 1991 at 4:30 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:021E

This emergency administrative regulation is being promulgated to increase dispensing fees paid to pharmacies for outpatient drugs to $4.75 per prescription and to $5.75 per prescription for recipients in nursing facilities with Medicaid patient status. This action must be taken on an emergency basis to implement the changes in a timely manner and ensure adequate reimbursement for pharmacies. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler on or about July 1, 1991.

WALLACE G. WILKINSON, Governor
HARRY J. COWHERD, M.D., Secretary

**CABINET FOR HUMAN RESOURCES**
**Department for Medicaid Services**

**907 KAR 1:021E. Amounts payable for drugs.**

RELATES TO: KRS 205.560
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.120, 447.331, 447.332, 447.333, 42 USC 1396a-d
EFFECTIVE: July 1, 1991
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer a program of Medical Assistance. KRS 205.560 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 drugs.

Section 1. Maximum Allowable Cost Reimbursement Limits. (1) Reimbursement to pharmacies participating in the Medical Assistance Program for those drugs contained on the Kentucky Medical Assistance Program Outpatient Drug List (as published by the Cabinet for Human Resources) or preauthorized for individual recipients based on medical necessity and provided to eligible recipients shall be determined in accordance with the following policies:

(a) An appropriate rebate agreement must have been signed by the manufacturer or labeler or the drug must be provided based on a preauthorized exemption from the rebate requirement.

(b) Drug costs shall be determined in the pharmacy program using a computerized price listing service with pricing based on the actual package size utilized.

(c) If an average wholesale price is listed, reimbursement for the drug cost shall be the lesser of the federal maximum allowable cost (FMAC) or average wholesale price (AWP) minus ten (10) percent plus a dispensing fee (and unit dose add-on, as appropriate) or the usual and customary billed charge unless the physician has written "do not substitute" or "brand necessary" on the prescription.

(d) If an AWP is not listed, reimbursement shall be the lesser of the FMAC or direct price plus a dispensing fee (and unit dose add-on, as appropriate), or the usual and customary billed charge unless the physician has written "do not substitute" or "brand necessary" on the prescription.

(e) If the physician has written "do not substitute" or "brand necessary" on the prescription, reimbursement shall be based on the lower of the pharmacy's usual and customary charge or the estimated acquisition cost (EAC) (AWP minus ten (10) percent or direct price as appropriate) for the respective drug plus a dispensing fee (and unit dose add-on, as appropriate).

(f) For nursing facility residents meeting Medicaid patient status criteria, there shall be no more than one (1) dispensing fee allowed per drug within a calendar month for maintenance drugs (as determined by the Medicaid agency), and no more than two (2) dispensing fees allowed per drug within a calendar month for other drugs, except for Schedules II, III, and IV controlled substances and for nonsolid dosage forms, including topical medication preparations, for which no more than four (4) dispensing fees per drug shall be allowed within a calendar month. For nursing facility residents not meeting Medicaid patient status criteria and nonresidents of nursing facilities, there shall be no more than one (1) dispensing fee allowed per drug per calendar month for drugs classified by the Medicaid Program as maintenance drugs and no more than four (4) dispensing fees shall be allowed per drug within a calendar month for legend intravenous drugs. Though dispensing fees are limited, this shall not be construed as placing a limit on the quantity of reimbursable drugs for which the program will pay for any patient, since the reasonable cost of the drug (as defined herein) is reimbursable as a covered service in whatever quantity is considered medically necessary for the patient. Nonsolid dosage forms include all covered drug items other than oral tablets or capsule forms.

(g) Whenever possible, unused drugs paid for by the cabinet shall be returned to the pharmacy with the credit for the cost of the drug and the unit dose packaging cost (if applicable) accruing to the cabinet.

(2) Reimbursement to hospitals for drugs provided to eligible recipients shall be on the basis of reasonable cost pursuant to 907 KAR 1:013. While reimbursement for drugs provided to patients in brain injury units in nursing facilities and units providing ventilator dependent care in nursing facilities is within the all-inclusive rate for the brain injury unit or ventilator care unit, the upper limits in this regulation shall be applicable with regard to payments for drugs provided in those settings.

Section 2. Dispensing Fees. (1) The dispensing fee shall be four (4) dollars and seventy-five (75) cents per prescription for drugs reimbursed through the outpatient drug program to all eligible recipients except those in nursing facilities meeting Medicaid patient status criteria.

(2) For eligible recipients in nursing facilities meeting the appropriate patient status criteria requirements, the dispensing fee shall be five (5) dollars and seventy-five (75) cents per prescription for drugs reimbursed through the outpatient drug program; for these recipients, a unit dose addition to the usual dispensing fee shall be made for drugs dispensed through the pharmacy outpatient drug program in the amount of two (2) cents per unit dose for

unit dose drugs packaged in unit dose form by the manufacturer and four (4) cents per unit dose for unit dose drugs packaged in unit dose form by the pharmacist; the unit dose dispensing fee amount shall be paid, as appropriate, even though the usual dispensing fee of five (5) dollars and seventy-five (75) cents is not paid due to monthly limits on dispensing fees.

Section 3. Reimbursement to Dispensing Physicians. Participating dispensing physicians who practice in counties where no pharmacies are located are reimbursed for the cost of the drug only, with the cost computed as the maximum allowable cost or estimated acquisition cost as shown in Section 1(1) of this regulation, or the physician's usual and customary charge to the general public for the drug if less, or in accordance with 907 KAR 1:010 for drugs purchased on the open market for specified immunizations shown in 907 KAR 1:009.

Section 4. Implementation Date. The provisions of this regulation shall be applicable with regard to services provided on or after July 1, 1991.

Section 5. 907 KAR 1:020 is hereby repealed.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 24, 1991
FILED WITH LRC: July 1, 1991 at 4:30 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:027E

This emergency administrative regulation is being amended to increase reimbursement for services provided by dentists on or after July 1, 1991 as follows: the fixed upper limits per procedure are increased to 100 percent of the median billed charge using 1989 calendar year billed charges; for emergency calls the fixed upper limit is increased to $31.25; for comprehensive oral examinations the fixed upper limit is increased to $18.75. The regulation is also amended to show payment amounts for preauthorized early phase orthondontia services for moderately severe and severe handicapping malocclusions. This action must be taken on an emergency basis to implement the changes in a timely manner and ensure adequate reimbursement for dentists. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler on or about July 1, 1991.

WALLACE G. WILKINSON, Governor
HARRY J. COWHERD, M.D., Secretary

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

**907 KAR 1:027E. Payments for dental services.**

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 441.30, 447 Subpart B, 42 USC 1396a-d
EFFECTIVE: July 1, 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 dental services.

Section 1. Definition. For purposes of determination of payment, "usual and customary charge" refers to the uniform amount which the individual dentist charges in the majority of cases for a specific dental procedure or service.

Section 2. Reimbursement. For services provided on or after July 1, 1991 [1990], the cabinet shall reimburse participating dentists for covered services rendered to eligible medical assistance recipients at the dentist's usual and customary actual billed charge up to the fixed upper limit per procedure established by the cabinet at 100 [eighty (80)] percent of the median billed charge using 1989 calendar year billed charges. If there is no median available for a procedure, or the cabinet determines that available data relating to the median for a procedure is unreliable, the cabinet shall set a reasonable fixed upper limit for the procedure consistent with the general array of upper limits for the type of service. Fixed upper limits not determined in accordance with the principle shown in this subsection of the regulation (if any) due to consideration of other factors (such as recipient access) shall be specified in the regulation.

Section 3. Hospital Inpatient Care. (1) Hospitalized inpatient care, which is paid in the same manner as shown in Section 2 of this regulation, refers to those services provided inpatients. It does not include dental services provided in the outpatient, extended care or home health units of hospitals. Any dentist submitting a claim for hospital inpatient care benefits must agree to accept payment in full for services rendered that patient during that admission.

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

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

Section 4. Reimbursement Exceptions. (1) Effective with regard to services provided on or after July 1, 1991 [1990], the procedures specified in this section shall have the following fixed upper limits:

(a) Emergency call (intermediate level of service), $31.25 [25]; and
(b) Comprehensive oral examination (limited to one (1) per provider per recipient per year), $18.75 [15].

(2) Effective with regard to services provided on or after July 1, 1991 [1989], the procedures specified in this section shall be paid at the lower of the provider's usual and customary actual billed charge or the fixed upper limit

specified in this section with preauthorization required for all procedures except for orthodontic consultation. The procedures and fixed fees are as follows:

(a) Orthodontic consultation, $100, except that the fixed fee is fifty (50) dollars if the provider is referring the recipient to a specialist or the preauthorization for orthodontia services is not approved or a request for preauthorization of orthodontia services is not made;

(b) Preauthorized early phase orthodontic services for moderately severe handicapping malocclusions, $1,200 for orthodontists and $1,080 for general dentists;

(c) [(b)] Preauthorized orthodontic services for moderately severe handicapping malocclusions, $1,600 for orthodontists and $1,440 for general dentists;

(d) [(c)] Preauthorized orthodontic services for severe handicapping malocclusions, $2,400 for orthodontists and $2,160 for general dentists;

(e) [(d)] Retention visits, $30; and

(f) [(e)] Stabilization visit, $15.

Section 5. Oral surgeons shall be treated in the same manner as physicians for reimbursement purposes, and shall be subject to the terms and conditions of payment shown in 907 KAR 1:010, Payments for physicians' services.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 24, 1991
FILED WITH LRC: July 1, 1991 at 4:30 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:040E

This emergency administrative regulation is being amended to increase the fixed upper limit per procedure paid to optometrists to 100 percent of the median billed charge using 1989 calendar year billed charges, effective for services provided on or after July 1, 1991. To make reimbursement for laboratory services provided by optometrists consistent with other providers, optometrists' laboratory services shall be reimbursed based on the Medicare allowable payment rates. For laboratory services with no established allowable payment rates, the payment shall be sixty-five (65) percent of the usual and customary actual billed charges. This action must be taken on an emergency basis to implement the changes in a timely manner and ensure adequate reimbursement for optometrists. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler on or about July 1, 1991.

WALLACE G. WILKINSON, Governor
HARRY J. COWHERD, M.D., Secretary

**CABINET FOR HUMAN RESOURCES**
**Department for Medicaid Services**

**907 KAR 1:040E. Payments for vision care services.**

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.40, 440.60, 447 Subpart B, 42 USC 1396a-d
EFFECTIVE: July 1, 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 vision care services.

Section 1. Definitions. For purposes of determination of payment the following definition shall be applicable: "usual and customary charge" means the uniform amount the individual optometrist or ophthalmic dispenser charges in the majority of cases for a specific covered procedure or service.

Section 2. Reimbursement for Covered Procedures and Materials for Optometrists.

(1) Effective with regard to services provided on or after July 1, 1991 [1990], reimbursement for covered services, except materials, shall be the optometrists' usual and customary actual billed charges up to the fixed upper limit per procedure established by the cabinet at 100 [eighty-five (85)] percent of the median billed charge using 1989 calendar year billed charges. If there is no median available for a procedure, or the cabinet determines that available data relating to the median for a procedure is unreliable, the cabinet shall set a reasonable fixed upper limit for the procedure consistent with the general array of upper limits for the type of service. Fixed upper limits not determined in accordance with the principle shown in this subsection of the regulation (if any) due to consideration of other factors (such as recipient access) shall be specified in the regulation.

(2) Reimbursement for materials (eyeglasses or parts of eyeglasses) shall be made at the laboratory cost of the materials not to exceed upper limits for materials as set by the cabinet. A laboratory invoice, or proof of actual acquisition cost of materials, shall be maintained in the recipient's medical records for postpayment review.

Section 3. Maximum Reimbursement for Covered Procedures and Materials for Ophthalmic Dispensers. (1) Effective with regard to services provided on or after July 1, 1991 [1990], reimbursement for covered services (a dispensing service fee or a repair service fee) rendered by licensed ophthalmic dispensers to eligible recipients shall be the ophthalmic dispensers' usual and customary actual billed charges up to the fixed upper limit per procedure established by the cabinet at 100 [eighty-five (85)] percent of the median billed charge using 1989 calendar year billed charges. If there is no median available for a procedure, or the cabinet determines that available data relating to the median for a procedure is unreliable, the cabinet shall set a reasonable fixed upper limit for the procedure consistent with the general array of upper limits for the type of service. Fixed upper limits not determined in accordance with the principle shown in this section of the regulation (if any) due to consideration of other factors (such as

recipient access) shall be specified in the regulation.

(2) Reimbursement for materials (eyeglasses or parts of eyeglasses) shall be made at the laboratory cost of the materials not to exceed upper limits for materials as set by the cabinet. A laboratory invoice, or proof of actual acquisition cost of materials, shall be maintained in the recipients's medical records for postpayment review.

Section 4. Reimbursement for other Supplies and Materials. Other supplies and materials such as cleaning fluid, cleaning cloth, carrying cases, etc., which are not eyeglasses or replacement/repair parts for eyeglasses, are considered to be provided in conjunction with and paid for as a part of the vision services rendered, and additional charges shall not be made to the cabinet or the recipient for these items.

Section 5. Effect of Third Party Liability. When payment for a covered service is due and payable from a third party source, such as private insurance, or some other third party with a legal obligation to pay, the amount payable by the cabinet shall be reduced by the amount of the third party payment.

Section 6. Limitations. (1) Program reimbursement for eyeglasses shall be inclusive. The cost of both laboratory materials and dispensing fees shall be billed to either the program or the recipient. If any portion of the amount is billed to or paid by the recipient, no responsibility for reimbursement shall attach to the cabinet and no bill for the service shall be paid by the cabinet. This limitation shall not, however, preclude the issuance of billings for the purpose of establishing the liability of, or collecting from, liable third parties.

(2) Telephone contacts are excluded from payment.

(3) Contact lenses are excluded from payment.

(4) Safety glasses are excluded from payment, unless the recipient is blind in one (1) eye and safety glasses are prescribed for protection.

Section 7. For services provided on or after July 1, 1991, optometrist laboratory services shall be reimbursed based on the Medicare allowable payment rates. For laboratory services with no established allowable payment rate, the payment shall be sixty-five (65) percent of the usual and customary actual billed charges.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 24, 1991
FILED WITH LRC: July 1, 1991 at 4:30 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:480E

This emergency administrative regulation is being promulgated to provide for the implementation of the tax assessment schedule for physicians as provided for by House Bill 21 of the 1991 Special Session of the General Assembly. For each physician the tax shall be (on a quarterly basis) one-half (1/2) of the increase in revenues realized by that physician which results from the July 1, 1991 fee schedule update but not to exceed fifteen (15) percent of the physician's gross Medicaid revenues for the quarter. This action must be taken on an emergency basis to provide for necessary funds essential to operation of the Medicaid Program and rate improvements for physicians. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler on or about July 1, 1991.

WALLACE G. WILKINSON, Governor
HARRY J. COWHERD, M.D., Secretary

**CABINET FOR HUMAN RESOURCES**
**Department For Medicaid Services**

**907 KAR 1:480E. Tax assessment schedule for physicians.**

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 205.577
EFFECTIVE: July 1, 1991
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance under Title XIX of the Social Security Act. This regulation sets forth provisions relating to the tax assessment of physicians as authorized by KRS 205.577.

Section 1. Tax Assessments. (1) The tax assessment for each Medicaid participating physician for each calendar quarter shall be one-half (1/2) of the increase in revenues realized by the physician which results from the July 1, 1991 fee schedule update but not to exceed fifteen (15) percent of the physician's gross Medicaid revenues for the calendar quarter.

(2) Due date for tax assessments.

(a) The tax assessment for each physician shall be due by the 45th day following the end of each calendar quarter.

(b) A physician may request a delay in his assessment payment due date based on unforeseeable circumstances affecting his ability to pay in a timely manner. Unforeseeable circumstances may include, but are not limited to, substantial disruptions of management or operations from occurrences such as fire, flood, storm, bankruptcy or other demonstrated financial hardship. Simple inability to pay, unless combined with a filing of bankruptcy of other demonstrated financial hardship by the physician, shall not constitute justification for a delayed payment schedule. If a delay is granted, the delay shall not exceed sixty (60) days. An appeal to the Franklin Circuit Court (or a higher court as appropriate) with regard to the assessment payment amount shall be justification for a delay in payment of the assessment until the court case is resolved.

Section 2. Waiver of the Late Payment Penalties. The Commissioner of the Department for Medicaid Services shall waive the late payment penalty specified in KRS 205.577 only when good cause exists. Good cause shall be determined to exist only when an unforeseeable circumstance occurs affecting timely payments. Unforeseeable circumstances may include substantial disruptions of management or operations from occurrences such as fire, flood, storm or similar events. Failure to pay due to insufficient funds shall not be good cause for a waiver of the penalty unless combined with a

bankruptcy filing of the provider. An appeal to the Franklin Circuit Court (or a higher court as appropriate) with regard to the assessment payment amount shall be considered to meet the criteria for good cause.

Section 3. The provisions of this regulation shall be applicable for calendar quarters beginning on and after July 1, 1991.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 24, 1991
FILED WITH LRC: July 1, 1991 at 4:30 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:485E

This emergency administrative regulation is being promulgated to provide for the implementation of the tax assessment schedule for dentists as provided for by House Bill 21 of the 1991 Special Session of the General Assembly. For each dentist the tax shall be (on a quarterly basis) one-half (1/2) of the increase in revenues realized by that dentist which results from the July 1, 1991 fee schedule update but not to exceed fifteen (15) percent of the dentist's gross Medicaid revenues for the quarter. This action must be taken on an emergency basis to provide for necessary funds essential to operation of the Medicaid Program and rate improvements for dentists. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler on or about July 1, 1991.

WALLACE G. WILKINSON, Governor
HARRY J. COWHERD, M.D., Secretary

**CABINET FOR HUMAN RESOURCES**
**Department For Medicaid Services**

**907 KAR 1:485E. Tax assessment schedule for dentists.**

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 205.577
EFFECTIVE: July 1, 1991
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance under Title XIX of the Social Security Act. This regulation sets forth provisions relating to the tax assessment of dentists as authorized by KRS 205.577.

Section 1. Tax Assessments. (1) The tax assessment for each Medicaid participating dentist for each calendar quarter shall be one-half (1/2) of the increase in revenues realized by the dentist which results from the July 1, 1991 fee schedule update but not to exceed fifteen (15) percent of the dentist's gross Medicaid revenues for the calendar quarter.

(2) Due date for tax assessments.

(a) The tax assessment for each dentist shall be due by the 45th day following the end of each calendar quarter.

(b) A dentist may request a delay in his assessment payment due date based on unforeseeable circumstances affecting his ability to pay in a timely manner. Unforeseeable circumstances may include, but are not limited to, substantial disruptions of management or operations from occurrences such as fire, flood, storm, bankruptcy or other demonstrated financial hardship. Simple inability to pay, unless combined with a filing of bankruptcy or other demonstrated financial hardship by the dentist, shall not constitute justification for a delayed payment schedule. If a delay is granted, the delay shall not exceed sixty (60) days. An appeal to the Franklin Circuit Court (or a higher court as appropriate) with regard to the assessment payment amount shall be justification for a delay in payment of the assessment until the court case is resolved.

Section 2. Waiver of the Late Payment Penalties. The Commissioner of the Department for Medicaid Services shall waive the late payment penalty specified in KRS 205.577 only when good cause exists. Good cause shall be determined to exist only when an unforeseeable circumstance occurs affecting timely payments. Unforeseeable circumstances may include substantial disruptions of management or operations from occurrences such as fire, flood, storm or similar events. Failure to pay due to insufficient funds shall not be good cause for a waiver of the penalty unless combined with a bankruptcy filing of the provider. An appeal to the Franklin Circuit Court (or a higher court as appropriate) with regard to the assessment payment amount shall be considered to meet the criteria for good cause.

Section 3. The provisions of this regulation shall be applicable for calendar quarters beginning on and after July 1, 1991.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 24, 1991
FILED WITH LRC: July 1, 1991 at 4:30 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:490E

This emergency administrative regulation is being promulgated to provide for the implementation of the tax assessment schedule for optometrists as provided for by House Bill 21 of the 1991 Special Session of the General Assembly. For each optometrist the tax shall be (on a quarterly basis) one-half (1/2) of the increase in revenues realized by that optometrist which results from the July 1, 1991 fee schedule update but not to exceed fifteen (15) percent of the optometrist's gross Medicaid revenues for the quarter. This action must be taken on an emergency basis to provide for necessary funds essential to operation of the Medicaid Program and rate improvements for optometrists. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler on or about July 1, 1991.

WALLACE G. WILKINSON, Governor
HARRY J. COWHERD, M.D., Secretary

CABINET FOR HUMAN RESOURCES
Department For Medicaid Services

**907 KAR 1:490E. Tax assessment schedule for optometrists.**

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 205.577
EFFECTIVE: July 1, 1991
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance under Title XIX of the Social Security Act. This regulation sets forth provisions relating to the tax assessment of optometrists as authorized by KRS 205.577.

Section 1. Tax Assessments. (1) The tax assessment for each Medicaid participating optometrist for each calendar quarter shall be one-half (1/2) of the increase in revenues realized by the optometrist which results from the July 1, 1991 fee schedule update but not to exceed fifteen (15) percent of the optometrist's gross Medicaid revenues for the calendar quarter.
(2) Due date for tax assessments.
(a) The tax assessment for each optometrist shall be due by the 45th day following the end of each calendar quarter.
(b) An optometrist may request a delay in his assessment payment due date based on unforeseeable circumstances affecting his ability to pay in a timely manner. Unforeseeable circumstances may include, but are not limited to, substantial disruptions of management or operations from occurrences such as fire, flood, storm, bankruptcy or other demonstrated financial hardship. Simple inability to pay, unless combined with a filing of bankruptcy of other demonstrated financial hardship by the optometrist, shall not constitute justification for a delayed payment schedule. If a delay is granted, the delay shall not exceed sixty (60) days. An appeal to the Franklin Circuit Court (or a higher court as appropriate) with regard to the assessment payment amount shall be justification for a delay in payment of the assessment until the court case is resolved.

Section 2. Waiver of the Late Payment Penalties. The Commissioner of the Department for Medicaid Services shall waive the late payment penalty specified in KRS 205.577 only when good cause exists. Good cause shall be determined to exist only when an unforeseeable circumstance occurs affecting timely payments. Unforeseeable circumstances may include substantial disruptions of management or operations from occurrences such as fire, flood, storm or similar events. Failure to pay due to insufficient funds shall not be good cause for a waiver of the penalty unless combined with a bankruptcy filing of the provider. An appeal to the Franklin Circuit Court (or a higher court as appropriate) with regard to the assessment payment amount shall be considered to meet the criteria for good cause.

Section 3. The provisions of this regulation shall be applicable for calendar quarters beginning on and after July 1, 1991.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 24, 1991
FILED WITH LRC: July 1, 1991 at 4:30 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:495E

This emergency administrative regulation is being promulgated to provide for the implementation of the tax assessment schedule for pharmacies as provided for by House Bill 21 of the 1991 Special Session of the General Assembly. For each pharmacy the tax shall be (on a quarterly basis) one-half (1/2) of the increase in revenues realized by that pharmacy which results from the July 1, 1991 dispensing fee update but not to exceed fifteen (15) percent of the pharmacy's gross Medicaid revenues for the quarter. This action must be taken on an emergency basis to provide for necessary funds essential to operation of the Medicaid Program and rate improvements for pharmacies. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler on or about July 1, 1991.

WALLACE G. WILKINSON, Governor
HARRY J. COWHERD, M.D., Secretary

CABINET FOR HUMAN RESOURCES
Department For Medicaid Services

**907 KAR 1:495E. Tax assessment schedule for pharmacies.**

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 205.577
EFFECTIVE: July 1, 1991
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance under Title XIX of the Social Security Act. This regulation sets forth provisions relating to the tax assessment of pharmacies as authorized by KRS 205.577.

Section 1. Tax Assessments. (1) The tax assessment for each Medicaid participating pharmacy for each calendar quarter shall be one-half (1/2) of the increase in revenues realized by the pharmacy which results from the July 1, 1991 dispensing fee schedule update but not to exceed fifteen (15) percent of the pharmacy's gross Medicaid revenues for the calendar quarter.
(2) Due date for tax assessments.
(a) The tax assessment for each pharmacy shall be due by the 45th day following the end of each calendar quarter.
(b) A pharmacy may request a delay in its assessment payment due date based on unforeseeable circumstances affecting its ability to pay in a timely manner. Unforeseeable circumstances may include, but are not limited to, substantial disruptions of management or operations from occurrences such as fire, flood, storm, bankruptcy or other demonstrated financial hardship. Simple inability to pay, unless combined with a filing of bankruptcy of other demonstrated financial hardship by the pharmacy, shall not constitute justification for a delayed payment schedule. If a delay is granted, the delay shall not exceed sixty (60) days. An appeal to the Franklin Circuit Court (or a higher court as appropriate) with regard to the assessment payment amount shall be justification for a delay in payment of the assessment until the court case is resolved.

Section 2. Waiver of the Late Payment Penalties. The Commissioner of the Department for Medicaid Services shall waive the late payment penalty specified in KRS 205.577 only when good cause exists. Good cause shall be determined to exist only when an unforeseeable circumstance occurs affecting timely payments. Unforeseeable circumstances may include substantial disruptions of management or operations from occurrences such as fire, flood, storm or similar events. Failure to pay due to insufficient funds shall not be good cause for a waiver of the penalty unless combined with a bankruptcy filing of the provider. An appeal to the Franklin Circuit Court (or a higher court as appropriate) with regard to the assessment payment amount shall be considered to meet the criteria for good cause.

Section 3. The provisions of this regulation shall be applicable for calendar quarters beginning on and after July 1, 1991.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 24, 1991
FILED WITH LRC: July 1, 1991 at 4:30 p.m.

REGULATIONS AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

**COMPILER'S NOTE:** The following regulation, 11 KAR 8:030, was amended by the promulgating agency and the Interim Joint Committee on Education, and became effective on July 8, 1991.

**KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY (As Amended)**

**11 KAR 8:030. Teacher scholarships.**

RELATES TO: KRS 164.744(2), 164.753(3)
STATUTORY AUTHORITY: KRS 164.748(4), 164.753(3), HB 799 (1990 RS), Part I, F., 46., p. 52
NECESSITY AND FUNCTION: KRS 164.744(2) authorizes the authority to provide scholarships, and KRS 164.753(3) prescribes certain standards for scholarship programs. House Bill 799 appropriated funds for a new program of teacher scholarships. The General Assembly has expressed a desire, in a budget memorandum prepared under KRS 48.300(2) to accompany House Bill 799, that prior recipients of loans pursuant to KRS 156.611, 156.613, 164.768 and 164.770 should be eligible for benefits under this new program. This regulation delineates eligibility criteria and repayment obligations related to scholarships provided under the new program and establishes a capability for refinancing of prior loans. This amendment is necessary to clarify the continuation of accelerated cancellation for a teacher who begins teaching in a critical shortage area, even if the area subsequently ceases to constitute a shortage, to avoid penalizing individuals who continue to meet their commitment to teach in a particular field.

Section 1. Definitions. As used in this regulation, the terms listed below shall have the following meanings:
(1) "Critical shortage area" means an understaffing of teachers for particular subjects, grade levels, or geographic locations as determined by the authority from any sources considered reliable, including, but not limited to, consultation with local and state school officials.
(2) "Eligible program of study" means an undergraduate or graduate program of study which is preparatory to initial teacher certification or recertification, and which does not lead to a certificate, diploma, or degree in theology, divinity, or religious education.
(3) "Qualified teaching service" means teaching the major portion of each school day for at least seventy (70) days each semester in a **public** school **of** [, accredited by] the Commonwealth[, located in Kentucky].
(4) "Semester" means a period of about eighteen (18) weeks, which usually makes up one-half (1/2) of a school year or one-half (1/2) of a participating institution's academic year.
(5) "Participating institution" means an institution of higher education located in Kentucky, which offers an eligible program of study and has in force an agreement with the authority providing for administration of this program.

Section 2. Eligibility. (1) The authority may, to the extent of appropriations and other funds available to it for this purpose, award teacher scholarships to persons enrolled or accepted for enrollment at participating institutions, who declare an intention to enter the teaching profession in **public** [state accredited] schools of the Commonwealth, and who are eligible under subsections (3) and (4) of this section.
(2) The authority shall, except for limitations imposed by subsection (5) of this section, cancel the repayment obligation of recipients of teacher scholarships who render qualified teaching service in accordance with Section 5 of this regulation.
(3) Kentucky residents who are enrolled or accepted for enrollment in an eligible program of study on a full-time basis at a participating institution and who agree to render qualified teaching service upon completion of the program of study shall be eligible, except for limitations imposed by subsection (5) of this section, to apply for teacher scholarships if they meet the following criteria:
(a) High school graduates with no college hours must rank academically in the top ten (10) percent of their high school graduating class or score at or above the 80th percentile on an instrument approved by the Council on Higher Education for admission to Kentucky's institutions of higher education.
(b) Certified teachers seeking recertification in order to teach in a critical shortage area must have a cumulative grade point average of at least the equivalent of 2.5 on a 4.0 scale on prior undergraduate studies or a 3.0 on a 4.0 scale on prior graduate studies. A certified teacher, who initially enrolls for recertification to teach in a designated critical shortage area, shall continue to benefit from that designation for so long as the teacher pursues that recertification, notwithstanding a change in the critical shortage area designation subsequent to the initial enrollment.
(c) Applicants with earned college hours must have attained at least the equivalent of a 2.5 grade point average on a 4.0 scale for all undergraduate work and a 3.0 on a 4.0 scale for all graduate work and must be currently enrolled or accepted for enrollment in a postsecondary institution.
(4) Persons enrolled full time at a participating institution in an eligible program of study who have previously received a teacher loan or a mathematics and science incentive loan, pursuant to KRS 156.611, 156.613, 164.768 or 164.770, or a teacher scholarship pursuant to this section, not in excess of the aggregate limit prescribed by Section 3 of this regulation, shall be eligible, except for limitations imposed by subsection (5) of this section, to apply for additional teacher scholarships if they:
(a) Have maintained continuous full-time enrollment, exclusive of periods of approved deferment, in an eligible program of study;
(b) Have made satisfactory progress toward completion of the eligible program of study in accordance with standards prescribed by the participating institution; and

(c) Have attained a cumulative grade point average of at least the equivalent of 2.5 on a 4.0 scale on all prior undergraduate studies and at least 3.0 on a 4.0 scale on all prior graduate studies.

(5) No teacher scholarship shall be awarded nor promissory note cancellation granted to any person who is in default on any obligation to the authority under any program administered by the authority pursuant to KRS 164.740 to 164.785 until such financial obligations to the authority are satisfied, except that ineligibility for this reason may be waived by the executive director of the authority at the recommendation of a designated staff review committee, for cause.

(6) Selection process. Applicants shall be considered and teacher scholarships shall be awarded in the following descending order until funds are depleted:

(a) Qualified renewal applicants pursuant to subsection (4) of this section;

(b) Certified teachers seeking recertification in a critical shortage area;

(c) Currently enrolled postsecondary students who have been admitted to a teacher education program;

(d) Currently enrolled postsecondary students who have not yet been admitted to a teacher education program; and

(e) High school seniors ranked by weighted selection scores that include rank in high school class (thirty (30) percent), high school grade point average (forty (40) percent), and American College Test (ACT) Composite Standard Score (thirty (30) percent).

Section 3. Award Maximums. The maximum teacher scholarship award shall be $1,250 for a summer session, $2,500 for a semester, and $5,000 for an academic year (exclusive of a summer session). Awards shall not exceed the student's total cost of attendance less other aid received as determined by the participating institution. The aggregate maximum of teacher scholarship awards shall not exceed $20,000 per individual.

Section 4. Disbursements. Disbursement of teacher scholarships shall be made at the beginning of each semester or summer session and each disbursement shall be evidenced by a promissory note, prescribed by the authority, in which the scholarship recipient shall agree to repay the scholarship funds or render qualified teaching service in lieu thereof.

Section 5. Cancellation. (1) Recipients shall render one (1) semester of qualified teaching service as repayment for each semester or summer term of scholarship received, except that recipients who teach in a critical shortage area shall render one (1) semester of qualified teaching service as repayment for two (2) semesters or summer terms of scholarships received. Once an area is designated as a critical shortage area, a recipient who renders uninterrupted qualified teaching service in that designated area shall continue to benefit from the designation, notwithstanding a change in the critical shortage area designation.

(2) Recipients who have outstanding mathematics and science incentive loans or teacher loans pursuant to KRS 156.611, 156.613, 164.768 or 164.770 may execute a new promissory note under the terms of this program in full satisfaction of the outstanding balance of prior promissory notes. The new promissory notes shall be cancelled in accordance with subsection (1) of this section.

(3) In the event that a recipient has received loans or scholarships from more than one (1) program administered by the authority, which require a period of qualified teaching service for repayment or cancellation, such teaching requirements shall not be fulfilled concurrently. Unless the authority determines otherwise for cause, loans or scholarships from more than one (1) program shall be repaid or cancelled by qualified teaching service in the same order in which they were received.

(4) Verification of qualified teaching service shall be submitted to the authority in writing, signed by the local school district superintendent or building principal.

Section 6. Repayment. (1) If a recipient ceases to be enrolled on a full-time basis in an eligible program of study at a participating institution prior to completion of the program of study or otherwise fails to attain certification after completion of the eligible program of study, he shall immediately become liable to the authority to pay the sum of all teacher scholarships received and accrued interest thereon, unless the authority, in its sole discretion, grants a deferment for cause.

(2) Recipients failing to render qualified teaching service within the six (6) month period following completion of the eligible program of study shall immediately become liable to the authority to pay the sum of all outstanding teacher scholarships and accrued interest thereon, unless the authority, in its sole discretion, grants a deferment for cause.

(3) Persons liable for repayment of teacher scholarships under this section shall be liable for interest accruing on each promissory note from the respective dates on which the teacher scholarships were disbursed.

(4) The interest rate applicable to repayment of a teacher scholarship under this section shall be twelve (12) percent per annum, except that promissory notes shall provide that if a judgment is rendered to recover payment, the judgment shall bear interest at a rate five (5) percent greater than the rate actually charged on the promissory note.

Section 7. Notifications. Recipients shall notify the authority within thirty (30) days of:

(1) Change in enrollment status;

(2) Cessation of full-time enrollment in an eligible program of study;

(3) Employment in a qualified teaching service position; or

(4) Change of name or address.

Section 8. Repayment Schedule. Written notification of demand for repayment shall be sent by the authority to the scholarship recipient's last known address and shall be effective upon mailing. The authority may agree, in its sole discretion, to accept repayment in installments in accordance with a schedule established by the authority. Payments shall first be applied to interest and then to principal on the earliest unpaid promissory note.

Section 9. Records. A participating institution shall maintain complete and accurate

records pertaining to the eligibility, enrollment and progress of students receiving aid under this program and the disbursement of funds and institutional charges as may be necessary to audit the disposition of funds hereunder. Such records shall be maintained for at least five (5) years after the student ceases to be enrolled at the institution.

Section 10. Refunds. A participating institution shall refund to the authority, within forty (40) days of a recipient's last date of attendance, any amount attributable to this program which is determined to be due under the institution's refund policy.

Section 11. Information Dissemination and Recruitment. The authority shall disseminate information through high school principals, counselors, and school superintendents about this program to potential recipients. Participating institutions shall provide assurances that program information will be disseminated to students enrolled at their institutions. Participating institutions shall actively recruit students from minority population groups for participation in this program.

GEORGE SHAW, Chairman
APPROVED BY AGENCY: April 30, 1991
FILED WITH LRC: May 15, 1991 at 10 a.m.

**COMPILER'S NOTE:** The following regulations were amended by the promulgating agency and the Administrative Regulation Review Subcommittee at its July 1991 meeting.

**GENERAL GOVERNMENT CABINET**
**Department of State**
**(As Amended)**

**30 KAR 1:040. Indistinguishable names.**

RELATES TO: KRS 271B.4-010, 271B.15-060, 273.177, 273.364, 274.077
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: KRS 271B.4-010, 271B.15-060, 273.177, 273.364 and 274.077 require the Secretary of State to set standards for the use of indistinguishable corporate names.

Section 1. (1) Each corporation applying to use an indistinguishable name shall be an existing corporation registered on the records of the Kentucky Secretary of State. Each corporation shall be in good standing as defined in 30 KAR 1:010.

(2) The corporations shall jointly submit one (1) written application in the form set out in Section 2 of this regulation. The application shall state the names and corporate mailing addresses of the two (2) corporations, the indistinguishable name which the second corporation wishes to use, an acknowledgment that the second corporation agrees to resume the use of its original corporate name if it does not acquire the indistinguishable name, that both corporations agree to continue their corporate existence in Kentucky in good standing and maintain a qualified agent and qualified registered office during the period of the application and that authorized individuals for each corporation shall sign the application.

(3) If the Secretary of State finds that the indistinguishable name filing is correct, he shall permit the two (2) corporations to use one (1) indistinguishable name for a nonrenewable sixty (60) day period.

(4) An indistinguishable name shall not be transferred.

[(5) An indistinguishable corporate name shall only be used by two (2) corporations at the same time.]

Section 2. The form required in Section 1 of this regulation is as follows:

APPLICATION FOR THE USE OF AN
INDISTINGUISHABLE NAME

_____,
Corporate Name

_____
Corporate Business Address

is a corporation in good standing in Kentucky as defined in 30 KAR 1:010, which consents to the use of the indistinguishable name,

_____,
Indistinguishable Name

by _____,
Corporate Name

_____.
Corporate Business Address

Both corporations agree to continue their corporate existence in Kentucky in good standing and maintain a qualified registered agent and qualified registered office in Kentucky during the period of the application.

Each corporation agrees to resume its corporate name, which satisfies the requirements of KRS 271B.4-010, 271B.15-060, 273.177, 273.364 and 274.077 if the name change is not completed prior to the expiration of the application.

This application shall be effective for a nonrenewable sixty (60) day period and is nontransferable.

I certify that the above statements are true and accurate.

| | |
|---|---|
| Name | Name |
| Title | Title |
| Corporation | Corporation |

BREMER EHRLER, Secretary of State
APPROVED BY AGENCY: May 15, 1991
FILED WITH LRC: May 15, 1991 at 9 a.m.

**GENERAL GOVERNMENT CABINET**
**Department of State**
**(As Amended)**

**30 KAR 1:050. Dishonored checks.**

RELATES TO: KRS Chapters 271B, 272, 273, 274, 279, 287, 289, 290, 304, 355, 362, 365
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: The Secretary of State is required to collect a filing fee prior to filing all documents where a fee is specified. Occasionally the Office of the Secretary of State receives payment by a check which is later dishonored. This regulation codifies existing

practice and enforces the provisions of various Kentucky statutes that require the payment of fees prior to the filing of documents.

Section 1. (1) Filing fees shall be paid **when** [prior to the filing of] a document **is filed** in the Office of the Secretary of State.

(2) An entity which pays for its filing fees by check which is later dishonored shall have its filing voided and removed from the records of the Secretary of State.

BREMER EHRLER, Secretary of State
APPROVED BY AGENCY: May 15, 1991
FILED WITH LRC: May 15, 1991 at 9 a.m.

**FINANCE AND ADMINISTRATION CABINET**
**State Investment Commission**
**(As Amended)**

**200 KAR 14:010. General rules.**

RELATES TO: KRS Chapter 42
STATUTORY AUTHORITY: KRS 42.525
NECESSITY AND FUNCTION: KRS 42.525 provides that the State Investment Commission shall prescribe rules for the operation of the state's investment program. This regulation establishes the general rules which apply to the investment of state funds.

Section 1. Definitions. For purposes of this regulation:

(1) "Commission" means the State Investment Commission; and

(2) "Office" means the Office of Financial Management and Economic Analysis [for Investment and Debt Management].

Section 2. General. The purpose of this regulation is to provide standard rules that will govern the Commonwealth's investment and cash management programs.

Section 3. Goals of Investments. [(1)] The [primary] goals of all investments of the Commonwealth are to: [is to maximize the yield received.]

[(2)(a) The limiting factors to the primary goal of maximizing yield are liquidity and security.]

(1) Insure safety of principal. The commission shall not allow the investment of state funds in any institution or instrument which it deems unsafe and a threat to the security of those funds.

(2) Maintain adequate liquidity to meet the cash needs of the Commonwealth. [(b)] The **commission** [office] is charged with the duty of determining the Commonwealth's liquidity needs pursuant to KRS 42.410. In light of this responsibility, the **commission** [office] shall not execute nor allow the execution of any investment that will negatively impact the short or long-term cash needs of the Commonwealth.

(3) Maximize yield. The **commission** [office] shall invest in securities which maximize yield or return to the Commonwealth within the safety and liquidity constraints set out by the commission.

[(c) The commission shall not allow the investment of state funds in any institution or instrument which it deems unsafe and a threat to the security of those funds.]

Section 4. Monies to be Invested. The commission shall invest all state funds as defined in KRS 446.010(31) which are excess, surplus, or otherwise available for investment for periods of time for one (1) day or more.

Section 5. Minimum Interest Rates. (1) The amount of funds per investment instrument will be determined periodically by the commission at its regular public meetings. Criteria to determine such amounts are:

(a) Liquidity needs of the various state agencies for which funds are budgeted; and

(b) Rates available per instrument, and safety of principal and interest.

(2) Investment instruments will be qualified as available for use by being:

(a) Specified as such in statute; and

(b) Further qualified by the commission guidelines, hereby incorporated by reference (available from the Office of Financial Management and Economic Analysis [for Investment and Debt Management], Room 318 [201], Capitol Annex, Frankfort, Kentucky).

(3) The commission shall not allow the investment of state funds in any institution or instrument for a term of one (1) year or less at a yield less than the yield available on Treasury Bills of similar maturity. For funds to be invested for more than one (1) year, the commission shall not allow investment in any institution or instrument at a yield less than the yield available on Treasury Notes of similar maturity.

Section 6. Acceptable Maturity of Investments. The [limits on the] maturity of investments made by the commission shall be subject to [first be KRS Chapter 42.500 which is no greater than five (5) years for U. S. government or government agency obligations. Certificates of deposit will be limited to a one (1) year maturity maximum and secondly,] the liquidity needs of the Commonwealth [state] as determined by the **commission** [office].

Section 7. In-state and Out-of-state Deposits. All funds eligible for investment in certificates of deposit as determined by the commission shall first be offered to financial institutions chartered in Kentucky or by the United States that have their main office located in Kentucky. The rate at which these funds will be offered shall be set by the commission as set out in KRS Chapter 42. Should Kentucky financial institutions eligible for these funds refuse any part of the funds offered, the commission may offer the funds to any commercial bank chartered in the United States, approved by the [State Investment] commission. Any out-of-state investments shall be subject to the same collateralization requirements as in-state investments.

Section 8. Distribution of Funds Among Types of Institutions. Distribution of funds among types of institutions will be determined from time to time by the commission at its regular public meetings. The criteria for that distribution will be:

(1) The institution is permitted by statute to qualify as a depository;

(2) Rates available;

(3) Sufficiency of collateral; and

(4) Determination as to whether institutions

are meeting the economic development needs of the community.

WALLACE G. WILKINSON, Chairman
APPROVED BY AGENCY: May 15, 1991
FILED WITH LRC: May 15, 1991 at 10 a.m.

## STATE INVESTMENT COMMISSION
## (As Amended)

### 200 KAR 14:080. Repurchase agreement.

RELATES TO: KRS Chapters 41, 42
STATUTORY AUTHORITY: KRS 42.525
NECESSITY AND FUNCTION: KRS 42.525 provides that the State Investment Commission shall prescribe rules for the operation of the state's investment program. This regulation establishes the general rules which shall apply to the employment of repurchase agreements as investment vehicles with commercial banks or savings and loan associations chartered by the Commonwealth of Kentucky or by an agency of the United States Government to do business in Kentucky, providing the main office is in Kentucky; or investment banking firms approved by the State Investment Commission at its open regular meetings.

Section 1. Definitions. For purposes of this regulation:
(1) "Commission" means the State Investment Commission;
(2) "Office" means the Office of Financial Management and Economic Analysis [for Investment and Debt Management];
(3) "Repurchase agreement" means an actual, conditional purchase of securities of the United States Treasury, any agency, instrumentality or corporation of the United States, or any other security authorized for investment pursuant to KRS 42.500(6), [receiving a full-faith and credit guarantee of the government of the United States,] with an agreement to resell the securities to their original owner on a specific date in the future [(at least seven (7) days into the future)].

Section 2. General. The use of repurchase agreements as a vehicle by which to channel state investable funds into commercial banks and savings and loan associations provides distinct advantages to both parties. The banks and savings and loan associations do not have to post reserves against these funds in that they are not defined as deposits by their regulatory agencies. Secondly, they do not have to bear increased premiums for deposit insurance. The result is that the state may receive a higher yield for its investment. Further, repurchase agreements, in general, provide the maximum available yield to the state's portfolio of the alternatives statutorily available to the commission in managing short-term funds.

Section 3. Monies to be Invested. The commission shall invest all public funds as defined by KRS 446.010(31). The office shall execute all investments on behalf of the commission.

Section 4. Minimum Interest Rates. The commission shall not allow public funds to be invested in any repurchase agreement with a yield less than could be received on any directly purchased United States Treasury security of a comparable maturity.

[Section 5. Acceptable Maturity of Investments. Repurchase agreements controlled by the regulation shall have a maturity of no less than seven (7) calendar days, nor more than 180 days, without the authorization of the commission.]

Section 5. Eligible Investment Institutions. [6. Designation of Depositories.] Any commercial bank or savings and loan association chartered by the Commonwealth of Kentucky or by the U.S. government with its main office located in Kentucky shall be considered eligible to enter into repurchase agreements [business] (as defined in this regulation) with the state. [, provided the State Treasurer and the Secretary of the Finance and Administration Cabinet have jointly designated each individual institution as a depository.] Any investment banking firm approved by the commission at an open meeting shall be considered eligible.

Section 6. Reporting Requirements for Eligible Investment Institutions. The commission shall advise all eligible investment institutions of the following reporting requirements which are prerequisites for the investment of state funds in such institutions:
(1) For commercial banks and savings and loan associations chartered by the Commonwealth of Kentucky or by the U.S. government with main offices located in Kentucky:
(a) The institution must submit a copy of its quarterly financial reports as furnished to regulatory bodies, including all accompanying schedules, to the commission;
(b) The institution must complete and sign a repurchase agreement contract with the Commonwealth.
(2) For investment banking firms:
(a) The institution must submit a copy of its annual audited financial statements and copies of quarterly financial statements, as published, to the commission;
(b) The institution shall complete and sign a repurchase agreement contract with the Commonwealth.

Section 7. Kentucky Banks and Savings and Loan Associations, Priority for Placement of Repurchase Agreements. Pursuant to KRS 42.520, the commission shall assign public funds to public depositories by priority based on evidence that the public depository serves the convenience and economic development needs of the communities in which they are chartered to do business. Repurchase agreements with commercial banks and savings and loan associations chartered by the Commonwealth of Kentucky or by the U.S. government with main offices located in Kentucky shall be placed pursuant to the following guidelines. As loan demand is a measure of economic activity in a community and as investments shorter than one (1) year are unlikely to provide loanable capital to financial institutions, the prioritization factors for placement of repurchase agreements with maturities longer than one (1) year shall be as follows:
(1) For repurchase agreements with maturities equal to or greater than 365 days, the following

financial criteria must be met or exceeded:
(a) A loan to deposit ratio of equal to or greater than seventy (70) percent;
(b) A nonperforming loan to capital ratio of equal to or less than twenty-five (25) percent;
(c) A capital to assets ratio of equal to or greater than seven (7) percent; and
(d) A return on assets ratio greater than zero.
(2) Repurchase agreements with maturities equal to or greater than 365 days with commercial banks and savings and loan associations chartered by the Commonwealth of Kentucky or by the U.S. government with main offices located in Kentucky shall be limited to $5,000,000 per institution.
(3) The office shall review the financial ratios listed semiannually to determine eligibility of institutions. Existing repurchase agreements with maturities equal to or greater than one (1) year with institutions which fail to meet the minimum criteria for two (2) consecutive reporting periods are subject to call at par value by the commission. Repurchase agreements shall be placed according to:
(a) Availability of funds;
(b) Demand for funds by the institutions; and
(c) Highest loan to deposit ratio of eligible institutions.

Section 8. [7.] Maximum Size of Repurchase Agreement per Institution. The **commission** [office] shall not enter into any repurchase agreement with a commercial bank or savings and loan association of more than $25,000,000, provided, however, that no such agreement shall be an amount in excess of its capital structure or ten (10) percent of the institution's deposits [or its capital structure], whichever is less.

Section 9. [8.] Payment for and Safekeeping Purchases. All transactions will be conducted on a payment-versus-delivery basis. In no event will any party allow state funds to be released until delivery of adequate, negotiable collateral has been verified. Securities purchased from commercial banks, savings and loan associations, or investment banks in a repurchase agreement shall be received, verified, and safekept by the state's general depository bank or its agent (subject to the approval of the commission).

Section 10. [9.] Eligible Securities. Any investment security issued or guaranteed by the United States Treasury; or any agency, corporation or instrumentality of the government of the United States or any other security authorized for investment pursuant to KRS 42.500(6), will be considered eligible for repurchase agreements.

Section 11. [10.] Sufficiency of Securities Purchased. The securities purchased shall have a market value (including accrued interest) of not less than 102 [100] percent of the face value of the repurchase agreement. The commission shall cause to have entered in the state's general depository banking contract, language requiring the general depository to review the sufficiency of collateral on all repurchase agreements, at least every seven (7) calendar days. Further, the commission shall demand additional securities be delivered immediately should market conditions cause the value of the securities purchased to drop below 102 [100] percent of the face value of the repurchase agreement.

Section 12. [11.] Status of Parties. Both the commission and the commercial bank, savings and loan association, or investment bank shall be considered principals in all repurchase agreements and never be considered to be acting as agents for third parties. All contractual obligations shall apply to and be binding on the commission and the specific financial institution with which the repurchase agreement is initially negotiated and settled.

Section 13. [12.] Default. The commission shall, in the case of default, or the suspicion of default, on the part of any institution with which it has entered into a repurchase agreement, immediately liquidate all securities delivered to it in the repurchase agreement. From the proceeds, the commission shall pay itself the full principal and accrued interest due as of the date of liquidation. Any remaining cash balances will be forwarded to the financial institution with which the repurchase agreement was originally executed.

Section 14. [13.] Contract. Formal agreement shall be signed by commercial banks, savings and loan associations, and investment banks desiring to enter into repurchase agreements with the state. Each commercial bank and savings and loan association and investment bank must agree to and sign the state's repurchase agreement contract prior to executing a repurchase agreement with the state.

WALLACE G. WILKINSON, Chairman
APPROVED BY AGENCY: May 15, 1991
FILED WITH LRC: May 15, 1991 at 10 a.m.

## STATE INVESTMENT COMMISSION
## (As Amended)

**200 KAR 14:090. Guidelines for money market instruments.**

RELATES TO: KRS Chapter 42
STATUTORY AUTHORITY: KRS 42.525
NECESSITY AND FUNCTION: KRS 42.525, provides that the State Investment Commission shall prescribe rules for the operation of the state's investment program. This regulation establishes the rules which shall apply to the use of certain money market instruments which include bankers' acceptances, commercial paper and negotiable collateralized and uncollateralized certificates of deposit.

Section 1. Definitions. For purposes of this regulation:
(1) "Commission" means the State Investment Commission.
(2) "Office" means the Office of Financial Management and Economic Analysis.
(3) "Bankers' acceptance" means a short-term negotiable discount note drawn on and accepted by a bank or trust company which is obligated to pay the face value amount at maturity, which is rated in one (1) of the three (3) highest categories by a nationally recognized rating agency.
(4) "Commercial paper" means an unsecured

promissory obligation having a maturity of less than 270 days and is by a nationally recognized rating agency.

(5) "Executive director" means the Executive Director of the Office of Financial Management and Economic Analysis.

Section 2. Bankers' Acceptances. (1) The **commission** [office] may purchase these instruments if deemed appropriate by the executive director when originated by a bank rated in one (1) of the three (3) highest categories by a nationally recognized rating agency.

(2) The purchase of these instruments shall be made on a payment versus delivery basis and shall be held in the Commonwealth's account in whatever depository shall be designated as eligible by the commission.

(3) These investments may be made for a period of no longer than six (6) months per investment and the total amount of the investment in this security shall not exceed the amount of ten (10) million dollars in any one (1) institution at a time.

Section 3. Commercial Paper. (1) The **commission** [office] may purchase these instruments if deemed appropriate by the executive director when originated by an issuer that is rated in the highest category by a nationally recognized rating agency.

(2) The purchase of these instruments shall be made on a payment versus delivery basis and shall be held in the Commonwealth's account in whatever depository shall be designated as eligible by the commission.

(3) The investments in commercial paper shall be made for a period of no longer than nine (9) months per investment and the total amount of the investment in this security shall not exceed the amount of ten (10) million dollars by any issuer at a time.

Section 4. Negotiable Certificates of Deposit, Collateralized and Uncollateralized. (1) The **commission** [office] may purchase these instruments if deemed appropriate by the executive director when issued by banks rated in one (1) of the three (3) highest categories by a nationally recognized rating agency.

(2) The purchase of these instruments shall be made on a payment versus delivery basis and shall be held in the Commonwealth's account in whatever depository shall be designated as eligible by the commission.

(3) These investments may be made for a period of no longer than six (6) months per investment and the total amount of investments in these securities shall not exceed the amount of ten (10) million dollars in any one (1) institution at a time.

Section 5. Limit of Money Market Instruments of the State's Total Portfolio. The aggregate investment in bankers' acceptances, commercial paper, and negotiable certificates of deposit shall not exceed twenty (20) percent of the Commonwealth's total investment portfolio.

Section 6. Exceptions. There shall be no exceptions to these guidelines except those approved by the commission [or the executive director of the office on the commission's behalf] based upon the liquidity needs of the Commonwealth.

WALLACE G. WILKINSON, Chairman
APPROVED BY AGENCY: May 15, 1991
FILED WITH LRC: May 15, 1991 at 10 a.m.

**COMPILER'S NOTE:** The following regulation was amended by the promulgating agency and the Interim Joint Committee on Transportation, and became effective on July 2, 1991.

**TRANSPORTATION CABINET**
**Department of Highways**
**Division of Planning**
**(As Amended)**

**603 KAR 5:250. Selection of National Truck Network highways and reasonable access to these highways.**

RELATES TO: KRS 189.221, 189.222, 23 CFR Part 658

STATUTORY AUTHORITY: KRS 189.222, 23 CFR Part 658

NECESSITY AND FUNCTION: KRS 189.222 authorizes the Secretary of Transportation to establish reasonable size limits for motor vehicles using the State Primary Road System. 23 CFR Part 658 requires the states to establish access review procedures certified by the Federal Highway Administration (FHWA) for purposes of allowing the operation of specified vehicles beyond the original limits of the National Truck Network as authorized by the Surface Transportation Appropriations Act of 1982. This administrative regulation is promulgated in order to provide for the **procedures for the selection of additional highway segments to be included in the National Truck Network and terminal and service facility** access review procedures to be administered by the Department of Highways.

Section 1. Definitions. (1) "STAA vehicle" shall mean a vehicle which exceeds the dimension limits set forth in 603 KAR 5:070, Section 1, but which does not exceed the dimensions prescribed by 603 KAR 5:070, Section 2(2). **This includes the larger vehicles authorized by the Surface Transportation Assistant Act of 1980 as amended and 23 CFR Part 658.**

(2) "National Truck Network (NTN)" shall mean the system of highway routes in Kentucky described in 603 KAR 5:070, Section 3, and Appendix A to 23 CFR Part 658.

(3) "Reasonable access" shall mean the right for an STAA vehicle to access a terminal or service facility under the provisions of 23 CFR Part 658.19.

(4) "Service facility" shall mean any commercial facility that provides repair, fuel, food, or rest to an STAA vehicle or its operator.

(5) "Terminal" shall mean any location where freight either originates, terminates, or is handled in the transportation process, or where commercial motor carriers maintain operating facilities.

Section 2. 23 CFR Part 658. Selection of the National Truck Network highways and access to terminals and services by STAA vehicles shall be governed by 23 CFR Part 658.

Section 3. Right of Access Without Review. Access to terminal and service facilities shall be allowed for STAA vehicles up to five (5) driving miles from the National Truck Network on state-maintained routes and up to one (1) mile on any nonstate-maintained route except where STAA vehicles are prohibited from using a route following the provisions set forth in Section 5 [4] of this regulation.

Section 4. **Automatic Access by Special Vehicles. (1) Household goods transporters automatic access. An STAA vehicle operated by a household goods carrier who has been certificated as a household goods carrier by either the Interstate Commerce Commission or the Kentucky Transportation Cabinet under the provisions of KRS Chapter 281 shall have access between any points needed for the loading and unloading of the motor vehicle except where STAA vehicles specifically are prohibited from using a route following the provisions set forth in Section 5 of this regulation.**

**(2) Short semitrailers automatic access. An STAA vehicle being operated in a truck tractor-semitrailer combination in which the semitrailer has a length which does not exceed twenty-eight and one-half (28 1/2) feet shall have access to any route except where STAA vehicles specifically are prohibited from using a route following the provisions set forth in Section 5 of this regulation.**

**Section 5.** Use of Route Prohibited. Any route within the one (1) mile or five (5) mile automatic access allowance set forth in Section 3 [2] of this regulation **or in the automatic access allowed by the provisions of Section 4 of this regulation** that has significant, clearly-evident safety problems may by Transportation Cabinet official order or local ordinance which has been reviewed and approved by the Transportation Cabinet be closed to use by STAA vehicles provided there is compliance with the following:

(1) If the prohibition of use is on a state-maintained route, an official order for that purpose shall be issued by the Transportation Secretary with the approval of the State Highway Engineer.

(2) If the prohibition **of use relating to a locally-owned highway** is the result of action by a local jurisdiction, that jurisdiction shall provide the State Highway Engineer with copies of the appropriate ordinance for review by the Department of Highways in order to ensure consistency of the local ordinance with 23 CFR Part 658. The Transportation Cabinet shall either approve, disapprove or offer changes to the local ordinance within thirty (30) days of receipt of the ordinance. If the Transportation Cabinet fails to act within the thirty (30) days, the local ordinance shall become effective on the 31st day.

(3) Any route normally falling within the five (5) mile or one (1) mile automatic access which is prohibited for use by STAA vehicles under the provisions of this section shall be identified by the placement of a traffic sign by either the Department of Highways or the local government unit having jurisdiction over the route.

(4) Any route normally falling within the five (5) mile or one (1) mile automatic access which is prohibited for use by STAA vehicles under the provisions of this section shall be identified in 603 KAR 5:070.

Section **6.** [5.] Request for **New Route to be Available to STAA Vehicles or Terminal and Service Facility** Access Review. Any owner or operator of an STAA vehicle **who has need to operate a STAA vehicle on a publicly-owned highway route segment not set forth in 603 KAR 5:070 or** who cannot reach a terminal **or service** facility through the access provisions of Section 3 of this regulation and the highway segments set forth in 603 KAR 5:070 may request review of a specific route by the following procedures:

(1) The applicant shall file a written request addressed to the Division of Planning, 419 Ann Street, Frankfort, Kentucky 40622, in an envelope plainly marked "STAA Route Review";

(2) The applicant **currently** shall mark on a state highway map the routes the applicant travels within Kentucky. The applicant shall also provide a written description of these routes;

(3) The applicant shall mark on the same map used in subsection (2) of this section the proposed route to be reviewed and**, if appropriate,** mark the terminal **or service** facility proposed to be used by STAA vehicles. The applicant shall also provide a written description of the route desired to be traveled in Kentucky**, the reason why the route is desired to be used,** and furnish any other appropriate proof of need to use the route;

(4) The applicant shall describe the STAA motor vehicle proposed to be operated by the applicant over the route, including kingpin distance of trailers as measured to the center of the rear axle and the amount of rear overhang as measured from the center of the rear axle to the rear of the trailer. These dimensions shall not exceed a forty-one (41) foot kingpin distance nor a rear overhang of five (5) feet; and

(5) The applicant shall agree to supply a tractor-semitrailer vehicle combination in which the semitrailer is fifty-three (53) feet long and 102 inches wide and the tractor is a standard model rather than a short, snub-nosed model [STAA vehicle] and driver for use in demonstrating vehicle performances on the route requested to be reviewed within thirty (30) days [if needed by the Transportation Cabinet].

Section **7.** [6.] Access Review Procedure. **(1)** After receipt of a "Request for **Terminal or Service Facility** Access Review" which meets the requirements of Section **6** [5] of this regulation, the Transportation Cabinet shall have ninety (90) days in which to inspect the route **as specified in Section 8 of this regulation**, make a recommendation as to whether the route should be approved as an access route, obtain the approval of the State Highway Engineer, and obtain the secretary's approval of an official order designating the route as part of the **access routes for the** NTN system, if so warranted. Otherwise, it shall notify the applicant that the request has been refused.

**(2)** In making its findings, the Transportation Cabinet shall consider all of the factors set forth in Section **8** [7] of this regulation. Failure to meet any one (1) of the application requirements set forth in Section 5 of this regulation [or the tests set forth in

Sections 7 and 8 of this regulation] shall be grounds for denial of a request for access review.

(3) Failure by the Transportation Cabinet to either approve or reject the request within the ninety (90) day period shall constitute automatic approval of this request.

(4) If the route requested for terminal or service facility access is locally-owned and not state-maintained, the Department of Highways shall immediately notify the jurisdictional unit of government of the request. The local government unit may also review the request and respond to the Department of Highways with its recommendations within sixty (60) days.

(5) If a route requested for terminal or service facility access is of sufficient dimensions and geometrics that there is no question by the Transportation Cabinet of its suitability for inclusion as an access route to the NTN, the route may be included as an access route to the NTN by the Department of Highways without the tests prescribed in Section 8 of this regulation.

Section 8. [7.] Provision for Over-the-road or Template Tests. A test drive of the terminal or service facility access review route shall be accomplished except where as-built planimetric plan drawings are available at a sufficient scale for use of template measures. In these cases the template measures may be substituted for an STAA vehicle test drive over the route. Where no suitable as-built plans exist, the applicant-furnished STAA dimension test vehicle shall be driven over the route and the vehicle's performance recorded so as to provide a permanent record demonstrating the adequacy or inadequacy of its performance. The test drive shall be performed at or near the highway segment speed limit in order to approximate actual conditions.

Section 9. [8.] [7.] **Engineering and Safety Criteria. Any route requested [All requests] for terminal or service facility access review in which the test drive or template measures required by Section 8 [7] of this regulation found the route to be inadequate shall be subjected to an engineering and safety analysis. After a route inadequacy is shown by the test imposed under Section 8 [7] of this regulation any one (1) of the following design deficiencies shall disqualify a route from further consideration for inclusion in the National Truck Network:**

**(1) A two (2) lane, two (2) directional route which has a lane width of less than ten (10) feet [or less];**

**[(2) A route which has a gross weight limit of less than 80,000 pounds;]**

**(2) [(3)] A route which has a structure on which the bridge weight allowance[, as determined by the bridge weight formula set forth in 603 KAR 5:066, Section 3(3),] is less than 80,000 pounds for use by a tractor semitrailer combination with five (5) or more axles or is less than 73,500 pounds for use by a straight truck with four (4) or more axles;**

**(3) [(4)] A route which has an underpass that has a vertical clearance of less than thirteen (13) feet six (6) inches);**

**(4) [(5)] A route which has a bridge structure with a width, measured curb to curb, of less than twenty-two (22) feet [or less];**

(5) [(6)] A route greater than one (1) mile in length where the sight passing distance over fifty (50) percent of any segment of the route is restricted to lengths less than 1,500 feet;

(6) [(7)] A route where a combination of two (2) or more of the following conditions on any segment of the route is of a magnitude to constitute a clearly-evident safety hazard;

(a) There exists high degrees of horizontal or vertical curvature;

(b) The roadway shoulders are less than four (4) feet in width; or

(c) There is a narrow bridge on the road segment;

(7) [(8)] A route on which the turning radii of urban intersections are insufficient, as measured by template or on-site observation, to permit safe turning maneuvers by an STAA vehicle or a route on which the operation of an STAA vehicle constitute a safety hazard to other vehicle operators or public or private property by reason of vehicle off-tracking or opposing lane encroachment; or

(8) [(9)] A route on which the incidence of traffic accidents is of a magnitude to indicate that any portion of the route is unsafe[, particularly] for use by STAA vehicles.

**Section 10. Request for New NTN Route for Use by STAA Vehicles. After receipt of a request for a new NTN route for use by STAA vehicles which meets the requirements of Section 5 of this regulation and which was not submitted in order to reach a terminal or service facility, the Transportation Cabinet shall subject the requested route to the engineering and safety analysis set forth in Section 9 of this regulation.**

[Section 8. Provision for Over-the road or Template Tests. If a route is not rejected for inclusion in the National Truck Network due to design deficiencies, a test drive of the route may be required. Where as-built planimetric plan drawings are available at a sufficient scale for use of template measures, the template measures may be substituted for an STAA vehicle test drive over the route. Where no suitable as-built plans exist, the applicant-furnished STAA dimension test vehicle shall be driven over the route and the vehicle's performance recorded so as to provide a permanent record demonstrating the adequacy or inadequacy of its performance. The result of the test drive shall be considered in the engineering and safety analysis of the route by the Transportation Cabinet.]

O. GILBERT NEWMAN, State Highway Engineer
MILO D. BRYANT, Secretary
APPROVED BY AGENCY: May 1, 1991
FILED WITH LRC: May 3, 1991 at 2 p.m.

**COMPILER'S NOTE:** The following regulations were amended by the promulgating agency and the Administrative Regulation Review Subcommittee at its July 1991 meeting.

**PUBLIC PROTECTION & REGULATION CABINET**
**Department of Housing, Buildings & Construction**
**Division of Plumbing**
**(As Amended)**

**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 assure the qualifications of licensed plumbers by requiring practical experience and to create more flexibility in the testing procedures to the administrative authority. This amendment was approved by the Plumbing Code Committee on April 24, 1991. [This amendment is necessary to bring the regulation into technical compliance with KRS Chpater 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 for a master plumber's license or twenty-five (25) dollars 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 times as the Department of Housing, Buildings and Construction directs.

(2) Time and place of examination. Notice of the time and place of examination shall be given by 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. In addition to the citizenship and age limitations of KRS 318.040, each person shall meet the following requirements [Examination for applicants desiring] to become licensed as a master plumber [shall consist of]:

(1) The applicant possessed a valid journeyman plumber's license for a minimum of two (2) years within the past five (5) years immediately preceding application and has been actively employed in plumbing under the supervision of a licensed master plumber for a minimum of two (2) years; or [Answering ten (10) oral questions pertaining to basic principles of plumbing and the State Plumbing Law, Regulation and Code.]

(2) The applicant shall be a Kentucky registered engineer experienced in mechanical engineering. [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) All applicants shall successfully complete the examination developed and administered by the State Plumbing Examining Committee. The examination shall be designed to demonstrate that the applicant understands the Kentucky plumbing laws, is capable of the design of a plumbing system and understands the technical and practical installation techniques and principles for a safe and sanitary plumbing system. The examination shall include, but not be limited to, answering written questions pertaining to basic principles of plumbing and state plumbing laws, and preparing a drawing from a sheet of instruction that describes the number and type of fixtures on each floor. The applicant shall draw all stacks, wastes and vents and insert the proper pipe size required. Oversized piping shall 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. In addition to the citizenship and age limitations of KRS 318.040, each person shall meet the following requirements [Examination for applicants desiring] to become licensed as a journeyman plumber [shall consist of]:

(1) The applicant has completed two (2) consecutive years experience as an apprentice plumber. Proof of this requirement shall be satisfied by submission of a W-2 form, affidavit of a Kentucky licensed master plumber, or other proof of experience acceptable to the Department. [Answering ten (10) oral questions pertaining to basic principles of plumbing and the State Plumbing Law, Regulation and Code.]

(2) The applicant successfully completes the

practical and written examination developed and administered by the State Plumbing Examining Committee. The examination shall be designed to demonstrate the practical and technical understanding of plumbing principles and the ability to apply those principles for a safe and sanitary plumbing system. The examination shall include, but not be limited to, answering written questions [Answering not more than fifty (50) written questions giving essay type answers as required] pertaining to basic principles of plumbing and [the] state plumbing laws, as well as [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 draw all stacks, wastes and vents and insert the proper pipe size required. Oversized piping shall be counted off the same as undersized.

(3) The examination shall also include [(4)] completing a practical section in which the applicant shall demonstrate ability to properly install plumbing by engaging in certain activities such as properly caulk a cast iron soil pipe spigot into a cast iron hub and soldering [. 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 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].

(4) [(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: May 13, 1991
FILED WITH LRC: May 15, 1991 at 10 a.m.

**PUBLIC PROTECTION AND REGULATION CABINET**
**Department of Housing, Buildings & Construction**
**Office of State Fire Marshal**
**(As Amended)**

**815 KAR 25:010. Mobile homes.**

RELATES TO: KRS 227.550 through 227.660, 227.990

STATUTORY AUTHORITY: KRS 227.570, 227.590

NECESSITY AND FUNCTION: KRS 227.590 requires the Mobile Home Certification and Licensure Board to establish rules and regulations governing the standards for manufacture, sale, installation and alteration of mobile homes; and the office of the State Fire Marshal to license mobile home dealers pursuant to KRS 227.610 and to issue certificates of acceptability pursuant to KRS 227.580. These regulations are intended to assure safety for owners and occupiers of mobile homes. This amendment is necessary to upgrade the quality of inspections and otherwise provide efficient administration of the law. This amended regulation was approved by the Mobile Home Board on May 9, 1991.

Section 1. Definitions. In addition to the **following** definitions [contained herein], the definitions of National Fire Protection Association Pamphlet Number 501(b) and the HUD Act shall apply:

(1) "Act" means the Mobile Home and Recreational Vehicle Act, KRS 227.550 to 227.660.

(2) [(3)] "Agency, testing" means an independent [outside] organization which is:

(a) Primarily interested in testing and evaluating equipment and installations;

(b) Qualified and equipped for, or to observe experimental testing to approved standards;

(c) Not under the jurisdiction or control of any manufacturer or supplier of any industry;

(d) Makes available a published report in which specific information is included stating that the equipment and installations listed or labeled have been tested and found safe for use in a specific manner; and

(e) Approved by the board.

(3) [(2)] "Alteration or conversion" means the replacement, addition, modification or removal of any equipment or installations which may affect the body and frame design and construction, plumbing, heat-producing or electrical systems or smoke detectors or their function unless excluded by this regulation [the functioning thereof of mobile homes subject to these regulations is an alteration or conversion unless excluded by these regulations. The above equipment shall be installed in accordance with manufacturer's specifications].

(4) "ANSI" means the American National Standards Institute.

(5) [(4)] "Board" means the Mobile Home Certification and Licensure Board defined in KRS 227.550(1).

(6) [(5)] "Certificate of acceptability" means the certificate provided to the manufacturer signifying the manufacturer's ability to manufacture, import or sell mobile homes within the state to licensed Kentucky dealers.

(7) [(6)] "Certified Kentucky dealer" means a dealer who is approved by the State Fire Marshal to inspect used mobile homes which are brought into Kentucky, and repair them, if necessary, under NFPA 501(B) before placing a "B" seal upon them.

(8) [(7)] "Class "A" seal" as defined by KRS 227.550(2) is for application on new mobile homes not covered by the HUD Act.

(9) [(8)] "Class "B" seal" as defined by KRS 227.550(3) is for application on used mobile homes.

(10) [(9)] "Dealer" as defined by KRS 227.550(4).

(11) [(10)] "Established place of business" as defined by KRS 227.550(5).

(12) [(11)] "Hard surfaced lot" means an area open to the public during business hours with a surface of concrete, asphalt/macadam, compacted gravel or stone, or other material of similar characteristics.

(13) [(12)] "HUD Act" **or "federal act" as defined by KRS 227.550(6).** [means Title VI of the "Housing and Community Development Act of 1974 - National Mobile Home Construction and Safety Standards."]

(14) [(13)] "Manufacturer" as defined by KRS 227.550(8).

(15) [(14)] "Manufactured housing" as defined by KRS 227.550(7).

(16) [(15)] "Mobile home or manufactured home"

as defined by KRS 227.550(9). **Homes or recreational vehicles known as "park trailers" under the HUD Act are regulated by 815 KAR 25:020.** [This definition does not include recreational vehicles known as "park trailers" which are regulated by 815 KAR 25:020.]

[(17) [(16)] "Municipality" for purposes of this regulation means county.]

[(18)] (17) "NFPA" means National Fire Protection Association pamphlets published by and available from the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

**(18)** [(19)] "Offer for sale" means to display, exhibit or otherwise advertise a mobile home. It also means negotiating the purchase and sale or exchange of mobile homes for a fee, commission, compensation, or other valuable consideration.

**(19)** [(20)] [(18)] "Person" means a person, partnership, corporation or other legal entity.

**(20)** [(21)] [(19)] "Red tag" means a written notice which is applied to a mobile home by a representative of the State Fire Marshal's Office in accordance with Section 10 of this regulation signifying that the mobile home is not in compliance with applicable laws.

**(21)** [(22)] [(20)] "Registration" means the transfer of title or any other official recording of change of ownership.

**(22)** [(23)] [(21)] "Salvage unit" means any used mobile home which is identified by the State Fire Marshal and the dealer, or by title, to not be subject to "B" seal requirements because it is not to be sold or used for habitable purposes.

**(23)** [(24)] [(22)] "Suitable sign" means a sign with the dealership name and type of dealership in letters of a minimum height of six (6) inches and minimum width of one and one-half (1 1/2) inches.

**(24)** [(25)] [(23)] "Used mobile home" means any mobile home unit which is offered for sale after the original purchase. These units are not covered by the HUD Act.

Section 2. Authorization and Enforcement. (1) These rules are authorized by KRS 227.590 and established pursuant to the rule making procedures set forth in KRS Chapter 13A, in order to implement, interpret, and carry out the provisions of laws of 1974, as amended in 1976, KRS Chapter 227, relating to mobile homes. **Title VI of the Federal Housing and Community Development Act of 1974 (HUD Act), shall govern all new mobile homes.** [If [In the event that] these regulations conflict with the codes promulgated by the National Fire Protection Association NFPA 501(B) and Title VI of the Federal Housing and Community Development Act of 1974 (Hud Act), the codes or the HUD Act subsequent to the effective enforcement date, shall govern in all cases.]

(2) Subject to the provisions of applicable law, the Office of the State Fire Marshal shall administer and enforce all the provisions of the Mobile Home and Recreational Vehicle Act. Any officer, agent, or employee of the State Fire Marshal's office is authorized to enter any dealer's place of business in order to inspect any mobile home for which the office has issued a seal of approval, or to inspect the [such] mobile home's equipment and its installations to insure compliance with the Act, the code and the HUD Act and these regulations. Upon complaint and request by the owner or occupant, a privately owned mobile home bearing a seal may be entered to determine compliance with these regulations. When it becomes necessary to determine compliance, **the inspector** [he] may require that a portion [or portions] of the [such] mobile homes be removed or exposed in order that a compliance inspection can be made.

Section 3. Scope and Purpose of the Act and Regulations. [(1)] Except to the extent otherwise stated in the Act, **this regulation shall** [and these regulations and in other laws of the Commonwealth which are not inconsistent with or superseded by the Act and these regulations, these regulations] govern the design, manufacture, installation and sale of new and used mobile homes not covered by the HUD Act, which are manufactured, sold or leased for use within or outside of the Commonwealth by dealers and manufacturers. Any person, firm or corporation who sells or offers for sale in Kentucky three (3) or more mobile homes in any consecutive twelve (12) month period shall be considered a dealer subject to all requirements set forth in this regulation and KRS 227.550 to 227.660. These regulations apply to mobile homes manufactured in manufacturing facilities located within or outside the Commonwealth. Mobile homes brought into this state for exhibition use only, in accordance with Section 9(4) of this regulation, and which **shall** [will] not be sold in this state, shall be exempt from the requirements of this regulation if inspections reveal no condition hazardous to health or safety.

[(2) The Act sets out the minimum standards for design, [and] manufacture and installation. Dealers are encouraged to maintain ethical business standards beyond nonfraudulent minimums.]

Section 4. Standards for Manufactured Homes [Vehicles] in Manufacturers' or Dealers' Possession. (1) The office shall enforce [such] standards and requirements for the installation of plumbing, heating, [and] electrical systems and smoke detectors in mobile homes not covered by the HUD Act, as it determines are reasonably necessary to protect the health and safety of the occupants and the public.

(2) The office shall also enforce the [such] standards and requirements for the body and frame design, [and] construction and installation of mobile homes [as are reasonably necessary in order to protect the health and safety of the occupants and the public].

(3) All new mobile homes not covered by the HUD Act, manufactured for sale within the Commonwealth of Kentucky, shall be constructed in accordance with NFPA 501(B), 1977 edition, hereby [herein] adopted by reference. Copies of this publication are available from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101. This material is available for public inspection [and copying, subject to copyright law,] at the Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday.

(4) NFPA 501(B), which is adopted by reference in subsection (3) of this section shall be the

standard for all used mobile homes, unless otherwise provided in this regulation, and it shall be used by the dealer upon inspection in accordance with subsection (7) of this section to determine and certify:

(a) The safe and adequate working condition of the electric, heating, plumbing systems; and

(b) The door, window, and general structural integrity of the unit; and

(c) The sealing of all exterior holes to prevent the entrance of rodents, and repaired if necessary; and

(d) The existence of adequate and operable smoke detection equipment; and

(e) The existence of storm windows.

(5) All mobile homes taken in trade by the dealer shall be reinspected and certified that they are [it is] in compliance with requirements of subsection (4) of this section. The existing Class "A" or Class "B" seal shall [may] be removed and a new seal affixed to the unit or a new seal may be affixed [applied] over the existing seal or label. When a new mobile home purchased under the provision of the HUD Act is resold, it becomes a used mobile home and subject to the provisions of this section. "A" and "B" seals shall not be required if the dealer submits to the office an affidavit that the unit is a salvage unit. No salvage unit shall be sold until it has been authorized, in writing, by the office to be labeled "salvage only" and the label has been affixed to the unit [applied] by the dealer. Upon prior approval of the office, one (1) licensed dealer may sell units to another licensed dealer without applying seals.

(6) [All new mobile homes shall be installed per manufacturers instructions or NFPA 501 (A), 1977 edition when manufacturers defer to local jurisdiction.] All [used] mobile homes shall be installed in accordance with manufacturer's instructions or ANSI A225.1/NFPA 501A, Manufactured Home Installations, 1982 Edition, hereby adopted by reference. Copies of this publication are available from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101. This material is available for public inspection [and copying, subject to copyright law,] at the Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday [NFPA 501 (A), 1977 edition].

(7) All new mobile homes purchased outside the Commonwealth of Kentucky not bearing a Class "A" seal of approval or a HUD label and all used mobile homes purchased outside the Commonwealth of Kentucky, regardless of the type seal or label affixed, shall be inspected by a certified Kentucky dealer or the office and a Class "B" seal of approval affixed prior to registration of the home. This inspection shall consist of the following:

(a) Inspection of the plumbing and waste systems, to determine operability and absence of leaks.

(b) Inspection of the heating unit to determine adequacy of system.

(c) Inspection of the electrical system, including the main circuit box and all outlets/switches, to detect any damaged coverings, lost screws, or improper installations.

(d) Inspection for the existence of adequate and operable smoke detection equipment.

(e) Inspection for storm windows. EXCEPTION: This paragraph and paragraph (4)(e) of this subsection **shall** [do] not apply to mobile homes built prior to the HUD Act. [Compliance with the NFPA 501(B) Edition in effect at the time the mobile home was constructed shall be deemed to comply with this subsection.]

(8) Any licensed Kentucky mobile home dealer that maintains the capability to perform minor maintenance of plumbing, heating and electrical systems of mobile homes shall be permitted to inspect and certify those mobile homes purchased in another state for use within the Commonwealth of Kentucky. Any dealer desiring to perform this service, shall make application to the Office of the State Fire Marshal for appropriate certification as a certified Kentucky dealer. The office shall maintain a list of all certified mobile home dealers.

(9) Any unit found to be in noncompliance with the requirements of Section 4(5) or (7) of this regulation, shall be corrected prior to the dealer certifying the unit or offering the unit for sale unless the unit has been issued a salvage label in accordance with this regulation. All units requiring repairs or correction prior to unit certification, shall be reported to the office specifying the repairs required to correct the deficiencies. Appropriate reporting forms shall be made available to qualified dealers performing inspection.

(10) The fee for the inspection of mobile homes shall be twenty (20) dollars per hour plus twenty-two (22) cents per mile [mileage as required] and a twenty-five (25) dollar seal fee when performed by a certified Kentucky dealer. Inspections performed by the office shall be thirty-five (35) dollars inspection fee and twenty-five (25) dollars seal fee.

Section 5. Applicability and Interpretation of Code and Regulation Provisions. Any questions regarding the applicability or interpretation of any provisions of the HUD Act, the code or regulation adopted shall be submitted to the office, in writing, by any interested person. It is the policy of the office that with respect to questions regarding NFPA 501(B), that the questions shall, whenever feasible, first be submitted to the NFPA for their recommendation; however, the [in accordance with the established procedures of the organization. The] office shall answer these questions and render the official [make] interpretations and the decision of the office shall be in writing.

Section 6. Certificate of Acceptability. (1) No manufacturer shall [may] manufacture, import, or sell any mobile home in this state unless he has procured a certificate of acceptability from the board. Compliance shall be enforced through KRS 227.992. Mobile homes not covered by the HUD Act, manufactured in this state and designed for delivery to and for sale in a state that has a code that is inconsistent with NFPA 501(B) **shall** [need] not comply with this provision.

(2) Requirements for issuance.

(a) The manufacturer shall [must] submit and the office shall [must] approve in-plant quality control systems.

(b) A $500 [400] fee shall [must] accompany the application. The fee shall be paid by check

or money order and shall be made payable to Kentucky State Treasurer.

(c) The manufacturer shall [must] furnish and maintain with the office a certificate of insurance from a Kentucky authorized insurance company for [proof of] general liability insurance to include lot and completed operations insurance in the minimum amount of $300,000 bodily injury or death for each person, $400,000 bodily injury or death for each accident, and $100,000 property damage.

(3) Quality control measures shall be provided for all mobile units not covered by the HUD Act (i.e., all office and used units). To obtain in-plant quality control approval, a manufacturer shall submit a system for in-plant control pursuant to paragraph (b) of this subsection and submit to inspection by the office for field certification of satisfactory quality control. Applications for approval of in-plant quality control systems shall contain the following:

(a) A certified copy of the plans and specifications of a model or model-group for body and frame design, construction, electrical, heating, and plumbing systems. All plans shall be submitted on sheets, the minimum possible size of which is eight and one-half (8 1/2) inches by eleven (11) inches and the maximum possible size of which is twenty-four (24) inches by thirty (30) inches. The manufacturer shall certify that the [aforementioned] systems comply with NFPA 501(B).

(b) Also, a copy of the procedure which will direct the manufacturer to construct mobile homes in accordance with the plans, specifying:

1. Scope and purpose.
2. Receiving and inspection procedure for basic materials.
3. Material storage and stock rotation procedure.
4. Types and frequency of product inspection
5. Sample of inspection control form used.
6. Responsibility for quality control programs, indicating personnel, their assignments, experience and qualifications.
7. Test equipment.
8. Control of drawings and material specifications.
9. Test procedures.

(4) A unit certification format certifying compliance with the Act and this regulation shall be submitted to the office no later than the end of the first week of each month for those units manufactured under the state code and not bearing a HUD label, i.e., mobile offices, add-a-rooms, duplex units, etc. The unit certification format shall contain the information in the format as outlined in Section 12 of this regulation [of Appendix A].

(5) A [No] manufacturer to which a certificate of acceptability has been issued shall not modify in any way its manufacturing specifications without prior written approval of the office.

(6) If the manufacturer is also a dealer, he shall [must] also comply with dealer licensing provisions.

(7) If the applicant does not conform with these regulations, the applicant shall be so notified in writing by the office within ten (10) working days of the date received. If the applicant fails to submit a corrected application in accordance with the information supplied on the application correction notice, the application shall be deemed abandoned and twenty (20) percent of fees due shall be forfeited to the office. Any additional submission shall be processed as a new application.

(8) Manufacturers shall notify the office, in writing, within thirty (30) days of any of the following occurrences:

(a) The corporate name is changed;

(b) The main address of the company is changed;

(c) There is a change in twenty-five (25) percent or more of the ownership interest of the company within a twelve (12) month period;

(d) The location of any manufacturing facility is changed;

(e) A new manufacturing facility is established; or

(f) There are changes in the principal officers of the firm.

(9) Any information relating to building systems or in-plant quality control systems which the manufacturer considers proprietary, shall be so designated [by him] at the time of plans [its] submission, and shall be so held by the office, and by the inspection, evaluation, and local enforcement agencies unless the board determines in each case that disclosure is necessary to carry out the purposes of the Act.

(10) If the office determines that the standards for mobile home units are at least equal to NFPA 501(B) because they comply with the Kentucky Building Code, it may issue a certificate of acceptability for the mobile homes. [The office may determine that the standards for mobile homes established by a state or a recognized body or agency of the federal government or other independent third party are at least equal to NFPA 501(B). If the office finds that these [such] standards are actually enforced, [then] it may issue a certificate of acceptability for the [such] mobile homes.]

(11) Under proceedings for the suspension of a certificate of acceptability for any of the violations enumerated in the Act, the holder of a certificate of acceptability may have the alternative, subject to the approval of the board, to pay in lieu of part or all of the days of any suspension the sum of fifty (50) dollars per day.

Section 7. Serial Numbers, Model Numbers, Date Manufactured. A clearly designated serial number, model number, and date manufactured shall be stamped into the mobile home tongue, or front cross member of the frame at the lower left hand side (while facing the unit), and if there is no [such] tongue or cross member, then a data plate with this information shall be affixed on the outside in a conspicuous place.

Section 8. Dealer License. (1) A [No] dealer of mobile homes shall not engage in business [as such] in this state without a license issued by the office upon application.

(2) Application shall [must] contain the following information:

(a) Name and address of the chief managing officer;

(b) Location of each and every established place of business;

(c) Social security number and date of birth of chief managing officer;

(d) Affidavit certifying compliance with the

Act and regulations;
(e) Names of offices, if dealership in corporate form;
(f) Names of partners, if dealership in partnership form;
(g) A copy of a valid Kentucky sales tax certificate;
(h) Any other information the office deems commensurate with safeguarding of the public interest in the locality of the proposed business;
(3) All licenses shall be granted or refused within thirty (30) days after application [therefor], and shall expire, unless [sooner] revoked or suspended, on December 31 of the calendar year for which they are granted.
(4) The license fee shall be $200 [100]. The fee shall be paid by check or money order and shall be made payable to the Kentucky State Treasurer.
(5) The license shall [must] be conspicuously displayed at the established place of business. If the business [In case such] location is [be] changed, the office shall endorse the change of location on the license without charge if it is located [be] within the same municipality. A change of location to another municipality shall require a new license[, if the county is also changed].
(6) The dealer shall [must] furnish and maintain with the office a certificate of insurance to certify proof [certification] of liability insurance in the minimum amount of $200,000 bodily injury or death for each person, $300,000 bodily injury or death for each accident, and $100,000 property damage.
(7) Dealers shall maintain a record of all units sold, new and used, to include serial numbers, Kentucky seal numbers ("A" or "B"), date manufactured, make, and the name and address of the purchaser. This report shall be in the format depicted in Section 13 of this regulation [Appendix B]. The report shall be made available to the field inspector on a monthly basis.
(8) A [No] dealer shall not have the authority to make any alterations to any mobile home manufactured under the HUD Act or NFPA 501(B) without the express permission of the manufacturer; except that in the case of used mobile homes, permission may be obtained from the State Fire Marshal's Office in accordance with this regulation. Any dealer altering a mobile home, shall be guilty of a federal violation and shall be subject to the penalties provided in KRS 227.990. Alteration of a mobile home shall include but is not limited to: addition or [/] deletion of windows, doors, or partitions; conversion of a heat producing appliance from one (1) fuel to another, i.e., electric to gas or gas to electric or oil; addition of an electrical circuit to accommodate a washer or dryer; addition of central air conditioning when the unit is not designed for that purpose; improper or improperly listed materials for the repair of a unit; installing an unlisted heat producing appliance, etc. The following shall [does] not constitute an alteration or conversion: replacement of equipment in kind, i.e., gas furnace with gas furnace; replacement or changing of furniture to accommodate the consumer and any other cosmetic repairs.
(9) Notification of a change in the application information shall [must] be made within thirty (30) days of any of the following occurrences:
(a) Dealership name is changed;
(b) Established place of business is changed (move to a different county requires a new license);
(c) There is a change in twenty-five (25) percent or more of the ownership interest of the dealership within a twelve (12) month period; or
(d) There are changes in the principal officers of the firm.
(10) Out-of-state dealers with valid Kentucky licenses. Exception: any applicant whose place of business is in another state and who possesses a valid dealers license in another state shall be licensed upon application and approval by the office in accordance with this regulation. These out-of-state dealers shall provide Kentucky seals for units actually sold for delivery into Kentucky.

Section 9. Temporary License. (1) No person, [Any dealer] other than one duly licensed in Kentucky pursuant to [under] Section 8 of this regulation, shall [not] [, pursuant to KRS 227.620, wishing to] show or [and] offer mobile homes within the Commonwealth of Kentucky; except that, for the express purpose of retailing the units to the general public at a specified location, the person or company may [he shall] [be required to] purchase from the Office of the State Fire Marshal a temporary license. The temporary [Said] license shall not exceed fifteen (15) days duration and the license fee shall be $100 for each authorized event. The applicant for the license shall notify the department at least thirty (30) days in advance of any event at which he plans to exhibit mobile homes for sale giving the name, location and time of the proposed event.
(2) Applicant shall meet the following requirements before a temporary license is granted:
(a) Be a duly licensed dealer in a state other than Kentucky;
(b) Furnish [Certify] to the office a certificate of insurance to certify that the dealership has proper liability insurance in the minimum amount of $200,000 bodily injury or death for each person, $300,000 bodily injury or death for each accident, and $100,000 property damage;
(c) Provide satisfactory assurance to the office by way of a physical inspection by an authorized representative of this office that each new unit not covered by the federal Act the dealer intends to display, show or offer for sale, bears a Kentucky Class "A" seal of approval. Used mobile homes shall not be [are not] permitted to be shown or offered for sale within the Commonwealth of Kentucky by nonresident dealers at any time;
(d) Possess a valid Kentucky Sales Tax Certificate;
(e) Provide all other information [as may be] required by the office; [and]
(f) The state in which the applicant is licensed shall have reciprocal provisions for temporary licensing of Kentucky dealers.
(3) Temporary licenses shall be prominently displayed at the location where the applicant is transacting business.
(4) Temporary licenses shall not be required for those dealers attending a mobile home show

within the Commonwealth of Kentucky if [provided] they do not sell or offer for sale to the general public new or used mobile homes, and if [further provided that] the dealer has notified the department, in writing, at least thirty (30) days in advance of any event at which he plans to exhibit mobile homes, giving the name, location and time of the proposed event.

Section 10. Seals. (1) **A** [No] manufacturer who has received a certificate of acceptability from the office shall **not** sell or offer for sale to Kentucky dealers in this state mobile homes not covered by the HUD Act, unless they bear a Class "A" seal of approval issued by and purchased from the office. This provision shall not apply to vehicles sold or offered for sale for shipment out of state.

(2) **A** [No] dealer who has received a license from the office shall **not** sell or offer for sale a mobile home except as permitted between licensed dealers, pursuant to Section 4(5) of this regulation, unless it has either a HUD seal, an "A" seal, a "B" seal or a salvage label, except as otherwise provided in this regulation. Any dealer who has acquired a used mobile home without a seal, shall apply to the office for a Class "B" seal by submitting an affidavit certifying either that all electrical, heating, and plumbing equipment has been checked, and if necessary, repaired, and is now in safe working condition, or that the unit meets the applicable code.

(a) Acquisition of seal.

1. Any manufacturer, except one altering a new mobile home not covered by the HUD Act bearing a seal, shall [may] qualify for acquisition of a Class "A" seal by obtaining a certificate of acceptability pursuant to KRS 227.580 and Section 6 of this regulation.

2. Any dealer, except one altering a mobile home bearing a seal, shall [may] qualify for acquisition of a Class "B" seal by giving an affidavit certifying either that all electrical, heating, and plumbing equipment has been checked, if necessary, repaired, and is now in safe working condition or that the unit meets the applicable code.

(b) Application for seals.

1. Any person who has met the applicable requirements of Section 6 or 8 of this regulation shall apply for seals in the form prescribed by the office. The application shall be accompanied by the seal fee of twenty-five (25) [(20)] dollars for each Class "A" seal or twenty-five (25) [(20)] dollars for each Class "B" seal.

2. If the applicant has qualified to apply for seals pursuant to the in-plant quality control approval method, the seal application shall include the certificate of acceptability number.

(c) Alteration or conversion of a unit bearing a seal.

1. Any alteration of the construction, plumbing, heat-producing equipment, electrical equipment installations or fire safety in a mobile home not covered by the HUD Act, which bears a seal, shall void the [such] approval and the seal shall be returned to the office.

2. The following shall not constitute an alteration or conversion for those mobile homes not covered by the HUD Act:

a. Repairs with approved component parts.

b. Conversion of listed fuel-burning appliances in accordance with the terms of their listing.

c. Adjustment and maintenance of equipment.

d. Replacement of equipment in kind.

e. Any change that does not affect those areas covered by NFPA 501(B) or the HUD Act.

3. Any dealer proposing an alteration to a mobile home not covered by the HUD Act bearing a seal, shall make application to the office. The [Such] application shall include:

a. Make and model of mobile home.

b. Serial number.

c. State seal number.

d. A complete description of the work to be performed together with plans and specifications, when required.

e. Location of the mobile home where work is to be performed.

f. Name and address of the owner of the mobile home.

4. Upon completion of the alteration, the applicant shall request the office to make an inspection.

5. The applicant may purchase a replacement seal, based on inspection of the alteration for a fee of two (2) dollars.

(d) Denial and repossession of seals. If inspection reveals that a manufacturer is constructing mobile homes not covered by the HUD Act (such as office units) according to NFPA 501(B); or, if inspection reveals that any dealer failed to repair a used mobile home under the standards and procedures set forth in this regulation and KRS 227.550 to 227.660 or failed to comply with any other provision for placement of seals and labels; and the dealer or manufacturer, after having been served with a notice setting forth in what respect the provisions of these rules and the code have been violated, continues to manufacture, sell or offer for sale mobile homes in violation of these rules and the code, applications for new seals shall be denied and the seals previously issued and unused shall be confiscated and credit given. Upon satisfactory proof of compliance, the manufacturer or dealer shall [may] resubmit an application for seal.

(e) Seal removal. If a [In the event that any] mobile home not covered by the HUD Act is found to be in violation of these rules, the office shall attach to the vehicle a notice of noncompliance or a "red tag" and furnish the manufacturer or dealer a copy of same. The office, dealer or manufacturer shall not remove the noncompliance "red tag" until corrections have been made, and the owner or his agent has requested an inspection in writing to the office and given an affidavit certifying compliance. Removal of any "red tag" shall result in repossession of all seals held by the dealer or manufacturer until [such time as] the facility is once again in full compliance with the Act and this regulation.

(f) Placement of seals.

1. Each seal shall be assigned and affixed to a specific mobile home not covered by the HUD Act. Assigned seals **shall not be** [are not] transferable unless assigned between dealers and **shall be** [are] void when not affixed as assigned, and all [such] seals shall be returned to or may be confiscated by the office. The seal shall remain the property of the office and may be seized by the office in the event of violation of the Act or regulations.

2. The seal shall be securely affixed by the

door on the handle side at approximately handle height.

3. No other seal, stamp, cover, or other marking shall [may] be placed within two (2) inches of the seal.

(g) Lost or damaged seals.

1. When a seal becomes lost or damaged, the office shall be notified immediately in writing by the owner. The owner shall specify the manufacturer, the mobile home serial number, and when possible, the seal number.

2. All damaged seals shall be promptly returned. Damaged and lost seals shall be replaced by the office with a replacement seal upon [on] payment of the replacement seal fee of two (2) dollars.

3. A dealer shall not display, sell or offer for sale a mobile home not covered by the HUD Act unless an "A" or "B" seal or salvage label is affixed.

Section 11. Examination for Installation of Manufactured Homes. The office shall administer an examination designed to determine qualifications based on NFPA 501A and other applicable standards adopted by regulation by the board. Any dealer or other person who successfully completes the examination shall be deemed qualified to install manufactured homes. The dealer shall be responsible for the proper installation of the manufactured home as required by the standards adopted by the board. [Sections 1 through 10 of this regulation shall take effect thirty (30) days after adoption, pursuant to KRS Chapter 13A, and shall be applicable to the possession and sale of mobile homes after that date.]

Section 12. Mobile Home Unit Certification Format.

[APPENDIX A]
MOBILE HOME
UNIT CERTIFICATION FORMAT

_____
Name of Manufacturer

_____ _____
Mailing Address County

_____, _____ _____
City State Zip Code

I hereby certify that the mobile homes as described hereon have been constructed in compliance with NFPA 501 B.

| No. | Serial # | KY Seal # | Date Mfg. | Model | Size | Dealer |
|---|---|---|---|---|---|---|
| 1 | | | | | | |
| 2 | | | | | | |
| 3 | | | | | | |
| 4 | | | | | | |
| 5 | | | | | | |

This form shall [must] be used in reporting units to the Office of the State Fire Marshal. The form shall [should] be completed in duplicate with the original to be sent to the Office of the State Fire Marshal, and the copy retained by the manufacturer. This form shall [should] be mailed to the State Fire Marshal when the last entry has been filled or not later than the first week of each month.

_____ BY _____
Date Person Authorized to Certify These Units

Section 13. Dealer Certification Format.

[APPENDIX B
STATE FIRE MARSHAL
MANUFACTURED HOUSING
U.S. 127 SOUTH
FRANKFORT, KENTUCKY 40601]

DEALER CERTIFICATION FORMAT

_____
Name of Dealer

_____ _____
Mailing Address County

_____, _____ _____
City State Zip Code

I hereby certify that the used units described hereon have been inspected and are in compliance with the standards as required by KRS 227.550 through KRS 227.660 and regulations thereto and that the new mobile homes described hereon have the appropriate HUD label.

| No. | Serial # | HUD LABEL #/ KY Seal # | Date Mfg. | Make | Purchaser & Address |
|---|---|---|---|---|---|
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

This form shall [must] be used in reporting units to the field inspector.

_____ _____
Date Signature

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: May 13, 1991
FILED WITH LRC: May 15, 1991 at 10 a.m.

**PUBLIC PROTECTION AND REGULATION CABINET**
**Department of Housing, Buildings & Construction**
**Office of State Fire Marshal**
**(As Amended)**

**815 KAR 25:020. Recreational vehicles.**

RELATES TO: KRS 227.550, 227.660 [227.570]
STATUTORY AUTHORITY: KRS 227.570, 227.590, 227.610
NECESSITY AND FUNCTION: KRS 227.590 requires the Recreational Vehicle Certification and Licensure Board to establish rules and regulation governing the standards for manufacture, sale, and alteration of recreational vehicles; and the office of the State Fire Marshal is required to license dealers pursuant to KRS 227.610 and to issue certificates of acceptability pursuant to KRS 227.580. These regulations are intended to assure safety for owners and occupiers of recreational vehicles by regulating dealers,

setting standards for construction and inspection. This amendment is necessary to clarify the law and improve the enforcement of safety standards for all recreational vehicles, including a new entity known as park trailers. This amendment was approved by the Recreational Vehicle Board on May 2, 1991. [This amendment is necessary to comply with the technical requirements of KRS Chapter 13A. No substantive changes are intended.]

Section 1. Definitions. For purposes of this regulation the following definitions [In addition to the definitions contained herein, the definitions of National Fire Protection Association Pamphlet Number 501(C)] shall apply:

(1) "Act" means the Mobile Home and Recreational Vehicle Act, KRS 227.550 to 227.660.

(2) "Agency, testing" means an outside organization which is:

(a) Primarily interested in testing and evaluating equipment and installations;

(b) Qualified and equipped for, or to observe experimental testing to approved standards;

(c) Not under the jurisdiction or control of any manufacturer or supplier of any industry;

(d) Makes available a published report in which the specific information is included stating that the equipment and installations listed or labeled have been tested and found safe for use in a specific manner; and

(e) Approved by the board.

(3) "Alteration or conversion" means the replacement, addition, modification, or removal of any equipment or installations which may affect the plumbing, heat-producing or electrical systems, and fire and life safety systems or **their function, unless excluded by this regulation** [the functioning thereof of recreational vehicles subject to these regulations [rules] is an alteration or conversion unless excluded by these regulations [rules]. The above equipment shall [must] be installed in accordance with manufacturer's specifications].

(4) "ANSI" means the American National Standards Institute.

(5) [(4)] "Board" means the Recreational Vehicle Certification and Licensure Board defined in KRS 227.550(1).

(6) [(5)] "Certificate of acceptability" means the certificate provided to the manufacturer signifying the manufacturer's ability to manufacture, import or sell recreational vehicles within the state to licensed Kentucky dealers.

(7) "Certified Kentucky dealer" means a dealer who is approved by the State Fire Marshal to inspect used recreational vehicles which are brought into Kentucky, and repair them, if necessary, under ANSI A119.2/NFPA 501C or ANSI A119.5 before placing a "B" seal upon them.

(8) [(6)] "Class 'A' seal" as defined by KRS 227.550(2).

(9) [(7)] "Class 'B' seal" as defined by KRS 227.550(3).

(10) [(8)] "Dealer" as defined by KRS 227.550(4).

(11) [(9)] "Established place of business" as defined by KRS 227.550(5).

(12) [(10)] "Hard surfaced lot" means an area open to the public during business hours with a surface of concrete, asphalt/macadam, compacted gravel or stone, or other material of similar characteristics.

(13) "HUD Act" **or "federal act" as defined by KRS 227.550(6).** [means Title VI of the "Housing and Community Development Act of 1974 - National Mobile Home Construction and Safety Standards."]

(14) "Manufacturer" as defined by KRS 227.550(8).

(15) "Manufactured housing" as defined by KRS 227.550(7).

[(16) "Municipality" for purposes of this regulation means county.]

**(16)** [(17)] [(11)] "NFPA 501(C)" as defined by KRS 227.550(12).

**(17)** [(18)] [(12)] "Office" as defined by KRS 227.550(13).

**(18)** [(19)] "Offer for sale" means to display, exhibit or otherwise advertise a recreational vehicle before the general public. It also means negotiating the purchase and sale or exchange of recreational vehicles for a fee, commission, compensation, or other valuable consideration.

**(19)** [(20)] "Park trailer" means a recreational vehicle that meets the following criteria:

(a) Built on a single chassis mounted on wheels.

(b) Primarily designed as temporary living quarters for seasonal or destination camping which may be connected to utilities necessary for operation of installed fixtures and appliances.

(c) Having a gross trailer area not exceeding forty (40) square feet in the set-up mode.

(d) Having a gross trailer area not less than 240 square feet and certified by the manufacturer as complying with ANSI A119.5.

**(20)** [(21)] [(13)] "Person" means a person, partnership, corporation or other legal entity.

**(21)** [(22)] [(14)] "Recreational vehicle" as defined by KRS 227.550(14), the HUD Act in 24 CFR, Parts 3280, 3282 and 3283, and defined herein as "park trailers."

**(22)** [(23)] "Red tag" means a written notice which is applied to a recreational vehicle by a representative of the State Fire Marshal's office in accordance with Section 4 of this regulation signifying that the recreational vehicle is not in compliance with applicable laws.

**(23)** [(24)] "Registration" means the transfer of title or any other official recording of change of ownership.

**(24)** [(25)] "Salvage unit" means any used recreational vehicle which is identified by the State Fire Marshal and the dealer, or by title, to not be subject to "B" seal requirements because it is not to be sold or used for habitable purposes.

**(25)** [(26)] [(15)] "Suitable sign" means a sign with the dealership name and type of dealership in letters of a minimum height of six (6) inches and a minimum width of one and one-half (1 1/2) inches.

Section 2. Authorization. (1) This regulation is authorized to carry out the provisions of law in KRS Chapter 227. If [In the event that] these regulations conflict with the applicable provisions of ANSI A119.2/NFPA 501C, or ANSI A119.5 [codes promulgated by the National Fire Protection Association (NFPA 501(C), 1977 edition,] the codes shall govern in all cases.

(2) Subject to the provisions of applicable

law, when it becomes necessary during an inspection to determine compliance, the office may require the dealer or manufacturer to remove or expose a portion [or portions] of the recreational vehicle in order to make the inspection.

Section 3. Scope and Purpose. These [of the Act and Regulations. Except to the extent otherwise stated in the Act and these] regulations establish licensing requirements for all dealers and [in other laws of the Commonwealth which are not inconsistent with or superseded by the Act and these regulations, these regulations] govern the design, manufacture, storage, and sale of recreational vehicles which are manufactured, sold, leased, or transported for use within or outside of the Commonwealth. These regulations apply to recreational vehicles manufactured in manufacturing facilities located within or outside the Commonwealth. Recreational vehicles brought into this state for exhibition use only and which **shall** [will] not be sold in this state, shall be exempt from the coverage of this regulation if inspections reveal no condition hazardous to health or safety.

Section 4. Standards for Vehicles in Manufacturers' or Dealers' Possession. (1) The office shall enforce the [such] standards and requirements for the installation of plumbing, heating, electrical, and fire and life safety systems in recreational vehicles as it determines are reasonably necessary to protect the health and safety of the occupants and the public.

(2) [On] All recreational vehicles manufactured for sale within the Commonwealth of Kentucky shall comply with the applicable [, said] standards set forth in ANSI A119.2/NFPA 501C, Recreational Vehicles, 1990 Edition, or ANSI A119.5, Park Trailers, 1988 Edition, hereby [shall be National Fire Protection Association Pamphlet #501(C), 1977 edition, herein] **incorporated** [adopted] by reference. [as if set at length herein.] Copies of ANSI A119.2/NFPA 501C are available from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101. Copies of ANSI A119.5 are available from the American National Standards Institute, 1430 Broadway, New York, New York 10018. This material is [. Copies are] available for public inspection [and copying, subject to copyright law.] [review] at the Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky, Monday through Friday between 8 a.m. and 4:30 p.m.

(3) Prior to the offering for sale of any used recreational vehicle, [On all used recreational vehicles without a seal, said standards shall be that] the dealer shall first certify that the electric, heating, plumbing, and fire and life safety systems have been checked, and repaired if necessary, and found to be in safe working condition and then affix a "B" seal to the unit [thus be in conformity with the intent of the Act to protect the health and safety of the occupants and general public].

(4) All recreational vehicles taken in trade by a dealer shall [must] be reinspected and certified that they are in compliance with requirements of this subsection and subsection (7) of this section. The existing class "A" or class "B" seal shall [may] be removed and a new seal or label affixed to the unit; or a new seal shall [may] be affixed to the unit [applied] over the existing seal or label. [A seal shall not be required if such dealer submits an affidavit that the unit will not be resold for use as recreational vehicles by the public.]

(5) A [No] seal shall be required if the dealer submits to the office an affidavit that the unit is a salvage unit. No salvage unit shall not be sold until it has been authorized, in writing, by the office to be labeled "salvage only" and the label has been affixed to the unit by the dealer. No seal shall be required if one (1) licensed dealer sells any unit to another licensed dealer; however, prior notice of the [such] shall be given to the office.

(6) [(5)] All new recreational vehicles purchased outside the Commonwealth of Kentucky not bearing a class "A" seal of approval and all used recreational vehicles purchased outside the Commonwealth of Kentucky, not bearing any Kentucky seal of approval, [regardless of the type seal affixed,] shall be inspected by [delivered to] a certified Kentucky dealer or the office and a class "B" seal of approval issued [for inspection] according to the following criteria:

(a) Inspection of the plumbing and waste systems;

(b) Inspection of the heating unit to determine adequacy of the system;

(c) Inspection of the electrical systems including the main circuit box and all outlets/switches to detect any damaged coverings, lost screws, or improper installations;

(d) Inspection of fire **and** [/] life safety (fire extinguishers and second means of egress).

(7) [(6)] Any Kentucky licensed [Kentucky] recreational vehicle dealer that maintains the capability to perform minor maintenance of plumbing, heating, and electrical systems of recreational vehicles shall be permitted to inspect and certify those recreational vehicles purchased in another state for use within the Commonwealth of Kentucky. Any dealer desiring to perform this service shall make application to the Department of Housing, Buildings and Construction, State Fire Marshal's Office for appropriate certification. Upon application approval, the dealer shall be a "certified Kentucky dealer".

(8) [(7)] Any unit found to be in noncompliance with the requirements of [section 4(5) of] this regulation shall be corrected prior to the dealer certifying the unit or offering the unit for sale unless the unit has been issued a salvage label in accordance with this regulation. All units requiring repairs or corrections prior to unit certification shall be reported to the office specifying the repairs required to correct the deficiencies. Appropriate reporting forms shall be made available to qualified dealers performing inspection.

(9) [(8)] The fee for the inspection of recreational vehicles shall be twenty (20) [fifteen (15)] dollars per hour plus twenty-two (22) cents per mile [mileage as required] and a twenty-five (25) [(20)] dollar seal fee when performed by a certified Kentucky dealer. Inspections performed by the office shall be

thirty-five (35) dollar inspection fee and twenty-five (25) dollar seal fee.

Section 5. Applicability and Interpretation of Code and Regulation Provisions. (1) Any request for [questions regarding the applicability or] interpretations of any provisions of this regulation or the Act [code] [or any standard referred to herein] may [regulation adopted shall] be submitted, in writing, by any interested person to the office [for resolution]. It is the policy of the office that [with respect to] questions regarding ANSI A119.2/NFPA 501C or ANSI A119.5 [NFPA 501(C), any such questions] shall, whenever feasible, be submitted to the NFPA or ANSI for their recommendation [in accordance with the established procedures of the organization]. The opinion or decision of the office shall be in writing for written requests.

Section 6. Certificate of Acceptability. (1) A [No] manufacturer shall not [may] manufacture, import, or sell any recreational vehicle in this state unless he has procured a certificate of acceptability from the board. Compliance shall be enforced through KRS 227.992. Recreational vehicles manufactured in this state and designed for delivery to and for sale in a state that has a code that is inconsistent with applicable provisions of ANSI A119.2/NFPA 501C or ANSI A119.5 as required by Section 4(2) of this regulation [NFPA 501(C)] shall [need] not comply with this provision. A certificate of acceptability shall not be required for manufacturers attending a recreational vehicle trade show within the Commonwealth of Kentucky if they do not sell recreational vehicles to Kentucky dealers.

(2) Requirements for issuance.

(a) The manufacturer shall [must] submit and the office shall [must] approve in-plant quality control systems;

(b) An affidavit certifying compliance with the applicable standards shall [must] be attached to the application;

(c) A $500 [400] fee shall [must] accompany the application. The fee shall be paid by check or money order and shall be made payable to: Kentucky State Treasurer;

(d) The manufacturer shall [must] furnish and maintain with the office a certificate of insurance to certify proof of general liability insurance to include lot and completed operations insurance in the minimum amount of $300,000 bodily injury or death for each person, $400,000 bodily injury or death for each accident, and $100,000 property damage.

(3) To obtain in-plant quality control approval, a manufacturer shall submit a system for in-plant control pursuant to paragraph (b) of this subsection and submit to inspection by the office for field certification of satisfactory quality control. Applications for approval of in-plant quality control systems shall contain the following:

(a) A certified copy of the plans and specifications of a model or model-group for electrical, heating, and plumbing systems. All plans shall be submitted on sheets, the minimum possible size of which is eight and one-half (8 1/2) inches by eleven (11) inches, and the maximum possible size of which is twenty-four inches by thirty inches (24" x 30"). The manufacturer shall certify that the [aforementioned] systems comply with ANSI A119.2/NFPA 501C, Recreational Vehicles or ANSI A119.5, Park Trailers, whichever is applicable [NFPA 501(C)].

(b) Also a copy of the procedure which will direct the manufacturer to construct recreational vehicles in accordance with the plans, specifying:

1. Scope and purpose.
2. Receiving and inspection procedure for basic materials.
3. Material storage and stock rotation procedure.
4. Types and frequency of product inspection.
5. Sample of inspection control form used.
6. Responsibility for quality control programs, indicating personnel, their assignments, experience and qualifications.
7. Test equipment.
8. Control of drawings and material specifications.
9. Test procedures.

(4) A unit certification format certifying compliance with the Act and regulations shall be submitted to the office no later than the end of the first week of each month. The unit certification format shall contain the information in the format **in Section 12 of this regulation** [of Appendix A].

(5) A [No] manufacturer to which a certificate of acceptability has been issued shall **not** modify in any way its manufacturing specifications without prior written approval of the office.

(6) If the manufacturer is also a dealer, he shall [must] also comply with dealer licensing provisions.

(7) If [Should] the applicant does not conform with these regulations, the applicant shall be so notified in writing by the office within ten (10) working days of the date received. If [Should] the applicant fails to submit a corrected application in accordance with the information supplied on the application correction notice, the application shall [will] be deemed abandoned and twenty (20) percent of fees due shall [will] be forfeited to the office. Any additional submission shall be processed as new application.

(8) Manufacturers shall notify the office in writing within thirty (30) days of any of the following occurrences:

(a) The corporate name is changed;

(b) The main address of the company is changed;

(c) There is a change in twenty-five (25) percent or more of the ownership interest of the company within a twelve (12) month period;

(d) The location of any manufacturing facility is changed;

(e) A new manufacturing facility is established; or

(f) There are changes in the principal officers of the firm.

(9) Any information relating to building systems or in-plant quality control systems which the manufacturer considers proprietary shall be so designated [by him] at the time of **plans** [its] submission, and shall be so held by the office, and by the inspection, evaluation, and local enforcement agencies unless the board determines in each case that disclosure is necessary to carry out the purposes of the Act.

(10) The office may determine that the standards for recreational vehicles established

by a state or a recognized body or agency of the federal government or other independent third party are at least equal to applicable provisions of ANSI A119.2/NFPA 501C, Recreational Vehicles or ANSI A119.5, Park Trailers, as adopted by this regulation [NFPA 501(C)]. If the office finds that these [such] standards are actually enforced then it may issue a certificate of acceptability for those [such] recreational vehicles.

Section 7. Serial Numbers, Model Numbers, Date Manufactured. A clearly designated serial number, model number, and date manufactured shall be stamped into the tongue, or front cross member of the frame at the lower left hand side (while facing the unit), and if there is no [such] tongue or cross member, then a data plate with this information shall be affixed on the outside in a conspicuous place.

Section 8. Licensed Kentucky Dealers [Dealer License]. (1) A [No] dealer of recreational vehicles shall not engage in business [as such] in this state without a license issued by the office upon application.

(2) Application shall [must] contain the following information:

(a) Name and address of the chief managing officer;

(b) Location of each and every established place of business;

(c) Social security number and date of birth of chief managing officer;

(d) Affidavit certifying compliance with the Act and regulations;

(e) Names of officers if dealership in corporate form;

(f) Names of partners if dealership in partnership form; [and]

(g) A copy of a valid Kentucky sales tax certificate; and

(h) [(g)] Any other information the office deems commensurate with safeguarding of the public interest in the locality of the proposed business.

(3) All licenses shall be granted or refused within thirty (30) days after application [therefor], and shall expire, unless [sooner] revoked or suspended, on December 31 of the calendar year for which they are granted.

(4) The license fee shall be $200 [100]. The fee shall be paid by check or money order and shall be made payable to Kentucky State Treasurer.

(5) The license shall [must] be conspicuously displayed at the established place of business. If the business [In case such] location is [be] changed, the office shall endorse the change of location on the license without charge if it is located [be] within the same municipality. A change of location to another municipality shall require a new license[, if the county is also changed].

(6) The dealer shall [must] furnish and maintain with the office a certificate of insurance to certify proof [certification] of liability insurance in the minimum amount of $200,000 bodily injury or death for each person, $300,000 bodily injury or death for each accident, and $100,000 property damage.

(7) Periodic reports.

(a) Dealers shall maintain a record of all units sold, new and used, to include serial numbers, Kentucky seal numbers ("A" or "B"), date manufactured, make, and the name and address of the purchaser. This report shall be in the format depicted in Section 13 of this regulation [Appendix B]. The report shall be made available to the field inspector on a monthly basis. [A unit compliance format certifying compliance with the Act and regulations shall be submitted to the field inspector on a monthly basis for "all" units sold. The unit certification format shall contain the information in Appendix B.]

(b) Notification of a change in the application information shall [must] be made within thirty (30) days of any of the following occurrences:

1. Dealership name is changed;
2. Established place of business is changed;
3. There is a change in twenty-five (25) percent or more of the ownership interest of the dealership within a twelve (12) month period; or
4. There are changes in the principal officers of the firm.

(8) Out-of-state dealers with valid Kentucky license. Exception: an applicant whose place of business is in another state and who possesses a valid dealer's license in another state, shall be licensed upon application and approval by the office in accordance with this regulation. These out-of-state dealers shall certify and provide Kentucky seals only for units actually sold for delivery into Kentucky.

(9) Any dealer duly licensed under subsections (1) through (8) of this section may offer for sale or sell recreational vehicles on a temporary basis at a location outside the municipality for which the dealer is currently licensed under the following conditions:

(a) Written notification to the State Fire Marshal's office thirty (30) days in advance of any event at which the dealer plans to exhibit recreational vehicles, giving name, location and duration of the proposed event and that the dealer shall comply with applicable fire code requirements for the event.

(b) No event exceeds fifteen (15) days in duration.

(c) The dealer complies with applicable temporary licensing requirements of Section 9 of this regulation for authorized events in excess of two (2).

Section 9. Temporary Licenses. (1) A [No] dealer, except one (1) possessing a valid Kentucky license issued pursuant to Section 8 of this regulation shall not offer for sale or sell recreational vehicles within the Commonwealth of Kentucky unless the dealer shall purchase from the Office of the State Fire Marshal a temporary license. [Any dealer other than one duly licensed in Kentucky, wishing to show and offer recreational vehicles within the Commonwealth of Kentucky for the express purpose of retailing said units to the general public, shall be required to purchase from the Office of the State Fire Marshal a temporary license. Said license shall not exceed fifteen (15) days duration and the license fee shall be ten (10) dollars for each authorized event.]

(2) An out-of-state applicant for temporary license shall meet the following requirements before a temporary license shall be [is] granted:

(a) Be a duly licensed dealer in a state other than Kentucky;

(b) [Must] Furnish to the office a certificate

of insurance as proof of liability insurance in the minimum amount of $200,000 [50,000] bodily injury or death for each person, $300,000 [100,000] bodily injury or death for each accident, and $100,000 [25,000] property damage;

(c) Provide satisfactory assurance to the office by way of a physical inspection by an authorized representative of the office, that each new unit the dealer proposes to display, show or offer for sale, bears a Kentucky class "A" seal of approval. Used units **shall not** [are not permitted to] be displayed, shown or offered for sale within the Commonwealth of Kentucky by any [nonresident] dealer who does not possess a valid Kentucky license issued pursuant to Section 8 of this regulation;

(d) Possess a valid Kentucky sales tax certificate; [Provide all other information as may be required by the office.]

(e) The state in which the applicant is licensed shall have reciprocal provisions for temporary licensing of Kentucky dealers;

(3) Any temporary license shall not exceed fifteen (15) days duration and the license fee shall be $100 for each authorized event. [Temporary licenses shall be prominently displayed at the location where the applicant is transacting business.]

(4) Applications for a temporary license shall be made at least thirty (30) days in advance of any event at which recreational vehicles shall be offered for sale or sold and the application shall state the name, location and time of the proposed event and all dealers shall comply with applicable fire code requirements for the proposed event. [Temporary licenses shall not be required for those dealers attending a recreational vehicle show within the Commonwealth of Kentucky provided they do not sell or offer for sale to the general public recreational vehicles.]

(5) Temporary licenses shall be prominently displayed at the location where the applicant is transacting business. The license shall be valid only for the location stated on the application.

(6) A [No] dealer shall **not** be issued more than two (2) temporary licenses per calendar year.

Section 10. Seals. (1) A [No] manufacturer who has received a certificate of acceptability from the office shall **not** sell or offer for sale to Kentucky dealers in this state recreational vehicles unless they bear a class "A" seal of approval issued by and purchased from the office. The provision shall not apply to vehicles sold or offered for sale for shipment out of state.

(2) A [No] dealer who has received a license from the office shall **not** sell or offer for sale a recreational vehicle except as permitted between licensed dealers pursuant to Section 4(6) of this regulation unless it has an "A", a "B" seal or a "salvage label" affixed to the unit [a seal]. Any dealer who has acquired a used recreational vehicle without a seal shall apply to the office for a class "B" seal by submitting an affidavit certifying either that all electrical, heating, plumbing, and fire and life safety equipment has been checked, and if necessary, repaired, and is now in safe working condition, or that the unit meets the applicable code. Any licensed dealer who has acquired a new recreational vehicle without an "A" seal, shall [is to] notify the office and the manufacturer upon discovery. Units without seals affixed shall not be displayed or offered for sale prior to certification by the office or manufacturer.

(a) Acquisition of seals.

1. Any manufacturer, except one altering a new recreational vehicle bearing a seal, shall [may] qualify for acquisition of a class "A" seal by obtaining a certificate of acceptability pursuant to KRS 227.580 and Section 6 of this regulation.

2. Any dealer, except one altering a recreational vehicle bearing a seal, shall [may] qualify for acquisition for a class "B" seal by giving an affidavit certifying either that all electrical, heating, plumbing, and fire and life safety equipment has been checked, if necessary, repaired, and is now in safe working condition, or that the unit meets the applicable code.

(b) Application for seals.

1. Any person who has met the applicable requirements of Section 6 or 8 of this regulation shall apply for seals in the form prescribed by the office. The application shall be accompanied by the seal fee of twenty-five (25) [(20)] dollars for each class "A" seal or twenty-five (25) [(20)] dollars for each class "B" seal.

2. If the applicant has qualified to apply for seals pursuant to the in-plant quality control approval method, the seal application shall include the certificate of acceptability number.

(c) Alteration or conversion of a unit bearing a seal.

1. Any alteration of the plumbing, heat-producing equipment, electrical equipment [or] installations or fire and life safety in a recreational vehicle which bears a seal, shall void the [such] approval and the seal shall be returned to the office.

2. The following shall not constitute an alteration or conversion:

a. Repairs with approved component parts;

b. Conversion of listed fuel-burning appliances in accordance with the terms of their listing;

c. Adjustment and maintenance of equipment;

d. Replacement of equipment in kind;

e. Any change that shall [does] not affect those areas regulated [covered] by ANSI A119.2/NFPA 501C, Recreational Vehicles or ANSI A119.5, Park Trailers [NFPA 501(C)].

3. Any dealer proposing an alteration to a recreational vehicle bearing a seal shall make application to the office. The [Such] application shall include:

a. Make and model of recreational vehicle;

b. Serial number;

c. State seal number;

d. A complete description of the work to be performed together with plans and specifications when required; and

e. Location of the recreational vehicle where work is to be performed.

4. Upon completion of the alteration, the applicant shall request the office to make an inspection.

5. The applicant shall [may] purchase a replacement seal, based on inspection of the alteration for a fee of two (2) dollars.

(d) Denial and repossession of seals. If [Should] inspection reveals that a manufacturer is not constructing recreational vehicles according to the applicable provisions of ANSI A119.2/NFPA 501C or ANSI A119.5; or, if

inspection reveals that any dealer failed to repair a used recreational vehicle under the standards and procedures set forth in this regulation and KRS 227.550 to 227.660 or failed to comply with any other provision for placement of seals and labels; and the dealer or manufacturer, after having been served with a notice setting forth in what respect the provisions of this regulation [these rules] and the code have been violated, continues to manufacture, sell or offer for sale recreational vehicles in violation of these rules and the code, applications for new seals shall be denied and the seals previously issued and unused shall be confiscated and credit given. [NFPA 501(C) and such manufacturer, after having been served with a notice setting forth in what respect the provisions of these rules and the code have been violated, continues to manufacture recreational vehicles in violation of these rules and the code, applications for new seals shall be denied and the seals previously issued and unused shall be confiscated and credit given.] Upon satisfactory proof of compliance, the [such] manufacturer or dealer shall [may] resubmit an application for seals.

(e) Seal removal. If [In the event that] any recreational vehicle bearing the seal is found to be in violation of this regulation or the Act [these rules], the office shall attach to the vehicle a notice of noncompliance or a "red tag" and furnish the manufacturer or dealer a copy of same. The office, dealer or manufacturer shall not remove the noncompliance tag or "red tag" until corrections have been made, and the owner or his agent has requested an inspection in writing to the office or given an affidavit certifying compliance. Removal of any "red tag" shall result in repossession of all seals held by the dealer or manufacturer until the facility is once again in full compliance with the Act and this regulation.

(f) Placement of seals.

1. Each seal shall be assigned and affixed to a specific recreational vehicle. Assigned seals shall not be [are not] transferable unless upon prior approval of the office and shall be [are] void when not affixed as assigned, and all [such] seals shall be returned to or shall [may] be confiscated by the office. The seal shall remain the property of the office and shall [may] be seized by the office in the event of violation of the Act or regulation.

2. The seal shall be securely affixed by the door on the handle side at approximately handle height.

3. No other seal, stamp, cover, or other marking shall [may] be placed within two (2) inches of the seal or label.

(g) Lost or damaged seals.

1. When a seal becomes lost or damaged, the office shall be notified immediately in writing by the owner. The owner shall specify the manufacturer, the recreational vehicle serial number, and when possible, the seal number.

2. All damaged seals shall be promptly returned. Damaged and lost seals shall be replaced by the office with a replacement seal upon [on] payment of the replacement seal fee of two (2) dollars.

3. A dealer shall not display, sell or offer for sale a recreational vehicle unless an "A" seal, a "B" seal or salvage label is affixed to the unit.

Section 11. Effective Date. The effective date of this regulation shall be September 1, 1991.

Section 12. Recreational Vehicle Unit Certification Format.

[APPENDIX A to 815 KAR 25:020]

RECREATIONAL VEHICLE
UNIT CERTIFICATION FORMAT

_____
Name of Manufacturer

_____ _____
Mailing Address County

_____, _____ _____
City State Zip Code

I hereby certify that the recreational vehicles as described hereon have been constructed in compliance with ANSI A119.2/NFPA 501(C) or ANSI A119.5.

| NO. | SERIAL # | KY SEAL # | DATE MFG. | MODEL | SIZE | DEALER |
|---|---|---|---|---|---|---|
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |

This form shall [must] be used in reporting units to the Office of the State Fire Marshal. The form shall [should] be completed in duplicate with the original to be sent to the Office of the State Fire Marshal, and the copy retained by the manufacturer. This form shall [should] be mailed to the Office of the State Fire Marshal when the last entry has been filled or not later than the first week of each month.

_____ BY _____
Date Person Authorized to Certify These Units

Section 13. Dealer Certification Format.

[APPENDIX B to 815 KAR 25:020
STATE FIRE MARSHAL
MANUFACTURED HOUSING
U.S. 127 South
Frankfort, Kentucky 40601]
DEALER CERTIFICATION FORMAT

_____
Name of Dealer

_____ _____
Mailing Address County

_____, _____ _____
City State Zip Code

I hereby certify that the used units described hereon have been inspected, A NEW "B" seals is affixed, and are in compliance with the standards as required by KRS 227.550 through KRS 227.660 and regulations thereto and that the new recreational vehicles described hereon have the Kentucky Class "A" seal affixed.

| NO. | SERIAL # | KY SEAL # | DATE MFG. | MAKE | PURCHASER & ADDRESS |
|---|---|---|---|---|---|
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

This form shall [must] be used in reporting units to the Field Inspector.

Date _____ Signature _____

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: May 13, 1991
FILED WITH LRC: May 15, 1991 at 10 a.m.

**CABINET FOR HUMAN RESOURCES**
**Department for Social Insurance**
**Division of Management & Development**
**(As Amended)**

**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, 250.73, 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. 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 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.]

(21) [(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.

(22) [(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.

(23) [(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;]

(a) [(b)] The case is not discontinued due to fraudulent activity; and

(b) [(c)] The case is not discontinued due to failure to comply with procedural requirements; and

(c) [(d)] The JOBS participant elects to continue the approved component activity in which she is engaged at the time of discontinuance.

(24) [(25)] "Unavailable" means that the income is not accessible to the AFDC benefit group for use toward basic food, clothing, shelter, and utilities.

(25) [(26)] "Unregulated child care providers" means private providers, such as friends or relatives, who are not required to be certified or licensed.

**(26) "Work expense standard deduction" means a deduction from earned income intended to cover mandatory pay check deductions, union dues, tools and transportation.**

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 of a minor parent 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, sanctioned individual, natural parent and parent of a minor parent 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 of a minor parent 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;

(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;

(q) Benefits received from the Nutrition Program for the Elderly, under 42 USC 3001;

(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;

(s) Payments to "Volunteers in Service to America" (VISTA) participants under 42 USC 1451 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, and the special food service program for children under 42 USC USC 1755, as amended;

(u) Payments from the Cabinet for Human Resources, Department for Social Services, for child foster care, or adult foster care[, or subsidized adoption];

(v) Payments made under the Low Income Home Energy Assistance Program (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) 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).

(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).]

(b) [(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 living in the home with a minor parent 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 of a minor parent 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 of a minor parent as dependents for purposes of determining his federal personal income tax liability;

(c) Any amount actually paid by the stepparent or parent of a minor parent 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 of a minor parent for alimony or child support with respect to individuals not living in the household; and

(e) Income of a stepparent and parent of a minor parent receiving Supplemental Security Income (SSI).

(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 of a minor parent 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) **With the exception of those in subsections (8) and (12) of this section those** 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; or

[(e) Transitional extension; or]

(e) [(f)] On-the-job training (OJT) **and work supplementation** participants discontinued **from AFDC, until the end of the component placement** [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;]

1. [2.] OJT participants discontinued due to increased earnings or hours of employment;

2. [3.] Component preparation; and

3. [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:

1. Be made directly to the provider, in an amount equal to the actual cost, up to a payment maximum based on local market rates for components which:

a. Do not provide earned income; or

b. Are [not] work supplementation components.

2. Be allowed as a deduction as outlined in Section 4(2)(d) of this regulation for any component yielding earned income, other than work supplementation.

(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 FT | Special Needs PT | Infants FT | Infants PT | Toddlers FT | Toddlers PT |
|---|---|---|---|---|---|---|
| Licensed | $10 | 10 | 10 | 7 | 10 | 7 |
| Certified | $ 9 | 9 | 9 | 6 | 9 | 6 |
| Unregulated | $ 8 | 8 | 8 | 5 | 8 | 5 |

| | Preschool FT | Preschool PT | School-age FT | School-age PT |
|---|---|---|---|---|
| Licensed | $10 | 7 | 10 | 7 |
| Certified | $ 9 | 6 | 9 | 6 |
| Unregulated | $ 8 | 5 | 8 | 5 |

PENNYRILE AREA DEVELOPMENT DISTRICT #2

| | Special Needs FT | Special Needs PT | Infants FT | Infants PT | Toddlers FT | Toddlers PT |
|---|---|---|---|---|---|---|
| Licensed | $10 | 10 | 10 | 7 | 9 | 6 |
| Certified | $ 9 | 9 | 9 | 6 | 8 | 5 |
| Unregulated | $ 8 | 8 | 8 | 5 | 7 | 4 |

| | Preschool FT | Preschool PT | School-age FT | School-age PT |
|---|---|---|---|---|
| Licensed | $ 9 | 6 | 9 | 6 |
| Certified | $ 8 | 5 | 8 | 5 |
| Unregulated | $ 7 | 4 | 7 | 4 |

GREEN RIVER AREA DEVELOPMENT DISTRICT #3

| | Special Needs FT | Special Needs PT | Infants FT | Infants PT | Toddlers FT | Toddlers PT |
|---|---|---|---|---|---|---|
| Licensed | $10 | 10 | 9 | 6 | 9 | 6 |
| Certified | $ 9 | 9 | 8 | 5 | 8 | 5 |
| Unregulated | $ 8 | 8 | 7 | 4 | 7 | 4 |

| | Preschool FT | Preschool PT | School-age FT | School-age PT |
|---|---|---|---|---|
| Licensed | $ 9 | 6 | 8 | 5 |
| Certified | $ 8 | 5 | 7 | 4 |
| Unregulated | $ 7 | 4 | 6 | 3 |

BARREN RIVER AREA DEVELOPMENT DISTRICT #4

| | Special Needs FT | Special Needs PT | Infants FT | Infants PT | Toddlers FT | Toddlers PT |
|---|---|---|---|---|---|---|
| Licensed | $12 | 12 | 12 | 9 | 10 | 7 |
| Certified | $11 | 11 | 11 | 8 | 9 | 6 |
| Unregulated | $10 | 10 | 10 | 7 | 8 | 5 |

| | Preschool FT | Preschool PT | School-age FT | School-age PT |
|---|---|---|---|---|
| Licensed | $10 | 7 | 10 | 7 |
| Certified | $ 9 | 6 | 9 | 6 |
| Unregulated | $ 8 | 5 | 8 | 5 |

LINCOLN TRAIL AREA DEVELOPMENT DISTRICT #5

| | Special Needs FT | Special Needs PT | Infants FT | Infants PT | Toddlers FT | Toddlers PT |
|---|---|---|---|---|---|---|
| Licensed | $10 | 10 | 10 | 7 | 9 | 6 |
| Certified | $ 9 | 9 | 9 | 6 | 8 | 5 |
| Unregulated | $ 8 | 8 | 8 | 5 | 7 | 4 |

| | Preschool FT | Preschool PT | School-age FT | School-age 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 FT | Special Needs PT | Infants FT | Infants PT | Toddlers FT | Toddlers PT |
|---|---|---|---|---|---|---|
| Licensed | $13 | 13 | 13 | 10 | 13 | 10 |
| Certified | $12 | 12 | 12 | 9 | 12 | 9 |
| Unregulated | $11 | 11 | 11 | 8 | 11 | 8 |

| | Preschool FT | Preschool PT | School-age FT | School-age PT |
|---|---|---|---|---|
| Licensed | $11 | 8 | 11 | 8 |
| Certified | $10 | 7 | 10 | 7 |
| Unregulated | $ 9 | 6 | 9 | 6 |

NORTHERN KENTUCKY AREA DEVELOPMENT DISTRICT #7

| | Special Needs FT | Special Needs PT | Infants FT | Infants PT | Toddlers FT | Toddlers PT |
|---|---|---|---|---|---|---|
| Licensed | $12 | 12 | 12 | 9 | 12 | 9 |
| Certified | $11 | 11 | 11 | 8 | 11 | 8 |
| Unregulated | $10 | 10 | 10 | 7 | 10 | 7 |

| | Preschool FT | Preschool PT | School-age FT | School-age PT |
|---|---|---|---|---|
| Licensed | $12 | 9 | 11 | 8 |
| Certified | $11 | 8 | 10 | 7 |
| Unregulated | $10 | 7 | 9 | 6 |

BUFFALO TRACE AREA DEVELOPMENT DISTRICT #8

| | Special Needs FT | Special Needs PT | Infants FT | Infants PT | Toddlers FT | Toddlers PT |
|---|---|---|---|---|---|---|
| Licensed | $10 | 10 | 8 | 5 | 8 | 5 |
| Certified | $ 9 | 9 | 7 | 4 | 7 | 4 |
| Unregulated | $ 8 | 8 | 6 | 3 | 6 | 3 |

| | Preschool FT | Preschool PT | School-age FT | School-age PT |
|---|---|---|---|---|
| Licensed | $ 8 | 5 | 8 | 5 |
| Certified | $ 7 | 4 | 7 | 4 |
| Unregulated | $ 6 | 3 | 6 | 3 |

GATEWAY AREA DEVELOPMENT DISTRICT #9

| | Special Needs FT | Special Needs PT | Infants FT | Infants PT | Toddlers FT | Toddlers PT |
|---|---|---|---|---|---|---|
| Licensed | $10 | 10 | 8 | 5 | 8 | 5 |
| Certified | $ 9 | 9 | 7 | 4 | 7 | 4 |
| Unregulated | $ 8 | 8 | 6 | 3 | 6 | 3 |

| | Preschool FT | Preschool PT | School-age FT | School-age PT |
|---|---|---|---|---|
| Licensed | $ 8 | 5 | 8 | 5 |
| Certified | $ 7 | 4 | 7 | 4 |
| Unregulated | $ 6 | 3 | 6 | 3 |

FIVCO AREA DEVELOPMENT DISTRICT #10

| | Special Needs FT | Special Needs PT | Infants FT | Infants PT | Toddlers FT | Toddlers PT |
|---|---|---|---|---|---|---|
| Licensed | $10 | 10 | 10 | 7 | 10 | 7 |
| Certified | $ 9 | 9 | 9 | 6 | 9 | 6 |
| Unregulated | $ 8 | 8 | 8 | 5 | 8 | 5 |

| | Preschool FT | Preschool PT | School-age FT | School-age PT |
|---|---|---|---|---|
| Licensed | $10 | 7 | 9 | 6 |
| Certified | $ 9 | 6 | 8 | 5 |
| Unregulated | $ 8 | 5 | 7 | 4 |

BIG SANDY AREA DEVELOPMENT DISTRICT #11

| | Special Needs FT | Special Needs PT | Infants FT | Infants PT | Toddlers FT | Toddlers PT |
|---|---|---|---|---|---|---|
| Licensed | $10 | 10 | 10 | 7 | 10 | 7 |
| Certified | $ 9 | 9 | 9 | 6 | 9 | 6 |
| Unregulated | $ 8 | 8 | 8 | 5 | 8 | 5 |

| | Preschool FT | Preschool PT | School-age FT | School-age PT |
|---|---|---|---|---|
| Licensed | $10 | 7 | 10 | 7 |
| Certified | $ 9 | 6 | 9 | 6 |
| Unregulated | $ 8 | 5 | 8 | 5 |

KENTUCKY RIVER AREA DEVELOPMENT DISTRICT #12

| | Special Needs FT | Special Needs PT | Infants FT | Infants PT | Toddlers FT | Toddlers PT |
|---|---|---|---|---|---|---|
| Licensed | $11 | 11 | 11 | 8 | 11 | 8 |
| Certified | $10 | 10 | 10 | 7 | 10 | 7 |
| Unregulated | $ 9 | 9 | 9 | 6 | 9 | 6 |

| | Preschool FT | Preschool PT | School-age FT | School-age PT |
|---|---|---|---|---|
| Licensed | $ 9 | 6 | 9 | 6 |
| Certified | $ 8 | 5 | 8 | 5 |
| Unregulated | $ 7 | 4 | 7 | 4 |

CUMBERLAND VALLEY AREA DEVELOPMENT DISTRICT #13

| | Special Needs FT | Special Needs PT | Infants FT | Infants PT | Toddlers FT | Toddlers PT |
|---|---|---|---|---|---|---|
| Licensed | $10 | 10 | 10 | 7 | 10 | 7 |
| Certified | $ 9 | 9 | 9 | 6 | 9 | 6 |
| Unregulated | $ 8 | 8 | 8 | 5 | 8 | 5 |

| | Preschool FT | Preschool PT | School-age FT | School-age PT |
|---|---|---|---|---|
| Licensed | $ 9 | 6 | 10 | 7 |
| Certified | $ 8 | 5 | 9 | 6 |
| Unregulated | $ 7 | 4 | 8 | 5 |

LAKE CUMBERLAND AREA DEVELOPMENT DISTRICT #14

| | Special Needs FT | Special Needs PT | Infants FT | Infants PT | Toddlers FT | Toddlers PT |
|---|---|---|---|---|---|---|
| Licensed | $10 | 10 | 9 | 6 | 9 | 6 |
| Certified | $ 9 | 9 | 8 | 5 | 8 | 5 |
| Unregulated | $ 8 | 8 | 7 | 4 | 7 | 4 |

| | Preschool FT | Preschool PT | School-age FT | School-age PT |
|---|---|---|---|---|
| Licensed | $ 9 | 6 | 9 | 6 |
| Certified | $ 8 | 5 | 8 | 5 |
| Unregulated | $ 7 | 4 | 7 | 4 |

BLUEGRASS AREA DEVELOPMENT DISTRICT #15

| | Special Needs FT | Special Needs PT | Infants FT | Infants PT | Toddlers FT | Toddlers PT |
|---|---|---|---|---|---|---|
| Licensed | $12 | 12 | 12 | 9 | 12 | 9 |
| Certified | $11 | 11 | 11 | 8 | 11 | 8 |
| Unregulated | $10 | 10 | 10 | 7 | 10 | 7 |

| | Preschool FT | Preschool PT | School-age FT | School-age 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, **with the exception of OJT and work supplementation while the AFDC case remains active**;

(d) Transitional extension; or

(e) On-the-job training (OJT) **and work supplementation** participants discontinued **from AFDC, until the end of the component placement** [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, **except for expenses included in the work expense standard deduction for participants in OJT or work supplementation while the AFDC case remains active**;

3. Transitional extension;

4. Preemployment; or

5. OJT **and work supplementation** participants discontinued **from AFDC, until the end of the component placement** [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. 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. These forms include the PA-33, revised 10/90, the PA-33.1, revised 10/90, and the PA-32, revised 10/90.
(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: May 7, 1991
FILED WITH LRC: May 13, 1991 at 3 p.m.

**CABINET FOR HUMAN RESOURCES**
**Department for Medicaid Services**
**(As Amended)**

**907 KAR 1:017. Hospital indigent care assurance program (HICAP).**

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 205.575[, HB 21, 1991 Special Session GA]
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance [under Title XIX of the Social Security Act,] and the Hospital Indigent Care Assurance Program (HICAP) [under KRS 205.575]. This regulation sets forth provisions relating to implementation of HICAP.

Section 1. Definition. [(1) For purposes of this regulation the following words or phrases shall have the same definition as shown in KRS 205.575:]
[(a) Hospital indigent care assurance program (HICAP);]
[(b) Department;]
[(c) Medicaid Assessment Revolving Trust (MART) fund;]
[(d) Medicaid Assessment Revolving Trust (MAIT) fund;]
[(e) [(d)] Hospital; and]
[(f) [(e)] Medical assistance program.]
[(2)] "Nonparticipant" means a hospital not complying with the conditions of participation for **the Hospital Indigent Care Assurance Program** (HICAP).

Section 2. Conditions of Participation. **A hopsital participating in HICAP shall submit to the cabinet any requested information to show the required sign has been posted.** [Any hospital participating in the HICAP program shall comply with the following requirements:]
[(1) Pay to the department the hospital's assessment;]
[(2) Comply with the requirement contained in KRS 205.575 for the posting of a sign showing the hospital will accept patients under given circumstances; [and]]
[(3) Comply with the requirement contained in KRS 205.575 for acceptance of benefits of state health insurance coverage; and]
[(4) Comply with the requirement for provision of inpatient hospital benefits to indigent individuals and families with income up to 100 percent of the federal poverty level as specified in Section 1(15) of House Bill 21, 1991 Special Session, General Assembly (to be codified as KRS 205.575);]
[(5) Comply with the requirement for providing to Medicaid recipients additional days of coverage per hospital stay as specified in Section 1(14)(c) of House Bill 21, 1991 Special Session, General Assembly (to be codified as KRS 205.575);]
[(6) Comply with the requirement for accepting as payment in full benefits of student health insurance as specified in Section 1(14)(d) of House Bill 21, 1991 Special Session, General Assembly (to be codified as KRS 205.575); and]
[(7) Comply with the requirement for

collecting and reporting to the department data on indigent patient days as specified in Section 1(14)(e) of House Bill 21, 1991 Special Session, General Assembly (to be codified as KRS 205.575).]

Section 3. Departmental Actions Based on Noncompliance with Participation Requirements. (1) A hospital shall be considered a nonparticipant when it fails to meet one (1) or more of the [participation] requirements shown in KRS 205.575 and Section 2 of this regulation. A hospital shall be notified in writing when the department determines the facility to be a nonparticipant. **Prior to written notification, the department shall provide the hospital an opportunity to:**

**(a) Discuss the department's determination; and**

**(b) Present evidence of its compliance with participation requirements.** [The department shall provide the hospital an opportunity to discuss with the department its determination prior to issuance of the written notification so the hospital may present any evidence it may wish the department to consider which relates to the hospital's compliance with conditions of participation.]

(2) A hospital which is a nonparticipant shall not be paid HICAP benefits until all participation requirements are met.

Section 4. Assessments. [The HICAP assessment payment amounts for the period beginning July 13, 1990 through December 31, 1990, shall be one (1) percent of each hospital's total inpatient and outpatient hospital costs for services to patients utilizing hospital cost reports available as of June 15, 1990.] The assessment percentage for annual periods beginning January 1, 1991, shall be five (5) [one (1)] percent utilizing hospital cost reports used in setting the year's Medicaid hospital rates. [From each year's assessments actually paid the cabinet,] The department shall [may] [shall] reserve [up to] $1,000,000 as a contingency reserve and shall [may] reserve [up to] two (2) percent of the assessments for necessary administrative expenditures as provided for in KRS 205.575 [House Bill 21, 1991 Special Session, General Assembly (to be codified in part in KRS 205.575 and as a new KRS section)].

Section 5. HICAP Benefit Payments. [(1) The HICAP benefit payment amounts for the period of July 13, 1990, through December 31, 1990, shall be computed in accordance with KRS 205.575 using hospital cost reports available as of June 15, 1990. For rate years beginning on or after January 1, 1991, the HICAP benefit payment amounts shall be the minimum amounts provided for in Section 1(6)(b) of House Bill 21, 1991 Special Session, General Assembly (to be codified as KRS 205.575) computed in accordance with Section 1(6)(b) of House Bill 21, 1991 Special Session, General Assembly (to be codified as KRS 205.575), plus $100,000 annually, [KRS 205.575] and the cost reports utilized shall be the cost reports used in setting hospital rates for the year.]

[(2) Disbursements shall be proportionate based on the ratio of the facility's Medicaid days compared to total Medicaid days (except for hold harmless amounts), taking into consideration funds available for disbursement. Disbursement adjustments based on appeal or audit may be paid from the contingency reserve or from the available fund amount (including amounts in the fund in a subsequent quarter if necessary).]

[(3)] If a hospital appeals a departmental decision with regard to its assessment payment amount or its HICAP benefit amount to Franklin Circuit Court, it may nevertheless pay to the department the assessment payment amount computed by the department with the understanding that the payment shall not compromise its right of action in court and that its final assessment payment amount or HICAP benefit payment amount shall be contingent on expiration of the time of judicial appeals or on court determination.

[Section 6. Allocation of Payments. Hospitals Shall be paid for the first one (1) percent of assessment the [any] HICAP benefit amounts based on Medicaid days, then hold harmless amounts as necessary sufficient to bring the hospitals' [total] payment [under the program] up to the amount of assessment [amount] paid; and for the second and third percents of assessment, the HICAP benefit amounts based on Medicaid days, then hold harmless amounts as necessary sufficient to bring the hospitals' payment up to the amount of assessment paid; and for the fourth and fifth percents of assessment, the HICAP benefit amounts based on Medicaid days, then hold harmless amounts as necessary sufficient to bring the hospitals' payment up to the amount of assessment paid; and then as necessary any additional HICAP benefits necessary to bring the total payment to each hospital up to an amount which is not less than that hospital's assessment plus $100,000 annually ($25,000 quarterly). The contingency reserve shall be used as necessary to ensure equitable continuing payments to hospitals meeting HICAP participant status and may be used as necessary for distribution to hospitals as hold harmless amounts.]

Section 6. [7.] Assessment Schedules. (1) [Assessment payments for the July 13, 1990, through September 30, 1990, period shall be due on or before September 30, 1990. Assessment payments for the October 1, 1990 – December 31, 1990 period shall be due on or before November 30, 1990.] The assessment payment due date for each [subsequent] calendar quarter shall be on the last day of the second month of each quarter, except that the department may establish administratively different assessment schedules for the calendar quarters ending March 31, 1991 and June 30, 1991 to accommodate assessment and payment requirements mandated by KRS 205.575 [House Bill 21, 1991 Special Session, General Assembly (to be codified as KRS 205.575)].

(2) A hospital may request a delay in its assessment payment due date based on unforeseeable circumstances affecting the hospital's ability to pay in a timely manner. Unforeseeable circumstances may include, but are not limited to, substantial disruptions of management or operations from occurrences such as fire, flood, storm, bankruptcy or other demonstrated financial hardship. Simple inability to pay, if [unless] combined with a filing of bankruptcy or other demonstrated financial hardship by the hospital, shall

[not] constitute justification for a delayed payment schedule. If a delay is granted, the delay shall not exceed sixty (60) days. An appeal to the Franklin Circuit Court (or a higher court as appropriate) with regard to the assessment payment amount or the HICAP benefit amount shall be justification for a delay in payment of the assessment until the court case is resolved.

[Section 8. Transfer of Excess MART Funds to the MAIT Fund. The department shall determine within thirty (30) days after payment to hospitals of each quarter's HICAP payments the amount of hospital assessment funds which are in excess of the amount required to meet the commitments for payments to hospitals, maintenance of the contingency reserve, and for use as administrative funds, and shall make the necessary request for transfer of the excess assessment amounts (plus accrued interest) to the MAIT fund for use in accordance with House Bill 21, 1991 Special Session, General Assembly (to be codified as KRS 205.575 and a new KRS section).]

Section 7. [9.] [8.] Waiver of Late Payment Penalties. The commissioner of the department shall waive the late payment penalty specified in KRS 205.575 ($20,000 per incident of late payment) only when good cause exists. Good cause shall be determined to exist only when an unforeseeable circumstance occurs affecting timely payment. Unforeseeable circumstances may include substantial disruptions of management or operations from occurrences such as fire, flood, storm or similar events. Good cause may also exist when the responsible official of the hospital reasonably anticipated that payment was or should have been made (e.g., payment was mailed timely but lost in the mail). Failure to pay due to insufficient funds shall not be good cause for a waiver of the penalty unless combined with a bankruptcy filing of the hospital. An appeal to the Franklin Circuit Court (or a higher court as appropriate) with regard to the assessment payment amount or the HICAP benefit payment amount shall be considered to meet the criteria for good cause.

[Section 10. [9.] General. The department shall perform other functions related to implementation of HICAP in accordance with the specific provisions shown in KRS 205.575 and House Bill 21, 1991 Special Session, General Assembly (to be codified as KRS 205.575 and a new KRS section).]

[Section 11. [10.] Effective Date. The provisions of this regulation shall be effective with regard to HICAP assessments and payments made for quarters ending on and after March 31, 1991 [July 13, 1990].]

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: March 18, 1991
FILED WITH LRC: March 26, 1991 at 11 a.m.

## REGULATIONS AMENDED AFTER PUBLIC HEARING OR WRITTEN COMMENTS RECEIVED

**TOURISM CABINET**
**Department of Fish & Wildlife Resources**
**(Amended After Hearing)**

**301 KAR 2:111. Deer and turkey hunting on special areas.**

RELATES TO: KRS 150.010, 150.025, 150.092, 150.170, 150.175, 150.305, 150.330, 150.340, 150.360, 150.370, 150.390, 150.395, 150.990
STATUTORY AUTHORITY: KRS 13A.350, 150.025
NECESSITY AND FUNCTION: This regulation pertains to the deer gun and archery season and the turkey season on special [deer] areas. This regulation is necessary for the continued protection of the species listed herein, and to insure a permanent and continued supply of the wildlife resource for present and future residents of the state. The function of this regulation is to provide for the prudent taking of deer and turkey within reasonable limits based upon an adequate supply. This amendment is necessary to establish current season dates and hunting rules.

Section 1. Deer and turkey Season on Special [Deer] Areas. Unless otherwise stated, the provisions of 301 KAR 2:170 and 301 KAR 2:140 apply. These areas are open only on the dates specified below for deer or turkey hunting [hunters]. [Except on the Westvaco hunting area,] Hunters on these areas shall produce the signature portion of a valid deer permit. [ and shall be issued] A special purpose tag to place on the deer shall be issued except on the Westvaco area.

(1) Land Between the Lakes Wildlife Management Area (LBL) located in Trigg and Lyon Counties.

(a) Deer archery hunts: Any [deer:] white-tailed [or fallow] deer. The last Saturday in September through October 24 [25], October 29 [30] through November 7 [8] and December 14 [15] through December 31.

(b) Quota deer hunts.

1. Quota gun hunts: white-tailed or fallow deer and sex of deer as specified on permit. November 16-17, 19-20, and 23-24 [17-18, 20-21, and 24-25].

2. Quota archery hunts: any white-tailed [or fallow] deer in that portion of the Environmental Education Area designated as hunt area 17. October 26-27 [27-28], November 16-17 [17-18] and 23-24 [24-25].

(c) Turkey archery hunts: one (1) turkey of either sex during the deer archery hunts as specified in subsection (1)(a) of this section. Each hunter shall have a valid wild turkey permit in possession, and when a turkey is taken, it shall be tagged with the fall [yellow] portion of the state permit.

(d) Quota deer gun hunt for youths only: one (1) white-tailed deer or fallow of either sex as specified on permit on October 26-27 [27-28]. Hunting is restricted to persons at least ten (10) years of age but who have not reached their 16th birthday. Each youth shall be accompanied by an adult and shall have a valid Kentucky hunting license and [, a] state deer permit, an LBL Youth Hunt Permit and a state approved Hunter Safety Certificate.

(e) Bag limits. The deer bag limit for the Kentucky portion of LBL is two (2) deer; except that no more than one (1) deer shall be taken during any quota gun or quota archery hunt [at LBL].

(f) Areas open and closed to hunting. State line to Barkley Canal is open to hunting except for developed public use areas (unless posted as open), safety zones and areas posted as closed.

(g) Youth and quota hunt applications. Hunters shall be selected by a drawing. Application forms are available from, and shall be submitted to, Quota Deer Hunt, Land Between the Lakes, Golden Pond, Kentucky 42231. Completed applications shall be postmarked [received by the wildlife staff at the Land Between the Lakes Administrative Office] no later than 3:30 p.m. on the last Wednesday in July. If unfilled quotas exist after the regular drawing, quotas shall be filled by issuing permits on a first-come, first-served basis at the Land Between the Lakes administrative office.

(h) Checking in and out.

1. Quota gun hunters. All hunters, including those camping in LBL, shall check in prior to hunting, but shall not be required to check out unless a deer is harvested. Hunters shall check in between 8 a.m. and 6 p.m. the day before the hunt, or after 4 a.m. on hunt days. Check stations will be open from 4 a.m. to 6:30 p.m. (CST) on hunt days.

2. Archery hunters. Archery hunters are not required to check in or out except on quota hunts. All deer and turkey harvested shall be checked out.

(i) Permits and tagging requirements.

1. Permits. An LBL hunter use permit shall be required for each hunter participating in the deer and turkey archery season and an LBL computer card permit is required for each hunter participating in the quota gun or quota archery deer hunts.

2. Tags. All harvested deer and turkey shall be tagged with an LBL permanent game tag before being removed from the area. Permanent LBL game tags shall be attached to all harvested deer and turkey at LBL check stations. The LBL permanent game tag shall be used in place of the Kentucky Department of Fish and Wildlife Resources official game check card as proof of check in and for taxidermy purposes.

(j) Prohibited weapons: crossbows [are prohibited].

(k) The taking of coyotes. Hunters participating in the quota gun hunts may take coyotes if hunters have not yet taken their deer and have a valid deer tag.

(l) For LBL general hunting rules refer to 301 KAR 2:050.

(2) Fort Campbell Wildlife Management Area located in Christian and Trigg Counties. There will be no hunting on Tuesdays and Wednesdays except when Tuesday or Wednesday is a federal holiday or as follows: December 16-17, 23-24, 26, and 30-31, [18-19 and 26,] then hunting shall be permitted. There will be no hunting on December 25 and January 1.

(a) Deer archery and muzzle-loading rifle season. Any deer: September 28 [22] through October 11 [5].

(b) Youth deer shotgun season: September 28-29 and October 5-6 [22 through October 5] on selected areas. Any deer. For persons aged ten (10) through sixteen (16) who shall be

accompanied by an adult. Each youth shall have a valid hunter safety certificate. Shotguns twenty (20) gauge or larger shall be used.

(c) Deer gun and archery season. Any deer: October 12 through 25 [6 through November 19] and December 14 [8] through December 31 on selected areas.

(d) Wild turkey archery season: Any turkey. Statewide season limits apply. September 28 [22] through October 11 [5]. Only those turkey hunters who possess valid unfilled deer and turkey hunting permits may hunt turkey at this time.

(e) Wild turkey shotgun only season: any turkey. October 26 [27] through November 4 [9].

(f) White turkey season: any white turkey. The post bag limit is one (1) white turkey [per deer gun season]. Statewide and post season limits and tagging requirements on wild [white] turkey do not apply to the taking of white [other] turkey. White turkey may be taken during any open hunting season on Ft. Campbell. Only those hunters who possess valid unfilled deer tags may hunt white turkey during deer season and only those possessing turkey hunting permits may hunt white turkey during turkey season. [Only those turkey hunters who possess valid unfilled deer tags and turkey hunting permits are permitted to hunt turkey at this time.]

(g) Deer bag limits. The bag limit for Kentucky license holders hunting on Fort Campbell shall be two (2) [antlered or antlerless] deer taken by either gun or bow. Prior to November 15 [24], once a hunter has taken his first deer on Fort Campbell, he shall be ineligible for weekend drawings (i.e., he may only hunt on Mondays, Thursdays, or Fridays or on weekend standby) until the reopening of deer hunting on December 14 [8]. Then if he has not harvested his limit he shall be eligible for the weekend drawing until he has taken his limit.

(h) Permits and tagging requirements.

1. Deer hunters shall purchase a fifteen (15) dollar post hunting and fishing permit which includes a Fort Campbell deer tag, at building #6645. All Fort Campbell deer hunters shall also have the signature portion of a valid Kentucky deer permit in their possession. Persons sixty-five (65) years of age or older are not required to purchase a post hunting and fishing permit.

2. All deer taken on post by Kentucky hunters shall have a valid special purpose Kentucky deer tag attached to the carcass. All successful hunters shall fill out an official game check card to be kept in possession until the deer is processed.

(i) Prohibited and permitted weapons. Handguns and crossbows are prohibited. Rifles shall be permitted only in areas west of Palmyra Road. All rifles shall be equipped with telescopic sights. Hunting arrows shall not be [not] less than twenty-four (24) inches in length, equipped with broadhead barbless blades not less than seven-eighths (7/8) inch nor more than two (2) inches wide for single two (2) edged blades, or not more than three (3) or more blades. The minimum weight for all broadheads is 100 grains.

(j) Hunter safety certificate. All deer hunters between the ages of ten (10) and eighteen (18) shall possess a valid hunter safety certificate.

(3) Fort Knox Wildlife Management Area located in Hardin, Bullitt and Meade Counties.

(a) Deer archery hunt [(any deer)]: any deer. First Saturday in October through November 17 [18].

(b) Deer gun hunt [(any deer)]: any deer. November 30-December 1, December 7-8, and December 14-15. [23-24, November 30-December 1, December 7-13.] [24-25, December 1-2, December 8-9 and December 15-16.]

(c) Bag limits. The [post] bag limit is two (2) deer [of either sex], only one (1) deer shall be taken by gun and one (1) [taken] by bow.

(d) Applications. Separate applications are required for archery and gun hunts.

1. Archery hunts. Civilians not working on post may [shall] apply for weekend archery hunts by mail. No more than five (5) hunters shall apply on any one (1) application. Applications shall not be postmarked earlier than the second [third] Saturday in August or later than August 31 to be considered for the drawing for weekend archery hunts. Applicants drawn shall be assigned one (1) weekend of archery hunting. Weekday archery hunting shall be on a first-come, first-served basis. Sign-up for weekday hunts shall be made at least forty-eight (48) hours in advance at Hunt Control Headquarters Building 1060.

2. Gun hunts. Civilians not working on post may [shall] apply by mail for a two (2) day gun hunt. No more than five (5) hunters shall apply on any one (1) application. Applications shall not be postmarked earlier than the second [third] Saturday in August or later than August 31 to be considered for a random drawing. Hunters shall be assigned one (1), two (2) day hunting period. Any hunter desiring to hunt December 7 through December 13 shall be accepted on a first-come first-served basis.

3. Application procedure. All applications shall contain the type of hunt (gun or bow), names and addresses of each hunter, a self-addressed stamped envelope and a fifteen (15) [twenty-two (22)] dollar money order, certified check or cashier's check for each hunter, made payable to Treasurer of the United States. Mail applications to Directorate of Engineering and Housing [Community Recreation Division], Hunt Control Office, Attn: ATZK-EHE, Fort Knox, Kentucky 40121-5000.

(e) Check station. All deer taken during the archery season shall be checked in at Building 112 [1060]. Deer taken during the gun hunts shall be checked in at Building 7331 on 9th Avenue. Successful hunters shall have the completed hunter portion of their game check card in their possession.

(f) Hunting hours: one-half (1/2) hour before sunrise until 5 p.m. local prevailing time. Hunters shall clear hunt control by 7 p.m.

(g) Weapons. Only breech-loading and muzzle-loading shotguns of twelve (12) gauge maximum and twenty (20) gauge minimum firing a single projectile, and muzzle-loading rifles of .38 caliber to .58 caliber firing a single projectile shall be permitted. Magazined shotguns shall be plugged to a three-shot capacity. Hunters shall have no more than ten (10) rounds of ammunition in possession for any one (1) hunting day. [Crossbows are prohibited.]

(h) Hunter safety certificates. All deer hunters under the age of forty (40) [thirty-seven (37)] shall possess a valid hunter safety certificate.

(i) Special clothing requirements. Gun hunters shall wear a solid hunter orange vest, jacket or coveralls and a hunter orange hat.

(j) Special equipment. All hunters shall possess a Fort Knox special hunting and fishing map and a flashlight.

(k) Intoxicants. Intoxicants are prohibited in vehicles and hunting areas.

(l) Licenses, deer tags, and post permits. All persons deer hunting on the Fort Knox Military Reservation shall possess a valid Kentucky Hunting License, deer permit and a Fort Knox Deer Permit.

(4) Bluegrass Ordnance Depot Activity located in Madison County.

(a) Deer archery hunts: during the month of October and November.

(b) Deer gun hunts: during the month of November and December.

(c) Bag limits. The post bag limit is one (1) deer of the sex announced on the day of the hunt.

(d) Applications. Hunters may submit applications for archery or gun hunts[, but not for both]. Applications for the drawings shall be made on a three (3) inch by five (5) inch card [postcard] with only one (1) applicant [hunter] allowed per card. More than one (1) [post]card per individual shall disqualify the applicant. When a maximum of two (2) people desire to hunt together, the required information shall be written on individual three (3) inch by five (5) inch cards, stapled together, and mailed in an [one (1)] envelope. The upper right corner of each card shall state the name of the person the applicant desires to hunt with. Each applicant shall furnish name and address (including zip code), [social security number,] date of birth, telephone number and specify first and second choice for [whether] gun and [or] archery hunting [is desired]. Hunters, their hunting dates and areas shall be selected by a drawing. All [cards or] envelopes shall be postmarked no earlier than September 1 [July 1] or later than September 30 [August 1] to be eligible for the drawing. Improper applications shall be discarded. A fifteen (15) dollars per person fee shall be charged for hunting payable on the assigned hunting date. Mail all applications to: Lexington-Bluegrass Depot, Attention: Land Manager, Lexington, Kentucky 40511-5010.

(e) Age limit. No one under the age of twelve (12) [fourteen (14)] shall [be allowed to] hunt.

(f) Weapons. Only breech-loading shotguns are permitted. Only longbows, recurve and compound bows having a pull weight of forty (40) pounds or greater are permitted. Crossbows are prohibited.

(g) Harvest quota. Hunting shall be discontinued whenever the designated deer harvest quota is reached or upon the direction of the Activity Commander.

(h) Hunter safety certificates. All deer hunters born after January 1, 1970 shall possess a valid hunter safety certificate.

(5) Reelfoot National Wildlife Refuge located in Fulton county.

(a) [Deer] Quota hunts: any deer beginning the last Saturday in October and the first and second Saturday in November and lasting for two (2) consecutive days each.

(b) Drawing. Only those persons selected by a drawing may participate in the quota hunts. If unfilled quotas exist after the regular drawings, quotas shall be filled by issuing permits on a first-come, first-served basis. Hunters shall hunt for a maximum of one (1) day only.

(c) [Deer] Archery hunt: any deer October 11-20 [16-26].

(d) Bag limits. The refuge bag limit is two (2) deer [of either sex]. Only one (1) deer shall be taken by gun.

(e) Check stations. All gun deer hunters shall check in and out at designated refuge check stations.

(f) All deer hunters must have purchased a ten (10) dollar refuge hunting permit.

(6) Westvaco public hunting areas. All persons hunting shall possess a valid Westvaco hunting permit.

(a) Persons shall not operate vehicles off designated roads.

(b) No person shall hunt from or build a tree stand on Westvaco property that is within fifty (50) yards of a property line.

(c) No person shall build an open fire on the area.

DON R. McCORMICK, Commissioner
DAVID H. GODBY, Chairman
RONALD E. GENTRY, Secretary
APPROVED BY AGENCY: July 2, 1991
FILED WITH LRC: July 2, 1991 at 2 p.m.

## PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION
## (Amended After Hearing)

**415 KAR 1:010. Definitions for terms used in 415 KAR Chapter 1.**

RELATES TO: KRS 224.810, 224.814 through 224.825

STATUTORY AUTHORITY: KRS 224.814, 224.815, 224.817, 224.819

NECESSITY AND FUNCTION: KRS 224.810 through 224.825 relate to the regulation of underground storage tanks. KRS 224.815 through 224.825 provide for the creation of a program to assist owners and operators in meeting federal financial responsibility requirements for petroleum underground storage tanks under 401 KAR 42:090. KRS 224.819 requires the Petroleum Storage Tank Environmental Assurance Fund Commission to promulgate regulations to establish the policy, guidelines, and procedures to administer the petroleum storage tank environmental assurance fund. This chapter identifies requirements for owners and operators of petroleum storage tanks. This regulation establishes essential terms used in connection with the program to administer the petroleum storage tank environmental assurance fund.

Section 1. Definitions. For the purpose of this regulation, the words and terms shall have the same meaning as in KRS 224.816, with the following additions:

(1) "Applicant" means an eligible petroleum storage tank owner or operator that has submitted an application for financial assistance to the Petroleum Storage Tank Environmental Assurance Fund Commission.

(2) "Application period" shall mean a period of time determined by the commission for review of applications. An application period shall occur at least four (4) times a year.

(3) "Assistance agreement" shall mean the contract between the eligible applicant and the commission executed after the commission has approved the application, which states the terms

and conditions of financial assistance.

(4) "Cabinet" shall mean the Kentucky Natural Resources and Environmental Protection Cabinet as defined by KRS 224.816(2).

(5) "Obligated balance" shall mean the total of the funds committed from complete applications received for reimbursement, the commission's operating budget as approved, and funds placed in reserve in Section 4 of 415 KAR 1:020.

(6) "State financial responsibility" means that level of financial responsibility which petroleum storage tank owners and operators shall maintain pursuant to KRS 224.817(1)(a) and (b).

(7) "Unobligated balance" shall mean the total of the funds as reported by the Revenue Cabinet to the commission at the end of the most recent calendar quarter, less the obligated funds.

WILLIAM C. EDDINS, Chairman
APPROVED BY AGENCY: July 9, 1991
FILED WITH LRC: July 9, 1991 at 2 p.m.

## PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION
## (Amended After Hearing)

**415 KAR 1:020. General provisions for state financial responsibility.**

RELATES TO: KRS 224.810, 224.814 through 224.825

STATUTORY AUTHORITY: KRS Chapter 13A, 224.815, 224.817, 224.819

NECESSITY AND FUNCTION: KRS 224.810 to 224.825 relate to the regulation of petroleum storage tanks. KRS 224.815 through 224.825 provide for the creation of a program to assist owners and operators in meeting federal financial responsibility requirements for petroleum storage tanks under 401 KAR 42:090. KRS 224.819 requires the Petroleum Storage Tank Environmental Assurance Fund Commission to promulgate regulations to establish the policy, guidelines, and procedures to administer the petroleum storage tank environmental assurance fund. This regulation establishes the policies, guidelines, and procedures for eligibility for reimbursement from the fund, the procedure for filing a claim against the fund, and the procedures for appealing decisions and hearing complaints brought before the commission.

Section 1. General Eligibility Requirements. (1) Any petroleum storage tank owner or operator shall be eligible for participation in the fund if the owner or operator certifies that the following requirements for substantial compliance have been maintained for each petroleum storage tank on the Substantial Compliance and State Financial Responsibility Affidavit form incorporated by reference in subsection (2) of this section:

(a) The owner or operator has met the technical requirements effective at the time of the discovery of the release [of 401 KAR Chapter 42]; and, if [in the event of] a release has occurred, has made proper notification to the cabinet as required in 401 KAR Chapter 42;

(b) The owner or operator has maintained current annual registration with the cabinet for each petroleum storage tank;

(c) The owner or operator has paid the thirty (30) dollar annual tank fee required by KRS 224.823 to the cabinet for each petroleum storage tank; and

(d) The owner or operator has certified state financial responsibility to the commission using one (1) or any combination of the options listed in subparagraphs 1 through 6 of this paragraph. This certification shall be provided to the commission on the Substantial Compliance and State Financial Responsibility Affidavit form dated April 1991, hereby incorporated by reference. This form may be copied and inspected at the Petroleum Storage Tank Environmental Assurance Fund Commission, 59 Fountain Place, Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the commission are from 8 a.m. to 4:30 p.m. eastern time Monday through Friday.

1. Commercial or private insurance from a carrier with an A.M. Best rating of B+, or better, authorized to transact business in the Commonwealth of Kentucky.

2. A risk retention group qualified to do business in the Commonwealth and who shall furnish any financial reports as may be required by the commission.

3. A guarantor with a direct or indirect controlling interest in the owner or operator. The guarantor shall furnish proof as may be required by the commission in order to demonstrate state financial responsibility.

4. A surety bond from a surety company that is listed with the U.S. Treasury Department or the Kentucky Department of Insurance. Under the terms of the bond, the surety shall become liable under the bond when the owner or operator fails to perform.

5. An irrevocable standby letter of credit by an entity that has authority to issue letters of credit in Kentucky, and whose letter of credit operations are regulated and examined by a federal or a Kentucky agency. This letter of credit shall be drawn to cover "taking corrective action" and indemnification arising from owning or operating petroleum storage tanks.

6. The owner or operator may qualify as a self-insurer with prior approval by the commission if the owner or operator has certified to the commission the following upon request:

a. The owner's or operator's annual year-end financial statements; and

b. The owner's or operator's net worth is at least equal to the amount of coverage required for corrective action and the third party indemnification required in KRS 224.817(1)(a) and (d) [415 KAR 1:030, Section 2].

(2) Petroleum storage tank owners or operators shall maintain evidence of all state financial responsibility requirements used to demonstrate compliance with the requirements of this regulation until the owner or operator is released from the requirements of 401 KAR 42:090.

(3) Any change in eligibility requirements listed in this section shall be reported to the commission within ten (10) days of the occurrence.

(4) Loss of eligibility.

(a) If at any time the commission determines that an owner or operator has not maintained substantial compliance, the commission shall notify the owner or operator of the noncompliance. The owner or operator shall be deemed ineligible to receive reimbursement from the fund in the event of a release, until the

noncomplying site is in substantial compliance.
(b) If [at the time of a discovery of a release,] the commission determines that an owner or operator has failed to certify eligibility or has not maintained substantial compliance, corrective action costs and third-party damages associated with a [that] release shall [are] not be eligible for reimbursement by the fund.
(c) If the commission determines that an owner or operator has submitted fraudulent information, the owner or operator shall be deemed ineligible to receive reimbursement from the fund, and may be required to pay back any monies falsely received.
(5) Restoration of eligibility. The owner or operator shall have thirty (30) days from the date of receipt of the notice of ineligibility to produce evidence of complying with all eligibility requirements.

Section 2. Criteria for Reviewing Certifications. (1) The applicant shall be in compliance with KRS Chapter 224 and 401 KAR Chapter 42.
(2) The Substantial Compliance and State Financial Responsibility Affidavit form shall be properly completed and executed.

Section 3. Notification of Eligibility. The petroleum storage tank owner or operator shall receive a written notification of eligibility from the commission that the fund may be used as a demonstration of financial responsibility in support of 401 KAR 42:090.

Section 4. Fund Balance. (1) Except as provided under KRS 224.820(2) and (4), the unobligated balance of the fund shall never be less than $1,500,000 to ensure a $1,000,000 reserve balance adequate to meet federal financial responsibility requirements for participants in the fund, and a $500,000 reserve balance for emergency abatement action by the cabinet resulting from a release from a petroleum storage tank. When funds are withdrawn for emergency abatement actions, the withdrawals shall be replaced immediately.
(2) When the unobligated balance of the fund is $1,500,000 or less, or the payment of a claim shall cause the unobligated balance of the fund to be less than $1,500,000, the commission shall immediately suspend the payment of claims until the unobligated balance is greater than $1,500,000. Claims approved for payment by the commission at the time of suspension shall be paid in accordance with the date of final approval of the claims when the suspension is lifted.

**Section 5. Request for Review of Determination. Any person aggrieved by the actions of the commission may, by written notice, request that a hearing be conducted by the commission as set out in 415 KAR 1:030, Section 5.**

WILLIAM C. EDDINS, Chairman
APPROVED BY AGENCY: July 9, 1991
FILED WITH LRC: July 9, 1991 at 2 p.m.

## PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION
## (Amended After Hearing)

**415 KAR 1:030. Guidelines for financial assistance applications.**

RELATES TO: KRS 224.810, 224.814 through 224.825
STATUTORY AUTHORITY: KRS Chapter 13A, 224.815, 224.817, 224.819
NECESSITY AND FUNCTION: KRS 224.810 to 224.825 relate to the regulation of petroleum storage tanks. KRS 224.815 through 224.825 provide for the creation of a program to assist owners and operators in meeting federal financial responsibility requirements for petroleum storage tanks under 401 KAR 42:090. KRS 224.819 requires the Petroleum Storage Tank Environmental Assurance Fund Commission to promulgate regulations to establish the policy, guidelines, and procedures to administer the petroleum storage tank environmental assurance fund. This regulation establishes the policies, guidelines, and procedures for eligibility for reimbursement from the fund, the procedure for filing an application for assistance against the fund, and the procedures for appealing decisions and hearing complaints brought before the commission.

Section 1. General Eligibility Requirements. (1) Any petroleum storage tank owner or operator, who has complied with the requirements of 415 KAR 1:020, shall be eligible to apply for financial assistance from the petroleum storage tank environmental assurance fund.
(2) The applicant shall have **filed a corrective action plan or notice of intent to permanently close underground storage tank reports as applicable to the release required by the cabinet and other supporting documentation required** [a corrective action plan approved] by the **commission** [cabinet].
(3)**(a)** A release shall have occurred or have been detected, [with notification made to the cabinet in accordance with KRS 224.814(2),] on or after April 9, 1990**; or**
**(b) Corrective action costs associated with a release shall have occurred on or after April 9, 1990; and**
**(c) Notification required by KRS 224.814(2) shall have been made**, in order for an owner or operator to be eligible for reimbursement from the fund.
(4) Eligible costs for corrective action shall include, but are not limited to, actually incurred, reasonable costs for the items listed below. The commission may request additional documentation if the reasonableness of a cost is questionable.
(a) Testing to determine tightness of tanks and lines;
(b) Removal, treatment, and disposal of petroleum products from petroleum storage tank system, liquids, and soil;
(c) Site checks and site investigation for site assessment of contamination caused by a release from a petroleum storage tank system;
(d) Preparation of corrective action plans;
(e) Environmental monitoring;
(f) Laboratory services;
(g) Restoration or replacement of a private or public potable water supply;
(h) Removal, treatment, and disposal of

contaminated liquids and soils resulting from corrective action;

(i) Third party claims pursuant to Section 2 of this regulation;

(j) The cost of materials purchased. Examples include, but are not limited to, bailers, sample containers, and similar equipment; and

(k) Other costs requested by the applicant and approved by the commission.

(5) Ineligible costs for corrective action shall include, but not be limited to:

(a) Costs of replacement, repair, maintenance, retrofitting of affected tanks and associated piping, and any costs not integral to site corrective action **including new blacktop or concrete, new or replacement fill material, and storage tank systems**.

(b) The cost of equipment purchased. Examples include, but are not limited to: drilling rigs, earth moving equipment, groundwater sampling pumps, and photoionization detectors.

(6) Emergency corrective action. A petroleum storage tank owner or operator may submit an application claim for reimbursement without completing a site investigation and without preparing a corrective action plan if the following apply:

(a) An emergency existed which made an investigation and development of a timely corrective action plan unfeasible; and

(b) The owner or operator acted in good faith in conducting the corrective action activities, did not intentionally avoid conducting the investigation, and conducted the activity in compliance with 401 KAR 42:060.

Section 2. Petroleum Storage Tank Environmental Assurance Fund Limitations and Terms. (1) Applications for reimbursement from the fund shall be approved by the commission for those applicants who meet the requirements in Section 1 of this regulation.

(2) Third party claims for bodily injury and property damage shall be paid only to the extent specified in 401 KAR 42:090[, or up to $15,000 per occurrence, whichever is greater]. To assert a claim for bodily injury or property damage, the applicant shall notify the commission of the allegations within **twenty-one (21)** [seven (7)] days of the filing of an action against the applicant by a third party so the commission may intervene in the action. Third party claims shall only be paid on the basis of a final and enforceable judgment.

Section 3. Application Submission Requirements and Review Process. (1) The petroleum storage tank environmental assurance fund application for assistance, dated April 1991, is hereby incorporated by reference into this section. Application forms may be copied and inspected at the Petroleum Storage Tank Environmental Assurance Fund Commission, 59 Fountain Place, Frankfort, Kentucky, 40601, (502) 564-5981. The business hours of the commission are from 8 a.m. to 4:30 p.m. eastern time Monday through Friday.

(2) The commission staff shall review all applications received for a particular application period. If the application is determined to be incomplete, the commission shall notify the applicant of the deficiencies which render the application incomplete. The applicant shall submit supplemental information to correct the identified deficiencies within fifteen (15) days after the applicant's receipt of the initial notice of incompleteness. If the commission determines that the application is still incomplete, the commission shall return the incomplete application to the applicant with written notification pursuant to KRS 224.821(7).

Section 4. Criteria for Reviewing Project Applications. (1) The commission staff shall review all applications during each application period in the order they are received.

(2) The criteria used by the commission to review project applications shall be as follows:

(a) The project complies with **corrective action and closure requirements of the cabinet** [the approved corrective action plan];

(b) The proposed project cost estimates are reasonable and attainable given the geographic location of the project, current pricing trends, required professional services, and any other factors that may have a bearing on the project;

(c) The project design shall achieve the results intended;

(d) The applicant can assure continued operation and maintenance of the project;

(e) The application is properly completed and accurate;

(f) The completed application was received by the commission at least thirty (30) days prior to the commission meeting;

(g) The application was received within one (1) year from the date of the completed site work and certification of closure issued by the Department for Environmental Protection; and

(h) The application was properly executed.

(3) The commission staff, after reviewing all eligible applications using the above criteria specified in subsection (2) of this section, shall submit a list of all projects recommended for funding with all application information attached for the commission's approval.

(4) If the application or any portion thereof is denied, and a request for a **hearing** [panel review] as set forth in **Section 5 of this regulation** [subsection (5) of this section] was not made, the initial determination shall be considered final.

[(5) Panel review. If the applicant is aggrieved by the commission's initial determination, the applicant may, within twenty (20) days of receipt of the initial determination, ask to appear before a three (3) member panel of the commission to present additional documentation and supplemental information explaining the application. The panel shall be comprised of three (3) commission members appointed by the chairman of the commission with the consent of the commission. The panel may establish a fair and reasonable limit on time allowed for oral presentation. The panel shall make recommendations to the commission on the application.]

**Section 5. Requests for Hearings. Any person aggrieved by the actions of the commission may by written notice request that a hearing be conducted by the commission. The hearing may be conducted by the commission or a hearing officer designated by the commission. The right to demand such a hearing shall be limited to a period of thirty (30) days after the applicant has had actual notice of the action, or could reasonably have had such notice. Unless the request is frivolous, the commission shall schedule a hearing before the commission not less than twenty-one (21) days after notice of**

demand for such a hearing, unless the person complained against waives in writing the twenty-one (21) day period. The notice of hearing shall include a statement of the time, place, and nature of the hearing; the legal authority for the hearing; reference to the statutes and regulations involved; and a short statement of the reason for the granting of the hearing.

[(6) Final determination. The commission shall determine the amount of reimbursement based on those costs it finds are eligible, actually incurred, and reasonable. The final determination shall be made on the basis of the written record and, if applicable, panel recommendation. The applicant shall be notified, in writing, within fifteen (15) days of the commission's decision. If the commission rejects any portion of the request for reimbursement, a statement of the reasons for rejection shall be included with the notification.]

Section 6. Prehearing Conference. Prior to the formal hearing, and upon seven (7) days written notice to all parties, delivered personally or by certified mail with return receipt requested, the hearing officer may hold a prehearing conference to consider simplification of the issues, admissions of fact and documents which will avoid unnecessary proof, limitations of the number of witnesses and such other matters as will aid in the disposition of the matter. Disposition of the matter may be made at the prehearing conference by stipulation agreed settlement, consent order, or default for nonappearance.

[(7) Right to appeal. A final determination by the commission shall be a final order or determination for the purpose of KRS 224.081.]

Section 7. Administrative Hearing Procedure. (1) Any party to a hearing may be represented by counsel, may make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of such actions. A hearing officer shall preside at the hearing in accordance with reasonable administrative practice.

(2) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. When necessary to ascertain facts not reasonably susceptible of proof under judicial rules of evidence, evidence not admissible thereunder may be admitted (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Hearing officers shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form. Documentary evidence may be received in the form of copies of excerpts if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original. A party may conduct cross-examinations required for a full and true disclosure of the facts.

(3) It will be within the hearing officer's discretion to require official transcripts or to set up other procedures of taking evidence including but not limited to the use of mechanical recording devices for recording the testimony. The record of such hearing, consisting of all pleadings, motions, rulings, documentary and physical evidence received or considered, a statement of matters officially noticed, questions and offers of proof, objections and rulings thereon, proposed findings and recommended order, and legal briefs, shall be open to public inspection and copies thereof shall be made available to any person upon completion of the hearing process upon payment of the actual cost of reproducing the original except as provided in KRS 224.035 or 224.036. The commission may cause the mechanical recording of the testimony to be transcribed. When certified as a true and correct copy of the testimony by the hearing officer, the transcript shall constitute the official transcript of the evidence.

(4) The hearing officer shall within thirty (30) days of the closing of the hearing record, make a report and a recommended order to the commission. The order shall contain the appropriate findings of fact and conclusions of law. If the commission finds upon written request of the hearing officer that additional time is needed, then the commission may grant a reasonable extension. The hearing officer shall serve a copy of his report and recommended order upon all parties. The parties may file within seven (7) days of service of the hearing officer's report and recommended order exceptions to the recommended order. The commission shall consider the report and recommended order and exceptions. The commission may remand to the hearing officer the matter for further deliberation, adopt the opinion of the hearing officer or issue their own written order based on the report and recommended order.

(5) After completion of the hearing and filing of exceptions, the commission shall notify the applicant in writing, certified mail with return receipt requested, of the final decision of the commission. If any extension of time is granted by the commission for a hearing officer to complete his report, the commission shall notify all parties at the time of the granting of the extentions.

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

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

(8) There shall be no ex parte communications between a hearing officer and parties to the action.

(9) Any person aggrieved by a final order of the commission may have recourse to the courts of jurisdiction.

Section 8. Final Determination. The commission shall determine the amount of reimbursement based on those costs it finds are eligible, actually incurred, and reasonable. The final determination shall be made on the basis of the written record and, if applicable, hearing recommendation. The applicant shall be notified, in writing, within fifteen (15) days of the

commission's decision. If the commission rejects any portion of the request for reimbursement, a statement of the reasons for rejection shall be included with the notification.

WILLIAM C. EDDINS, Chairman
APPROVED BY AGENCY: July 9, 1991
FILED WITH LRC: July 9, 1991 at 2 p.m.

**CABINET FOR HUMAN RESOURCES**
**Department for Social Services**
**(Amended After Hearing)**

**905 KAR 1:320. Fair hearing.**

RELATES TO: Social Security Act, Civil Rights Act, 45 CFR 210
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: Under Titles IV-B, IV-C, IV-E and Title XX of the Social Security Act, the single state agency responsible for the program shall be required by federal regulation, 45 CFR 205.10, to provide a hearing to an applicant or recipient who is aggrieved by an agency action resulting in denial, suspension, reduction, discrimination, exclusion or termination of services. The Department for Social Services has assured various federal agencies that it shall comply with the provisions of the Civil Rights Act of 1964, as amended, Section 504 of the Rehabilitation Act of 1973 as amended and with 45 CFR 205.10.

Section 1. Definitions. (1) "Local resolution process guidelines" means the local resolution conference consisting of an informal process that gives the complainant the opportunity to discuss his complaint and clarify issues and attempt to resolve those issues. The complainant shall be afforded the opportunity to decide whether he continues to desire a formal hearing following the local resolution process.

(2) "Timely" means that a notice is mailed at least ten (10) days before the date of the action, except that adequate written notice shall be given no later than the date of the action if staff determines that delaying the action endangers the health or well-being of the children or that the health or well-being of children may be endangered if prior notice is given.

Section 2. Right to a Fair Hearing. (1) The department shall not on the basis of race, color, national origin, sex, age, religion or handicap:

(a) Deny an individual aid, care, services or other benefits of the department, either directly or through contractual or other agreements.

(b) Provide aid, care, services, or other benefits to an individual which is different or is provided in a different manner from that provided to others.

(c) Subject an individual to segregation or separate treatment in a matter related to his receipt of aid, care, services or other benefits.

(d) Restrict an individual in the enjoyment of an advantage or privilege enjoyed by others receiving aid, care, services or other benefits.

(e) Treat an individual differently from others in determining whether he satisfies eligibility or other requirements or conditions which individuals shall meet to receive aid, care, services or other benefits.

(f) Deny an individual an opportunity to participate in the program through the provision of services or afford him an opportunity to do so which is different from that afforded others.

(2) A notice of the client's right to a hearing shall be displayed prominently in each Department for Social Services residential treatment facility, clinical programs, day treatment center, group home, and in each Department for Social Services office in a location easily accessible to clients. The notice of right to a hearing shall state:

(a) If you are dissatisfied with the action taken, you may request a fair hearing within thirty (30) days from the date of the action by filing a written request or a DSS-154, Request for Fair Hearing form, incorporated by reference herein, with the Quality Assurance Branch, Department for Social Services, 404 Ann Street, Frankfort, Kentucky 40601.

(b) You may be represented by an attorney or other spokesman.

(3) Staff of the Department for Social Services, shall have the responsibility of advising clients and subsidized adoptive parents in writing of their right to a fair hearing:

(a) During intake or at the initial treatment planning conference, using the DSS-154, Request for Fair Hearing form.

(b) During any action affecting services or assistance:

1. Staff shall give the client or subsidized adoptive parent timely and adequate notice thereof and an opportunity to object, using the DSS-154A, Notice of Intended Action form, incorporated by reference herein.

2. If a request for a hearing is made within ten (10) days of the notice of an action affecting services, services shall be continued until a decision is rendered after a hearing, unless staff determines that continuation of the services or delay of the action endangers the health or well-being of a child; and

(c) Staff shall give new foster parents at the time of approval a written notice of their right to a fair hearing when:

1. A foster home is closed;

2. A child is removed from one (1) foster home to another foster home; and

3. When training provided by the department is denied.

(4) [(3)] Hearing entitlement.

(a) A client or subsidized adoptive parent shall be entitled to a hearing on the following actions:

1. A denial, reduction, material modification, suspension, discontinuance, exclusion from or termination of a service;

2. Dissatisfaction with a service received, inappropriate or inadequate treatment, placement or visitation;

3. Failure of the department to act upon a request for service with reasonable promptness;

4. Failure of the department to take into account a client's choice of service or a determination that the individual shall participate in a service program against his wishes, except where required by law; or

5. Discrimination against a client by department staff on account of age, sex, race, national origin, handicap or religion.

(b) A foster parent shall be entitled to a hearing on the following decisions:

1. To remove [Removal] of a foster child from one foster home to another foster home except if the child has been the subject of a substantiated report of abuse or neglect by the foster parents;

2. To deny foster parents foster parent training provided and scheduled by the department.

3. To close the foster home, except when:

a. Sexual abuse or exploitation by the foster parents is substantiated;

b. Substantiation of physical abuse of a child or spouse warranting the removal of the victim;

c. There is presence of a serious physical or mental illness which impairs or precludes [may impair or preclude] adequate care of the child by the foster parents;

d. Foster parents are convicted of a felony offense; and

e. Foster parents have not had a placement within five (5) years of the approval date.

(c) Subsidized adoptive parents shall be entitled to a hearing on the decision to deny or reduce adoptive assistance for a special needs child.

(4) The following issues shall not be considered through the hearing procedure described herein:

(a) Complaints related to legal issues, i.e., actions involved in court cases or the interpretation of any statute or regulation;

(b) A complaint that has not been filed in writing with the Quality Assurance Branch;

(c) A complaint that has been abandoned by failure of the complainant to furnish information requested by the hearing officer or to appear at a scheduled hearing;

(d) A complaint of a provider of services under contract or memorandum of agreement, e.g. private child care facilities or area development districts. Refer to 905 KAR 8:140, Hearing procedures for area agency on aging, contract selector actions, for formal complaint procedure for area agencies on aging.

(e) Discrimination practices in relation to departmental personnel policies and procedures. These grievances shall be handled per instructions in the personnel manual; and

(f) A report of child abuse or neglect and adult abuse or neglect.

Section 3. Request for Hearing. (1) The complainant or legal guardian shall sign the request and submit it to the Quality Assurance Branch. Upon request, departmental staff shall assist individuals in preparation and submission of a request for hearing. Staff shall not assume responsibility for mailing the request. Requests for hearing shall be in writing or filed on the DSS-154, Request for Hearing form and contain:

(a) Specific allegations or complaints;

(b) Name of the person, if known, responsible for the act or decision upon which the complaint is based;

(c) Circumstances under which the alleged act occurred; and

(d) Date and place of alleged act.

(2) Requests shall be filed within thirty (30) days after the alleged act or notice of a decision affecting services. If the notice is mailed, the date of the notice shall be the date mailed; otherwise it shall be the date of delivery. If the request is filed after the thirty (30) day period, a decision as to acceptance or denial of the complaint for action shall be made by the Commissioner of the Department for Social Services.

(a) Within five (5) working days of the receipt of the complaint, the Quality Assurance Branch shall notify the complainant of the receipt of the request and the department's policy of attempts at local resolution before a hearing is scheduled.

1. The appropriate family services district manager or designee shall also be notified of the receipt of the request and asked to set a meeting with the complainant to attempt to resolve the issues that led to the complaint.

2. The juvenile services specialist shall arrange a meeting with the complainant to attempt to resolve the issues that led to the complaint if received from youth in residential treatment facilities, clinical programs, group homes or day treatment programs.

(b) The local resolution facilitator contacts the complainant to:

1. Clarify the issues of the complaint; and

2. Determine if the complainant wishes to participate in the local resolution process;

3. Determine whether the complainant is a client or a person filing on behalf of a client. If the complainant is not a client, notify the Quality Assurance Branch Manager immediately.

(c) The complainant may refuse to participate in the local resolution efforts and shall sign an acknowledgement to be forwarded to the Quality Assurance Branch Manager and choose:

1. To request that the complaint be withdrawn; or

2. That the complaint be referred for a formal fair hearing.

(d) If the complainant chooses to be involved in the local resolution process, the local resolution facilitator shall solicit information from the involved parties in an attempt to resolve the complaint in a manner that is acceptable to the complainant. The solicitation of information may include:

1. Interviews with the complainant and named DSS staff:

2. Interviews with other involved parties; and

3. A review of relevant case materials.

(e) Other issues identified as a result of the local resolution conference shall be brought to the attention of appropriate management and supervisory staff.

(4) The family services district manager or his designee or the juvenile services specialist shall forward to the Quality Assurance Branch, in writing, the results of their efforts to achieve local resolution of the complaint not more than thirty (30) days after the filing of the request for hearing. The report shall contain:

(a) Nature of the complaint.

(b) Date of resolution conference.

(c) Persons present at the conference.

(d) A specific statement of any issues not resolved. [The results of the conference.]

(5) If the complaint is resolved, the complainant shall sign an acknowledgment to be attached to the report.

Section 4. Hearing Before the State Agency. (1) If a complaint is not resolved within thirty (30) days after filing, it shall be referred to a hearing officer of the Quality Assurance Branch to conduct a hearing. The hearing shall be held within thirty (30) days after referral. If the complainant agrees to an extension of

time, the time for final administrative action shall be correspondingly extended.

(2) The hearing shall be conducted at a reasonable location selected by the hearing officer.

(3) The complainant and representatives, as appropriate, the DSS staff named in the complaint and their representatives, and CHR Office of Counsel shall be given at least seven (7) working days written notice prior to the hearing. The following information shall be contained in the hearing officer's notice to the complainant and his representative:

(a) The specific allegations to be heard at the hearing. The complainant shall be asked to notify the hearing officer in writing within five (5) working days of the receipt of the notice if the allegations have not been correctly stated. The hearing officer shall then make a determination as to whether to modify the allegations.

(b) Individuals to be present at the hearing.

(c) The complainant's option of presenting his case himself or with the aid of an authorized representative, i.e., legal counsel, relative, friend or other spokesman.

(d) That the department shall not be responsible for any legal fees incurred by the complainant related to the hearing.

(e) The nature and conduct of the hearing, e.g., orderly but informal manner, opportunity to present witnesses and to cross examine opposing witnesses, etc.

(f) The complainant's right to examine the contents of his case file and all documents and records to be used by the agency at the hearing at a reasonable time before the date of the hearing and instructions on how to access the material under the open records law.

(4) The following information shall be contained in the hearing officer's notice to staff named in the complaint:

(a) The specific allegations to be heard at the hearing.

(b) Individuals to be present at the hearing.

(c) The nature and conduct of the hearing, e.g., orderly but informal manner, opportunity to present witnesses and to cross examine opposing witnesses, etc.

(d) Staff's option of presenting the case themselves or with representative, or with the aid of an attorney from the office of counsel. Staff shall be responsible for making arrangements for representation at the hearing.

(5) Attendance at the hearing shall be limited to:

(a) The complainant and representatives;

(b) Staff named in the complaint and their representatives;

(c) The department's attorney;

(d) A representative of the department;

(e) A person to operate the recording equipment;

(f) Any witness called by either the complainant or staff; and

(g) The hearing officer.

(6) The hearing shall be conducted in an orderly but informal manner, following the rules of procedure applicable to administrative hearings. Facts relevant to the issue shall be received.

(a) The hearing officer shall open the hearing by:

1. Describing the purpose of the hearing;

2. Explaining the role of the hearing officer; and

3. Introducing parties to the hearing.

4. The hearing officer may direct or grant a continuance for good cause shown.

5. The hearing officer shall carefully clarify the allegations to be heard with the parties to the hearing. The allegations shall be the same as those in the written notification of the hearing.

(b) Before receipt of testimony, the hearing officer shall assemble all witnesses in the hearing room, and administer an oath pursuant to KRS 194.025.

(c) The hearing officer shall arrange for the separation of witnesses. Only the client and representatives; staff named in the complaint and their representatives; the department's attorney; a representative of the department; the hearing officer; and a person to operate the recording equipment are entitled to be in the the hearing room throughout the entire hearing. The hearing officer may permit others to remain throughout the entire hearing if circumstances dictate.

(d) Each witness shall complete direct testimony and then shall answer questions on cross examination by the adverse party.

(e) The complainant shall have the burden of proof and shall testify first and may present pertinent evidence, including testimony of witnesses and documents.

(f) Upon completion of the case for the complainant, the respondents may testify and present other evidence including testimony of witnesses and documents.

(g) Upon completion of the case for the respondents, the complainant may present additional evidence in strict rebuttal of the evidence presented by respondents. Additional evidence may be presented by either complainant or respondents at the discretion of the hearing officer.

(h) The hearing officer may, if necessary to secure full information on the issue:

1. Postpone the hearing;

2. Examine each party who appears, and his witnesses; and

3. Take any additional evidence which he deems necessary including excerpts from the case record.

(i) After both parties to the hearing have been given ample opportunity to present their testimony and evidence, the hearing officer shall give each party an opportunity to summarize the salient points of their cases.

(j) The hearing officer shall advise the parties that a decision shall be rendered within twenty (20) days from the close of the hearing.

Section 5. Hearing Officer's Report and Decision. (1) Within ten (10) days after the close of the hearing, the hearing officer shall file a written report with the Quality Assurance Branch. The report shall contain:

(a) Statement of the complaint;

(b) Persons present at the hearing, including witness;

(c) Findings of fact based solely on the evidence introduced at the hearing;

(d) Conclusions as to whether or not the findings support the complaint, citing appropriate policy and procedures; and

(e) Recommendations as to action to be taken, if any, on the complaint.

(2) Within ten (10) days after receipt of the

hearing officer's report by the Quality Assurance Branch, the commissioner, or designee, shall render a written decision on the complaint. The written decision shall be sent to the complainant by certified mail, return receipt requested, and to the staff involved, and shall contain the following information:

(a) Statement of the complaint;

(b) Findings of fact and conclusion in regard to complaint; and

(c) Decision and action to be taken based on findings of fact.

Section 6. Corrective Action. After reviewing the findings of fact and recommendations of the hearing officer, if the commissioner or the commissioner's designee feels that corrective action is warranted, a memorandum shall be forwarded to the appropriate assistant director for family services or residential services requesting that corrective action be initiated. Corrective actions deemed necessary shall be initiated within ten (10) days.

Section 7. Record. The transcript or recording of testimony and exhibits, or an official report containing the substance of the testimony introduced at the hearing, together with all exhibits, papers and requests filed in the proceeding, and the report of the hearing officer shall constitute the exclusive record and shall be available at the Frankfort office of the Quality Assurance Branch at any reasonable time in accordance with open records. The record of the fair hearing shall be maintained in a locked file separate from the case record of the complainant.

Section 8. Contract Agencies. (1) Contract agencies of the department shall follow procedures outlined in this manual section when a client has a complaint related to civil rights, discrimination or service delivery. If the complainant is dissatisfied with the written decision rendered by the contract agency, the client has ten (10) days from the date of the agency's decision to appeal. The agency, if requested, shall assist the complainant in filing an appeal of the decision. An appeal is mailed to the office of the commissioner.

(2) The commissioner shall forward the appeal of the decision to the Quality Assurance Branch to be reviewed by a specialist. After reviewing the decision made by the contract agency, the specialist shall file a written report with the commissioner which shall contain:

(a) Conclusions as to whether the contract agency's finding support the complaint, citing appropriate policy and procedure; and

(b) Recommendations as to action to be taken on the complaint.

(3) After receipt of the quality assurance specialist's report, the commissioner or the commissioner's designee shall render a written decision on the complaint. The written decision shall be sent to the complainant by certified mail, return receipt requested, and shall contain the following:

(a) Statement of the complaint; and

(b) Decision and action to be taken.

Section 9. Material Incorporated by Reference. (1) Forms necessary for the implementation of the fair hearing process shall be **herein** incorporated **by reference** [effective January, 1991].

(2) Material incorporated by reference may be inspected and copied at the Department for Social Services, CHR Building, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

LARRY MICHALCZYK, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: July 1, 1991
FILED WITH LRC: July 2, 1991 at 3 p.m.

PROPOSED AMENDMENTS RECEIVED THROUGH JULY 15, 1991 BY NOON

**KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY**
**(Proposed Amendment)**

**11 KAR 4:040. Educational institution participation requirements.**

RELATES TO: KRS 164.740, 164.748(6), (13)
STATUTORY AUTHORITY: KRS 13A.100, 164.748(4)
NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority ("authority") administers programs of student financial assistance. The authority is empowered by KRS 164.748(6) and (13) to enter contracts with eligible educational institutions to provide for the administration of student financial assistance programs, and approve, disapprove, limit, suspend, or terminate the participation of such institutions. This regulation sets forth the conditions under which the authority will execute a contract with an educational institution for participation in any or all of the authority's programs. The amendment specifies documentation and standards that are a precondition to execution of an administrative agreement.

Section 1. Definitions. (1) The definition of "authority" is governed by KRS 164.740. Action by the authority shall refer to action on behalf of the authority by the executive director or his designee, appointed pursuant to KRS 164.746(6).

(2) The definition of "business school" is governed by KRS 164.740.

(3) The definition of "college" is governed by KRS 164.740.

(4) The definition of "federal act" is governed by KRS 164.740.

(5) "Fiscal year default rate" means, for any fiscal year in which thirty (30) or more current and former students at the institution enter repayment on GSL or SLS program loans received for attendance at the institution, the percentage, determined by the secretary, of those current and former students who enter repayment on GSL or SLS program loans received for attendance at that institution in that fiscal year who default before the end of the following fiscal year. For any fiscal year in which less than thirty (30) of the institution's current and former students enter repayment, the term "fiscal year default rate" means the average, determined by the secretary, of the rate calculated under the preceding sentence for the three (3) most recent fiscal years. In the case of a student who has attended and borrowed at more than one (1) school, the student (and his or her subsequent repayment or default) is attributed to each school for attendance at which the student received a loan that entered repayment in the fiscal year. A loan on which a payment is made by the school, its owner, agent, contractor, employee, or any other affiliated entity or individual, in order to avoid default by the borrower is considered as in default for purposes of this definition.

(6) "Fiscal year" means the period from and including October 1 of the calendar year through and including September 30 of the following calendar year.

(7) "GSL or SLS program loans" means loans reinsured by the secretary pursuant to sections 428 or 428A of the federal act (20 USC §1078 or 1078-1).

(8) The definition of "insured student loan" is governed by KRS 164.740.

(9) The definition of "school of nursing" is governed by KRS 164.740.

(10) The definition of "secretary" is governed by KRS 164.740.

(11) The definition of "vocational school" is governed by KRS 164.740.

Section 2. [1.] General Rule. The authority shall [will] execute an administrative agreement with any educational institution which meets the eligibility criteria established by KRS 164.740 et seq., KRS 164.780 et seq., and (as applicable to a particular authority program) the federal act [Higher Education Act of 1965 (20 United States Code 1070 et seq.), as amended], and which is approved for participation by the authority and (as applicable) the [United States] secretary [of Education ("Secretary")]. The authority shall [will] approve for participation in any authority program an educational institution which:

(1) Demonstrates to the satisfaction of the authority, in accordance with standards set forth in Section 5 of this regulation [34 Code of Federal Regulations part 668], financial responsibility and administrative capability to administer authority programs of student financial assistance;

(2) Is not presently suspended or terminated from participation in student financial assistance programs by either the authority, and organization authorized to insure loans under the federal act, or the secretary;

(3) Holds all licenses, in full force and effect, necessary to transact business in the Commonwealth of Kentucky;

(4) Meets the criteria set forth in Sections 4 through 13 [3, 4, 5 and/or 6] of this regulation, as applicable to the particular authority program(s) in which the educational institution seeks participation; and

(5) Has been in continuous operation for at least two (2) years, unless otherwise required by the federal act.

Section 3. [2.] Maintenance of Participation. An administrative agreement executed pursuant to Section 2 [1] of this regulation shall remain in force, in accordance with its terms, for so long as the educational institution conforms to the criteria set forth in Section 2 [1] of this regulation, except [provided] that the agreement may, at the discretion of the authority, remain in force for one or more programs, as circumstances warrant, notwithstanding Section 2 [1](2) of this regulation. The authority may periodically reevaluate the financial and administrative capability of an institution and compliance with the criteria established in this regulation. A reevaluation may also be initiated at any time based upon a change of ownership or control of the institution, the establishment or acquisition of a new campus or branch of the institution, a substantial increase in student financial assistance volume or no insured student loan volume for a period of twelve (12) months (if the institution participates in that program), a pattern of complaints from students,

parents of students or others who have a business or educational relationship with the institution, persistent student financial aid processing errors, or a fiscal year default rate sufficiently high to invoke additional requirements under applicable federal regulations.

Section 4. Documentation of Federal Eligibility, Financial Responsibility, and Administrative Capability. (1) The institution shall demonstrate to the authority that it is approved by the secretary to participate, and and holds all necessary licenses to offer academic programs by submitting to the authority a true and complete copy of the most recent:

(a) Federal application for institutional eligibility, eligibility letter, and program participation agreement executed by the secretary;

(b) Letter of accreditation from each organization accrediting the institution and its programs and copies of any letters denying, limiting or suspending accreditation of the institution; and

(c) License from each governmental organization responsible for licensing the institution or its programs.

(2) The institution shall provide evidence of its financial responsibility by submitting to the authority:

(a) A copy of audited financial statements (including any audit of student financial assistance programs), prepared by a certified public accountant in accordance with generally accepted accounting standards, for the preceding two (2) years;

(b) Information indicating the type of organizational ownership and the names of all current owners and corporate officers; and

(c) A list of the three (3) student loan lenders and guarantors providing the highest dollar volume of student loans to the institution's students during the preceding twenty-four (24) months.

(3) The institution shall provide evidence of its capability to administer the student financial assistance programs and provide the services publicized to students by submitting to the authority:

(a) A current copy of the consumer information required by federal and state law to be made available to students and prospective students, including the institution's catalog, enrollment contract, brochures and printed advertisements; and (unless contained in the foregoing materials) a current description of the financial assistance programs available, cost of attendance, programs of study, facilities, the experience of the instructional and administrative staff, and average starting salaries of graduates;

(b) A current statement of the institution's policies on recruitment and admission, attendance, refund and repayment of student financial assistance, and the ability to benefit and satisfactory academic progress standards;

(c) Information for the preceding two (2) years on total annual enrollment, fiscal year default rates, accreditation and student financial assistance program review reports, and any sanctions imposed on the institution by the secretary or a student loan guarantee agency;

(d) All materials currently used or proposed to be used in student financial assistance counseling involving entrance and exit interviews, student loan debt management, student financial assistance authorizations and disbursement forms, and standardized student budgets;

(e) A current analysis of information and a current plan of remedial measures required pursuant to 34 CFR Section 668.15(b)(2), (c), (d), and (e), if the secretary requires those materials to be prepared by the institution.

(4) The authority may disapprove, limit, suspend, or terminate the participation of an institution upon failure to submit the required documentation within forty-five (45) days following request by the authority.

(5) The authority in its sole discretion may waive all or any part of the documentation requirements in this section if the institution's fiscal year default rate is twenty (20) percent or less or upon a showing by the institution that submission of required documentation would impose an undue hardship, provided that the authority is satisfied from documentation that is provided or available from other sources that the institution can reasonably be presumed to meet the requirements of this regulation. If the institution advises the authority that any documentation required under this section has been submitted to a third party and so requests, the authority shall seek the documentation from the third party, and shall consult with other governmental agencies responsible for making contemporaneous determinations on financial responsibility.

Section 5. Standards of Financial Responsibility and Administrative Capability. The authority may conduct an on-site review of the institution to determine compliance with the following standards prior to execution of an administrative agreement. An eligible institution demonstrates that it is financially responsible and administratively capable if it:

(1) Provides the services described in its official publications and statements;

(2) Provides the administrative resources necessary to comply with the requirements of this regulation;

(3) Meets all of its financial obligations, including, but not limited to:

(a) Refunds of institutional charges; and

(b) Repayments to the authority for liabilities and debts incurred in programs administered by the authority;

(4) Has not:

(a) Had operating losses during its two (2) most recent fiscal years; or

(b) Had, for its most recent fiscal year, a deficit net worth, in which its liabilities exceed its assets; or

(c) Under a fund accounting system, sustained material deficits over at least its two (2) most recent fiscal years in its unrestricted operating funds;

(5) Has a ratio of current assets to current liabilities of at least 1:1 under an accrual basis of accounting at the end of its most recent fiscal year;

(6) Designates an individual competent and responsible for administering all of the student financial assistance programs in which it participates and coordinating the authority's programs with the institution's other programs of student financial assistance, and communicates to that individual all information

received by any institutional office that affects a student's eligibility for student financial assistance;

(7) Uses an adequate number of persons competent to administer the student financial assistance programs in which it participates, taking into account the number of students aided, the number and types of programs in which the institution participates, the number of applications evaluated, the amount of funds administered, and the financial aid delivery system used by the institution;

(8)(a) Administers authority programs with checks and balances in its system of internal controls; and

(b) Divides the functions of authorizing payments and disbursing funds so that no office has responsibility for both functions with respect to any particular student aided under the programs;

(9) Establishes, publishes, and applies reasonable standards for measuring whether a student is maintaining satisfactory academic progress in a program of study, which standards shall:

(a) Conform with the standards of satisfactory progress of the nationally recognized accrediting agency that accredits the institution, if the institution is accredited by such an agency, and if the agency has those standards;

(b) Be, for a student enrolled in an eligible program who is to receive assistance under an authority program, the same as or stricter than the institution's standards for a student enrolled in the same academic program who is not receiving assistance under an authority program;

(c) Include grades, work projects completed, or comparable factors that are measurable against a norm;

(d) Include a maximum time frame determined by the institution in which the student must complete his or her educational objective (degree, diploma or certificate), based on the student's enrollment status and increments no longer than one (1) academic year;

(e) Include a schedule established by the institution, designating the minimum percentage or amount of work that a student must successfully complete at the end of each increment in order to complete the educational objective, degree, or certificate within the maximum time frame;

(f) Include a determination at the end of each increment by the institution whether the student has successfully completed the appropriate percentage or amount of work according to the established schedule;

(g) Be consistently applied to all students within categories of students (i.e., full-time, part-time undergraduate, etc.) and programs established by the institution;

(h) Specifically define the effect of course incompletes, withdrawals, repetitions, and noncredit remedial courses upon satisfactory academic progress and student charges;

(i) Specify the procedures under which a student may appeal a determination that the student is not making satisfactory progress, and the procedures for reinstatement of satisfactory academic standing and eligibility for student financial assistance;

(10) Develops and applies an adequate system to identify and resolve discrepancies in the information it receives from different sources with respect to a student's application for student financial assistance, and refers to United States Department of Education's Office of Inspector General or other appropriate law enforcement agencies any information indicating that an applicant or employee or agents of the institution may have engaged in fraud or other criminal misconduct;

(11) Provides adequate counseling to student financial assistance applicants regarding the source and amount of each type of aid offered, the method by which awards are determined and disbursed, the rights and responsibilities of the student, and the policies of the institution affecting the student's receipt of financial assistance;

(12) Complies with institutional policies and procedures, including any remedial measures required by the secretary pursuant to 34 CFR Part 668, in all applicable requirements of the institution's accrediting and licensing agencies.

Section 6. Insured [3. Guaranteed] Student Loan [and PLUS] Program Participation. In order to participate in the authority's insured student loan [GSLP or PLUS] program[s], the educational institution shall [must]:

(1) Qualify as [Be] a "public or private, nonprofit institution of higher education" or a "vocational school" pursuant to [as defined in] the federal act [Higher Education Act of 1965, as amended];

(2) Be certified by the secretary to participate and have in force, if required by the secretary, a participation agreement with the secretary; and

(3) Execute an administrative agreement with the authority, provided that the authority may permit an educational institution, otherwise approved, to participate without an agreement if the institution's fiscal year default rate is twenty (20) percent or less [until the annual, original principal amount of loans insured by the authority for students to attend the institution is $50,000].

Section 7. [4.] State Student Incentive Grant Program Participation. In order to participate in the authority's SSIG program, an educational institution shall [must]:

(1) Qualify as [Be] a "public or private, nonprofit institution of higher education," a "proprietary institution of higher education," or a "postsecondary vocational institution" pursuant to the federal act [defined in the Higher Education Act of 1965, as amended];

(2) Qualify as [Be] a "business school," "college," "school of nursing," or "vocational school" [as defined in KRS 164.740];

(3) Be located within the Commonwealth of Kentucky;

(4) Offer an "eligible course of study," as defined in 11 KAR 5:020, which is not comprised solely of sectarian instruction; and

(5) Execute an administrative agreement with the authority.

Section 8. [5.] Kentucky Tuition Grant Program Participation. In order to participate in the authority's KTG program, an educational institution shall [must]:

(1) Qualify as [Be] a private, nonprofit "college" [as defined in KRS 164.740];

(2) Be located within the Commonwealth of Kentucky;

(3) Offer an "eligible course of study," as defined in 11 KAR 5:020, which is not comprised solely of sectarian instruction; and
(4) Execute an administrative agreement with the authority.

Section 9. KHEAA [6. Commonwealth] Work Study Program Participation. In order to participate in the authority's KHEAA work study [CWS] program, an educational institution shall [must]:
(1) Qualify as [Be] a "business school," "college," "school of nursing," or "vocational school" [as defined in KRS 164.740];
(2) Be located within the Commonwealth of Kentucky;
(3) Offer a program of study not comprised solely of sectarian instruction; and
(4) Execute an administrative agreement with the authority.

Section 10. Teacher Scholarship Participation. In order to participate in the authority's teacher scholarship program, an educational institution shall:
(1) Qualify as a "business school", "college", "school of nursing", or "vocational school";
(2) Be located within the Commonwealth of Kentucky; and
(3) Offer an "eligible program" of study.

Section 11. College Access Program Participation. In order to participate in the authority's college access program, an educational institution shall:
(1) Qualify as a public or private, nonprofit college; and
(2) Be located within the Commonwealth of Kentucky.

Section 12. [7.] The authority will execute an administrative agreement with an educational institution which may include nonmain campuses of the institution that are not separately incorporated.

Section 13. Notwithstanding any other section of this regulation, the authority shall not execute an administrative agreement with an eligible institution, except as provided in subsection (4) of this section, if:
(1) The institution, its owner, or its chief executive officer has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of student financial assistance funds, or has been judicially determined to have committed fraud involving student financial assistance funds;
(2) The institution employs an individual in a capacity that involves the administration of programs, or the receipt of authority program funds who has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of student financial assistance funds, or who has been judicially determined to have committed fraud involving federal funds; or
(3) The institution uses any individual, agency, or organization that has been, or whose officers or employees have been:
(a) Convicted of, or pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of student financial assistance funds; or
(b) Judicially determined to have committed fraud involving student financial assistance funds.
(4) The authority may execute an administrative agreement if:
(a) The funds that were fraudulently obtained, or criminally acquired, used, or expended have been repaid and any related financial penalty has been paid;
(b) The individuals who were convicted of, or pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of the funds are no longer incarcerated for that crime; and
(c) At least five (5) years have elapsed from the date of the conviction, nolo contendere plea, guilty plea, or judicial determination.

Section 14. [8.] The authority may, as a precondition to maintenance of participation, require an educational institution to post a good and sufficient surety bond or other collateral in an amount necessary to ensure that the educational institution can meet its financial obligations to its students and[/or] to the authority, provided that no separate bond shall be required if the authority is assured to its satisfaction that indemnification is provided to the authority and students in an amount sufficient to cover any potential student aid liability through a bond required by a third party. Said surety bond or other collateral shall be conditioned to provide indemnification to the authority and[/or] to any grantee or payee of benefits under an Authority administered program, related to a student's enrollment or acceptance for enrollment at the educational institution, for loss or damage suffered by reason of the insolvency of the institution, cessation of operation of the institution, misappropriation of student financial assistance funds by the institution, fraud or misrepresentation by the institution in obtaining student financial assistance benefits for students, or failure by the institution to make timely and proper disposition of funds. The Authority may require such surety bond or other collateral when a reasonable probability exists that the conditions of indemnification may occur.

GEORGE SHAW, Chairman
APPROVED BY AGENCY: June 27, 1991
FILED WITH LRC: July 15, 1991 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Wednesday, August 28, 1991 at 10 a.m. at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 23, 1991, five days prior to the 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: Paul P. Borden, Executive Director, Kentucky Higher

Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Paul P. Borden

(1) Type and number of entities affected: The amendments effect institutions seeking new participation in authority programs and participating institutions undergoing a change of ownership, addition of branches, or a compliance review. There are 129 Kentucky institutions currently participating in all of the Kentucky Higher Education Assistance Authority student financial assistance programs. Additionally, over 8,000 institutions across the nation are potential participants in the Guaranteed Student Loan Program.

(a) Direct and indirect costs or savings to those affected:

1. First year: The regulation defines the requirements prerequisite to participating in financial assistance programs. The costs imposed on those institutions that choose to participate are costs associated with compiling and submitting the required documentation and obtaining an independent certified audit. Such documentation includes letters of accreditation, licenses, information on type of ownership, a list of the lenders and guarantors providing the highest student loan volume to the institution's students, institutional policies, and consumer and counseling materials required by federal regulations, compliance reports, default and enrollment data, and analyses required by federal regulations. This information should be available for participation in the federal student aid programs, and may be waived if the institution's default rate is 20% or less.

2. Continuing costs or savings: See 1 above. The costs may be incurred again, following initial approval, upon a reevaluation based upon a significant change in circumstances (i.e., increase in student aid volume, change of ownership, etc.) or a biennial review required by 34 CFR Section 682.410(c)(1).

3. Additional factors increasing or decreasing costs (note any effects upon competition): The standards imposed are the same as standards prescribed by the federal government. However, the enforcement of those standards may vary. For instance, the federal government and state agencies (such as State Board for Proprietary Education) reserve discretion to require certified audits, but do not require them in all cases.

(b) Reporting and paperwork requirements: In order to participate, an institution must execute an administrative agreement and may, on occasion, be required to revise such agreement. Documentation required to be submitted pursuant to this regulation is similar to documentation required by other state student loan guarantee agencies, such as South Carolina, Alabama, and Tennessee. The institution may be required to submit extensive information about its financial and administrative operations, but this is typically copies of documents already prepared for other purposes (i.e., accreditation, state licensure, and federal student aid program participation.) When such information is available through third parties, the authority, upon request of the institution, will seek the documentation from the third party.

(2) Effects on the promulgating administrative body: The promulgating body will evaluate the documentation submitted, devise, print, and distribute the administrative agreement to participating schools undergoing a change of ownership or adding branches, and those other schools seeking initial participation. During the past year, 22 institutions have undergone an evaluation for initial approval or compliance review. This volume may increase or decrease from year to year depending upon factors external to the authority's programs.

(a) Direct and indirect costs or savings:

1. First year: The only cost associated with these amendments would be that associated with the receipt, evaluation, storage and maintenance of documents.

2. Continuing costs or savings: Nothing other than described in 1 above.

3. Additional factors increasing or decreasing costs: It is anticipated that current staff and systems will be sufficient to perform the evaluations necessary under the regulation.

(b) Reporting and paperwork requirements: The promulgating agency is required to process and maintain appropriate records. This will involve thorough evaluation and storage of documentation received from the institutions.

(3) Assessment of anticipated effect on state and local revenues: The implementation of this regulation will have no effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative to independently evaluating the financial and administrative responsibility of institutions that seek participation would be to rely entirely upon approval by the federal government. However, the U.S. Department of Education has been criticized by the Government Accounting Office and the office of Inspector General for lax oversight and enforcement. The federal approval process has not proven to be an effective safeguard for the states or for students against school closures and improper administration of the student aid programs.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no state statute, administrative regulation or policy in conflict. Overlap or duplication may occur with respect to a determination of financial stability and submission of certain documentation to state licensing agencies. However, in the event that a licensing agency has received any of the required documentation or has made a contemporaneous determination of financial stability, the authority will consult with and seek information from that licensing agency.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. Those institutions whose student loan default rate is lower than 20% may have documentation requirements waived.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 CFR Sections

682.401(b)(10), 682.405(e)(4) and 682.410(c)(1), and 34 CFR Sections 668.13, 14, 15.

2. State compliance standards. Schools, in order to participate in Kentucky Higher Education Assistance Authority programs, must demonstrate financial responsibility (i.e., no operating losses, no deficit net worth, and assets equal to or exceeding liabilities) and administrative capability to assure that they can continue operation, meet their financial obligations (including refunds), and provide the services described in their official publications (i.e., including counseling, distribution of information, establishment of policies, and adequate staff). Schools must be properly accredited, licensed, and, where required, federally approved.

3. Minimum or uniform standards contained in the federal mandate. 34 CFR section 682.401(b)(10) requires a student loan guarantee agency to establish and disseminate standards and procedures for school participation. 34 CFR Section 682.410(c)(1) requires a student loan guarantee agency to conduct compliancae reviews of schools. 34 CFR Section 682.410(c)(1) requires a student loan guarantee agency to conduct compliance reviews of schools. 34 CFR Section 682.405(e)(4) requires a student loan guarantee agency to establish eligibility criteria (as distinguished from participation criteria) no more onerous than federal criteria. 34 CFR Sections 668.13 through 668.15 prescribe standards for federal approval of participation. The federal regulations require institutions to meet requirements with respect to statutory eligibility, accreditation and state licensure, as well as to demonstrate financial responsibility (i.e., no operating losses, no deficit net worth, and assets equal to or exceeding liabilities) and administrative capability to administer the programs in which they participate (i.e., adequate staff resources; distribution of consumer information; establishment of policies on refunds, satisfactory progress, ability to benefit, etc.; and default rates less than 20%).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The regulation will impose stricter documentation requirements for initial approval than does the federal mandate. Overall, the standards by which a school's administrative and financial performance are evaluated are identical to the federal standards. However, the federal regulations do not specify the documentation that a school must submit for federal approval, other than financial statements (which the U.S. Secretary of Education may require to be independently audited). Subsequent to initial approval, federal regulations require documentation of policies, consumer information, counseling materials, financial statements, and analyses of defaults, withdrawals, and other data to be available during a compliance review. In contrast, the state regulation requires a substantiation by documentation of data relevant to financial responsibility and administrative capability (including a certified audit) prior to a determination of approval.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. It is imperative that the promulgating agency take steps to protect the interests of involved students and the Commonwealth. The United States Department of Education has been criticized by reports of congressional committees, the Government Accounting Office, and the Inspector General for lax oversight and enforcement of program guidelines. The federal approval process has not been an effective safeguard for the state or for students against school closures and improper administration of the programs. The promulgating agency believes that it must conduct an independent assessment of institutional compliance with federal standards in order to responsibly discharge its duties to the Commonwealth, and to avoid risks associated with litigation by students resulting from school failure and reduction of federal reinsurance resulting from excessive student loan defaults.

## FINANCE AND ADMINISTRATION CABINET
## Department for Facilities Management
## (Proposed Amendment)

**200 KAR 3:010. Vehicle parking and traffic control.**

RELATES TO: KRS Chapter 56
STATUTORY AUTHORITY: KRS 56.850
NECESSITY AND FUNCTION: This regulation establishes the rules for the operation and parking of motor vehicles on the grounds of the State Capitol and all other state-owned facilities [buildings] except those exclusively used by and in the custody of any state agency authorized by law to control vehicular traffic and parking. The proposed amendments to this regulation are for the purpose of correcting those deficiencies raised by the Interim Joint Committee on State Government during its quadrennial review of this regulation. The proposed amendments also clarify the regulatory provisions governing reserved parking at state-owned facilities.

Section 1. Parking areas or spaces on state grounds not specifically designated as reserved or restricted as provided in this regulation shall be available for use by all state employees and visitors. Employee and visitor parking in posted parking areas or spaces is prohibited. Unauthorized vehicles parking in these spaces may be removed [are subject to removal] at the owner's or operator's expense. Privately owned vehicles left overnight may be removed [are subject to removal] from the grounds at the owner's expense unless authorization for overnight parking has been obtained from the Facilities Security Section, Department [Bureau] of State Police.

Section 2. (1) Specific parking areas or spaces may be reserved for:
(a) Elected officials and their principal assistants;
(b) Members of the Judiciary;
(c) Members of the Governor's and Lieutenant Governor's staff;
(d) Members of the Cabinet and their deputies;
(e) Heads of departments, their deputies, [bureaus] or employees of comparable grade and position;
(f) Emergency vehicles; [and]
(g) Temporarily or permanently handicapped

employees; and

(h) State employees who have submitted a written request approved by the head of their respective agency stating a justifiable need for the requested reserved space. These requests shall be subject to the availability of parking space.

(2) Persons eligible for reserved parking, shall apply to Division of Real Properties, Finance and Administration Cabinet, for a reserved parking permit. All persons authorized to have a reserved parking space shall display the appropriate tag or bumper sticker issued by the Division of Real Properties, Finance and Administration Cabinet. [register their vehicles with the Compliance Section, Division of Real Properties, Finance and Administration Cabinet;] Any vehicle that does not properly display the appropriate tag or bumper sticker and is parked in a reserved parking space may be removed [is not properly registered and which is parked in a reserved parking space shall be subject to removal] at the operator's or owner's expense.

Section 3. Sections of the parking lots of state-owned facilities [buildings] may be posted as restricted areas for carpool parking. For purposes of determining eligibility for parking in a carpool parking area, a carpool must consist of three (3) or more state employees who ride together to commute between their homes and official work stations.

Section 4. When the General Assembly is in session, all or portions of any level of the Capital [Annex] parking structure may be reserved for members of the General Assembly and staff. Sections of any level may be reserved or restricted between legislative sessions for parking by members of the Interim Committees of the General Assembly and for meetings of the Legislative Research Commission of the General Assembly.

Section 5. Vehicles parked parallel to the roadway shall be parked within the lines, with the vehicle headed in the direction of the traffic flow. No vehicle shall be double parked or parked or left standing unattended next to any yellow line or on any yellow striped area, or in a fire lane, or in any area in which a "no parking" sign has been posted.

Section 6. Speed limits on roads on the grounds of state-owned facilities [buildings] shall be twenty-five (25) miles per hour unless a lower speed limit is posted. All laws and regulations governing the movement and operation of motor vehicles on the public highways of this Commonwealth [are hereby adopted and incorporated by reference in this regulation and] shall be enforced on the grounds of [all] state-owned facilities. [buildings. Any person apprehended by the Facilities Security Police or the Kentucky State Police on the grounds of any state-owned building for the commission of any moving traffic violation shall be cited to appear and may be prosecuted in the district court.] All accidents occurring on the grounds of state-owned facilities [buildings] shall be reported to the Facilities Security Police or the State Police. Accident reports shall be compiled by the State Police.

L. ROGERS WELLS, Jr., Secretary
APPROVED BY AGENCY: July 11, 1991
FILED WITH LRC: July 11, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1991 at 9:30 a.m. in Room 285, Capitol Annex Building, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 1991, five days prior to the 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 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: Warren O. Nash, III, Attorney, Finance and Administration Cabinet, Room 314, Capitol Annex Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Warren O. Nash, III

(1) Type and number of entities affected: This regulation only applies to all state agencies except those state agencies which have exclusive use and custody of state-owned facilities.

(a) Direct and indirect costs or savings to those affected: There will be no direct or indirect costs or savings to the above-referenced state agencies as a result of the promulgation of the proposed amendments to 200 KAR 3:010.

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: The proposed amendments to 200 KAR 3:010, will not change the amount of reporting and paperwork required of the affected state agencies.

(2) Effects on the promulgating administrative body: The amendments to this regulation will correct those deficiencies raised by the Interim Joint Committee on State Government during the quadrennial review process and will clarify the procedure by which individuals may acquire parking at state-owned facilities. However, these amendments will have no effect on the Finance and Administration Cabinet.

(a) Direct and indirect costs or savings: The proposed amendments to 200 KAR 3:010 will not result in direct or indirect costs or savings to the Finance and Administration Cabinet.

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: This regulation will not result in any additional reporting and paperwork requirements for the Finance and Administration Cabinet.

(3) Assessment of anticipated effect on state and local revenues: The amendments to this regulation will not effect state and local revenues.

(4) Assessment of alternative methods; reasons

why alternatives were rejected: The proposed amendments are for the purpose of correcting those deficiencies raised by the Interim Joint Committee on State Government during the quadrennial review process. The remaining amendments are for the purpose of clarifying the process for obtaining reserved parking at state-owned facilities. Consequently, no alternatives were considered by the promulgating agency.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: The amendments to this regulation will not conflict, overlap, or duplicate any statute, administrative regulation, or government policy.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

Tiering: Was tiering applied? Yes. This regulation and the proposed amendments thereto, have been narrowly tailored to establish the rules for the operation and parking of motor vehicles on grounds of the State Capitol, and other state-owned facilities, except those state-owned facilities under the exclusive use and control of any state agency authorized by law to control vehicular traffic and parking.

## GENERAL GOVERNMENT CABINET
## Board of Medical Licensure
## (Proposed Amendment)

**201 KAR 9:175. Physician assistants; certification and supervision.**

RELATES TO: KRS 311.530 to 311.620, 311.990

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: It is the purpose of this regulation to promote the efficient and effective utilization of the skills of physicians by allowing them to delegate health care tasks to qualified physician assistants and in so doing, promote, sustain and enhance the health and welfare of the people of the Commonwealth.

Section 1. Definitions. As used in this regulation:

(1) "Physician assistant" means a person who has successfully completed an approved program and an approved examination, and who is certified by the board to assist a registered physician in the provision of medical care under the physician's supervision; the physician assistant is not an independent practitioner of the healing arts but only an adjunct to his or her supervising physician;

(2) "Anesthesia (or anesthesiology) assistant" means a physician assistant who assists in the provision of general or regional anesthesia;

(3) "Board" means the Kentucky Board of Medical Licensure;

(4) "Supervising physician" means a physician currently licensed to practice medicine in the Commonwealth who has been approved by the board to supervise physician assistants for whom the supervising physician takes responsibility;

(5) "Advisory committee" means the committee appointed by the board to advise the board on all matters related to physician assistants;

(6) "Approved program" means a program for the education and training of physician assistants which meets standards acceptable to the board;

(7) "Supervision" means control and direction of the services of physician assistants by their supervising physicians;

(8) "Approved examination" means an examination to test the knowledge and skills of physician assistants which meets standards acceptable to the board;

(9) "Certificate" means the board's official documentary authorization allowing a physician assistant to practice in the Commonwealth for the time specified; and

(10) "Trainee" means a person who is currently enrolled in an approved program for the training of physician assistants.

Section 2. Certification of Physician Assistants. (1) To be certified by the board as a physician assistant, a person must:

(a) Submit a completed application with the required fee;

(b) Be of good character and reputation;

(c) Be a graduate of an approved program;

(d) Have passed an examination approved by the board within three (3) attempts.

(2) If grounds for denial of certification do not exist, a temporary certificate may be issued by the board's executive director to a physician assistant after graduation from an approved program and prior to his taking the first available approved examination after graduation. This temporary certificate shall enable the holder to practice as a certified physician assistant pursuant to 201 KAR 9:175 only under the direct supervision of a supervising physician at the same practice location. The holder of this [a] temporary certificate shall take the first available approved examination after graduation. If the holder receives a passing score on this examination, the temporary certificate shall be effective until the board approves the holder for permanent certification. If the holder receives a failing score, or fails to take the first available approved examination after graduation, the temporary certificate shall automatically expire. This temporary certificate shall not be renewed or reissued subsequent to expiration or cancellation. The executive director may also issue a temporary certificate to an applicant who otherwise meets all requirements of 201 KAR 9:175, Section 2(1), said temporary certificate remaining in effect until the board approves the holder for permanent certification. This temporary certificate shall allow the applicant to practice as a physician assistant pursuant to 201 KAR 9:175, Section 6. However, under no circumstances shall this temporary certificate remain in effect for longer than six (6) months and said temporary certificate shall not be renewable. Any temporary certificate may be cancelled at any time, without a hearing, for reasons deemed sufficient to the executive director, and who shall cancel it immediately upon direction by the board or the board's physician assistant advisory committee or upon the board's denial of the holder's application for permanent certification. When the executive director cancels a temporary certificate, he shall promptly notify, by certified United States mail, the holder of the temporary certificate, at his last known address as

reflected by the files of the board, and the temporary certificate shall become terminated and of no further force and effect upon receipt of said notice.

(3) Physician assistants duly authorized to practice in other states and in good standing may apply for certification by endorsement from the state of their original certification if the endorsing state has standards substantially equivalent to those of the Commonwealth.

(4) Certification shall be renewed on or before July 1, 1989, and thereafter biennially according to the procedure established by the executive director. In conjunction with the renewal of his/her certification, the physician assistant shall provide evidence of having completed in the previous two (2) years a minimum of 100 hours of continuing education accepted by the National Commission on Certification of Physician Assistants or the American Medical Association. In addition to this, all physician assistants must recertify every six (6) years as required by the NCCPA, unless they are not eligible because they hold physician assistant certification approved by the board pursuant to 201 KAR 9:175, Section 6.

Section 3. Approved Examination. The following examinations are approved by the board:

(1) The examination of the National Commission on Certification of Physician Assistants.

(2) The official certification examination of any state if the board determines the examination to be an adequate measure of physician assistant competency.

(3) Any other formally administered examination if the board determines, upon review of proof provided by the applicant, that the examination is substantially equivalent to the examination of the National Commission on Certification of Physician Assistants.

Section 4. Approved Programs. (1) The following programs are approved by the board:

(a) Programs that are accredited by the Committee on Allied Health Education and Accreditation of the American Medical Association (CAHEA) and that provide interdisciplinary training in at least the following areas: family medicine, internal medicine, surgery, pediatrics, psychiatry, and obstetrics/gynecology; and

(b) Any other training program if the board determines, upon review of proof submitted by the applicant, that the training received was substantially equivalent to that received in a program as described in paragraph (a) of this subsection.

(2) Programs specifically designed to train the individual to assist in the provision of general or regional anesthesia must be accredited by CAHEA.

(3) Trainees enrolled in approved programs shall be under the supervision of the program which shall be responsible for their services. Trainees shall be bound by the same practice limitations imposed upon physician assistants generally, but will not be considered to be practicing without authorization while enrolled in the program.

Section 5. Physician Assistant Scope of Practice. (1) A physician assistant may perform any and all medical services that are within the scope of training received in an approved program and which are also within the scope of the supervising physician's practice as designated by the specialty code in the most current revision of the Kentucky Medical Directory. The physician assistant shall not make a definitive diagnosis or prescribe or employ any treatment modality independent of the supervising physician. However, A physician assistant may, without specific approval, initiate evaluation and treatment in emergency situations.

(2) A physician assistant shall not administer or monitor general or regional anesthesia unless such individual satisfies the applicable requirements of Section 6 of this regulation.

(3) A physician assistant may render services in the offices or clinics of the supervising physician, or in hospitals and other licensed health care facilities. However, physician assistants shall not render services in these facilities without the express written permission of the respective facility's governing body. The facility may restrict the physician assistant's scope of practice within the facility as the facility deems appropriate.

(4) Neither the physician assistant nor the supervising physician shall require any individual or entity to perform any act relative to the provision of services by the physician assistant that the individual or entity is specifically forbidden to perform pursuant to duly promulgated law.

Section 6. Physician Assistants Practicing as Anesthesia (or Anesthesiology) Assistants. (1) Any physician assistant practicing as an anesthesia (or anesthesiology) assistant in Kentucky prior to July 15, 1986 may continue to so practice provided:

(a) That such individual has complied with all the practice requirements and conditions of Sections 2, 3, 4(2), and 5 of this regulation;

(b) That such individual is a graduate of a program specifically designed to train the individual to administer general or regional anesthesia which is accredited by CAHEA;

(c) That such individual is only employed by a supervising physician who has postgraduate training in anesthesiology from an anesthesiology program accredited by the Accreditation Council for Graduate Medical Education (ACGME); and

(d) Notwithstanding Section 9 of this regulation, such individual shall not administer or monitor general or regional anesthesia unless his or her supervising physician is physically present in the operating room during induction, and thereafter physically present in the operating suite and not concurrently performing any other anesthesia procedure which would prevent the supervising physician's immediate physical presence in the operating room where the anesthesia procedure is being performed.

(2) Any physician assistant not already practicing as an anesthesia (or anesthesiology) assistant in Kentucky prior to July 15, 1986 must meet the following requirements:

(a) Such individual shall be a graduate of an approved program as defined in Section 4(1)(a) of this regulation which is of four (4) years duration, and, in addition to such training, be a graduate of a two (2) year program specifically designed to train the individual to assist in the provision of general and regional anesthesia, which consists of specialized

academic and clinical training in anesthesia, and which is accredited by CAHEA;

(b) Such individual shall have complied with all of the practice requirements and conditions of Sections 2, 3, 4, and 5 of this regulation;

(c) Such individual shall only be employed by a supervising physician who is a board certified anesthesiologist; and

(d) Notwithstanding Section 9 of this regulation, such individual shall not administer or monitor general or regional anesthesia unless his or her supervising physician, who must be a board certified anesthesiologist, is physically present in the operating room during induction and emergence, and thereafter physically present in the operating suite and not concurrently performing any other clinical procedure.

Section 7. Approval of Supervising Physicians. (1) To seek approval by the board as a supervising physician, a physician must:

(a) Be currently licensed in good standing and primarily practicing in the Commonwealth;

(b) Submit a completed application with the required fee.

(2) In addition to other information the board's executive director may deem appropriate, the supervising physician shall, briefly, on the face of the application:

(a) Describe the nature of his/her practice;

(b) Describe the responsibilities the physician wishes the physician assistant to assume;

(c) Describe the means by which the physician will maintain a line of communication with the physician assistant when the two (2) are not in the same location; and

(d) Denote the name, address and area of practice of one (1) or more alternate physicians who agree in writing to accept the responsibility of supervising the physician assistant in the supervising physician's absence.

(3) A physician shall not supervise a physician assistant without being approved by the board. The board may impose restrictions on the scope of practice of a particular physician assistant or on the methods of supervision employed by the supervising physician as it deems appropriate. Physicians must obtain specific approval for each physician assistant they wish to supervise and the board will not approve any physician to supervise more than two (2) physician assistants at any one (1) time.

Section 8. Duties of Supervising Physicians. A supervising physician shall:

(1) Restrict the services provided by the physician assistant the physician supervises to those services within the limitations of the physician assistant's scope of practice as set forth in Section 5 of this regulation and, as applicable, Section 6 of this regulation, and as may be specifically limited by the board;

(2) Prohibit physician assistants from prescribing or dispensing controlled substances or other drugs;

(3) Inform all patients with whom the physician assistant comes in contact of the status of the physician assistant;

(4) Post a notice in all offices or clinics where the physician assistant may practice stating that a physician assistant practices on the premises;

(5) Require physician assistants to wear a name tag or other identification clearly stating that the person is a "physician assistant – certified";

(6) Prohibit the physician assistant from independently billing any patient or other payor for services rendered by the physician assistant;

(7) Negotiate with the medical staff and/or governing body of any hospital, long-term care facility or institution to establish and limit the scope of practice of the physician assistant;

(8) Not require a physician assistant to perform services or other acts that the physician assistant feels incapable of carrying out safely and properly;

(9) Survey critically and biennially the performance of the physician assistant under the physician's supervision as to reliability, accountability, fund of medical knowledge and recommend to the committee, approval or disapproval of other physician assistant's certification, including evidence of continuing certification by the National Commission on Certification of Physician Assistants. This critical survey process shall be performed by the supervising physician biennially on the date of the physician assistant's original certification in the Commonwealth of Kentucky;

(10) Submit in conjunction with the physician assistant's renewal of certification a statement evidencing the physician assistant's completion of a minimum of 100 hours of continuing education as set forth in Section 2(4) of this regulation;

(11) Maintain adequate, active and continuous supervision of the physician assistant's activities to assure the physician assistant is performing as directed and in compliance with these regulations. The supervising physician shall timely sign all records of services rendered by the physician assistant as certification that the physician assistant carried out the services as delegated;

(12) Notify the board within three (3) business days if the physician assistant ceases to be under the control or in the employ of the supervising physician; and

(13) Notify the board within twenty (20) days if the supervising physician believes in good faith that the physician assistant has violated any disciplinary rule set forth in this regulation.

Section 9. Supervision and Satellite Clinics. (1) The supervising physician need not be physically present at all times when the physician assistant is providing services in the physician's office or clinic so long as the physician assistant has a reliable means of having direct communication with the supervising physician at all times. Except as may be provided by this regulation or the board, the supervising physician need not be present in a hospital or other licensed health care facility while the physician assistant is providing services so long as the physician assistant has a reliable means of having direct communication with the supervising physician at all times, and the facility has given specific approval for the provision of the given services by the physician assistant without the presence of the supervising physician.

(2) Any supervising physician utilizing the services of a physician assistant in an office or clinic separate and apart from the physician's primary office shall submit a specific written request to the board

delineating the services to be provided by the physician assistant, the distance between the primary office and the setting in which the physician assistant is to practice and the mechanism by which the physician assistant shall have access to direct communication with the supervising physician at all times. The board may approve or disapprove such requests as it deems appropriate and may approve a request with specified limitations. Under no circumstances shall a physician assistant practice in such a setting without first having two (2) continuous years of experience in a nonsatellite setting.

Section 10. Discipline of Physician Assistants. The board may revoke, suspend, deny, decline to renew, limit or restrict the certificate of a physician assistant, or may reprimand or place a physician assistant on probation for no more than five (5) years under conditions the board deems appropriate, upon proof that the physician assistant has:

(1) Knowingly made or presented, or caused to be made or presented, any false, fraudulent or forged statement, writing, certificate, diploma or other document in connection with an application for certification;

(2) Practiced, or aided or abetted in the practice, of fraud, forgery, deception, collusion or conspiracy in connection with an examination for certification;

(3) Been convicted, by any court within or without the Commonwealth of Kentucky, of committing an act which is, or would be, a felony under the laws of the Commonwealth of Kentucky, or of the United States, or of any crime involving moral turpitude which is a misdemeanor under such laws;

(4) Become addicted to or an abuser of alcohol, drugs or any illegal substance;

(5) Developed such physical or mental disability or other condition that continued practice presents a danger to patients, the public or other health care personnel;

(6) Knowingly made, or caused to be made, or aided or abetted in the making of, a false statement in any document executed in connection with the practice of his/her profession;

(7) Practiced as a physician assistant outside the practice of the designated supervising physician;

(8) Aided, assisted, or abetted the unlawful practice of medicine or osteopathy or any other healing art, including the practice of physician assistants;

(9) Willfully violated a confidential communication;

(10) Had a physician assistant certificate of any other state, territory, or foreign nation revoked, suspended, restricted, limited or subject to other disciplinary action;

(11) Performed the services of a physician assistant in an unprofessional, incompetent, grossly negligent or chronically negligent manner;

(12) Exceeded the authority delegated by the supervising physician;

(13) Exceeded the scope of practice duly established by the governing authority of any hospital or other licensed health care facility;

(14) Been removed, suspended, expelled or placed on probation by any health care facility or professional society for what was found to be unprofessional conduct, incompetence, negligence or violation of any provision of this regulation;

(15) Violated any applicable provision of regulations regarding physician assistant practice;

(16) Violated any term of probation or other discipline imposed by the board;

(17) Failed to complete the required number of hours of approved continuing education; or

(18) Performed any act as a physician assistant without having a designated supervising physician.

Section 11. Discipline of Supervising Physicians. Failure of a physician to obtain approval as a supervising physician, or failure of a supervising physician to observe applicable responsibilities established by regulations promulgated by the board regarding physician assistants, shall be considered unprofessional conduct and the physician may be proceeded against pursuant to the board's rules regarding physician discipline. In addition to other discipline, the board may revoke, suspend, restrict, or place on probation the supervising physician's right to supervise a physician assistant.

Section 12. Physician Assistant Advisory Committee. (1) The board shall establish a physician assistant advisory committee consisting of nine (9) members, four (4) of whom shall be physician assistants from (as practicable) different regions of the Commonwealth, two (2) supervising physicians, one (1) resident of the Commonwealth who is not associated with or financially interested in the health care business, one (1) advanced registered nurse practitioner who shall be selected from a list of three (3) nominees submitted by the Kentucky Board of Nursing and who shall be licensed in good standing in the Commonwealth, and one (1) member of the board. The members of the committee shall hold office for terms of three (3) years and until their successors are appointed and qualified, except that the terms of office of the members first appointed shall be as follows: two (2) members shall be appointed for one (1) year, four (4) members shall be appointed for two (2) years and three (3) members shall be appointed for three (3) years. The terms of all members of the committee shall expire on August 31st of the last year of their respective terms.

(2) The committee shall hold meetings at least semiannually and more often as necessary, to review and make recommendations to the board regarding:

(a) Applications of physician assistants and supervising physicians;

(b) Statutes and regulations; and

(c) Any other matter relating to the practice of physician assistants.

(3) The committee shall review all grievances relating to physician assistants. The board's investigational powers relating to physicians shall apply equally to physician assistants. Upon review of any grievance, the committee shall make a recommendation to the appropriate inquiry panel. Disciplinary proceedings against physician assistants shall be conducted in the same manner as proceedings against physicians and physician assistants shall have the same right to judicial review enjoyed by physicians. The board may temporarily suspend or restrict a physician assistant's certification during the pendency of a proceeding and may order a

physician assistant to undergo physical or mental examination in accordance with the procedures set forth in KRS 311.592 and KRS 311.599, respectively.

ROYCE E. DAWSON, M.D., President
APPROVED BY AGENCY: July 8, 1991
FILED WITH LRC: July 9, 1991 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1991 at 10 a.m. at the office of the Kentucky Board of Medical Licensure, 400 Sherburn Lane, Suite 222, Louisville, Kentucky 40207. Individuals interested in being heard at this hearing shall notify C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, in writing by August 16, 1991, (five days prior to the 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 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: C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, 400 Sherburn Lane, Suite 222, Louisville, Kentucky 40207.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: C. William Schmidt

(1) Type and number of entities affected: The proposed amendment will affect all physician assistants applying for certification in Kentucky that are recent graduates from an approved program or applicants who meet all requirements and are merely awaiting board meeting approval.

(a) Direct and indirect costs or savings to those affected: No real direct or indirect costs or savings anticipated other than they are eligible to work as physician assistants while awaiting board approval.

1. First year: Costs or savings cannot be adequately calculated.

2. Continuing costs or savings: Continued costs or savings cannot be adequately calculated.

3. Additional factors increasing or decreasing costs (note any effects upon competition): No additional factors of which board is aware which would increase or decrease costs.

(b) Reporting and paperwork requirements: No additional reporting and/or paperwork requirements for applicants or administrators.

(2) Effects on the promulgating administrative body: Will cause the board's staff to design 2 different applications for the 1) recent graduate and 2) the applicant who meets all requirements.

(a) Direct and indirect costs or savings: No other direct or indirect costs or savings are anticipated by the board other than the minute costs associated with designing the 2 applications.

1. First year: No other direct or indirect costs or savings are anticipated.

2. Continuing costs or savings: No continued costs or savings are anticipated.

3. Additional factors increasing or decreasing costs: No additional factors increasing or decreasing costs are anticipated by the board.

(b) Reporting and paperwork requirements: No additional paperwork or reporting requirements other than design the 2 applications.

(3) Assessment of anticipated effect on state and local revenues: No charges anticipated; fees remain the same.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative considered was leaving the regulation as is. However, it does not currently address the differences between recent graduate physician assistant and the physician assistant already qualified and practicing.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Board is not aware of any statute, regulation or government policy which is in conflict, overlaps or is duplicated by this proposed amendment.

(a) Necessity of proposed regulation if in conflict: N/A – See (5) above.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A – See (5) above.

(6) Any additional information or comments: The board feels that the proposed amendment addresses the differences between the recent graduate physician assistant and the otherwise qualified physician assistant. This will streamline the process and prevent misinterpretation of the application process.

TIERING: Was tiering applied? Yes. The board feels that the proposed amendment addresses the differences between the recent graduate physician assistant and the otherwise qualified physician assistant. This proposed amendment will prevent misinterpretation of the application process.

## GENERAL GOVERNMENT CABINET
## Board of Nursing
## (Proposed Amendment)

**201 KAR 20:056. Advanced registered nurse practitioner registration, program requirements, recognition of a national certifying organization.**

RELATES TO: KRS 314.011(6), 314.042, [314.131(1),] 314.161

STATUTORY AUTHORITY: KRS [Chapter 13A, Chapter] 314.131(1)

NECESSITY AND FUNCTION: KRS Chapter 314 [The Nurse Practice Act] provides for the registration of advanced registered nurse practitioner. It is necessary to assure that applicants meet qualifications as set forth by the board as necessary for safe practice.

Section 1. The application for registration as an advanced registered nurse practitioner in Kentucky required by the board is hereby incorporated by reference. A copy of the form may be obtained at the Board of Nursing office, 4010 Dupont Circle, Suite 430, Louisville, Kentucky between the hours of 8:30 a.m. and 5 p.m. [Eligibility Requirements. To be eligible for registration as advanced registered nurse practitioner, the applicant shall:]

[(1) Be currently licensed on an active status

to practice as a registered nurse in Kentucky;]

[(2) Have completed an organized postbasic program of study and clinical experience acceptable to the board as defined in Section 2 of this regulation; "completed" shall mean that the applicant has completed all course requirements, including didactic, clinical and/or thesis components, and is eligible for receipt of a diploma or certificate as awarded by the school/program.]

[(3) Be currently/actively certified by one (1) of the following national organizations: American Nurses' Association as practitioner or clinical specialist, American College of Nurse Midwives as nurse midwife, Council on Certification/Recertification of Nurse Anesthetists (or their predecessor, American Association of Nurse Anesthetists) as nurse anesthetist, National Board of Pediatric Nurse Practitioners/Associates as practitioner, Nurses' Association of the American College of Obstetricians and Gynecologists as practitioner, or other national organizations designated by the board as defined in Section 3 of this regulation in collaboration with the Nurse Practice Council;]

[(4) Accurately complete and submit application form and necessary information for registration as advanced registered nurse practitioner;]

[(5) Submit a recent photograph (two (2) x three (3) inches) taken within the past six (6) months with the photograph signed by the applicant on the front under the facial features. Snapshots are not acceptable.]

[(6) Submit the current application fee for advanced registered nurse practitioner registration.]

Section 2. Postbasic Program of Study and Clinical Experience. An organized postbasic program of study and clinical experience shall conform to the following criteria in order to be acceptable to the board: [Program Requirements. To be acceptable to the board an organized postbasic program of study and clinical experience shall:]

(1) Be an established, ongoing and organized program offered on a routine basis to enrollees.

(2) Be accredited/approved for the education of nurses by a recognized accreditation/approval body, or the sponsoring organization holds such accreditation/approval.

(3) Have a program design which prepares enrollees to function in a role consistent with the advanced registered nursing practice specialty designation.

(4) Have a program design which includes purpose, philosophy, objectives, curriculum content, and plan to evaluate achievement of objectives and measurement of learning outcomes of students.

(5) Have a designated faculty responsible for planning, development, implementation and evaluation of curriculum and students.

[(6) Extend over an enrollment period of no less than nine (9) months. See Section 3 of this regulation for exception.]

(6) [(7)] Include didactic components.

(7) [(8)] Include a supervised clinical experience.

(8) [(9)] Upon successful completion award a diploma or certificate.

(9) Extend over an enrollment period of not less than nine (9) months. An organized postbasic program of study and clinical experience with an enrollment period of less than nine (9) months shall be evaluated by the board on an individual basis to determine if the program is acceptable to the board by sufficiently preparing students for advanced registered nursing practice.

Section 3. National Certifying Organizations. (1) A nationally established organization or agency which certifies registered nurses for advanced nursing practice shall be recognized by the board if it meets the following criteria: [Program Requirements Exception. The only exception to the program requirements as stated in Section 2 of this regulation shall relate to Section 2(6) of this regulation. An organized postbasic program of study and clinical experience with an enrollment period of less than nine (9) months, completed by an applicant prior to January 1, 1986, shall be evaluated by the board on an individual basis to determine if the program is acceptable to the board.]

[Section 4. Recognition of a National Certifying Organization. A national certifying organization may be recognized by the board to grant certification to meet eligibility requirements for registration as advanced registered nursing practitioner when said organization or agency meets the following criteria:]

(a) [(1)] Certifying body is an established national nursing organization or a subdivision thereof.

(b) [(2)] Full membership privileges are restricted to registered nurses.

(c) [(3)] Eligibility requirements for certification are delineated.

(d) [(4)] Valid and current registered nurse licensure is required for initial and continuing certification.

(e) [(5)] Certification is offered in speciality areas of clinical practice.

(f) [(6)] Scope and standards of practice statements are promulgated and include:

1. [(a)] Belief statement.
2. [(b)] Statement on scope of practice.
3. [(c)] Standards for specialty area clinical practice.
4. [(d)] Guidelines for development of practice protocols.
5. [(e)] Guidelines for the provision of comprehensive client care.

(g) [(7)] Mechanism for determining continuing competency is established.

(h) [(8)] Procedures are established for determining qualifications for initial or continuing certification for members having had disciplinary action taken on license by any jurisdiction.

(2) The board shall maintain a list of recognized national certifying organizations which is hereby incorporated by reference. A copy of the list may be obtained at the Board of Nursing office, 4010 Dupont Circle, Suite 430, Louisville, Kentucky between the hours of 8 a.m. and 5 p.m.

Section 4. Practice Pending Processing. (1) An applicant who meets all the requirements for practice as an advanced registered nurse practitioner except for certification by a national certifying organization may practice as an advanced registered nurse practitioner

subject to the following conditions:

(a) The applicant shall apply for certification from a recognized national certifying organization for the first time.

(b) The applicant shall obtain an advanced registered nurse practitioner of the same specialty, or a licensed physician, to supervise the applicant.

(c) The applicant shall verify to the board that he has applied for certification and has obtained a supervisor.

(d) Practice pursuant to this provision shall extend only until the applicant has learned the results of the request for certification, but in no case longer than one (1) year from application.

(e) Applicants who have previously applied for and been denied certification by a recognized national certifying organization are ineligible to practice as an advanced registered nurse practitioner until they have been certified.

(2) A registered nurse who meets all the requirements for practice as an advanced registered nurse practitioner and who holds a registered nurse temporary work permit issued pursuant to 201 KAR 20:090 pending licensure by endorsement shall be authorized to practice as an advanced registered nurse practitioner for a period of time not to exceed the expiration date of the temporary work permit.

[Section 5. Applicant Pending Certification Examination Results. A nurse who meets the requirements of Section 1(1), (2), (4), (5), and (6) of this regulation and who is eligible for and has applied for initial certification by one (1) of the national organizations specified in Section 1(3) of this regulation may be authorized by the board to practice under the supervision of a certified advanced registered nurse practitioner of the same specialty or a licensed physician until results of the certification examination have been received or for a period not to exceed one (1) year beyond the practice requirement for certification. To be eligible for authorization to practice under supervision the applicant shall:

(1) Submit evidence of verification of the required supervision.

(2) Submit evidence that he/she has applied to take and has met the eligibility requirements to take an initial examination to attain certification as required in Section 1(3) of this regulation.]

[Section 6. Applicant Holding Temporary Work Permit Pending Registered Nurse Licensure by Endorsement. A nurse who meets the eligibility requirements of Section 1(2), (3), (4), (5) and (6) of this regulation, and who holds a registered nurse temporary work permit issued pursuant to 201 KAR 20:090 pending licensure by endorsement, may be authorized by the board to practice as an advanced registered nurse practitioner for a period of time not to exceed the expiration date of the temporary work permit or until the registered nurse license is issued or denied.]

Section 5. [7.] Registration Renewal. (1) The advanced registered nurse practitioner registration shall expire/lapse at the time the registered nurse license expires/lapses.

(2) To be eligible for renewal of registration as an advanced registered nurse practitioner, the applicant shall:

(a) Renew the registered nurse license on an active status.

(b) Submit a completed application form for renewal of registration as an advanced registered nurse practitioner;

(c) Submit current renewal application fee; and

(d) Maintain current certification by a recognized national certifying organization. [Meet requirements in Section 1(3) of this regulation.]

(3) An advanced registered nurse practitioner who fails to renew the registered nurse license or is issued a license on an inactive status may not practice as or use the title of advanced registered nurse practitioner until a current active license has been issued by the board and the advanced registered nurse practitioner registration has been reinstated.

Section 6. [8.] Registration Reinstatement. (1) If a nurse fails to renew the advanced registered nurse practitioner registration as prescribed by law and regulation, the registration shall lapse on the last day of the licensure period.

(2) To be eligible for reinstatement of advanced registered nurse practitioner registration, the applicant shall:

(a) Submit a completed application form;

(b) Submit current reinstatement application fee;

(c) Maintain current certification by a recognized national certifying organization. [Meet requirements in Section 1(1), (3) of this regulation.]

Section 7. [9.] Certification/Recertification. (1) An advanced registered nurse practitioner who has met requirements and has applied for recertification by one (1) of the national organizations recognized [specified] in Section 3 [1(3)] of this regulation may practice as an advanced registered nurse practitioner until the results of the recertification have been received.

(2) A nurse who fails to attain certification from one (1) of the national organizations recognized [specified] in Section 3 [1(3)] of this regulation will not be registered as an advanced registered nurse practitioner and may not practice or use the title of advanced registered nurse practitioner until the requirements of [Section 1 of] this regulation have been met.

[(3) An advanced registered nurse practitioner who fails to attain recertification as required by the appropriate national organization will be notified that his/her advanced registered nurse practitioner number is void and he/she may not practice as or use the title of advanced registered nurse practitioner until recertification has been achieved.]

(3) [(4)] An advanced registered nurse practitioner who is decertified by the appropriate national organization shall notify the board of that fact and he[/she] shall not practice as or use the title of advanced registered nurse practitioner during the period of decertification.

Section 8. [10.] An application is valid for a period of one (1) year from date of submission to board. After one (1) year from date of application, the applicant shall be required to

reapply. [:]
[(1) Submit new application;]
[(2) Submit current fee;]
[(3) Meet requirements as stated in Section 1(1) through (3) of this regulation.]

Section 9. [11.] The requirements of this regulation do not prohibit the supervised practice of nurses enrolled in postbasic educational programs for preparation in advanced registered nursing practice or enrolled in advanced registered nurse practitioner refresher courses.

Section 10. [12.] Any registered nurse who holds himself out as a clinical specialist or is known as such, is required to register as an advanced registered nurse practitioner if his practice includes the performance of advanced registered nursing procedures [according to an established protocol as defined in 201 KAR 20:057(2); such a nurse whose practice does not include the performance of procedures beyond the scope of registered nursing practice shall not be included under the requirements of this regulation].

Section 11. [13.] Any nurse practicing as an advanced registered nurse practitioner who is not registered as such by the board, [or] any advanced registered nurse practitioner whose practice is inconsistent with the specialty to which he[/she] has been designated, or any advanced registered nurse practitioner who does not recertify and continues to practice as an advanced registered nurse practitioner shall be subject to the disciplinary procedures set in KRS 314.091.

ANGELA LASLEY, President
APPROVED BY AGENCY: June 20, 1991
FILED WITH LRC: June 27, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing on this regulation shall be held on August 23, 1991 at 9 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 August 18, 1991, five days prior to the 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 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: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 4010 Dupont Circle, Suite 430, Louisville, Kentucky 40207.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nathan Goldman
(1) Type and number of entities affected: Approximately 894 advanced registered nurse practitioners.
(a) Direct and indirect costs or savings to those affected:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: Unchanged
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: Unchanged
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: N/A
TIERING: Was tiering applied? Tiering is not applicable.

## GENERAL GOVERNMENT CABINET
## Board of Physical Therapy
## (Proposed Amendment)

**201 KAR 22:020. Method of applying for licensure.**

RELATES TO: KRS 327.050
STATUTORY AUTHORITY: KRS 327.040
NECESSITY AND FUNCTION: Describes the criteria for eligibility, methods, and procedures of applying for a license to practice physical therapy in Kentucky.

Section 1. To be eligible to sit for the licensure [application by] examination, the applicant shall: [person must]
(1) Have successfully completed the academic and clinical requirements of a [an approved] physical therapy program accredited by the American Physical Therapy Association (APTA); [and]
(2) Submit [have been granted] certification of completion by the educational administrator of that program; [. All physical therapy programs approved by the American Physical Therapy Association are periodically reviewed and updated for approval by the Kentucky State Board of Physical Therapy. To be eligible for licensure application by endorsement, the person must have, in addition, successfully completed an examination approved by the board.]
(3) After July 1, 1991, completed an educational course at least four (4) hours in length which has been approved by the Cabinet for Human Resources (CHR) on the transmission, control, treatment and prevention of human immunodeficiency virus infection and AIDS;
(4) Submit a [Section 2. A person desiring to practice as a physical therapist in Kentucky must apply to the Kentucky State Board of Physical Therapy. An application form will be

sent to the applicant by the executive secretary of the board. When the] completed application form provided by the board; and [, certification of completion of academic and clinical portions of an approved physical therapy program and]

(5) Submit the correct fee as required in 201 KAR 22:135 [relative to that person's vehicle of licensure have been received, the applicant becomes an official candidate for licensure. At the request of the applicant, the board shall determine the necessity of conducting a hearing regarding licensure qualification of said applicant].

Section 2. To be eligible for licensure application by endorsement, the applicant must have, in addition, successfully completed an examination approved by the board.

Section 3. Three (3) types of candidates will be accepted for licensure:

(1) Examination;
(2) Endorsement; and
(3) Reinstatement.

KAREN CRONIN, Chairman
APPROVED BY AGENCY: May 16, 1991
FILED WITH LRC: July 15, 1991 at noon

PUBLIC HEARING: A public hearing on this proposed amendment to a current administrative regulation will be held on August 21st at 10 a.m., ET, at the Board Office, 400 Sherburn Lane, Suite 248, Louisville, Kentucky 40207. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 1991, five days prior to the 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 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: Mrs. Nancy Brinly, Executive Secretary, KY State Board of Physical Therapy, The Mall Office Center, 400 Sherburn Lane, Suite 248, Louisville, KY 40207-4215.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nancy Brinly

(1) Type and number of entities affected: At least 175 applicants for physical therapist licensure per year.

(a) Direct and indirect costs or savings to those affected:

1. First year: $0 – $200 each person.

2. Continuing costs or savings: Same each biennium.

3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: Will be required to retain certificate and submit to board if requested. Additional correspondence with board, course providers and/or perhaps CHR.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Increased costs (29 cents each) for mailing instructions, increased personnel time to process paperwork, print and distribute instructions. Very high volume of incoming telephone calls.

2. Continuing costs or savings: Costs will be ongoing.

3. Additional factors increasing or decreasing costs: Increase in personnel time, printing and postage may require increase in license renewal fees.

(b) Reporting and paperwork requirements: Reports to CHR and post renewal audit of individuals to confirm course completion will be necessary.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives. Requirement was mandated by HB 450 in 1990 session of Kentucky legislature.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.

(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 physical therapists and physical therapist's assistants are treated uniformly under the law.

## GENERAL GOVERNMENT CABINET
## Board of Physical Therapy
## (Proposed Amendment)

**201 KAR 22:040. Procedure for renewing licenses.**

RELATES TO: KRS 327.050
STATUTORY AUTHORITY: KRS 327.040
NECESSITY AND FUNCTION: Provides specific directions for the biennial renewal of the physical therapy license or temporary permit.

Section 1. A [The] physical therapist's license [will automatically receive renewal of licensure] or temporary permit may be renewed upon payment on or before March 31st of each uneven numbered year of the [a] renewal fee [to be] set by regulation and submission of the following written information to the executive secretary of the board:

(1) Current complete home address and telephone number, including county of residence;

(2) Current, complete name(s) and address(es), telephone number(s), and county(ies) of each location in which physical therapy service is provided; [and]

(3) Confirmation of completion of a Cabinet for Human Resources (CHR) approved course on the transmission, control, treatment and prevention of human immunodeficiency virus infection and AIDS;

(a) All persons who renewed a license in 1991 shall have completed a course of at least four (4) hours in length before June 30, 1992.

(b) Subsequently, a renewal applicant shall have completed an approved course at least two (2) hours in length.

(4) [(3)] Written confirmation that the person has not since his license or permit was issued

or renewed:
(a) Been convicted of a felony or any crime in the courts of this state or any other state, territory or country;
(b) Had his license disciplined or under current disciplinary review in another state;
(c) Had a civil judgment entered against him which concerned [concerning] his practice; or
(d) Had engaged in any other conduct [circumstance] which was [may be] in violation of KRS 327.070. Persons convicted or disciplined in the interim period before renewal of their license or temporary permit shall [may] submit such information during that period for consideration by the board prior to license renewal. Notice of violation by a licensee except minor traffic violations which do not involve substance abuse will be reviewed by the board.

Section 2. If payment and complete information are not received by the executive secretary by March 31 of each uneven numbered year, the license or permit shall lapse and the person shall not work as a physical therapist in Kentucky.

Section 3. Upon initial licensing and each subsequent renewal, each therapist shall [will] be furnished a validation that shall be posted to the original certificate and displayed at the primary physical therapy service location and a billfold license which is a means of identifying a person holding himself out as a physical therapist.

KAREN CRONIN, Chairman
APPROVED BY AGENCY: May 16, 1991
FILED WITH LRC: July 15, 1991 at noon
PUBLIC HEARING: A public hearing on this proposed amendment to a current administrative regulation will be held on August 21st at 10 a.m., ET, at the Board Office, 400 Sherburn Lane, Suite 248, Louisville, Kentucky 40207. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 1991, five days prior to the 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 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: Mrs. Nancy Brinly, Executive Secretary, KY State Board of Physical Therapy, The Mall Office Center, 400 Sherburn Lane, Suite 248, Louisville, KY 40207-4215.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nancy Brinly
(1) Type and number of entities affected: 1060 physical therapists.
(a) Direct and indirect costs or savings to those affected:
1. First year: $0 - $200 each person.
2. Continuing costs or savings: Same each biennium.
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: Will be required to retain certificate and submit to board if requested. Additional correspondence with board, course providers and/or perhaps CHR.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: Increased costs (29 cents each) for mailing instructions, increased personnel time to process paperwork, print and distribute instructions. Very high volume of incoming telephone calls.
2. Continuing costs or savings: Costs will be ongoing.
3. Additional factors increasing or decreasing costs: Increase in personnel time, printing and postage may require increase in license renewal fees.
(b) Reporting and paperwork requirements: Reports to CHR and post renewal audit of individuals to confirm course completion will be necessary.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives. Requirement was mandated by HB 450 in 1990 session of Kentucky legislature.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.
(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 physical therapists and physical therapist's assistants are treated uniformly under the law.

## GENERAL GOVERNMENT CABINET
## Board of Physical Therapy
## (Proposed Amendment)

**201 KAR 22:070. Requirements for foreign-trained physical therapists.**

RELATES TO: KRS 327.060
STATUTORY AUTHORITY: KRS 327.040
NECESSITY AND FUNCTION: This regulation establishes the requirements [of] a foreign-trained physical therapist shall satisfy [to permit the therapist] to become licensed in the state of Kentucky. Because of variances in curriculums of foreign countries, specific requirements are needed to insure [assure] that the applicant possesses adequate educational and clinical preparation.

Section 1. In order [The following requirements] for a foreign-trained physical therapist to become licensed he shall [must be fulfilled:]
(1) Furnish the board an original, favorable educational credentials evaluation [a] report from International Credentialing Associates, Inc., International Consultants of Delaware, Inc., or International Education Research Foundations, Inc.; [of a board approved credentialing agency for educational status.]

(2) Have graduated from a recognized physical therapy program in the country of education. The applicant shall have earned [The educational requirements of licensure require an applicant to have satisfactorily completed] at least 120 U.S. semester credits in a program equivalent to a U.S. Bachelors degree in Physical Therapy, of which [.] at least sixty (60) [of these] semester credits must be in professional physical therapy courses. [as described and distributed in the approved credentials form. At least fifty-eight (58) of these semester credits must be in general education courses as described and distributed in the approved credentials form, of which at least forty-five (45) semester credits must be completed at the time of application. The remaining semester credits in general education would be completed by College Level Entrance Proficiency (CLEP) or at a board approved educational institution.]

(3) For those applicants seeking [(2) The applicant for] licensure by examination, speak [must have] English as his native language or have submitted the results of a Test of English as a Foreign Language (TOEFL) with a score of at least 550 or the Test of Spoken English (TSE) with a total score of at least 220.

(4) [(3)] Submit a satisfactorily completed application and appropriate fee.

(5) [(4)] Successful completion of one (1) year, totaling at least 1000 clock hours of supervised practice at a Kentucky facility previously approved by the board, and under a physical therapist licensed under this chapter which satisfies the following requirements: [.]

(a) The supervised practice shall [will] be in an acute care facility which serves [serving] both in and out patients and also is a [that has been approved by the board. The board shall approve Kentucky facilities which serve as] clinical education site[s] for students enrolled in an APTA accredited program in physical therapist education; [.]

(b) The applicant shall [will] work only with on-site supervision until a minimum score of three and five-tenths (3.5) with no one (1.0) or two (2.0) on a four (4.0) point scale has been achieved utilizing the board provided clinical evaluation form. Evaluations shall [will] be submitted to the board quarterly by the clinical supervisor until the required score denoting clinical competency has been reached; [.]

(c) The applicant shall [will] work under the supervision required of a U.S. educated physical therapist candidate issued [, as do other applicants with] a temporary permit after achieving the required score of three and five-tenths (3.5) except that when the foreign-trained applicant has also passed the physical therapist licensure examination his physical therapy records do not [will no longer] need to be cosigned by the supervising physical therapist. This requirement may be satisfied by one (1) year of supervised practice in a state with licensure [license] requirements at least comparable to those of Kentucky or by the consent of the board. Evidence of that experience in a comparable facility outside Kentucky must be in writing confirming successful completion and satisfactory performance; and [.]

(6) [(5)] Successful completion of the examination as specified in KRS 327.050. The examination, when next offered by the board for other candidates, shall be taken after the applicant becomes a candidate for licensure, unless excused by the board.

Section 2. [The following pertain to] Temporary Permits for Foreign Trained Physical Therapist Applicants. (1) Following completion of the requirements of Section 1(1) to (4) [(3)] of this regulation and submission of an approved Supervisory Agreement Statement, an applicant for licensure by examination, and [an applicant who needs to complete his general education requirements and/or] an applicant who has not yet satisfactorily completed a year of supervised practice as a physical therapist may [will] be issued a temporary permit to practice under the supervision of a designated Kentucky licensed therapist.

(2) All requirements for licensure shall be completed within one (1) year from the beginning of the supervised practice [the maximum period of twenty-one (21) months in which an applicant may work as a physical therapist with a temporary permit]. If not completed within that time period, the temporary permit shall be [is] revoked and the applicant shall [may] no longer work in Kentucky as a physical therapist. [An applicant who has failed to pass the examination may reapply in one (1) year as per 201 KAR 22:031, Section 3. Applicants who have failed to complete general education requirements may reapply when those requirements have been met.]

KAREN CRONIN, Chairman
APPROVED BY AGENCY: May 16, 1991
FILED WITH LRC: July 15, 1991 at noon

PUBLIC HEARING: A public hearing on this proposed amendment to a current administrative regulation will be held on August 21st at 10 a.m. at the Board Office, 400 Sherburn Lane, Suite 248, Louisville, Kentucky 40207. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 1991, five days prior to the 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 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: Mrs. Nancy Brinly, Executive Secretary, KY State Board of Physical Therapy, The Mall Office Center, 400 Sherburn Lane, Suite 248, Louisville, KY 40207-4215.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nancy Brinly
(1) Type and number of entities affected: 3-10 foreign educated physical therapists per year.
(a) Direct and indirect costs or savings to those affected:
1. First year: Unknown, cost of completing additional general education courses through enrollment or CLEP, costs of reevaluation of educational credentials = $75-$100 post courses/CLEP.
2. Continuing costs or savings:
3. Additional factors increasing or decreasing

costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: Decreased.
(2) Effects on the promulgating administrative body: Timesaving.
(a) Direct and indirect costs or savings: None except correspondence and "tracking" of applicants, is decreased, thus a "savings".
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Only as per (a).
(3) Assessment of anticipated effect on state and local revenues: Believe more qualified persons would apply if they did not have to complete more general education courses.
(4) Assessment of alternative methods; reasons why alternatives were rejected: This is the least restrictive, fair method.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: Because of differences in university curriculi and even high school educations in other nations, an individual educated outside the U.S. may have the equivalent of a U.S. bachelor's degree in physical therapy without having 58 general education semester credits.
TIERING: Was tiering applied? No. All physical therapists and physical therapist's assistants are treated uniformly under the law.

**GENERAL GOVERNMENT CABINET**
**Board of Physical Therapy**
**(Proposed Amendment)**

**201 KAR 22:101. Eligibility and method of applying for physical therapist's assistant certification.**

RELATES TO: KRS 327.040
STATUTORY AUTHORITY: KRS 327.040
NECESSITY AND FUNCTION: In order to offer a high level of assistance to the physical therapist in delivery of his service, the role of physical therapist's assistant was developed. This regulation identifies the requirements and mechanisms by which one may become certified as a physical therapist's assistant and defines supervision of practice.

Section 1. (1) The physical therapist's assistant is a skilled health care worker who performs physical therapy and related duties as assigned by the physical therapist. This work is carried out only under the supervision and direction of the therapist to whom the employee is responsible. Supervision requires the responsible therapist to be available and accessible by telecommunications to the assistant at all times during the working hours of the assistant and to be responsible for the direction of the actions of the person supervised when services are performed by the assistant.
(2) Only individuals certified as a physical therapist's assistant under this chapter may hold himself out as a physical therapist's assistant, and may use the initials PTA or CPTA, or in any other manner imply that he is a physical therapist's assistant in designating his title. From the effective date of this regulation, no person shall act, or hold himself out to be able to act as an assistant in this state unless he/she is certified in accordance with the provisions of the board's regulations.

Section 2. [(1)] To be eligible for board certification the assistant applicant shall have:
(1) [(a)] Successfully completed the academic and clinical requirements of a[n approved] physical therapist's assistant program accredited by the American Physical Therapy Association (APTA), or been approved by the board as a special candidate for certification as defined in 201 KAR 22:106;
(2) [(b)] Been granted certification upon completion by the administrator of the [approved] program;
(3) [(c)] Successfully completed an examination required by the Kentucky State Board of Physical Therapy; [and]
(4) [(d)] Paid a fee to the board relative to that person's vehicle of certification as required in 201 KAR 22:135; and
(5) Beginning July 1, 1991 also shall have completed an educational course at least four (4) hours in length which has been approved by the Cabinet for Human Resources (CHR) on the transmission, control, treatment and prevention of human immunodeficiency virus infection and AIDS.
[(2) All physical therapist's assistant programs accredited by the American Physical Therapy Association are periodically reviewed and updated for approval by the Kentucky State Board of Physical Therapy.]

Section 3. A person desiring to practice as a physical therapist's assistant in Kentucky must apply to the Kentucky State Board of Physical Therapy. When requested, an application form and instructions shall be sent to the applicant by the [executive secretary of the] board. When the completed application, certification of completion of all academic and clinical portions of an approved program, and correct fee have been received, the applicant becomes an official candidate for certification.

Section 4. Four (4) types of candidates will be accepted for certification:
(1) Examination;
(2) Endorsement;
(3) Reinstatement; and
(4) Special.

KAREN CRONIN, Chairman
APPROVED BY AGENCY: May 16, 1991
FILED WITH LRC: July 15, 1991 at noon
PUBLIC HEARING: A public hearing on this proposed amendment to a current administrative regulation will be held on August 21st at 10 a.m., ET, at the Board Office, 400 Sherburn Lane, Suite 248, Louisville, Kentucky 40207. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 1991, five days prior to the 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 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: Mrs. Nancy Brinly, Executive Secretary, KY State Board of Physical Therapy, The Mall Office Center, 400 Sherburn Lane, Suite 248, Louisville, KY 40207-4215.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nancy Brinly
(1) Type and number of entities affected: At least 75 applicants for physical therapist's assistant certification per year.
(a) Direct and indirect costs or savings to those affected:
1. First year: $0 - $200 each person.
2. Continuing costs or savings: Same each biennium.
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: Will be required to retain certificate and submit to board if requested. Additional correspondence with board, course providers and/or perhaps CHR.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: Increased costs (29 cents each) for mailing instructions, increased personnel time to process paperwork, print and distribute instructions. Very high volume of incoming telephone calls.
2. Continuing costs or savings: Costs will be ongoing.
3. Additional factors increasing or decreasing costs: Increase in personnel time, printing and postage may require increase in license renewal fees.
(b) Reporting and paperwork requirements: Reports to CHR and post renewal audit of individuals to confirm course completion will be necessary.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives. Requirement was mandated by HB 450 in 1990 session of Kentucky legislature.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.
(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 physical therapists and physical therapist's assistants are treated uniformly under the law.

**GENERAL GOVERNMENT CABINET**
**Board of Physical Therapy**
**(Proposed Amendment)**

**201 KAR 22:110. Renewal of assistant's certification.**

RELATES TO: KRS 327.040
STATUTORY AUTHORITY: KRS 327.040
NECESSITY AND FUNCTION: This regulation provides specific direction for the biennial renewal of the physical therapist's assistant certificate or temporary permit.

Section 1. A physical therapist's [The] assistant [may receive a renewal] certificate or temporary permit may be renewed upon payment on or before March 31 of each uneven numbered year of the [a] renewal fee [to be] set by regulation and submission of the following written information to the board:
(1) Current complete home address and telephone number, including county of residence;
(2) Current, complete name(s), address(es), telephone number(s), and county(ies) of each location in which physical therapy service is provided;
(3) Confirmation of completion of a Cabinet for Human Resources (CHR) approved course on the transmission, control, treatment and prevention of human immunodeficiency virus infection and AIDS.
(a) All persons who renewed a certificate in 1991 shall have completed a course of at least four (4) hours in length before June 30, 1992.
(c) Subsequently, a renewal applicant shall have completed an approved course at least two (2) hours in length.
(4) [(3)] The name and license number of the assistant's primary physical therapist supervisor at each Kentucky work location; and
(5) [(4)] Written confirmation that the person has not since his certificate or permit was issued or renewed:
(a) Been convicted of a felony or any crime in the courts of this state or any other state, territory or country;
(b) Had his license disciplined or under current disciplinary review in another state;
(c) Had a civil judgment entered against him which concerned [concerning] his practice; or
(d) Had engaged in any other conduct [circumstance] which was [may be] in violation of KRS 327.070. Persons convicted or disciplined in the interim period before renewal of their certificate or temporary permit shall [may] submit such information during that period for consideration by the board prior to license renewal. Notice of a violation by a certificant, except minor traffic violations which do not involve substance abuse, shall be reviewed by the board.

Section 2. If payment and complete information are not received by the board [executive secretary] by March 31 of each uneven numbered year, the certificate or permit shall lapse and the person shall not work as a physical therapist's assistant in Kentucky.

Section 3. Upon initial certification and each subsequent renewal, each physical therapist's assistant shall be furnished a validation that shall be posted to the original certificate and displayed at the primary physical therapy

service location and a billfold certificate which is a means of identifying a person holding himself out as a physical therapist's assistant.

KAREN CRONIN, Chairman
APPROVED BY AGENCY: May 16, 1991
FILED WITH LRC: July 15, 1991 at noon
PUBLIC HEARING: A public hearing on this proposed amendment to a current administrative regulation will be held on August 21st at 10 a.m., ET, at the Board Office, 400 Sherburn Lane, Suite 248, Louisville, Kentucky 40207. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 1991, five days prior to the 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 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: Mrs. Nancy Brinly, Executive Secretary, KY State Board of Physical Therapy, The Mall Office Center, 400 Sherburn Lane, Suite 248, Louisville, KY 40207-4215.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nancy Brinly
(1) Type and number of entities affected: >350 physical therapist's assistants each biennium.
(a) Direct and indirect costs or savings to those affected:
1. First year: $0 - $200 each person.
2. Continuing costs or savings: Same each biennium.
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: Will be required to retain certificate and submit to board if requested. Additional correspondence with board, course providers and/or perhaps CHR.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: Increased costs (29 cents each) for mailing instructions, increased personnel time to process paperwork, print and distribute instructions. Very high volume of incoming telephone calls.
2. Continuing costs or savings: Costs will be ongoing.
3. Additional factors increasing or decreasing costs: Increase in personnel time, printing and postage may require increase in license renewal fees.
(b) Reporting and paperwork requirements: Reports to CHR and post renewal audit of individuals to confirm course completion will be necessary.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives. Requirement was mandated by HB 450 in 1990 session of Kentucky legislature.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.
(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 physical therapists and physical therapist's assistants are treated uniformly under the law.

**GENERAL GOVERNMENT CABINET**
**Board of Physical Therapy**
**(Proposed Amendment)**

**201 KAR 22:135. Fees.**

RELATES TO: KRS 327.040(12), 327.050
STATUTORY AUTHORITY: KRS 327.040
NECESSITY AND FUNCTION: The purpose of this regulation is to establish fees required of applicants for physical therapist (PT) licensure or physical therapist's assistant (PTA) certification by endorsement, examination, reinstatement, renewal or [and] reexamination. [Fees are set to reflect the revenue required to permit the board to fulfill its statutory obligations.]

Section 1. An application fee, except for reexamination and renewal applicants is prorated according to the time within a biennial licensure term it is received in the office [by the executive secretary] of the board. Fees submitted for applications received in the first year of a biennial licensure term shall be greater by one-half the renewal fee than a fee received in the second year of a biennial licensure term. This fee and application may [could] result in a temporary permit and license or certificate being [to be] valid for more than one (1) year. Personal checks are accepted [permitted] only for [license, temporary permit, or certificate] renewal applications. Other application fees shall be paid by [Personal,] cashier's or certified check[s] or money order[s shall be] made payable to the Kentucky State Treasurer, and delivered [sent] to the board office. These fees shall not be [executive secretary of the board, and are not] refundable.

Section 2. [(1)] The [fees for] application fees for licensure or certification in the first year of the biennial licensure term shall be [are]:
[(a) Physical therapists and physical therapist's assistants:]
(1) [1. Application fee for licensure or certification by endorsement is] $140 for endorsement applicants;
(2) [2. Application fee for license or certificate reinstatement is] $105 for reinstatement applicants;
(3) [(b) Physical therapist application fee for licensure by examination is] $220 for applicants seeking PT licensure by examination; or
(4) [(c) Physical therapist's assistant application fee for certification by examination is] $210 for applicants seeking PTA certification by examination.

Section 3. [(2)] The [fee for] application fees for licensure or certification in the second year of the biennial licensure term shall be [are]:
[(a) Physical therapists and physical therapist's assistants:]
(1) [1. Application fee for licensure or certification by endorsement is] $100 for endorsement applicants;
(2) [2. Application fee for license or certificate reinstatement is] Sixty-five (65) dollars for reinstatement applicants;
(3) [(b) Physical therapist application fee for licensure by examination is] $180 for applicants seeking PT licensure by examination; or
(4) [(c) Physical therapist's assistant application fee for certification by examination is] $170 for applicants seeking PTA certification by examination.

Section 4. [2.] The renewal application fee [for physical therapists and physical therapist's assistants] shall be eighty (80) dollars.

Section 5. [3.] The application fee for reexamination or examination if a person fails to take or complete the examination he registered to take shall be:
[(1) Seventy-seven (77) dollars and fifty (50) cents for the physical therapist applicant who must retake only one (1) part of the physical therapist examination;]
(1) [(2)] $137.50 for the PT [physical therapist] applicant [who must retake or take more than one (1) part of the examination]; or [and]
(2) [(3)] $127.50 for the PTA [physical therapist's assistant] applicant.

KAREN CRONIN, Chairman
APPROVED BY AGENCY: May 16, 1991
FILED WITH LRC: July 15, 1991 at noon
PUBLIC HEARING: A public hearing on this proposed amendment to a current administrative regulation will be held on August 21st at 10 a.m., ET, at the Board Office, 400 Sherburn Lane, Suite 248, Louisville, Kentucky 40207. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 1991, five days prior to the 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 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: Mrs. Nancy Brinly, Executive Secretary, KY State Board of Physical Therapy, The Mall Office Center, 400 Sherburn Lane, Suite 248, Louisville, KY 40207-4215.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nancy Brinly
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected: N/A
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body: N/A
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected:
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: There is no longer a three part examination for physical therapists and the cost to the agency for new one part exam is same as former three part examination.
TIERING: Was tiering applied? No. All physical therapists and physical therapist's assistants are treated uniformly under the law.

## NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
### Department for Surface Mining Reclamation and Enforcement
### (Proposed Amendment)

**405 KAR 7:015. Documents incorporated by reference.**

RELATES TO: KRS Chapter 350
STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.465
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to adopt regulations pertaining to surface coal mining and reclamation operations under the permanent regulatory program. This regulation provides for incorporation by reference of documents referred to in these regulations and other documents relied on by the cabinet in implementing the permanent regulatory program.

Section 1. Reclamation Advisory Memoranda. The following Reclamation Advisory Memoranda (RAM) issued by the cabinet are incorporated herein by reference for the purposes of 405 KAR Chapters 7 through 24. Copies may be obtained from the cabinet. If [Where] there is a conflict between these documents on a particular item, the document of later date shall prevail.
(1) RAM No. 56, "Overlapping Permits," December 1, 1982.
(2) RAM No. 73, "Delayed Filing of Performance Bonds on Technically Acceptable Applications for Transitioning Permanent Program Permits," February 6, 1984.
(3) RAM No. 75, "Permanent Program Performance Standards Take Effect March 16, 1984 on Transitioning Operations," March 12, 1984.

(4) RAM No. 76, "Revision to RAM No. 73: Maximum Period of Bond Deferral Reduced from 5 Years to 3 Years," April 2, 1984.
(5) RAM No. 77, "Reinstatement of Small Operator Assistance," April 2, 1984.
(6) RAM No. 78, "Departmental Policies: Withdrawal and Maintenance of Mining Permit Applications," April 23, 1984.

Section 2. Technical Reclamation Memorandum [Memoranda]. The following Technical Reclamation Memorandum [Memoranda] (TRM) issued by the cabinet is [are] incorporated herein by reference for the purposes of 405 KAR Chapters 7 through 24. Copies may be obtained from the department: [cabinet.
(1)] TRM No. 1, "Existing Structures," October 22, 1982.
[(2) TRM No. 9, "Revegetation Standards for Success," February 1, 1983.]

Section 3. Penalty Assessment Manual. The following document issued by the cabinet is incorporated herein by reference for the purposes of 405 KAR Chapters 7 through 24. Copies may be obtained from the cabinet. "Penalty Assessment Manual," July 1983.

Section 4. Documents Referred to Within These Regulations. The following documents which are referred to within 405 KAR Chapters 7 through 24 are incorporated by reference for the purposes of 405 KAR Chapters 7 through 24.
(1) "Standard Methods for the Examination of Water and Wastewater," fourteenth edition, 1976. Prepared by American Public Health Association, American Water Works Association, and Water Pollution Control Federation. Copies may be obtained from American Public Health Association, 1015 Eighteenth Street NW, Washington, D.C. 20036.
(2) "Methods for Chemical Analysis of Water and Wastes," March 1979, U.S. Environmental Protection Agency. Copies may be obtained from U.S. Environmental Protection Agency, Environmental Monitoring and Support Laboratory, 26 W. St. Clair Street, Cincinnati, Ohio 45268.
(3) "Soil Taxonomy," Agriculture Handbook 436, 1975, U.S.D.A. - Soil Conservation Service. Copies may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.
(4) "Soil Survey Manual," Agriculture Handbook No. 18, 1951, U.S. Department of Agriculture. Copies may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.
(5) "ASTM STANDARD D388-77, Standard Specification for Classification of Coal by Rank," 1977, American Society for Testing and Materials. Copies may be obtained from American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.
[(6) "Environmental Criteria for Electric Transmission Lines," 1970, U.S. Department of the Interior, U.S. Department of Agriculture. Copies may be obtained from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.]
[(7) REA Bulletin 61-10, "Protection of Bald and Golden Eagles from Powerlines," 1972 U.S. Department of Agriculture. Copies may be obtained from the U.S. Department of Agriculture, Washington, D.C.]
(6) [(8)] ANSI S1.4-1971, "Specification for Sound Level Meters," 1971, American National Standards Institute, Inc. Copies may be obtained from the American National Standards Institute, Inc., 1430 Broadway, New York, NY.
(7) [(9)] AASHTO T99-74, "Standard Methods of Test for the Moisture-Density Relations of Soils Using 5.5 lb. (2.5 Kg) Rammer and a twelve (12) in. (305 mm) Drop," 1974, American Association of State Highway and Transportation Officials. Copies may be obtained from American Association of State Highway and Transportation Officials, 444 N. Capitol Ave., Washington, D.C. 20001.

Section 5. Permit Application Review Procedures. The following Permit Application Review Procedures (PARP) issued by the cabinet are incorporated herein by reference for the purposes of 405 KAR Chapters 7 through 24. Copies may be obtained from the cabinet.
(1) PARP No. 2, "Lands within 100 feet, measured horizontally, of a cemetery," April 18, 1983.
(2) PARP No. 6, "Advertising Schedule Variance," July 29, 1983.

Section 6. Policy Memorandum. The following policy memorandum issued by the cabinet is incorporated herein by reference for the purposes of 405 KAR Chapters 7 through 24. Copies may be obtained from the cabinet. Departmental Policy Memorandum No. 81-003, "Conflict of Interest," June 19, 1981.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 12, 1991
FILED WITH LRC: July 15, 1991 at 10 a.m.
PUBLIC HEARING: A public hearing on this proposed regulation has been scheduled for 9 a.m. (EDT) Thursday, August 29, 1991, in the Department for Surface Mining Reclamation and Enforcement's Main Conference Room (Room B-31) 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 August 24, 1991. The schedule hearing may be cancelled if the contact person has not received any written notice of intent to testify by August 24, 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 regulation 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 regulation but does not wish to testify at the hearing may submit written comments on the proposed regulation at any time before 4:30 p.m. (EDT) on Thursday, August 29, 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:
CONTACT PERSON: 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 regulation applies to permanent program surface coal mining and reclamation operations, of which there are 3,800 presently in existence in Kentucky. It also indirectly affects the general public in the coal field regions. However, these particular amendments are of little effect, since the amendments are deleting two (2) minor technical documents that were incorporated by reference, and deleting one document related to revegetation standards that is being superseded by amendments to the cabinet's regulations on revegetation. See the regulatory impact analyses for 405 KAR 16:200 and 18:200 for a discussion of revegetation amendments.

(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: No alternatives were considered.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(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.

**NATURAL RESOURCES AND ENRIVONMENTAL PROTECTION CABINET**
**Department for Surface Mining Reclamation and Enforcement**
**(Proposed Amendment)**

**405 KAR 7:020. Definitions <u>of terms used in 405 KAR Chapters 7 through 24</u> [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 <u>KAR</u> 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 <u>if</u> [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, if [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 if [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 KAR 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 KAR 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 KAR 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 under SMCRA or issued by any state pursuant to its laws or regulations under SMCRA.

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

(18) "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 KAR Chapters 7 through 24 if the [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) "Coal mine waste" means coal processing waste and underground development waste.

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

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

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

(27) "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) "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) "Date of primacy" means the effective date of the Secretary of Interior's unconditional or conditional approval of Kentucky's permanent regulatory program under SMCRA 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) "Day" means calendar day unless otherwise specified to be a working day.

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

(32) "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) "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 KAR Chapter 10 is released.

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

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

(36) "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; to [,] support roads or railways; or for other similar purposes.

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

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

(40) "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 similar [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 KAR Chapters 7 through 24.

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

(43) "Fish and wildlife land use [habitat]", as used in 405 KAR 16:210 and 405 KAR 18:220 and in similar situations when referring to a premining or postmining land use, means land dedicated wholly or partially to the production, protection, or management of species of fish or wildlife. Areas considered as having the fish and wildlife land use are typically characterized by a diversity of habitats in which use by wildlife is the dominant characteristic, whether actively managed or not.

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

(47) "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) "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) "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) "Ground cover" means the area of ground covered by the combined aerial parts of vegetation and litter produced and distributed naturally and seasonally on site, expressed as a percentage of the total area of measurement. ["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) "Groundwater" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

(52) "Growing season" means the period during a one (1) year cycle, from the last killing frost in the spring to the first killing frost in the fall, in which climatic conditions are favorable for plant growth. In Kentucky, this period normally extends from mid-April to mid-October. ["Half-shrub" means a perennial plant with a woody base whose annually-produced stems die back each year.]

(53) "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) "Higher or better uses" means postmining land uses that have a higher economic value or nonmonetary benefit to the landowner or the community than the premining land use.

(55) [(54)] "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.

(56) "Highwall remnant" means that portion of highwall that remains after backfilling and grading of a remining permit area.

(57) [(55)] "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.

(58) [(56)] "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.

(59) [(57)] "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.

(60) [(58)] "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.

(61) [(59)] "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.

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

(63) [(61)] "Incidental boundary revision" means an extension to a permit area that is necessary for reasons unforeseen when [at the time] the original permit application was prepared and that is small in relation to the original or amended 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.]

(64) [(62)] "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.]

(65) [(63)] "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.

(66) [(64)] "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.

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

(68) "Knowingly" means that a person knew or had reason to know in authorizing, ordering, or carrying out an act or omission that the act or omission constituted a violation of SMCRA, KRS Chapter 350, 405 KAR Chapters 7 through 24, or a permit condition, or that the act or omission constituted a failure or refusal to comply with an order issued pursuant to SMCRA, KRS Chapter 350, or 405 KAR Chapters 7 through 24.

(69) [(66)] "Land use" means specific functions, uses or management-related activities [rather than the vegetation or cover] of an area [the land], and may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the use. In some instances, a specific use can be identified without active management.

(70) "Modified highwall" means either:

(a) The highwall resulting from remining where the preexisting highwall face is removed; or

(b) The highwall resulting from remining where the preexisting highwall is vertically enlarged.

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

(72) [(68)] "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.

(73) [(69)] "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.

(74) [(70)] "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 KAR 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.

(75) [(71)] "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.

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

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

(78) [(74)] "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.

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

(80) [(76)] "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 KAR 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.

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

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

(83) [(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.

(84) [(80)] "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.

(85) [(81)] "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."

(86) [(82)] "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 KAR Chapters 7 through 24, and the requirements of the permit and reclamation plan.

(87) [(83)] "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.

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

(89) [(85)] "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.

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

(91) [(87)] "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.

(92) [(88)] "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.

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

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

(95) "Previously mined area" means land that was disturbed or affected by coal mining operations conducted prior to August 3, 1977, that has not been reclaimed to the standards of this title, and for which there is no continuing responsibility to reclaim to the standards of this title.

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

(97) [(92)] "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.

(98) [(93)] "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.

(99) [(94)] "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.

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

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

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

(103) [(98)] "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.

(104) [(99)] "Public park" means an area dedicated or designated by any federal, state, or local agency primarily for public recreational use, despite whether the [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.

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

(106) "Reasonably available spoil" means spoil and suitable coal mine waste material generated by the remining operation and other spoil or suitable coal mine waste material located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to public safety or significant damage to the environment. For this purpose, the permit area shall include all spoil of this nature located in the immediate vicinity of the mining operation.

(107) [(101)] "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.

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

(109) [(103)] "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.

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

(111) [(105)] "Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetative [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.

(112) [(106)] "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.

(113) "Remining" means conducting surface coal mining and reclamation operations which affect previously mined areas.

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

(a) As used in [KAR Title] 405 KAR 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, these [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.

(115) [(108)] "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.

(116) [(109)] "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 KAR 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.

(117) [(110)] "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.

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

(119) [(112)] "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 the [such] secondary sedimentation structures drain to a sedimentation pond.

(120) [(113)] "Significant, imminent environmental harm" means [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 environmental [such] harm; or

2. May reasonably be expected to cause environmental [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.

(121) [(114)] "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.

(122) [(115)] "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.

(123) [(116)] "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.

(124) [(117)] "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 the [such] soils for use. Soil surveys shall [must] meet the standards of the National Cooperative Soil Survey.

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

(126) [(119)] "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.

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

(128) [(121)] "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 twenty-five (25) [250] tons of coal.

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

(130) [(123)] "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].

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

(132) [(125)] "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. These [Such] activities include excavation for the purpose of obtaining coal, including [such] common methods such 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. These [Such] activities shall not include the extraction of coal by a landowner of fifty (50) tons or less within twelve (12) successive calendar months 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, twenty-five (25) [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 if [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 these [such] activities occur or where the [such] activities disturb the natural land surface. These [Such] areas shall also include any adjacent land the use of which is incidental to any of the [such] activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of the [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 the [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.

(133) [(126)] "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.

(134) [(127)] "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 U.S. EPA's [Environmental Protection Agency's] regulations for waste water and analyses (40 CFR 136).

(135) [(128)] "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.

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

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

(138) [(131)] "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.

(139) [(132)] "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.

(140) [(133)] "Transfer, assignment, or sale of permit 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.

(141) [(134)] "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.

(142) [(135)] "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, audits, underground support facilities; in situ processing; and underground mining, hauling, storage, and blasting.

(143) [(136)] "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..

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

(145) [(138)] "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.

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

(147) [(140)] "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.

(148) [(141)] "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.

(149) "Willfully" and "willful violation" mean that a person acted either intentionally, voluntarily, or consciously, and with intentional disregard or plain indifference to legal requirements, in authorizing, ordering, or carrying out an act or omission that constituted a violation of SMCRA, KRS Chapter 350, 405 KAR Chapters 7 through 24, or a permit condition, or that constituted a failure or refusal to comply with an order issued pursuant to SMCRA, KRS Chapter 350, or 405 KAR Chapters 7 through 24.

[(142) "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 KAR 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
KDFWR - Kentucky Department of Fish and Wildlife Resources
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
PARP - Permit Application Review Procedure
RAM - Reclamation Advisory Memorandum
SCS - Soil Conservation Service
SMCRA - Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87), as amended
TRM - Technical Reclamation Memorandum
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.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 12, 1991
FILED WITH LRC: July 15, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed regulation has been scheduled for 9 a.m. (EDT) Thursday, August 29, 1991, in the Department for Surface Mining Reclamation and Enforcement's Main Conference Room (Room B-31) 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 August 24, 1991. The schedule hearing may be cancelled if the contact person has not received any written notice of intent to testify by August 24, 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 regulation 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 regulation but does not wish to testify at the hearing may submit written comments on the proposed regulation at any time before 4:30 p.m. (EDT) on Thursday, August 29, 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:

CONTACT PERSON: 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 regulation applies to surface coal mining and reclamation operations and indirectly affects the general public in the coal field regions. There are presently about 3,800 permanent program surface coal mining operations in Kentucky. This amendment modifies several definitions of terms used in the regulations governing surface coal mining operations. The primary purpose is to bring these definitions in line with changes to the corresponding federal regulations and with changes made in KRS Chapter 350 in the 1990 General Assembly. The two most significant changes are: 1) in conjunction with amendments to 405 KAR 8:010, the definition of incidental boundary revisions is being relaxed so that more boundary changes can be processed as revisions rather than as new permit applications and 2) the jurisdiction of the surface coal mining regulations is being broadened in accordance with amendments to KRS Chapter 350 made by the 1990 General Assembly, i.e., the 250 ton exemption was cut to 25 tons and the exemption for extraction of coal by a landowner for his own noncommercial use was limited to 50 tons of coal per year.

(a) Direct and indirect costs or savings to those affected:

1. First year: Some savings will be realized by mining operations due to the changes relating to incidental boundary revisions. The changes

related to the exemptions are not expected to directly affect legitimate operators, but are designed to improve the cabinet's ability to take action against illegal mining. The legitimate industry will indirectly benefit from this. If any legitimate operators are brought under jurisdiction by these amendments, there would be a large increase in the cost of operations for them, but this is not likely.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: If there are any legitimate operators that are being brought under jurisdiction for the first time due to the changes in the exemption, there will be a large increase in the reporting and paperwork requirements for them.

(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: No alternatives were considered.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(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, 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. These amendments modify some of the definitions of terms used in 405 KAR Chapters 7 through 24, add a few new definitions, and move some existing definitions from other regulations into this regulation. These definitions relate to a variety of topics and the amendments are being made to comply with federal regulations and to bring the state regulations in line with changes to KRS Chapter 350 made by the 1990 General Assembly.

3. Minimum or uniform standards contained in the federal mandate. The standards contained in the federal mandate are essentially the same as those contained in these amendments with the exception of 2 jurisdictional changes made by the 1990 General Assembly. The federal exemption does not limit the amount of coal that may be extracted by a landowner for his own noncommercial use, and the federal limit for any person is 250 tons within 12 successive calendar months rather than 25 tons as in the state law and regulations.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes, two of the state exemptions are more narrowly defined than the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These more narrow exemptions were established in KRS Chapter 350 by the 1990 General Assembly.

**NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET**
**Department for Surface Mining Reclamation and Enforcement**
**(Proposed Amendment)**

**405 KAR 7:030. Applicability.**

RELATES TO: KRS 350.010, 350.028, 350.057, 350.060, 350.151, 350.465, 30 CFR Parts 700.11, 707.11-.12, 730-733, 735, 917, 30 USC 1253, 1255, 1278, 1291

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.465, 30 CFR Parts 700.11, 707.11-.12, 730-733, 735, 917, 30 USC 1253, 1255, 1278, 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. This regulation designates [Title] 405 KAR Chapters 7 through 24 as applicable to all coal exploration and surface coal mining and reclamation operations, and specifies those activities to which [Title] 405 KAR Chapters 7 through 24 do not apply. This regulation reflects the jurisdiction of the cabinet over coal exploration and surface coal mining and reclamation operations and sets forth certain nonjurisdictional activities.

Section 1. Applicability. [Title] 405 KAR Chapters 7 through 24 apply to all coal exploration and surface coal mining and reclamation operations, except any surface coal mining and reclamation operations which, together with any related operation, affected an area of two (2) acres or less, which were conducted pursuant to a two (2) acre or less permit issued by the cabinet, which were commenced on or before June 5, 1987, and on which mining ceased on or before November 7, 1987, in which case the provisions of [Title] 405 KAR Chapter 26 and KRS 350.060(13) shall apply.

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

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

related, and are under common ownership or control.

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

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

1. The same person;

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

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

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

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

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

Section 2. Coal Extraction Incidental to Government Financed Construction. (1)(a) Coal extraction which is an incidental part of government-financed construction is exempt from KRS Chapter 350 and [Title] 405 KAR Chapters 7 through 24, except subsection (2) of this section shall apply.

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

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

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

(a) A description of the construction project;

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

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

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

(a) The extraction of coal by a landowner of fifty (50) tons or less within twelve (12) successive calendar months for his or her own noncommercial use from land owned or leased by him or her. Noncommercial use does not include the extraction of coal by one (1) unit of an integrated company or other business or nonprofit entity which uses the coal in its own manufacturing or power plants;

(b) The extraction of or intent to extract twenty-five (25) [250] tons of coal or less by any person by within twelve (12) successive calendar months;

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

(d) The extraction of coal incidental to the extraction of other minerals if [where] coal does not exceed sixteen and two-thirds (16 2/3) percent of the tonnage of minerals removed for purposes of commercial use or sale in accordance with 405 KAR 7:035. [OSM guidelines on implementing this exemption published at 49 FR 19338 are hereby incorporated by reference. Copies may be obtained from the department. The cabinet may require such information from the applicant as the cabinet deems necessary to decide whether the extraction of coal is "incidental" to the extraction of other minerals and to decide whether the other mineral is being extracted for commercial use or sale. This may include, but is not limited to: information regarding the applicant's prior involvement in coal mining operations and mining operations for the other mineral; geologic information for the proposed mining area; mining and engineering plans for the excavation; evidence of the existence of a generally acknowledged regional, state, or national market for the mineral being sought; and a description of the commercial nature of the mineral. Coal extraction shall not be considered to be "incidental" unless removal of the coal seam is physically necessary for the extraction of the other mineral.]

(2) The cabinet may on its own initiative and shall, within a reasonable time of a request from any person who intends to extract coal pursuant to subsection (1)(a) through (c) of this section, make a written determination whether the operation is exempt from 405 KAR Chapters 7 through 24. The cabinet shall give reasonable notice of the request to interested

persons. Prior to the time a determination is made, any person may submit, and the cabinet shall consider, any written information relevant to the determination. A person requesting that an operation be declared exempt shall have the burden of establishing the exemption.

(3) If a written determination of exemption pursuant to subsection (1)(a) through (c) of this section is reversed through subsequent administrative or judicial action, any person who, in good faith, has made a complete and accurate request for an exemption and relied upon the determination shall not be cited for violations which occurred prior to the date of the reversal. This subsection shall not apply to two (2) acre permits.

(4) Exemptions pursuant to subsection (1)(d) of this section shall be subject to 405 KAR 7:035.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 12, 1991
FILED WITH LRC: July 15, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed regulation has been scheduled for 9 a.m. (EDT) Thursday, August 29, 1991, in the Department for Surface Mining Reclamation and Enforcement's Main Conference Room (Room B-31) 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 August 24, 1991. The schedule hearing may be cancelled if the contact person has not received any written notice of intent to testify by August 24, 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 regulation 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 regulation but does not wish to testify at the hearing may submit written comments on the proposed regulation at any time before 4:30 p.m. (EDT) on Thursday, August 29, 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:

CONTACT PERSON: 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 regulation sets forth the applicability of, and exemptions from the surface coal mining regulations. This regulation indirectly affects the general public in the coal field regions. There are presently about 3,800 permanent program surface coal mining operations in Kentucky. Very few legitimate coal extraction operations are exempted by this regulation. In accordance with changes to KRS Chapter 350 in 1990, these amendments reduce the 250 ton per year exemption to 25 tons, limit the exemption for coal extraction by a landowner for his own noncommercial use to 50 tons per year, and, in conjunction with new 405 KAR 7:035, modifies the conditions for the incidental coal extraction exemption. Refer to the regulatory impact analysis for 405 KAR 7:035 for a discussion of the changes to the incidental coal extraction exemption.

(a) Direct and indirect costs or savings to those affected:

1. First year: The changes related to the 250 ton/year exemption and the landowner exemption are not expected to affect legitimate operators, but are designed to improve the cabinet's ability to take action against illegal mining. The legitimate industry will benefit from this. If any legitimate operators are brought under jurisdiction by these amendments, there would be a large increase in the cost of operations, but this is not likely.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: If any legitimate operators are brought under jurisdiction by these amendments, there will be a large increase in the reporting and paperwork requirements for them.

(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: No alternatives were considered.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering is not applicable to this proposed amendment because, these exemptions are set forth in federal and Kentucky surface mining laws.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 USC 1253, 1255, 1278, 1291. 30 CFR Parts 700.11, 707.11-.12, 730-733, 735, 917.

2. State compliance standards. These amendments modify 3 of the exemptions from the surface coal mining regulations, 405 KAR Chapters 7 through 24. These amendments limit the coal that can be extracted by a landowner for his own noncommercial use to 50 tons or less within 12 successive calendar months; change the

limit any person may extract during 12 successive calendar months from 250 tons to 25 tons, and make extensive changes to the exemption for coal extraction incidental to the extraction of other minerals.

3. Minimum or uniform standards contained in the federal mandate. The federal law and regulations contain these same exemptions except that the landowner exemption is not limited to 50 tons and the exemption for any person is 250 tons. The federal incidental coal extraction exemption is the same as in proposed 405 KAR 7:035 which is referenced by this regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes, two of the state exemptions are more narrowly drawn as described above.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The more narrow exemptions were established in KRS Chapter 350 by the 1990 General Assembly.

**NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET**
**Department for Surface Mining Reclamation and Enforcement**
**(Proposed Amendment)**

**405 KAR 7:080. Small operator assistance.**

RELATES TO: KRS 350.465, 30 CFR Parts 730-733, 735, 795, 917, 30 USC 1253, 1255, 1257

PURSUANT TO: KRS Chapter 13A, 350.020, 350.028, 350.465, 30 CFR Parts 730-733, 735, 795, 917, 30 USC 1253, 1255, 1257

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to surface coal mining and reclamation operations. This regulation sets out the federal small coal operator assistance program and establishes procedures to provide assistance to eligible operators who request assistance. The regulation specifies the assistance to be given to small operators whose total actual and attributed production does not exceed 300,000 [100,000] tons during any consecutive twelve (12) month period.

Section 1. Scope. This regulation comprises the small operator assistance program (Program) and governs the procedures for providing assistance to eligible small mine operators who request assistance for:

(1) The determination of the probable hydrologic consequences of mining and reclamation under Title 405, Chapter 8; and

(2) The statement of physical and chemical analyses of test borings or core samples under Title 405, Chapter 8; and

(3) Any [Such] other requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24 for which financial or other assistance may be available under this Program.

Section 2. Objective. The objective of this regulation is to meet the intent of KRS 350.465(2)(f) by:

(1) Providing financial and other necessary assistance to eligible small operators; and

(2) Assuring that the cabinet shall have sufficient information to make a reasonable assessment of the probable cumulative impacts of all anticipated mining upon the hydrology of the watershed(s) and particularly upon water availability.

Section 3. Authority. The secretary shall provide financial and other assistance under KRS 350.465(2)(f) to the extent that state funds are made available and to the extent that funds are appropriated by the United States Congress specifically for implementation of Section 507(c) of P.L. 95-87 and made available to the Commonwealth. Federal funds specifically authorized for this program to provide the services specified in Section 4 of this regulation shall not be used to cover administrative costs.

Section 4. Program Services. To the extent possible with available funds the cabinet shall, for eligible small operators who request assistance:

(1) Select and pay a qualified laboratory to:

(a) Determine for the operator the probable hydrologic consequences of the mining and reclamation operations both on and off the proposed permit area in accordance with Section 8 of this regulation; and

(b) Prepare a statement of the results of test borings or core samplings in accordance with Section 8 of this regulation.

(2) Collect and provide general hydrologic information on the basin or subbasin areas within which the anticipated mining will occur. The information provided shall be limited to that required to relate the basin or subbasin hydrology to the hydrology of the proposed permit area.

Section 5. Eligibility for Assistance. An applicant is eligible for assistance if he or she:

(1) Intends to apply for a permit pursuant to KRS Chapter 350;

(2) Establishes that the probable total actual and attributed production of the applicant from all locations during any consecutive twelve (12) month period either during the term of the permit or during the first five (5) years after issuance of the permit, whichever period is shorter, will not exceed 300,000 [100,000] tons. Production from the following operations shall be attributed to the applicant:

(a) The pro rata share, based upon percentage of ownership of the applicant, of coal produced by operations in which the applicant owns more than a five (5) percent interest;

(b) The pro rata share, based upon percentage of ownership of the applicant, of coal produced in other operations by persons who own more than five (5) percent of the applicant's operation;

(c) All coal produced by operations owned by persons who directly or indirectly control the applicant by reason of direction of the management; and

(d) All coal produced by operations owned by members of the applicant's family and the applicant's relatives, unless it is established that there is no direct or indirect business relationship between or among them.

(3) Is not restricted in any manner from receiving a permit under Title 405, Chapters 7 through 24; and

(4) Does not organize or reorganize his or her

company solely for the purpose of obtaining assistance under this regulation.

Section 6. Filing for Assistance. The application form "Kentucky Small Operator Application for Assistance", revised October 1989, is hereby incorporated by reference. This form may be reviewed or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Each applicant shall submit the following information to the cabinet when filing for assistance:

(1) A statement of the operator's intent to file a permit application;

(2) The names and addresses of:

(a) The permit applicant; and

(b) The operator if different from the applicant.

(3) The names, addresses, and percentages of ownership of all owners of and stockholders in the applicant;

(4) A schedule of the estimated total production of coal from the proposed permit area and all other locations from which production is attributed to the applicant under Section 5(2) of this regulation. The schedule shall include for each location:

(a) The operator or company name under which coal is or will be mined;

(b) The permit number and MSHA number if currently or previously permitted;

(c) The estimated coal production for each year of the proposed permit and that portion attributed to the applicant; and

(d) Mine location (county).

(5) The Kentucky coal severance tax vendor number and copies of payments for the past twelve (12) months made by the applicant and any affiliated companies as defined under Section 5(2) of this regulation;

(6) A description of:

(a) The proposed method of coal mining;

(b) The anticipated starting and termination dates of mining operations;

(c) The total number of acres of land to be affected by the proposed mining and number of acres (surface or underground) from which coal is to be removed;

(d) A general statement on the probable depth and thickness of the coal resource, and the name(s) of the coal seam(s) to be mined; and

(e) A statement identifying the coal resources in the permit area and the method by which they were calculated.

(7) A USGS topographic map of 1:6,000 scale or larger or other topographic map of equivalent detail which clearly shows:

(a) The area of land to be affected;

(b) The names of property owners within the area to be affected and of adjacent lands;

(c) The location and extent of known workings for the proposed underground mine; and

(8) Copies of documents which show that:

(a) The applicant has a legal right to enter and commence mining within the permit area; and

(b) A legal right of entry has been obtained for the cabinet and laboratory personnel to inspect the lands to be mined and adjacent lands which may be affected to collect environmental data or to install necessary instruments.

Section 7. Application Approval and Notice. (1) If the cabinet finds the applicant eligible and it does not have information readily available which would preclude issuance of a permit to the applicant for mining in the area proposed, it shall:

(a) Notify the applicant in writing that the application is approved;

(b) Determine the minimum data requirements necessary to meet the provisions of Section 8 of this regulation; and

(c) Select the services of one (1) or more qualified laboratories to perform the required work. A copy of the contract or other appropriate work order and the final approved reports shall be provided to the applicant.

(2) If the cabinet finds the applicant ineligible, the applicant shall be informed in writing that the application is denied and the reasons for denial shall be stated.

(3) The granting of assistance under this regulation shall not be a factor in decisions by the cabinet on a subsequent permit application.

Section 8. Data Requirements. (1) General. This section describes the minimum requirements for the collection of data to meet the objectives of this Program. The cabinet shall determine the data collection requirements for each applicant or group of applicants. Data collection and analysis may proceed concurrently with the development of mining and reclamation plans by the applicant.

(2) Specific provisions. Pursuant to Sections 1 through 4 of this regulation, data and information required to be contained in permit applications under the regulations listed in this subsection, may be supplied under this Program.

(a) Surface mines.

1. 405 KAR 8:030, Section 12; General requirements for geology and hydrology.

2. 405 KAR 8:030, Section 13; Geology information.

3. 405 KAR 8:030, Section 14; Groundwater information.

4. 405 KAR 8:030, Section 15; Surface water information.

5. 405 KAR 8:030, Section 16; Alternative water supply information.

6. 405 KAR 8:030, Section 17; Climatological information.

7. 405 KAR 8:030, Section 20(2)(c); Biological assessment of surface waters.

8. [7.] 405 KAR 8:030, Section 32(1); Description of measures to protect the hydrologic balance.

9. [8.] 405 KAR 8:030, Section 32(3); Determination of probable hydrologic consequences of mining.

10. [9.] 405 KAR 8:030, Section 32(4); Plan for monitoring groundwater and surface water.

(b) Underground mines:

1. 405 KAR 8:040, Section 12; General requirements for geology and hydrology.

2. 405 KAR 8:040, Section 13; Geology information.

3. 405 KAR 8:040, Section 14; Groundwater information.

4. 405 KAR 8:040, Section 15; Surface water information.

5. 405 KAR 8:040, Section 16; Alternate water supply information.

6. 405 KAR 8:040, Section 17; Climatological information.

7. 405 KAR 8:040, Section 20(2)(c); Biological assessment of surface waters.

8. [7.] 405 KAR 8:040, Section 32(1); Description of measures to protect the hydrologic balance.
9. [8.] 405 KAR 8:040, Section 32(3); Determination of the probable hydrologic consequences of mining.
10. [9.] 405 KAR 8:040, Section 32(4); Plan for monitoring groundwater and surface water.

(3) Data availability. Data collected under this Program shall be made available to all interested persons, except information related to the chemical and physical properties of coal. Information regarding the mineral or elemental content of the coal which is potentially toxic in the environment shall be made available.

Section 9. Allocation of Funds. If available funds are not sufficient to provide services under this regulation to all eligible applicants, the cabinet shall allocate the available funds among eligible applicants based upon a formula which shall include, but shall not be limited to, the following factors:

(1) Date of filing of application for assistance; and

(2) Anticipated date for commencing mining operations.

Section 10. Qualified Laboratories. (1) General.

[(a) As used in this section, "qualified laboratory" means a designated public agency, private consulting firm, institution, or analytical laboratory which can provide the required determination, statement, or other eligible services under this Program.]

(a) [(b)] The cabinet shall establish a list of qualified laboratories which may be used by the cabinet under the procedures of this section. A qualified laboratory shall be a designated public agency, private consulting firm, institution, or analytical laboratory which can provide the required determination, statement, or other eligible services under this program.

(b) [(c)] Persons who desire to be included in the list of qualified laboratories established by the cabinet shall apply to the cabinet and provide such information as is necessary to establish the qualifications required by subsection (2) of this section.

(2) Basic qualifications.

(a) To be designated a qualified laboratory, a firm shall demonstrate that it:

1. Is staffed with experienced, professional or technical personnel in the fields applicable to the work to be performed.
2. Is capable of collecting necessary field data and samples.
3. Has adequate space for material preparation and cleaning and sterilizing of necessary equipment and has stationary equipment, storage, and space to accommodate workloads during peak periods.
4. Meets the requirements of the Occupational Safety and Health Act or the equivalent Commonwealth safety and health program.
5. Has the financial capability and business organization necessary to perform the work required.
6. Has analytical, monitoring, and measuring equipment capable of meeting the applicable standards and methods contained in: "Standard Methods for the Examination of Water and Waste Water," 14th Edition, 1975; "Methods for Chemical Analysis of Water and Wastes," 1974; and other references as specified by the cabinet.
7. Has the capability of making hydrologic field measurements and to conduct analytical laboratory determinations by acceptable hydrologic, geologic, or analytical methods or by those appropriate methods or guidelines for data acquisition recommended by the cabinet.

(b) The qualified laboratory shall be capable of performing some or all of the services set forth in Section 8 of this regulation. Subcontractors may be used to provide the services required if [provided] their use is defined in the application for qualification and they meet the requirements established by the cabinet.

Section 11. Applicant Liability. (1) The applicant shall reimburse the cabinet for the costs of the laboratory services performed pursuant to this regulation:

(a) If the applicant submits false information;

(b) If the applicant fails to submit a permit application within one (1) year from the date of receipt of the approved laboratory reports;

(c) If the applicant fails to mine after obtaining a permit;

(d) If the cabinet finds that the applicant's actual and attributed production of coal for all locations exceeds 300,000 [100,000] tons during any consecutive twelve (12) month period either during the term of the permit for which assistance is provided or during the first five (5) years after issuance of the permit, whichever is shorter; or

(e) If the permit rights or the permit application is sold, transferred, or assigned to another person and the transferee's total actual and attributed production exceeds the 300,000 [100,000] ton annual production limit during any consecutive twelve (12) month period during the remaining term of the permit. Under this paragraph, the applicant and its successor are jointly and severally obligated to reimburse the cabinet.

(2) The cabinet may waive the reimbursement obligation if it finds that the applicant at all times acted in good faith.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 12, 1991
FILED WITH LRC: July 15, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed regulation has been scheduled for 9 a.m. (EDT) Thursday, August 29, 1991, in the Department for Surface Mining Reclamation and Enforcement's Main Conference Room (Room B-31) 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 August 24, 1991. The schedule hearing may be cancelled if the contact person has not received any written notice of intent to testify by August 24, 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 regulation 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 regulation but does not wish to testify at the hearing may submit written comments on the proposed regulation at any time before 4:30 p.m. (EDT) on Thursday, August 29, 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:

CONTACT PERSON: 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 regulation specifies the financial and other assistance to be provided to eligible small mine operators. This assistance program is commonly referred to as SOAP. These amendments add biological assessment of surface waters to the list of items that can be paid for. The regulation also broadens the eligibility criteria in accordance with amendments made by Congress. Prior to these amendments, about 400 small operators were eligible for SOAP assistance. By changing the definition of a small operator from one that mines 100,000 tons of coal per year to one that mines 300,000 tons/year, the cabinet estimates that 170 more operators will be eligible.

(a) Direct and indirect costs or savings to those affected:

1. First year: These amendments will save the applicant a small amount of the permit application cost on some applications by providing payment for the cost of biological assessment of streams, where required. For those operators that become newly eligible for SOAP assistance under the new 300,000 tons/year criteria, a substantial savings will be realized because they may then receive assistance for the entire scope of items paid for under SOAP whereas they presently are ineligible for any assistance.

2. Continuing costs or savings: Same as first year.

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: There will be some increase in costs due to providing additional assistance for a higher number of eligible small operators. However, that is the purpose of this program. There will be some increase in administrative costs also.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There will be some increase in paperwork due to the anticipated increase in number of eligible small operators.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: 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 federal law and regulations and KRS Chapter 350 establish the eligibility criteria and the list of items for which financial assistance is available.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 USC 1253, 1255, 1257. 30 CFR Parts 730-733, 735, 795, 917.

2. State compliance standards. Revised Section 5(2) changes the production limit for eligible operations from 100,000 to 300,000 tons per year. Revised Section 6 incorporates by reference the form that applicants for assistance must submit to the cabinet. Revised Sections 8(2)(a) and (b) authorize assistance for biological assessment of surface water. Revised Sections 11(1)(d) and (e) incorporate the new 300,000 tons limit into the requirements for reimbursement of assistance moneys when the production limit is exceeded.

3. Minimum or uniform standards contained in the federal mandate. The federal counterpart to Section 5(2) is at 30 CFR 795.6(a)(2), which presently contains the 100,000 tons/year limit. However, Section 507(c) of SMCRA has been amended effective October 1, 1991 to increase the 100,000 tons to 300,000 tons. (PL 101-508, November 5, 1990, "Abandoned Mine Reclamation Act of 1990.") The federal regulations do not incorporate a particular application form, but the federal counterpart to Section 6 is 795.7. Sections 8(2)(a) and (b), regarding biological assessment of surface waters, do not have direct federal counterpart language. It is the cabinet's understanding that OSM considers appropriate biological assessments to be eligible assistance items under 795.9(b)(1) as part of the determination of probable hydrologic consequences. Because 405 KAR 7:080 Section 6 contains a more detailed listing than the federal regulation of specific regulatory requirements for which assistance may be provided, and because the biological assessment of surface water is called for at 405 KAR 8:030/8:040 Section 20(2)(c), the cabinet considers it appropriate to list this item separately in 7:080.

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 than the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different

responsibilities or requirements. Requirements are consistent with the federal mandate.

**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)] <u>or seams</u> 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 <u>the</u> filing <u>of the preliminary application</u>, 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 following forms, which are required to be submitted by applicants, are hereby incorporated by reference:

1. Preliminary Application, SMP-03, revised August 3, 1984;

2. Application for a Comprehensive Mining and Reclamation Permit, SMP-01-R, November, 1985;

3. Application for Mining Permit Revision, SMP-02-REV, December, 1987;

4. Application for Renewal of a Comprehensive Mining and Reclamation Permit, SMP-01-N1, September, 1987;

5. Application for Coal Marketing Reclamation Deferment, SMP-09, October, 1984;

6. Notification of Operator Change, SMP-11, August, 1990;

7. Notification of Change in Corporate Permittee and/or Corporate Name, SMP-10, December, 1987; and

8. Application for Transfer, Assignment or Sale of Permit Rights, SMP-08, October, 1982.

(d) These forms may be reviewed or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(e) [(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, if [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) If [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 <u>when</u> [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 or an application for transfer, assignment, or sale of permit rights 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. If [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 when [where] evidence to the contrary is set forth in the permit application, or when [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:

1. 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; 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).

(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).

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. If the applicant has entered into a payment schedule approved by OSM, a permit may be issued only if it includes a condition that the permittee comply with the approved payment schedule.

(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 when [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) If [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) Except as provided in subsections (3)(f) and (6) of this section, a revision shall be deemed [is] a major revision if the cabinet determines that 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; and

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 under subsection (2) of this section to be major revisions, or which are not operator change revisions under subsection (6) of this section, shall be deemed [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 if [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 if [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, if [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), if [provided that] the diameter of the proposed additional culvert is equal to the diameter of the nearest downstream crossdrain and if it 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, if [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 if [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 if [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 if [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 if [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 if [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 if [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 if [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 if [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.]

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

24. [25.] Proposals for incidental boundary revisions for minor off-permit disturbances if [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 in subsection (5) of this section [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.

25. [26.] Except as provided below, proposals to remove sedimentation ponds previously approved as permanent impoundments if [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 if:

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.

26. [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 if [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.

(f) Incidental boundary revisions shall be deemed minor revisions if they:

1. Do not exceed ten (10) percent of the relevant surface or underground acreage in the original or amended permit area;

2. Are contiguous to the current permit area;

3. Are within the same watershed as the current permit area;

4. Are required for an orderly continuation of the mining operation;

5. Involve mining of the same coal seam or seams as in the current permit;

6. Involve only lands for which the hydrologic and geologic data and the probable hydrologic consequences determination in the current permit are applicable;

7. Do not involve properties on which mining is prohibited under KRS 350.085 and 405 KAR 24:040, unless appropriate waivers have been obtained, or which have been designated as unsuitable for mining under 405 KAR 24:030, or any properties eligible for listing on the National Register of Historic Places;

8. Do not involve any of the categories of mining in 405 KAR 7:060 and 405 KAR 8:050 unless the current permit already includes the relevant category;

9. Do not constitute a change in the current method of mining; and

10. Will be reclaimed in conformity with the current reclamation plan.

(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) Size limitations for incidental boundary revisions.

(a) For surface mining activities, an incidental boundary revision shall not exceed ten (10) percent of the acreage in the original or amended permit area, and shall not exceed twenty (20) acres.

(b) For underground mining activities and auger mining, incidental boundary revisions for surface operations and incidental boundary revisions for underground workings shall be determined separately.

1. For surface operations, an incidental boundary revision shall not exceed the greater of two (2) acres or ten (10) percent of the acreage of surface operations in the original or amended permit area, and shall not exceed twenty (20) acres.

2. For underground workings, an incidental boundary revision shall not exceed ten (10) percent of the acreage of underground workings in the original or amended permit area, and shall not exceed twenty (20) acres.

(c) Cumulative incidental acreage added by successive incidental boundary revisions shall not exceed the limitations in this subsection. Acreage added by incidental boundary revisions prior to a permit amendment shall not be counted toward cumulative incidental acreage after the amendment.

(6) Operator change revisions.

(a) This subsection shall apply to all operator changes that do not constitute a transfer, assignment or sale of permit rights.

(b) A permittee shall not allow an operator to conduct operations on the permit area unless the operator has been approved in the permit.

(c) A permittee proposing to change the operator approved in the permit shall submit a complete and accurate application for approval of the change. The application shall be on forms provided by the cabinet. The required forms are incorporated by reference at 405 KAR 8:030, Section 1 and 405 KAR 8:040, Section 1.

(d) The application shall include, but shall not be limited to, the information set forth in this paragraph:

1. The permit number, the name and business address of the permittee, the telephone number of the permittee, and the identifying number assigned to the permittee by the cabinet;

2. The name, business address and telephone number of the operator approved in the permit, and the identifying number, if any, assigned to the approved operator by the cabinet;

3. For the proposed operator and persons related to the proposed operator through ownership or control, the same information as required for applicants and persons related to applicants through ownership or control by Sections 2(1) through (4) and (8) of 405 KAR 8:030 and 405 KAR 8:040, and Sections 2(11) through (13) of those regulations shall also apply; and

4. For the proposed operator and persons related to the proposed operator through ownership or control, the same information as required for applicants and persons related to applicants through ownership or control by Sections 3(1) through (3) of 405 KAR 8:030 and 405 KAR 8:040, except information under Section 3(3) pertaining to abated violations shall not be required, and Section 3(5) of those regulations shall also apply.

(e) The application shall be verified under oath by the permittee and the proposed operator in the manner required under Section 7 of this regulation.

(f) On or after the date the application has been submitted to the cabinet, the application shall be advertised at least once 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. The advertisement shall be entitled "Notice of Intention to Mine" and shall be of a form specified by the cabinet. The advertisement shall include, at a minimum, the permit number, the geographic location of the permit area, the name and business address of the permittee, a statement that the permittee proposes to change the operator approved in the permit, the names and business addresses of the currently approved operator and the proposed operator, the cabinet address to which written comments may be sent under paragraph (g) of this subsection and the time available for submission of the comments. A copy of the advertisement and

proof of publication acceptable to the cabinet shall be filed with the cabinet and made a part of the application not later than fifteen (15) days after the date of publication.

(g) A person whose interests are or may be adversely affected by the cabinet's decision on the proposed operator change, including an officer of a federal, state, or local government agency, may submit written comments on the application to the cabinet within fifteen (15) days after the date of publication of the advertisement.

(h) The cabinet may approve the proposed operator change if it finds, in writing, that the proposed operator:

1. Is eligible to act as an operator under the criteria in Section 13(4) of this regulation; and

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

(i) The cabinet shall notify in writing the permittee, the proposed operator, and any commenters on the application, of its final decision.

(7) [(5)] Fees. Applications for [major and minor] revisions shall include a basic fee of $375, except that minor field revisions and operator change 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, but [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) If [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 if [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 request a formal hearing. Any permittee aggrieved by the notice may request a formal hearing under 405 KAR 7:090.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 12, 1991
FILED WITH LRC: July 15, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed regulation has been scheduled for 9 a.m. (EDT) Thursday, August 29, 1991, in the Department for Surface Mining Reclamation and Enforcement's Main Conference Room (Room B-31) 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 August 24, 1991. The schedule hearing may be cancelled if the contact person has not received any written notice of intent to testify by August 24, 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 regulation 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 regulation but does not wish to testify at the hearing may submit written comments on the proposed regulation at any time before 4:30 p.m. (EDT) on Thursday, August 29, 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:

CONTACT PERSON: 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 regulation establishes procedures for review of permit applications for surface coal mining operations. Although several minor changes are included in these amendments, there are 2 significant amendments: 1) increasing the size of an area that can be added to a permit as an incidental boundary revision rather than through a new permit or amendment, coupled with setting forth criteria for determining if an incidental boundary revision must be treated as a minor revision rather than a major revision; and 2) establishing a new type of revision for approval of a change in a permittee's operator. Currently, the cabinet processes about 300 major revisions per year and about 1,000 minor revisions per year, not including minor "field" revisions.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be some savings to

permittees due to the changes in the incidental boundary revision provisions because a greater number of these changes can be processed as revisions, which is a quicker procedure than obtaining a new permit or amendment. Furthermore, some incidental boundary revisions that previously were treated as major revisions, will now be treated as minor revisions. Minor revisions are easier and faster to obtain than major revisions. There will be some small increase in cost for some permittees who wish to change their operator because this will have to be approved in advance by the cabinet to ensure that the new proposed operator is eligible under law to conduct surface coal mining operations. However, the cabinet will not charge a permit fee for this type of revision.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: There will be an increase in paperwork requirements due to the new procedure for approval of operator changes.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be some increase in cost of operation due to the new procedure of processing applications for changing operators.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There will be an increase in the cabinet's paperwork due to the new procedure for reviewing applications for changing operators.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(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 applicants 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. 27 CFR 55.206, 55.218, 55.219, 55.220. 30 CFR Parts 77.1301(c), 730-733, 735, 773-775, 777, 778.17, 917.

2. State compliance standards. These amendments make several changes to bring the state regulation into compliance with federal regulations and changes to KRS Chapter 350 made by the General Assembly. However, the two most significant changes do not have federal counterparts. These changes: 1) increase the size of area that can be treated as an incidental boundary revision and specify that certain incidental boundary revisions are minor revisions; and 2) establish a procedure for approving proposed operator changes.

3. Minimum or uniform standards contained in the federal mandate. The federal regulations do not go into detail on specifying size limits for incidental boundary revisions, but leave that to individual state programs. Under the federal regulations, proposed operator changes would be processed either as revisions or as transfers of permit rights. This would generally provide a result equivalent to Kentucky's proposed treatment of this type of change as a new type of revision.

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. Not applicable.

**NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET**
**Department for Surface Mining Reclamation and Enforcement**
**(Proposed Amendment)**

**405 KAR 8:020. Coal exploration.**

RELATES TO: KRS 350.057, 350.610, 30 CFR Parts 730-733, 735, 772, 917, 30 USC 1253, 1255, 1262

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.057, 350.060, 350.465, 30 CFR Parts 730-733, 735, 772, 917, 30 USC 1253, 1255, 1262

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to coal exploration operations. This regulation specifies when notice to the cabinet is required and when prior written approval is needed from the cabinet for coal exploration operations. This regulation further specifies the application process, information requirements, and hearing and compliance requirements.

Section 1. Exploration in an Area not Designated Unsuitable for Mining and Removing Twenty-five (25) [250] Tons or Less of Coal. (1) Any person who intends to conduct coal exploration during which twenty-five (25) [250] tons or less of coal will be removed and which will not take place in an area designated unsuitable for mining pursuant to 405 KAR Chapter 24 shall, at least twenty-one (21) days prior to conducting the exploration, file with the cabinet a written notice of intention to explore.

(2) The notice shall include:

(a) The name, address, and telephone number of the person seeking to explore;

(b) The name, address, and telephone number of the representative who will be present at and responsible for conducting the exploration activities;

(c) A precise narrative description of the exploration area, or a map at a scale of 1:24,000 or greater, describing or showing the proposed area of exploration (including latitude, longitude, nearest community, and USGS quadrangle), existing and proposed roads,

occupied dwellings, topographic features, bodies of surface water, pipelines, and the general location of drill holes and trenches;

(d) A statement of the period of intended exploration;

(e) The names and addresses of the owner of record of the surface land and of the subsurface mineral estate of the area to be explored; and

(f) A description of the method of exploration to be used and the practices that will be followed to protect the environment and to reclaim the area from adverse impacts of the exploration activities in accordance with the applicable requirements of 405 KAR 20:010.

(3) The cabinet shall, in accordance with Section 3 of this regulation, place the notices on public file and make them available for public inspection and copying at the appropriate regional office of the cabinet.

(4) Any person who conducts coal exploration activities pursuant to this section which substantially disturb the natural land surface shall comply with 405 KAR 20:010.

Section 2. Exploration Removing More Than Twenty-five (25) [250] Tons of Coal and Exploration in an Area Designated Unsuitable for Mining, Regardless of Tonnage. (1) General. Any person who intends to conduct coal exploration in which more than twenty-five (25) [250] tons of coal will be removed, or which will take place in a area designated unsuitable for mining pursuant to 405 KAR Chapter 24, shall, prior to conducting the exploration, submit an application and obtain the written approval of the cabinet in accordance with this section.

(2) Contents of application for approval. Each application for approval, in the number and form required by the cabinet, shall contain, at a minimum:

(a) The name, address, and telephone number of the applicant;

(b) The name, address, and telephone number of the representative of the applicant who will be present at and be responsible for conducting the exploration;

(c) An exploration and reclamation operations plan, including:

1. A narrative description of the proposed exploration area, cross-referenced to the map required under paragraph (e) of this subsection, including latitude, longitude, and nearest community; surface topography; geological, surface water, and other physical features; vegetative cover, the distribution and important habitats of fish, wildlife, and plants, including, but not limited to, any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 USC 1531 et seq.); cultural or historic resources listed or known to be eligible for listing on the National Register of Historic Places; known archaeological resources located within the proposed exploration area; and any other information which the cabinet may require regarding known or unknown historic or archaeological resources;

2. A narrative description of the methods to be used to conduct coal exploration and reclamation, including, but not limited to, the types and uses of equipment, drilling, blasting, road or other access route construction, and excavated earth and other debris disposal activities;

3. An estimated timetable for conducting and completing each phase of the exploration and reclamation;

4. The estimated amounts of coal to be removed and a description of the methods to be used to determine those amounts;

5. A description of the measures to be used to comply with the applicable requirements of 405 KAR 20:010; and

6. A statement as to whether the proposed coal exploration will be conducted within an area which has been designated unsuitable for mining pursuant to 405 KAR Chapter 24. If so, the application shall include a description of the measures to be taken so as not to interfere with the values for which the area was designated unsuitable;

(d) The name and address of the owner of record of the surface land and of the subsurface mineral estate of the area to be explored;

(e) 1. A USGS seven and one-half (7 1/2) minute topographic map marked showing the area of land to be affected and location of drill holes or excavations, and

2. A map at a scale of 1:6000 (one (1) inch equals 500 feet) or larger, showing the areas of land which may be affected by the proposed exploration and reclamation. The map shall also specifically show existing roads, occupied dwellings, and pipelines; proposed location of trenches, roads, and other access routes and structures to be constructed; the location of land excavations to be conducted; water or coal exploratory holes and wells to be drilled or altered; earth or debris disposal areas; existing bodies of surface water; historic, cultural, topographic, and drainage features; and habitats of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 USC 1531 et seq.);

(f) If the surface is owned by a person other than the applicant, a description of the basis upon which the applicant claims the right to enter that land for the purpose of conducting exploration and reclamation;

(g) A justification of the necessity to remove more than twenty-five (25) [250] tons of coal from the area during exploration; and

(h) A fee of $375.

(3) Public notice and opportunity to comment. Public notice of the application and opportunity to comment shall be provided as follows:

(a) As contemporaneously as possible with receipt of written notification from the cabinet under subsection (4)(a) of this section that the application has been determined to be administratively complete, public notice of the filing of the administratively complete application with the cabinet shall be published by the applicant 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 exploration area is to be located.

(b) The public notice shall state the name and business address of the person seeking approval, the date of the filing of the administratively complete application, the address of the cabinet at which written comments on the application may be submitted, the closing date of the public comment period under paragraph (c) of this subsection, and a description of the general area of exploration.

(c) Any person with an interest which is or may be adversely affected shall have the right to file with the cabinet written comments on the

application within thirty (30) days of the publication of the public notice under paragraph (a) of this subsection.

(4) Processing of applications.

(a) Within ten (10) working days of receipt of an application for approval of coal exploration operations, the cabinet shall provide written notification to the applicant as to the administrative completeness of the application. The date of written notification shall be deemed the date of filing of the administratively complete application. A determination by the cabinet that the application is administratively complete shall not mean that the application is technically sufficient.

(b) The cabinet shall act upon an application within sixty (60) days after the filing of the administratively complete application.

(c) The cabinet shall approve a complete and accurate application filed in accordance with this regulation, if it finds, in writing, that the applicant has demonstrated that the exploration and reclamation described in the application:

1. Will be conducted in accordance with KRS Chapter 350, 405 KAR 20:010, and this regulation;

2. Will not jeopardize the continued existence of an endangered or threatened species listed pursuant to Section 4 of the Endangered Species Act of 1973 (16 USC 1533) or result in the destruction or adverse modification of critical habitat of those species;

3. Will not adversely affect any cultural or historic resources listed on the National Register of Historic Places, unless the proposed exploration has been approved by both the cabinet and the agency with jurisdiction over the areas;

4. If located within an area designated unsuitable for mining, will not be incompatible with the values for which the area was designated unsuitable for mining; and

5. If removal of more than twenty-five (25) [250] tons of coal has been proposed, that the removal is justified.

(5) Terms of approval. Each approval issued by the cabinet shall contain conditions necessary to ensure that the exploration and reclamation will be conducted in compliance with KRS Chapter 350, this regulation, and 405 KAR 20:010.

(6) Notice and hearing:

(a) The cabinet shall notify the applicant, the appropriate local government officials, and all commenters on the application, in writing, of its decision on the application. If the application has been disapproved, the notice to the applicant shall include a statement of the reason for disapproval. The cabinet shall provide public notice of approval or disapproval of each application by publication of notice 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 exploration operations are to be located.

(b) Any person having an interest which is or may be adversely affected by a decision of the cabinet pursuant to paragraph (a) of this subsection shall have the opportunity for administrative and judicial review as set forth in 405 KAR 8:010, Section 24.

Section 3. Public Availability of Information. (1) Except as provided in subsection (2) of this section, all information submitted to the cabinet under this regulation shall be made readily available for public inspection and copying pursuant to Kentucky open record statutes KRS 61.870 to 61.884, at the appropriate Regional Office of the Department of Surface Mining Reclamation and Enforcement.

(2)(a) The cabinet shall not make information available for public inspection, if the person submitting it requests in writing, when it is submitted, that it not be disclosed and the cabinet determines that the information is confidential.

(b) The cabinet shall determine that information is confidential only if it concerns trade secrets or is privileged commercial or financial information which relates to the competitive rights of the person intending to conduct coal exploration.

(c) Information requested to be held as confidential under this subsection shall not be made publicly available until notice and opportunity to be heard has been afforded persons seeking or opposing disclosure of the information.

Section 4. Commercial Use or Sale. (1) Except as provided under subsection (2) of this section, any person who intends to commercially use or sell coal extracted during coal exploration operations that are subject to Section 2 of this regulation shall first obtain a permit to conduct surface coal mining and reclamation operations under 405 KAR 8:010.

(2) With the prior written approval of the cabinet, no permit to conduct surface coal mining and reclamation operations shall be required for the sale or commercial use of coal extracted during coal exploration operations if the sale or commercial use is for coal testing purposes only. The person conducting the exploration shall file an application for the approval with the cabinet. The application shall demonstrate that the coal testing is necessary for the development of a surface coal mining and reclamation operation for which a surface coal mining and reclamation operations permit application is to be submitted in the near future, and that the proposed commercial use or sale of coal extracted during exploration operations is solely for the purpose of testing the coal. The application shall contain the following:

(a) The name of the testing firm and the locations at which the coal will be tested;

(b) If the coal will be sold directly to, or commercially used directly by, the intended end user, a statement from the intended user, or if the coal is sold indirectly to the intended end user through an agent or broker, a statement from the agent or broker. The statement shall include:

1. The specific reason for the test, including why the coal may be so different from the intended user's other coal supplies as to require testing;

2. The amount of coal necessary for the test and why a lesser amount is not sufficient; and

3. A description of the specific tests that will be conducted;

(c) Evidence that sufficient reserves of coal are available to the person conducting exploration or his principals for future commercial use or sale to the intended end user, or agent or broker of the user identified above, to demonstrate that the amount of coal to be removed is not the total reserve, but is a

sampling of a larger reserve; and

(d) An explanation as to why other means of exploration, such as core drilling, are not adequate to determine the quality of the coal and the feasibility of developing a surface coal mining operation.

Section 5. [4.] Compliance. All coal exploration and reclamation operations which substantially disturb the natural land surface shall be conducted in accordance with the coal exploration requirements of KRS Chapter 350, this regulation, and 405 KAR 20:010, and any conditions on approval for exploration and reclamation imposed by the cabinet.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 12, 1991
FILED WITH LRC: July 15, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed regulation has been scheduled for 9 a.m. (EDT) Thursday, August 29, 1991, in the Department for Surface Mining Reclamation and Enforcement's Main Conference Room (Room B-31) 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 August 24, 1991. The schedule hearing may be cancelled if the contact person has not received any written notice of intent to testify by August 24, 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 regulation 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 regulation but does not wish to testify at the hearing may submit written comments on the proposed regulation at any time before 4:30 p.m. (EDT) on Thursday, August 29, 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:

CONTACT PERSON: 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 regulation applies to coal exploration operations. These amendments change the breakpoint between a requirement to obtain approval for coal exploration vs. a requirement to simply notify the cabinet that the coal exploration will occur. The breakpoint changes from removal of 250 tons of coal to 25 tons of coal and is in accordance with amendments to KRS Chapter 350 by the 1990 General Assembly. Other changes are made to comply with revised federal regulations concerning the map of the exploration area included with an exploration notice, and concerning the process and criteria for approving the sale of coal removed during exploration for coal testing purposes. Currently there are about 500 coal exploration operations in existence, all of which are in the less than 25 tons removal category. This regulation also indirectly affects the general public in the coal field regions.

(a) Direct and indirect costs or savings to those affected:

1. First year: It is not anticipated that these changes will affect many coal exploration operations in any significant way. If there are any exploration operations in the future that intent to remove between 25 to 250 tons of coal, they will now have to obtain approval rather than simply provide notice. This will result in a small cost for submitting an application. However, the change to 25 tons became effective by law a year ago, and there have been no applications for coal exploration operations that remove 25 tons of coal or more. There should be very few applications for approval of sale of coal for coal testing purposes, but a small cost will be involved for those cases.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: There will be an increase in paperwork requirements on any future exploration operations that previously would have been subject to the notice provisions that now are subject to the approval provisions. Similarly, there will be an increase in paperwork for those few persons seeking approval to sell coal extracted during coal exploration for coal testing purposes.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There may be a very minor increase in cost of operation due to processing a few applications to sell coal extracted during coal exploration for coal testing purposes.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There may be a very minor increase in paperwork due to processing a few applications to sell coal extracted during coal exploration for coal testing purposes.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering is not applicable to this proposed amendment because Kentucky surface mining law established

25 tons as the criterion for requiring approval of the exploration operations vs. the simpler notice requirements. The remaining requirements are established by federal regulation and must apply equally to all coal exploration operations.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 USC 1253, 1255, 1262. 30 CFR Parts 730-733, 735, 772, 917.
2. State compliance standards. These amendments change the breakpoint between coal exploration operations that must obtain approval from the cabinet and those that may simply provide notice that exploration will occur, from removal of 250 tons to 25 tons. These amendments also provide more detail on what is required in an exploration notice regarding a description of the exploration area and provide procedures for approving the commercial use or sale of coal extracted during exploration, for coal testing purposes.
3. Minimum or uniform standards contained in the federal mandate. Except for the change of 250 tons of coal to 25 tons of coal described above, the federal requirements are the same as Kentucky's proposed amendments.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes, the state regulation requires approval for all coal exploration operations greater than 25 tons removed, rather than 250 tons.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This stricter standard was established in KRS Chapter 350 by the 1990 General Assembly.

**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.
[(4)(a) The following forms, which are required to be submitted by applicants, are hereby incorporated by reference:]
[1. Preliminary Application, SMP-03, revised August 3, 1984;]
[2. Application for a Comprehensive Mining and Reclamation Permit, SMP-01-R, November, 1985;]
[3. Application for Mining Permit Revision, SMP-02-REV, December, 1987;]
[4. Application for Renewal of a Comprehensive Mining and Reclamation Permit, SMP-01-N1, September, 1987;]
[5. Application for Coal Marketing Reclamation Deferment, SMP-09, October, 1984;]
[6. Notification of Operator Change, SMP-11, August, 1990;]
[7. Notification of Change in Corporate Permittee and/or Corporate Name, SMP-10, December, 1987; and]
[8. Application for Transfer, Assignment or Sale of Permit Rights, SMP-08, October, 1982.]
[(b) The forms incorporated by reference in paragraph (a) of this subsection may be reviewed or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

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) The names and addresses of:

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

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

[(6) 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.]

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

(7) [(8)] 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.

(8) [(9)] 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.

(9) [(10)] 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.

(10) [(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.

(11) The permittee shall, in writing, inform the cabinet of any change of the permittee's address immediately if changed at any point prior to final bond release.

(12) The permittee shall submit updates of the following information in writing to the cabinet within thirty (30) days of the effective date of any change. Updates shall be submitted for any changes that occur at any point prior to final bond release. Failure to submit updated information shall constitute a violation of KRS Chapter 350 only upon the permittee's refusal or failure to timely submit, as determined by the cabinet, the information to the cabinet upon request. The cabinet may suspend permits pending compliance with this subsection:

(a) The names and addresses of every officer, partner, director, or person performing a function similar to a director of the permittee;

(b) The names and addresses of principal shareholders; and

(c) Whether the permittee or other persons specified in this subsection are subject to any of the provisions of KRS 350.130(3).

[(12) The applicant shall submit the information required by this section and Section 3 of this regulation on the appropriate forms, incorporated by reference in Section 1(4) of this regulation.]

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

(1) A statement of whether the applicant or [,] 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 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 permit or forfeited the 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:

(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;

(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 violation, including, but not limited to, proceedings initiated by any person identified in this subsection to obtain administrative or judicial review of the violation; and

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

3. The actions, if any, taken or being taken by any person identified in this subsection 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) Upon request by a small operator as defined in KRS 350.450(4)(c[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) If [Where] the private mineral estate to be mined has been severed from the private surface estate, the application shall contain: [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.]

(a) A copy of the written consent of the surface owner for the extraction of coal by surface mining methods; or

(b) A copy of the conveyance that expressly grants or reserves the right to extract coal by surface mining methods; or

(c) If the conveyance does not expressly grant the right to extract the coal by surface mining methods, a copy of the original instrument of serverance upon which the applicant bases his right to extract coal by surface mining methods and documentation that under applicable state law, the applicant has the legal authority to extract the coal by those 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).

(4) If the applicant proposes to conduct surface mining activities within 100 feet of a public road, the requirements of 405 KAR 24:040, Section 2(6) shall be met.

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 for a permit, major revision, amendment, transfer, or renewal of a permit and proof of publication of the advertisement, which is acceptable to the cabinet, 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. (1) General. Each application shall include fish and wildlife resources information for the permit area and the adjacent area. This information shall be in the scope and detail required by the cabinet, and shall be sufficient to design the fish and wildlife protection and enhancement plan and to demonstrate compliance with SMCRA; KRS Chapter 350; and 405 KAR Chapters 7 through 24.

(2) The information, at a minimum, shall include:

(a)1. Identification of listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary of the Interior under the Endangered Species Act of 1973, as amended (16 USC Sec. 1531 et seq.), or those species or habitats protected by similar state statutes;

2. Identification and description of habitats of unusually high value for fish and wildlife such as important streams classified under 405 KAR 16:180, Section 2(1)(a)3, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, and reproduction and wintering areas. Information obtained pursuant to paragraphs (b) and (c) of this subsection and, as appropriate, from pertinent literature and other sources shall be used to compile this information;

3. Identification of other species or habitats identified through agency consultation as requiring special protection under state or federal law; and

4. The delineation of the following on the environmental resources map: the permit area; any baseline biological and hydrological stations; ephermeral, intermittent, and perennial streams, with their names; outstanding resource waters listed pursuant to 401 KAR 5:026 or 401 KAR 5:031; streams listed in Appendix G of TRM #20; stream buffer zones; wetlands; lakes and impoundments; nature preserves dedicated pursuant to KRS 146.410 et seq.; publicly-owned wildlife management areas; natural areas owned

or managed by state universities; and any other distinctive features.

(b) A terrestrial habitat analysis of the permit area and contiguous area. This habitat analysis shall:

1. Address all terrestrial habitats;

2. Address canopy, understory, and ground cover plant species with their relative abundances or stratum-rank values;

3. Describe the capacity of the existing terrestrial habitats to support wildlife; and

4. Include a delineation of all terrestrial habitats on the vegetation map required under Section 19 of this regulation or on another appropriate map.

(c)1. At least one (1) set of current (as set forth in TRM #20) baseline aquatic resources information collected from at least three (3) representative locations if:

a. The permit area or adjacent area contains, or could reasonably be expected to contain, streams with listed or proposed endangered or threatened aquatic species of plants or animals or their critical habitats listed by the Secretary of the Interior under the Endangered Species Act of 1973, as amended (16 USC Sec. 1531 et seq.), or those aquatic species or habitats protected by similar state statutes;

b. The permit area or adjacent area includes an important stream classified under 405 KAR 16:180, Section 2(1)(a)3; or

c. A stream buffer zone variance is requested under 405 KAR 16:060, Section 11.

2. This information shall include:

a. Biological information on the fish and macroinvertebrate communities, including taxa richness, relative abundance, biotic integrity, and the prevalence of tolerant or intolerant species;

b. The results of water quality analyses, from locations where biological data were collected, for the parameters specified in Section 15 of this regulation and for dissolved oxygen; and

c. A description of the physical characteristics of the stream sections where biological data were collected.

(3) Other data requirements.

(a)1. The information required by subsection (2) of this section shall be obtained in accordance with TRM #20, "Methodologies for the Evaluation, Protection, and Enhancement of Fish and Wildlife Resources for Coal Mining and Reclamation Operations", Kentucky Department for Fish and Wildlife Resources and Kentucky Department for Surface Mining Reclamation and Enforcement, June 28, 1991. This document is hereby incorporated by reference. This document may be reviewed or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

2. Wetland evaluations shall be conducted in accordance with the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands", (FICWD, 1989). This manual provides several methods for differentiating between wetland and nonwetland areas; however, an intermediate or comprehensive method shall be followed for wetland determinations under this regulation. This document is hereby incorporated by reference. This document may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. This document may be reviewed or copied, subject to copyright law, at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(b) As necessary, the cabinet shall consult with appropriate state and federal agencies with responsibilities for fish and wildlife, and may require additional information from the applicant to demonstrate compliance with SMCRA; KRS Chapter 350; and 405 KAR Chapters 7 through 24. Upon request, the cabinet shall provide the resource information required under this section to the U.S. Department of the Interior, Fish and Wildlife Service regional or field office for their review within ten (10) days of receipt of the request from the service.

(c) The baseline fish and wildlife resources information shall be collected by or under the direction of qualified professionals. Recommended minimum qualifications are outlined in TRM #20.

(d) Any aquatic biological specimens collected during the baseline study shall be labeled, preserved, maintained, and made available for inspection until the permit is issued or denied, or the application is permanently withdrawn, or until completion of any hearing on the application, whichever is later.

(e) Existing field data may be used instead of conducting field investigations, if the existing data are current as set forth in TRM #20, specific to the permit area and adjacent area, and sufficient to demonstrate compliance with this section.

(4) This section shall apply to applications for permits, amendments, and revisions submitted to the cabinet on or after nine (9) months following the effective date of these amendments, and shall apply to those applications for revisions and amendments in accordance with TRM #20. [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) If [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) If [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 this [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 Protection and Enhancement. (1) Each application shall include a description of how, to the extent possible using the best technology currently available and in compliance with 405 KAR 16:180, the permittee will minimize disturbances and adverse impacts on fish and wildlife and related environmental values, including compliance with the Endangered Species Act, during the surface coal mining and reclamation operations, and how enhancement of these resources will be achieved where practicable.

(2) This description shall:

(a) Apply, at a minimum, to species and habitats identified under Section 20(2) of this regulation;

(b) Include protective measures, in accordance with TRM #20, that will be used during mining and reclamation. Protective measures may include the establishment of buffer zones, the selective location and special design of haul roads and powerlines, and the monitoring of surface water;

(c) Include enhancement measures, in accordance with TRM #20, that will be used during the reclamation and postmining phase of operation to develop aquatic and terrestrial habitat. Enhancement measures may include restoration of streams and wetlands, retention of ponds or impoundments, establishment of vegetation for wildlife food or cover, and the placement of perches and nesting boxes. If the plan does not include enhancement measures, a statement shall be given explaining why enhancement is not practicable;

(d) Include a delineation of proposed wildlife habitats and enhancement measures on the postmining land use map or on another appropriate map; and

(e) Be prepared by or under the direction of a qualified professional. Recommended minimum qualifications are outlined in TRM #20.

(3) As necessary, the cabinet shall consult with appropriate state and federal fish and wildlife management agencies, state and federal conservation agencies, and state and federal land management agencies, and may require additional protection and enhancement measures from the applicant. Upon request, the cabinet shall provide the protection and enhancement plan required under this section to the U.S. Department of the Interior, Fish and Wildlife Service regional or field office for their review within ten (10) days of receipt of the request from the service.

(4) This section shall apply to applications for permits, amendments, and revisions submitted to the cabinet on or after nine (9) months following the effective date of these amendments, and shall apply to those applications for revisions and amendments in accordance with TRM #20. [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 land use or uses following reclamation of the land within the proposed permit area, including:

(a) 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:]

(b) A discussion of [(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, including but not necessarily limited to management practices to be conducted during the liability period for the commercial forest land, cropland (including

hayland), and pastureland land uses;

(c) If [(b) Where] a land use different from the premining land use is proposed, all supporting documentation required [submitted] for approval of the proposed use under 405 KAR 16:210;

(d) A discussion of [(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.]

(e) [(2) The description shall be accompanied by] A copy of the comments concerning the proposed use from [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.

(2) [(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 Chapters 7 through 24.

[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.]

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 12, 1991
FILED WITH LRC: July 15, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed regulation has been scheduled for 9 a.m. (EDT) Thursday, August 29, 1991, in the Department for Surface Mining Reclamation and Enforcement's Main Conference Room (Room B-31) 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 August 24, 1991. The schedule hearing may be cancelled if the contact person has not received any written notice of intent to testify by August 24, 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 regulation 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 regulation but does not wish to testify at the hearing may submit written comments on the proposed regulation at any time before 4:30 p.m. (EDT) on Thursday, August 29, 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:

CONTACT PERSON: 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 regulation establishes application requirements for surface mining activities and its counterpart 405 KAR 8:040 establishes requirements for underground mining activities. Currently the cabinet is receiving about 1,200 applications for original permits and amendments per year. About 1,300 applications for major and minor revisions are received per year (not including minor "field" revisions). These amendments indirectly affect the general public in the coal field regions. These amendments include several changes to bring the requirements into line with changes to the federal regulations and changes made to KRS Chapter 350 by the General Assembly. The most significant changes are new requirements to provide information concerning fish and wildlife resources for the proposed permit area and adjacent area and to provide a plan for the protection and enhancement of those resources. Another significant addition is a requirement to provide updated information on the permittee's officers, partners, directors, and principal shareholders when changes occur.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be some increase in the cost of preparing an application for a new permit and for some, but not all, applications for revisions and amendments. These costs will be due to gathering fish and wildlife resource information and designing a protection and enhancement plan. Data on terrestrial wildlife habitats will be required in all cases. Biological data from potentially impacted streams will be required only in certain specified situations. The cabinet has conducted a fish and wildlife study to determine the time and resources that will be required to gather the data, analyze the data, and prepare the report. The cabinet estimated the cost, including profit, would be about $1,600 for the site studied, which was relatively complex. The cabinet estimates that $1,500 to $2,000 would be

a reasonable cost range for a proposed mine that had to gather aquatic biological data as well as the terrestrial wildlife habitat data. Of course, there will be cases where these costs will be higher due to a large permit area, due to potential to impact several streams for which biological data is required, and where wetlands will be involved. Where only terrestrial data is required, the cost would be substantially lower, in the $600-$1,000 range. Some additional costs will be incurred by permittees due to the new requirements to update information on principal shareholders, officers, partners, and directors.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The amendments provide that fish and wildlife resource data from existing literature or studies may be accepted in certain circumstances. When acceptable existing data is available, the applicant's cost will be decreased.

(b) Reporting and paperwork requirements: Additional information is required in the applications for fish and wildlife resources. The cabinet has designed forms for this information which will provide for concise reports. Additional paperwork is involved when reporting changes to the permittee's principal shareholders, officers, partners, and directors.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be additional cost of operation of the cabinet due to the review of fish and wildlife resource information and protection and enhancement plans. There will be costs involved in conducting the training necessary to prepare technical staff for this work, and one additional permit reviewer may be necessary. Since there is a 9 month posteffective clause on the fish and wildlife amendments, there will be time to prepare for this program. There will also be additional cost involved in reviewing and processing updated information on principal shareholders, officers, partners, and directors.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There will be additional paperwork for the cabinet due to these amendments.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: The federal fish and wildlife regulations envision a permit by permit consultation with state and federal fish and wildlife agencies to determine information needs. This approach was rejected in favor of the proposed regulations which set forth the information requirements in detail, thus avoiding a permit by permit consultation in the majority of cases. This approach was favored by industry, the environmental community, and the general public because of the high number of permits that must be processed in Kentucky.

(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: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(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 applicants 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. These amendments contain changes to comply with federal regulations and to comply with changes in KRS Chapter 350 made by the General Assembly. The two most significant changes are: 1) the requirement to provide information on fish and wildlife resources information for the permit area and adjacent area and to provide a fish and wildlife protection and enhancement plan, and 2) a requirement to provide updated information when there are changes to a permittee's principal shareholders, officers, partners, or directors. The fish and wildlife requirements are very detailed and technical. They are designed to provide a permit applicant a thorough description of the application requirements so that case by case consultation with the cabinet and other agencies will not generally be required. This will provide for an efficient permit preparation process. The amendments provide detail on data required for terrestrial wildlife habitats, biological data required for selected streams, data requirements for wetlands that may be impacted by mining, etc. It also establishes in some detail the requirements for a fish and wildlife protection and enhancement plan. These requirements have been developed in consultation with state and federal fish and wildlife agencies.

3. Minimum or uniform standards contained in the federal mandate. The federal regulations require that the cabinet determine the scope and detail of the fish and wildlife resource information requirements in consultation with state and federal fish and wildlife agencies. It is envisioned that this will be done on a permit by permit basis, but this does not preclude it being done on a programmatic basis as is proposed by these amendments. Regarding updating information on principal shareholders, officers, partners, or directors, the federal regulations require, as a permit condition, that the permittee provide updated information on persons that own and control the permittee within 30 days after a cessation order is issued to the permittee.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The requirement to provide updated information on principal shareholders, officers, partners, and directors when changes occur is in addition to the requirement to provide updated information on persons that own or control the permittee after a cessation order is issued.

5. Justification for the imposition of the

stricter standard, or additional or different responsibilities or requirements. The additional requirement stated in #4 above was established in KRS Chapter 350 by the General Assembly.

**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.

[(3)(a) The following forms, which are required to be submitted by applicants, are hereby incorporated by reference:]

[1. Preliminary Application, SMP-03, revised August 3, 1984;]

[2. Application for a Comprehensive Mining and Reclamation Permit, SMP-01-R, November, 1985;]

[3. Application for Mining Permit Revision, SMP-02-REV, December, 1987;]

[4. Application for Renewal of a Comprehensive Mining and Reclamation Permit, SMP-01-N1, September, 1987;]

[5. Application for Coal Marketing Reclamation Deferment, SMP-09, October, 1984;]

[6. Notification of Operator Change, SMP-11, August, 1990;]

[7. Notification of Change in Corporate Permittee and/or Corporate Name, SMP-10, December, 1987; and]

[8. Application for Transfer, Assignment or Sale of Permit Rights, SMP-08, October, 1982.]

[(b) The forms incorporated by reference in paragraph (a) of this subsection may be reviewed or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

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) The names and addresses of:

(a) 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) 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) 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.

[(6) 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.]

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

(7) [(8)] 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.

(8) [(9)] 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.

(9) [(10)] 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.

(10) [(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.

(11) The permittee shall, in writing, inform the cabinet of any change of the permittee's address immediately if changed at any point prior to final bond release.

(12) The permittee shall submit updates of the following information in writing to the cabinet within thirty (30) days of the effective date of any change. Updates shall be submitted for any changes that occur at any point prior to final bond release. Failure to submit updated information shall constitute a violation of KRS Chapter 350 only upon the permittee's refusal or failure to timely submit, as determined by the cabinet, the information to the cabinet upon request. The cabinet may suspend permits pending compliance with this subsection:

(a) The names and addresses of every officer, partner, director, or person performing a function similar to a director of the permittee;

(b) The names and addresses of principal shareholders; and

(c) Whether the permittee or other persons specified in this subsection are subject to any of the provisions of KRS 350.130(3).

[(12) The applicant shall submit the information required by this section and Section 3 of this regulation on the appropriate forms, incorporated by reference in Section 1(3) of this regulation.]

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

(1) A statement of whether the applicant or [,] 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 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 permit or forfeited the 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:

(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;

(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 violation, including, but not limited to, proceedings initiated by any person

identified in this subsection to obtain administrative or judicial review of the violation; and

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

3. The actions, if any, taken or being taken by any person identified in this subsection 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) Upon request by a small operator as defined in KRS 350.450(4)(c) [(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 contain [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.]

(a) A copy of the written consent of the surface owner for the extraction of coal by surface mining methods; or

(b) A copy of the conveyance that expressly grants or reserves the right to extract coal by surface mining methods; or

(c) If the conveyance does not expressly grant the right to extract the coal by surface mining methods, a copy of the original instrument of severance upon which the applicant bases his right to extract coal by surface mining methods and documentation that under applicable state law, the applicant has the legal authority to extract the coal by those 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).

(4) If the applicant proposes to conduct or locate surface operations or facilities within 100 feet of a public road, the requirements of 405 KAR 24:040, Section 2(6) shall be met.

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 for a permit, major revision, amendment, transfer, or renewal of a permit and proof of publication of the advertisement, which is acceptable to the cabinet, 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 Groundwater 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. (1) General. Each application shall include fish and wildlife resources information for the permit area and the adjacent area as specified below. This information shall be in the scope and detail required by the cabinet, and shall be sufficient to design the fish and wildlife protection and enhancement plan and to demonstrate compliance with SMCRA; KRS Chapter 350; and 405 KAR Chapters 7 through 24.

(2) For the permit area and adjacent area the information shall include, at a minimum:

(a)1. Identification of listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary of the Interior under the Endangered Species Act of 1973, as amended (16 USC Sec.

1531 et seq.), or those species or habitats protected by similar state statutes;

2. Identification and description of habitats of unusually high value for fish and wildlife such as important streams classified under 405 KAR 16:180, Section 2(1)(a)3, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, and reproduction and wintering areas. Information obtained pursuant to paragraphs (b) and (c) of this subsection and, as appropriate, from pertinent literature and other sources shall be used to compile this information;

3. Identification of other species or habitats identified through agency consultation as requiring special protection under state or federal law; and

4. The delineation of the following on the environmental resources map: the permit area; any baseline biological and hydrological stations; ephermeral, intermittent, and perennial streams, with their names; outstanding resource waters listed pursuant to 401 KAR 5:026 or 401 KAR 5:031; streams listed in Appendix G of TRM #20; stream buffer zones; wetlands; lakes and impoundments; nature preserves dedicated pursuant to KRS 146.410 et seq.; publicly-owned wildlife management areas; natural areas owned or managed by state universities; and any other distinctive features.

(b) A terrestrial habitat analysis of the area to be affected by surface operations and facilities and contiguous area. This habitat analysis shall:

1. Address all terrestrial habitats;

2. Address canopy, understory, and ground cover plant species with their relative abundances or stratum-rank values;

3. Describe the capacity of the existing terrestrial habitats to support wildlife; and

4. Include a delineation of all terrestrial habitats on the vegetation map required under Section 19 of this regulation or on another appropriate map.

(c)1. At least one (1) set of current (as set forth in TRM #20) baseline aquatic resources information collected from at least three (3) representative locations if:

a. The area to be affected by surface operations and facilities or adjacent area, or area that reasonably can be expected to be affected by subsidence, contains, or could reasonably be expected to contain, streams with listed or proposed endangered or threatened aquatic species of plants or animals or their critical habitats listed by the Secretary of the Interior under the Endangered Species Act of 1973, as amended (16 USC Sec. 1531 et seq.), or those aquatic species or habitats protected by similar state statutes;

b. The area to be affected by surface operations and facilities or adjacent area, or area that reasonably can be expected to be affected by subsidence, includes an important stream classified under 405 KAR 18:180, Section 2(1)(a)3; or

c. A stream buffer zone variance is requested under 405 KAR 16:060, Section 11.

2. This information shall include:

a. Biological information on the fish and macroinvertebrate communities, including taxa richness, relative abundance, biotic integrity, and the prevalence of tolerant or intolerant species;

b. The results of water quality analyses, from locations where biological data were collected, for the parameters specified in Section 15 of this regulation and for dissolved oxygen; and

c. A description of the physical characteristics of the stream sections where biological data were collected.

(3) Other data requirements.

(a) The information required by subsection (2) of this section shall be obtained in accordance with TRM #20, incorporated by reference in 405 KAR 8:030, Section 20(3)(a). Wetland evaluations shall be conducted in accordance with the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands", (FICWD, 1989), incorporated by reference in 405 KAR 8:030, Section 20(3)(a). This manual provides several methods for differentiating between wetland and nonwetland areas; however, an intermediate or comprehensive method shall be followed for wetland determinations under this regulation.

(b) As necessary, the cabinet shall consult with appropriate state and federal agencies with responsibilities for fish and wildlife, and may require additional information from the applicant to demonstrate compliance with SMCRA; KRS Chapter 350; and 405 KAR Chapters 7 through 24. Upon request, the cabinet shall provide the resource information required under this section to the U.S. Department of the Interior, Fish and Wildlife Service regional or field office for their review within ten (10) days of receipt of the request from the service.

(c) The baseline fish and wildlife resources information shall be collected by or under the direction of qualified professionals. Recommended minimum qualifications are outlined in TRM #20.

(d) Any aquatic biological specimens collected during the baseline study shall be labeled, preserved, maintained, and made available for inspection until the permit is issued or denied, or the application is permanently withdrawn, or until completion of any hearing on the application, whichever is later.

(e) Existing field data may be used instead of conducting field investigations, if the existing data are current as set forth in TRM #20, specific to the permit area and adjacent area, and sufficient to demonstrate compliance with this section.

(4) This section shall apply to applications for permits, amendments, and revisions submitted to the cabinet on or after nine (9) months following the effective date of these amendments, and shall apply to those applications for revisions and amendments in accordance with TRM #20. [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) If [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) If [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 this [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 Protection and Enhancement. (1) Each application shall include a description of how, to the extent possible using the best technology currently available and in compliance with 405 KAR 16:180,

the permittee will minimize disturbances and adverse impacts on fish and wildlife and related environmental values, including compliance with the Endangered Species Act, during the surface coal mining and reclamation operations, and how enhancement of these resources will be achieved where practicable.

(2) This description shall:

(a) Apply, at a minimum, to species and habitats identified under Section 20(2) of this regulation;

(b) Include protective measures, in accordance with TRM #20, that will be used during mining and reclamation. Protective measures may include the establishment of buffer zones, the selective location and special design of haul roads and powerlines, and the monitoring of surface water;

(c) Include enhancement measures, in accordance with TRM #20, that will be used during the reclamation and postmining phase of operation to develop aquatic and terrestrial habitat. Enhancement measures may include restoration of streams and wetlands, retention of ponds or impoundments, establishment of vegetation for wildlife food or cover, and the placement of perches and nesting boxes. If the plan does not include enhancement measures, a statement shall be given explaining why enhancement is not practicable;

(d) Include a delineation of proposed wildlife habitats and enhancement measures on the postmining land use map or on another appropriate map; and

(e) Be prepared by or under the direction of a qualified professional. Recommended minimum qualifications are outlined in TRM #20.

(3) As necessary, the cabinet shall consult with appropriate state and federal fish and wildlife management agencies, state and federal conservation agencies, and state and federal land management agencies, and may require additional protection and enhancement measures from the applicant. Upon request, the cabinet shall provide the protection and enhancement plan required under this section to the U.S. Department of the Interior, Fish and Wildlife Service regional or field office for their review within ten (10) days of receipt of the request from the service.

(4) This section shall apply to applications for permits, amendments, and revisions submitted to the cabinet on or after nine (9) months following the effective date of these amendments, and shall apply to those applications for revisions and amendments in accordance with TRM #20. [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 land use or uses [,] following reclamation of the land to be affected within the proposed permit area by surface operations and [or] facilities, including:

(a) 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:]

(b) A discussion of [(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, including but not necessarily limited to management practices to be conducted during the liability period for the commercial forest land, cropland (including hayland), and pastureland land uses;

(c) If [(b) Where] a land use different from the premining land use is proposed, all supporting documentation required [submitted] for approval of the proposed alternative use under 405 KAR 18:220;

(d) A discussion of [(c)] The consideration which has been 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.]

(e) [(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 area [surface areas] to be affected by surface operations and [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.

(2) [(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 Chapters 7 through 24.

[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 38. [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.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 12, 1991
FILED WITH LRC: July 15, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed regulation has been scheduled for 9 a.m. (EDT) Thursday, August 29, 1991, in the Department for Surface Mining Reclamation and Enforcement's Main Conference Room (Room B-31) 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 August 24, 1991. The schedule hearing may be cancelled if the contact person has not received any written notice of intent to testify by August 24, 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 regulation 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 regulation but does not wish to testify at the hearing may submit written comments on the proposed regulation at any time before 4:30 p.m. (EDT) on Thursday, August 29, 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:

CONTACT PERSON: 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 regulation establishes application requirements for underground mining activities and its counterpart 405 KAR 8:030 establishes requirements for surface mining activities. Currently the cabinet is receiving about 1,200 applications for original permits and amendments per year. About 1,300 applications for major and minor revisions are received per year (not including minor "field" revisions). These amendments indirectly affect the general public in the coal field regions. These amendments include several changes to bring the requirements into line with changes to the federal regulations and changes made to KRS Chapter 350 by the General Assembly. The most significant changes are new requirements to provide information concerning fish and wildlife resources for the proposed permit area and adjacent area and to provide a plan for the protection and enhancement of those resources. Another significant addition is a requirement to provide updated information on the permittee's officers, partners, directors, and principal shareholders when changes occur.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be some increase in the cost of preparing an application for a new permit and for some, but not all, applications for revisions and amendments. These costs will be due to gathering fish and wildlife resource information and designing a protection and enhancement plan. Data on terrestrial wildlife habitats will be required in all cases. Biological data from potentially impacted streams will be required only in certain specified situations. The cabinet has conducted a fish and wildlife study to determine the time and resources that will be required to gather the data, analyze the data, and prepare the report. The cabinet estimated the cost, including profit, would be about $1,600 for the site studied, which was relatively complex. The cabinet estimates that $1,500 to $2,000 would be a reasonable cost range for a proposed mine that had to gather aquatic biological data as well as the terrestrial wildlife habitat data. Of course, there will be cases where these costs will be higher due to a large permit area, due to potential to impact several streams for which biological data is required, and where wetlands will be involved. Where only terrestrial data is required, the cost would be substantially lower, in the $600-$1,000 range. Some additional costs will be incurred by permittees due to the new requirements to update information on principal shareholders, officers, partners, and directors.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The amendments provide that fish and wildlife resource data from existing literature or studies may be accepted in certain circumstances. When acceptable existing data is available, the applicant's cost will be decreased.

(b) Reporting and paperwork requirements: Additional information is required in the applications for fish and wildlife resources. The cabinet has designed forms for this information which will provide for concise reports. Additional paperwork is involved when reporting changes to the permittee's principal shareholders, officers, partners, and directors.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be additional cost of operation of the cabinet due to the review of fish and wildlife resource information and protection and enhancement plans. There will be costs involved in conducting the training necessary to prepare technical staff for this work, and one additional permit reviewer may be necessary. Since there is a 9 month

posteffective clause on the fish and wildlife amendments, there will be time to prepare for this program. There will also be additional cost involved in reviewing and processing updated information on principal shareholders, officers, partners, and directors.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There will be additional paperwork for the cabinet due to these amendments.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: The federal fish and wildlife regulations envision a permit by permit consultation with state and federal fish and wildlife agencies to determine information needs. This approach was rejected in favor of the proposed regulations which set forth the information requirements in detail, thus avoiding a permit by permit consultation in the majority of cases. This approach was favored by industry, the environmental community, and the general public because of the high number of permits that must be processed in Kentucky.

(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: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(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 applicants 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. These amendments contain changes to comply with federal regulations and to comply with changes in KRS Chapter 350 made by the General Assembly. The two most significant changes are: 1) the requirement to provide information on fish and wildlife resources information for the permit area and adjacent area and to provide a fish and wildlife protection and enhancement plan, and 2) a requirement to provide updated information when there are changes to a permittee's principal shareholders, officers, partners, or directors. The fish and wildlife requirements are very detailed and technical. They are designed to provide a permit applicant a thorough description of the application requirements so that case by case consultation with the cabinet and other agencies will not generally be required. This will provide for an efficient permit preparation process. The amendments provide detail on data required for terrestrial wildlife habitats, biological data required for selected streams, data requirements for wetlands that may be impacted by mining, etc. It also establishes in some detail the requirements for a fish and wildlife protection and enhancement plan. These requirements have been developed in consultation with state and federal fish and wildlife agencies.

3. Minimum or uniform standards contained in the federal mandate. The federal regulations require that the cabinet determine the scope and detail of the fish and wildlife resource information requirements in consultation with state and federal fish and wildlife agencies. It is envisioned that this will be done on a permit by permit basis, but this does not preclude it being done on a programmatic basis as is proposed by these amendments. Regarding updating information on principal shareholders, officers, partners, or directors, the federal regulations require, as a permit condition, that the permittee provide updated information on persons that own and control the permittee within 30 days after a cessation order is issued to the permittee.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The requirement to provide updated information on principal shareholders, officers, partners, and directors when changes occur is in addition to the requirement to provide updated information on persons that own or control the permittee after a cessation order is issued.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The additional requirement stated in #4 above was established in KRS Chapter 350 by the General Assembly.

**NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET**
**Department for Surface Mining Reclamation and Enforcement**
**(Proposed Amendment)**

**405 KAR 10:050. Bond forfeiture.**

RELATES TO: KRS 350.020, 350.060, 350.064, 350.093, 350.095, 350.110, 350.130, 350.151, 350.465, 30 CFR Parts 730-733, 735, 800.4, 800.50, 917, 30 USC 1253, 1255, 1271

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.060, 350.064, 350.130, 350.151, 350.465, 30 CFR Parts 730-733, 735, 800.4, 800.50, 917, 30 USC 1253, 1255, 1271

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to regulate surface coal mining and reclamation operations in a manner as to insure that satisfactory reclamation is accomplished. This regulation sets forth the procedures and criteria by means of which a bond may be forfeited to the cabinet. This regulation sets forth that certain violations of KRS Chapter 350 and regulations promulgated pursuant to that chapter may cause a bond to be forfeited. This regulation sets forth that a hearing may be requested before such forfeiture can be effected. This regulation also specifies a method to determine the amount of bond forfeiture.

Section 1. General. (1) The cabinet shall forfeit all of the remaining bond amount for any permit or increment pursuant to the procedures and criteria of this regulation.

(2) The cabinet may withhold forfeiture if the permittee or another party [or the surety] agrees to perform reclamation operations in accordance with a compliance schedule which meets the conditions of the permit, the reclamation plan and the requirements of Title 405 KAR Chapters 7 through 24 and demonstrates that the party has the ability to satisfy the conditions [to correct the violations of the permit or bond conditions].

(3) The cabinet shall withhold forfeiture and allow the surety or other financial institution providing bond to complete the reclamation plan if the surety or other financial institution can demonstrate the ability to complete the reclamation plan, including achievement of the capability to support the postmining land use approved by the cabinet, and will undertake to do so within a reasonable time frame and agrees to a compliance schedule. Neither the surety company nor other financial institution shall employ anyone to perform said measures who has been barred from mining pursuant to the provisions of KRS Chapter 350.

Section 2. Procedures. (1) In the event forfeiture of the bond is required by Section 3 of this regulation, the cabinet shall:

(a) Send written notification by certified mail, return receipt requested, to the permittee, and to the surety on the bond, if applicable, of the cabinet's determination to initiate forfeiture of the bond and the reasons for the forfeiture;

(b) Advise the permittee and surety, if applicable, of their right to challenge the determination pursuant to 405 KAR 7:090; and

(c) If no hearing is requested within thirty (30) days following notification and the bond proceeds are not received, the secretary shall enter a final order of forfeiture and the cabinet shall proceed in an action for collection on the bond.

(2) The cabinet may, as an alternative to following the procedures of subsection (1) of this section, initiate formal hearing procedures concerning forfeiture of the bond alone or in conjunction with the cabinet's action for other appropriate remedies against the permittee pursuant to 405 KAR 7:090.

(3) The cabinet shall utilize funds collected from bond forfeiture to complete the reclamation plan on the permit area or increment on which bond coverage applied, and to cover associated administrative expenses. Such funds shall be deposited in an appropriate account for the payment of such costs. Funds remaining after reclamation shall be returned to the person from whom the forfeiture proceeds were received, subject to the cabinet's right to attach or setoff such proceeds under state law.

(4) In the event the amount forfeited is insufficient to pay for the full cost of reclamation, the operator shall be liable for remaining costs. The cabinet may complete, or authorize completion of, reclamation of the bonded area and may recover from the operator all costs of reclamation in excess of the amount forfeited.

Section 3. Criteria for Forfeiture. (1) A bond for a permit area or increment shall be forfeited, if the cabinet finds that:

(a) The permittee has violated any of the terms or conditions of the bond and has failed to take corrective action;

(b) The permittee has failed to conduct the surface mining and reclamation operations in accordance with KRS Chapter 350, the conditions of the permit or Title 405, Chapters 7 through 24 within the time required;

(c) The permit for the area or increment under bond has been revoked or the operation terminated, unless the permittee, surety, or other financial institution providing bond assumes liability pursuant to an agreement for the completion of reclamation; or

(d) The permittee, surety, or other financial institution providing bond has failed to comply with a compliance schedule approved pursuant to Section 1(2) or (3) of this regulation.

(2) A bond may be forfeited if the cabinet finds that:

(a)1. The permittee has become insolvent; or

2. A creditor of the permittee has attached or executed judgment against the permittee's equipment, materials, or facilities, at the permit area; and

(b) The permittee cannot demonstrate or prove the ability to continue to operate in compliance with KRS Chapter 350, Title 405, Chapters 7 through 24, and the permit.

(3) The cabinet may forfeit a bond solely upon the permittee's failure to pay penalties or fines (where all reclamation requirements have been fully met) and retain the bond proceeds, or portion thereof as necessary to offset the penalty or fine owed (including administrative costs incurred by the cabinet), but the cabinet shall forfeit a bond under this circumstance only after the five (5) year liability period has expired; except that for surety bonds or bonds secured by a letter of credit:

(a) In no event shall the cabinet take any action to forfeit a surety bond or bond secured by a letter of credit under this circumstance until reclamation phase I and II monies have been released and the five (5) year liability period has expired; and

(b) Where a forfeiture of a surety bond or a bond secured by a letter of credit under this circumstance has occurred, the cabinet shall not retain the surety bond or bond secured by letter of credit or any proceeds thereof and the permittee shall continue to be responsible for payment of the penalties or fines as well as administrative costs incurred by the cabinet.

Section 4. Forfeiture Amount. The cabinet shall forfeit the entire amount of the bond for the permit area or increment.

CARL H. BRADLEY, Secretary
FRANK DICKERSON, Commissioner
APPROVED BY AGENCY: June 21, 1991
FILED WITH LRC: June 21, 1991 at 3:38 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1991 at 9:30 a.m. at Hudson Hollow Office Park, #2 Hudson Hollow, Frankfort, Kentucky in Room C-13. Persons interested in being heard at this hearing shall notify this agency in writing by August 16, 1991, 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. To assure an accurate record, the cabinet requests

that each person testifying at the hearing provide the cabinet with a written copy of his or her testimony. No transcript or recording will automatically be taken of the hearing unless a written request for a transcript or recording is made, in which case the person making the request shall have the responsibility of paying for same. Written comments on the proposed amendment may be submitted at any time before 4:30 p.m. on August 21, 1991. Comments received after that time will not be considered. Written notification of intent to be heard at the public hearing and written comments must be submitted to the following contact person: Glenna Jo Curry, Department of Law, Natural Resources and Environmental Protection Cabinet, 5th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Glenna Jo Curry

(1) Type and number of entities affected: This regulation governs forfeiture of bonds for surface coal mining operations which becomes necessary when there has been a failure to reclaim or comply with the law. Persons seeking to reclaim a surface mining permit in order to prevent forfeiture of the performance bond are affected by this amendment. At present there are 396 bond forfeiture actions pending before the cabinet.

(a) Direct and indirect costs or savings to those affected:

1. First year: In order to prevent bond forfeiture, the permittee or another party has the right to complete the reclamation plan for a permit. The amendment removes the opportunity to prevent bond forfeiture by correcting only current violations. Additional costs may be incurred by a person in completing the reclamation plan as compared to abating only current violations. Conversely, a person may realize savings since under the amendment funds will not be expended to abate only current violations which may recur, resulting in repeated expenditures to abate and providing only a temporary avoidance of forfeiture.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: These amendments have no affect on reporting or paperwork requirements.

(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: No alternatives were considered since this change is mandated either by federal regulation or state law.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation or governmental policy which may be in conflict, overlap or duplicate the proposed amendment.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Federal law and regulations and state law mandate the same bond forfeiture procedures and criteria for all surface coal mining operations.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 CFR 800.50

2. State compliance standards. This amendment ensures that the permittee or another party will complete reclamation in accordance with the permit, reclamation plan, and the law in situations where the permittee has previously failed or refused to do so.

3. Minimum or uniform standards contained in the federal mandate. The federal regulations do not contemplate the abatement of only current violations.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This regulation does not impose stricter requirements, or additional or different responsibilities, than those required by federal law.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. A stricter standard has not been imposed.

**NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET**
**Department for Surface Mining Reclamation and Enforcement**
**(Proposed Amendment)**

**405 KAR 10:200. Kentucky bond pool.**

RELATES TO: KRS Chapter 304, 350.020, 350.028, 350.060, 350.062, 350.064, 350.068, 350.085, 350.093, 350.095, 350.100, [350.110,] 350.113, 350.130, 350.135, 350.151, 350.260, 350.465, 350.700, 350.705, 350.710, 350.715, 350.720, 350.725, 350.730, 350.735, 350.740, 350.745, 350.750, 350.755, 350.990, 30 CFR Parts 730-733, 735, 800.11(e), 917, 30 USC 1253, 1255, 1259

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.060, 350.062, 350.064, 350.093, 350.130, 350.151, 350.465, 350.710, 350.715, 350.720, 350.725, 350.730, 350.735, 350.740, 350.750, 30 CFR Parts 730-733, 735, 800.11(e), 917, 30 USC 1253, 1255, 1259

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to regulate surface coal mining and reclamation operations, including requiring bond sufficient to ensure [insure] satisfactory reclamation. KRS Chapter 350 further authorizes the cabinet to establish alternative methods of meeting bonding requirements. This regulation implements an alternative bonding program known as a bond pool. This regulation establishes requirements for applications for membership in the bond pool; procedures for submittal of, review of, and decisions on applications, including

determinations of financial standing and reclamation compliance records of applicants; procedures for acceptance of specific permit areas into coverage by the bond pool; and procedures for keeping of production records, reporting of production, and payment of fees based on coal production.

Section 1. Definitions. (1) "Administrator" or "bond pool administrator" means the cabinet employee named by the secretary to assist the commission and to perform certain administrative functions in connection with the bond pool, as required by KRS 350.715.

(2) "Applicant," for purposes of this regulation, means a person who [or entity which] has submitted an application form to the commission seeking membership in the bond pool.

(3) "Bond pool" or "Kentucky Bond Pool" means the voluntary alternative bonding program [as] established at KRS 350.700 through .755.

(4) "Commission" or "bond pool commission" means the seven (7) member body established at KRS 350.705.

(5) "Member" means a person who [or entity which] the bond pool commission has determined meets the minimum requirements of KRS 350.720 and this regulation for inclusion in the bond pool and upon whom the commission has formally conferred membership.

(6) "Month of operation," for the purposes of Section 7 of this regulation, means a calendar month in which a duty exists to reclaim a disturbed area for which a permit was issued under KRS Chapter 350. It is not necessary that coal extraction occur during the month.

Section 2. General. (1) Applicability. This regulation applies only to the voluntary alternative bonding program known as the Kentucky Bond Pool, as established at KRS 350.700 through 350.755, and to permanent program permits or increments covered under that pool.

(2) Forms.

(a) The following forms, which are required to be submitted by applicants and members, are hereby incorporated by reference:

1. Application for Membership, BP-01, revised September 1, 1988; and

2. Monthly Production Report, BP-02.

(b) These forms may be reviewed or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

Section 3. Review of Decisions. There shall be no administrative appeal under 405 KAR 7:090 from a decision of the commission. However, the applicant or member may within sixty (60) days after notice of the decision, request the commission to reconsider its decision. The commission may, at its discretion, grant or deny the request for reconsideration.

Section 4. Applications for Membership. (1) Any person desiring membership in the bond pool shall submit an application for membership to the commission at the address established by the administrator.

(2) The application shall be submitted on forms provided by the commission and shall be of the form, content, and number of originals and copies as the commission may require. The application form is incorporated by reference in Section 2(2) of this regulation. The application shall be typed or printed, and shall be legible throughout.

(3) Financial statements required with the application shall be prepared by a certified public accountant. Financial statements shall be kept confidential to the commission, the administrator, and cabinet personnel authorized by the administrator.

(4) The application shall include an application fee of $100 by cash or by certified check, cashier's check or money order made payable to "Kentucky State Treasurer." The fee shall not be refunded in any circumstances, but shall be applied toward the membership fee if the applicant is accepted for membership.

(5) The application shall be complete in all respects.

Section 5. Review of Applications. (1) As soon as practicable after the administrator receives the application, he shall determine whether the application is complete or incomplete.

(a) If the application is incomplete, the administrator shall so notify the applicant and shall identify the additional information which is needed to make the application complete. The applicant may submit the corrected application, in whole or in part, and no additional application fee shall be required.

(b) If the application is complete, the administrator shall so notify the applicant in writing. The administrator shall evaluate the complete application and any other relevant information available to the administrator, and shall submit the evaluation to the commission. The application, the administrator's evaluation, and any other relevant information available to the commission, shall form the factual basis for the commission's decision on the application.

(2) The commission shall act upon the application as soon as practicable.

(a) If the commission approves the application, the administrator shall provide written notice to the applicant. The notice shall specify the rating which the applicant will receive upon membership, and shall state the membership fee required. The applicant shall submit the required membership fee. As soon as practicable after receipt of the membership fee, the administrator shall provide the applicant with an official certificate of membership which shall confer actual membership as of the date of the certificate. The certificate shall state the rating assigned to the member and also shall assign the member a unique membership number. The certificate shall be signed by the chairman of the commission and by the administrator.

(b) If the commission denies the application, the administrator shall provide written notice to the applicant, setting forth the reasons for denial. The notice of denial shall be signed by the chairman of the commission.

(3) The commission may defer its decision on an application if the applicant, any person who owns or controls the applicant, any person who is owned or controlled by the applicant, or any person who is under common ownership or control with the applicant has appealed a notice of noncompliance and order for remedial measures or an order for cessation and immediate compliance [violation or cessation order] or has a notice or order [violation] pending a penalty assessment and the notice [violation] or

[cessation] order pending an appeal or penalty assessment would affect the applicant's eligibility or rating.

Section 6. Determination of Financial Standing. (1) If the commission or administrator prepares summaries or analyses of information contained in the applicant or member's [applicant's] financial statements, the summaries or analyses [they] shall be kept confidential if [where] necessary to ensure [insure] the confidentiality of information contained in the financial statements.

(2) The financial standing of the applicant or member shall be determined based upon the financial information required in the application and other information available to the commission and cabinet. The commission may consider, but shall not be limited to, the following financial ratios and related financial information:

(a) The ratio of current assets to current liabilities;

(b) The ratio of net income to net sales;

(c) The ratio of total liabilities to stockholders' equity;

(d) The ratio of net income to owners' equity;

(e) The ratio of owners' equity to total assets; and

(f) The ratio of the sum of cash, marketable securities, and net receivables, to current liabilities.

Section 7. Determination of Reclamation Compliance Record. (1) Excellent compliance record. The applicant or member shall be deemed to have an excellent compliance record if the applicant or member, each person who owns or controls the applicant or member, each person who is owned or controlled by the applicant or member, and each person who is under common ownership or control with the applicant or member, meet all the criteria in this subsection:

(a) Has never committed a violation for mining without having first obtained the required permit under KRS Chapter 350;

(b) Has never forfeited a bond or had a permit revoked under KRS Chapter 350;

(c) Has never avoided forfeiture of a bond under KRS Chapter 350 because a surety performed reclamation work in order to avoid forfeiture;

(d) Has never been determined to have demonstrated a pattern of [willful] violations pursuant to KRS 350.028(4), 350.130(3), or 350.465(3)(f);

(e) Has not been issued more than one (1) order for cessation and immediate compliance [failure-to-abate cessation order] pursuant to 405 KAR 12:020, Section 3(1)(a) in the most recent thirty-six (36) months of operation and the [cessation] order was abated as ordered by the cabinet in a timely manner and was not for a violation of contemporaneous reclamation requirements under 405 KAR 16:020 or 405 KAR 18:020;

(f) Has not been issued more than one (1) [cessation] order for cessation and immediate compliance under 405 KAR 12:020, Section 3(1)(b) in the most recent thirty-six (36) months of operation and the [cessation] order was abated as ordered by the cabinet in a timely manner;

(g) Has not committed more than one (1) violation of contemporaneous reclamation requirements under 405 KAR 16:020 or 405 KAR 18:020 in the most recent thirty-six (36) months of operation and the violation was abated as ordered by the cabinet in a timely manner, except the commission may for good cause and by unanimous vote exclude violations that have been terminated by the cabinet with no civil penalty;

(h) Has not committed more than three (3) violations of KRS Chapter 350 or 405 KAR Chapters 7 through 24 on any one (1) permit in any twelve (12) month period of the most recent thirty-six (36) months of operation, except the commission may for good cause and by unanimous vote exclude the twelve (12) month period on one (1) permit during which the largest number of violations occurred and may for good cause and by unanimous vote exclude violations that were timely abated and terminated by the cabinet with no civil penalty; or

(i) Has not had civil penalties under KRS 350.990 or [,] 405 KAR 7:090 or 405 KAR 7:095 remaining unpaid more than thirty (30) days after they were due and payable, within the most recent thirty-six (36) months of operation.

(j) To the extent information is available, the commission may take into account the [applicant's] performance of the applicant or member and each person who owns or controls, is owned or controlled by, or is under common ownership or control with the applicant or member, in other states and on federal lands and Indian lands under criteria similar or equivalent to those in this subsection.

(2) Acceptable compliance record. The applicant or member shall be deemed to have an acceptable compliance record if the applicant or member, each person who owns or controls the applicant or member, each person who is owned or controlled by the applicant or member, and each person who is under common ownership or control with the applicant or member, meet all the criteria in this subsection:

(a) Has never committed a violation for mining without having first obtained the required permit under KRS Chapter 350;

(b) Has never forfeited a bond or had a permit revoked under KRS Chapter 350;

(c) Has never avoided forfeiture of a bond under KRS Chapter 350 because a surety performed reclamation work to avoid forfeiture;

(d) Has never been determined to have demonstrated a pattern of [willful] violations pursuant to KRS 350.028(4), 350.130(3), or 350.465(3)(f);

(e) Has not been issued more than four (4) [cessation] orders for cessation and immediate compliance under 405 KAR 12:020, Section 3, in the most recent thirty-six (36) months of operation and each [cessation] order was abated as ordered by the cabinet in a timely manner and not more than one (1) was for a violation of contemporaneous reclamation requirements under 405 KAR 16:020 or 405 KAR 18:020;

(f) Has not committed more than three (3) violations of contemporaneous reclamation requirements under 405 KAR 16:020 or 405 KAR 18:020 in the most recent thirty-six (36) months of operation, except the commission may for good cause and by unanimous vote exclude violations that were timely abated and terminated by the cabinet with no civil penalty;

(g) Has not committed more than eight (8) violations of KRS Chapter 350 or 405 KAR Chapters 7 through 24 on any one (1) permit in any twelve (12) month period of the most recent thirty-six (36) months of operation, except the commission may for good cause and by unanimous

vote exclude the twelve (12) month period on one (1) permit during which the largest number of violations occurred and may for good cause and by unanimous vote exclude violations that were timely abated and terminated by the cabinet with no civil penalty; or

(h) Has not had civil penalties under KRS 350.990 or [,] 405 KAR 7:090 or 405 KAR 7:095 remaining unpaid more than ninety (90) days after they were due and payable, within the most recent thirty-six (36) months of operation.

(i) To the extent information is available, the commission may take into account the [applicant's] performance of the applicant or member and each person who owns or controls, is owned or controlled by, or is under common ownership or control with the applicant or member, in other states and on federal lands and Indian lands under criteria similar or equivalent to those in this subsection.

Section 8. Acceptance of Permit Areas Into Bond Pool. (1) The commission shall specifically set forth those permits, increments, or portions thereof, which have been accepted for coverage under the bond pool. Coverage shall not be effective unless so identified by the commission.

(2) Eligible portions of all permits issued to the member after the date of membership shall be covered by the bond pool.

(3) If a permit was issued to the member prior to the date of membership but has not been disturbed as of the date of membership, eligible portions of the permit shall be covered by the bond pool. The member shall substitute the appropriate rating based bond under KRS 350.735 for the bond originally posted for the permit area or increment.

(4) For existing permits or increments which have been disturbed as of the date of membership, the bond pool shall cover all eligible undisturbed portions of the permits or increments in accordance with this subsection.

(a) A permit area or increment shall not be accepted for coverage if coal removal has been completed or substantially completed on the permit area or increment. In determining whether coal removal has been substantially completed, the commission shall consider factors such as the amount or percentage of coal yet to be extracted from the permit area or increment, the acreage or percentage of the permit area or increment yet to be disturbed, and the amount of time which likely would be required to complete coal extraction from the permit area or increment.

(b) Within thirty (30) days after the date of membership the member shall, for each existing permit, designate to the cabinet in writing a date, which shall be not later than ninety (90) days after the date of membership, on which eligible portions of the permit shall be covered by the bond pool. With the designation, the member shall also submit maps as required by the cabinet which clearly identify those portions of the permit area which the member expects to have disturbed as of the designated date and those portions which are expected to remain undisturbed as of that date. The cabinet may, on a case-by-case basis and for good cause, grant extensions to the thirty (30) and ninety (90) day periods in this paragraph.

(c) The cabinet shall recalculate the bond amount for the permit area or increment as two (2) bond amounts for two (2) new increments. One (1) new increment shall include the portion expected to be disturbed as of the designated date, and one (1) shall include the portion expected to remain undisturbed as of the designated date.

(d) The member shall, on or before the designated date, post a new bond in the amount determined by the cabinet for the increment containing the areas expected to be disturbed as of the designated date. This increment shall not be covered by the bond pool.

(e) The member shall, on or before the designated date, post a new rating based bond in the amount determined by the cabinet pursuant to KRS 350.735 for the increment containing the areas expected to remain undisturbed as of the designated date. This increment shall be covered by the bond pool. This increment shall not be disturbed until the bond required under this paragraph has been posted.

(f) Upon receipt and approval of acceptable bonds as required by paragraphs (d) and (e) of this subsection, and upon verification by the cabinet that the increment to be covered by the bond pool has not been disturbed, the cabinet shall release the bond originally posted for the permit area or increment.

(5) Any member that submits a preliminary permit application to the cabinet shall notify the bond pool administrator in writing within fourteen (14) calendar days of the submittal date.

Section 9. Production Records, Reporting, and Payment of Fees. (1)(a) Authorized representatives of the commission and administrator shall have access to all permit areas of the member for purposes of determining compliance with the requirements of this section.

(b) Each member shall make any book or record necessary to substantiate the accuracy of reports and payments available at reasonable times for inspection and copying by authorized representatives of the commission and administrator. The books and records shall include, but not be limited to, those required under subsection (2) of this section, books and records related to federal reclamation fees as required under 30 CFR Part 870, and books and records related to Kentucky coal severance tax as required under KRS Chapter 143. All information copied shall be kept confidential to the administrator and commission and their authorized representatives.

(c) Each member shall retain books and records for a period of six (6) years from the end of the calendar month in which a report was due.

(d) Authorized representatives of the administrator and commission shall have authority to examine records of second parties involved in the sale or transfer of the ownership of coal by the member, and shall have authority to examine the records of any party selling or transferring coal to the member.

(2) Each member shall maintain current books and records that separately contain the tonnage [tons] of coal extracted for each permit covered by the bond pool.

(3) Determination of fees. Fees shall be determined by the weight of the coal the first time the coal is weighed.

(a) The weight of the coal shall be the actual gross weight of the coal. Impurities, including water, that have not been removed prior to the first time the coal is weighed shall not be

deducted from the gross weight.

(b) If the member combines surface mined coal and underground mined coal before the coal is weighed, the rate for surface mined coal shall apply unless the member can substantiate the tonnage produced by surface and underground mining by acceptable engineering calculations or other procedures which the cabinet may require.

(4) Reporting of tonnage and payment of fees.

(a) On forms provided by the cabinet each member shall report, for each permit covered by the bond pool, all coal tonnage extracted during the reporting period. The reporting form is incorporated by reference in Section 2(2) of this regulation. Payment of fees shall accompany the report.

(b) The reporting and payment period shall be monthly. The report shall be submitted, and fees shall be paid, not later than the 20th day of the month which follows the reporting period. The report shall be submitted even if the member has zero production during the reporting period.

(c) Late report or payment. If a member fails to submit a report or payment on or before the due date, five (5) percent of the original fee due shall be added to the fee for each month or fraction thereof elapsing between the due date and the date on which the report or payment is submitted. In no case shall the penalty be less than ten (10) dollars.

(5) As soon as practicable after each report is received, the administrator shall examine it and shall notify the member of any underpayment or overpayment.

(a) If the amount of required fee as computed by the administrator is greater than the amount submitted by the member, the administrator shall notify the member, within thirty (30) days from the date the payment was received, of the additional amount to be paid; except that in the case of a failure to submit a report or of a fraudulent report, the examination and notification may occur at any time. Additional fee payments under this paragraph shall include a penalty of five (5) percent of the amount of the deficiency for each month or fraction thereof elapsing between the original due date and the date on which the payment is submitted.

(b) If the amount of required fee as computed by the administrator is less than the amount submitted by the member, the administrator shall notify the member, within thirty (30) days from the date the payment was received, of the amount of the overpayment. The member may receive credit for the overpayment against the next monthly payment or any subsequent payment.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 12, 1991
FILED WITH LRC: July 15, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed regulation has been scheduled for 9 a.m. (EDT) Thursday, August 29, 1991, in the Department for Surface Mining Reclamation and Enforcement's Main Conference Room (Room B-31) 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 August 24, 1991. The schedule hearing may be cancelled if the contact person has not received any written notice of intent to testify by August 24, 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 regulation 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 regulation but does not wish to testify at the hearing may submit written comments on the proposed regulation at any time before 4:30 p.m. (EDT) on Thursday, August 29, 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:

CONTACT PERSON: 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 proposed amendment applies to the current 32 members of the bond pool and to future applicants.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no direct or indirect costs or savings to persons affected by this amendment. The amendment consists of clarifications and other minor changes that do not impose costs or effect savings.

2. Continuing costs or savings: There will be no continuing costs or savings as a result of the this amendment.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs and no effects upon competition.

(b) Reporting and paperwork requirements: This amendment does not impose any reporting or paperwork requirements. It incorporates by reference the current application form and reporting form.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This amendment will not cause any direct or indirect costs or savings to the cabinet.

2. Continuing costs or savings: There will be no continuing costs or savings.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: This amendment does not impose any paperwork or reporting requirements. It incorporates by reference the current application form and reporting form.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect or state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered. This amendment consists of

clarifications and other minor changes.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations or policies that conflict with, overlap, or duplicate this amendment.

(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. Tiering is not applicable to this proposed amendment because this amendment consists of clarifications and other minor changes that do not affect program requirements in a way that would make tiering beneficial.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 USC 1253, 1255, 1259. 30 CFR Parts 730-733, 735, 800.11(e), 917.

2. State compliance standards. Deletion of "or entity" after "person" at Section 1(2) and 1(5) removes a redundancy, since 405 KAR 7:020 defines "person" as including not only individuals but also any other sort of business entity or public agency. New Section 2(2) incorporates by reference the application form required in Section 4(2) and the the reporting form required in Section 9(4)(a). Revised Section 4(4) allows application fees to be paid by cash, in addition to other methods of payment. Revised Section 5(3), Section 7(1)(e) and (f), and 7(2)(e) are clarified by insertion of the defined terms "notice of noncompliance and order for remedial measures" and "order for cessation and immediate compliance" in place of less specific terms. Deletion of "willful" at Section 7(1)(d) and 7(2)(d) makes the regulation consistent with the statutes referenced by those sections, and avoids possible imposition of an additional standard beyond the standards in the referenced statutes themselves. Insertion of "or member" after "applicant" at Section 6(1) and (2), Section 7(1) and (1)(j), and Section 7(2) and (2)(i), clarifies that the examinations of financial standing and compliance record are applicable not only to initial applicants for membership but also to members. The amendments at Section 7(1)(j) and 7(2)(i) authorize the commission to consider not only the performance of the applicant or member, but also the performance owners and controllers, etc., of the applicant or member, when evaluating the applicant's or member's performance in other states and on federal lands and Indian lands. This makes the commission's evaluation of performance on these "other" lands consistent with the evaluation of performance on lands covered by KRS Chapter 350.

3. Minimum or uniform standards contained in the federal mandate. The minimum federal standards corresponding to 405 KAR 10:200 are at 30 CFR 800.11(e). The federal regulations allow, but do not require, alternative bonding systems. The federal standards are that 1) the alternative bonding system must be approved by OSM as part of the approved state program; 2) the alternative must assure that the regulatory authority will have available sufficient money to complete the reclamation plan for any areas which may be in default at any time; and 3) the alternative must provide a substantial economic incentive for the permittee to comply with all reclamation provisions.

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 requirements than the federal mandate. Of necessity, this regulation and this amendment impose specific, and therefore different, requirements than those in the federal mandate. 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 federal mandate imposes broad requirements on alternative bonding systems. The alternative bonding systems themselves must implement a bonding system in working detail and therefore must contain specific procedures and requirements that meet the broad federal mandate.

**NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET**
**Department for Surface Mining Reclamation and Enforcement**
**(Proposed Amendment)**

**405 KAR 16:180. Protection of fish, wildlife, and related environmental values.**

RELATES TO: KRS 350.020, 350.028, 350.405, 350.435, 350.465, 30 CFR Parts 730-733, 735, 816.57, 816.97, 917, 30 USC 1253, 1255, 1265

PURSUANT TO: KRS Chapter 13A, 350.028, 350.465, 30 CFR Parts 730-733, 735, 816.57, 816.97, 917, 30 USC 1253, 1255, 1265

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during surface mining activities and for restoration and reclamation of surface areas affected by mining activities. This regulation sets forth specific requirements and measures for the protection of fish, wildlife, and related environmental values, and for the enhancement of those [such] resources where practicable.

Section 1. General. [Protection of Fish, Wildlife, and Related Environmental Values.] (1) The [Any] permittee shall, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts [of the activities] on fish, wildlife, and related environmental values, and shall achieve enhancement of those [such] resources where practicable.

(2) Each permittee shall:

(a) To the extent possible using the best technology currently available:

1. Ensure that electric powerlines and other transmission facilities, used for or incident to surface mining activities on the permit area are

designed and constructed to minimize electrocution hazards to raptors, except where the cabinet determines that these requirements are unnecessary;

2. Locate and operate haul and access roads so as to avoid or minimize impacts on important fish and wildlife species or other species protected by state or federal law;

3. Construct stream crossings so as not to adversely affect fish migration and aquatic habitat;

4. Design fences, overland conveyors, and other potential barriers to permit passage of large mammals, except where the cabinet determines that the designs are unnecessary; and

5. Fence, cover, or use other appropriate methods to exclude wildlife from ponds which contain hazardous concentrations of toxic-forming materials.

(b) Avoid disturbance to, enhance where practicable, restore, or replace habitats of unique or unusually high value for fish and wildlife;

(c) Avoid disturbance to, enhance where practicable, or reestablish riparian vegetation along rivers and streams and bordering ponds and lakes; and

(d) Avoid disturbances to, enhance where practicable, restore or replace wetlands and comply with Section 404 of the Clean Water Act.

Section 2. Protection of Streams. (1) Buffer zones for streams with valuable environmental resources.

(a) A stream or reach of stream with valuable environmental resources is one that:

1. Contains, or could reasonably be expected to contain, listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary of the Interior under the Endangered Species Act of 1973, as amended (16 USC Sec. 1531 et seq.), or those species or habitats protected by similar state statutes;

2. Is an intermittent or perennial stream that supports a high level of habitat development and quality as reflected by the integrity of fish and macroinvertebrate populations, as set forth in TRM #20 which is incorporated by reference in 405 KAR 8:030, Section 20(3)(a); or

3. Is an important stream. An important stream is one that:

a. Is classified as an outstanding resource water pursuant to 401 KAR 5:026 or 401 KAR 5:031;

b. Based on the Kentucky Rivers Assessment, is a Class 1, 2, or 3 stream in the water quality category or is a Class 1 or 2 stream in the fish resource category. Class 3 streams in the fish resource category may be determined case-by-case to be important streams by the cabinet. These streams that occur in the coal fields are listed in TRM #20; or

c. Is otherwise considered to be an important stream by the cabinet, including but not limited to a stream contained within, immediately upstream of, or bordering a publicly-owned wildlife management area or a nature preserve dedicated pursuant to KRS 146.410 et seq.

(b) The cabinet shall not grant a buffer zone variance under 405 KAR 16:060, Section 11, if the reach of stream that is within the buffer zone is one with valuable environmental resources pursuant to paragraph (a) of this subsection. Exceptions may be made for the following, if the surface mining activities will not cause significant detrimental effects on the valuable environmental resources and if all other requirements of 405 KAR 16:060, Section 11 are met:

1. Stream crossings and appurtenant approaches;

2. Minor disturbances; and

3. Existing roads where no major reconstruction of the road within 100 feet of the stream is proposed including road widening (except widening in which only an incidental portion of the road berm is accidentally disturbed during grading), road relocation, or any other construction activity that might detrimentally affect the stream or its channel. Typical road maintenance including grading, cleaning ditches, and road surfacing shall not be considered major reconstruction measures.

(c) The cabinet may grant a buffer zone variance if the reach of stream with valuable environmental resources is outside (e.g., downstream of) the buffer zone, if surface mining activities will not cause significant detrimental effects on the valuable environmental resources, and if all other requirements of 405 KAR 16:060, Section 11 are met.

(2)(a) During-mining and postmining biological monitoring shall be conducted if required by the cabinet; however, it shall always be required if a reach of stream with valuable environmental resources exists within the permit or adjacent area.

(b) If biological monitoring is required under paragraph (a) of this subsection, the biological monitoring shall be conducted in accordance with TRM #20, and shall be conducted at least semiannually through Phase I bond release and once per year thereafter until final bond release. The cabinet may approve termination of the biological monitoring program after Phase I bond release based upon a demonstration that additional monitoring is not needed to ensure protection of aquatic resources.

(c) Biological monitoring data shall be collected and evaluated by or under the direction of qualified professionals whose credentials have been filed with the department. The results of the biological monitoring data shall be submitted to the cabinet within sixty (60) days after data collection. All biological monitoring samples shall be labeled, preserved, maintained, and made available for inspection, for twelve (12) months.

(3) Other stream protection measures. The cabinet shall require other appropriate stream protection measures (such as those prescribed in TRM #20) as necessary to ensure protection of streams with valuable environmental resources. At the cabinet's discretion, protection measures may also be required for other streams. The protection measures may be required during the permitting process, as a result of during-mining or postmining monitoring, or as a result of a site inspection by the cabinet. These additional protection measures shall be required in consultation with qualified personnel.

(4) The provisions of this section shall apply to operations having permit applications that were subject to 405 KAR 8:030, Sections 20 and 36.

Section 3. Protection of Endangered and Threatened Species. (1)(a) No surface mining activity shall be conducted which is likely to jeopardize the continued existence of an

endangered or threatened species listed by the Secretary of the Interior or which is likely to result in the destruction or adverse modification of a designated critical habitat of those species in violation of the Endangered Species Act of 1973 as amended (16 USC Sec. 1531 et seq.). The permittee shall promptly report to the cabinet any state- or federally-listed endangered or threatened species within the permit area of which the permittee becomes aware. Upon notification, the cabinet shall consult with appropriate state and federal fish and wildlife agencies and, after consultation, shall identify whether, and under what conditions, the permittee may proceed.

(b) No surface mining activity shall be conducted in a manner which would result in the unlawful taking of a bald or golden eagle, its nest, or any of its eggs. The permittee shall promptly report to the cabinet any golden or bald eagle nest within the permit area of which the permittee becomes aware. Upon notification, the cabinet shall consult with the U.S. Fish and Wildlife Service and also, where appropriate, the Kentucky Department of Fish and Wildlife Resources and, after consultation, shall identify whether, and under what conditions, the permittee may proceed.

(2) Nothing in this title shall authorize the taking of an endangered or threatened species or a bald or golden eagle, its nest, or any of its eggs in violation of the Endangered Species Act of 1973 as amended (16 USC 1531 et seq.) or the Bald Eagle Protection Act as amended (16 USC 668 et seq.).

[(2) A permittee shall promptly report to the cabinet the presence in the permit area of any critical habitat of a threatened or endangered species listed by the Secretary of the Interior, any plant or animal listed by the Commonwealth of Kentucky as threatened or endangered or any bald or golden eagle, of which that person becomes aware and which was not previously reported to the cabinet by that person.]

[(3) A permittee shall ensure that the design and construction of electric power lines and other transmission facilities used for or incidental to the surface mining activities on the permit area are in accordance with the guidelines set forth in "Environmental Criteria for Electric Transmission System" (USDI, USDA (1970)), or in alternative guidance manuals approved by the cabinet. Distribution lines shall be designed and constructed in accordance with REA Bulletin 61-10, "Powerline Contacts by Eagles and Other Large Birds," or in alternative guidance manuals approved by the cabinet.]

[(4) Each permittee shall, to the extent possible using the best technology currently available:]

[(a) Locate and operate haul and access roads so as to avoid or minimize impacts to important fish and wildlife species or other species protected by state or federal law;]

[(b) Fence roadways where specified by the cabinet to guide locally important wildlife to roadway underpasses. No new barrier shall be created in known and important wildlife migration routes;]

[(c) Fence, cover, or use other appropriate methods to exclude wildlife from ponds which contain hazardous concentrations of toxic-forming materials;]

[(d) Restore, enhance where practicable or avoid disturbance to habitats of unusually high value for fish and wildlife;]

[(e) Restore, enhance where practicable, or maintain natural riparian vegetation on the banks of streams, lakes, and other wetland areas. Wetlands shall be preserved or created, rather than drained or otherwise permanently abolished;]

[(f) Afford protection to aquatic communities by avoiding stream channels as required in 405 KAR 16:060, Section 11 or restoring stream channels as required in 405 KAR 16:080, Section 2;]

[(g) Not use persistent pesticides on the area during surface mining and reclamation activities, unless approved by the cabinet;]

[(h) To the extent possible prevent, control, and suppress range, forest, and coal fires which are not approved by the cabinet as part of a management plan.]

Section 4. Reclamation Strategies and Wildlife Enhancement Techniques. (1) A postmining land use for fish and wildlife shall be characterized by: a combination of habitat types or vegetative types, such as a mix of forest land or woodlots, shrub/scrub areas, grass/legume areas, and wetlands; or palustrine wetlands throughout. If the postmining land use is for fish and wildlife, at least thirty (30) percent of the land area involved, not including permanent impoundments, permanent roads, and brush piles and rock piles for wildlife, shall be stocked with trees or shrubs. Where [(i) If] fish and wildlife [habitat] is to be a [primary or secondary] postmining land use, the permittee [operator] shall, in addition to the requirements of 405 KAR 16:200:

(a) [1.] Select plant species [to be used on reclaimed areas, based] on the basis of the following criteria: their proven nutritional value, their use as cover, their ability to support and enhance fish and wildlife after release of the performance bond, soil conditions and pH tolerances of the species, and species identified during the baseline terrestrial habitat (vegetation) analysis; [their proven nutritional value for fish and wildlife; their uses as cover for fish and wildlife; and their ability to support and enhance fish and wildlife habitat after release of bonds;] and

(b) Group and distribute plants [2. Distribute plant groupings to maximize benefit to fish and wildlife. Plants should be grouped and distributed] in a manner which optimizes edge effect, cover, and other benefits for fish and wildlife.

(2) [(j)] Where cropland or pastureland is to be the [alternative] postmining land use, [on lands diverted from a fish and wildlife premining land use] and where appropriate for wildlife and crop management practices, the permittee shall intersperse the fields with trees, hedges, or fence rows throughout the [harvested] area to break up large blocks of monoculture and to diversify habitat types for birds and other animals. [; and]

(3) [(k)] Where [the primary land use is to be] residential[, public service,] or industrial/commercial use is to be the postmining land use, and where consistent with the approved postmining land use, the permittee shall [land use,] intersperse reclaimed lands with greenbelts utilizing species of grass, shrubs and trees useful as food and cover for wildlife [birds and small animals, unless such

greenbelts are inconsistent with the approved postmining land use].

(4) Additional reclamation strategies and wildlife enhancement techniques are outlined in TRM #20.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 12, 1991
FILED WITH LRC: July 15, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed regulation has been scheduled for 9 a.m. (EDT) Thursday, August 29, 1991, in the Department for Surface Mining Reclamation and Enforcement's Main Conference Room (Room B-31) 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 August 24, 1991. The schedule hearing may be cancelled if the contact person has not received any written notice of intent to testify by August 24, 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 regulation 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 regulation but does not wish to testify at the hearing may submit written comments on the proposed regulation at any time before 4:30 p.m. (EDT) on Thursday, August 29, 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:

CONTACT PERSON: 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 regulation establishes performance standards for the protection of fish, wildlife, and related environmental values. This regulation applies to surface mining activities and its counterpart, 405 KAR 18:180 applies to underground mining activities. Together these regulations affect about 3,800 permanent program operations. However, Section 2 of these regulations, protection of streams, will only apply to newly permitted operations and some, but not all, new areas permitted as amendments and revisions. Presently, the cabinet is receiving about 1,200 applications for original and amended permits per year and about 1,300 applications for major and minor revisions per year, not including minor "field" revisions. These amendments are being made to comply with the federal surface coal mining regulations, and to carry out a commitment made to the federal Office of Surface Mining to establish criteria for streams with valuable environmental resources in connection with the stream buffer zone regulation at 405 KAR 16:060, Section 11. In addition to affecting mining operations, this regulation also affects the general public that may be adversely affected by mining activities' impacts on fish and wildlife resources. This regulation will affect the surface owner by affecting the reclamation of the land.

(a) Direct and indirect costs or savings to those affected:

1. First year: Although many of the requirements in this regulation are reworded, they are not all new provisions as there has always been a performance standard for protection of fish and wildlife. However, there will be a more effective implementation of these requirements in the future because the permittee must include a protection and enhancement plan in his permit application and implement the approved reclamation strategies. There are some new requirements in Section 2 which establishes stream protection measures, buffer zone requirements, biological monitoring requirements, and other protection measures. Emphasis is placed on "streams with valuable environmental resources" which are established by these amendments. There will be some additional cost to the industry involved in ensuring that their approved fish and wildlife protection and enhancement measures are implemented in the mining and reclamation process. The costs will vary considerably from operation to operation. There will be some increased costs involved for those operations that are required to conduct biological monitoring of streams; however, these costs should not be very high, and will not apply to every operation. Some cost savings may be realized by those operations that reclaim to a fish and wildlife postmining land use because the standards for this in this regulation and in the revegetation regulations are designed to allow for the most cost effective reclamation.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: There will be some additional reporting and paperwork requirements for those operations that are required to conduct biological monitoring of streams.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: In general there should not be a significant increase in the cabinet's cost of operation, although there may be some increase in required inspection time to ensure that the approved fish and wildlife protection and enhancement plan is complied with. There will be some additional time required to review and follow up on biological monitoring reports. Some additional training of cabinet personnel will be required.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There will be some additional paperwork for the cabinet involved in reviewing and filing biological monitoring reports.

(3) Assessment of anticipated effect on state

and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: Not applicable.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.
(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, 1265. 30 CFR Parts 730-733, 735, 816.57, 816.97, 917.
2. State compliance standards. These amendments to the protection of fish and wildlife resources performance standard are being made to comply with federal regulations and to carry out a commitment to the federal Office of Surface Mining to set standards for streams with valuable environmental resources related to the stream buffer zone provisions. In addition, these amendments set forth performance standards regarding wetlands, habitats of unique or unusually high value, protection of threatened and endangered species, protection of streams, reclamation strategies, and wildlife enhancement techniques, among others. Regarding stream protection, this regulation establishes which streams are considered to have valuable environmental resources in Section 2 and establishes protection measures for these streams including buffer zones, biological monitoring, and other protection measures.
3. Minimum or uniform standards contained in the federal mandate. The federal performance standards for protection of fish and wildlife include requirements to minimize adverse impacts on fish and wildlife and to enhance those resources where practicable. The federal regulations also contain standards for wetlands, habitats of unique or unusually high value, endangered or threatened species, and enhancement techniques, among other standards. These are generally the same as in the state amendments; however, the state amendments do contain more detail, especially regarding protection of streams. The federal regulation on stream buffer zones establishes criteria for when variances may be granted. One of the criteria is that the mining activities will not adversely affect the water quantity and quality or other environmental resources of the stream. At first glance, this might seem to be a stricter standard than the state's counterpart at 405 KAR 16:060, which uses the terminology "valuable" environmental resources. However, OSM approved the state regulation because Kentucky said it would establish criteria for determining what are "valuable" environmental resources when it amended this regulation on fish and wildlife resources. That is one reason why there is more detail in the state regulation on protection of streams than is in the federal counterpart.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, although the state regulation contains more detailed requirements than the federal regulation, this regulation establishes the requirements through regulation, rather than by a case-by-case consultation process as envisioned under the federal regulation. This provides for a more efficient and consistent process, but does not impose additional or stricter requirements than would the more general federal regulation.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

**NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET**
**Department for Surface Mining Reclamation and Enforcement**
**(Proposed Amendment)**

**405 KAR 16:190. Backfilling and grading.**

RELATES TO: KRS 350.020, 350.093, 350.100, 350.405, 350.410, 350.450, 350.465, 30 CFR Parts 730-733, 735, 816.102-.106, 917, 30 USC 1253, 1255, 1265
STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.100, 350.465, 30 CFR Parts 730-733, 735, 816.102-.106, 917, 30 USC 1253, 1255, 1265
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during surface mining activities and for restoration and reclamation of surface areas affected by mining activities. This regulation sets forth requirements for backfilling and grading, including requirements for highwall elimination, return to approximate original contour, timing of backfilling and grading, use of terraces, thick and thin overburden conditions, covering coal and acid and toxic materials, and regrading or stabilizing rills and gullies.

Section 1. Timing of Backfilling and Grading. Backfilling and grading shall be conducted in accordance with the requirements for contemporaneous reclamation as set forth in 405 KAR 16:020.

Section 2. General Backfilling and Grading Requirements. (1) Except as provided in subsection (9) of this section, all disturbed areas shall be returned to their approximate original contour. All spoil shall be transported, placed in a controlled manner, backfilled, compacted (where advisable to ensure stability or to prevent leaching of toxic materials), and graded to:
(a) Eliminate all highwalls (except as otherwise provided in Section 7 of this regulation), spoil piles, and depressions (excluding depressions and impoundments approved pursuant to subsection (5) or (6) of this section);
(b) Ensure a long-term static factor of safety of at least one and three-tenths (1.3) for all

portions of the reclaimed land;
(c) Achieve a postmining slope which does not exceed the angle of repose and which does prevent slides;
(d) Minimize erosion and adverse effects on surface and ground water both on and off the site; and
(e) Support the approved postmining land use.
(2) Spoil, except excess spoil disposed of in accordance with 405 KAR 16:130, shall be returned to the excavated areas.
(3) Disposal of coal processing waste and underground development waste in the mined-out area shall be in accordance with 405 KAR 16:140, except that a long-term static safety factor of one and three-tenths (1.3) shall be achieved.
(4) On approval by the cabinet in order to conserve soil moisture, ensure stability, and control erosion on final graded slopes, cut-and-fill terraces may be allowed, if the terraces are compatible with the approved postmining land use and are appropriate substitutes for construction of lower grades on the reclaimed lands. The terraces shall meet the following requirements:
(a) The width of the individual terrace bench shall not exceed twenty (20) feet, unless specifically approved by the cabinet as necessary for stability, erosion control, or roads included in the approved postmining land use plan.
(b) The vertical distance between terraces shall be as specified by the cabinet, to prevent excessive erosion and to provide long-term stability.
(c) The slope of the terrace outslope shall not exceed 1v:2h (fifty (50) percent). Outslopes which exceed 1v:2h (fifty (50) percent) may be approved, if they have a minimum static safety factor of more than 1.3, provide adequate control over erosion, and closely resemble the surface configuration of the land prior to mining. In no case may highwalls be left as part of terraces.
(d) Culverts and underground rock drains shall be used on the terrace only <u>if</u> [when] approved by the cabinet.
(5) Small depressions may be constructed on backfilled areas, if the depressions:
(a) Are needed to minimize erosion, conserve soil moisture, create or enhance wildlife habitat, or promote vegetation;
(b) Are not disapproved by the cabinet;
(c) Are not substitutes for compliance with approximate original contour requirements;
(d) Do not adversely affect the stability of the backfilled area; and
(e) Are not located on steep-slope outslopes.
(6) Impoundments on backfilled areas may be approved, if the impoundments:
(a) Meet the applicable requirements of 405 KAR 16:060, Section 10 and 405 KAR 16:100;
(b) Are demonstrated, to the satisfaction of the cabinet in the permit application, to have no adverse effect on the stability of the backfilled area;
(c) Are consistent with and suitable for the approved postmining land use;
(d) Are specifically approved by the cabinet in the permit application; and
(e) Are not located on steep-slope outslopes.
(7) All surface mining activities on slopes above twenty (20) degrees, or on lesser slopes that the cabinet defines as steep slopes, shall comply with the requirements of 405 KAR 20:060.
(8) All final grading; preparation of overburden before replacement of topsoil, topsoil substitutes, and topsoil supplements; and placement of topsoil, topsoil substitutes, and topsoil supplements shall be done along the contour to minimize subsequent erosion and instability. If [such] grading, preparation, or placement along the contour is hazardous to equipment operators, then grading, preparation, and placement in a direction other than generally parallel to the contour may be used. In all cases, grading, preparation, or placement shall be conducted in a manner which minimizes erosion and provides a surface for placement of topsoil, topsoil substitutes, and topsoil supplements which will minimize slippage.
(9) The postmining slope may vary from the approximate original contour <u>if</u> [when] approval is obtained from the cabinet for:
(a) The provisions for thin overburden in Section 4 of this regulation;
(b) The provisions for thick overburden in Section 5 of this regulation;
(c) Mountaintop removal operations in accordance with 405 KAR 8:050, Section 4;
(d) A variance from approximate original contour requirements in accordance with 405 KAR 8:050, Section 6; or
(e) Incomplete elimination of highwalls in previously mined areas in accordance with Section 7 of this regulation.

Section 3. Disposal of Acid-forming, Toxic-forming, and Combustible Materials and Coverage of Coal Seams. (1) General. Exposed coal seams, acid-forming materials, toxic-forming materials, and combustible materials which are used, produced, or exposed during surface coal mining and reclamation operations shall be handled; disposed of; treated; and covered with nontoxic-forming, nonacid-forming, and noncombustible materials in a manner which:
(a) Minimizes adverse impacts on surface and ground water, minimizes disturbances to the hydrologic balance, and prevents material damage to the hydrologic balance;
(b) Ensures compliance with 405 KAR 16:060;
(c) Prevents sustained combustion;
(d) Minimizes adverse impacts on plant growth and the approved postmining land use;
(e) Ensures that the affected area is capable of sustaining sufficient vegetation to meet the revegetation requirements of 405 KAR 16:200; and
(f) Ensures that the affected area is capable of meeting the postmining land use requirements of 405 KAR 16:210.
(2) Coverage and treatment. All exposed coal seams, acid-forming materials, toxic-forming materials, and combustible materials which are used, produced, or exposed during surface coal mining and reclamation operations shall be covered and treated as necessary to neutralize toxicity, acidity, and combustibility, in order to ensure long-term and short-term compliance with subsection (1) of this section.
(a) All exposed coal seams shall be covered with a minimum of four (4) feet of nontoxic-forming, nonacid-forming, and noncombustible materials. The cabinet shall require thicker amounts of cover, special compaction of cover, treatment, or other measures as necessary to ensure compliance with subsection (1) of this section and to prevent exposure of the coal seams by erosion.

(b) Excluding exposed coal seams, all acid-forming materials, toxic-forming materials, and combustible materials which are used, produced, or exposed during surface coal mining and reclamation operations shall be:

1. Selectively blended with nontoxic-forming, nonacid-forming, and noncombustible materials; treated; or selectively handled, or an appropriate combination of those [such] measures shall be used, as necessary to ensure compliance with subsection (1) of this section; and

2. Covered with a minimum of four (4) feet of nontoxic-forming, nonacid-forming, and noncombustible materials. The cabinet shall require thicker amounts of cover, special compaction of cover, treatment, or other measures as necessary to ensure compliance with subsection (1) of this section and to prevent exposure of the toxic-forming, acid-forming, or combustible materials by erosion. The cabinet may approve lesser amounts of cover, or no cover (other than topsoil, topsoil substitutes, or topsoil supplements), if the applicant demonstrates, to the satisfaction of the cabinet in the permit application, that the lesser amounts are sufficient to ensure compliance with subsection (1) of this section and to maintain coverage of the toxic-forming, acid-forming, and combustible materials;

3. If required or approved by the cabinet, compacted and placed in an environment which minimizes the oxidation potential of the toxic-forming materials, acid-forming materials, and combustible materials; and

4. If required or approved by the cabinet, disposed so as to minimize surface and ground water contact with acid-forming materials, toxic-forming materials, and combustible materials. Water [Such] contact may be minimized by the encasement of those [such] materials in low-permeability substances and by the compaction and selective placement of those [such] materials in locations other than surface drainage courses, ground water recharge areas, or areas of significant ground water flow. As an alternative to minimizing contact with surface and ground water and if feasible based on site conditions, the cabinet may allow acid-forming materials, toxic-forming materials, and combustible materials to be placed below the permanent water table.

(3) The cabinet shall require measures in addition to those identified in subsection (2) of this section if necessary to ensure protection of the environment or the health or safety of the public.

Section 4. Thin Overburden. (1) The provisions of this section apply only where the final thickness is less than eight-tenths (0.8) of the initial thickness. Initial thickness is the sum of the overburden thickness and coal thickness prior to removal of coal. Final thickness is the product of the overburden thickness prior to removal of coal times the bulking factor to be determined for each permit area. The provisions of this section apply only if [when] surface mining activities cannot be carried out to comply with Section 2 of this regulation to achieve the approximate original contour.

(2) In surface mining activities carried out continuously in the same limited pit area for more than one (1) year from the day coal removal operations begin and where the volume of all available spoil and suitable waste materials over the permit area is demonstrated to be insufficient to achieve the approximate original contour of the lands disturbed, surface mining activities shall be conducted to meet, at a minimum, the following standards:

(a) Transport, backfill, and grade, using all available spoil and suitable waste materials from the entire mine area, to attain the lowest practicable stable grade, to achieve a static safety factor of 1.3, and to provide adequate drainage and long-term stability of the regraded areas and cover all acid-forming and toxic-forming materials;

(b) Eliminate highwalls by grading or backfilling to stable slopes not exceeding 1v:2h (fifty (50) percent), or to [such] lesser slopes as the cabinet may specify to reduce erosion, maintain the hydrologic balance, or allow the approved postmining land use;

(c) Transport, backfill, grade, and revegetate in accordance with 405 KAR 16:200, to achieve an ecologically sound land use compatible with the prevailing use in unmined areas surrounding the permit area; and

(d) Transport, backfill, and grade, to ensure impoundments are constructed only if [where]:

1. It has been demonstrated to the cabinet's satisfaction that all requirements of 405 KAR 16:060, 405 KAR 16:070, 405 KAR 16:080, 405 KAR 16:090, 405 KAR 16:100 and 405 KAR 16:110 have been met; and

2. The impoundments have been approved by the cabinet as suitable for the approved postmining land use and as meeting the requirements of this chapter and all other applicable federal and state laws and regulations.

Section 5. Thick Overburden. (1) The provisions of this section apply only where the final thickness is greater than one and two-tenths (1.2) of the initial thickness. Initial thickness is the sum of the overburden thickness and coal thickness prior to removal of coal. Final thickness is the product of the overburden thickness prior to removal of coal times the bulking factor to be determined for each permit area. The provisions of this section apply only if [when] surface mining activities cannot be carried out to comply with Section 2 of this regulation to achieve the approximate original contour.

(2) In surface mining activities where the volume of spoil over the permit area is demonstrated to be more than sufficient to achieve the approximate original contour, surface mining activities shall be conducted to meet, at a minimum, the following standards:

(a) Transport, backfill, and grade all spoil and wastes, not required to achieve the approximate original contour of the permit area, to the lowest practicable grade, to achieve a static factor of safety of one and three-tenths (1.3) and cover all acid-forming and other toxic-forming materials;

(b) Transport, backfill and grade excess spoil and wastes only within the permit area and dispose of those [such] materials in accordance with 405 KAR 16:130;

(c) Transport, backfill, and grade excess spoil and wastes to maintain the hydrologic balance, in accordance with 405 KAR 16:060, 405 KAR 16:070, 405 KAR 16:080, 405 KAR 16:090, 405 KAR 16:100 and 405 KAR 16:110 and to provide long-term stability by preventing slides, erosion and water pollution;

(d) Transport, backfill, grade, and revegetate wastes and excess spoil to achieve an ecologically sound land use approved by the cabinet as compatible with the prevailing land uses in unmined areas surrounding the permit area;
(e) Eliminate all highwalls and depressions by backfilling with spoil and suitable waste materials; and
(f) Meet the revegetation requirements of 405 KAR 16:200 for all disturbed areas.

Section 6. Regrading or Stabilizing Rills and Gullies. Except as provided in subsections (a) and (b) of this section, if [when] rills or gullies deeper than nine (9) inches form in areas that have been regraded and topsoiled, the rills and gullies shall be filled, graded, or otherwise stabilized and the area reseeded and [/or] replanted according to 405 KAR 16:200.
(a) Rills or gullies less than nine (9) inches deep shall be stabilized and the area reseeded and [/or] replanted, if the rills or gullies are disruptive to the approved postmining land use or to the establishment of vegetation, may result in additional erosion and sedimentation, or may cause or contribute to the violation of a water quality standard.
(b) Rills and gullies deeper than nine (9) inches need not be filled, regraded, and revegetated if all of the following criteria are met:
1. They are incised to solid bedrock or are otherwise stable and not likely to further erode;
2. They are not disruptive to the approved postmining land use or to the establishment of the vegetative cover; and
3. They neither cause nor contribute to the violation of water quality standards.

Section 7. Remining Previously Mined Areas. (1) General requirements. Remining operations on previously mined areas, including steep slope areas, that contain a preexisting highwall shall comply with Sections 1 through 6 of this regulation except as provided in this section.
(2) The terms "highwall remnant", "modified highwall", "previously mined area", "reasonably available spoil", and "remining" are defined in 405 KAR 7:020. [Definitions.]
[(a) "Highwall remnant" means that portion of highwall that remains after backfilling and grading of a remining permit area.]
[(b) "Modified highwall" means either:]
[1. The highwall resulting from remining where the preexisting highwall face is removed; or]
[2. The highwall resulting from remining where the preexisting highwall is vertically enlarged.]
[(c) "Previously mined area" means land disturbed by earlier activities related to coal mining on which none of the earlier disturbances were subject to any of the standards of SMCRA.]
[(d) "Reasonably available spoil" means spoil and suitable coal mine waste material generated by the remining operation and other spoil or suitable coal mine waste material located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to public safety or significant damage to the environment. For this purpose, the permit area shall include all such spoil in the immediate vicinity of the mining operation.]
[(e) "Remining" means conducting surface coal mining and reclamation operations which affect previously mined areas.]

(3) Variances to backfilling and grading requirements for remining operations. The requirements within Section 2(1)(a) of this regulation to completely eliminate highwalls shall apply to remining operations, except for situations in which the volume of all reasonably available spoil is demonstrated, to the satisfaction of the cabinet in the permit application, to be insufficient to completely backfill and eliminate the preexisting or modified highwall. The highwall shall be eliminated to the maximum extent technically practicable in accordance with the following criteria:
(a) All reasonably available spoil shall be used to backfill the area.
(b) The backfill shall be graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability (one and three-tenths (1.3) long-term static factor of safety). [, provided, however, that] The exposed coal seam shall be covered in accordance with Section 3 of this regulation.
(c) Spoil generated or handled by the remining operation shall not be placed on the fill section of any existing or new bench.
(d) Any highwall remnant shall be stable and not pose a hazard to the public health and safety or to the environment. The permittee shall demonstrate, to the satisfaction of the cabinet in the permit application, that the postmining highwall remnant will be stable. If the highwall remnant is determined by the cabinet to be unstable or potentially unstable, the permittee shall perform any corrective measures required by the cabinet to stabilize the highwall remnant.
(e) Spoil placed on the outslope during previous mining operations shall not be disturbed if the [such] disturbance will cause instability of the remaining spoil or otherwise increase the hazard to the public health or safety or to the environment.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 12, 1991
FILED WITH LRC: July 15, 1991 at 10 a.m.
PUBLIC HEARING: A public hearing on this proposed regulation has been scheduled for 9 a.m. (EDT) Thursday, August 29, 1991, in the Department for Surface Mining Reclamation and Enforcement's Main Conference Room (Room B-31) 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 August 24, 1991. The schedule hearing may be cancelled if the contact person has not received any written notice of intent to testify by August 24, 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 regulation 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 regulation but does not wish to testify at the hearing may submit written comments on the proposed regulation at any time before 4:30 p.m. (EDT) on Thursday, August 29, 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:

CONTACT PERSON: 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 regulation for surface mining activities and its counterpart 405 KAR 18:190 for underground mining activities establish backfilling and grading requirements for surface coal mining and reclamation operations. There are about 3800 permanent program operations in existence. However, these amendments have only a very narrow or effect. The definition of "previously mined area" must be changed to comply with a federal court ruling. All the definitions in this regulation were moved to 405 KAR 7:020 and the definition of "previously mined area" was modified.

(a) Direct and indirect costs or savings to those affected:

1. First year: The court ruled that to be eligible for relaxed backfilling and grading requirements on previously mined areas, those areas must have been mined prior to August 3, 1977. That eliminates some areas that could have been eligible under the previous definition and reclamation of those areas may be more costly since the complete highwall elimination requirements will apply.

2. Continuing costs or savings: Same as first year.

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: 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: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(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, 1265. 30 CFR Parts 730-733, 735, 816.102-.106, 917.

2. State compliance standards. These amendments move several definitions to 405 KAR 7:020 and modify the definition of "previously mined area" to comply with a federal court ruling which limits these areas to those which were mined prior to August 3, 1977.

3. Minimum or uniform standards contained in the federal mandate. Although the federal definition has not yet been changed in the Code of Federal Regulations, the effect of the court ruling makes the federal standard the same as proposed in the state amendments.

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. Not applicable.

**NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET**
**Department for Surface Mining Reclamation and Enforcement**
**(Proposed Amendment)**

**405 KAR 16:200. Revegetation.**

RELATES TO: KRS 350.093, 350.095, 350.100, 350.405, 350.410, 350.420, 350.435, 350.465, 30 CFR Parts 730-733, 735, 816.111-.116, 917, 30 USC 1253, 1255, 1265

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.100, 350.465, 30 CFR Parts 730-733, 735, 816.111-.116, 917, 30 USC 1253, 1255, 1265

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during surface mining activities and for restoration and reclamation of surface areas affected by mining activities. This regulation sets forth requirements for revegetation of areas affected by surface mining activities, including requirements for temporary and permanent vegetative cover, use of introduced species, timing of revegetation, mulching and other soil stabilizing practices, standards for measuring revegetation success, and reporting requirements.

Section 1. General Requirements. (1)(a) Each permittee shall establish on all affected land a diverse, effective, and permanent vegetative cover that meets the requirements of this regulation and the revegetation provisions of 405 KAR 16:180, and [of the same seasonal variety native to the region or species] that supports the approved postmining land use. [For areas designated as prime farmland, the requirements of 405 KAR 20:040 shall apply.]

(b) For prime farmland areas, the requirements of 405 KAR 20:040 shall apply in lieu of the productivity standards of this regulation unless those areas are exempted by 405 KAR 8:050,

Section 3, in which case the productivity standards of this regulation shall apply.

(2) All revegetation shall be in compliance with the plans submitted under 405 KAR 8:030, Sections 24(4) and 37, as approved by the cabinet, and shall be carried out in a manner that encourages a prompt vegetative cover and recovery of productivity levels compatible with the approved postmining land use.

(3) If the approved postmining land use is not cropland or pastureland, [(a)] all disturbed land except water areas, rock areas such as those used for drainage control and wildlife enhancement, and surface areas of roads that are approved as a part of the postmining land use or uses [,] shall be seeded or planted to achieve a permanent vegetative cover of the same seasonal variety native to the region that is capable of soil stabilization, self-regeneration, and plant succession. The vegetative cover shall be considered of the same seasonal variety if [when] it consists of a mixture of species of equal or superior utility for the approved postmining land use when compared with the utility of naturally occurring vegetation during each season of the year. [If the postmining land use is cropland, successful establishment of the crops normally grown or other appropriate crops will meet the requirements of this paragraph.]

(4) [(b) The vegetative cover shall be capable of stabilizing the soil surface from erosion.] If the postmining land use is cropland or pastureland, establishment of [appropriate] crops or pasture species normally grown in the mine vicinity and normal husbandry practices will meet the requirements of subsection (1)(a) of this section. [this paragraph unless the cabinet determines that other temporary vegetation shall be initially planted in order to stabilize the soil surface prior to the establishment of crops.]

(5)(a) Plant species used for revegetation shall be compatible with the plant and animal species of the area, and shall meet the requirements of applicable state and federal laws or regulations for seeds, poisonous and noxious plants, and introduced species.

(b) Except for cropland and pastureland, selection of species, distribution patterns, seeding rates, and planting arrangements shall be approved case-by-case by the cabinet based upon TRM #20 and other appropriate technical documents. TRM #20 is incorporated by reference in 405 KAR 8:030, Section 20. Two (2) or more permanent legume species and one (1) or more permanent grasses shall be established on pastureland unless fewer species are approved by the cabinet based on a pasture management plan specifically tailored to the species mix.

(6) [(c)] Subject to the approval of the cabinet, small incidental areas related to the fulfillment of the postmining land use may be exempted from the revegetation standards if [where] no adverse environmental impact will occur if the exemption is granted.

(7) The extended liability period under the performance bond requirements of 405 KAR Chapter 10 shall begin after the last time of augmented seeding, fertilizing, irrigating, or other related work, and shall continue for not less than five (5) years; except:

(a) Discrete areas of 0.25 acre or less needing reseeding due to circumstances specified in subparagraphs 1 through 5 of this paragraph may be reseeded (including reliming, refertilizing, and remulching) without restarting the five (5) year liability period. The total acreage of these areas reseeded during the liability period shall not exceed three (3) percent of the permit area acreage. This paragraph shall only apply to:

1. Reseeding associated with repair of rills and gullies;

2. Reseeding areas where vegetation was disturbed by vehicular traffic not under the control of the permittee;

3. Reseeding areas where vegetation was disturbed by the installation or removal of oil and gas wells or utility lines;

4. Reseeding areas where there was poor seed germination of the initial seeding; and

5. Reseeding areas where vegetation was unavoidably disturbed in the course of conducting some other necessary reclamation activity.

(b) Liming, fertilizing, mulching, seeding, or stocking of haul roads, locations where sedimentation ponds and off-site temporary diversions that divert water to or away from sedimentation ponds have been removed, and locations where collected sediment and embankment material from sedimentation pond removal have been disposed shall not restart the five (5) year liability period. Vegetation established in these areas shall be in place for at least two (2) years before Phase III bond release;

(c) For cropland, the five (5) year liability period shall commence at the date of initial planting for the long-term intensive agricultural postmining land use;

(d) Irrigating, reliming, and refertilizing cropland and pastureland; reseeding cropland; and renovating pastureland by overseeding with legumes after Phase II bond release and after three (3) years from the initial seeding shall be considered normal husbandry practices and shall not restart the liability period if the amount and frequency of these practices do not exceed normal agricultural practices used on unmined land within the region; and

(e) Other normal husbandry practices that may be conducted without restarting the liability period are disease, pest, and vermin control; pruning; and transplanting and replanting of trees and shrubs in accordance with Section 6 of this regulation.

(8) For pastureland, and for cropland except prime farmland subject to 405 KAR 20:040, ground cover and productivity success standards shall be met during the growing seasons of any two (2) years of the liability period except the first year; and areas approved for other uses shall equal or exceed the applicable success standards during the growing season of the last year of the liability period.

Section 2. Use of Introduced Species. Introduced species may be substituted for native species only if approved by the cabinet under the following conditions:

(1) The species shall meet the applicable requirements of Section 1(2), (3), (4), and (5) of this regulation. [The species are compatible with the plant and animal species of the region;]

[(2) The species meet the requirements of applicable state and federal seed or introduced species statutes and are not poisonous or noxious; and]

[(3)(a) After appropriate field trials or

other demonstrations or studies satisfactory to the cabinet have shown that the introduced species, if proposed as the permanent vegetation, are desirable and necessary to achieve the approved postmining land use; or]

(2)(a) Appropriate field trials or other studies shall be conducted or published literature shall be submitted to demonstrate to the satisfaction of the cabinet that proposed, unproven, introduced species are desirable and are necessary for achieving the postmining land use; or

(b) The species are necessary to achieve a quick, temporary, and stabilizing cover that aids in controlling erosion; and measures to establish permanent vegetation are included in the approved plan submitted under 405 KAR 8:030, Sections 24(4)(e) and 37.

[(4) The cabinet may require the use of particular species or mixtures when such species are determined to enhance fish and wildlife resources, to be more effective in controlling erosion, to be more effective in establishing permanent vegetation or to be more effective in achieving the approved postmining land use.]

Section 3. Timing. Seeding and planting of disturbed areas with permanent species shall be conducted no later than during the first normal period for favorable planting conditions after final preparation. The normal period for favorable planting shall be that planting time generally accepted locally, or as approved [established] by the cabinet in the permit, for the type of plant materials selected. In accordance with Section 4 of this regulation and 405 KAR 16:020, a [When necessary to effectively control erosion, any] disturbed area shall be seeded and mulched [planted], as contemporaneously as practicable with the completion of backfilling and grading, to establish a temporary cover of small grains, grasses, or legumes until a permanent cover is established.

Section 4. Soil Amendments and Stabilization. [Mulching and Other Soil Stabilizing Practices.] (1) Nutrients and soil amendments shall be applied to regraded areas in accordance with 405 KAR 16:050, Section 5.

(2) [(1)] Suitable mulch or other soil stabilizing practices shall be used in addition to temporary cover on all regraded and topsoiled areas to control erosion, to promote germination of seeds, and [or] increase the moisture retention capacity of the soil. The cabinet may, on a case-by-case basis, waive [suspend] the requirement for mulch if the cabinet finds, based on seasonal, soil, and slope factors, that the temporary vegetative cover will achieve proper erosion control until a permanent cover is established, except that no waiver shall be granted for any area having a slope greater than ten (10) percent. [that alternative procedures proposed by the permittee will achieve the requirements of Section 6 of this regulation and do not cause or contribute to air or water pollution.]

[(2) When required by the cabinet, mulches shall be mechanically or chemically anchored to the soil surface to assure effective protection of the soil and vegetation.]

[(3) Annual grasses and grains may be used alone, as in situ mulch, or in conjunction with another mulch, when the cabinet determines that they will provide adequate soil erosion control and will later be replaced by perennial species approved for the postmining land use.]

[(4) Chemical soil stabilizers alone, or in combination with appropriate mulches, may be used in conjunction with vegetative covers approved for the postmining land use.]

(3) For areas within the permit boundary to be used as cropland, the area shall be seeded or planted in order to maintain a vegetative cover effective in controlling erosion until the permittee chooses to grow crops.

[Section 5. Grazing. When the approved postmining land use is grazing or pasture land, the permittee may demonstrate successful revegetation by using the reclaimed land for livestock grazing at a grazing capacity approved by the cabinet approximately equal to that for similar nonmined lands, for at least the last two (2) full years of liability required under Section 6(2) of this regulation, or by other appropriate demonstration approved by the cabinet.]

Section 5. Success Standards for Ground Cover and Productivity. (1) Determination of success of ground cover and productivity may be made on the basis of reference areas from unmined lands in the vicinity of the operation, where applicable, or by application of the specific ground cover and productivity standards of this section (tree and shrub stocking standards are set forth in Section 6 of this regulation).

(2)(a) For an approved postmining land use of pastureland or cropland used for the production of hay (except prime farmland subject to 405 KAR 20:040):

1. Ground cover (percent) and productivity (tons of forage per acre) shall be at least ninety (90) percent of that of an approved reference area with a statistical confidence of ninety (90) percent; and

2. Ground cover shall be at least ninety (90) percent, and productivity shall be at least ninety (90) percent of the average yield for that hay in the county in the three (3) years prior to the year of measurement, as determined from yield data available from the Kentucky Department of Agriculture, with a statistical confidence of ninety (90) percent.

(b) For areas within the permit boundary where row crops will be planted (except prime farmland subject to 405 KAR 20:040):

1. Ground cover on any area not planted in row crops shall be at least ninety (90) percent with a statistical confidence of ninety (90) percent; or

2. Crop production shall be at least ninety (90) percent of that of an approved reference area or at least ninety (90) percent of the average yield for the crop in the county in the three (3) years prior to the year of measurement, as determined from yield data available from the Kentucky Department of Agriculture, with a statistical confidence of ninety (90) percent.

(c) Forest land, or other areas within the permit boundary where woody plants are stocked, shall have at least eighty (80) percent ground cover with a statistical confidence of ninety (90) percent, with no sign of significant erosion as set forth in 405 KAR 16:190, Section 6.

(d) For all other land uses, ground cover

shall be at least eighty (80) percent with a statistical confidence of ninety (90) percent, with no sign of significant erosion as set forth in 405 KAR 16:190, Section 6.

(e) For all land uses other than cropland planted in row crops, at Phase III bond release there shall be no discrete bare area or sparsely covered (less than fifty (50) percent ground cover) area greater than 0.25 acre in size. [6. Standards for Success. (1) Success of revegetation shall be measured by techniques approved by the cabinet after consultation with appropriate state and federal agencies. Comparison of ground cover and productivity may be made on the basis of reference areas or through the use of technical guidance procedures published by USDA or USDI, or other procedures approved by the cabinet and the Director of OSM for assessing ground cover and productivity. Management of the reference area, if applicable, shall be comparable to that which is required for the approved postmining land use of the permit area.]

[(2)(a) Ground cover and productivity of living plants on the revegetated area within the permit area shall be at least equal to the ground cover and productivity of living plants on the approved reference area, or to the standards in technical guides approved by the cabinet and the Director of OSM. Ground cover and productivity shall equal the approved standard for the last two (2) consecutive years of the responsibility period.]

[(b) Except as provided in paragraph (c)3 of this subsection, the period of extended responsibility under the performance bond requirements of Title 405, Chapter 10 begins at the last time of substantially augmented seeding, fertilizing, irrigation or other work necessary to ensure successful vegetation, and continues for not less than five (5) years.]

[(c) The ground cover and productivity of the revegetated area shall be considered equal if they are at least ninety (90) percent of the ground cover and productivity of the reference area with ninety (90) percent statistical confidence, or with eighty (80) percent statistical confidence on shrublands, or ground cover and productivity are at least ninety (90) percent of the standards in a technical guide approved pursuant to paragraph (a) of this subsection. Exceptions may be authorized by the cabinet under the following standards:]

(3) [1.] For previously mined areas that were not reclaimed to the requirements of [Title] 405 KAR Chapters 16 through 20, the ground cover of living plants shall [not be less than can be supported by the best available topsoil or other suitable material in the reaffected area, shall] not be less than the ground cover existing before the redisturbance and shall be at least eighty (80) percent with a statistical confidence of ninety (90) percent, with no sign of significant erosion as set forth in 405 KAR 16:190, Section 6. [adequate to control erosion;]

[2. For areas to be developed for industrial or residential use within two (2) years after regrading is completed, the ground cover of living plants shall not be less than required to control erosion; and]

[3. For areas to be used for cropland, success in revegetation of cropland shall be determined on the basis of crop production from the mined area as compared to approved reference areas or other approved technical guidance procedures. Crop production from the mined area shall be equal to or greater than that of the approved standard for the last two (2) consecutive growing seasons of the five (5) year liability period established in paragraph (b) of this subsection. Production shall not be considered equal if it is less than ninety (90) percent of the production of the approved standard with ninety (90) percent statistical confidence. The applicable five (5) year period of responsibility for revegetation shall commence at the date of initial planting of the crop being grown. Within thirty (30) days of planting, the permittee shall notify the cabinet that the initial planting of the crop has been completed. Promptly thereafter, the cabinet shall inspect the area to verify that the initial planting has been completed.]

[4. On areas to be developed for fish and wildlife management or forestland, success of vegetation shall be determined on the basis of tree, shrub or half-shrub stocking and ground cover. The tree, shrub, or half-shrub stocking shall meet the standards described in Section 7 of this regulation. The area seeded to a ground cover shall be considered acceptable if it is at least seventy (70) percent of the ground cover of the reference areas with ninety (90) percent statistical confidence or if the ground cover is determined by the cabinet to be adequate to control erosion. This subsection shall determine the responsibility period and the frequency of ground cover measurement.]

[(3) The permittee shall:]

[(a) Maintain any necessary fences and proper management practices; and]

[(b) Conduct periodic measurements of vegetation, soils, and water prescribed or approved by the cabinet, to identify conditions during the applicable period of liability specified in subsection (2) of this section.]

[(4) For permit areas forty (40) acres or less in size, the following performance standards, if approved by the cabinet, may be used to measure success of revegetation on sites that are disturbed.]

[(a) Areas planted only in herbaceous species shall sustain a vegetative ground cover of seventy (70) percent for the last three (3) full consecutive years of the five (5) year period of liability.]

[(b) Areas planted with a mixture of herbaceous and woody species shall sustain a herbaceous vegetative ground cover of seventy (70) percent for the last three (3) full consecutive years of the five (5) year period of liability and 400 woody plants per acre at the end of the five (5) years. On steep slopes, the minimum number of woody plants shall be 600 per acre.]

[(5) For purposes of this section, herbaceous species means grasses, legumes, and nonleguminous forbs; woody plants means woody shrubs, trees, and vines; and ground cover means the area of ground covered by the combined aerial parts of vegetation and the litter that is produced naturally on-site, expressed as a percentage of the total area of measurement.]

Section 6. [7.] Tree and Shrub Stocking. This section sets forth stocking standards and criteria for counting woody plants for measuring stocking success, and applies in addition to Section 5 of this regulation, where the approved postmining land use or the approved fish and

wildlife protection and enhancement plan requires the planting of trees or shrubs. [This section sets forth standards for revegetation of areas for which the approved postmining land use requires woody plants as the primary vegetation, to ensure that a cover of commercial tree species, noncommercial tree species, shrubs or half-shrubs, sufficient for adequate use of the available growing space, is established after surface mining activities.]

(1) If forest land is an approved postmining land use:

(a) The forested area shall have a minimum stocking of 450 trees or trees and shrubs per acre determined with a statistical confidence of ninety (90) percent, with tree species comprising at least fifty (50) percent of the woody plant species;

(b) At least four (4) species of trees or trees and shrubs shall be planted in a mixed distribution pattern for noncommercial (unmanaged) forest land with each of the four (4) species comprising at least ten (10) percent of the total stock; however, none of the species shall comprise more than fifty (50) percent of the total stock; and

(c) For areas to be used as commercial (managed) forest land, at least seventy-five (75) percent of the woody plant stocking shall be with tree (not shrub) species providing good to excellent commercial value. The species shall be selected from those listed in TRM #20, except the cabinet may approve other species on a case-by-case basis.

(2) For other postmining land uses:

(a) At least thirty (30) percent of the area shall be comprised of multiple rows or plots of trees or shrubs if fish and wildlife is the postmining land use.

(b) For subareas within the permit boundary where trees or shrubs will be planted for the purpose of creating wildlife habitat (either for a fish and wildlife postmining land use or for fish and wildlife enhancement of other postmining land uses):

1. The minimum stocking rate shall be 450 woody plants per acre, determined with a statistical confidence of ninety (90) percent;

2. At least four (4) species of trees or shrubs shall be planted with each of the four (4) species comprising at least ten (10) percent of the total stock; however, none of the species shall comprise more than fifty (50) percent of the total stock; and

3. Tree and shrub species shall be selected, grouped, and distributed in a manner which optimizes edge effect, cover, and food for wildlife.

(c) For subareas within the permit boundary where trees and shrubs will be planted for the purposes of creating recreation areas, green belts, fence rows, woodlots, or shelter belts for wildlife, or otherwise facilitating the postmining land use, the minimum stocking rate shall be 450 woody plants per acre, unless a lesser density is approved by the cabinet based on site-specific considerations.

(3) For determining tree or shrub stocking success for areas within the permit boundary to be stocked with woody plants, the following criteria shall apply:

(a) At Phase II bond release, each tree or shrub counted shall be alive and healthy and shall have been in place for not less than one (1) growing season. At Phase III bond release, each tree or shrub counted shall be alive and healthy and shall have been in place for not less than two (2) growing seasons;

(b) At Phase III bond release each tree or shrub counted shall have at least one-third (1/3) of its height in live crown;

(c) At Phase III bond release, only woody plants over one (1) foot in height shall be counted, and if multiple stems occur on the same plant, only the tallest stem shall be counted;

(d) Up to a cumulative twenty (20) percent of the woody plants needed to meet the stocking standard of 450 per acre may be replanted during the liability period without restarting the liability period;

(e) At Phase III bond release, at least eighty (80) percent of the trees and shrubs used to determine success shall have been in place for three (3) years or more; and

(f) Portions of the site occupied by approved rock areas, brush piles, permanent impoundments, permanent roads, and surface drainageways shall be excluded from the stocking success determinations.

[(1) Stocking, i.e., the number of stems per unit area, will be used to determine the degree to which space is occupied by well-distributed, countable trees, shrubs or half-shrubs.]

[(a) Root crown or root sprouts over one (1) foot in height shall count as one (1) toward meeting the stocking requirements. Where multiple stems occur only the tallest stem will be counted.]

[(b) A countable tree or shrub means a tree that can be used in calculating the degree of stocking under the following criteria:]

[1. The tree or shrub shall be in place at least two (2) growing seasons;]

[2. The tree or shrub shall be alive and healthy; and]

[3. The tree or shrub shall have at least one-third (1/3) of its length in live crown.]

[(c) Rock areas, permanent road and surface water drainage ways on the revegetated area shall not require stocking.]

[(2) The following are the minimum performance standards for areas where commercial forest land is the approved postmining land use:]

[(a) The area shall have a minimum stocking of 450 trees or shrubs per acre.]

[(b) A minimum of seventy-five (75) percent of countable trees or shrubs shall be commercial trees species.]

[(c) The number of trees or shrubs and the ground cover shall be determined using procedures described in Section 6(2)(c) of this regulation and this subsection, and the sampling method approved by the cabinet.]

[(d) Upon expiration of the five (5) year responsibility period and at the time of request for bond release, each permittee shall provide documentation showing that the stocking of trees and shrubs and the ground cover on the revegetated area satisfy Section 6(2)(c)4 of this regulation and this subsection.]

[(3) The following are the minimum performance standards for areas where woody plants are used for wildlife management, recreation, shelter belts, or forest uses other than commercial forest land:]

[(a) The stocking of trees, shrubs, half-shrubs and the ground cover established on the revegetated area shall approximate the stocking and ground cover on the reference area, or shall approximate the stocking and ground

cover as approved in the mining and reclamation plan as appropriate for the approved postmining land use.]

[(b) When a reference area is utilized, an inventory of trees, half-shrubs and shrubs shall be conducted on established reference areas according to methods approved by the cabinet; this inventory shall contain but not be limited to:]

[1. Site quality;]

[2. Stand size;]

[3. Stand condition;]

[4. Site and species relations; and]

[5. Appropriate forest land utilization considerations.]

[(c) Upon expiration of the five (5) year responsibility period and at the time of request for bond release, each permittee shall provide documentation showing that:]

[1. The woody plants established on the revegetated site are equal to or greater than ninety (90) percent of the stocking of live woody plants of the same life form on the reference area or of the life form as approved in the permittee's mining and reclamation plan, with eighty (80) percent statistical confidence; and]

[2. The ground cover on the revegetated area satisfies Section 6(2)(c)4 of this regulation. Species diversity, seasonal variety and regenerative capacity of the vegetation of the revegetated area shall be evaluated on the basis of the results which could reasonably be expected using the revegetation methods described in the mining and reclamation plan.]

Section 7. Use of Reference Areas. (1) Access.

(a) If the reference area is not under the control of the permittee, there shall be a written agreement between the permittee and the landowner specifying that the area may be used for the purposes of a reference area;

(b) The agreement shall also specify that representatives of the cabinet and OSM have right of entry for the purpose of observing and measuring vegetation; and

(c) The agreement shall be effective until final bond release on the permit area, and a copy of the agreement shall be submitted in the permit application.

(2) Selection and management.

(a) Reference areas shall be:

1. Located in unmined areas;

2. Of sufficient areas to allow meaningful vegetation measurements and comparisons with the permit area;

3. As close to the permit area as practicable;

4. Representative of the geology, soil, and slope of the permit area, and have the same vegetative type or crops proposed for the postmining land use; and

5. Delineated on the vegetation map pursuant to 405 KAR 8:030, Section 19 or on another appropriate map.

(b) Management of the reference area shall be comparable to that which is required for the approved land use of the permit area.

Section 8. Planting Report. (1) Prior to or simultaneously with the submittal of an application for Phase I [the initial] bond release on an area, the permittee shall file a certified planting report with the cabinet, on a form prescribed and furnished by the cabinet, giving the following information:

(a) [(1)] Identification of the operation;

(b) [(2)] The type of planting or seeding, including mixtures and amounts;

(c) [(3)] The date of planting or seeding;

(d) [(4)] The area of land planted or seeded; and

(e) Any [(5) Such] other relevant information that [as] the cabinet [may] requires.

(2) A planting report as described in subsection (1) of this section shall also be submitted to the cabinet if any augmentive reseeding or replanting, or other augmentive work, is performed within the permit area.

Section 9. Measurement of Vegetation Success. (1) "TRM #19, Field Sampling Techniques for Determining Ground Cover, Productivity, and Stocking Success of Reclaimed Surface Mined Lands", Department for Surface Mining Reclamation and Enforcement, June 28, 1991, is hereby incorporated by reference. This document may be reviewed or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky, 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(2) Ground cover and tree and shrub stocking shall be measured using the techniques outlined in TRM #19.

(3) Productivity for pastureland and cropland shall be measured by either:

(a) The techniques established in TRM #19 or alternatives approved under subsection (4) of this section;

(b) Harvesting and weighing the entire crop or forage by the permittee to determine total yield from the entire permit area or the entire portion designated as cropland (including prime farmland) or pastureland. Representative samples shall be taken to determine moisture content. Procedures for determining total yields under this option shall be approved in advance by the cabinet; or

(c) For cropland where hay is grown that is not prime farmland and for pastureland, harvesting and weighing by the permittee of the forage from a productivity test area that is an approved representative subarea of the area designated as pastureland or cropland, under subsection (6) of this section.

(4) The cabinet may approve alternative sampling and measurement techniques for productivity determinations in addition to those established by TRM #19 if:

(a) A complete description and justification of the methodology is submitted to the cabinet;

(b) The cabinet determines that use of the methodology would provide substantial benefit to the user in terms of cost, efficiency, or accuracy of measuring productivity;

(c) The methodology is determined by the cabinet to be procedurally and statistically valid and in compliance with this regulation;

(d) Methodologies used for prime farmland shall be approved in consultation with SCS; and

(e) Alternative methodologies shall not be used unless they are approved by OSM.

(5) Measurements of ground cover, tree and shrub stocking, and productivity for Phase II and Phase III bond release shall be made by the cabinet, except the permittee may measure productivity.

(a) If the permittee intends to measure productivity, he shall notify the department's appropriate regional office of the measurement dates in order to provide the opportunity for

cabinet personnel to observe the measurements. This notification shall be provided in writing at least thirty (30) days prior to the anticipated measurement dates and shall be provided by telephone or in person within two (2) days prior to the measurement date.

(b) If the permittee measures productivity, he shall ensure that the measurements are made by qualified persons.

(c) The cabinet may make measurements or take other appropriate action as deemed necessary to verify measurements made by the permittee.

(6) Productivity test area for cropland where hay is grown that is not prime farmland and for pastureland. If approved by the cabinet a permittee may determine productivity by mowing, baling and weighing the forage on a test area that is a representative subarea of the area designated as pastureland or cropland.

(a) The test area shall be one (1) contiguous subarea of the larger area to be represented; shall include ten (10) percent or more of the larger area but shall not be less than one (1) acre; shall be representative of the soil types, slopes and aspect of the larger area; and at the time of harvesting shall be representative of the vegetative species, ground cover, and extent of vegetative growth on the larger area.

(b) Prior to submitting an application for Phase II bond release the permittee shall submit a copy of the MRP map marked to show the proposed test area. The cabinet shall evaluate the proposed test area and shall notify the permittee in writing whether the proposed test area is approved. The approval shall be conditioned that fertilization and other management of the test area shall be the same as that of the larger area, and that at the time of harvesting the test area shall be representative of the vegetative species, ground cover, and extent of vegetative growth on the larger area. If the cabinet approves the test area the permittee shall physically mark the location of the test area with appropriate markers. The cabinet in its approval may specify the type of markers required.

(c) Within ten (10) working days of receipt of the written notice of anticipated measurement dates under subsection (5)(a) of this section, the cabinet shall inspect the area to determine if species composition, ground cover, and extent of vegetative growth on the test area are representative of the larger area. If the cabinet determines that the test area does not meet the applicable criteria, it shall promptly notify the permittee in writing and set forth the reasons for its determination. If the cabinet determines that the test area meets the applicable criteria, it shall promptly notify the permittee in writing that the test area may be harvested to determine productivity.

(d) The permittee shall mow, bale and weigh the yield from the test area, and shall ensure that the yield from the test area is kept separate from the yield from surrounding areas. Representative samples shall be taken to determine moisture content. Personnel of the cabinet may observe the mowing, baling and weighing and may take any reasonable actions necessary to verify the validity of these activities.

(e) The permittee shall submit the results of the yield measurements to the cabinet. The cabinet shall have the right to reject the results, in whole or in part, for good cause. The cabinet shall evaluate the results and shall notify the permittee in writing of the extent to which the results fulfill the requirement to determine productivity for the larger area.

(7) All crop and forage yields shall be adjusted to standard moisture content: fifteen (15) percent for pasture and hay, fifteen and five-tenths (15.5) percent for corn, and twelve and five-tenths (12.5) percent for soybeans and wheat.

(8) Whether measured by the cabinet or the permittee, vegetation success shall be measured prior to the submittal of an application for a Phase II or Phase III bond release.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 12, 1991
FILED WITH LRC: July 15, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed regulation has been scheduled for 9 a.m. (EDT) Thursday, August 29, 1991, in the Department for Surface Mining Reclamation and Enforcement's Main Conference Room (Room B-31) 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 August 24, 1991. The schedule hearing may be cancelled if the contact person has not received any written notice of intent to testify by August 24, 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 regulation 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 regulation but does not wish to testify at the hearing may submit written comments on the proposed regulation at any time before 4:30 p.m. (EDT) on Thursday, August 29, 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:

CONTACT PERSON: 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 regulation for surface mining activities and its counterpart 405 KAR 18:200 for underground mining activities establish revegetation requirements. There are about 3800 permanent program operations in existence. This regulation will affect the surface owner by affecting the reclamation of the land. This regulation will indirectly affect the general public in the coal field regions. These amendments are being made: to comply with federal regulation changes; to clarify the standards; to move some requirements

from previous TRM #9 (which was previously incorporated by reference) into the regulation; to increase the ground cover standards for some postmining land uses; to relax the productivity standards for nonprime cropland and pastureland; to establish a list of husbandry practices that can be carried out without restarting the liability period; to establish mandatory mulching requirements; to establish measurement methodologies; and other changes.

(a) Direct and indirect costs or savings to those affected:

1. First year: On balance, these amendments will reduce the cost of reclamation to the industry, primarily due to the effects of the relaxation of the productivity standards and the inclusion of the list of husbandry practices that will allow certain practices without restarting the liability period. For some operations there will be some increase in cost due to revised mulching requirements, however the long-term result may well be a savings due to the improved chances for initial revegetation germination and survival.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): This regulation allows permittees to make their own productivity measurements to establish success or failure to meet revegetation and bond release standards. This will be a cost to those choosing to make the measurements themselves rather than the cabinet making the measurements.

(b) Reporting and paperwork requirements: There will be additional reporting requirements because the permittee must report any "augmentative" reseeding, replanting, or other work. "Husbandry practices" will not need to be reported. For those that choose to measure productivity, a report of those results will be required.

(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: No alternatives were considered.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: Not applicable.

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, 1265. 30 CFR Parts 730-733, 735, 816.111-.116, 917.

2. State compliance standards. These amendments to the performance standard for revegetation include: requirements to establish vegetation on mined areas; husbandry practices that may be carried out without restarting the liability period; requirements for introduced species; timing requirements; mulching requirements; success standards; requirements for reference areas; vegetation measurement techniques; and others.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation for revegetation is different in character than many of the other federal performance standards. Although it contains certain minimum requirements, it charges each state with establishing much of the detail of the revegetation standards. Minimum provisions are included for establishing vegetation, introduced species, timing, mulching, success standards, statistically valid sampling techniques, husbandry practices, and others.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. Although the state regulation contains more detail then the federal regulation, as explained above, the states are charged with establishing the detailed requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

## NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
## Department for Surface Mining Reclamation and Enforcement
## (Proposed Amendment)

**405 KAR 16:210. Postmining land use capability.**

RELATES TO: KRS 350.093, 350.095, 350.100, 350.405, 350.410, 350.450, 350.465, 30 CFR Parts 730-733, 735, 816.133, 917, 30 USC 1253, 1255, 1265

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.465, 30 CFR Parts 730-733, 735, 816.133, 917, 30 USC 1253, 1255, 1265

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during surface mining activities and for restoration and reclamation of surface areas affected by mining activities. This regulation sets forth requirements for restoring land use capability after completion of surface mining activities, and specific criteria for approval of postmining land uses which differ from the premining land use.

Section 1. General. (1) Prior to the final release of performance bond, [liability for] affected areas[, the areas] shall be restored in a timely manner:

(a) [(1)] To conditions capable of supporting the uses which the areas were capable of supporting before any mining; or

(b) [(2)] To conditions capable of supporting higher or better alternative uses [of which there is reasonable likelihood,] as approved by the cabinet under Section 4 of this regulation.

(2) The following land uses shall apply under this regulation. Definitions of these uses, and definitions of "land use" and "higher or better use", are given in 405 KAR 7:020:

(a) Cropland;
(b) Pastureland;
(c) Forest land;
(d) Residential;
(e) Industrial/commercial;
(f) Recreation;
(g) Fish and wildlife;
(h) Developed water resources;
(i) Undeveloped land or no current use or land management.

Section 2. Premining and Postmining Land Use. (1) The premining uses of land to which the postmining land use is compared shall be those uses which the land previously supported if the land has not been previously mined. The premining land use for a specific area shall be determined based on the prevalent or dominant use, vegetative types, and features present at that area; however, more than one (1) land use can exist within a proposed permit boundary.

(2) The postmining land use for land that has been previously mined, and not reclaimed in compliance with 405 KAR Chapter 1 or 3 or Chapters 7 through 24, shall be judged on the basis of the land use that existed prior to any mining; except if the land cannot be reclaimed to the land use that existed prior to any mining because of the previously mined condition, the postmining land use shall be judged on the basis of the highest and best use that can be achieved which is compatible with surrounding areas and does not require the disturbance of areas previously unaffected by mining.

(3) Prime farmland that has been historically used for cropland that is not exempted by 405 KAR 8:050, Section 3 shall have a postmining land use of cropland.

(4)(a) The land use category of "undeveloped land or no current use or land management" shall not be used to designate a postmining land use.

(b) If the premining land use is "undeveloped land or no current use or land management", and if consistent with subsection (2) of this section and Section 3 of this regulation:

1. If trees are dominant on the area prior to mining, the area may be designated as forestland for the postmining land use without compliance with the procedures and criteria for an alternative postmining land use.

2. For all other cases, the area may be designated as fish and wildlife for the postmining land use without compliance with the procedures and criteria for an alternative postmining land use.

(5) Slope limitations for specific postmining land uses. These limitations shall apply to permits issued after the effective date of this amendment.

(a) Portions of the permit area with slopes greater than twenty (20) percent (eleven and three-tenths (11.3) degrees) shall not be designated as cropland, including hay production; and

(b) Portions of the permit area with slopes greater than thirty-three (33) percent (eighteen and five-tenths (18.5) degrees) shall not be designated as pastureland; except the cabinet may, on a case-by-case basis, approve pastureland for slopes greater than thirty-three (33) percent if the permittee submits a detailed management plan specific to the special circumstances of steep slopes clearly demonstrating that the land use of pastureland is practical and reasonable, and the management plan is supported by the surface owner comments submitted under 405 KAR 8:030, Section 37.

(6) Steep slope operations with variances from approximate original contour shall comply with the requirements of 405 KAR 20:060, Section 3(2), and mountaintop removal operations shall comply with 405 KAR 8:050, Section 493). [Determining Minimum Acceptable Postmining Land Use Capability for Lands to be Restored to the Premining Land Use. (1) Unmined lands. On lands which have not been previously mined and have received proper management, the postmining land use capability shall equal or exceed the premining capability of the land to support the actual premining uses and a variety of other feasible uses.]

[(2) Previously mined lands. On lands which have been previously mined, the postmining land use capability shall equal or exceed the capability of the land prior to any mining to support the actual uses and a variety of other feasible uses, except that allowances shall be made for any irreparable damages to the land which have resulted from the previous mining.]

[(3) Improperly managed lands. On lands which have received improper management as compared to similar lands in surrounding areas, the postmining land use capability shall equal or exceed the capability of the land under proper levels of management to support the actual premining uses or a variety of other feasible uses, except that allowances shall be made for any irreparable damages to the land which have resulted from improper management.]

Section 3. Historical Land Use. If the premining use of the land was changed within five (5) years of the date of application for a permit to conduct surface coal mining and reclamation operations, the historical use of the land as well as the land use immediately preceding the date of application shall be considered in establishing the premining capability of the land to support a variety of feasible uses. [The determination of minimum acceptable postmining land use capability shall be based upon the potential utility of the land to support a variety of feasible uses, and not only upon premining land uses which may have resulted from under utilization.]

Section 4. Alternative Postmining Land Use. Higher or better alternative postmining land uses may be approved by the cabinet [after consultation with the landowner or the land management agency having jurisdiction over the lands,] if the following criteria [of this section] are met:

(1) There is a reasonable likelihood that the land use will be achieved;

(2) The use will not be impractical or unreasonable;

(3) The landowner or the land management agency having jurisdiction over the lands has

been consulted, and [(1)(a)] the proposed alternative postmining land use is consistent [compatible with adjacent land use and, where applicable,] with applicable [existing local, state, or federal] land use policies and plans;

[(b) Authorities with statutory responsibilities for land use policies and plans shall have been provided opportunity to submit written statements of their views to the cabinet within sixty (60) days of notice by the cabinet.]

(4) The proposed use will not present an actual or probable hazard to public health or safety or threat of water pollution or diminution of water availability;

(5) The proposed use will not involve unreasonable delays in implementation; and

(6) The proposed use will not cause or contribute to violation of federal, state, or local law.

[(c) Any required approval of local, state, or federal land management agencies, including any necessary zoning or other changes required for the proposed alternative land use, shall be obtained and remain valid throughout surface mining activities.]

[(2) Specific plans are prepared and submitted to the cabinet which show the feasibility of the postmining land use as related to projected land use trends and markets, and that include a schedule showing how the proposed use will be developed and achieved within a reasonable time after mining. The cabinet may require appropriate demonstrations to show that the planned procedures are feasible, reasonable, and integrated with mining and reclamation, and that the plans will result in successful reclamation.]

[(3) The applicant has demonstrated that there is reasonable likelihood that any necessary public facilities will be provided.]

[(4) Specific and feasible plans are submitted to the cabinet which show that financing, attainment and maintenance of the postmining land use are feasible.]

[(5) Plans for the postmining land use are designed and certified by a qualified registered professional engineer to assure land stability, drainage, and site configuration necessary for the intended postmining use of the site.]

[(6) The proposed use or uses will neither present actual or probable hazard to public health or safety nor will they pose any actual or probable threat of water pollution or diminution of water availability.]

[(7) The proposed use will not involve unreasonable delays in reclamation.]

[(8) Necessary approval of measures to prevent or mitigate adverse effects on fish, wildlife, and related environmental values and threatened or endangered plants is obtained from the cabinet, and appropriate state and federal fish and wildlife management agencies have been provided a sixty (60) day period in which to review the plan.]

[(9) Proposals to change premining land uses of fish and wildlife habitat, forest land, hayland, or pasture to a postmining cropland use, where the cropland would require continuous maintenance such as seeding, plowing, cultivation, fertilization, or other similar practices to be practicable or to comply with applicable federal, state, and local laws, have been reviewed by the cabinet to ensure that:]

[(a) The applicant has demonstrated that there is reasonable likelihood that the landowner or land manager will provide sufficient crop management after release of applicable performance bonds under Title 405, Chapter 10, in order that the proposed postmining cropland use will remain practical and reasonable;]

[(b) There is sufficient water available and committed to maintain crop production; and]

[(c) Topsoil quality and depth are sufficient to support the proposed use.]

[Section 5. Land Use Categories. The following is the list of land use categories to be applied under this regulation. These uses are defined in 405 KAR 7:020. Also see the definition of "land use."]

[(1) Cropland.]
[(2) Pastureland.]
[(3) Grazing land.]
[(4) Forestry.]
[(5) Residential.]
[(6) Industrial/commercial.]
[(7) Recreation.]
[(8) Fish and wildlife habitat.]
[(9) Developed water resources.]
[(10) Undeveloped land or no current land use or land management.]

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 12, 1991
FILED WITH LRC: July 15, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed regulation has been scheduled for 9 a.m. (EDT) Thursday, August 29, 1991, in the Department for Surface Mining Reclamation and Enforcement's Main Conference Room (Room B-31) 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 August 24, 1991. The schedule hearing may be cancelled if the contact person has not received any written notice of intent to testify by August 24, 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 regulation 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 regulation but does not wish to testify at the hearing may submit written comments on the proposed regulation at any time before 4:30 p.m. (EDT) on Thursday, August 29, 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:

CONTACT PERSON: 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

regulation for surface mining activities and its counterpart 405 KAR 18:220 for underground mining activities set forth the performance standards for postmining land uses. Currently there are about 3,800 permanent program mining operations. This regulation will affect the surface owner by affecting the postmining land use. This regulation indirectly affects the general public in coal field regions. These amendments include changes that were made in the federal regulations, including deletion of much of the specific criteria for approval of alternative postmining land uses. The criteria are now more general in nature. These amendments also contain slope limitations for cropland and pastureland.

(a) Direct and indirect costs or savings to those affected:

1. First year: These amendments generally will not affect industry costs one way or the other. There may be a small savings to applicants proposing to change undeveloped land to forestland or fish and wildlife postmining land use because under certain conditions, these changes will not have to comply with the procedures for alternative postmining land use changes. In some cases, the slope limitations may save cost for mining operators in that in approriate location of postmining land uses, leading to inability to obtain bond release, will be prevented.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: There will be a small reduction in paperwork for the situation described in paragraph (a) above.

(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: No alternatives were considered.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(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 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, 1265. 30 CFR Parts 730-733, 735, 816.133, 917.

2. State compliance standards. These amendments to the performance standard establish requirements for determining premining land uses and postmining land uses, including some limitations on postmining designations of cropland and pastureland. These amendments also modify the criteria for approval of alternative postmining land uses, and for the sake of clarity, list the various land use categories that may be used.

3. Minimum or uniform standards contained in the federal mandate. The federal regulations contain requirements for postmining land uses and criteria for approving alternative postmining land uses which are the same as these amendments except that the state regulation provides some more detail by including the limitations on postmining land use designations as cropland and pastureland. These limitations are consistent with the federal requirement that alternative postmining land uses be practical, reasonable, and likely to be achieved.

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. Not applicable.

## NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
## Department for Surface Mining Reclamation and Enforcement
## (Proposed Amendment)

**405 KAR 18:180. Protection of fish, wildlife, and related environmental values.**

RELATES TO: KRS 350.020, 350.028, 350.151, 350.405, 350.435, 350.465, 30 CFR Parts 730-733, 735, 817.57, 817.97, 917, 30 USC 1253, 1255, 1266

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.151, 350.465, 30 CFR Parts 730-733, 735, 817.57, 817.97, 917, 30 USC 1253, 1255, 1266

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This regulation sets forth specific requirements and measures for the protection of fish, wildlife, and related environmental values, and for the enhancement of those [such] resources where practicable.

Section 1. General. [Protection of Fish, Wildlife, and Related Environmental Values.] (1) The [Any] permittee shall, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts [of the activities] on fish, wildlife, and related environmental values, and achieve enhancement of those [such] resources where practicable.

(2) Each permittee shall:

(a) To the extent possible using the best technology currently available:

1. Ensure that electric powerlines and other transmission facilities, used for or incident to underground mining activities on the permit area are designed and constructed to minimize

electrocution hazards to raptors, except where the cabinet determines that these requirements are unnecessary;

2. Locate and operate haul and access roads so as to avoid or minimize impacts on important fish and wildlife species or other species protected by state or federal law;

3. Construct stream crossings so as not to adversely affect fish migration and aquatic habitat;

4. Design fences, overland conveyors, and other potential barriers to permit passage of large mammals, except where the cabinet determines that the designs are unnecessary; and

5. Fence, cover, or use other appropriate methods to exclude wildlife from ponds which contain hazardous concentrations of toxic-forming materials.

(b) Avoid disturbance to, enhance where practicable, restore, or replace habitats of unique or unusually high value for fish and wildlife;

(c) Avoid disturbance to, enhance where practicable, or reestablish riparian vegetation along rivers and streams and bordering ponds and lakes; and

(d) Avoid disturbances to, enhance where practicable, restore or replace wetlands and comply with Section 404 of the Clean Water Act.

Section 2. Protection of Streams. (1) Buffer zones for streams with valuable environmental resources.

(a) A stream or reach of stream with valuable environmental resources is one that:

1. Contains, or could reasonably be expected to contain, listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary of the Interior under the Endangered Species Act of 1973, as amended (16 USC Sec. 1531 et seq.), or those species or habitats protected by similar state statutes;

2. Is an intermittent or perennial stream that supports a high level of habitat development and quality as reflected by the integrity of fish and macroinvertebrate populations, as set forth in TRM #20 which is incorporated by reference in 405 KAR 8:030, Section 20(3)(a); or

3. Is an important stream. An important stream is one that:

a. Is classified as an outstanding resource water pursuant to 401 KAR 5:026 or 401 KAR 5:031;

b. Based on the Kentucky Rivers Assessment, is a Class 1, 2, or 3 stream in the water quality category or is a Class 1 or 2 stream in the fish resource category. Class 3 streams in the fish resource category may be determined case-by-case to be important streams by the cabinet. These streams that occur in the coal fields are listed in TRM #20; or

c. Is otherwise considered to be an important stream by the cabinet, including but not limited to a stream contained within, immediately upstream of, or bordering a publicly-owned wildlife management area or a nature preserve dedicated pursuant to KRS 146.410 et seq.

(b) The cabinet shall not grant a buffer zone variance under 405 KAR 16:060, Section 11, if the reach of stream that is within the buffer zone is one with valuable environmental resources pursuant to paragraph (a) of this subsection. Exceptions may be made for the following, if the underground mining activities will not cause significant detrimental effects on the valuable environmental resources and if all other requirements of 405 KAR 16:060, Section 11 are met:

1. Stream crossings and appurtenant approaches;

2. Minor disturbances; and

3. Existing roads where no major reconstruction of the road within 100 feet of the stream is proposed including road widening (except widening in which only an incidental portion of the road berm is accidentally disturbed during grading), road relocation, or any other construction activity that might detrimentally affect the stream or its channel. Typical road maintenance including grading, cleaning ditches, and road surfacing shall not be considered major reconstruction measures.

(c) The cabinet may grant a buffer zone variance if the reach of stream with valuable environmental resources is outside (e.g., downstream of) the buffer zone, if underground mining activities will not cause significant detrimental effects on the valuable environmental resources, and if all other requirements of 405 KAR 16:060, Section 11 are met.

(2)(a) During-mining and postmining biological monitoring shall be conducted if required by the cabinet; however, it shall always be required if a reach of stream with valuable environmental resources exists within the area affected by surface operations and facilities or the adjacent area.

(b) If biological monitoring is required under paragraph (a) of this subsection, the biological monitoring shall be conducted in accordance with TRM #20, and shall be conducted at least semiannually through Phase I bond release and once per year thereafter until final bond release. The cabinet may approve termination of the biological monitoring program after Phase I bond release based upon a demonstration that additional monitoring is not needed to ensure protection of aquatic resources.

(c) Biological monitoring data shall be collected and evaluated by or under the direction of qualified professionals whose credentials have been filed with the department. The results of the biological monitoring data shall be submitted to the cabinet within sixty (60) days after data collection. All biological monitoring samples shall be labeled, preserved, maintained, and made available for inspection, for twelve (12) months.

(3) Other stream protection measures. The cabinet shall require other appropriate stream protection measures (such as those prescribed in TRM #20) as necessary to ensure protection of streams with valuable environmental resources. At the cabinet's discretion, protection measures may also be required for other streams. The protection measures may be required during the permitting process, as a result of during-mining or postmining monitoring, or as a result of a site inspection by the cabinet. These additional protection measures shall be required in consultation with qualified personnel.

(4) The provisions of this section shall apply to operations having permit applications that were subject to 405 KAR 8:030, Sections 20 and 36.

Section 3. Protection of Endangered and Threatened Species. (1)(a) No underground mining activity shall be conducted which is likely to jeopardize the continued existence of an

endangered or threatened species listed by the Secretary of the Interior or which is likely to result in the destruction or adverse modification of a designated critical habitat of those species in violation of the Endangered Species Act of 1973 as amended (16 USC Sec. 1531 et seq.). The permittee shall promptly report to the cabinet any state- or federally-listed endangered or threatened species within the permit area of which the permittee becomes aware. Upon notification, the cabinet shall consult with appropriate state and federal fish and wildlife agencies and, after consultation, shall identify whether, and under what conditions, the permittee may proceed.

(b) No underground mining activity shall be conducted in a manner which would result in the unlawful taking of a bald or golden eagle, its nest, or any of its eggs. The permittee shall promptly report to the cabinet any golden or bald eagle nest within the permit area of which the permittee becomes aware. Upon notification, the cabinet shall consult with the U.S. Fish and Wildlife Service and also, where appropriate, the Kentucky Department of Fish and Wildlife Resources and, after consultation, shall identify whether, and under what conditions, the permittee may proceed.

(2) Nothing in this title shall authorize the taking of an endangered or threatened species or a bald or golden eagle, its nest, or any of its eggs in violation of the Endangered Species Act of 1973 as amended (16 USC 1531 et seq.) or the Bald Eagle Protection Act as amended (16 USC 668 et seq.).

[(2) A permittee shall promptly report to the cabinet the presence in the permit area of any critical habitat of a threatened or endangered species listed by the Secretary of the Interior, any plant or animal listed by the Commonwealth of Kentucky as threatened or endangered, or any bald or golden eagle, of which that person becomes aware and which was not previously reported to the cabinet by that person.]

[(3) A permittee shall ensure that the design and construction of electric power lines and other transmission facilities used for or incidental to the underground mining activities on the permit area shall be designed and constructed in accordance with the guidelines set forth in "Environmental Criteria for Electric Transmission System" (USDI, USDA (1970)), or in alternative guidance manuals approved by the cabinet. Distribution lines shall be designed and constructed in accordance with REA Bulletin 61-10 "Powerline Contacts by Eagles and Other Large Birds" or in alternative guidance manuals approved by the cabinet.]

[(4) Each permittee shall to the extent possible using the best technology currently available:]

[(a) Locate and operate haul and access roads so as to avoid or minimize impacts to important fish and wildlife species or other species protected by state or federal law;]

[(b) Fence roadways where specified by the cabinet to guide locally important wildlife to roadway underpasses or overpasses and construct the necessary passages. No new barrier shall be located in known and important wildlife migration routes;]

[(c) Fence, cover, or use other appropriate methods to exclude wildlife from ponds which contain hazardous concentrations of toxic-forming materials;]

[(d) Restore, enhance where practicable, or avoid disturbances to habitats of unusually high value for fish and wildlife;]

[(e) Restore, enhance where practicable, or maintain natural reparian vegetation on the banks of streams, lakes, and other wetland areas. Wetlands shall be preserved or created, rather than drained or otherwise permanently abolished;]

[(f) Afford protection to aquatic communities by avoiding stream channels as required in 405 KAR 18:060, Section 9 and 405 KAR 18:210, Section 4 or restoring stream channels as required in 405 KAR 18:080, Section 2;]

[(g) Not use persistent pesticides on the area during underground mining and reclamation activities unless approved by the cabinet;]

[(h) To the extent possible prevent, control, and suppress range forest and coal fires which are not approved by the cabinet as part of a management plan;]

Section 4. Reclamation Strategies and Wildlife Enhancement Techniques. (1) A postmining land use for fish and wildlife shall be characterized by: a combination of habitat types or vegetative types, such as a mix of forest land or woodlots, shrub/scrub areas, grass/legume areas, and wetlands; or palustrine wetlands throughout. If the postmining land use is for fish and wildlife, at least thirty (30) percent of the land area involved, not including permanent impoundments, permanent roads, and brush piles and rock piles for wildlife, shall be stocked with trees or shrubs. Where [(i) If] fish and wildlife [habitat] is to be a [primary or secondary] postmining land use, the permittee [operator] shall, in addition to the requirements of 405 KAR 18:200:

(a) [1.] Select plant species [to be used on reclaimed areas, based] on the basis of the following criteria: their proven nutritional value, their use as cover, their ability to support and enhance fish and wildlife after release of the performance bond, soil conditions and pH tolerances of the species, and species identified during the baseline terrestrial habitat (vegetation) analysis; [their proven nutritional value for fish and wildlife; their uses as cover for fish and wildlife; and their ability to support and enhance fish and wildlife habitat after release of bonds;] and

(b) Group and distribute plants [2. Distribute plant groupings to maximize benefit to fish and wildlife. Plants should be grouped and distributed] in a manner which optimizes edge effect, cover, food, and other benefits for fish and wildlife;

(2) [(j)] Where cropland or pastureland is to be the [alternative] postmining land use [on lands diverted from a fish and wildlife premining land use], and where appropriate for wildlife and crop management practices, the permittee shall intersperse the fields with trees, hedges or fence rows throughout the [harvested] area to break up large blocks of monoculture and to diversify habitat types of birds and other animals. [; and]

(3) [(k)] Where [the primary land use is to be] residential[, public service,] or industrial/commercial use is to be the postmining land use, and where consistent with the approved postmining land use, the permittee shall [land use,] intersperse reclaimed lands with greenbelts, utilizing species of grass,

shrubs and trees useful as food and cover for wildlife [birds and small animals, unless such greenbelts are inconsistent with the approved postmining land use].

(4) Additional reclamation strategies and wildlife enhancement techniques are outlined in TRM #20.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 12, 1991
FILED WITH LRC: July 15, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed regulation has been scheduled for 9 a.m. (EDT) Thursday, August 29, 1991, in the Department for Surface Mining Reclamation and Enforcement's Main Conference Room (Room B-31) 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 August 24, 1991. The schedule hearing may be cancelled if the contact person has not received any written notice of intent to testify by August 24, 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 regulation 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 regulation but does not wish to testify at the hearing may submit written comments on the proposed regulation at any time before 4:30 p.m. (EDT) on Thursday, August 29, 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:

CONTACT PERSON: 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 regulation establishes performance standards for the protection of fish, wildlife, and related environmental values. This regulation applies to underground mining activities and its counterpart, 405 KAR 16:180 applies to surface mining activities. Together these regulations affect about 3,800 permanent program operations. However, Section 2 of these regulations, protection of streams, will only apply to newly permitted operations and some, but not all, new areas permitted as amendments and revisions. Presently, the cabinet is receiving about 1,200 applications for original and amended permits per year and about 1,300 applications for major and minor revisions per year, not including minor "field" revisions. These amendments are being made to comply with the federal surface coal mining regulations, and to carry out a commitment made to the federal Office of Surface Mining to establish criteria for streams with valuable environmental resources in connection with the stream buffer zone regulation at 405 KAR 16:060, Section 11. In addition to affecting mining operations, this regulation also affects the general public that may be adversely affected by mining activities' impacts on fish and wildlife resources. This regulation will affect the surface owner by affecting the reclamation of the land.

(a) Direct and indirect costs or savings to those affected:

1. First year: Although many of the requirements in this regulation are reworded, they are not all new provisions as there has always been a performance standard for protection of fish and wildlife. However, there will be a more effective implementation of these requirements in the future because the permittee must include a protection and enhancement plan in his permit application and implement the approved reclamation strategies. There are some new requirements in Section 2 which establishes stream protection measures, buffer zone requirements, biological monitoring requirements, and other protection measures. Emphasis is placed on "streams with valuable environmental resources" which are established by these amendments. There will be some additional cost to the industry involved in ensuring that their approved fish and wildlife protection and enhancement measures are implemented in the mining and reclamation process. The costs will vary considerably from operation to operation. There will be some increased costs involved for those operations that are required to conduct biological monitoring of streams; however, these costs should not be very high, and will not apply to every operation. Some cost savings may be realized by those operations that reclaim to a fish and wildlife postmining land use because the standards for this in this regulation and in the revegetation regulations are designed to allow for the most cost effective reclamation.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: There will be some additional reporting and paperwork requirements for those operations that are required to conduct biological monitoring of streams.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: In general there should not be a significant increase in the cabinet's cost of operation, although there may be some increase in required inspection time to ensure that the approved fish and wildlife protection and enhancement plan is complied with. There will be some additional time required to review and follow up on biological monitoring reports. Some additional training of cabinet personnel will be required.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There will be some additional paperwork for the cabinet involved in reviewing and filing

biological monitoring reports.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: Not applicable.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.
(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 applicants under 405 KAR Chapters 7-24.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 USC 1253, 1255, 1265. 30 CFR Parts 730-733, 735, 816.57, 816.97, 917.
2. State compliance standards. These amendments to the protection of fish and wildlife resources performance standard are being made to comply with federal regulations and to carry out a commitment to the federal Office of Surface Mining to set standards for streams with valuable environmental resources related to the stream buffer zone provisions. In addition, these amendments set forth performance standards regarding wetlands, habitats of unique or unusually high value, protection of threatened and endangered species, protection of streams, reclamation strategies, and wildlife enhancement techniques, among others. Regarding stream protection, this regulation establishes which streams are considered to have valuable environmental resources in Section 2 and establishes protection measures for these streams including buffer zones, biological monitoring, and other protection measures.
3. Minimum or uniform standards contained in the federal mandate. The federal performance standards for protection of fish and wildlife include requirements to minimize adverse impacts on fish and wildlife and to enhance those resources where practicable. The federal regulations also contain standards for wetlands, habitats of unique or unusually high value, endangered or threatened species, and enhancement techniques, among other standards. These are generally the same as in the state amendments; however, the state amendments do contain more detail, especially regarding protection of streams. The federal regulation on stream buffer zones establishes criteria for when variances may be granted. One of the criteria is that the mining activities will not adversely affect the water quantity and quality or other environmental resources of the stream. At first glance, this might seem to be a stricter standard than the state's counterpart at 405 KAR 16:060, which uses the terminology "valuable" environmental resources. However, OSM approved the state regulation because Kentucky said it would establish criteria for determining what are "valuable" environmental resources when it amended this regulation on fish and wildlife resources. That is one reason why there is more detail in the state regulation on protection of streams than is in the federal counterpart.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, although the state regulation contains more detailed requirements than the federal regulation, this regulation establishes the requirements through regulation, rather than by a case by case consultation process as envisioned under the federal regulation. This provides for a more efficient and consistent process, but does not impose additional or stricter requirements than would the more general federal regulation.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

**NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET**
**Department for Surface Mining Reclamation and Enforcement**
**(Proposed Amendment)**

**405 KAR 18:190. Backfilling and grading.**

RELATES TO: KRS 350.020, 350.093, 350.100, 350.151, 350.405, 350.410, 350.450, 350.465, 30 CFR Parts 730-733, 735, 817.102-.106, 917, 30 USC 1253, 1255, 1266
STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.100, 350.151, 350.465, 30 CFR Parts 730-733, 735, 817.102-.106, 917, 30 USC 1253, 1255, 1266
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This regulation sets forth requirements for backfilling and grading of areas affected by surface operations, including requirements for backfilling and grading of face-up areas and other cut slopes and limited exemptions, timing of backfilling and grading, covering coal and acid and toxic materials, and regrading or stabilizing rills and gullies.

Section 1. Timing of Backfilling and Grading. Surface areas disturbed incident to underground mining activities shall be backfilled and graded in accordance with a relative time-schedule approved by the cabinet in accordance with 405 KAR 18:020.

Section 2. General Backfilling and Grading Requirements. (1) Except as provided in subsection (8) of this section, all disturbed areas shall be returned to their approximate original contour. All spoil shall be transported, placed in a controlled manner, backfilled, compacted (where advisable to ensure stability or to prevent leaching of toxic materials), and graded to:
(a) Eliminate all highwalls (except as otherwise provided in Section 5 of this regulation), spoil piles, and depressions (excluding depressions and impoundments approved

pursuant to subsection (4) or (5) of this section);

(b) Ensure a long-term static factor of safety of at least one and three-tenths (1.3) for all portions of the reclaimed land;

(c) Achieve a postmining slope which does not exceed the angle of repose and which does prevent slides;

(d) Minimize erosion and adverse effects on surface and ground water both on and off the site; and

(e) Support the approved postmining land use.

(2) Spoil, except excess spoil disposed of in accordance with 405 KAR 18:130, shall be returned to the excavated surface areas.

(3) Disposal of coal processing waste and underground development waste in the mined-out surface area shall be in accordance with 405 KAR 18:140, except that a long-term static safety factor of one and three-tenths (1.3) shall be achieved.

(4) Small depressions may be constructed on backfilled areas, if the depressions:

(a) Are needed to minimize erosion, conserve soil moisture, create or enhance wildlife habitat, or promote vegetation;

(b) Are not disapproved by the cabinet;

(c) Are not substitutes for compliance with approximate original contour requirements;

(d) Do not adversely affect the stability of the backfilled area; and

(e) Are not located on steep-slope outslopes.

(5) Impoundments on backfilled areas may be approved, if the impoundments:

(a) Meet the applicable requirements of 405 KAR 18:060, Section 10 and 405 KAR 18:100;

(b) Are demonstrated, to the satisfaction of the cabinet in the permit application, to have no adverse effect on the stability of the backfilled area;

(c) Are consistent with and suitable for the approved postmining land use;

(d) Are specifically approved by the cabinet in the permit application; and

(e) Are not located on steep-slope outslopes.

(6) All underground mining activities on slopes above twenty (20) degrees, or on lesser slopes that the cabinet defines as steep slopes, shall comply with the requirements of 405 KAR 20:060.

(7) All final grading; preparation of overburden before replacement of topsoil, topsoil substitutes, and topsoil supplements; and placement of topsoil, topsoil substitutes, and topsoil supplements shall be done along the contour to minimize subsequent erosion and instability. If [such] grading, preparation, or placement along the contour is hazardous to equipment operators, then grading, preparation, or placement in a direction other than generally parallel to the contour may be used. In all cases, grading, preparation, and placement shall be conducted in a manner which minimizes erosion and provides a surface for placement of topsoil, topsoil substitutes, and topsoil supplements which will minimize slippage.

(8) The postmining slope may vary from the approximate original contour <u>if</u> [when] approval is obtained from the cabinet for:

(a) A variance from approximate original contour requirements in accordance with 405 KAR 8:050, Section 6;

(b) Incomplete elimination of highwalls in previously mined areas in accordance with Section 5 of this regulation; or

(c) Incomplete elimination of face-up areas and similar cut slopes pursuant to subsection (9) of this section.

(9) Face-up areas and similar cut slopes created prior to the effective date of SMCRA, as defined at Section 502(a), (b), and (c) therein, that are associated with underground mining activities which were started prior to the effective date of SMCRA and which have continued as existing and ongoing operations pursuant to permits issued under the interim and permanent regulatory programs shall be backfilled and graded in accordance with the requirements of Section 5 of this regulation; <u>except</u> [provided, however,] that for the purposes of this subsection "reasonably available spoil" shall not include spoil generated by the operation prior to the effective date of SMCRA which is not accessible and available for use or which would cause a hazard to public safety or significant damage to the environment if rehandled.

Section 3. Disposal of Acid-forming, Toxic-forming, and Combustible Materials and Coverage of Coal Seams. (1) General. Exposed coal seams, acid-forming materials, toxic-forming materials, and combustible materials which are used, produced, or exposed during surface coal mining and reclamation operations shall be handled; disposed of; treated; and covered with nontoxic-forming, nonacid-forming, and noncombustible materials in a manner which:

(a) Minimizes adverse impacts on surface and ground water, minimizes disturbances to the hydrologic balance, and prevents material damage to the hydrologic balance;

(b) Ensures compliance with 405 KAR 18:060;

(c) Prevents sustained combustion;

(d) Minimizes adverse impacts on plant growth and the approved postmining land use;

(e) Ensures that the affected area is capable of sustaining sufficient vegetation to meet the revegetation requirements of 405 KAR 18:200; and

(f) Ensures that the affected area is capable of meeting the postmining land use requirements of 405 KAR 18:220.

(2) Coverage and treatment. All exposed coal seams, acid-forming materials, toxic-forming materials, and combustible materials which are used, produced, or exposed during surface coal mining and reclamation operations shall be covered and treated as necessary to neutralize toxicity, acidity, and combustibility, in order to ensure long-term and short-term compliance with subsection (1) of this section.

(a) All exposed coal seams shall be covered with a minimum of four (4) feet of nontoxic-forming, nonacid-forming, and noncombustible materials. The cabinet shall require thicker amounts of cover, special compaction of cover, treatment, or other measures as necessary to ensure compliance with subsection (1) of this section and to prevent exposure of the coal seams by erosion.

(b) Excluding exposed coal seams, all acid-forming materials, toxic-forming materials, and combustible materials which are used, produced, or exposed during surface coal mining and reclamation operations shall be:

1. Selectively blended with nontoxic-forming, nonacid-forming, and noncombustible materials; treated; or selectively handled, or an appropriate combination of <u>those</u> [such] measures

shall be used, as necessary to ensure compliance with subsection (1) of this section; and

2. Covered with a minimum of four (4) feet of nontoxic-forming, nonacid-forming, and noncombustible materials. The cabinet shall require thicker amounts of cover, special compaction of cover, treatment, or other measures as necessary to ensure compliance with subsection (1) of this section and to prevent exposure of the toxic-forming, acid-forming, or combustible materials by erosion. The cabinet may approve lesser amounts of cover, or no cover (other than topsoil, topsoil substitutes, or topsoil supplements), if the applicant demonstrates, to the satisfaction of the cabinet in the permit application, that the lesser amounts are sufficient to ensure compliance with subsection (1) of this section and to maintain coverage of the toxic-forming, acid-forming, and combustible materials;

3. If required or approved by the cabinet, compacted and placed in an environment which minimizes the oxidation potential of the toxic-forming materials, acid-forming materials, and combustible materials; and

4. If required or approved by the cabinet, disposed so as to minimize surface and ground water contact with acid-forming materials, toxic-forming materials, and combustible materials. Water [Such] contact may be minimized by the encasement of those [such] materials in low-permeability substances and by the compaction and selective placement of those [such] materials in locations other than surface drainage courses, ground water recharge areas, or areas of significant ground water flow. As an alternative to minimizing contact with surface and ground water and if feasible based on site conditions, the cabinet may allow acid-forming materials, toxic-forming materials, and combustible materials be placed below the permanent water table.

(3) The cabinet shall require measures in addition to those identified in subsection (2) of this section if necessary to ensure protection of the environment or the health or safety of the public.

Section 4. Regrading or Stabilizing Rills and Gullies. Except as provided in subsections (1) and (2) of this section, if [when] rills or gullies deeper than nine (9) inches form in areas that have been regraded and topsoiled, the rills and gullies shall be filled, graded, or otherwise stabilized and the area reseeded and [/or] replanted according to 405 KAR 18:200.

(1) Rills or gullies less than nine (9) inches deep shall be stabilized and the area reseeded and [/or] replanted, if the rills or gullies are disruptive to the approved postmining land use or to the establishment of vegetation, may result in additional erosion and sedimentation, or may cause or contribute to the violation of a water quality standard.

(2) Rills and gullies deeper than nine (9) inches need not be filled, regraded, and revegetated if all of the following criteria are met:

(a) They are incised to solid bedrock or are otherwise stable and not likely to further erode;

(b) They are not disruptive to the approved postmining land use or to the establishment of the vegetative cover; and

(c) They neither cause nor contribute to the violation of water quality standards.

Section 5. Remining Previously Mined Areas. (1) General requirements. Remining operations on previously mined areas, including steep slope areas, that contain a preexisting highwall shall comply with Sections 1 through 4 of this regulation except as provided in this section.

(2) The terms "highwall remnant", "modified highwall", "previously mined area", "reasonably available spoil", and "remining" are defined in 405 KAR 7:020. [Definitions.]

[(a) "Highwall remnant" means that portion of highwall that remains after backfilling and grading of a remining permit area.]

[(b) "Modified highwall" means either:]

[1. The highwall resulting from remining where the preexisting highwall face is removed; or]

[2. The highwall resulting from remining where the preexisting highwall is vertically enlarged.]

[(c) "Previously mined area" means land disturbed by earlier activities related to coal mining on which none of the earlier disturbances were subject to any of the standards of SMCRA.]

[(d) "Reasonably available spoil" means spoil and suitable coal mine waste material generated by the remining operation and other spoil or suitable coal mine waste material located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to public safety or significant damage to the environment. For this purpose, the permit area shall include all such spoil in the immediate vicinity of the mining operation.]

[(e) "Remining" means conducting surface coal mining and reclamation operations which affect previously mined areas.]

(3) Variances to backfilling and grading requirements for remining operations. The requirements within Section 2(1)(a) of this regulation to completely eliminate highwalls shall apply to remining operations, except for situations in which the volume of all reasonably available spoil is demonstrated, to the satisfaction of the cabinet in the permit application, to be insufficient to completely backfill and eliminate the preexisting or modified highwall. The highwall shall be eliminated to the maximum extent technically practicable in accordance with the following criteria:

(a) All reasonably available spoil shall be used to backfill the area.

(b) The backfill shall be graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability (one and three-tenths (1.3) long-term static factor of safety). [, provided, however, that] The exposed coal seam shall be covered in accordance with Section 3 of this regulation.

(c) Spoil generated or handled by the remining operation shall not be placed on the fill section of any existing or new bench.

(d) Any highwall remnant shall be stable and not pose a hazard to the public health and safety or to the environment. The permittee shall demonstrate, to the satisfaction of the cabinet in the permit application, that the postmining highwall remnant will be stable. If the highwall remnant is determined by the cabinet to be unstable or potentially unstable, the permittee shall perform any corrective measures required by the cabinet to stabilize the highwall remnant.

(e) Spoil placed on the outslope during previous mining operations shall not be

disturbed if the [such] disturbance will cause instability of the remaining spoil or otherwise increase the hazard to the public health or safety or to the environment.

Section 6. Temporary Storage of Materials. (1) After excavation, materials to be used for backfilling in compliance with this regulation shall be returned, for backfilling purposes in accordance with this regulation, to a mined-out area within the permit area or shall be temporarily stored in designated storage areas designs of which have been provided in the permit application and thereby approved by the cabinet.

(2) Temporary storage areas shall be designed and constructed in accordance with the requirements of 405 KAR 18:130 or 405 KAR 18:140, depending on the type of material, except as specified in the following:

(a) If the temporary storage area is to exist for six (6) months or longer, the storage area shall be protected by establishment of an effective cover of nonnoxious, quick-growing, annual and perennial plants seeded or planted during the first normal seeding or planting period following placement of the fill material and resown as necessary thereafter.

(b) Topsoil, topsoil substitute, and topsoil supplement materials to be used in final reclamation of the temporary storage area shall either be stockpiled in accordance with 405 KAR 18:050, Section 3(1) through (3) or temporarily redistributed on areas in accordance with 405 KAR 18:050, Section 3(4). The applicant shall submit, in the permit application, a discussion from a qualified soil scientist or qualified agronomist which indicates, to the satisfaction of the cabinet, that the topsoil stockpile or temporary redistribution plan will minimize adverse effects on the quality and quantity of the topsoil, topsoil substitute, and topsoil supplement materials.

(3) Fills designed and constructed in accordance with this section may be retained as permanent structures if:

(a) The cabinet approves a permit revision submitted in accordance with 405 KAR 8:010, Section 20 for retention of the fill as a permanent structure and for the use of alternate materials to backfill areas and return the disturbed areas to their approximate original contour, in accordance with the requirements of this regulation;

(b) Topsoil, topsoil substitute, and topsoil supplement materials are redistributed on the fill in accordance with 405 KAR 18:050;

(c) The fill is revegetated and reclaimed in accordance with 405 KAR 18:200, 405 KAR 18:220, and all other applicable requirements of KRS Chapter 350 and this Title; and

(d) The borrow area or other area from which the alternate backfill material is obtained is permitted under a valid permit from OSMRE and is reclaimed in accordance with the requirements of KRS Chapter 350 and this Title.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 12, 1991
FILED WITH LRC: July 15, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed regulation has been scheduled for 9 a.m. (EDT) Thursday, August 29, 1991, in the Department for Surface Mining Reclamation and Enforcement's Main Conference Room (Room B-31) 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 August 24, 1991. The schedule hearing may be cancelled if the contact person has not received any written notice of intent to testify by August 24, 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 regulation 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 regulation but does not wish to testify at the hearing may submit written comments on the proposed regulation at any time before 4:30 p.m. (EDT) on Thursday, August 29, 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:

CONTACT PERSON: 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 regulation for underground mining activities and its counterpart 405 KAR 16:190 for surface mining activities establish backfilling and grading requirements for underground coal mining and reclamation operations. There are about 3800 permanent program operations in existence. However, these amendments have only a very narrow effect. The definition of "previously mined area" must be changed to comply with a federal court ruling. All the definitions in this regulation were moved to 405 KAR 7:020 and the definition of "previously mined area" was modified.

(a) Direct and indirect costs or savings to those affected:

1. First year: The court ruled that to be eligible for relaxed backfilling and grading requirements on previously mined areas, those areas must have been mined prior to August 3, 1977. That eliminates some areas that could have been eligible under the previous definition and reclamation of those areas may be more costly since the complete highwall elimination requirements will apply.

2. Continuing costs or savings: Same as first year.

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: 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: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(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, 1266. 30 CFR Parts 730-733, 735, 816.102-.106, 917.

2. State compliance standards. These amendments move several definitions to 405 KAR 7:020 and modify the definition of "previously mined area" to comply with a federal court ruling which limits these areas to those which were mined prior to August 3, 1977.

3. Minimum or uniform standards contained in the federal mandate. Although the federal definition has not yet been changed in the Code of Federal Regulations, the effect of the court ruling makes the federal standard the same as proposed in the state amendments.

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. Not applicable.

## NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
## Department for Surface Mining Reclamation and Enforcement
## (Proposed Amendment)

### 405 KAR 18:200. Revegetation.

RELATES TO: KRS 350.093, 350.095, 350.100, 350.151, 350.405, 350.410, 350.420, 350.435, 350.465, 30 CFR Parts 730-733, 735, 817.111-.116, 917, 30 USC 1253, 1255, 1266

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.100, 350.151, 350.465, 30 CFR Parts 730-733, 735, 817.111-.116, 917, 30 USC 1253, 1255, 1266

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This regulation sets forth requirements for revegetation of areas affected by surface operations and facilities of underground mining activities, including requirements for temporary and permanent vegetative cover, use of introduced species, timing of revegetation, mulching and other soil stabilizing practices, standards for measuring revegetation success, and reporting requirements.

Section 1. General Requirements. (1)(a) Each permittee shall establish on all areas affected [disturbed] by surface operations and facilities a diverse, effective, and permanent vegetative cover that meets the requirements of this regulation and the revegetation provisions of 405 KAR 18:180, and that supports the approved postmining land use. [For areas designated as prime farmland, the requirements of 405 KAR 20:040 shall apply.]

(b) For prime farmland areas, the requirements of 405 KAR 20:040 shall apply in lieu of the productivity standards of this regulation unless those areas are exempted by 405 KAR 8:050, Section 3, in which case the productivity standards of this regulation shall apply.

(2) All revegetation shall be in compliance with the plan submitted under 405 KAR 8:040, Sections 24(4) and 37 as approved by the cabinet and shall be carried out in a manner that encourages a prompt vegetative cover and recovery of productivity levels compatible with the approved postmining land use.

(3) If the approved postmining land use is not cropland or pastureland, [(a)] all disturbed lands except water areas, rock areas such as those used for drainage control and wildlife enhancement, and surface areas of roads that are approved as a part of the postmining land use or uses shall be seeded or planted to achieve a permanent vegetative cover of the same seasonal variety native to the region that is capable of soil stabilization, self-regeneration, and plant succession. The vegetative cover shall be considered of the same seasonal variety if [when] it consists of a mixture of species of equal or superior utility for the approved postmining land use, when compared with the utility of naturally occurring vegetation during each season of the year. [If the postmining land use is cropland, successful establishment of the crops normally grown, or other appropriate crops, will meet the requirements of this paragraph.]

(4) [(b) The vegetative cover shall be capable of stabilizing the soil surface from erosion.] If the postmining land use is cropland or pastureland, establishment of [appropriate] crops or pasture species normally grown in the mine vicinity and normal husbandry practices will meet the requirements of subsection (1)(a) of this section. [this paragraph unless the cabinet determines that other temporary vegetation shall be initially planted in order to stabilize the soil surface prior to establishment of crops.]

(5)(a) Plant species used for revegetation shall be compatible with the plant and animal species of the area, and shall meet the requirements of applicable state and federal laws or regulations for seeds, poisonous and noxious plants, and introduced species.

(b) Except for cropland and pastureland, selection of species, distribution patterns, seeding rates, and planting arrangements shall be approved case-by-case by the cabinet based

upon TRM #20 and other appropriate technical documents. TRM #20 is incorporated by reference in 405 KAR 8:030, Section 20. Two (2) or more permanent legume species and one (1) or more permanent grasses shall be established on pastureland unless fewer species are approved by the cabinet based on a pasture management plan specifically tailored to the species mix.

(6) [(c)] Subject to the approval of the cabinet, small incidental areas related to the fulfillment of the postmining land use may be exempted from the revegetation standards if [where] no adverse environmental impact will occur if the exemption is granted.

(7) The extended liability period under the performance bond requirements of 405 KAR Chapter 10 shall begin after the last time of augmented seeding, fertilizing, irrigating, or other related work, and shall continue for not less than five (5) years; except:

(a) Discrete areas of 0.25 acre or less needing reseeding due to circumstances specified in subparagraphs 1 through 5 of this paragraph may be reseeded (including reliming, refertilizing, and remulching) without restarting the five (5) year liability period. The total acreage of these areas reseeded during the liability period shall not exceed three (3) percent of the acreage affected by surface operations and facilities. This paragraph shall only apply to:

1. Reseeding associated with repair of rills and gullies;

2. Reseeding areas where vegetation was disturbed by vehicular traffic not under the control of the permittee;

3. Reseeding areas where vegetation was disturbed by the installation or removal of oil and gas wells or utility lines;

4. Reseeding areas where there was poor seed germination of the initial seeding; and

5. Reseeding areas where vegetation was unavoidably disturbed in the course of conducting some other necessary reclamation activity.

(b) Liming, fertilizing, mulching, seeding, or stocking of haul roads, locations where sedimentation ponds and off-site temporary diversions that divert water to or away from sedimentation ponds have been removed, and locations where collected sediment and embankment material from sedimentation pond removal have been disposed shall not restart the five (5) year liability period. Vegetation established in these areas shall be in place for at least two (2) years before Phase III bond release;

(c) For cropland, the five (5) year liability period shall commence at the date of initial planting for the long-term intensive agricultural postmining land use;

(d) Irrigating, reliming, and refertilizing cropland and pastureland; reseeding cropland; and renovating pastureland by overseeding with legumes after Phase II bond release and after three (3) years from the initial seeding shall be considered normal husbandry practices and shall not restart the liability period if the amount and frequency of these practices do not exceed normal agricultural practices used on unmined land within the region; and

(e) Other normal husbandry practices that may be conducted without restarting the liability period are disease, pest, and vermin control; pruning; and transplanting and replanting of trees and shrubs in accordance with Section 6 of this regulation.

(8) For pastureland, and for cropland except prime farmland subject to 405 KAR 20:040, ground cover and productivity success standards shall be met during the growing seasons of any two (2) years of the liability period except the first year; and areas approved for other uses shall equal or exceed the applicable success standards during the growing season of the last year of the liability period.

Section 2. Use of Introduced Species. Introduced species may be substituted for native species only if approved by the cabinet under the following conditions:

(1) The species shall meet the applicable requirements of Section 1(2), (3), (4), and (5) of this regulation. [The species are compatible with the plant and animal species of the region;]

[(2) The species meet the requirements of applicable state and federal seed or introduced species statutes, and are not poisonous or noxious; and]

[(3)(a) After appropriate field trials or other demonstrations or studies satisfactory to the cabinet have shown that the introduced species, if proposed as the permanent vegetation, are desirable and necessary to achieve the approved postmining land use; or]

(2)(a) Appropriate field trials or other studies shall be conducted or published literature shall be submitted to demonstrate to the satisfaction of the cabinet that proposed, unproven, introduced species are desirable and are necessary for achieving the postmining land use; or

(b) The species are necessary to achieve a quick, temporary, and stabilizing cover that aids in controlling erosion: and measures to establish permanent vegetation are included in the approved [revegetation] plans submitted under 405 KAR 8:040, Sections 24(4)(e) and 37.

[(4) The cabinet may require the use of particular species or mixtures when such species are determined to enhance fish and wildlife resources, to be more effective in controlling erosion, to be more effective in establishing permanent vegetation, or to be more effective in achieving the approved postmining land use.]

Section 3. Timing. Seeding and planting of disturbed areas with permanent species shall be conducted no later than during the first normal period for favorable planting conditions after final preparation. The normal period for favorable planting shall be that planting time generally accepted locally, or as approved [established] by the cabinet in the permit, for the type of plant materials selected. In accordance with Section 4 of this regulation and 405 KAR 18:020, a [When necessary to effectively control erosion, any] disturbed area shall be seeded and mulched, as contemporaneously as practicable with the completion of backfilling and grading, to establish a temporary cover of small grains, grasses, or legumes until a permanent cover is established.

Section 4. Soil Amendments and Stabilization. (1) Nutrients and soil amendments shall be applied to regarded areas in accordance with 405 KAR 18:050, Section 5. [Mulching and Other Soil Stabilizing Practices.]

(2) [(1)] Suitable mulch or other soil

stabilizing practices shall be used in addition to temporary cover on all regraded and topsoiled areas to control erosion, [to] promote germination of seeds, and [or to] increase the moisture retention capacity of the soil. The cabinet may, on a case-by-case basis, waive [suspend] the requirement for mulch if the cabinet finds, based on seasonal, soil, and slope factors, that the temporary vegetative cover will achieve proper erosion control until a permanent cover is established, except that no waiver shall be granted for any area having a slope greater than ten (10) percent. [that alternative procedures proposed by the permittee will achieve the requirements of Section 6 and do not cause or contribute to air or water pollution.]

[(2) When required by the cabinet, mulches shall be mechanically or chemically anchored to the soil surface to assure effective protection of the soil and vegetation.]

[(3) Annual grasses and grains may be used alone, as in situ mulch, or in conjunction with another mulch when the cabinet determines they will provide adequate soil erosion control and will later be replaced by perennial species approved for the postmining land use.]

[(4) Chemical soil stabilizers alone or in combination with appropriate mulches may be used in conjunction with vegetative covers approved for the postmining land use.]

(3) For areas within the area affected by surface operations and facilities to be used as cropland, the area shall be seeded or planted in order to maintain a vegetative cover effective in controlling erosion until the permittee chooses to grow crops.

[Section 5. Grazing. When the approved postmining land use is grazing or pasture land, the permittee may demonstrate successful revegetation by using the reclaimed land for livestock grazing at a grazing capacity approved by the cabinet approximately equal to that for similar nonmined lands, for at least the last two (2) full years of liability required under Section 6(2) of this regulation or by other appropriate demonstration approved by the cabinet.]

Section 5. Success Standards for Ground Cover and Productivity. (1) Determination of success of ground cover and productivity may be made on the basis of reference areas from unmined lands in the vicinity of the operation, where applicable, or by application of the specific ground cover and productivity standards of this section (tree and shrub stocking standards are set forth in Section 6 of this regulation).

(2)(a) For an approved postmining land use of pastureland or cropland used for the production of hay (except prime farmland subject to 405 KAR 20:040):

1. Ground cover (percent) and productivity (tons of forage per acre) shall be at least ninety (90) percent of that of an approved reference area with a statistical confidence of ninety (90) percent; or

2. Ground cover shall be at least ninety (90) percent, and productivity shall be at least ninety (90) percent of the average yield for that hay in the county in the three (3) years prior to the year of measurement, as determined from yield data available from the Kentucky Department of Agriculture, with a statistical confidence of ninety (90) percent.

(b) For areas within the area affected by surface operations and facilities where row crops will be planted (except prime farmland subject to 405 KAR 20:040):

1. Ground cover on any area not planted in row crops shall be at least ninety (90) percent with a statistical confidence of ninety (90) percent; and

2. Crop production shall be at least ninety (90) percent of that of an approved reference area or at least ninety (90) percent of the average yield for the crop in the county in the three (3) years prior to the year of measurement, as determined from yield data available from the Kentucky Department of Agriculture, with a statistical confidence of ninety (90) percent.

(c) Forest land, or other areas within the area affected by surface operations and facilities where woody plants are stocked, shall have at least eighty (80) percent ground cover with a statistical confidence of ninety (90) percent, with no sign of significant erosion as set forth in 405 KAR 16:190, Section 4.

(d) For all other land uses, ground cover shall be at least eighty (80) percent with a statistical confidence of ninety (90) percent, with no sign of significant erosion as set forth in 405 KAR 16:190, Section 4.

(e) For all land uses other than cropland planted in row crops, at Phase III bond release there shall be no discrete bare area or sparsely covered (less than fifty (50) percent ground cover) area greater than 0.25 acre in size. [6. Standards for Success. (1) Success of revegetation shall be measured by techniques approved by the cabinet after consultation with appropriate state and federal agencies. Comparison of ground cover and productivity may be made on the basis of reference areas, or through the use of technical guidance procedures published by USDA or USDI or other procedures approved by the cabinet and the Director of OSM for assessing ground cover and productivity. Management of the reference area, if applicable, shall be comparable to that which is required for the approved postmining land use of the permit area.]

[(2)(a) The ground cover and productivity of living plants on the revegetated area shall be at least equal to the ground cover and productivity of living plants on the approved reference area, or to the standards in technical guides approved by the cabinet and the Director of OSM. Ground cover and productivity shall equal the approved standard for the last two (2) consecutive years of the responsibility period.]

[(b) Except as provided in paragraph (c)3 of this subsection, the period of extended responsibility under the performance bond requirements of Title 405, Chapter 10 begins at the last time of substantially augmented seeding, fertilizing, irrigation or other work necessary to ensure successful vegetation, and continues for not less than five (5) years.]

[(c) The ground cover and productivity of the revegetated area shall be considered equal, if they are at least ninety (90) percent of the ground cover and productivity of the reference area with ninety (90) percent statistical confidence, or with eighty (80) percent statistical confidence on shrublands; or ground cover and productivity are at least ninety (90) percent of the technical guide approved pursuant

to paragraph (a) of this subsection. Exceptions may be authorized by the cabinet under the following standards:]

(3) [1.] For previously mined areas that were not reclaimed to the requirements of [Title] 405 KAR Chapters 16 through 20, the ground cover of living plants shall [not be less than can be supported by the best available topsoil or other suitable material in the reaffected area, shall] not be less than the ground cover existing before the redisturbance and shall be at least eighty (80) percent with a statistical confidence of ninety (90) percent, with no sign of significant erosion as set forth in 405 KAR 18:190, Section 4. [adequate to control erosion;]

[2. For areas to be developed for industrial or residential use within two (2) years after regrading is completed, the ground cover of living plants shall not be less than required to control erosion;]

[3. For areas to be used for cropland, success in revegetation of cropland shall be determined on the basis of crop production from the mined area as compared to the approved reference areas or other approved technical guidance procedures. Crop production from the mined area shall be equal to or greater than that of the approved standard for the last two (2) consecutive growing seasons of the five (5) year liability period established in paragraph (b) of this subsection. Production shall not be considered equal if it is less than ninety (90) percent of the production of the approved standard with ninety (90) percent statistical confidence. The applicable five (5) year period of responsibility for revegetation shall commence at the date of initial planting of the crop being grown. Within thirty (30) days of planting, the permittee shall notify the cabinet that the initial planting of the crop has been completed. Promptly thereafter, the cabinet shall inspect the area to verify that the initial planting has been completed; and]

[4. On areas to be developed for fish and wildlife management or forestland, successful vegetation shall be determined on the basis of tree, shrub or half-shrub stocking and ground cover. The tree, shrub or half-shrub stocking shall meet the standards described in Section 7 of this regulation. The area seeded to a ground cover shall be considered acceptable if it is at least seventy (70) percent of the ground cover of the reference areas with ninety (90) percent statistical confidence or if the ground cover is determined by the cabinet to be adequate to control erosion. This subsection shall determine the responsibility period and the frequency of ground cover measurement.]

[(3) The permittee shall:]

[(a) Maintain any necessary fences and proper management practices; and]

[(b) Conduct periodic measurements of vegetation, soils, and water prescribed or approved by the cabinet, to identify conditions during the applicable period of liability specified in subsection (2) of this section.]

[(4) Where land to be affected by surface operations and facilities is forty (40) acres or less in size within a permit area, the following performance standards, if approved by the cabinet, may be used to measure success of revegetation on sites that are disturbed.]

[(a) Areas planted only in herbaceous species shall sustain a vegetative ground cover of seventy (70) percent for the last three (3) full consecutive years of the five (5) year period of liability.]

[(b) Areas planted with a mixture of herbaceous and woody species shall sustain a herbaceous vegetative ground cover of seventy (70) percent for the last three (3) full consecutive years of the five (5) year period of liability and 400 woody plants per acre at the end of the five (5) years. On steep slopes, the minimum number of woody plants shall be 600 per acre.]

[(5) For the purposes of this section, herbaceous species means grasses, legumes, and nonleguminous forbs; wood plants means woody shrubs, trees, and vines; and ground cover means the area of ground covered by the combined aerial parts of vegetation and the litter that is produced naturally on-site, expressed as a percentage of the total area of measurement.[

Section 6. [7.] Tree and Shrub Stocking. This section sets forth stocking standards and criteria for counting woody plants for measuring stocking success, and applies in addition to Section 5 of this regulation, where the approved postmining land use or the approved fish and wildlife protection and enhancement plan requires the planting of trees or shrubs. [This section sets forth standards for revegetation of areas for which the approved postmining land use requires woody plants as the primary vegetation, to ensure that a cover of commercial tree species, noncommercial tree species, shrubs or half-shrubs, sufficient for adequate use of available growing space, is established after underground mining activities.]

(1) If forest land is an approved postmining land use:

(a) The forested area shall have a minimum stocking of 450 trees or trees and shrubs per acre determined with a statistical confidence of ninety (90) percent, with tree species comprising at least fifty (50) percent of the woody plant species;

(b) At least four (4) species of trees or trees and shrubs shall be planted in a mixed distribution pattern for noncommercial (unmanaged) forest land with each of the four (4) species comprising at least ten (10) percent of the total stock; however, none of the species shall comprise more than fifty (50) percent of the total stock; and

(c) For areas to be used as commercial (managed) forest land, at least seventy-five (75) percent of the woody plant stocking shall be with tree (not shrub) species providing good to excellent commercial value. The species shall be selected from those listed in TRM #20, except the cabinet may approve other species on a case-by-case basis.

(2) For other postmining land uses:

(a) At least thirty (30) percent of the area shall be comprised of multiple rows or plots of trees or shrubs if fish and wildlife is the postmining land use.

(b) For subareas within the area affected by surface operations and facilities where trees or shrubs will be planted for the purpose of creating wildlife habitat (either for a fish and wildlife postmining land use or for fish and wildlife enhancement of other postmining land uses):

1. The minimum stocking rate shall be 450 woody plants per acre, determined with a statistical confidence of ninety (90) percent;

2. At least four (4) species of trees or shrubs shall be planted with each of the four (4) species comprising at least ten (10) percent of the total stock; however, none of the species shall comprise more than fifty (50) percent of the total stock; and

3. Tree and shrub species shall be selected, grouped, and distributed in a manner which optimizes edge effect, cover, and food for wildlife.

(c) For subareas within the area affected by surface operations and facilities where trees and shrubs will be planted for the purposes of creating recreation areas, green belts, fence rows, woodlots, or shelter belts for wildlife, or otherwise facilitating the postmining land use, the minimum stocking rate shall be 450 woody plants per acre, unless a lesser density is approved by the cabinet based on site-specific considerations.

(3) For determining tree or shrub stocking success for areas within the area affected by surface operations and facilities to be stocked with woody plants, the following criteria shall apply:

(a) At Phase II bond release, each tree or shrub counted shall be alive and healthy and shall have been in place for not less than one (1) growing season. At Phase III bond release, each tree or shrub counted shall be alive and healthy and shall have been in place for not less than two (2) growing seasons;

(b) At Phase III bond release each tree or shrub counted shall have at least one-third (1/3) of its height in live crown;

(c) At Phase III bond release, only woody plants over one (1) foot in height shall be counted, and if multiple stems occur on the same plant, only the tallest stem shall be counted;

(d) Up to a cumulative twenty (20) percent of the woody plants needed to meet the stocking standard of 450 per acre may be replanted during the liability period without restarting the liability period;

(e) At Phase III bond release, at least eighty (80) percent of the trees and shrubs used to determine success shall have been in place for three (3) years or more; and

(f) Portions of the site occupied by approved rock areas, brush piles, permanent impoundments, permanent roads, and surface drainageways shall be excluded from the stocking success determinations.

[(1) Stocking, i.e., the number of stems per unit area, will be used to determine the degree to which space is occupied by well distributed countable trees, shrubs or half-shrubs.]

[(a) Root crown or root sprouts over one (1) foot in height shall count as one (1) toward meeting the stocking requirements. Where multiple stems occur, only the tallest stem will be counted.]

[(b) A countable tree or shrub means a tree that can be used in calculating the degree of stocking under the following criteria:]

[1. The tree or shrub shall be in place at least two (2) growing seasons;]

[2. The tree or shrub shall be alive and healthy; and]

[3. The tree or shrub shall have at least one-third (1/3) of its length in live crown.]

[(c) Rock areas, permanent road and surface water drainageways on the revegetated area shall not require stocking.]

[(2) The following are the minimum performance standards for areas where commercial forest land is the approved postmining land use:]

[(a) The area shall have a minimum stocking of 450 trees or shrubs per acre.]

[(b) A minimum of seventy-five (75) percent of countable trees or shrubs shall be commercial trees species.]

[(c) The number of trees or shrubs and the ground cover shall be determined using procedures described in Section 6(2)(c)4 of this regulation and subsection (1) of this section and the sampling method approved by the cabinet.]

[(d) Upon expiration of the five (5) year responsibility period and at the time of request for bond release each permittee shall provide documentation showing that the stocking of trees and shrubs and the ground cover on the revegetated area satisfy Section 6(2)(c)4 of this regulation and this subsection.]

[(3) The following are the minimum performance standards for areas where woody plants are used for wildlife management, recreation, shelter belts, or forest uses other than commercial forest land:]

[(a) The stocking of trees, shrubs, half-shrubs, and the ground cover established on the revegetated area shall approximate the stocking and ground cover on the reference area or shall approximate the stocking and ground cover as approved in the mining and reclamation plan as appropriate for the approved postmining land use.]

[(b) Where a reference area is utilized, an inventory of trees, half-shrubs and shrubs shall be conducted on established reference areas according to methods approved by the cabinet. This inventory shall contain but not be limited to:]

[1. Site quality;]

[2. Stand size;]

[3. Stand condition;]

[4. Site species relations; and]

[5. Appropriate forest land utilization considerations.]

[(c) Upon expiration of the five (5) year responsibility period and at the time of request for bond release, each permittee shall provide documentation showing that: the woody plants established on the revegetated site are equal to or greater than ninety (90) percent of the stocking of live woody plants of the same life form on the reference area or of the life form as approved in the permittee's mining and reclamation plan with eighty (80) percent statistical confidence; and the ground cover on the revegetated area satisfies Section 6(2)(c)4 of this regulation. Species diversity, seasonal variety and regenerative capacity of the vegetation of the revegetated area shall be evaluated on the basis of the results which could reasonably be expected using the revegetation methods described in the mining and reclamation plan.]

Section 7. Use of Reference Areas. (1) Access.

(a) If the reference area is not under the control of the permittee, there shall be a written agreement between the permittee and the landowner specifying that the area may be used for the purposes of a reference area;

(b) The agreement shall also specify that representatives of the cabinet and OSM have right of entry for the purpose of observing and measuring vegetation; and

(c) The agreement shall be effective until

final bond release on the permit area, and a copy of the agreement shall be submitted in the permit application.

(2) Selection and management.

(a) Reference areas shall be:

1. Located in unmined areas;

2. Of sufficient areas to allow meaningful vegetation measurements and comparisons with the permit area;

3. As close to the area affected by surface operations and facilities as practicable;

4. Representative of the geology, soil, and slope of the area affected by surface operations and facilities, and have the same vegetative type or crops proposed for the postmining land use; and

5. Delineated on the vegetation map pursuant to 405 KAR 8:030, Section 19 or on another appropriate map.

(b) Management of the reference area shall be comparable to that which is required for the approved land use of the area affected by surface operations and facilities.

Section 8. Planting Report. (1) Prior to or simultaneously with the submittal of an application for Phase I [the initial] bond release on an area, the permittee shall file a certified planting report with the cabinet, on a form prescribed and furnished by the cabinet, giving the following information:

(a) [(1)] Identification of the operation;

(b) [(2)] The type of planting or seeding, including mixtures and amounts;

(c) [(3)] The date of planting or seeding;

(d) [(4)] The area of land planted or seeded; and

(e) Any [(5) Such] other relevant information that [as] the cabinet [may] requires.

(2) A planting report as described in subsection (1) of this section shall also be submitted to the cabinet if any augmentive reseeding or replanting, or other augmentive work, is performed within the area affected by surface operations and facilities.

Section 9. Measurement of Vegetation Success. (1) Ground cover and tree and shrub stocking shall be measured using the techniques outlined in TRM #19. This document is incorporated by reference in 405 KAR 16:200, Section 9.

(2) Productivity for pastureland and cropland shall be measured by either:

(a) The techniques established in TRM #19 or alternatives approved under subsection (4) of this section;

(b) Harvesting and weighing the entire crop or forage by the permittee to determine total yield from the entire surface operations and facilities area or the entire portion designated as cropland (including prime farmland) or pastureland. Representative samples shall be taken to determine moisture content. Procedures for determining total yields under this option shall be approved in advance by the cabinet; or

(c) For cropland where hay is grown that is not prime farmland and for pastureland, harvesting and weighing by the permittee of the forage from a productivity test area that is an approved representative subarea of the area designated as pastureland or cropland, under subsection (6) of this section.

(3) The cabinet may approve alternative sampling and measurement techniques for productivity determinations in addition to those established by TRM #19 if:

(a) A complete description and justification of the methodology is submitted to the cabinet;

(b) The cabinet determines that use of the methodology would provide substantial benefit to the user in terms of cost, efficiency, or accuracy of measuring productivity;

(c) The methodology is determined by the cabinet to be procedurally and statistically valid and in compliance with this regulation;

(d) Methodologies used for prime farmland shall be approved in consultation with SCS; and

(e) Alternative methodologies shall not be used unless they are approved by OSM.

(4) Measurements of ground cover, tree and shrub stocking, and productivity for Phase II and Phase III bond release shall be made by the cabinet, except the permittee may measure productivity.

(a) If the permittee intends to measure productivity, he shall notify the department's appropriate regional office of the measurement dates in order to provide the opportunity for cabinet personnel to observe the measurements. This notification shall be provided in writing at least thirty (30) days prior to the anticipated measurement dates and shall be provided by telephone or in person within two (2) days prior to the measurement date.

(b) If the permittee measures productivity, he shall ensure that the measurements are made by qualified persons.

(c) The cabinet may make measurements or take other appropriate action as deemed necessary to verify measurements made by the permittee.

(5) Productivity test area for cropland where hay is grown that is not prime farmland and for pastureland. If approved by the cabinet a permittee may determine productivity by mowing, baling and weighing the forage on a test area that is a representative subarea of the area designated as pastureland or cropland.

(a) The test area shall be one (1) contiguous subarea of the larger area to be represented; shall include ten (10) percent or more of the larger area but shall not be less than one (1) acre; shall be representative of the soil types, slopes and aspect of the larger area; and at the time of harvesting shall be representative of the vegetative species, ground cover, and extent of vegetative growth on the larger area.

(b) Prior to submitting an application for Phase II bond release the permittee shall submit a copy of the MRP map marked to show the proposed test area. The cabinet shall evaluate the proposed test area and shall notify the permittee in writing whether the proposed test area is approved. The approval shall be conditioned that fertilization and other management of the test area shall be the same as that of the larger area, and that at the time of harvesting the test area shall be representative of the vegetative species, ground cover, and extent of vegetative growth on the larger area. If the cabinet approves the test area the permittee shall physically mark the location of the test area with appropriate markers. The cabinet in its approval may specify the type of markers required.

(c) Within ten (10) working days of receipt of the written notice of anticipated measurement dates under subsection (4)(a) of this section, the cabinet shall inspect the area to determine if species composition, ground cover, and extent of vegetative growth on the test area are

representative of the larger area. If the cabinet determines that the test area does not meet the applicable criteria, it shall promptly notify the permittee in writing and set forth the reasons for its determination. If the cabinet determines that the test area meets the applicable criteria, it shall promptly notify the permittee in writing that the test area may be harvested to determine productivity.

(d) The permittee shall mow, bale and weigh the yield from the test area, and shall ensure that the yield from the test area is kept separate from the yield from surrounding areas. Representative samples shall be taken to determine moisture content. Personnel of the cabinet may observe the mowing, baling and weighing and may take any reasonable actions necessary to verify the validity of these activities.

(e) The permittee shall submit the results of the yield measurements to the cabinet. The cabinet shall have the right to reject the results, in whole or in part, for good cause. The cabinet shall evaluate the results and shall notify the permittee in writing of the extent to which the results fulfill the requirement to determine productivity for the larger area.

(6) All crop and forage yields shall be adjusted to standard moisture content: fifteen (15) percent for pasture and hay, fifteen and five-tenths (15.5) percent for corn, and twelve and five-tenths (12.5) percent for soybeans and wheat.

(7) Whether measured by the cabinet or the permittee, vegetation success shall be measured prior to the submittal of an application for a Phase II or Phase III bond release.

[Section 9. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.]

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 12, 1991
FILED WITH LRC: July 15, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed regulation has been scheduled for 9 a.m. (EDT) Thursday, August 29, 1991, in the Department for Surface Mining Reclamation and Enforcement's Main Conference Room (Room B-31) 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 August 24, 1991. The schedule hearing may be cancelled if the contact person has not received any written notice of intent to testify by August 24, 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 regulation 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 regulation but does not wish to testify at the hearing may submit written comments on the proposed regulation at any time before 4:30 p.m. (EDT) on Thursday, August 29, 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:

CONTACT PERSON: 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 regulation for underground mining activities and its counterpart 405 KAR 16:200 for surface mining activities establish revegetation requirements. There are about 3800 permanent program operations in existence. This regulation will affect the surface owner by affecting the reclamation of the land. This regulation will indirectly affect the general public in the coal field regions. These amendments are being made: to comply with federal regulation changes; to clarify the standards; to move some requirements from previous TRM #9 (which was previously incorporated by reference) into the regulation; to increase the ground cover standards for some postmining land uses; to relax the productivity standards for nonprime cropland and pastureland; to establish a list of husbandry practices that can be carried out without restarting the liability period; to establish mandatory mulching requirements; to establish measurement methodologies; and other changes.

(a) Direct and indirect costs or savings to those affected:

1. First year: On balance, these amendments will reduce the cost of reclamation to the industry, primarily due to the effects of the relaxation of the productivity standards and the inclusion of the list of husbandry practices that will allow certain practices without restarting the liability period. For some operations there will be some increase in cost due to revised mulching requirements, however the long-term result may well be a savings due to the improved chances for initial revegetation germination and survival.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): This regulation allows permittees to make their own productivity measurements to establish success or failure to meet revegetation and bond release standards. This will be a cost to those choosing to make the measurements themselves rather than the cabinet making the measurements.

(b) Reporting and paperwork requirements: There will be additional reporting requirements because the permittee must report any "augmentative" reseeding, replanting, or other work. "Husbandry practices" will not need to be reported. For those that choose to measure productivity, a report of those results will be required.

(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: No alternatives were considered.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: Not applicable.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.
(6) Any additional information or comments: Not applicable.
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, 1265. 30 CFR Parts 730-733, 735, 816.111-.116, 917.
2. State compliance standards. These amendments to the performance standard for revegetation include: requirements to establish vegetation on mined areas; husbandry practices that may be carried out without restarting the liability period; requirements for introduced species; timing requirements; mulching requirements; success standards; requirements for reference areas; vegetation measurement techniques; and others.
3. Minimum or uniform standards contained in the federal mandate. The federal regulation for revegetation is different in character than many of the other federal performance standards. Although it contains certain minimum requirements, it charges each state with establishing much of the detail of the revegetation standards. Minimum provisions are included for establishing vegetation, introduced species, timing, mulching, success standards, statistically valid sampling techniques, husbandry practices, and others.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. Although the state regulation contains more detail then the federal regulation, as explained above, the states are charged with establishing the detailed requirements.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

**NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET**
**Department for Surface Mining Reclamation and Enforcement**
**(Proposed Amendment)**

**405 KAR 18:220. Postmining land use capability.**

RELATES TO: KRS 350.093, 350.095, 350.100, 350.151, 350.410, 350.450, 350.465, 30 CFR Parts 730-733, 735, 817.133, 917, 30 USC 1253, 1255, 1266
STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.151, 350.465, 30 CFR Parts 730-733, 735, 817.133, 917, 30 USC 1253, 1255, 1266
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This regulation sets forth requirements for restoring surface land use capability after completion of underground mining activities, and specific criteria for approval of postmining land uses which differ from the premining land use.

Section 1. General. (1) Prior to the final release of the performance bond, [liability for] affected areas[, the areas] shall be restored in a timely manner:
(a) [(1)] To conditions capable of supporting the uses which the areas were capable of supporting before any mining; or
(b) [(2)] To conditions capable of supporting higher or better alternative uses [of which there is reasonable likelihood,] as approved by the cabinet under Section 4 of this regulation.
(2) The following land uses shall apply under this regulation. Definitions of these uses, and definitions of "land use" and "higher or better use", are given in 405 KAR 7:020:
(a) Cropland;
(b) Pastureland;
(c) Forest land;
(d) Residential;
(e) Industrial/commercial;
(f) Recreation;
(g) Fish and wildlife;
(h) Developed water resources;
(i) Undeveloped land or no current use or land management.

Section 2. Premining and Postmining Land Use. (1) The premining uses of land to which the postmining land use is compared shall be those uses which the land previously supported if the land has not been previously mined. The premining land use for a specific area shall be determined based on the prevalent or dominant use, vegetative types, and features present at that area; however, more than one (1) land use can exist within an area to be affected by surface operations and facilities.
(2) The postmining land use for land that has been previously mined, and not reclaimed in compliance with 405 KAR Chapter 1 or 3 or Chapters 7 through 24, shall be judged on the basis of the land use that existed prior to any mining; except if the land cannot be reclaimed to the land use that existed prior to any mining because of the previously mined condition, the postmining land use shall be judged on the basis of the highest and best use that can be achieved which is compatible with surrounding areas and does not require the disturbance of areas previously unaffected by mining.
(3) Prime farmland that has been historically used for cropland that is not exempted by 405 KAR 8:050, Section 3 shall have a postmining land use of cropland.
(4)(a) The land use category of "undeveloped

land or no current use or land management" shall not be used to designate a postmining land use.

(b) If the premining land use is "undeveloped land or no current use or land management", and if consistent with subsection (2) of this section and Section 3 of this regulation:

1. If trees are dominant on the area prior to mining, the area may be designated as forestland for the postmining land use without compliance with the procedures and criteria for an alternative postmining land use.

2. For all other cases, the area may be designated as fish and wildlife for the postmining land use without compliance with the procedures and criteria for an alternative postmining land use.

(5) Slope limitations for specific postmining land uses. These limitations shall apply to permits issued after the effective date of this amendment.

(a) Portions of the area affected by surface operations and facilities with slopes greater than twenty (20) percent (eleven and three-tenths (11.3) degrees) shall not be designated as cropland, including hay production; and

(b) Portions of the area affected by surface operations and facilities with slopes greater than thirty-three (33) percent (eighteen and five-tenths (18.5) degrees) shall not be designated as pastureland; except the cabinet may, on a case-by-case basis, approve pastureland for slopes greater than thirty-three (33) percent if the permittee submits a detailed management plan specific to the special circumstances of steep slopes clearly demonstrating that the land use of pastureland is practical and reasonable, and the management plan is supported by the surface owner comments submitted under 405 KAR 8:040, Section 37.

(6) Steep slope operations with variances from approximate original contour shall comply with the requirements of 405 KAR 20:060, Section 3(2). [Determining Minimum Acceptable Postmining Land Use Capability for Lands to be Restored to the Premining Land Use. (1) Unmined lands. On lands which have not been previously mined and have received proper management, the postmining land use capability shall equal or exceed the premining capability of the land to support the actual premining uses and a variety of other feasible uses.]

[(2) Previously mined lands. On lands which have been previously mined, the postmining land use capability shall equal or exceed the capability of the land prior to any mining to support the actual uses and a variety of other feasible uses, except that allowances shall be made for any irreparable damages to the land which have resulted from the previous mining.]

[(3) Improperly managed lands. On lands which have received improper management as compared to similar lands in surrounding areas, the postmining land use capability shall equal or exceed the capability of the land under proper levels of management to support the actual premining uses or a variety of other feasible uses, except that allowances shall be made for any irreparable damages to the land which have resulted from improper management.]

Section 3. Historical Land Use. If the premining use of the land was changed within five (5) years of the date of application for a permit to conduct surface coal mining and reclamation operations, the historical use of the land as well as the land use immediately preceding the date of application shall be considered in establishing the premining capability of the land to support a variety of feasible uses. [The determination of minimum acceptable postmining land use capability shall be based upon the potential utility of the land to support a variety of feasible uses, and not only upon premining land uses which may have resulted from underutilization.]

Section 4. Alternative Postmining Land Use. Higher or better alternative postmining land uses may be approved by the cabinet [after consultation with the landowner or the land management agency having jurisdiction over the lands,] if the following criteria [of this section] are met:

(1) There is a reasonable likelihood that the land use will be achieved;

(2) The use will not be impractical or unreasonable;

(3) The landowner or the land management agency having jurisdiction over the lands has been consulted, and [(1)(a)] the proposed alternative postmining land use is consistent [compatible with adjacent land use and, where applicable,] with applicable [existing local, state, or federal] land use policies and plans;

[(b) Authorities with statutory responsibilities for land use policies and plans shall have been provided opportunity to submit written statements of their views to the cabinet within sixty (60) days of notice by the cabinet.]

(4) The proposed use will not present an actual or probable hazard to public health or safety or threat of water pollution or diminution of water availability;

(5) The proposed use will not involve unreasonable delays in implementation; and

(6) The proposed use will not cause or contribute to violation of federal, state, or local law.

[(c) Any required approval of local, state, or federal land management agencies, including any necessary zoning or other changes required for the proposed alternative land use, shall be obtained prior to the final release of bond liability for the permit area.]

[(2) Specific plans shall be prepared and submitted to the cabinet which show the feasibility of the proposed postmining land use as related to projected land use trends and markets, and which include a schedule showing how the proposed use will be developed and achieved within a reasonable time after mining. The cabinet may require appropriate demonstrations to show that the planned procedures are feasible, reasonable, and integrated with mining and reclamation, and that the plans will result in successful reclamation.]

[(3) The applicant has demonstrated that there is reasonable likelihood that any necessary public facilities will be provided.]

[(4) Specific and feasible plans are submitted to the cabinet which show that financing, attainment and maintenance of the postmining land use are feasible.]

[(5) Plans for the postmining land use are designed and certified by a qualified registered professional engineer to assure land stability, drainage, and site configuration necessary for the intended postmining use of the site.]

[(6) The proposed use or uses will neither

present actual or probable hazard to public health or safety nor will they pose any actual or probable threat of water pollution or diminution of water availability.]

[(7) The proposed use or uses will not involve unreasonable delays in reclamation.]

[(8) Necessary approval of measures to prevent or mitigate adverse effects on fish, wildlife, and related environmental values and threatened or endangered plants shall have been obtained from the cabinet, and appropriate state and federal fish and wildlife management agencies have been provided a sixty (60) day period in which to review the plan.]

[(9) Proposals to change premining land uses of fish and wildlife habitat, forest land, hayland, or pasture to a postmining cropland use, where the cropland would require continuous maintenance such as seeding, plowing cultivation, fertilization, or other similar practices to be practicable or to comply with applicable federal, state, and local laws, have been reviewed by the cabinet to ensure that:]

[(a) The applicant has demonstrated that there is reasonable likelihood that the landowner or land manager will provide sufficient crop management after release of applicable performance bonds under Title 405, Chapter 10 and 405 KAR 18:200, in order that the proposed postmining cropland use will remain practical and reasonable;]

[(b) There is sufficient water available and committed to maintain crop production; and]

[(c) Topsoil quality and depth are sufficient to support the proposed use.[

[Section 5. Land Use Categories. The following is the list of land use categories to be applied under this regulation. These uses are defined in 405 KAR 7:020. Also see the definition of "land use."]

[(1) Cropland.]
[(2) Pastureland.]
[(3) Grazing land.]
[(4) Forestry.]
[(5) Residential.]
[(6) Industrial/commercial.]
[(7) Recreation.]
[(8) Fish and wildlife habitat.]
[(9) Developed water resources.]
[(10) Underdeveloped land or no current land use or land management.]

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 12, 1991
FILED WITH LRC: July 15, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed regulation has been scheduled for 9 a.m. (EDT) Thursday, August 29, 1991, in the Department for Surface Mining Reclamation and Enforcement's Main Conference Room (Room B-31) 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 August 24, 1991. The schedule hearing may be cancelled if the contact person has not received any written notice of intent to testify by August 24, 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 regulation 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 regulation but does not wish to testify at the hearing may submit written comments on the proposed regulation at any time before 4:30 p.m. (EDT) on Thursday, August 29, 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:

CONTACT PERSON: 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 regulation for underground mining activities and its counterpart 405 KAR 16:210 for surface mining activities set forth the performance standards for postmining land uses. Currently there are about 3,800 permanent program mining operations. This regulation will affect the surface owner by affecting the postmining land use. This regulation indirectly affects the general public in coal field regions. These amendments include changes that were made in the federal regulations, including deletion of much of the specific criteria for approval of alternative postmining land uses. The criteria are now more general in nature. These amendments also contain slope limitations for cropland and pastureland.

(a) Direct and indirect costs or savings to those affected:

1. First year: These amendments generally will not affect industry costs one way or the other. There may be a small savings to applicants proposing to change undeveloped land to forestland or fish and wildlife postmining land use because under certain conditions, these changes will not have to comply with the procedures for alternative postmining land use changes. In some cases, the slope limitations may save cost for mining operators in that inapproriate location of postmining land uses, leading to inability to obtain bond release, will be prevented.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: There will be a small reduction in paperwork for the situation described in paragraph (a) above.

(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: No alternatives were considered.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: Not applicable.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.
(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, 1265. 30 CFR Parts 730-733, 735, 816.133, 917.
2. State compliance standards. These amendments to the performance standard establish requirements for determining premining land uses and postmining land uses, including some limitations on postmining designations of cropland and pastureland. These amendments also modify the criteria for approval of alternative postmining land uses, and for the sake of clarity, list the various land use categories that may be used.
3. Minimum or uniform standards contained in the federal mandate. The federal regulations contain requirements for postmining land uses and criteria for approving alternative postmining land uses which are the same as these amendments except that the state regulation provides some more detail by including the limitations on postmining land use designations as cropland and pastureland. These limitations are consistent with the federal requirement that alternative postmining land uses be practical, reasonable, and likely to be achieved.
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. Not applicable.

**NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET**
**Department for Surface Mining Reclamation and Enforcement**
**(Proposed Amendment)**

**405 KAR 20:010. Coal exploration.**

RELATES TO: KRS 350.057, 350.465, 30 CFR Parts 730-733, 735, 815, 917, 30 USC 1253, 1255, 1262
STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.057, 350.465, 30 CFR Parts 730-733, 735, 815, 917, 30 USC 1253, 1255, 1262
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to regulate coal exploration operations which substantially disturb the natural land surface. This regulation sets forth the performance standards applicable to coal exploration operations which substantially disturb the land surface.

Section 1. General Responsibility of Persons Conducting Coal Exploration. Each person who conducts coal exploration which substantially disturbs the natural land surface shall comply with the provisions of Section 3 of this regulation.

Section 2. Required Documents. Each person who conducts coal exploration which removes more than twenty-five (25) [250] tons of coal or which is located in an area designated unsuitable for mining pursuant to [KAR Title] 405 KAR Chapter 24 shall, while in the exploration area, possess written approval of the cabinet for the activities granted under 405 KAR 8:020, Section 2. The written approval shall be available for review by the authorized representative of the cabinet or OSM [the Office of Surface Mining Reclamation and Enforcement] upon request.

Section 3. Performance Standards for Coal Exploration. The performance standards in this section are applicable to coal exploration which substantially disturbs land surface. For any cross-references to the 405 KAR Chapter 8 permitting requirements made within those regulations of 405 KAR Chapter 16 that are referenced in this section, the permitting requirements shall only apply to the extent set forth in 405 KAR 8:020 and this regulation.
(1) Habitats of unique or unusually high value for fish, wildlife, and other related environmental values and critical habitats of threatened or endangered species identified pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) shall not be disturbed during coal exploration.
(2) The person who conducts coal exploration shall, to the extent practicable, measure important environmental characteristics of the exploration area during the operations, to minimize environmental damage to the area and to provide supportive information for any permit application that person may submit under [Title] 405 KAR Chapter 8.
(3)(a) Vehicular travel on other than established graded and surfaced roads shall be limited by the person who conducts coal exploration to that absolutely necessary to conduct the exploration. Travel shall be confined to graded and surfaced roads during periods when excessive damage to vegetation or rutting of the land surface could result.
(b) Any new road in the exploration area shall comply with the provisions of 405 KAR 16:220.
(c) Existing roads may be used for exploration in accordance with the following:
1. All applicable federal, state, and local requirements shall be met.
2. If the road is significantly altered for exploration, including, but not limited to, change of grade, widening, or change of route, or if use of the road for exploration contributes additional suspended solids to stream flow or run-off, then subsection (7) of this section shall apply to all areas of the road which are altered or which result in the [such] additional contributions of suspended solids.
3. If the road is significantly altered for exploration activities and will remain as a

permanent road after exploration activities are completed, the person conducting exploration shall ensure that the requirements of 405 KAR 16:220 are met for the design, construction, alteration, and maintenance of the road.

(d) Promptly after exploration activities are completed, existing roads used during exploration shall be reclaimed either:

1. To a condition equal to or better than their preexploration condition; or

2. To the condition required for permanent roads under 405 KAR 16:220.

(4) If excavations, artificial flat areas, or embankments are created during exploration, these areas shall be returned to the approximate original contour promptly after these [such] features are no longer needed for coal exploration.

(5) Topsoil shall be removed, stored, and redistributed on disturbed areas as necessary to assure successful revegetation or as required by the cabinet.

(6) All areas disturbed by coal exploration activities shall be revegetated in a manner that encourages prompt revegetation and recovery of a diverse, effective, and permanent vegetative cover. Revegetation shall be accomplished in accordance with the following:

(a) All areas disturbed by coal exploration activities shall be seeded or planted to the same seasonal variety native to the areas disturbed. If the preexploration land use was intensive agriculture, planting of the crops normally grown shall [will] meet the requirements of this paragraph.

(b) The vegetative cover shall be capable of stabilizing the soil surface from erosion.

(7) Diversions of overland flows and ephemeral, perennial, or intermittent streams shall be made in accordance with 405 KAR 16:080.

(8) Each exploration hole, borehole, well, or other exposed underground opening created during exploration shall [must] meet the requirements of 405 KAR 16:040.

(9) All facilities and equipment shall be removed from the exploration area promptly when they are no longer needed for exploration, except for those facilities and equipment that may remain to:

(a) Provide additional environmental quality data;

(b) Reduce or control the on- and off-site effects of the exploration activities; or

(c) Facilitate future surface mining and reclamation operations by the person conducting the exploration, under an approved permit.

(10) Coal exploration shall be conducted in a manner which minimizes disturbance of the prevailing hydrologic balance in accordance with 405 KAR 16:060 through 405 KAR 16:110. The cabinet may specify additional measures which shall be adopted by the person engaged in coal exploration.

(11) Toxic- or acid-forming materials shall be handled and disposed of in accordance with 405 KAR 16:060, Section 4 and 405 KAR 16:190, Section 3. If specified by the cabinet, additional measures shall be adopted by the person engaged in coal exploration.

Section 4. Requirements for a Permit. Except as provided in 405 KAR 8:020, Section 4(2), any person who extracts coal for commercial use or sale during coal exploration operations must obtain a permit for those operations that are subject to 405 KAR 8:020, Section 2 shall first obtain a permit to conduct surface coal mining operations under 405 KAR 8:010. [from the cabinet under Title 405, Chapter 8. No permit is required if the cabinet makes a prior determination that the sale is to test for coal properties necessary for the development of surface coal mining and reclamation operations for which a permit application is to be submitted at a later time.]

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 12, 1991
FILED WITH LRC: July 15, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed regulation has been scheduled for 9 a.m. (EDT) Thursday, August 29, 1991, in the Department for Surface Mining Reclamation and Enforcement's Main Conference Room (Room B-31) 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 August 24, 1991. The schedule hearing may be cancelled if the contact person has not received any written notice of intent to testify by August 24, 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 regulation 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 regulation but does not wish to testify at the hearing may submit written comments on the proposed regulation at any time before 4:30 p.m. (EDT) on Thursday, August 29, 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:

CONTACT PERSON: 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 regulation establishes performance standards for coal exploration operations which substantially disturb the land surface. Currently there are about 500 coal exploration operations in existence. The primary change included in these amendments is to change 250 tons to 25 tons as the breakpoint between operations that need cabinet approval and those that simply have to notify the cabinet that exploration will occur. This change was made by the 1990 General Assembly.

(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: Any exploration operation intending to remove between 25 and 250 tons of coal will now have to obtain and possess cabinet approval for the operation. Previously, approval was only required if more than 250 tons would be removed. However, there are presently no exploration operations greater than 25 tons.

(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: No alternatives were considered.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering is not applicable to this proposed amendment because Kentucky surface mining law established 25 tons as the criteria for requiring approval of the exploration operations vs. the simpler notice requirements. The remaining requirements are established by federal regulation and must apply equally to all coal exploration operations.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 USC 1253, 1255, 1262. 30 CFR Parts 730–733, 735, 815, 917.

2. State compliance standards. The primary effect of these amendments to the coal exploration performance standard is to change the breakpoint between explorations that must obtain and possess approval of the operation from the cabinet and those that may simply provide notice that exploration will occur. The change is from 250 tons coal removed to 25 tons coal removed.

3. Minimum or uniform standards contained in the federal mandate. The breakpoint described above is 250 tons of coal removed.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes, this regulation will require approval for a broader range of coal exploration operations; however, experience to date is there will be few, if any, exploration operations greater than 25 tons.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This change was made in KRS Chapter 350 by the 1990 General Assembly.

## JUSTICE CABINET
## Office of the Secretary
## (Proposed Amendment)

### 500 KAR 8:010. Certification of operators.

RELATES TO: KRS 189A.103(3)(6). [15A.070, 186.565]

STATUTORY AUTHORITY: KRS 15A.160

NECESSITY AND FUNCTION: [KRS 186.565 provides that the state shall supply each county with one (1) breath analysis and simulating unit. KRS 15A.070 authorizes the Secretary of Justice to establish, supervise, and coordinate training programs for law enforcement personnel.] This regulation establishes the certification of breath analysis operators as required by KRS 189A.103(3)(6).

Section 1. (1)(a) To become certified to operate a breath alcohol analysis instrument, the person shall successfully complete the training program of the Department of Criminal Justice Training or the Department of State Police.

(b) The Department of State Police shall not provide training on operation of breath alcohol analysis instruments to any law enforcement officers other than its own employees.

(2) Successful completion shall mean receiving a passing score on a standardized written examination as provided by the department providing the training and the satisfactory completion of a standardized practical proficiency examination administered by a certified instructor or an intoxilyzer service technician employed by the department providing the training.

(3) The examinations shall be included in a minimum of forty (40) hours of instruction which shall also include the demonstration of physiological effects of alcohol in the human body, general instrumentation theory, and operation of approved instruments which measure alcohol concentration.

Section 2. (1) Operator certification shall be valid for a period of two (2) years from the date of issuance.

(2) Certification shall be terminated if it is not renewed with a two (2) year period or the operator ceases to be employed by a criminal justice agency.

(3) An operator whose certification has been revoked pursuant to this section shall be eligible for recertification pursuant to Section 4 of this regulation for six (6) months following revocation.

Section 3. The employer of a certified operator shall notify the Department of Criminal Justice Training which issued the certificate in writing within two (2) weeks of the change in the event of change of employment to a different criminal justice agency or termination of employment with a criminal justice agency.

Section 4. To obtain recertification, a certified operator shall review standards and procedures for a minimum of four (4) hours of recertification instruction.

Section 5. (1) The following are grounds for revocation of certification to operate a breath analysis instrument:

(a) Misuse of the instrument by the operator in violation of law;
(b) Refusal or failure to perform procedures in an acceptable manner;
(c) Failure to testify at any judicial proceeding under KRS Chapter 189A [an administrative revocation hearing held pursuant to KRS 186.570] without just cause; and
(d) Dismissal of an operator from his employment with a criminal justice agency.
(2) Revocation will be held only following a hearing conducted by the Commissioner of the Department of Criminal Justice Training which issued the certificate, or his designee, following written notice to the certified operator of the basis for revocation.

Section 6. A person who has received training from the Department of Criminal Justice Training, the Department of State Police, or the Lexington-Fayette Urban County Government Division of Police in breath analysis instrument operation before January 1, 1991, shall be exempt from the requirements of Section 1 of this regulation. Each person who has not received this training more recently than January 1, 1989, shall comply with Section 4 of this regulation.

RAY CORNS, Secretary
APPROVED BY AGENCY: June 19, 1991
FILED WITH LRC: July 1, 1991 at 8:05 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Wednesday, August 21, 1991 at 10 a.m. at 403 Wapping Street, Bush Building, Second Floor, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 1991, five days prior to the 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 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 to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Christopher W. Johnson, Justice Cabinet, 403 Wapping Street, Bush Building, 2nd Floor, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Chris Johnson
(1) Type and number of entities affected: Approximately 900 state police officers.
(a) Direct and indirect costs or savings to those affected: No fiscal impact.
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: KSP Academy already maintains records reflecting this training.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No additional paperwork.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative provider of training, DOCJT is over-burdened.
(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. Regulation only pertains to one class of affected people: Kentucky State Police Officers.

## CORRECTIONS CABINET
## (Proposed Amendment)

### 501 KAR 6:030. Kentucky State Reformatory.

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 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 revised on July 14, 1991 and are incorporated by reference [on May 15, 1991,] and hereinafter shall [should] be referred to as Kentucky State Reformatory 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.

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| KSR 01-00-09 | Public Information and News Media Relations |
| KSR 01-00-10 | Entry Authorization for All Cameras and Tape Recorders Brought into the Institution |
| KSR 01-00-14 | Extraordinary Occurrence Report |
| KSR 01-00-15 | Cooperation and Coordination with Oldham County Court |
| KSR 01-00-19 | Personal Service Contract Personnel |
| KSR 01-00-20 | Consent Decree Notification to Inmates |
| KSR 02-00-01 | Inmate Canteen [(Amended 5/15/91)] |
| KSR 02-00-03 | Screening Disbursements from Inmate Personal Accounts |
| KSR 02-00-11 | Inmate Personal Accounts |
| KSR 02-00-12 | Institutional Funds and Issuance of Checks |
| KSR 04-00-02 | Staff Training and Development |

KSR 05-00-01 Officers' Daily Housing Security and Safety Log
KSR 05-00-02 Research Activities
KSR 05-00-03 Management Information Systems
KSR 06-00-01 Inmate Master File
KSR 06-00-02 Records Audit
KSR 06-00-03 Kentucky Open Records Law and Release of Psychological/ Psychiatric Information
KSR 07-00-02 Institutional Tower Room Regulations [(Amended 5/15/91)]
KSR 07-00-04 Handling of PCB Articles and Containers
KSR 07-00-05 Proper Removal of Transformers
KSR 07-00-06 Asbestos Abatement
KSR 07-00-07 Discharge Monitoring Report (DMR)
KSR 08-00-07 Inmate Family Emergency – Life Threatening Illness or Death in Inmate's Immediate Family
KSR 08-00-08 Death of an Inmate/Notification of Inmate Family in Case of Serious Injury, Critical Medical Emergency, Major Surgery
KSR 08-00-10 Hazardous Chemicals and Material Safety Data Sheet
KSR 09-00-04 Horizontal Gates/Box 1 Entry and Exit Procedure
KSR 09-00-05 Gate I Entrance and Exit Procedure
KSR 09-00-09 Contraband, Dangerous Contraband and Search Policy
KSR 09-00-14 Use of Force
KSR 09-00-21 Crime Scene Camera
KSR 09-00-22 Collection, Preservation, and Identification of Physical Evidence
KSR 09-00-23 Drug Abuse Testing
KSR 09-00-25 Inmate Motor Vehicle Operator's License
KSR 09-00-26 Contraband Outside Institutional Perimeter
KSR 09-00-27 Construction Crew Entry/Exit
KSR 09-00-28 Restricted Areas (Amended 7/15/91)
KSR 09-00-29 Transportation of Inmates
KSR 09-00-30 Parole Board [(Amended 5/15/91)]
KSR 09-00-31 Forced Cell Move in Medium or Maximum Area
KSR 10-01-01 Unit D – Staffing Pattern, Staff Allocation, Position Description, Staff Selection, Training and Evaluation, Time and Attendance, and Unit Personnel Records [(Amended 5/15/91)]
KSR 10-01-02 Unit D – General Operational Procedures [(Amended 5/15/91)]
KSR 10-01-03 Unit D – Inmate Tracking System and Records System [(Amended 5/15/91)]
KSR 10-01-04 Unit D – Administrative Segregation [(Amended 5/15/91)]
KSR 10-01-05 Unit D – Disciplinary Segregation [(Amended 5/15/91)]
KSR 10-01-06 Unit D – Protective Custody [(Amended 5/15/91)]
KSR 10-01-07 Unit D – Geriatrics [(Amended 5/15/91)]
KSR 10-01-08 Unit D – Safekeepers [(Amended 5/15/91)]
KSR 10-01-09 Unit D – Hold Ticket Residents [(Amended 5/15/91)]
KSR 10-00-10 Unit D – Inmate Legal Access
KSR 10-01-11 Unit D – Behavior Problem Control [(Amended 5/15/91)]
KSR 10-00-12 Unit D – Designated Staff Visits
KSR 10-00-13 Unit D – Property Room Access
KSR 10-02-01 [Corrections Cabinet Division of] Mental Health[, Unit E,] Staffing Pattern[, Staff Allocation, Position Descriptions, Staff Selection, Training and Evaluation. Time and Attendance and Unit Personnel Records] (Amended 7/15/91)
KSR 10-02-02 Unit E Designated Staff Visits
KSR 10-02-03 Unit E-1 Convalescent Care [(Added 05/15/91)]
KSR 11-00-01 Meal Planning for the General Population
KSR 11-00-02 Special Diets
KSR 11-00-03 Food Service Inspections
KSR 11-00-04 Dining Room Rules and Dress Code for Inmates [(Amended 5/15/91)]
KSR 11-00-06 Health Standards/Regulations for Food Service Employees
KSR 11-00-07 Early Chow Line Passes for Medically Designated Inmates
KSR 12-00-01 Inmate Summer Dress Regulations
[KSR 12-00-02 Sanitation and General Living Conditions (Deleted 7-15-91)]
KSR 12-00-03 State Items Issued to Inmates (Amended 7/15/91)
KSR 12-00-07 Regulations for Inmate Barbershop
KSR 12-00-09 Treatment of Inmates with Body Lice [(Added 05/15/91)]
KSR 13-00-02 Hospital Operations, Rules and Regulations [(Amended 5/15/91)]
KSR 13-00-03 Medication for Inmates Leaving Institution Grounds
KSR 13-00-04 Medical and Dental Care
KSR 13-00-05 Medical Records (Amended 7/15/91)
KSR 13-00-08 Institutional Laboratory Procedures
KSR 13-00-09 Institutional Pharmacy Procedures
KSR 13-00-10 Requirements for Medical Personnel
KSR 13-00-11 Health Evaluation
KSR 13-00-12 Vision Care/Optometry Services
KSR 13-00-14 Periodic Health Examinations for Inmates
KSR 13-00-15 Medical Alert System
KSR 13-00-16 Suicide Prevention and Intervention Program
KSR 13-00-17 Special Care
KSR 13-02-01 Mental Health Services
KSR 13-02-02 Mentally Retarded Inmates
KSR 13-02-03 Suicide Prevention and Intervention Program (Amended 7/15/91)
KSR 13-02-04 Division of Mental Health's Residential Services
KSR 14-00-01 Inmate Rights
KSR 14-00-04 Inmate Grievance Procedure
KSR 15-00-02 Regulations Prohibiting Inmate Control or Authority Over Other Inmate(s)
KSR 15-00-04 Restoration of Forfeited Good Time
KSR 15-00-05 Differential Status for SU (QUIT) Inmates
KSR 15-00-06 Inmate I.D. Cards
KSR 15-00-07 Inmate Rules and Discipline – Adjustment Committee Procedures
KSR 15-00-08 Firehouse Living Area [(Amended 5/15/91)]
KSR 15-00-10 Program Services for Special Housing Placement
KSR 15-01-01 Operational Procedures and Rules and Regulations for Unit A, B & C: Functions of Assigned Personnel
KSR 15-01-02 Operational Procedures and Rules and Regulations for Unit A, B, & C: Staff Operational Procedures (Amended 7/15/91)

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| KSR 15-01-03 | Operational Procedures and Rules and Regulations for Unit A, B & C: Inmate Rules and Regulations (Amended 7/15/91) |
| KSR 15-01-04 | Institutional Medical and Fire Safety Service: Unit Application |
| KSR 15-01-05 | Institutional Inmate Services |
| KSR 15-01-06 | Operational Procedures and Rules and Regulations for Unit A, B & C: Inmate Honor Housing Criteria and Regulations (Amended 7/15/91) |
| [KSR 16-00-01 | Visiting Regulations (Deleted 7/15/91)] |
| KSR 16-00-02 | Inmate Correspondence and Mailroom Operations (Amended 7/15/91) |
| KSR 16-00-03 | Inmate Access to Telephones |
| KSR 16-01-01 | Visiting Regulations (Added 7/15/91) |
| KSR 16-01-02 | Lawn Visit Regulations (Added 7/15/91) |
| KSR 16-01-03 | Night Visit Regulations (Added 7/15/91) |
| KSR 17-00-03 | Notifying Inmates' Families of Admission and Procedures for Mail and Visiting |
| KSR 17-00-05 | Dormitory 10 Operations |
| KSR 17-00-06 | Identification Department Admission and Discharge Procedures (Amended 7/15/91) |
| KSR 17-00-07 | Inmate Personal Property (Amended 7/15/91) |
| KSR 17-00-08 | Repair of Inmate Owned Appliances by Outside Dealers |
| KSR 18-00-04 | Returns from Other Institutions |
| KSR 18-00-05 | Transfer of Residents to Kentucky Correctional Psychiatric Center, and Referral Procedure for Residents Adjudicated Guilty but Mentally Ill |
| KSR 18-00-06 | Classification and Special Notice Form |
| KSR 18-00-07 | Kentucky State Reformatory Placement Committee (Amended 7/15/91) |
| KSR 19-00-01 | Inmate Work Incentives [(Amended 5/15/91)] |
| KSR 19-00-02 | On-the-job Training Program [(Amended 5/15/91)] |
| KSR 19-00-03 | Safety Inspections of Inmate Work Assignment Locations |
| KSR 19-00-05 | Food Service On-The-Job Training and Workers Rules [(Added 05/15/91)] |
| KSR 20-00-01 | Vocational School Referral and Release Process |
| KSR 20-00-03 | Academic School Program [(Amended 5/15/91)] |
| KSR 20-00-04 | Criteria for Participation in Jefferson Community College Program |
| KSR 20-00-08 | Integration of Vocational and Academic Education Programs [(Amended 5/15/91)] |
| KSR 21-00-01 | Legal Aide Office and Inmate Law Library Services and Supervision [(Amended 5/15/91)] |
| KSR 21-00-02 | Inmate Library Services |
| KSR 21-00-03 | Library Services for Unit D |
| KSR 22-00-03 | Inmate Organizations [(Amended 5/15/91)] |
| KSR 22-00-07 | Inmate News Magazine |
| KSR 23-00-02 | Chaplain's Responsibility and Inmate Access to Religious Representatives |
| KSR 23-00-03 | Religious Programming |
| KSR 25-00-01 | Discharge of Residents to Hospital or Nursing Home |
| KSR 25-00-02 | Violations of Law or Code of Conduct by Inmates on Parole Furlough |
| KSR 25-00-03 | Preparole Progress Report |

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: July 15, 1991
FILED WITH LRC: July 15, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for August 26, 1991 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron and Tom Campbell, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron
(1) Type and number of entities affected: 572 employees of the Kentucky State Reformatory, 1397 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 6:070. Kentucky Correctional Institution for Women.**

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 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 revised on July 15 [June 14], 1991 and are incorporated by reference and hereinafter shall be referred to as Kentucky Correctional Institution for Women 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 on weekdays between 8 a.m. to 4:30 p.m.

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| KCIW 01-06-01 | Legal Assistance for Corrections Staff |
| KCIW 01-08-01 | News Media Access |
| KCIW 02-01-01 | Comprehensive Insurance Coverage |
| KCIW 02-02-01 | Fiscal Management: Audits |
| KCIW 02-02-03 | Fiscal Management: Checks |
| KCIW 02-02-04 | Institution Purchasing Procedures |
| KCIW 02-03-01 | Inventory Control of Nonexpendable Personal Property |
| KCIW 02-03-02 | Inventory and Control of Stores |
| KCIW 02-04-01 | Accounting Procedures |
| KCIW 02-05-01 | Inmate Canteen and Staff Canteen [(Amended 6/14/91)] |
| KCIW 06-01-01 | Inmate Records |
| KCIW 06-01-02 | Transfers to Community Centers and the Minimum Security Unit |
| KCIW 06-01-03 | Storage of Expunged Records |
| KCIW 10-01-01 | Special Management Unit General Operation and Regulations |
| KCIW 10-01-02 | Special Management Unit Programs, Placement and Review |
| KCIW 10-01-04 | Special Security |
| KCIW 11-01-01 | Food Service Operation Inspections (Amended 7/15/91) |
| KCIW 11-01-02 | Budgeting, Accounting, and Purchasing Procedures for Food Products |
| KCIW 11-02-01 | Menu Preparation/Special Diets |
| KCIW 11-03-01 | General Guidelines for Food Service Workers |
| KCIW 11-03-02 | General Guidelines for Food Service Workers |
| KCIW 11-04-01 | Health Regulations and General Guidelines for the Food Service Area |
| KCIW 12-01-01 | Control of Pests and Vermin |
| KCIW 12-02-01 | Laundry and Clothing Issuance |
| KCIW 12-02-03 | Donated Items [(Amended 6/14/91)] |
| KCIW 12-04-01 | Sanitation and General Living Conditions |
| KCIW 12-04-02 | Hair Care Services |
| KCIW 13-01-01 | Provision of Medical and Dental Care (Amended 7/15/91) |
| KCIW 13-01-02 | Preliminary Health Screening and Appraisal |
| KCIW 13-01-03 | Use of Pharmaceutical Products (Amended 7/15/91) |
| KCIW 13-03-01 | Emergency Care (Amended 7/15/91) |
| KCIW 13-03-02 | Infirmary Care and Outside Services |
| [KCIW 13-03-03 | Outside Hospital Security |
| KCIW 13-04-01 | Medical Alert System |
| KCIW 13-04-02 | Psychiatric/Psychological Services |
| KCIW 13-06-01 | Informed Consent |
| KCIW 13-07-01 | Detoxification and Alcohol or Chemical Dependency Guidelines |
| KCIW 13-08-01 | Medical Examination for Employees [(Amended 6/14/91)] |
| KCIW 13-09-01 | Suicide Prevention and Intervention Program |
| KCIW 13-11-01 | Infection Control [(Amended 6/14/91)] |
| KCIW 14-01-02 | Inmate Rights |
| KCIW 14-02-01 | Access to Attorneys and Designated Counsel Substitutes |
| KCIW 14-03-01 | Inmates Are Not Subject to Discrimination Based on Race, Religion, National Origin, Sex, Handicap, or Political Beliefs |
| KCIW 14-04-01 | Inmate Grievance Procedure |
| KCIW 15-01-01 | Offenses and Penalties |
| KCIW 15-01-02 | Adjustment Committee Procedures and Programs |
| KCIW 15-03-01 | Inmate Rule Book |
| KCIW 15-04-01 | Honor Program |
| KCIW 15-06-01 | Restriction Guidelines [(Amended 6/14/91) |
| KCIW 16-01-01 | Inmate Correspondence |
| KCIW 16-01-03 | Staff Mail |
| KCIW 16-02-01 | Inmate Access to Telephone |
| KCIW 16-02-02 | Intra-Institution Phone Calls |
| KCIW 16-03-01 | Inmate Visiting Regulations (Amended 7/15/91) |
| KCIW 16-03-02 | Unauthorized Items for Picnic Lunches, Food Packages and Regular Packages |
| KCIW 16-04-01 | Inmate Indigent Fund [(Amended 6/14/91)] |
| KCIW 16-05-01 | Inmate Packages |
| KCIW 17-01-01 | Assessment Center Operation and Reception Programs |
| KCIW 17-01-02 | Assessment/Classification Center Operations, Rules and Regulations |
| KCIW 17-01-03 | Assessment and Classification Unit Property Guidelines |
| KCIW 17-02-01 | Identification Department Admissions |
| KCIW 17-03-01 | Notifying Inmates Families of Admission and Procedures for Mail and Visiting |
| KCIW 17-05-01 | Inmate Personal Property Guidelines |
| KCIW 18-01-02 | Institutional Housing Assignments |
| KCIW 18-02-01 | Classification Procedures |
| KCIW 18-05-01 | Special Needs Inmates |
| KCIW 18-06-01 | Institutional Status Codes |
| KCIW 19-01-01 | Inmate Work/Program Assignments |
| KCIW 19-03-01 | Landscape and Maintenance Work Details |
| KCIW 20-01-01 | Education Center [Programs] (Amended 7/15/91) |
| [KCIW 20-01-03 | Vocational Education: Curriculum Flexible Schedule, Upgrade Programs and Release Preparation Program (Deleted 7/15/91)] |
| [KCIW 20-01-04 | Entry - Exit Vocational School (Deleted 7/15/91)] |
| [KCIW 20-01-05 | Vocational Programs: Approved, Assessed and Contain Guidelines for Vocational Records (Deleted 7/15/91)] |
| [KCIW 20-01-06 | Vocational Education: Staffing Patterns/Requirements (Deleted 7/15/91)] |
| [KCIW 20-01-07 | Vocational Counselor (Deleted 7/15/91)] |
| [KCIW 20-01-08 | Vocational Education: Community Resources and the Integration with Academic Progress (Deleted 7/15/91)] |

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| [KCIW 20-01-09 | Vocational Education: Support Equipment (Deleted 7/15/91)] |
| KCIW 20-01-10 | Control of Flammable, Hazardous, Toxic and Caustic Materials in the Vocational Area |
| KCIW 22-01-04 | Inmate Club Activities |
| KCIW 23-01-01 | Religious Services |
| KCIW 25-01-01 | Preparole Progress Report |
| KCIW 25-02-01 | Temporary Release/Community Center |
| KCIW 25-02-02 | Furloughs |
| KCIW 25-03-01 | Escorted Leave into the Community |

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: July 15, 1991
FILED WITH LRC: July 15, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for August 26, 1991 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron or Tom Cambpell, Corrections Cabinet, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron
(1) Type and number of entities affected: 126 employees of the Kentucky Correctional Institution for Women, 290 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 6:090. Frankfort Career Development 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 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 revised on July 15, 1991 and are incorporated by reference [on April 15, 1991] and hereinafter shall [should] be referred to as Frankfort Career Development 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.

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| FCDC 01-04-01 | Confidentiality of Information Roles and Services of Consultant, Contract Personnel, Governmental Services Supervisors and Volunteers [(Amended 4/15/91)] |
| FCDC 01-05-01 | Duties and Responsibilities of FCDC Duty Officer [(Amended 4/15/91)] |
| FCDC 01-09-01 | Organization and Assignment of Responsibilities [(Added 4/15/91)] |
| FCDC 02-02-01 | Inventory of Nonexpendable Personal Property [(Added 4/15/91)] |
| FCDC 02-09-01 | Inmate Account Draw and Savings Deposit Transactions Between Inmates [(Amended 4/15/91)] |
| FCDC 02-10-01 | Fiscal Management and Control [(Amended 4/15/91)] |
| FCDC 02-11-01 | Fiscal Management: Accounting Procedures [(Amended 4/15/91)] |
| FCDC 02-12-01 | Fiscal Management: Checking Accounts [(Amended 4/15/91)] |
| FCDC 02-13-01 | Purchasing and Receiving [(Amended 4/15/91)] |
| FCDC 06-02-01 | Inmate Records |
| FCDC 08-01-01 | Fire Safety Practices |
| FCDC 09-01-02 | Institutional Entry/Exit Surveillance and Perimeter Security Procedures |
| FCDC 09-03-01 | Control and Accountability of Flammable Toxic, Caustic and Other Hazardous Materials |
| FCDC 09-06-08 | Searches and Contraband Control |
| [FCDC 11-01-01 | Special Diets (Deleted 7/15/91)] |
| [FCDC 11-02-01 | Menu Preparation (Deleted 7/15/91)] |
| FCDC 11-03-01 | Food Service[s] (Amended 7/15/91) |
| FCDC 12-03-01 | Laundry, Clothing, Hygiene and Grooming Services |
| FCDC 12-04-01 | Sanitation Practices and Inspections |
| FCDC 13-01-01 | Use of Pharmaceutical Products (Amended 7/15/91) |
| FCDC 13-01-02 | Medical Emergencies (Amended 7/15/91) |
| FCDC 13-01-03 | Informed Consent (Amended 7/15/91) |
| FCDC 13-02-01 | Inmate Medical Screenings and Health Evaluations (Amended 7/15/91) |

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| FCDC 13-03-01 | Psychiatric and Psychological Services (Amended 7/15/91) |
| FCDC 13-03-02 | Parental Administration of Medications and Use of Psychotropic Drugs (Amended 7/15/91) |
| [FCDC 13-04-01 | Intrasystem Transfers of Medical/Psychiatric Problems (Deleted 7/15/91)] |
| FCDC 13-05-01 | Family Notification: Serious Illness, Injury, [or] Major Surgery or Death (Amended 7/15/91) |
| FCDC 13-06-01 | Chronic and Convalescent Care (Amended 7/15/91) |
| FCDC 13-08-01 | Sick Call/Physician's Weekly [Bimonthly] Clinic (Amended 7/15/91) |
| FCDC 13-09-01 | Management of Serious and Infectious Diseases (Amended 7/15/91) |
| FCDC 13-10-01 | Treatment Protocol Regarding First-Aid Procedures, Routine Health Care (Amended 7/15/91) |
| FCDC 13-11-01 | Health Education: Provision of Special Health Care Needs (Amended 7/15/91) |
| FCDC 13-12-01 | Elective Services (Amended 7/15/91) |
| FCDC 13-13-01 | Physicians Referrals (Amended 7/15/91) |
| FCDC 13-14-01 | Health Records (Amended 7/15/91) |
| FCDC 13-15-01 | Routine and Emergency Dental Appointments (Amended 7/15/91) |
| FCDC 13-16-01 | Routine and Emergency Eye Examinations (Amended 7/15/91) |
| FCDC 13-17-01 | Inmate Death |
| FCDC 14-01-01 | Prohibiting Inmate Authority Over Other Inmates |
| FCDC 14-02-01 | Inmate Grievance System |
| FCDC 14-03-01 | Inmates Are Not Subject to Discrimination Based on Race, Religion, National Origin, Sex, Handicap or Political Beliefs and Are Protected Against Corporal Punishment |
| FCDC 14-04-01 | Legal Services Program |
| FCDC 15-01-01 | Good Time – Credits |
| FCDC 15-03-01 | Conduct of Adjustment Committee Hearings (Chairperson) |
| FCDC 15-04-01 | Prehearing Detention and Protective Custody Requests |
| FCDC 16-01-01 | Inmate Visiting |
| FCDC 16-02-01 | Mail Policy |
| FCDC 16-03-01 | Inmate Access to Telephones |
| FCDC 17-01-01 | Inmate Property Control |
| FCDC 17-02-01 | Inmate Reception, Orientation, and Discharge |
| FCDC 18-01-01 | Inmate Classification |
| FCDC 18-02-01 | Reclassification Document |
| FCDC 18-03-01 | Instructions for Six Month Review |
| FCDC 19-01-01 | Security and Operation of the Governmental Services Program |
| FCDC 19-02-01 | Inmate Work Program |
| FCDC 20-01-01 | Academic and Vocational Education |
| FCDC 22-01-01 | Privilege Trips |
| FCDC 22-01-02 | Activity Trips |
| FCDC 22-02-01 | Recreation and Inmate Activities |
| FCDC 23-01-01 | Religious Activities |
| FCDC 24-01-01 | Social Service Program |
| FCDC 24-02-01 | Substance Abuse Programs |
| FCDC 25-01-01 | Escorted Leaves |
| FCDC 25-02-01 | Temporary Release/Community Center Program |
| FCDC 25-03-01 | Release Preparation Program |

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: July 15, 1991
FILED WITH LRC: July 15, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for August 26, 1991 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron and Tom Campbell, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron
(1) Type and number of entities affected: 45 employees of the Frankfort Career Development Center, 180 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.

## TRANSPORTATION CABINET
## Department of Highways
## Division of Planning
## (Proposed Amendment)

### 603 KAR 5:070. Motor vehicle dimension limits.

RELATES TO: KRS 189.222, 23 CFR Part 658
STATUTORY AUTHORITY: KRS 189.222(1), 23 CFR Part 658
NECESSITY AND FUNCTION: KRS 189.222 authorizes the Secretary of Transportation to establish reasonable size limits for motor vehicles using the State Primary Road System. The State Primary Road System consists of those roads maintained by the Department of Highways. Further, 23 CFR Part 658 requires that a five (5) mile access on state-maintained highways and a one (1) mile access on locally controlled highways be included with the list of highways over which

motor vehicles with increased dimensions are allowed to operate. The federal regulation also requires that vehicles with increased dimensions which are transporting household goods and truck tractors towing only one (1) semitrailer which does not exceed twenty-eight (28) feet be provided state-wide access unless a route is specifically excluded for safety reasons. This regulation is adopted to set the maximum motor vehicle dimensions for all classes of highways. However, bus dimension limits are set forth in 603 KAR 5:071.

Section 1. Except as provided in Section 2 of this regulation, the maximum dimensions for all motor vehicles except buses using all classes of highways shall be as follows:

(1) Height: including body and load, not to exceed thirteen (13) feet and six (6) inches.

(2) Width: including body and load, not to exceed eight (8) feet.

(3) Length.

(a) Single unit motor vehicle, including any part of the body or load, not to exceed forty-five (45) feet. However, if the front or rear overhang exceeds five (5) feet, an overdimensional permit shall be obtained prior to the operation of the vehicle. However, single unit motor vehicles transporting utility poles or pipes in which the vehicle and load do not exceed forty-five (45) feet shall not be required to obtain an overdimensional permit.

(b) Motor vehicle and trailer or semitrailer combinations, including any part of the body or load, not to exceed fifty-five (55) feet, except for truck tractor and semitrailer units exclusively engaged in the transportation of motor vehicles or boats, a three (3) foot front and four (4) foot rear overhang of the transported vehicles or boats is excluded in the measurement of the fifty-five (55) feet.

(c) If the front or rear overhang of a motor vehicle and trailer or semitrailer combination exceeds five (5) feet, an overdimensional permit shall be obtained prior to the operation of the vehicle. In truck tractor and semitrailer units exclusively engaged in the transportation of motor vehicles or boats, a three (3) foot front and four (4) foot rear overhang of the transported vehicles or boats shall be excluded from this measurement.

(d) A tolerance of not more than five (5) percent shall be permitted on overall length before a motor carrier is deemed to be in violation of this section.

Section 2. (1) Motor vehicles except buses with dimensions greater than those specified in Section 1 of this regulation but which do not exceed the dimensions set forth in subsection (2) of this section may be operated without an overdimensional permit only on the highways listed in Section 3(1) of this regulation, [and] on the five (5) mile [local] access authorized in Section 3(2) of this regulation and on the one (1) mile access authorized in Section 3(3) of this regulation.

(2) Motor vehicles shall not exceed, without an overdimensional permit, the following width and length dimensions when operating on those highways listed in Section 3(1) of this administrative regulation:

(a) Width - 102 inches including any part of the body or load.

(b) Length.

1. Semitrailers - fifty-three (53) feet including body and load when operated in tractor semitrailer combination.

2. Trailers - twenty-eight (28) feet including body and load when operated in a tractor-semitrailer-trailer combination, not to exceed two (2) trailers per truck tractor. Twenty-eight (28) feet shall be the maximum length of a trailer including body and load when operated in a truck-trailer combination.

3. If the load overhangs the body of the trailer or semitrailer by more than five (5) feet an overdimensional permit shall be required regardless of the overall length of the unit, except in truck tractor and semitrailer units exclusively engaged in the transportation of motor vehicles or boats, a three (3) foot front and four (4) foot rear overhang of the transported vehicles or boats shall be excluded in the measurement.

4. There shall be no overall length limitation on motor vehicles operating on highways listed in Section 3(1) of this regulation or on the five (5) mile local access authorized in Section 3(2) of this regulation as long as the requirements set forth in this subsection are met.

5. In a tractor semitrailer-trailer combination vehicle in which the two (2) trailing units are connected with a rigid frame extension attached to the rear frame of the first semitrailer which allows for a fifth wheel connection point for the second semitrailer, the length of the extension shall be excluded from the measurement of semitrailer length; however, when there is no second semitrailer mounted to the fifth wheel, the length of the extension shall be included in the length measurement for the semitrailer.

(3) No dimension specified in this section shall be subject to any enforcement tolerances provided in any other section.

Section 3. (1) The following highways are designated to permit the operation of motor vehicles with increased dimensions but which do not exceed the limitations stated in Section 2(2) of this regulation:

The Interstate and National Defense Highway System.

Audubon Parkway - from Pennyrile Parkway at Henderson to US 60 Bypass in Owensboro.

Bluegrass Parkway - from I-65 in Elizabethtown to US 60 near Versailles.

Cumberland Parkway - from I-65 near Smiths Grove [at Warren County line] to US 27 west of Somerset.

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

Green River Parkway - From I-65 in Bowling Green to US 60 Bypass in Owensboro.

[Jackson] Purchase Parkway - from Tennessee state line to I-24 in Marshall County.

Mountain Parkway and Extension - from I-64 at Winchester to US 460 at Salyersville.

Pennyrile Parkway - From US 41A in Hopkinsville to US 41 near Henderson.

Western Kentucky Parkway - from I-24 south of Eddyville to US 31W in Hardin County.

KY 4 - The entire circle of Lexington.

KY 11 - from the junction with KY 32 in Fleming County to US 62-68 in Maysville.

KY 15 - from US 119 in Whitesburg to the Mountain Parkway at Campton.

KY 18 - from KY 338 at Burlington to KY 1017

in Florence.
KY 21 - from I-75 near Berea to US 25 south in Berea.
US 23 - from KY 1426 south of Pikeville to the Ohio state line.
US 23 - from the Virginia state line to US 119 near Jenkins.
US 23 Spur - from US 23/60 in Ashland to the Ohio state line.
US 25 - from US 421 south of Richmond to KY 876 in Richmond.
US 25 - from KY 418 southeast of Lexington to [Nandino Boulevard in Lexington (via] KY 4[)].
US 25 - from US 42 in Florence to Ohio state line.
US 25E - from Virginia state line to I-75 north of Corbin.
US 27 - from Tennessee state line to Ohio state line (via KY 4 in Lexington).
US 31E - from Tennessee state line to KY 90 at Glasgow (via the Scottsville Bypass and the Glasgow Bypass).
US 31W - from Tennessee state line to KY 73 north of Franklin.
US 31W - from the Green River Parkway to US 68 north of Bowling Green.
US 31W - from US 31W Bypass in Elizabethtown to I-264 in Shively.
US 31W Bypass - from Western Kentucky Parkway to US 31W in Elizabethtown.
KY 32 - from KY 11 in Fleming County to US 60 at Morehead.
KY 35 - from US 127 at Bromley to I-71 north of Sparta.
KY 36 - from I-64 south of Owingsville to US 60 at Owingsville.
KY 36 - from US 42 in Carrollton to KY 227.
US 41 - from US 68 (Main Street) in Hopkinsville to US 68 (McLean Avenue) in Hopkinsville.
US 41 - concurrent with Pennyrile Parkway from south of Nortonville to north of Madisonville.
US 41 - from Pennyrile Parkway at Henderson to Indiana state line.
US 41A - from Tennessee state line to Pennyrile Parkway at south city limits of Hopkinsville.
US 41A - from KY 112 in Earlington to KY 281 and KY 1751 in Madisonville.
US 42 - from I-264 northeast of Louisville to Oldham County line.
US 42 - from I-75 in Florence to US 25 in Florence.
US 42 - from KY 55 at Carrollton to KY 47 at Ghent.
US 45 - from the Jackson Purchase Parkway north of Mayfield to US 60 in Paducah.
US 45 Bypass - concurrent with the Jackson Purchase Parkway from southwest of Mayfield to US 45 north of Mayfield.
US 49 - Concurrent with KY 55 south of Lebanon to north of Lebanon.
US 51 - from Jackson Purchase Parkway in Fulton County to Illinois state line.
KY 52 - from KY 876 in Richmond to KY 499 at Irvine.
KY 55 - from Cumberland Parkway in Columbia to US 150 at Springfield, via US 68 and KY 49.
US 60 - from US 51 in Wickliffe to US 62 east of Paducah.
US 60 - from East O'Banion Avenue in Morganfield to KY 425, the Henderson Bypass.
US 60 - from US 60 Bypass west of Owensboro to KY 69 at Hawesville.
US 60 - from KY 144 in Meade County to US 31W at Tip Top.
US 60 - from I-264 east of Louisville to KY 1531 at Eastwood.
US 60 - from US 421/460 at Frankfort to I-75 near Lexington (via Versailles and KY 4 in Lexington).
US 60 - from junction of KY 180 near Cannonsburg to US 23 in Ashland.
US 60 Bypass - from US 60 west of Owensboro to US 60 east of Owensboro.
US 61 - from Tennessee state line to KY 90 at Burkesville.
US 62 - from US 60 east of Paducah to Western Kentucky Parkway east of Eddyville.
US 62 - from US 150 at Bardstown to KY 245 at Bardstown.
US 62 - from US 421 west of Midway to US 421 in Scott County, concurrent with US 421.
US 62 - from KY 353 southwest of Cynthiana to US 27 at Cynthiana.
US 62 - from US 68 at Washington to the Ohio state line at Maysville.
US 68 - from US 62 at Reidland to KY 284 in McCracken County.
US 68 - from I-24 in Trigg County to Green River Parkway at Bowling Green via US 41 in Hopkinsville.
US 68 - from KY 55 southwest of Campbellsville to KY 55 in Lebanon.
US 68 - from its east intersection with US 150 in Perryville to its west intersection with US 150 in Perryville.
US 68 - from US 127 south in Harrodsburg to US 127 north in Harrodsburg.
US 68 - from US 27 at Paris to US 62 at Washington (via Paris Bypass).
KY 69 - from US 60 at Hawesville to Indiana state line.
KY 70 - from I-65 west of Cave City to KY 90 southeast of Cave City.
KY 79 - from KY 1051 in Brandenburg to Indiana state line.
KY 80 - from KY 80B at Somerset to US 25 north of London.
KY 80 - from KY 15 at Hazard to US 23 at Watergap.
KY 80B - From US 27 at Somerset to KY 80 east of Somerset.
KY 90 - from KY 70 at Cave City to Cumberland Parkway at Glasgow.
KY 90 - from KY 61 at Burkesville to US 27 at Burnside.
KY 114 - from US 460 east of Salyersville to US 23/460 at Prestonsburg.
KY 118 - from US 421 and KY 80 northwest of Hyden to the Daniel Boone Parkway.
US 119 - from KY 15 at Whitesburg to US 23 at Jenkins.
US 119 - from US 25E south of Pineville to US 421 at Harlan.
US 119 - from US 23 at Pikeville to KY 1441 northeast of Pikeville.
KY 121 - from the Jackson Purchase Parkway at Mayfield to US 51 in Wickliffe.
US 127 - from KY 90 west to KY 90 east in Clinton County (concurrent with KY 90).
US 127 - from US 127 Bypass north of Danville to US 127 Bypass south of Lawrenceburg.
US 127 - from I-64 west of Frankfort to US 421 in Frankfort.
US 127 - from KY 22 in Owenton to KY 35 at Bromley.
US 127 Bypass - from US 127 south of Danville to US 127 north of Danville.
US 127 Bypass - from US 127 south of

Lawrenceburg to US 127 north of Lawrenceburg.
KY 144 - from KY 448 south of Brandenburg to US 60.
US 150 - from US 62 at Bardstown to US 27 at north city limits of Stanford (via the US 150 Bypass in Danville).
US 150B - from US 127 south of Danville to US 150 east of Danville.
KY 151 - from US 127 near Lawrenceburg to I-64 near Graefenburg.
KY 180 - from I-64 near Cannonsburg to US 60 at Cannonsburg.
KY 191 - from KY 205 north to KY 205 south in Wolfe County, concurrent with KY 205.
KY 192 - from I-75 south of London to Daniel Boone Parkway east of London.
KY 205 - from Mountain Parkway at Helechawa to US 460 west in Morgan County, concurrent with KY 191.
KY 212 - from KY 20 to Greater Cincinnati Airport (Boone County).
KY 227 - from KY 355 near Worthville to KY 36 at Carrollton.
US 231 - from US 60 Bypass in Owensboro to Indiana state line.
US 231 - from I-65 east of Bowling Green to US 31W in Bowling Green.
KY 236 - from US 25 at Erlanger to KY 212 near the Greater Cincinnati Airport.
KY 237 - from KY 18 east of Burlington to I-275 in Boone County.
KY 245 - from I-65 south of Shepherdsville to US 62 at Bardstown.
KY 259 - from Western Kentucky Parkway to US 62 in Leitchfield.
KY 281 - from US 41A in Madisonville to the Pennyrile Parkway, concurrent with US 41.
KY 341 - from US 62/421 near Midway north to I-64.
KY 348 - from Jackson Purchase Parkway west of Benton to US 641 in Benton.
KY 418 - from US 25 south of Lexington to I-75.
US 421 - from 0.1 mile south of Harlan Appalachian Regional Hospital.
US 421 & KY 80 - from Daniel Boone Parkway to 2nd Street in Manchester.
US 421 - from KY 4 in Lexington to US 62 east in Scott County.
US 421 - from US 460 in Frankfort to US 127 north.
KY 425 - from US 60 at Henderson to the Pennyrile Parkway.
US 431 - from US 60 Bypass in Owensboro to US 60 (4th Street) in Owensboro.
KY 446 - from US 31W northeast of Bowling Green to I-65.
KY 448 - from KY 144 to KY 1051 at Brandenburg.
US 460 - from I-64 north of Mt. Sterling to KY 686.
US 460 - from Mountain Parkway Extension to US 23 near Paintsville.
KY 471 - from US 27 in Campbell County to the I-275/471 junction.
KY 546 - from I-275/KY 9 at Wilder to KY 59 south of Vanceburg [KY 19 in Bracken County to KY 11 south of Maysville in Mason County].
KY 555 - from US 150 at Springfield to Bluegrass Parkway.
US 641 - from Tennessee state line to US 641A south of Benton.
US 641A - from US 641 south of Benton to the Jackson Purchase Parkway.
KY 645 - from US 23 south of Ulysses to KY 40 west of Inez.
KY 676 - from US 127 in Frankfort to US 60.
KY 686 - from US 460 north of Mt. Sterling to KY 11 south of Mt. Sterling.
KY 841 - from I-71 in Jefferson County to US 42 northeast of Louisville.
KY 841 - from US 31W (Dixie Highway) in southwestern Jefferson County to I-65.
KY 859/KY 57 - from I-64 east of Lexington to Lexington - Bluegrass Army Depot.
KY 876 - from I-75 at Richmond to KY 52 east of Richmond.
KY 922 - from KY 4 in Lexington north to I-64 and I-75.
KY 1017 - from US 25 in Florence to I-75.
KY 1051 - from KY 79 to KY 448 south of Brandenburg.
KY 1682 - from US 68 west of Hopkinsville to Pennyrile Parkway.
KY 1958 - from KY 627 south of Winchester to I-64 at Winchester.
KY 1998 - from US 27 at Cold Springs to KY 8 at Silver Grove.

(2) Motor vehicles with the increased dimensions specified in Section 2 of this regulation shall be allowed five (5) driving miles on state maintained highways from the highway segments specified in Section 3(1) of this regulation for the purpose of attaining reasonable access to terminals; facilities for food, fuel, repairs and rest[; and points of loading and unloading for household goods carriers].

(3) Motor vehicles with the increased dimensions specified in Section 2 of this regulation shall be allowed one (1) driving mile on nonstate maintained public use highways from the highway segments specified in Section 3(1) for the purpose of attaining reasonable access to terminals, facilities for food, fuel, repairs and rest.

Section 4. (1) Household Goods Transporters. Motor vehicles with the increased dimensions specified in Section 2 of this regulation and which are used to transport household goods by a motor carrier certificated by either the Interstate Commerce Commission or the Kentucky Transportation Cabinet to transport household goods shall have access to any public roadway in the Commonwealth of Kentucky.

(2) Single unit semitrailers. Motor vehicles with the increased dimensions specified in Section 2 of this regulation and which consist of only a truck tractor and single semitrailer which does not exceed twenty-eight (28) feet shall have access to any public roadway in the Commonwealth of Kentucky.

JEROME L. LENTZ, Acting Commissioner
O. GILBERT NEWMAN, State Highway Engineer
MILO D. BRYANT, Secretary
APPROVED BY AGENCY: June 21, 1991
FILED WITH LRC: June 26, 1991 at 1 p.m.
PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on August 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 August 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 August 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: All operators of STAA type vehicles in Kentucky and the United States Armed Forces.

(a) Direct and indirect costs or savings to those affected: This regulation was amended to match the requirements of 23 CFR Part 658 and 603 KAR 5:250. As a result of more roads (i.e., county roads) being made available to STAA-dimensioned vehicles, there will be a cost savings to the operators of some larger vehicles. In addition, more segments of the AA Highway (KY 546) have been opened to use and will cut operating cost of the larger vehicles in northeastern Kentucky by providing a more direct route in those areas. The United States Armed Forces has designed a new transport vehicle which pulls a short trailer rather than semitrailer. The amendment to the length provisions of this administrative regulation will allow this unique vehicle to be operated legally on the highways set forth in this administrative regulation without an overdimensional permit.

1. First year: The savings will be less than an average of $100 per vehicle per year.

2. Continuing costs or savings: The savings will be less than an average of $100 per vehicle per year.

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: 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: The alternative of not accommodating the new military vehicle was rejected because the vehicle appears to be designed to operate as safely as the vehicles pulling semitrailers of the same length.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: KRS 189.221 specifies the dimension limits for local roads. The one-mile access provisions of this regulation are in conflict.

(a) Necessity of proposed regulation if in conflict: The Federal Highway Administration mandated the one-mile access on local roads.

(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 was applied by allowing larger vehicles to operate on those highways with geometrics conducive to the safe operation of those vehicles.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 23 CFR Part 658, Truck Size and Weight; Reasonable Access requires each state to establish access provisions to the National Truck Network of Highways which meet the criteria set forth in the federal regulation and to get federal approval of the criteria.

2. State compliance standards. The state compliance standards set forth in this administrative regulation meet the federal requirements, but do not exceed them. Specifically, five-mile access on state-maintained highways and one-mile access on locally-maintained highways are allowed from the National Truck Network of Highways. However, if there are reasonable safety grounds for excluding a road segment from the access provisions, the Transportation Cabinet in accordance with 603 KAR 5:250 may do so.

3. Minimum or uniform standards contained in the federal mandate. Same as adopted in the state administrative regulation.

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. Not applicable.

**TRANSPORTATION CABINET**
**Department of Highways**
**Division of Planning**
**(Proposed Amendment)**

**603 KAR 5:071. Bus dimension limits.**

RELATES TO: KRS 189.221, 189.222, 189.265, 281.735, 23 CFR Part 658

STATUTORY AUTHORITY: KRS 189.221, 189.222, 189.265, 281.735, 23 CFR Part 658

NECESSITY AND FUNCTION: KRS 189.222 authorizes the Secretary of Transportation to increase the dimension limits prescribed in KRS 189.221 for vehicles operated on designated state maintained highways or portions thereof up to specified limits if the increase is justified by the safety of the designated highways. KRS 189.222(6)(b) authorizes the Secretary of Transportation to increase the width limit for vehicles on the Federal Aid Highway System and the State Parkway System when authorized by federal law or laws or regulations up to a specified limit. KRS 189.265 establishes length and width limits for buses and authorizes the Secretary of Transportation to increase the width limits of motor buses, except for those operated by transit authorities created pursuant to KRS Chapter 96A, on state maintained highways if the increase is justified by the width of the designated highways. KRS 281.735(3) establishes a width limit for city and suburban buses and authorizes the Secretary of Transportation to increase the width limit on state maintained

highways for all other buses only as provided by law. Federal regulation 23 CFR Part 658 requires the establishment of a system of roads both state maintained and locally maintained over which motor vehicles with increased dimensions are allowed to operate. This regulation is adopted to set the maximum dimension limits for buses.

Section 1. Except as provided in Sections 2 and 3 of this regulation the maximum dimensions for buses having a seating capacity of ten (10) or more, including the driver, operated on any state maintained highway shall be as set forth in KRS 189.265.

Section 2. Buses which do not exceed a width of 102 inches, exclusive of any required safety equipment and tire bulge due to load, may be operated on those highways designated for the operation of motor vehicle with increased dimensions by Section 3 of 603 KAR 5:070.

Section 3. Buses which are allowed the increased width under the authority of Section 2 of this regulation shall be allowed to operate within five (5) driving miles on state maintained highways from the designated routes for the purpose of attaining reasonable access to terminals; facilities for food, lodging, and rest; facilities for fuel and repairs; and points of loading and unloading of passengers and freight.

Section 4. Buses which are allowed the increased width under the authority of Section 2 of this regulation shall be allowed to operate within one (1) driving mile on locally maintained highways from the designated routes for the purpose of attaining reasonable access to terminals; facilities for food, lodging, and rest; facilities for fuel and repairs; and points of loading and unloading of passengers and freight.

JEROME L. LENTZ, Acting Commissioner
O. GILBERT NEWMAN, State Highway Engineer
MILO D. BRYANT, Secretary
APPROVED BY AGENCY: June 21, 1991
FILED WITH LRC: June 26, 1991 at 1 p.m.
PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on August 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 August 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 August 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: All operators of wider or longer buses in Kentucky.
(a) Direct and indirect costs or savings to those affected: This regulation was amended to match the requirements of 23 CFR Part 658 and 603 KAR 5:250. As a result of more roads (i.e., county roads) being made available to STAA-dimensioned buses, there will be a slight cost savings to the operators of some larger buses. In addition, more segments of the AA Highway (KY 546) have been opened to use and may cut the operating cost of buses in northeastern Kentucky by providing a more direct route in those areas.
1. First year: The savings will be less than an average of $25 per bus per year.
2. Continuing costs or savings: None
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: 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 – federal mandate.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: KRS 189.221 specifies the dimension limits for local roads. The one-mile access provisions of this regulation are in conflict.
(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 was applied by allowing larger vehicles to operate on those highways with geometrics conducive to the safe operation of those vehicles.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 23 CFR Part 658, Truck Size and Weight; Reasonable Access requires each state to establish access provisions to the National Truck Network of Highways which meet the criteria set forth in the federal regulation and to get federal approval of the criteria.
2. State compliance standards. The state compliance standards set forth in this administrative regulation meet the federal requirements, but do not exceed them. Specifically, five-mile access on state-maintained highways and one-mile access on locally-maintained highways are allowed from the National Truck Network of Highways. However, if there are reasonable safety grounds for excluding a road segment from the access

provisions, the Transportation Cabinet in accordance with 603 KAR 5:250 may do so.

3. Minimum or uniform standards contained in the federal mandate. Same as adopted in the state administrative regulation.

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. Not applicable.

**TRANSPORTATION CABINET**
**Motor Vehicle Commission**
**(Proposed Amendment)**

**605 KAR 1:010. Meetings.**

RELATES TO: KRS 190.058
STATUTORY AUTHORITY: KRS 190.058
NECESSITY AND FUNCTION: KRS 190.058 provides for the Motor Vehicle Commission to hold an annual meeting[s] and regular meetings. The purpose of this regulation is to establish those meetings, the method for calling the meetings, and the place of the meetings.

[Section 1. The commission shall hold a regular annual meeting in September of each year for the purpose of electing a chairman and vice chairman to serve for the ensuing year.]

Section 1. [2.] The regular meetings of the commission shall be held at least once a month or as often as may be necessary. Advance notice of each meeting shall be delivered to each member. [Meetings shall be called by the chairman or the vice chairman upon not less than three (3) days' notice which shall be given to each member of the commission. Members of the commission may waive the notice requirement.] All meetings of the commission shall be in the Office of the Motor Vehicle Commission in Frankfort, Kentucky, or [such] other place as the chairman may designate[, and all meetings shall start at 10 a.m. prevailing time at the place of meeting].

RAYMOND COTTRELL, SR., Chairman
APPROVED BY AGENCY: July 12, 1991
FILED WITH LRC: July 15, 1991 at 11 a.m.
PUBLIC HEARING: A public comment hearing on this proposed amended administrative regulation shall be held at 10 a.m. on August 30, 1991, at the office of the Kentucky Motor Vehicle Commission, 114 West Clinton Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by August 25, 1991, five days prior to the 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 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 administrative regulation. Send written notification of intent to attend the public hearing or written comments on the administrative regulation to: David Garnett, Executive Director, Kentucky Motor Vehicle Commission, 114 West Clinton Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: David Garnett

(1) Type and number of entities affected: The only entity affected is the Motor Vehicle Commission. The proposed amendments are stylistic in nature and are the result of the Legislative Research Commission staff comments designed to bring a ten-year old regulation into compliance with current regulatory drafting requirements. The proposed amendments only delete language which is duplicative, having previously been placed in statutory form, or language which is superfluous.

(a) Direct and indirect costs or savings to those affected: No costs or savings are entailed in these proposed amendments. The changes are stylistic in nature and are not substantive.

1. First year: No costs or savings are entailed in these proposed amendments. The changes are stylistic in nature and are not substantive.

2. Continuing costs or savings: No costs or savings are entailed in these proposed amendments. The changes are stylistic in nature and are not substantive.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs entailed in these proposed amendments. The changes are stylistic in nature and are not substantive.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements resulting from the proposed amendments.

(2) Effects on the promulgating administrative body: The proposed amendments will not affect the promulgating administrative body. The changes are stylistic in nature and are not substantive.

(a) Direct and indirect costs or savings: No costs or savings are entailed in these proposed amendments. The changes are stylistic in nature and are not substantive.

1. First year: No costs or savings are entailed in these proposed amendments. The changes are stylistic in nature and are not substantive.

2. Continuing costs or savings: No costs or savings are entailed in these proposed amendments. The changes are stylistic in nature and are not substantive.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs entailed in these proposed amendments. The changes are stylistic in nature and are not substantive.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements resulting from the proposed amendments.

(3) Assessment of anticipated effect on state and local revenues: There will be effect on state or local revenues. The changes are stylistic in nature and are not substantive.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative to the proposed amendments was to have the regulation declared deficient by the legislative subcommittee of jurisdiction, which would result in the expiration of the regulation.

(5) Identify any statute, administrative

regulation or government policy which may be in conflict, overlapping, or duplication: These proposed amendments do not conflict with or duplicate any statute, existing regulation or government policy.

(a) Necessity of proposed regulation if in conflict: The proposed amendments do not present a conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The proposed amendments do not present a conflict.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. The proposed amendments are stylistic changes in a procedural regulation setting forth an agency meeting schedule.

**TRANSPORTATION CABINET**
**Motor Vehicle Commission**
**(Proposed Amendment)**

**605 KAR 1:030. Applications.**

RELATES TO: KRS 190.010 to 190.080

STATUTORY AUTHORITY: KRS 190.020, 190.030, 190.035, 190.073

NECESSITY AND FUNCTION: KRS 190.030 provides for the issuance of various licenses to engage in the activity of a motor vehicle dealer. This regulation allows the Motor Vehicle Commission to provide for an orderly procedure for the submission and content of applications [and the content thereof] to facilitate processing of applications and the issuance of the license.

Section 1. Definitions. In this regulation "established place of business" means, in addition to those requirements of KRS 190.010(18), a dealership sales facility which has the following:

(1) A business office which:

(a) Is underpinned and on a permanent foundation;

(b) Has electricity;

(c) Has a file cabinet used for the storage of business records;

(d) Has a working business telephone;

(e) Has a desk and chairs for the use of the business;

(f) Has at least 100 square feet of floor space;

(g) Shall be located on or immediately adjacent to the vehicle storage or display lot;

(h) Is not part of a residence;

(i) Is used exclusively as a licensee business office; and

(2) A vehicle storage or display lot which:

(a) Has a hard surface lot (gravel, asphalt, concrete or other suitable covering);

(b) Is at least 2,000 square feet in size;

(c) Is used exclusively for the display and showing of vehicles for sale and licensee customer parking;

(d) Is a distinctively defined area, from that which surrounds it.

The dealership business office need not be a separate walled enclosure.

Section 2. Upon receipt of a completed application [other than an application for a license as a motor vehicle salesperson, manufacturer, factory branch or factory representative], a review of the application will be made, including an appropriate investigation as to the applicant's compliance with the appropriate statutory and regulatory provisions governing the issuance of a license.

Section 3. [2.] Applicant will be notified of the acceptance or rejection of his application, and if the application is rejected, the reason or reasons for rejection shall [grounds therefor must] be specifically stated, and the rejected applicant shall [further] be notified[, in that event,] of his right to a hearing before the commission in accordance with the rules and regulations of the commission.

[Section 3. No application may be accepted or license granted unless the applicant has an established place of business as defined in KRS 190.010.]

[(1) The office shall be underpinned and on a permanent foundation.]

[(2) The office shall have the following equipment:]

[(a) Electricity;]

[(b) File cabinet(s);]

[(c) A telephone;]

[(d) A desk;]

[(e) Chairs.]

Section 4. [(Applies to retail only.)] A motor vehicle dealer, other than a wholesale dealer, shall display on his premises a sign with lettering not less than nine (9) inches in height, which is clearly visible from the nearest roadway, and which specifically identifies his business. The business name on the sign must be the same as that on the license application.

Section 5. A licensee may conduct more than one (1) business in a building otherwise meeting the requirements of this regulation provided he has suitable space and adequate facilities [therein] to conduct the business of a motor vehicle dealer.

[Section 6. An applicant for a license conducting more than one (1) business at the proposed location shall be capable as to fitness and ability to properly conduct the business activity authorized by the license.]

Section 6. [7.] All applicants shall comply with the following:

(1) Submit a financial statement. [The commission may require the applicant to furnish bond as authorized by statute.]

(2) Submit at least six (6) photographs of the premises to be occupied by the applicant.

(3) Submit a detailed drawing of his premises in relation to the nearest roadway. This drawing is to include location and size of office, display area and location of dealership sign.

(4) Furnish a personal data sheet on each individual owning a portion of the business and[/or] officers of a corporation, including a photograph and an employment history of each such person.

(5) Every applicant, partner or corporate officer shall [must] sign a statement authorizing the Motor Vehicle Commission to make inquiries or investigations concerning the applicant's employment, credit, or criminal records.

(6) Applicant shall [must] obtain garage liability insurance and file with the commission a certificate of insurance (form TD 95-99) in the exact name in which it applies for a license.

[(7) Applicant will be required to verify that it is familiar with the laws concerning the purchase and sale of motor vehicles. Failure to demonstrate such proof constitutes grounds for denial of license. A copy of the applicable laws and regulations governing the purchase and sale of motor vehicles shall be given to each applicant. In addition, applicants shall execute such other forms dealing with their familiarity with such specific statutory and regulatory requirements as the commission may indicate.]

[(8) Applicant must have a hard surface lot (gravel, asphalt, concrete or other suitable covering) of at least 2000 square feet for customer parking and vehicle storage area. This lot shall be used exclusively for the display and showing of vehicles for sale and customer parking, and shall be constructed in such a manner that it will not allow the flow of public traffic through it. The lot shall be a distinctively defined area, from that which surrounds it.]

[(9) Applicant must have 100 square feet of office floor space to carry on the activity authorized under the license for which the application is submitted. The office space need not be a separate walled enclosure, but must be an area which will be used to conduct the activity authorized under the license in addition to the area necessary to conduct the applicant's primary business. The office shall be located on the display lot and shall not be a part of a residence.]

Section 7. Every [8. An] applicant who conducts an automobile salvage or junk business on the same premises shall [must] be in compliance with all state regulations regarding junkyard operations. Applicant shall [must] have an area for the display of vehicles for sale and an office separate and apart from the area where junk cars or parts are stored or situated.

Section 8. [9.] If an applicant operates a garage for the repair or rebuilding of wrecked or disabled vehicles, an office and area for the display of vehicles separate and apart from the area where the [such] repairs are made shall [must] be allocated for the licensed activity.

Section 9. [10.] Not more than one (1) licensee for the same licensed activity shall be licensed from a single place of business.

Section 10. Every [11. A] licensee shall obtain [have] a sales tax permit number from the Revenue Cabinet.

RAYMOND COTTRELL, SR., Chairman

APPROVED BY AGENCY: July 12, 1991

FILED WITH LRC: July 15, 1991 at 11 a.m.

PUBLIC HEARING: A public comment hearing on this proposed amended administrative regulation shall be held at 10 a.m. on August 30, 1991, at the office of the Kentucky Motor Vehicle Commission, 114 West Clinton Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by August 25, 1991, five days prior to the 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 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 administrative regulation. Send written notification of intent to attend the public hearing or written comments on the administrative regulation to: David Garnett, Executive Director, Kentucky Motor Vehicle Commission, 114 West Clinton Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: David Garnett

(1) Type and number of entities affected: The only entity affected by the proposed amendments is the Motor Vehicle Commission. The proposed amendments are stylistic in nature and are the result of the Legislative Research Commission staff comments designed to bring a six-year old regulation into compliance with current regulatory drafting requirements. The proposed amendments only delete language which is duplicative, having previously been placed in statutory form, or language which is superfluous.

(a) Direct and indirect costs or savings to those affected: No costs or savings are entailed in these proposed amendments. The changes are stylistic in nature and are not substantive.

1. First year: No costs or savings are entailed in these proposed amendments. The changes are stylistic in nature and are not substantive.

2. Continuing costs or savings: No costs or savings are entailed in these proposed amendments. The changes are stylistic in nature and are not substantive.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs entailed in these proposed amendments. The changes are stylistic in nature and are not substantive.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements resulting from the proposed amendments.

(2) Effects on the promulgating administrative body: The proposed amendments will not affect the promulgating administrative body. The changes are stylistic in nature and are not substantive.

(a) Direct and indirect costs or savings: No costs or savings are entailed in these proposed amendments. The changes are stylistic in nature and are not substantive.

1. First year: No costs or savings are entailed in these proposed amendments. The changes are stylistic in nature and are not substantive.

2. Continuing costs or savings: No costs or savings are entailed in these proposed amendments. The changes are stylistic in nature and are not substantive.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs entailed in these proposed amendments. The changes are stylistic in nature and are not substantive.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements

resulting from the proposed amendments.
(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues. The changes are stylistic in nature and are not substantive.
(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative to the proposed amendments was to have the regulation declared deficient by the legislative subcommittee of jurisdiction, which would result in the expiration of the regulation.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: These proposed amendments do not conflict with or duplicate any statute, existing regulation or government policy.
(a) Necessity of proposed regulation if in conflict: The proposed amendments do not present a conflict.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The proposed amendments do not present a conflict.
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. The proposed amendments are stylistic changes in a procedural regulation setting forth agency requirements for receiving applications and the issuance of licenses.

**TRANSPORTATION CABINET**
**Motor Vehicle Commission**
**(Proposed Amendment)**

**605 KAR 1:050. Dealer and salesman [/ salesperson].**

RELATES TO: KRS 190.010, 190.030, 190.035
STATUTORY AUTHORITY: KRS 190.010, 190.030, 190.035
NECESSITY AND FUNCTION: KRS 190.010, 190.030, and 190.035 define what a motor vehicle salesman is and his relationship to his employing dealership [/employer]. KRS 190.030 also provides for salesmen's licenses to indicate for whom they work and to be displayed upon request. This regulation interprets the relationship between the dealership and salesman [dealer/salesman relationship] and implements statutory requirements to facilitate accurate recordkeeping by the Motor Vehicle Commission[, and to put the public on notice of with whom they are dealing].

Section 1. A properly licensed motor vehicle salesman [salesperson] employed by a [proper] licensee may, in that capacity, sell or exchange a motor vehicle [anywhere] in Kentucky, subject to the following limitations:
(1) The [Such] activity must be pursuant to the salesman's [salesperson's] employment by the licensee whose name appears on the salesman's [his/her] license.
[(2) Once a sale or exchange is negotiated by a salesperson, he/she may not offer, transfer or assign it to any other licensee or salesperson.]
(2) No salesman shall [(3) A salesperson may not] establish a place of business separate from the location for which his[/her] employer holds a license.
(3) No salesman shall [(4) A salesperson may not] hold himself[/herself] out to be a licensed dealer or conduct himself[/herself] in any manner which would [might] lead a prospective purchaser to believe he[/she] is a licensed dealer.
(4) No salesman shall [(5) A salesperson may not] advertise his[/her] sales activity at any [specific] location other than the location [that] for which his[/her] employer holds a license.

Section 2. In the event a salesman changes his place of employment to another dealership, he [case of a change of employment, a salesperson] shall return his[/her] license to the commission along with a properly completed salesman's license showing the name and address of the other dealership. [notification from the licensee by whom he/she will be employed, and his/her license will be amended and returned to him/her showing the name and address of the new employer, and a copy thereof will be sent to the new employer. Before any copy of the license may be secured by any new employer, the salesperson's license must be amended to show the name and address of the new employer.]

Section 3. Every dealer [A] licensee shall display in a conspicuous place in the dealership [his/her] office a copy of the license of each salesman [salesperson] employed by the dealership [him/her]. Upon the termination of employment of a salesman [salesperson], the licensee shall, within ten (10) days, notify the commission of the [such] termination and return to the commission the dealer's copy of the salesman's [salesperson's] license.

RAYMOND COTTRELL, SR., Chairman
APPROVED BY AGENCY: July 12, 1991
FILED WITH LRC: July 15, 1991 at 11 a.m.
PUBLIC HEARING: A public comment hearing on this proposed amended administrative regulation shall be held at 10 a.m. on August 30, 1991, at the office of the Kentucky Motor Vehicle Commission, 114 West Clinton Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by August 25, 1991, five days prior to the 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 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 administrative regulation. Send written notification of intent to attend the public hearing or written comments on the administrative regulation to: David Garnett, Executive Director, Kentucky Motor Vehicle Commission, 114 West Clinton Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: David Garnett
(1) Type and number of entities affected: The proposed amendments are stylistic in nature and are the result of Legislative Research Commission staff comments designed to bring a ten-year old regulation into compliance with current regulatory drafting requirements. The

proposed amendments only delete language which is duplicative, having previously been placed in statutory form, or language which is superfluous or archaic.

(a) Direct and indirect costs or savings to those affected: No costs or savings are entailed in these proposed amendments. The changes are stylistic in nature and are not substantive.

1. First year: No costs or savings are entailed in these proposed amendments. The changes are stylistic in nature and are not substantive.

2. Continuing costs or savings: No costs or savings are entailed in these proposed amendments. The changes are stylistic in nature and are not substantive.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs entailed in these proposed amendments. The changes are stylistic in nature and are not substantive.

(b) Reporting and paperwork requirements: There are no new or additional reporting or paperwork requirements resulting from the proposed amendments.

(2) Effects on the promulgating administrative body: The proposed amendments will not affect the promulgating administrative body. The changes are stylistic in nature and are not substantive.

(a) Direct and indirect costs or savings: No costs or savings are entailed in these proposed amendments. The changes are stylistic in nature and are not substantive.

1. First year: No costs or savings are entailed in these proposed amendments. The changes are stylistic in nature and are not substantive.

2. Continuing costs or savings: No costs or savings are entailed in these proposed amendments. The changes are stylistic in nature and are not substantive.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs entailed in these proposed amendments. The changes are stylistic in nature and are not substantive.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements resulting from the proposed amendments.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues. The changes are stylistic in nature and are not substantive.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative to the proposed amendments was to have the regulation declared deficient by the legislative subcommittee of jurisdiction, which would result in the expiration of the regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: These proposed amendments do not conflict with or duplicate any statute, existing regulation or government policy.

(a) Necessity of proposed regulation if in conflict: The proposed amendments do not present a conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The proposed amendments do not present a conflict.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. The proposed amendments are stylistic changes in a regulation setting forth the respective duties and obligations of motor vehicle salesmen and their employing dealers, with respect to each other.

## TRANSPORTATION CABINET
## Motor Vehicle Commission
## (Proposed Amendment)

**605 KAR 1:090. Business [Trade] names.**

RELATES TO: KRS 190.040

STATUTORY AUTHORITY: KRS 190.040

NECESSITY AND FUNCTION: KRS 190.040(1)(i) provides that a license can be denied, suspended, or revoked for false or misleading advertising. This regulation interprets that proscription against false or misleading advertising to include the use of the name of a make of motor vehicle [automobile] in the business [trade] name of a used motor vehicle [car] dealer, a practice which infringes on trademark law and would cause [very likely mislead] a consumer to think [into thinking] that [he can buy] a new motor vehicle may be obtained [car] from that dealer.

Section 1. The trade name of a licensee shall incorporate the words used cars, auto sales, auto mart, or other similar wording clearly identifiable as a motor vehicle licensee. No licensee other than a franchised new motor vehicle [car] dealer may use the name of any make of motor vehicle as a part of the dealership business [his/her trade] name. The adoption of the name of a make of motor vehicle in [such] a trade name or advertising in this manner shall be deemed to constitute false or misleading advertising within the meaning of KRS 190.040 and shall be considered grounds for the denial, suspension or revocation of a license.

RAYMOND COTTRELL, SR., Chairman

APPROVED BY AGENCY: July 12, 1991

FILED WITH LRC: July 15, 1991 at 11 a.m.

PUBLIC HEARING: A public comment hearing on this proposed amended administrative regulation shall be held at 10 a.m. on August 30, 1991, at the office of the Kentucky Motor Vehicle Commission, 114 West Clinton Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by August 25, 1991, five days prior to the 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 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 administrative regulation. Send written notification of intent to attend the public hearing or written comments on the administrative regulation to: David Garnett, Executive Director, Kentucky Motor Vehicle Commission, 114 West Clinton Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: David Garnett

(1) Type and number of entities affected: The proposed amendments are stylistic in nature and are the result of the Legislative Research Commission staff comments designed to bring a ten-year old regulation into compliance with current regulatory drafting requirements. The proposed amendments only delete language which is duplicative, having previously been placed in statutory form, or language which is superfluous or archaic.

(a) Direct and indirect costs or savings to those affected: No costs or savings are entailed in these proposed amendments. The changes are stylistic in nature and are not substantive.

1. First year: No costs or savings are entailed in these proposed amendments. The changes are stylistic in nature and are not substantive.

2. Continuing costs or savings: No costs or savings are entailed in these proposed amendments. The changes are stylistic in nature and are not substantive.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs entailed in these proposed amendments. The changes are stylistic in nature and are not substantive.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements resulting from the proposed amendments.

(2) Effects on the promulgating administrative body: The proposed amendments will not affect the promulgating administrative body. The changes are stylistic in nature and are not substantive.

(a) Direct and indirect costs or savings: No costs or savings are entailed in these proposed amendments. The changes are stylistic in nature and are not substantive.

1. First year: No costs or savings are entailed in these proposed amendments. The changes are stylistic in nature and are not substantive.

2. Continuing costs or savings: No costs or savings are entailed in these proposed amendments. The changes are stylistic in nature and are not substantive.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs entailed in these proposed amendments. The changes are stylistic in nature and are not substantive.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements resulting from the proposed amendments.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues. The changes are stylistic in nature and are not substantive.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative to the proposed amendments was to have the regulation declared deficient by the legislative subcommittee of jurisdiction, which would result in the expiration of the regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: These proposed amendments do not conflict with or duplicate any statute, existing regulation or government policy.

(a) Necessity of proposed regulation if in conflict: The proposed amendments do not present a conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The proposed amendments do not present a conflict.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. The proposed amendments are stylistic changes in a regulation prohibiting the use of a make of motor vehicle in the business name of a used motor vehicle dealer. No substantive changes were made.

**TRANSPORTATION CABINET**
**Motor Vehicle Commission**
**(Proposed Amendment)**

**605 KAR 1:130. Procedures.**

RELATES TO: KRS 190.058, 190.062
STATUTORY AUTHORITY: KRS 190.058, 190.062
NECESSITY AND FUNCTION: An absolute necessity for any administrative board is a written code of practice and procedure. The enabling legislation for the adoption of such procedures by the Motor Vehicle Commission is found in KRS 190.058. This regulation establishes the proper form of procedure and practice before the Motor Vehicle Commission and adopts the general practice procedures found in the Kentucky Rules of Civil Procedure.

Section 1. Hearings shall be conducted by a commission member of person designated by the commission as a hearing officer. Hearings shall be conducted pursuant to the Kentucky Rules of Civil Procedure except as otherwise provided in this regulation. The hearing officer shall conduct the hearing and shall rule on matters of procedure and introduction of evidence. The hearing shall be conducted in the manner as the hearing officer determines will best serve the purpose of attainment of justice and dispatch. Objections may be taken to any ruling of the hearing officer and shall be ruled on by the commission. The reason for any objection shall be stated and made a part of the stenographic record. All testimony shall be transcribed. [Definitions. All words are used as defined in applicable sections of KRS 190.010.]

Section 2. Appearances. Any licensee may appear and be heard in person, or with or by duly appointed attorney, and may produce under oath evidence relative and material to matters before the commission. Any attorney, in a representative capacity, appearing before the commission may be required to show his authority to act in such capacity.

Section 3. Argument. [Due to press of other matters, the Motor Vehicle Commission asks] All oral arguments shall be succinct and concise. The hearing officer may curtail or set time limits for oral arguments.

Section 4. Additional Hearings. The commission may, on its own motion, prior to its determination, require an additional hearing. Notice to all interested parties setting forth the date of such hearing must be given in

writing by the Executive Director [to the commission].

Section 5. Briefs. Briefs may be filed [upon permission if a member of the Motor Vehicle Commission is conducting the hearing, and may be filed] as a matter of right [if hearing is conducted by a referee other than a member of the commission]. All [The commission asks that] briefs shall be concise, summarizing first the evidence presented at the hearing. Copies of briefs must be typewritten or typed and printed and filed in quadruplicate. The time allowed for filing briefs shall [may] be designated by the hearing officer, but in no event shall be less than five (5) days after the hearing. Respondent briefs may be filed by the commission, or filed by any person whose interests are affected. Reply briefs may be filed only when limited strictly to answering the brief of respondent. Briefs containing more than ten (10) pages shall contain on the top fly leaves a subject index with page references.

Section 6. Continuances. Continuances may be granted in the discretion of the [commission or] hearing officer if good cause for the continuance is [therefor be] shown and if requested at least forty-eight (48) hours in advance of hearing date.

Section 7. Depositions. The hearing officer [of the commission] may order testimony to be taken by deposition at any stage [state] of the hearing. Depositions shall [may] be taken before any person having power to administer oaths, [and designated by the commission] or written by the person taking the deposition or under his direction and shall then be subscribed by the deponent and certified in the usual manner by the person taking the deposition. The provisions of the Civil Rules governing the taking of depositions shall be applicable.

Section 8. Except as otherwise provided in this regulation, the rules of evidence governing civil proceedings in the courts of the Commonwealth of Kentucky shall govern hearings before the commission; provided, however, that the hearing officer may relax such rules in any case where, in his judgment, the ends of justice will be better served by so doing.

(1) Judicial notice. [Evidence.] When called to the attention of the hearing officer, "judicial notice" may [will] be taken of any matter situated in the files of the [Motor Vehicle] commission, the Revenue Cabinet or the Transportation Cabinet, any action pending which involves the [Motor Vehicle] commission or [;] and all other matters of which a court of Kentucky may take judicial [such] notice. A brief statement recognizing the matter shall [should] be made in the transcript by the hearing officer.

[(2) Rules of evidence. Except as otherwise provided herein, the rules of evidence governing civil proceedings in courts in the Commonwealth of Kentucky shall govern hearings before the Motor Vehicle Commission; provided, however, that the hearing officer may relax such rules in any case where, in his judgment, the ends of justice will be better served by so doing.]

[(3) Cumulative evidence. The introduction of cumulative evidence shall be avoided and the hearing officer may curtail the testimony of any witness which he judges to be merely cumulative; however, the party offering witness may make a short avowal of the testimony the witness would give and if witness asserts such avowal is true, this avowal shall be made a part of the stenographic record.]

[(4) Decisions. All decisions shall be based upon the evidence developed at the hearing.]

(2) [(5)] Additional evidence. Upon [due] application to the commission, prior to the decision of the commission in the case [thereon], the hearing may, in the discretion of the commission, be reopened for the presentation of additional evidence. Application for and additional hearing shall [must] set forth concisely the nature of this additional evidence. The commission may, on its own motion, require an additional hearing.

Section 9. Ex Parte Contacts. No person shall have ex parte contact with any member of the commission regarding any matter pending before the commission for review prior to final decision. In the event an ex parte contact occurs, the name of the person making the contact shall be revealed on the record. In no event shall the information conveyed in an ex parte contact be relied upon or considered in reaching a decision.

[Section 10. (1) Hearings shall be conducted by a commission member or person designated by the commission as a referee, hereinafter referred to as hearing officer.]

[(2) The hearing officer shall conduct said hearing, ruling upon matters of procedure and introduction of evidence. The hearing shall be conducted in such manner as the hearing officer determines will best serve the purpose of attainment of justice and dispatch. Objections may be taken to rulings of hearing officer and a rehearing or additional hearing may be ordered by the commission. Reason for objection must be stated and made a part of the stenographic record. All testimony shall be taken down but shall not be transcribed unless requested by a party to the proceedings.]

[(3) Witnesses will be examined orally unless testimony is taken by depositions, as provided for herein, or the facts are stipulated.]

Section 10. [11.] The Report and Recommended Order. Upon the conclusion of [such] a hearing, the hearing officer shall make a report and recommended order which shall contain his finding of facts and conclusions of law. Copies of the report and recommended order shall be served upon each of the parties to the matter heard.

Section 11. [12.] Exceptions and Replies [Thereto]. Any party to a hearing may, within twenty (20) days after the date [of] the finding of facts and conclusions of law [report] and recommended order is filed with the commission, file and serve exceptions [thereto]. Exceptions shall consist of as many objections to the whole or any part of the finding of facts and conclusions of law [report] as the party filing the exceptions desires to make, with each objection numbered. Each objection shall fully state the nature [thereof] and [the] grounds for the objection [therefor]. Parties filing exceptions shall serve a copy [thereof] upon every other party participating in the hearing

and shall certify to the commission that such service has been accomplished. Replies to exceptions shall be filed and served within twenty (20) days after the filing of exceptions, if any party desires to make a reply. The reply shall consist of a separate reply to each objection set out in the exceptions. Any party filing a reply shall serve a copy [thereof] on every other party participating in the hearing and shall certify to the commission that such service has been accomplished.

Section 12. [13.] Final Order. Upon the filing of the exceptions and replies [thereto relative to a report and recommended order and/]or upon expiration of the time for filing exceptions and replies [of same], the hearing officer shall render the complete record to the commission which shall consider and rule [pass] upon the case. The commission may, after a study of the case, refer it back to the hearing officer [examiner] and request the taking of more proof on any point in issue. The commission may require oral argument of the case. When the commission has rendered its decision in the case, its decision shall be served by mail upon all parties and shall be the final order of the commission. The final order shall contain the date of its rendition, and shall be final for purposes of judicial appeal.

Section 13. Service of [14.] Motions, Pleadings[, Etc]. Copies of all motions and [,] pleadings shall [, etc., must] be served upon all interested parties, in addition to filing the required copies before the commission. There shall be no demurrers. [; but] Motions to dismiss, setting forth the reasons in support of the motion [therefor], may be heard [entertained] by the commission.

Section 14. [15.] Reconsideration Hearings. [(1)] Any party to the proceeding may [, for good cause shown,] request in writing a hearing for purposes of reconsideration of a commission decision of any matter formally heard by the commission.

[(2)] The request shall [should] be filed with the Executive Director within fifteen (15) days from the date the notice of the commission's decision is mailed.

[(3)] A reconsideration hearing [for good cause] shall be granted only if the [a] request [for reconsideration:

(a)] presents significant, relevant information not previously available for consideration, [;] or

[(b)] demonstrates that there have been significant changes in the factors or circumstances relied upon by the commission in reaching its decision, [;] or

[(c)] demonstrates that the commission has materially failed to follow its adopted [adoptive] procedures in reaching its decision.

[(4)] The commission shall consider requests for reconsideration in a summary manner.

[(5)] If a hearing for reconsideration is granted by the commission, it shall be conducted in accordance with the requirements of this regulation. The reconsideration hearing shall be held within thirty (30) days of the decision to grant the request for reconsideration.

[(6) The decision of the commission shall be final for purposes of judicial appeal.]

Section 15. [16.] Notices. Upon the filing of an appeal from an [the] order or decision, the appellant [Executive Director of the commission] shall serve a copy on [notify in writing] all interested parties [of the fact and of the time set for hearing]. All other hearings except license suspension or revocation hearings shall be held only after notice given at least ten (10) days before the date of the hearing. A notice of a license suspension or revocation hearing by registered mail to the licensee [or owner of the licensed premises, if locking and barring the premises is involved], sent to the business [known] address of the licensee [or owner of the licensed premises at the address] shown on the latest [last] application for a license shall be deemed sufficient notice [compliance].

[Section 17. Record. (1) The stenographic record of any hearing before the Motor Vehicle Commission shall not be transcribed unless such transcription is directed by the appropriate commission officer or employee or is requested in writing by any interested party to the hearing who shall make arrangements for such transcript of record with the Executive Director of the commission. The original record shall be filed directly with the Clerk of the Franklin Circuit Court, and copy furnished to the interested party requesting the record.]

[(2) The charge for transcript of records of hearing shall be one (1) dollar per page for the original copy, and fifty (50) cents per page for each carbon copy, not to exceed four (4), furnished with an original. The fee shall be paid before the record is filed or the copies delivered to interested parties.]

[(3) If for its own use, the commission has any record of hearing transcribed, any person requiring the same may have a carbon copy, if one is available, at the rate of fifty (50) cents per page.]

Section 16. [18.] Specifications as to Pleadings, Complaints, Briefs, Motions, Etc. Except when permission is granted by the hearing officer, all papers filed under these rules shall [must] be typewritten or printed [(mimeographed, multigraphed or planographed copies will be accepted as typewritten)]. All copies shall [must] be clearly legible and double spaced, except for quotations. [It is requested that] All motions, complaints, briefs, etc., shall be made on unglazed paper eight and one-half (8 1/2) inches wide and eleven (11) inches long.

[Section 19. Stipulations. Parties may, by agreement, stipulate as to any facts involved in the proceedings. Such stipulation must be made part of the stenographic records of the hearing.]

Section 17. [20.] Subpoenas and Subpoena Duces Tecum. [(1)] The party desiring a subpoena shall [must] make application at least five (5) days before the hearing date with the Executive Director of the commission. The application shall be in writing, and shall state the name and address of each witness required. [Provisions of the Civil Rules shall be applicable.

(2)] If evidence other than oral testimony is required, such as documents or written data, the application shall set forth the specific matter

to be produced and sufficient facts to indicate that such matter is reasonably necessary to establish the cause of action or defense of the applicant. [Provisions of the Civil Rules shall be applicable.]

[Section 21. Witnesses. Separation of witnesses may be had upon request of either party to the hearing.]

RAYMOND COTTRELL, SR., Chairman
APPROVED BY AGENCY: July 12, 1991
FILED WITH LRC: July 15, 1991 at 11 a.m.
PUBLIC HEARING: A public comment hearing on this proposed amended administrative regulation shall be held at 10 a.m. on August 30, 1991, at the office of the Kentucky Motor Vehicle Commission, 114 West Clinton Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by August 25, 1991, five days prior to the 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 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 administrative regulation. Send written notification of intent to attend the public hearing or written comments on the administrative regulation to: David Garnett, Executive Director, Kentucky Motor Vehicle Commission, 114 West Clinton Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: David Garnett
(1) Type and number of entities affected: The proposed amendments are stylistic in nature and are the result of the Legislative Research Commission staff comments designed to bring a ten-year old regulation into compliance with current regulatory drafting requirements. The proposed amendments only delete language which is duplicative, having previously been placed in statutory form, or language which is superfluous or archaic.
(a) Direct and indirect costs or savings to those affected: No costs or savings are entailed in these proposed amendments. The changes are stylistic in nature and are not substantive.
1. First year: No costs or savings are entailed in these proposed amendments. The changes are stylistic in nature and are not substantive.
2. Continuing costs or savings: No costs or savings are entailed in these proposed amendments. The changes are stylistic in nature and are not substantive.
3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs entailed in these proposed amendments. The changes are stylistic in nature and are not substantive.
(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements resulting from the proposed amendments.
(2) Effects on the promulgating administrative body: The proposed amendments will not affect the promulgating administrative body. The changes are stylistic in nature and are not substantive.
(a) Direct and indirect costs or savings: No costs or savings are entailed in these proposed amendments. The changes are stylistic in nature and are not substantive.
1. First year: No costs or savings are entailed in these proposed amendments. The changes are stylistic in nature and are not substantive.
2. Continuing costs or savings: No costs or savings are entailed in these proposed amendments. The changes are stylistic in nature and are not substantive.
3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs entailed in these proposed amendments. The changes are stylistic in nature and are not substantive.
(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements resulting from the proposed amendments.
(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues. The changes are stylistic in nature and are not substantive.
(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative to the proposed amendments was to have the regulation declared deficient by the legislative subcommittee of jurisdiction, which would result in the expiration of the regulation.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: These proposed amendments do not conflict with or duplicate any statute, existing regulation or government policy.
(a) Necessity of proposed regulation if in conflict: The proposed amendments do not present a conflict.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The proposed amendments do not present a conflict.
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. The proposed amendments are stylistic changes in a procedural regulation setting forth an agency hearing mechanism.

## TRANSPORTATION CABINET
## Motor Vehicle Commission
## (Proposed Amendment)

**605 KAR 1:160. Motor vehicle component manufacturers.**

RELATES TO: KRS 186.070, 190.010 through 190.990
STATUTORY AUTHORITY: KRS 190.015, 190.020, 190.030(1), 190.058(8), 190.073
NECESSITY AND FUNCTION: [KRS 190.010(1) defines a motor vehicle manufacturer as "any person ... who manufactures or assembles new motor vehicle ..."] KRS 190.030 authorizes the Motor Vehicle Commission to provide by regulation for other licensee activities, [a]nd an appropriate fee therefor." A substantial industry is in place and expanding, centered around the processes ancillary to the manufacture and assembly of new motor vehicles

in this Commonwealth.] The function of this regulation is to provide a means for [whereby] motor vehicle component manufacturers to [may] qualify for a license [as such] and to otherwise conduct necessary business functions in accordance with applicable state laws and regulations.

Section 1. Definition. "Motor vehicle component manufacturer" means any resident person, partnership, firm, association, corporation or trust, who manufactures or assembles components or constituent parts, for inclusion in the final assembly of new motor vehicles, in this state, but is not otherwise involved in the distribution or sale of motor vehicles.

Section 2. The license fee for a calendar year or any part of a calendar year [thereof] for a motor vehicle component manufacturer shall be $100.

Section 3. The following statutes and regulations shall apply to a licensee or applicant for a license under this regulation [hereunder]: KRS 186.070, 190.020, 190.030(4), (5), (7), (9), (11), 190.033, 190.040, 190.053, 190.057, 190.058, 190.059, 605 KAR 1:070, and 605 KAR 1:130.

Section 4. A licensee licensed under this regulation [hereunder] shall be prohibited from otherwise engaging in the business of a motor vehicle manufacturer or dealer.

RAYMOND COTTRELL, SR., Chairman
APPROVED BY AGENCY: July 12, 1991
FILED WITH LRC: July 15, 1991 at 11 a.m.
PUBLIC HEARING: A public comment hearing on this proposed amended administrative regulation shall be held at 10 a.m. on August 30, 1991, at the office of the Kentucky Motor Vehicle Commission, 114 West Clinton Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by August 25, 1991, five days prior to the 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 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 administrative regulation. Send written notification of intent to attend the public hearing or written comments on the administrative regulation to: David Garnett, Executive Director, Kentucky Motor Vehicle Commission, 114 West Clinton Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: David Garnett
(1) Type and number of entities affected: The proposed amendments are stylistic in nature and are the result of the Legislative Research Commission staff comments designed to bring an old regulation into compliance with current regulatory drafting requirements. The proposed amendments only delete language which is duplicative, having previously been placed in statutory form, or language which is superfluous or archaic.
(a) Direct and indirect costs or savings to those affected: No costs or savings are entailed in these proposed amendments. The changes are stylistic in nature and are not substantive.
1. First year: No costs or savings are entailed in these proposed amendments. The changes are stylistic in nature and are not substantive.
2. Continuing costs or savings: No costs or savings are entailed in these proposed amendments. The changes are stylistic in nature and are not substantive.
3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs entailed in these proposed amendments. The changes are stylistic in nature and are not substantive.
(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements resulting from the proposed amendments.
(2) Effects on the promulgating administrative body: The proposed amendments will not affect the promulgating administrative body. The changes are stylistic in nature and are not substantive.
(a) Direct and indirect costs or savings: No costs or savings are entailed in these proposed amendments. The changes are stylistic in nature and are not substantive.
1. First year: No costs or savings are entailed in these proposed amendments. The changes are stylistic in nature and are not substantive.
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3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs entailed in these proposed amendments. The changes are stylistic in nature and are not substantive.
(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements resulting from the proposed amendments.
(3) Assessment of anticipated effect on state and local revenues: There will be effect no on state or local revenues. The changes are stylistic in nature and are not substantive.
(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative to the proposed amendments was to have the regulation declared deficient by the legislative subcommittee of jurisdiction, which would result in the expiration of the regulation.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. The proposed amendments are stylistic changes in a regulation setting forth the qualifications for a particular type of license.

**EDUCATION AND HUMANITIES CABINET**
**Department of Education**
**Office of School Administration & Finance**
**(Proposed Amendment)**

**702 KAR 3:220. Guidelines for waiver of school fees.**

RELATES TO: KRS 160.330
STATUTORY AUTHORITY: KRS 160.330
NECESSITY AND FUNCTION: KRS 160.330 provides that local school districts shall establish, consistent with State Board for Elementary and Secondary regulations, a process to waive fees for qualifying students and a procedure for notice of such. This regulation provides guidelines for the waiver of school fees by local districts.

Section 1. [Beginning with the 1990-91 school year,] Local school districts shall establish a process by which to waive any applicable fees charged by the district for pupils who qualify for free or reduced price lunches, including a process by which at least all such students shall be informed of the fee waiver provisions. Districts that do not charge fees to any students shall not be subject to these requirements.

Section 2. Local school districts shall adopt specific policies and procedures whereby, at the beginning of the school year or at the time of enrollment, all or at least qualifying pupils and their parents shall be given clear and prominent written notice of the fee waiver process, including the applicable income guidelines. Such policies and procedures shall also insure that the written notice of the fee waiver process shall include a form that parents shall use to request waiver of applicable fees.

Section 3. Local districts shall keep records for documentation and compliance purposes, which shall be made available to the Department of Education upon request. These records shall include:
(1) The number of pupils receiving free lunches and reduced price lunches;
(2) The number of pupils who request that fees be waived and the number of pupils for who fees are waived;
(3) Copies of any forms, notices or instructions used by schools in the collection or waiver of fees.

Section 4. Mandatory waiver of fees shall [not] apply to all charges, direct or indirect, which would otherwise be required for participation in the following school-sponsored courses, activities, programs, events or services:
(1) Charges and deposits collected by a school for use of school property, including but not limited to, locks, towels, laboratory equipment and special workbooks;
(2) Charges for field trips, any portion of which fall within the school day;
(3) Charges or deposits for uniforms or equipment related to intramural sports, music, or fine arts programs;
(4) Special supplies or fees required for a particular class;
(5) Graduation fees required for participation;
(6) Special education fees;
(7) School records fees;
(8) School health service fees;
(9) General activities fees;
(10) Vocational education fees;
(11) Driver's education fees; and
(12) Any other fees not exempt under Section 5 of this regulation.

Section 5. Mandatory waiver of fees shall not apply to the following:
(1) [those fees charged and applicable to] Activities or rental of property taking place or for exclusive use outside the normal six (6) hour school day (and any local district extension of such) and having no impact upon graduation from or credit for any instructional course(s) included in or authorized by the "Program of Studies for Kentucky Schools, Grades K-12", incorporated by reference in 704 KAR 3:304; and [, nor shall mandatory waiver apply to any fees beyond those charged]
(2) Costs for materials, equipment, or supplies beyond those necessary for full credit for instructional courses and essential for meeting student performance objectives.

Section 6. Local districts shall provide written notice of approvals and denials of fee waivers. Any denial shall contain the specific grounds for denial and shall afford the opportunity for a personal meeting with appropriate district personnel to discuss the validity of the denial.

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: July 3, 1991
FILED WITH LRC: July 9, 1991 at 8 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 26, 1991 at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 21, 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: J. Gary Bale, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ron Moubray
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected: Will possibly require some school districts to provide services to some at-risk pupils not previously served. Approximately $70 million of SEEK at-risk money (state) available to cover any increased costs.
1. First year:
2. Continuing costs or savings: Same
3. Additional factors increasing or decreasing

costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: N/A
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: N/A
(3) Assessment of anticipated effect on state and local revenues: No impact other than stated in (1)(a).
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: None
TIERING: Was tiering applied? Amendment to existing regulation largely for clarification purposes.

**EDUCATION AND HUMANITIES CABINET**
**Department of Education**
**Office of School Administration and Finance**
**(Proposed Amendment)**

**702 KAR 5:030. Superintendents' responsibilities.**

RELATES TO: KRS [156.031,] 156.160, 189.540
STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.320
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; and] KRS 156.160 and 189.540 require the State Board for Elementary and Secondary Education to promulgate regulations relating to the safety of public school children, the transportation of such children to and from school, and the operation of school buses. This regulation provides the district superintendent with the regulations necessary to assist him in administering the district's pupil transportation programs and to provide the maximum consistency throughout the state.

Section 1. Each school district superintendent shall be responsible for the general supervision of the district's pupil transportation program. The superintendent may designate another employee or other employees of the board to assist in carrying out this responsibility. For the purpose of these regulations, the word "superintendent" shall mean the superintendent or his designate.

Section 2. The superintendent shall require that a safety inspection be made on each school bus owned and operated by the board or contracted to the board at least once each month that the district's schools are in session. This inspection shall be made by a competent person. If, upon inspection, a school bus is found to be in unsafe operating condition, the superintendent shall withhold the bus from operation until the required repairs are made. The superintendent shall be responsible for keeping the records of the bus safety inspections on file, and shall be responsible for certifying to the Division of Pupil Transportation at least once each month that each school bus used during that month has received the proper safety inspection.

Section 3. The superintendent shall be responsible for preparing the school bus route maps, school bus inventories, and other reports required by the Division of Pupil Transportation for the purpose of making the pupil transportation cost calculation for the Fund to Support Education Excellence in Kentucky.

Section 4. The superintendent shall be responsible for making reports on a monthly basis to the Division of Pupil Transportation on all school bus accidents that happened to the district's buses during the month.

Section 5. The superintendent shall be responsible for providing the necessary and required school bus driver training before a school bus driver shall enter into the duties of transporting pupils to and from school or events related to such schools. This training shall at least include the school bus driver course prescribed by the State Board for Elementary and Secondary Education, in accordance with 702 KAR 5:080, Sections 8 and 9 and shall be conducted by a certified instructor. Evidence that the driver has received this training shall be submitted to the Division of Pupil Transportation and a copy shall be kept on file in the office of the superintendent.

Section 6. The superintendent shall be responsible for providing the required in-service school bus driver training which each school bus driver shall complete annually for certification renewal, in accordance with 702 KAR 5:080, Section 9. The in-service training shall include at least eight (8) hours of required instruction conducted by a certified instructor. Evidence that each driver has received this training shall be submitted to the Division of Pupil Transportation and a copy shall be kept on file in the office of the superintendent.

[Section 7. (1) The superintendent shall, prior to the beginning of each school year, perform a criminal records and driving history check on all new and previously employed school bus drivers. Employment for the school year shall be contingent upon such a check and appropriate action on such by the local superintendent.]
[(2) The school bus driver shall immediately report to the local superintendent or his designee any revocation of his driver's license or conviction for DUI or reckless driving.]

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).

THOMAS C. BOYSEN, Commissioner

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: July 5, 1991
FILED WITH LRC: July 8, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 26, 1991 at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 21, 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: J. Gary Bale, General Counsel, Office of Legal Services, Department of Education, 120 Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Prince
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected: None
1. First year: $70,000
2. Continuing costs or savings: $70,000
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: The amended version to be placed in 702 KAR 5:080 will result in a savings of approximately $70,000 annually in state and local funds.
(4) Assessment of alternative methods; reasons why alternatives were rejected: The Division of Drivers Licensing notifies the Division of Pupil Transportation immediately when school bus drivers have their license suspended.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. This regulation will apply equally to all school districts.

## EDUCATION AND HUMANITIES CABINET
## Department of Education
## Office of School Administration & Finance
## (Proposed Amendment)

**702 KAR 5:080. Bus drivers' qualifications; responsibilities.**

RELATES TO: KRS [156.031,] 156.160, 189.540
STATUTORY AUTHORITY: KRS [156.070,] 156.160, 189.540
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] 156.160 requires the State Board for Elementary and Secondary Education to adopt regulations relating to the transportation of children to and from school and to medical inspections and other matters deemed relevant to the protection of the physical welfare and safety of public school children; and KRS 189.540 requires the State Board to adopt regulations to govern the design and operation of school buses. This regulation implements those duties relative to the qualifications and responsibilities of the school bus driver.

Section 1. All local boards of education shall require annual medical examination of each school bus driver and drivers of special vehicles used to transport school children to and from school and such events related to such schools. The medical examination shall include tests for hearing and vision disorders, emotional instability, and for serious medical conditions including diabetes, epilepsy, heart disease, and other chronic or communicable diseases if indicated in the opinion of the examining physician. The examination shall include tests for tuberculosis upon initial employment and positive reactors shall be required to have further evaluations. All medical examinations of the school bus drivers shall be reported on a form prescribed by the State Department of Education and submitted to the local superintendent. The form, TC 94-35, July 1990, and Supplement to TC 94-35, is incorporated by reference may be obtained from the Division of Pupil Transportation, 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.

Section 2. (1) Prior to initial employment, school bus driver applicants shall be screened, through appropriate testing and verification procedures, for unprescribed use of controlled substances. Appropriate tests shall be administered as a part of the preemployment medical examination and shall screen for at least the following drugs: marijuana, cocaine, opiates, amphetamines, and phencyclidine.
(2) Prior to initial employment or after any break in service (excluding summers), a criminal records and driving history check on all new school bus drivers shall be performed by local districts. Employment shall be contingent upon such a check. A school bus driver shall immediately report to the local superintendent or his designee any revocation of his driver's license or conviction for DUI or reckless driving.

(3) No person shall be employed as a school bus driver who has tested positive for the unprescribed use of any of the drugs set forth in subsection (1) of this section or who has been convicted of driving any motor vehicle under the influence of alcohol or any illegal drug within the last five (5) years. No person shall drive a school bus unless he or she is physically or mentally able to operate a school bus safely and satisfactorily. If there is limitation of motion in joints, neck, back, arms, legs, or other bodily parts, due to injury or disease and that would limit the driver's ability to safely perform the task of safely driving a school bus, the driver shall be rejected. Any driver taking medication either by prescription or without prescription, shall not be permitted to drive if that medication would affect, in any way, the driver's ability to safely drive a school bus.

Section 3. (1) No person shall drive a school bus unless he or she has:
(a) Visual acuity of at least 20/40 (Snellan) in each eye either without glasses or by correction with glasses;
(b) Form field vision of not less than a total of 140 degrees; and
(c) The ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.
(2) Drivers requiring correction by glasses shall wear properly prescribed glasses at all times while driving.

Section 4. No person shall drive a school bus whose hearing is less than 7/15 in the better ear, or hearing loss is greater than forty (40) decibels if audiogram is used, for conversational tones, with or without a hearing aid. Drivers requiring a hearing aid shall wear such properly operating aids at all times while driving.

Section 5. The board, at its discretion, may require a school bus driver to pass a routine physical examination or a special type physical examination more often than annually. The school bus driver shall have a current physical fitness certificate on file in the district superintendent's office.

Section 6. A driver shall not start driving a school bus until his 18th birthday. After April 1, 1992, school bus drivers shall be twenty-one (21) years of age or older.

Section 7. (1) The school bus driver shall have a current driver's license that is valid in Kentucky. Beginning April 1, 1992, all Kentucky school bus drivers shall possess a commercial driver's license, with the passenger endorsement for a school bus, which is valid in Kentucky.
(2) A driver applicant, prior to acceptance into the driver training program, shall be required to demonstrate driving skills judged to be acceptable by a certified driver training instructor, with acceptable performance standards as outlined in the Division of Pupil Transportation curriculum and with the score sheet to become a part of each drivers record. Skill levels shall be demonstrated in:
(a) Vehicle knowledge;
(b) Driver ability to perform steering, shifting, maneuvering, braking, use of mirrors, and negotiate each of the following:
1. Ninety (90) degree left hand turns;
2. Ninety (90) degree right hand turns;
3. Straight ahead;
4. Irregular surface maneuverability at speeds;
5. Backing ability using mirrors only; and
6. Demonstration of spatial awareness.

Section 8. (1) Minimum training requirements to become a Kentucky school bus driver shall consist of the training course developed by the Kentucky Department of Education. The training course shall consist of the following instructional units and minimum instructional times:
(a) Laws and regulations - one (1) hour;
(b) Driving fundamentals - one (1) hour;
(c) Care and maintenance - one (1) hour;
(d) Critical situations - one (1) hour;
(e) Accidents and emergency procedures - one (1) hour;
(f) Pupil management - one (1) hour;
(g) First aid - one (1) hour;
(h) Special education transportation - five-tenths (.5) hour;
(i) Extracurricular trips - five-tenths (.5) hour; and
(j) Vehicle operations - three (3) hours.
(k) Vehicle control at speed - one (1) hour; and
(l) Bus route identification, driver review and instruction - two (2) hours.
(2) Upon successful completion of the core curriculum the school bus driver applicant shall complete within thirty (30) days:
(a) Driver review I, evaluation and instruction - two (2) hours within the first five (5) days of driving; and
(b) Driver review II, evaluation and instruction - two (2) hours not less than twenty (20) days nor more than thirty (30) days.

Section 9. (1) Certified drivers shall complete annually an eight (8) hour in-service update relevant to the curriculum prior to the beginning of the school year.
(2) Discontinuance of driver employment and subsequent reemployment shall require drivers to become requalified by a training update within a twelve (12) month period following his or her certification termination date.
(3) Drivers who are not updated and recertified within such twelve (12) month period shall be required to be retrained through the beginning training program.

Section 10. Substitute school bus drivers shall meet the same requirements as regular school bus drivers.

Section 11. In case of an emergency that would make it necessary for the driver to leave the bus while pupils are on board, the driver shall stop the motor, shift the bus to low gear, set the parking brake, remove the ignition key, and place one (1) of the older responsible pupils in charge during the driver's absence.

Section 12. The driver shall operate the school bus at all times in a manner that provides the maximum amount of safety and comfort for the pupils under the circumstances.

Section 13. The driver shall supervise the seating of the pupils on the bus. The driver

shall make certain the seating capability of the bus has been fully utilized before any pupil is permitted to stand in the bus aisle.

Section 14. The driver shall not, at any time, permit pupils to stand in the stepwell or landing area or where the pupil would likely fall out of the bus if the rear emergency door was opened, or where the driver's view directly in front of the bus or to either side of the front of the bus would be obscured.

Section 15. The driver shall report to the superintendent any overcrowded conditions on the bus.

Section 16. The driver shall transport only those pupils officially assigned to a particular bus trip unless an unassigned pupil presents the driver with a written permit to ride the bus trip that has been signed by the school principal or his designate. The driver shall not permit an assigned pupil to leave the bus at a stop other than where the pupil regularly leaves the bus unless presented with a written permission signed by the principal or his designate.

Section 17. The driver shall not transport adult employees of the board or any person not employed by the board unless he receives written permission from the district superintendent.

Section 18. The driver shall not knowingly permit any firearms or weapons, either operative or ceremonial, to be transported on the bus. The driver shall not knowingly permit any fireworks or any other explosive materials of any type to be transported.

Section 19. The driver shall not knowingly permit any live animals, fowls, or reptiles to be transported on the bus. The driver shall not knowingly permit any preserved specimen to be transported that would likely frighten any pupil or cause a commotion on the bus.

Section 20. The driver shall not permit the transportation of any object that would likely block the bus aisle or exits in case of a collision.

Section 21. The driver shall not permit a pupil to operate the entrance door handle or any other bus control except in case of an emergency.

Section 22. The driver shall activate the flashing amber signal lights a sufficient distance from a bus stop to warn motorists of the intended stop. Once the bus comes to a complete stop, the driver shall activate the stop arm and red flashing signal lights.

Section 23. For safety reasons, the driver shall not permit fueling of the bus while pupils are on board the bus.

Section 24. If a pupil's conduct on the bus is such that it endangers the lives and morals of the other people on the bus and makes it unsafe for the bus to continue on its route, and when requested by the driver to desist from such conduct and the pupil does not comply, it shall be the duty of the driver to order the pupil to leave the bus. Should the order be ignored, the driver shall eject the pupil from the bus or send for assistance, whichever the circumstance dictates. Ejecting a pupil from the bus shall be done only in the most extreme circumstances. When ejection from the bus is required, the driver shall notify the principal of the school where the pupil attends, the district superintendent or some other school authority of the action taken as soon as possible.

Section 25. The school bus driver shall stop the bus at all places where the roadway crosses a railroad track or tracks at the grade level. The stop shall be made not less than fifteen (15) feet nor more than fifty (50) feet from the nearest track. After making the stop, the driver shall open the service door and driver side window and carefully look in each direction and listen for approaching trains before proceeding. When the driver has ascertained that it is safe for the bus to cross the railroad tracks, he shall close the bus entrance door, shift the bus gears into the range that will provide adequate power and proceed immediately to cross the railroad tracks. In cases of severe weather or restricted visibility, the driver shall request assistance from the oldest pupils on the bus in determining whether or not it is safe for the bus to cross the railroad tracks. Under these circumstances, the stop signal arm and flashing warning lights shall be used only if these pupils get off the bus before it is driven across the tracks and board the bus after it has crossed the tracks.

Section 26 The driver shall have the authority to assign a pupil to a specific seat on the school bus.

Section 27. The driver shall make a pretrip inspection of the bus safety and operating equipment each time that the bus is taken out for the transportation of pupils.

Section 28. The school bus driver shall not operate the school bus at a speed in excess of the posted speed limit on any section of highways over which the bus travels. The bus shall not be operated upon any highway at speeds in excess of fifty-five (55) miles per hour. The driver shall not drive the school bus on any roadway at any time at a speed where the conditions of the roadway, weather conditions, or other extenuating circumstances would likely make it unsafe.

Section 29. The driver shall wear the driver's seat belt at all times that the bus is operated.

Section 30. The stop signal arm and flashing warning lights shall be used only at stops where pupils are boarding or leaving the bus.

Section 31. The driver shall not use tobacco products while operating the school bus, nor knowingly permit pupils to use tobacco products when on the school bus.

Section 32. The driver shall signal pupils who must cross a roadway to board or leave the bus when the driver has determined that any visible approaching traffic creating a substantive risk of harm has come to a complete stop and is not attempting to start up or pass the bus.

Section 33. A driver shall not operate a school bus while under the influence of alcoholic beverages or any illegal drug or other drug as provided in Section 2 of this regulation. Drivers found under the influence of alcohol or any illegal drugs while on duty or with remaining driving responsibilities that same day shall be dismissed from employment. A driver shall report to the superintendent or his designate immediately any revocation of license or conviction for driving under the influence.

Section 34. The driver of a school bus shall be on the bus at all times students are loading or unloading.

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: July 3, 1991
FILED WITH LRC: July 8, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 26, 1991 at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 21, 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: J. Gary Bale, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.
CONTACT PERSON: J. Gary Bale, General Counsel, Office of Legal Services, Department of Education, 120 Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Prince
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected: None
1. First year: Drug tests will cost $55,000 per year.
2. Continuing costs or savings: Savings of $70,000 by amended requirement for driving history and criminal records check.
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: 1. This amendment will cost the state and local districts approximately $55,000 annually. 2. Elimination of the annual criminal records and driving history check will save the state and local school districts approximately $70,000 annually.
(4) Assessment of alternative methods; reasons why alternatives were rejected: The drug testing amendment was requested by the State Board of Education.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. This regulation applies equally to all districts.

**EDUCATION AND HUMANITIES CABINET**
**Department of Education**
**Office of Administration and Finance**
**(Proposed Amendment)**

**702 KAR 5:150. Transportation of preschool children.**

RELATES TO: KRS Chapter 157
STATUTORY AUTHORITY: KRS 156.160, Chapter 157, 189.540
NECESSITY AND FUNCTION: This regulation provides the district superintendent with the guidelines necessary to provide transportation for preschool children.

Section 1. Kentucky school districts may transport three (3) and four (4) year old children. These children shall be transported on post federal standard (1978 through present) school buses. Local boards of education shall develop and incorporate within existing board of education transportation policy, guidelines consistent with the child's mental and physical characteristics.

Section 2. Local boards of education shall require each school bus transporting three (3) and four (4) year old children to be staffed with a minimum of one (1) driver assistant, minimum sixteen (16) years of age, qualified, and trained to assist in the transportation of three (3) and four (4) year old children by a certified local board of education school bus driver training instructor. The driver training instructor shall qualify the driver assistants with training in student entrance of bus, student egress from bus, safety rules of transportation, first aid as it pertains to emergency and immediate care, emergency evacuation, and student management as it relates to seated positions and seat occupancy. The Division of Pupil Transportation of the Department of Education shall provide the curriculum for driver assistant training. The number of assistants required for any one (1) school bus shall be determined by the driver training instructor. Liability insurance shall be provided for the driver assistant as a named insured. The driver assistant shall be selected who has personal attributes and indicators which show the individuals ability to handle preschool aged children.

Section 3. Local boards of education shall develop a policy requiring all three (3) and

four (4) year old children to be transported on school bus seats located approximately midship of school bus. Loading shall begin in the middle of the bus and continue toward the front and rear. These children shall not occupy a front or rear row seat. Each three (3) or four (4) year old child shall be provided with a seated position on a seat which would tend to cause in a frontal [and/] or frontal quarter impact, occupant excursion into the protection zone provided by the forward seat back.

Section 4. It shall be the responsibility of the parent, guardian, or person authorized by the parent of a preschool child to provide safe supervision to and from the bus stop and delivery to and receipt from the driver assistant.

Section 5. The driver assistant shall be responsible to deliver and [/] receive the child safely to and [/] from the parent, guardian or person authorized by the parent. Three (3) and four (4) year old children who must cross a roadway shall be escorted by the driver assistant.

(1) No three (3) or four (4) year old child [A child under age six (6)] shall [not] be left unattended at the time of delivery.

(2) If the parent, guardian or a person authorized by the parent to accept the child is not present upon delivery, the child shall be taken to a prearranged location.

(3) If anyone other than the authorized person is to receive the child, such arrangements shall be made by the parent or guardian by prior written permission.

Section 6. Local boards of education shall develop a policy requiring all school buses transporting three (3) and four (4) year old children to establish a maximum road speed of thirty-five (35) miles per hour throughout pickup and delivery zones and a maximum road speed of forty-five (45) miles per hour after completing pickup and delivery and enroute to school locations, from school to home or other school related transportation.

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: July 3, 1991
FILED WITH LRC: July 8, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 26, 1991 at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 21, 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: J. Gary Bale, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.
CONTACT PERSON: J. Gary Bale, General Counsel, Office of Legal Services, Department of Education, 120 Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Prince
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(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 passage of the amended version is needed to include three year old children involved in the preschool program. Other changes for clarification are needed.
TIERING: Was tiering applied? No. The regulation will apply equally to all districts.

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

**704 KAR 7:090. Homeless children education program.**

RELATES TO: KRS 156.031, 156.035, 42 USC Section 11432
STATUTORY AUTHORITY: KRS 156.035, 156.070
NECESSITY AND FUNCTION: In accordance with the Stewart B. McKinney Homeless Assistance Act Amendments of 1990 [1987], the Kentucky Department of Education, when applying to the U.S. Department of Education for participation in programs for homeless children under the Act, shall submit an approvable plan and satisfactory assurances that all requirements of the law set forth in 42 USC Section 11432 shall be met. This regulation implements the State Board for Elementary and Secondary Education's KRS 156.031 and 156.035 duties to develop education policy, to implement acts of Congress appropriating and apportioning funds to the state and to provide for the proper implementation of federal law in accordance with the state's current plan. This regulation sets forth criteria regarding residency policies, the provision of a free,

appropriate public education to homeless children, provides informal procedures for resolution of disputes regarding educational placement of homeless children, provides grants to local educational agencies for the enrollment, retention and educational success of homeless children and homeless youths, and provides for an annual count of homeless children and homeless youth. [Reconsideration and refiling of this regulation is required by KRS 156.031.]

Section 1. Definitions. (1) "Homeless child", "homeless children", "homeless youth", and "homeless student" means a child or children who are between the ages of five (5) and twenty-one (21) inclusive and who are:

(a) Living with their families in hotels, motels, public or private shelters[, parks or campgrounds,] or other temporary living arrangements due to the lack of a fixed, regular and adequate residence;

(b) Residing in special care homes such as runaway shelters or spouse abuse centers due to the lack of a fixed, regular and adequate residence;

(c) Placed by parents under the care of relatives or nonrelatives due to the homeless situation of the family or due to their impoverished condition which may cause[s] the family members to live [be living] separately from one another;

(d) Sleeping in a public or private place not ordinarily used as a regular sleeping accommodation for human beings; [or]

(e) Sick or abandoned children staying in hospitals, who would otherwise be released if they have a place to go; [Awaiting assistance from social service agencies in a hospital or a temporary placement facility due to being abandoned or forced out of the home by parents or other caretakers.]

(f) Living in campgrounds or similar temporary sites because they lack living accommodations that are fixed, regular and adequate. Those living in campgrounds on a long-term basis in adequate accommodations shall not be considered homeless; or

(g) Runaway or throwaway youth who have been "thrown out" of their home environment and who are living in a shelter, on the street, or who move from one friend's house to another in a cycle of transiency.

(2) Such homeless children shall not include any individual imprisoned or otherwise detained by act of Congress or a state law. Nor shall a child be classified as "homeless" to circumvent state law and regulations which:

(a) Prohibit the attempted enrollment of nonresident students for the express purposes of obtaining school accommodations and services without the payment of tuition to the nonresident school district or for the purpose of obtaining specific programs not available in the school of residence; or

(b) Regulate interschool athletic recruiting by the Kentucky High School Athletic Association.

(3) "Free, appropriate public education" means the educational programs and services that are provided the children of a resident of a state, and that are consistent with state school attendance laws. It includes educational services for which the child meets the eligibility criteria, such as compensatory education programs for the disadvantaged, and educational programs for the handicapped and for students with limited English proficiency; programs in vocational education; programs for the gifted and talented; [and] school meals programs; extended school programs; preschool programs; and programs developed by the family resource and youth services centers.

(4) "School of origin" shall mean the school that the child or youth attended when permanently housed, or the school in which the child or youth was last enrolled.

Section 2. Criteria for Program Implementation. Homeless children or homeless youth who reside within the boundaries of a local school district shall be provided a free, appropriate public education. Programs for homeless children and youth shall be provided in a timely fashion and shall be ensured by the following actions:

(1) Each local district shall designate a person in the district to be a homeless child education coordinator and shall submit the name of the person to the Kentucky Department of Education. The coordinator's responsibilities shall be to:

(a) Obtain all necessary records, including birth certificates and immunization records, of each homeless student identified as living within the boundaries of the school district and place the student in appropriate programs within two (2) school days of the student's appearance in the district. In cases where records are not readily available, the coordinator shall contact the school district(s) of last attendance for verbal confirmation of essential information. The coordinator shall assist the homeless student to obtain essential records which are not in existence in order that enrollment shall not be delayed or denied;

(b) Receive and resolve any requests for resolution of disputes related to the educational placement of homeless students within the district. The coordinator shall provide the necessary information to the Department of Education for final resolution whenever such a request is received and is not resolved;

(c) Assist the homeless student to obtain the appropriate program and services, including transportation and referrals to medical, dental, mental and other appropriate services; [and]

(d) Develop procedures to ensure that homeless student records are readily available upon request by a new receiving school district; and

(e) Develop a liaison with known homeless service providers and state agencies in the community to identify and enroll homeless students living there.

Section 3. Residency. The school district of residence is the district in which the homeless student physically resides with his or her parent or legal custodian, unless by reason of marriage, emancipation, or basic physical necessity the child resides elsewhere. The school district of residence shall ensure that:

(1) The homeless student is enrolled in the school attendance area [district] in which he or she is physically located or that the homeless student's education is continued in the school [district] of origin for the remainder of the academic [school] year, or in any case in which the family becomes homeless between academic years, for the following academic year; or

enroll the child or youth in any school that nonhomeless students who live in the attendance area in which the child or youth is actually living are eligible to attend, whichever is in the best interest of the homeless student.

(2) In determining the best interests of the child or youth for purposes of making a school assignment under Section 3(1) of this regulation, consideration shall be given to a request made by the parent regarding school selection.

(3) [(2)] A homeless student shall not be denied enrollment in the school district of residence due to the absence of a parent or a court-appointed guardian or custodian. Such a homeless student shall be enrolled and provided educational services until such time that the school district can substantiate that the enrollment is contrary to Section 1(2) of this regulation.

(4) [(3)] In the absence of a parent, and a court-appointed custodian or guardian, any medical, dental and other health services may be rendered to a homeless student who is a minor of any age when, in the judgment of the school principal or other professional that the risk to the minor's health is of such a nature that treatment should be given without delay and the requirements of consent would result in delay or denial of treatment as stated in KRS 214.185(3)(4).

(5) [(4)] No policy of the school district shall delay or deny the timely provision of educational placement and appropriate services to the homeless student, including policies related to guardianship issues.

Section 4. Resolution of Disputes. Disputes arising between or among the school district of residency; another school district; and the parent, homeless youth, or person in parental relationship to the homeless student regarding the school district in which the child shall attend school or the educational placement of the homeless student shall be resolved through the following procedures:

(1) The school district's homeless child education coordinator shall inform the representative of the homeless student of the right to an informal hearing with the school district(s) when a dispute arises about the placement of the homeless student. The coordinator shall assist the representative to complete a written request for the hearing which shall be based on a placement that was initiated, or declined to be initiated, by the school district not more than two (2) school weeks prior to the request.

(2) The informal hearing shall be scheduled within two (2) days of the written request and shall be convenient to the needs of the representative of the homeless student.

(3) During the hearing, the school district(s) shall discuss any considerations that led to the placement decision which may include the ability of the school district to provide continuity in educational programs, the need of the homeless student for special instructional programs, the amount of time and arrangements required to transport the student to the original school district, the age of the homeless student and the school placement of siblings, and the time remaining until the end of the semester or the end of the school year.

(4) In cases where an agreement cannot be reached among all involved parties, either party may request the assistance of the state homeless children education coordinator. Upon written request, the coordinator shall meet with the involved parties to discuss available alternatives and seek to resolve the dispute.

(5) In cases of such a request for the assistance of the state coordinator, the school district of residence shall inform the Kentucky Department of Education and shall provide sufficient information as required.

(6) The placement and services for the homeless student shall be continued pending the resolution of the dispute by the Department of Education.

Section 5. Annual Count. The Department of Education shall annually conduct a count of all homeless children and youth in the state as follows:

(1) Survey instruments shall be distributed to local school districts, related social agencies, and appropriate service providers no later than October 1 of each year [according to the required time lines set by the U.S. Department of Education].

(2) Local school districts, social agencies, and service providers shall take an unduplicated count of homeless children and youth and shall return the completed forms to the Department of Education according to the time lines provided.

(3) The Department of Education shall develop procedures as required to ensure that the homeless child count is accurate and verifiable.

Section 6. Local Educational Agency Grants for the Education of Homeless Children and Youth. The Kentucky Department of Education shall make grants to local educational agencies (LEA) when such funds become available in the following manner:

(1) For any year in which there is an increase in funds in relation to the previous year, all school districts in the state shall be eligible to apply for this money through a request for proposal (RFP) process. Districts which receive funds shall be given priority status for two (2) years, and shall receive continued funding contingent upon a positive evaluation and review of the project and continued need.

(2) For any year in which there is a decrease in funds in relation to the previous year, only those districts which received a grant in that previous year shall be eligible to submit an RFP for the present year. If a majority of these districts either decide not to reapply for refunding, or receive a negative evaluation or are found to no longer have a need for these funds, the amount of money which would have been awarded to them will be made available to all other districts through a RFP process. If the funding level remains at or below the previous year for two (2) years, on the second year of this cycle the grant money shall be made available to all districts through the RFP process.

(3) Not less than fifty (50) percent of amounts provided under a grant to local districts shall be used to provide tutoring, remedial education services, or other education services to homeless children or homeless youths.

(4) Not less than thirty-five (35) nor more than fifty (50) percent of amounts provided to local districts shall be used for activities including expedited evaluations, professional

development for school personnel, referrals for medical, dental, mental and other health services, transportation, before- and after-school care, and school supplies.

(5) A local district that desires to receive a grant shall submit an application to the Kentucky Department of Education. Each application shall include:

(a) The number of homeless children and youth enrolled in preschool, elementary and secondary school, the needs of such children and the ability of the district to meet these needs;

(b) A description of the services and programs for which assistance is sought and the problems sought to be addressed through the provision of such services and programs (i.e., enrollment, retention and educational success);

(c) An assurance that assistance under the grant shall supplement and not supplant funds used before the award of the grant for purposes of providing services to homeless children and homeless youths;

(d) A description of policies and procedures that the district shall implement to ensure that activities carried out by the district shall not isolate or stigmatize homeless children and homeless youth;

(e) A description of coordination with other local and state agencies that serve homeless children and homeless youths; and

(f) Other criteria the Kentucky Department of Education deems appropriate.

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).

THOMAS C. BOYSEN, Commissioner

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: July 5, 1991

FILED WITH LRC: July 8, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 26, 1991 at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 21, 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: Mr. J. Gary Bale, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Laura Graham

(1) Type and number of entities affected: All local educational agencies and homeless families with school-age children.

(a) Direct and indirect costs or savings to those affected: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Each local school district must participate in the annual count of homeless children and youth; LEAs receiving grant funds must submit an application and an evaluation report.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: State plan; submit a status report every other year to the U.S. Department of Education.

(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: KRS 158.035 Certificate of Immunization and OAG 79-420 Possible Grace Period for Immunization.

(a) Necessity of proposed regulation if in conflict: Many homeless families cannot retain essential records and need assistance to gain them.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Yes

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Federal law does not allow.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The Stewart B. McKinney Homeless Assistance Amendments Act of 1990, PL 101-645, Sections 721-722.

2. State compliance standards. The Kentucky State Plan for the Education of Homeless Children and Youth.

3. Minimum or uniform standards contained in the federal mandate. Submit state plan; comply with regulations under PL 101-645, Section 722; develop supportive policy and implementing regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes, this regulation continues to require an annual count of homeless children and youth as according to the earlier federal mandate. The amended federal mandate requires a count every other year.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Under the Kentucky Education Reform Act (KERA), the development of family resource and youth services centers, extended school services and preschool programs will provide additional educational, social and other appropriate services for identified homeless children and youth. It is imperative that the current system stay in place to provide frequent identification

of homeless students and to facilitate the earliest possible intervention.

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

**707 KAR 1:054. Programs for children and youth with emotional-behavioral disabilities [the emotionally disturbed; behavior disordered].**

RELATES TO: KRS [156.031], 157.200, 157.220, 157.224, 157.230
STATUTORY AUTHORITY: KRS 157.220
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 157.200 sets forth definitions with respect to special education and exceptional children's programs; KRS 157.220 requires the State Board for Elementary and Secondary Education to promulgate administrative regulations for the proper administration of KRS 157.200 to 157.280; and 157.224 and 157.230 require local school districts to establish and operate appropriate special education programs for residents of their districts. This regulation is necessary to mandate establishment of appropriate local district programs for children and youth with emotional-behavioral disabilities [emotionally disturbed (behavior disordered) children] and to assure uniformity in providing special education and related services to [emotionally disturbed] children and youth with emotional-behavioral disabilities, in conformance with the Individuals with Disabilities Education Act, [Education for All Handicapped Children Act,] 20 U.S.C. 1400 et seq.

Section 1. General Provisions. Local school boards of education shall operate programs for the resident children and youth with emotional-behavioral disabilities [emotionally disturbed (behavior disordered)] of school attendance age pursuant to KRS 157.200 to 157.290, inclusive, and the criteria set forth in this regulation.

Section 2. Eligibility Criteria. (1) An admissions and release committee shall determine that a child or youth is emotionally-behaviorally disabled [disturbed (behavior disordered)] provided the following eligibility criteria are met:

(a) When provided with appropriate interventions to meet instructional and social-emotional needs, the student continues to exhibit one (1) or both of the following across settings, over a long period of time, and to a marked degree:

1. Severe deficits in social competence which impair interpersonal relationships with adults or peers; or

2. Severe deficits in academic performance which are not commensurate with the student's ability levels and are not solely the result of intellectual, sensory, or other health factors, but are related to the student's social-emotional problems. [The child manifests symptoms characterized by diagnostic labels such as psychosis, schizophrenia and autism; or]

(b) The student's emotional-behavioral problems significantly interfere with his or her interpersonal relationships or learning process to such an extent that specially designed instruction is required for the student to benefit from education. [The child demonstrates one or more of the following characteristics over a long period of time and to a marked degree, which adversely affects educational performance:]

[1. An inability to learn at a rate commensurate with intellectual, sensory-motor or physical development because of emotional problems;]

[2. An inability to build or maintain satisfactory interpersonal relationships with peers and adults;]

[3. Behavior which is disruptive to the learning process of other students or himself;]

[4. A general pervasive mood of unhappiness or depression; or]

[5. A tendency to develop physical symptoms or fears associated with personal or school problems;]

(c) The student's behavior clearly deviates from the standards for his or her cultural and peer reference group. [The criteria do not include those who are socially maladjusted, unless it is determined that they are seriously emotionally disturbed.]

(2) A child who meets the above criteria shall be eligible for special education and related services.

Section 3. Admissions and Release Committee. As required and provided in 707 KAR 1:051, Section 3, a committee process shall be followed for the identification, evaluation, and placement of [emotionally disturbed (behavior disordered)] pupils with emotional-behavioral disabilities. The appropriate admissions and release committee shall assure that procedural safeguards as described in 707 KAR 1:051, Sections 9 and 10, and 707 KAR 1:060 shall be followed.

Section 4. Child Evaluation. Appropriate child evaluation shall be assured by the appropriate admissions and release committee. Evaluation information shall be obtained pursuant to the requirements in 707 KAR 1:051, Section 4. The assessment of the referred pupil for identification and placement purposes shall consist of:

(1) A compilation of existing behavior data and a written record or evidence of previous instructional and social-emotional interventions that have been provided; [A health screening which indicates there are no primary visual, auditory or physical handicapping conditions;]

(2) Screenings of communication and physical functioning which would indicate there are no primary visual, auditory, speech and language, or physical disabilities; [A written account of specific behavioral data collected over a period of time by the referral source describing the behavior(s) of concern;]

(3) An assessment of family, social and cultural factors designed to gather specific information about the behaviors of concern, and to identify any cultural, ethnic, medical, developmental, social or home factors which may be contributing to those behaviors; [A written compilation of data from direct observations of the referred pupil in familiar surroundings by a

person other than the referral source;]

(4) An assessment of social competence composed of behavior and social skills ratings and behavioral observations of social interactions; [An individual educational assessment of the referred pupil's specific strengths and weaknesses in basic skill areas;]

(5) An educational assessment of the referred child's specific strengths and weaknesses in basic skills areas and behavioral observations of academic engaged time; [An individual psychological or psychiatric evaluation;]

(6) An individual assessment of cognitive functioning; [A developmental and social history;]

(7) Additional appropriate assessments in cases where an intellectual, sensory, and communication or health-related disability is suspected to be a primary contributor to the referred student's emotional-behavioral problems. [A written record or evidence of previous educational and behavioral intervention strategies that have been utilized.]

Section 5. Individual Education Program (IEP). As required and provided in 707 KAR 1:051, Section 5, for each pupil identified, the appropriate admissions and release committee shall develop and assure the implementation and annual review of an individual education program.

Section 6. Placement. Placement in a program for the children and youth with emotional-behavioral disabilities [emotionally disturbed (behavior disordered) pupils] shall be determined by the appropriate admissions and release committee pursuant to procedures as described in 707 KAR 1:051, Section 6.

Section 7. Classroom Plan. Classroom plans for the children and youth with emotional-behavioral disabilities [emotionally disturbed (behavior disordered)] shall operate pursuant to procedures as described in 707 KAR 1:051, Section 1. Classroom plans for children and youth with emotional-behavioral disabilities [emotionally disturbed (behavior disordered) pupils] shall be established under the resource special class or variation plan.

Section 8. Membership and Age Range. (1) Classroom membership and age range in programs for the children and youth with emotional-behavioral disabilities [emotionally disturbed (behavior disordered)] shall be as follows:

| Classroom Plan | Maximum Membership | Age Range |
|---|---|---|
| Special Class Plan | 8 | 4 years |
| Resource Plan | 15 | 6 years |

(2) No more than eight (8) pupils, all within the four (4) year age span, shall be in the resource room during any one (1) instructional period.

(3) Variations of the above shall be considered for approval upon submission of written request and justification to the Office of Education for Exceptional Children. Factors for consideration of approval in determining pupil to teacher ratio and age shall include, but not be limited to, the following:

(a) Age and grade level of the pupils;

(b) Physical condition of the pupils; and

(c) Support personnel.

THOMAS C. BOYSEN, Commissioner
JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: May 16, 1991

FILED WITH LRC: July 11, 1991 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 26, 1991 at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 21, 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: Dr. Dan H. Branham, Secretary, State Board of Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

CONTACT PERSON: J. Gary Bale, General Counsel, Office of Legal Services, Department of Education, 120 Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Linda F. Hargan

(1) Type and number of entities affected: 176

(a) Direct and indirect costs or savings to those affected: None expected.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body: None expected.

(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: No additional.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were analyzed for proven practice and feasibility during the task force process – the regulation reflects the culmination of those analyses.

(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 has not

been applied as these are federally mandated requirements that must be consistent across local school districts.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 CFR 300.5
2. State compliance standards. 707 KAR 1:054
3. Minimum or uniform standards contained in the federal mandate. 34 CFR 300.5 requires the state to identify handicapped children as defined in the federal mandate.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? 707 KAR 1:054 establishes eligibility criteria and evaluation requirements for identifying students labeled as having emotional and behavioral disabilities within this state. These changes should not impose stricter requirements than the federal mandates.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

**PUBLIC PROTECTION & REGULATION CABINET**
**Department of Housing, Buildings & Construction**
**Office of State Fire Marshal**
**(Proposed Amendment)**

**815 KAR 15:020. Administrative procedures; requirements.**

RELATES TO: KRS Chapter 236
STATUTORY AUTHORITY: KRS 236.030, 236.120
NECESSITY AND FUNCTION: KRS 236.030 and 236.120 requires the commissioner, upon advisement of the Board of Boiler Rules, to fix reasonable fees and standards for the safe construction, installation, inspection and repair of boilers and pressure piping. This regulation specifies administrative procedures, fees and requirements of the boiler inspection section. This amendment is necessary to specify the circumstances under which safety valves may be repaired and to identify the form used by special inspectors and insurance companies. [This amendment is necessary to clarify the type of form needed by the department's data processing section and prevent misunderstanding of necessary information.]

Section 1. Definitions. "ASME" as defined in KRS 236.010(5).

Section 2. Administration. (1) Manufacturers data report to be filed:
(a) Manufacturers data report on all boilers of steel construction and all pressure vessels prior to operation in this state, unless exempted by KRS 236.060, shall be filed with the National Board of Boiler and Pressure Vessel Inspectors.
(b) Details of boilers and pressure vessels of special design (not fully complying with ASME Boiler and Pressure Vessel Code) shall be submitted to the boiler section and approval secured before construction or field erection shall be started.
(2) When boilers or pressure vessels are designed and fabricated according to the requirements of the applicable sections of the ASME Boiler and Pressure Vessel Code, but are not stamped with the ASME Boiler and Pressure Vessel Code symbol stamp, individual handling shall be required for their installation. The prospective owner or user who desires approval of the boiler installation shall pursue the following procedure in each individual case:
(a) Prior to construction of the boiler or pressure vessel the proposed owner, user, or his authorized agent shall make written application for permission to install the boiler or pressure vessel in the State of Kentucky. The application shall be by letter or application permit form of the jurisdiction and shall be directed to the Chief Boiler Inspector, Office of the State Fire Marshal, Department of Housing, Buildings and Construction, U.S. 127 South, Frankfort, Kentucky 40601.
(b) He shall submit with the application letter or application permit the following data, material and information to establish ASME Boiler and Pressure Vessel Code equivalency:
1. Detailed shop drawings and welding details of the proposed construction. All materials shall be in the English language and United States units of measurements as used in the ASME Boiler and Pressure Vessel Codes.
2. Design calculation and supporting data which include pressure (psi), temperature (degrees Fahrenheit), use and other service conditions.
3. Specifications for all material to be used in construction. These shall conform to the applicable ASME Boiler and Pressure Vessel Codes standards or their suitable equivalent. If reference is made to a standard or specification of a country other than the United States, please attach a copy and indicate how the material is considered equivalent.
4. Copies of: all welding procedures to be used, welding qualification test reports for each welding operator or welder to be used. The procedures and tests required in this paragraph shall be made in accordance with the ASME Boiler and Pressure Vessel Code, Section IX, "Welding Qualifications."
5. Where the design exceeds ASME Boiler and Pressure Vessel Code limitation, recognized engineering practices shall be used and identified in the submittal.
6. Design drawings and calculations shall be certified by a professional engineer holding a license acceptable to the boiler inspection section.
7. The manufacturer of the vessel shall identify the inspection agency whose personnel will make the shop inspections and sign the manufacturer's data reports for the proposed vessel.
8. The shop inspection agency shall furnish the qualifications and experience of the individual inspector or inspectors assigned to make the shop inspections and shall give his jurisdiction commission number.
(c) All details mentioned in paragraphs (a) and (b) of this subsection shall be approved by the Boiler Inspection Section, Department of Housing, Buildings and Construction.
(d) When the boiler or pressure vessel is completed, a manufacturers' data report signed by the manufacturer and shop inspector shall be submitted to the jurisdictional authorities containing the equivalent type data required by the ASME Boiler and Pressure Vessel Code. (Do not use ASME Boiler and Pressure Vessel Code

data report forms.)

(e) The vessel shall be inspected by a qualified boiler and pressure vessel inspector in the employ of the department upon arrival in the State of Kentucky and before installation to make certain the above provisions have been complied with and that the vessel is properly marked and stamped for identification.

(3) Installation inspection and stamping.

(a) All power boilers shall be inspected annually as required by KRS 236.110.

(b) All low pressure heating boilers shall be inspected biennially as required by KRS 236.110(b).

(c) A grace period for paragraphs (a) and (b) of this subsection may elapse between inspections as allowed by KRS 236.110(d).

(d) Power boilers, operated in a manner that experience indicates internal corrosion or deposits would not be anticipated, shall have the internal inspection period extended by the boiler inspection section if requested in writing by the owner or user and if circumstances warrant.

(4) Installation inspection or first inspection and stamping of boilers and pressure vessels.

(a) Upon completion of installation or at the time of first inspection, a Commonwealth of Kentucky serial number shall be assigned to the boiler or pressure vessel, applied as follows:

1. Steel boilers shall be stamped with the letters, "KY" followed by the state serial number assigned. Pressure vessels shall be stamped with the letters "KY" followed by the numeral "0" and the remainder of the state serial number assigned. Stamping shall be applied in the immediate area of code stamping on the boiler or pressure vessel and shall be in letters and figures not less than five-sixteenths (5/16) inch in height. A metal tag may additionally be used showing identical lettering and serial number as used in the stamping, this tag to be securely affixed in the area of manufacturer's name plate or data plate.

2. Cast iron boilers shall have securely attached to the boiler (preferably adjacent to the manufacturer's data plate or in the most conspicuous area) a metal tag not less than one (1) inch in height which shall have the letters "KY" and the state serial number stamped thereon.

3. Hot water supply boilers shall have securely attached to the heater (preferably adjacent to the manufacturer's data plate or in the most conspicuous area) a metal tag not less than one (1) inch in height which shall have the letters "KY" and the state serial number stamped thereon.

(b) New installations are subject to inspection as set forth in KRS Chapter 236. Installations shall be inspected for conformance with applicable ASME Boiler and Pressure Vessel Codes and these rules and regulations and additionally shall be subject to inspection of pressure piping carrying steam, vapor or water pressures emanating from the boiler, as follows:

1. Power boiler piping shall be inspected in all segments of the system carrying substantially the same pressures and temperatures encountered in the boiler itself. Inspection shall be to the extent necessary to assure compliance with engineering design, material specifications, fabrication, assembly and test requirements of the boiler and first (or second) stop valve and requirements of Section 1, ASME Boiler and Pressure Vessel Code, for that piping between the boiler and the first (or second) stop valve and requirements of The National Standard Code For Pressure Piping ANSI B31.1 (and subsequent revisions) for pressure piping beyond Section 1, Power Boiler ASME Code Limits. ANSI B31.1 also covers air and hydraulic system piping.

2. The installing contractor, where welded assembly has been used, shall be able to present for the inspector's review, his welding procedures and proof of qualification of his welding operators. The contractor shall be responsible for the quality of the welding done by his organization.

3. Visual inspection of welding performed by qualified welders shall be deemed sufficient unless codes or engineering specifications state otherwise, or unless the inspector wishes to augment this visual inspection with other nondestructive tests including radiography. All tests or retests required by the inspector shall be at the owner's or contractor's expense.

4. The inspector shall accept signed certification of the contractor regarding satisfactory hydrostatic tests performed on piping or he shall witness these tests himself. He may also, if he deems it expedient, require these tests to be performed in his presence.

5. Heating boiler piping shall be inspected in all segments of the system carrying substantially the same pressure and temperature as the boiler itself. Inspection shall be to the extent necessary to assure good fit-up, assembly, tightness and support of the system. Welded joints shall be installed by qualified welders in accordance with ASME Section IX and shall be visually inspected for complete and full root penetration, soundness of the weld and freedom from undercutting, cracking and other surface imperfections, and in conformance with subparagraph 3 of this paragraph.

6. Hot water supply boiler installations shall be inspected for conformance with Section IV, ASME Boiler and Pressure Vessel Code.

(5) Notification of inspection. The owner or user shall prepare each boiler for internal inspection and shall prepare for and apply a hydrostatic pressure test whenever necessary, on the date specified by the inspector, which date shall not be less than seven (7) days after the date of notification.

(6) Examinations for commission.

(a) Examinations for commission as an inspector shall be given as required by KRS 236.090. Qualifications shall be set forth in KRS 236.070, 236.090 and 815 KAR 15:010, Section 1(8).

(b) Application for employment as an inspector shall be in writing, upon a form to be furnished by the commissioner, stating the school education of the applicant, a list of his employers, his period of employment and position held with each employer. Applications containing willful falsification or untruthful statements shall be rejected. If the applicant's history and experience meet with the approval of the Board of Boiler Rules, he shall be given a written examination, prepared by the National Board of Boiler and Pressure Vessel Inspectors in accordance with their bylaws, Article IV, dealing with the construction, installation, operation, maintenance, and repair of boilers and their appurtenances. The applicant shall have passed the examination before he shall be

eligible for permanent status as a boiler inspector.

(7) Examination fees. A fee of twenty (20) dollars shall be charged to each applicant who sits for the National Board examination. This fee shall be payable directly to the Treasurer of the Commonwealth of Kentucky, and shall accompany the application.

(8) Commission.

(a) Upon the request of a boiler insurance company authorized to do business in this Commonwealth, a commission as a special boiler inspector and an identifying commission card shall be issued by the department to an inspector in the employ of any insurance company provided the inspector has successfully passed the written examination as set forth in subsection (6) of this section, or holds a commission as outlined in subsection (9) of this section.

(b) The commission and the identifying commission card shall be returned to the department when the inspector to whom the commission was issued is no longer in its employ, or at the request of the department.

(c) The commission issued to any boiler inspector may be suspended or revoked as set forth in KRS 236.100.

(9) Reciprocal commissions.

(a) Upon the request of a boiler insurance company authorized to do business in this Commonwealth, a commission and identifying commission card as special boiler inspector shall be issued by the department to an inspector in the employ of the insurance company provided the inspector has the experience prescribed in subsection (6) of this section, and holds either:

1. A certificate of competency; or
2. A commission issued by a state which has adopted the ASME Boiler and Pressure Code; or
3. A commission issued by the National Board of Boiler and Pressure Vessel Inspectors.

(b) Application for a reciprocal commission shall be made on a form to be furnished by the department and shall be accompanied by a photostatic copy of the applicant's state or national board commission or certificate of competency and a fee of twenty (20) dollars.

(c) The commission issued to an inspector may be suspended or revoked upon ten (10) days notice to the inspector and to the employer of the inspector for incompetency or untrustworthiness; for willful falsification of his application or in the report of an inspection; but the holder of the commission shall be entitled to a hearing before any final action shall be taken.

(10) Inspection reports. Special inspectors shall submit to the Boiler Inspection Section of the State Fire Marshal's Office inspection reports on the following form: [as required by KRS 236.080(4) on National Board Inspection Code forms.]

( ) ADD
( ) CHANGE
( ) REINSPECTION

COMMONWEALTH OF KENTUCKY
DEPT. OF HOUSING, BUILDINGS AND CONSTRUCTION
OFFICE OF STATE FIRE MARSHAL
BOILER OR PRESSURE VESSEL INSPECTION

HBC-B1-220
INSURANCE NO.

1 INSP DT: EXP DT: YR 1 ( ) TYPE: 2 ( ) STATUS ST OWN ( ) STATE NO.: KY NAT BOARD NUMBER:

2 OWNER: ADDRESS:

ADDRESS: CITY: ST: ZIP:

3 USER: ( ) ADDRESS:

ADDRESS: CITY: ST: ZIP:

4 USER PHONE: NATURE OF BUSINESS: COUNTY: SPECIFIC LOCATION IN PLANT:

5 TYPE: YR BLT: MANUFACTURER:
CIS ( ) FT ( ) OTH ( ) HFB ( ) HSM ( ) WT ( )

6 USER: FUEL: INSP TYPE: INT ( ) EXT ( ) CERT INSP: YES ( ) NO ( )
POWER ( ) PROCESS ( ) STEAM HTG ( ) HWH ( ) HWS ( ) UNFIRED ( )

7 PRESSURE ALLOWED: THIS INSP PREV INSP SAF RELIEF VALVE: SET AT: SAF VALVE CAP: MIM SAF VALVE CAP:

8 HYDRO TEST PSI: TEST DATE:

VIOLATIONS TO BE CORRECTED ARE BELOW

CODE

1_____
2_____
3_____
4_____
5_____
6_____
7_____

FEE
Insp.___ Comp. Date:___ KY COMM _____
Cert.___ _____ Contact Person
TOTAL___ _____
Inspector Signature
CO. NO.
_____

_____ CHECK BOX IF ADDITIONAL
_____ REMARKS ARE ON BACK

(11) Insurance companies shall notify the Boiler Inspection Section of new, cancelled, or suspended risks. All insurance companies shall notify the Boiler Inspection Section within thirty (30) days of all boiler or pressure vessel risks written, cancelled, not renewed, or suspended because of unsafe conditions. [All reports shall be reported on the form of the department attached hereto as Appendix A.]

(12) Insurance companies to notify the Boiler Inspection Section of defective boilers or pressure vessels. If a special boiler inspector, upon the first inspection of a boiler or pressure vessel, finds the boiler or pressure vessel or any of the appurtenances in a condition causing his company to refuse insurance, the company shall immediately notify the Boiler Inspection Section and submit a report of the defects.

(13) Defective conditions disclosed at time of external inspections. If, upon an external inspection, there is evidence of a leak or crack, enough of the covering of the boiler or pressure vessel shall be removed to satisfy the inspector in order that he may determine its safety; or, if the covering cannot be removed at that time, he shall order the operation stopped until the covering may be removed and proper examination made.

(14) Owner, user or insurer to notify the Boiler Inspection Section in case of accident. When an accident or malfunction which affects the strength of the boiler, occurs, the owner, user, or insurer shall immediately notify the Boiler Inspection Section, and submit a detailed report of the accident. In case of serious accident, such as explosion, notice shall be given immediately by telephone, telegraph, or messenger and neither the boiler, pressure vessel nor any of the parts thereof shall be removed or disturbed before an inspection has been made by an inspector, except for the purpose of saving a human life.

(15) Inspection certificate fees.

(a) Each boiler complying with the rules of the department shall be issued a certificate as required by KRS 236.120(1).

(b) If the owner or user of each boiler or pressure vessel required to be inspected refuses to allow an inspection to be made or refuses to pay the above fee, the inspection certificate shall be suspended by the commissioner until the owner or user complies with the requirements.

(c) The owner or user who causes a boiler or pressure vessel to be operated without possessing a valid certificate of inspection shall be subject to the penalties provided for in KRS 236.990.

(d) Certificates shall be located as required by KRS 236.120(1).

(16) Validity of inspection certificates. An inspection certificate, issued in accordance with KRS 236.120, shall be valid until expiration unless some defect or condition affecting the safety of the boiler or pressure vessel is disclosed. A certificate issued for a boiler or pressure vessel inspected by a special boiler inspector shall be valid only if the boiler for which it was issued continues to be insured by a duly authorized insurance company.

(17) Suspension of certificate of operations. Certificates may be suspended as required by KRS 236.120.

(18) Condemned boilers.

(a) Any boiler or pressure vessel having been inspected and declared unsafe by the chief boiler inspector or boiler inspector shall be stamped with the letters "XX" and the letters "KY," as shown by the following facsimile which shall designate a condemned boiler or pressure vessel: XX KY 12345 XX.

(b) Any person, firm, partnership, or corporation using or offering for sale a condemned boiler or pressure vessel for operation within this Commonwealth shall be subject to the penalties in KRS 236.990.

(19) Nonstandard boilers and pressure vessels.

(a) Shipment of nonstandard boilers or pressure vessels, or hot water supply boilers into this Commonwealth for use shall be prohibited, provided they are not exempt under KRS Chapter 236.

(b) A nonstandard boiler, pressure vessel, or hot water supply boiler now in use in this Commonwealth, if removed from the Commonwealth, shall not be brought into and reinstalled.

(20) Secondhand boilers and pressure vessels. Before a secondhand boiler or pressure vessel shall be shipped into this Commonwealth, an inspection shall be made by a boiler inspector, or a special boiler inspector holding a national board commission, and the data submitted by him shall be filed by the owner or user of the boiler or pressure vessel with the Boiler Inspection Section for approval.

(21) Reinstalled boilers or pressure vessels. In any case where a boiler or pressure vessel within the Commonwealth is moved and reinstalled, the fittings and appliances shall comply with the ASME Boiler and Pressure Vessel Code and the regulations adopted in Title 815, Chapter 15 of the Kentucky Administrative Regulations.

(22) Factors of safety for existing installations. The inspector shall be authorized to increase factors of safety if the condition of the boiler warrants it. If the owner or user does not concur with the inspector's decision, he may appeal to the commissioner who may request a joint inspection by the chief inspector and the boiler inspector or special boiler inspector. Each inspector shall render his report to the commissioner, who shall render the final decision, based upon the data contained in all the inspector's reports.

(23) Major repairs. Major repairs shall require prior approval of an inspector and permits as required by KRS 236.250.

(24) Repairs [by welding]. Repairs to any safety valve, safety relief valve, relief valve or liquid relief valve shall be stamped upon completion of the repair by a firm in possession of the National Board Certificate of Authorization for use of the Valve Repair (VR) Stamp. Boiler and pressure vessel [Welding] repairs shall be performed in accordance with the rules recommended by the National Board of Boiler and Pressure Vessel Inspectors Inspection Code available from the 1979 Edition, (or most recent edition).

(25) Riveted patches. Riveted patches shall be designed and installed in accordance with the rules recommended by the National Board of Boiler and Pressure Vessel Inspectors Inspection Code.

(26) Removal of safety appliances. No person, except under the direction of an inspector, shall attempt to remove or shall do any work, upon any safety appliance, while a boiler is in operation. If any of these appliances is repaired during an outage of a boiler or pressure vessel, they shall be reinstalled and in proper working order before the object shall be again placed in service.

(27) Inspection fees. The installing contractor, owner or user of any boiler or pressure vessel or pressure piping not exempted under KRS Chapter 236 and required to be inspected by a boiler or pressure vessel inspector, shall pay to the department following inspection of the boiler, fees in accordance with this section. The fees for all new installations of boilers, pressure vessels or pressure piping and fees for repairs shall be in accordance with the fees listed in paragraph (d)2 of this subsection.

(a) Shop inspections made by boiler inspectors for purposes of inspecting the fabrication of the vessels themselves at the request of a boiler manufacturer, installer, engineering contractor, or owner shall be charged at the following rates:

1. $150 for one-half (1/2) day of four (4) hours or less.
2. $200 for one (1) day of over four (4) hours.
3. $240 for eight (8) hours or any part thereof on Saturdays, Sundays, or public holidays.
4. Thirty (30) dollars per hour for overtime in excess of eight (8) hours in any one (1) day. Plus itemized expenses to include mileage, lodging, meals and incidentals. These charges shall not void regular fees for inspection and certificate when the boilers or pressure vessels are completed.

(b) Charges for inspection of secondhand equipment shall be at the rates specified above plus charges for mileage, lodging, meals, and incidentals. These charges shall not void regular fees for inspection and certificate when the boilers or pressure vessels are installed.

(c) ASME and National Board inspections. Inspections of the manufacturing facility itself, at the request of the manufacturer, for the issuance of ASME or National Board certificates of authorization shall be charged as follows:

1. Initial inspection for ASME certificates – $1,000.
2. Reviews for renewal of ASME Certificates – $750.
3. Initial inspections and renewals for National Board R or VR certificate – $200.

(d) Inspection of new installations of pressure piping, boilers and pressure vessels:

1. Under normal circumstances, pressure piping inspection shall be a "once only" inspection as specified under KRS Chapter 236 and shall be conducted generally as set forth under subsection (4)(b) of this section.
2. The fees chargeable for inspection of each boiler and pressure vessel and all pressure piping carrying substantially the same pressures and temperatures as encountered in the boiler shall be based upon the total dollar value covering the combined boiler/pressure vessel and piping installation, either actual or estimated. It shall be the obligation of the installing contractor to supply this value which shall include both labor and material costs. No exact figure need be quoted or divulged to the boiler inspector or department; only a designation that the true value lies within certain limits as set forth in the table below. The fees for all new installations of boiler, pressure vessels or pressure piping and fees for repairs are then found in the table's right hand column.

| Amount In Dollars | Fee |
|---|---|
| $ 2,000 or less | $ 60 |
| $ 2,001 to $10,000 | $ 90 |
| $ 10,001 to $25,000 | $120 |
| $ 25,001 to $50,000 | $150 |
| $ 50,001 to $75,000 | $200 |
| $ 75,001 to $100,000 | $300 |
| $100,001 to $150,000 | $400 |
| $150,001 to $200,000 | $500 |
| $200,001 to $250,000 | $600 |
| $250,001 to $300,000 | $700 |
| $300,001 to $400,000 | $800 |
| $400,001 to $500,000 | $1,000 |
| $500,001 and over | $1,200 |

3. The installing contractor, owner or user shall request inspection of boilers and pressure piping at least seven (7) days in advance. If the inspection is not made within this time limit, the installation may proceed. Request for inspection shall be made by letter or phone call to the department.

(e) Inspection of nuclear installations: Nuclear installation inspections shall be charged as set forth under paragraph (a) of this subsection or as determined by contracts between the installer and the department.

(f) Hydrostatic tests: When it is necessary to make a special trip to witness the application of a hydrostatic test, an additional fee based on the scale of fees set forth under paragraph (a) of this subsection shall be charged.

(g) Fees for reinspection of boilers and pressure vessels:

1. Fees for reinspection of power boilers shall be in accordance with the following tables:

INTERNAL INSPECTIONS OF POWER BOILERS

| Height Surface (Square Feet) | Fee |
|---|---|
| 100 or less | $20 |
| 101 to 1,000 | $40 |
| 1,001 to 4,000 | $70 |
| 4,001 to 10,000 | $100 |
| 10,001 and over | $160 |

EXTERNAL INSPECTIONS OF POWER BOILERS

| Height Surface (Square Feet) | Fee |
|---|---|
| 100 or less | $16 |
| 101 and over | $20 |

2. Fees for reinspection of heating boilers shall be as follows:

HEATING BOILERS

| | |
|---|---|
| Boilers with man way where internal inspection required | $40 |
| Other heating boilers | $20 |
| Hot water supply boilers | $10 |
| Miniature boilers | $10 |

3. The initial installation inspection fee for pressure vessels shall be twenty (20) dollars.

(h) Plan review of boiler and unfired pressure vessel installations: Prior to the construction and installation of any boiler or unfired pressure vessel, the plans for the installation shall be submitted to the chief boiler inspector of this department for review and release for construction. Fees for this service shall be provided in accordance with the following table:

| Heating Surface (Square Feet) | Fee |
|---|---|
| 100 and under | $20 |
| 101 to 1,000 | $30 |
| 1,001 to 4,000 | $50 |
| 4,001 to 10,000 | $70 |
| 10,001 and over | $100 |
| Unfired Pressure Vessels | $20 |

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: July 3, 1991
FILED WITH LRC: July 8, 1991 at 2 p.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on August 21, 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 August 16, 1991, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

(1) Type and number of entities affected: All high pressure boiler and pressure vessel owners who choose to have safety valves repaired instead of replaced.

(a) Direct and indirect costs or savings to those affected: No change in costs or savings for those companies operating under established practices of the industry and previous requirements of the Boiler Code.

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No paperwork or reporting requirements will be changed with this amendment.

(2) Effects on the promulgating administrative body: This amendment specifies the stamp to be used when repairs are made to safety valves and the report form used by special inspectors and insurance companies.

(a) Direct and indirect costs or savings: None involved with the implementation of this amendment.

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: This amendment represents no change in existing methods used in the department.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were assessed or rejected.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No known conflicting statute.

(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 boiler and pressure vessel contractors and standards for boilers and pressure vessels need to be uniform in treatment and protection.

## PUBLIC PROTECTION & REGULATION CABINET
## Department of Housing, Buildings & Construction
## Office of State Fire Marshal
## (Proposed Amendment)

**815 KAR 30:060. Certification of underground petroleum storage tank contractors.**

RELATES TO: KRS 224.814, 224.820
STATUTORY AUTHORITY: KRS 224.820(5), 227.300

NECESSITY AND FUNCTION: KRS 224.820(5) requires the State Fire Marshal to promulgate regulations requiring any person or organization who installs, repairs, closes or removes an underground petroleum storage tank for an owner or operator to demonstrate financial capability, including maintenance of pollution liability insurance and technical competency and proficiency. This regulation is necessary to set the minimum requirements for determining technical competency and proficiency of companies who are responsible for the installation of these systems by qualifying individuals and to determine financial capability through proof of insurance. <u>This amendment is necessary to delete OSHA requirements for medical training, etc., is inappropriate at the certification stage, and to reduce the experience requirements and to provide appropriate review of competency.</u>

Section 1. Definitions. Definitions in this section shall apply to this regulation.

(1) "Certified contractor" means any individual or organization certified by the State Fire Marshal as qualified to engage in the business of installing, repairing, removing, closing, and supervising of other employees in the installation, performance of repairs on site for closure or removal of UPST systems. A person or organization may be qualified pursuant to this regulation to engage in the business of removal and closure, only, but the certification shall be limited to closure and removal, only.

(2) "Close or closure" means permanently taking an underground storage tank out of service without removing it from the ground.

(3) "Repair" means the restoration of a tank or an underground storage tank or any of its components that has caused a release of a product from the system or the modification of the tank or a system component. "Repair" does not include routine maintenance or cathodic protection applied to existing installations.

(4) "Remove or removal" means permanently taking an underground storage tank or any of its components out of service by removing it from the ground.

(5) "Supervise" means being physically on site and having the authority and responsibility for the direction of other employees engaged in carrying out the installation of, making repairs on site to, closure, or removal of UPST systems as well as having the authority to exercise independent judgment regarding the recommendation of activities to other employees acting under his direction.

(6) "Underground storage tank" means as defined by KRS 224.810.

(7) "UPST system" means an underground storage tank defined by KRS 224.810 and used solely for the storage of petroleum and petroleum products.

Section 2. Effective April 1, 1991. (1) No permit for the installation of any UPST system shall be issued by the State Fire Marshal unless the applicant for the permit is a certified contractor, and the applicant assures the State Fire Marshal's Office, in writing, that the installation shall comply with all applicable requirements of the Natural Resources and Environmental Protection Cabinet promulgated in 401 KAR Chapter 42.

(2) No individual or company shall install, remove, repair or close any UPST system unless the installation, removal, repair or closure is made by a certified contractor and unless the installation, removal, repair or closure of the system complies with applicable regulations of the Natural Resources and Environmental Protection Cabinet, set forth in 401 KAR Chapter 42.

(3) A company may be the certified contractor and may engage in the activities regulated by this regulation if it has in its employ at least one (1) person who has passed the examination and demonstrated the experience to obtain qualification for the company as a certified contractor and that person supervises the activities described by Section 3 of this regulation.

Section 3. Supervision Requirements. (1) A certified contractor shall be present on site for each of the following activities:

(a) Preparation of the excavation immediately prior to receiving backfill or any component of the UPST system;

(b) Setting of the UPST system, including placement of any anchoring devices, backfilling to the level of the UPST system and strapping, if any;

(c) Final inspection of an installation after components of the piping have been connected, field coated and cathodically protected;

(d) Final pressure testing of any component of the tank or piping components of the UPST system;

(e) Completion of the backfilling and filling of the excavation.

(2) Repairs to a UPST system shall require a certified contractor to be present on site for each of the following activities:

(a) The actual excavation of existing UPST systems;

(b) The actual performance of repairs to the UPST system;

(c) Any time during the repair project in which components of the piping are connected;

(d) Any time during the repair project in which the UPST or its associated piping is pressure tested;

(e) The replacement of piping valves, fill pipes, vents, leak detection devices, or spill and overfill protection devices;

(f) The addition of leak detection devices or spill and overfill devices.

(3) Preparation for closing a UPST system shall require a certified contractor to be present on site for each of the following activities:

(a) The cleaning and purging of a UPST system;

(b) The filling of a UPST system with an inert solid material;

(c) All testing associated with the cleaning and purging processes;

(d) Any time during the closing in which components of the UPST system are disconnected or capped.

(4) Removal of a UPST system shall require a certified contractor to be present on site during each of the following activities:

(a) The cleaning and purging of the UPST system;

(b) The actual excavation and removal of the UPST system or any of its components;

(c) All testing associated with the cleaning and purging processes;

(d) Any time during the removal in which components of the UPST system are disconnected or capped.

Section 4. Certificate Availability. Each certified contractor shall have a copy of the current certificate issued by the State Fire Marshal at the location where he is supervising work. Upon request of a fire official or agent of the Natural Resources and Environmental Protection Cabinet, a certified contractor shall make the current certificate available for inspection.

Section 5. Application for Certification Requirements. Each applicant for certified contractor shall meet all of the following application requirements:

(1) The applicant shall submit an application to the State Fire Marshal, on the form furnished by the State Fire Marshal and outlined in Section 10 of this regulation, accompanied by a nonrefundable fee of $150; and

(2) The applicant shall be an individual, and

shall be at least eighteen (18) years of age; and

(3) The individual shall verify to the State Fire Marshal the individual's experience in the installation of, performance of repairs on site, closure and removal of UPST systems, as required by Section 6 of this regulation; and

(4) The individual shall complete the examination requirements of Section 7 of this regulation; and

(5) The individual shall provide proof of financial capability by submitting certificates of general liability insurance in the minimum amount of $500,000 and pollution liability insurance in the minimum amount of $25,000 per occurrence for taking corrective action as described by KRS 224.817; and

(6) If the individual wishes the certificate to be issued with a company name, the company name shall be indicated on the application form and the company shall provide the insurance certificates required by subsection (5) of this section and otherwise be subject to this regulation.

[(7) EPA health and safety training.]

[(a) The application shall affirm, in writing, compliance with OSHA 29 CFR 120 including forty (40) hours of safety training and eight (8) hours annual refresher course for working at hazardous waste sites.]

[(b) The application shall affirm, in writing, compliance with requirements for enrollment in medical baseline and monitoring program in accordance with appropriate categories listed in Appendices I and II of EPA Field Health and Safety Manual (1987).]

Section 6. Experience Requirements. (1) The person making application shall demonstrate that within five (5) years immediately prior to making application, the person's participation in the installation of, performance of repairs on site to, closure of, or removal of a minimum of six (6) [twelve (12)] underground storage tanks. Of the participations, a minimum of three (3) [six (6)] shall have involved the installation of UPST systems; or

(2) Technical training of the type provided and documented by the manufacturer of the underground storage tanks and approved by the State Fire Marshal shall eliminate [reduce] the experience requirements [of subsection (1) of this section by one-half (1/2)].

(3) A BS degree in engineering with a concentration in the area of underground containment systems or a Kentucky license to practice engineering shall reduce the experience requirements of subsection (1) by two-thirds (2/3).

(4) An applicant requesting contractor certification pursuant to this regulation for the limited function of removal and closure shall demonstrate experience in removal and closure of six (6) underground storage tanks.

Section 7. Examination Requirements. Each applicant for certified contractor shall take and pass a written examination administered by the State Fire Marshal in compliance with this section.

(1) The applicant shall submit payment of a twenty-five (25) dollar nonrefundable fee at least ten (10) days prior to the date of examination.

(2) The examination for full certification shall be a written multiple choice examination covering all aspects of the installation, repair, closure, and removal of underground petroleum storage tank systems. The examination shall test the applicant's knowledge of codes, standards, laws and regulations and of current technological and industry recommended practices with respect to the proper installation, repair, closure, and removal of UPST systems.

(3) An applicant who requests to be a certified contractor for the limited purpose of removing and permanently closing UPST systems shall be tested on knowledge of closure and removal only.

(4) An applicant may request permission to take the examination orally, upon good cause shown.

(5) To satisfactorily pass the written examination, the applicant shall obtain a minimum score of seventy-five (75) percent on the examination.

(6) Any applicant who fails the examination may request reexamination upon payment of a nonrefundable twenty-five (25) dollar fee. An application shall remain pending for that purpose for a period of one (1) year after the date the application was submitted. If the applicant has not requested reexamination within the one (1) year period, the applicant shall file a new application for certification with the State Fire Marshal.

(7) Examinations shall be given monthly in the State Fire Marshal's Office located at 1047 U.S. 127 South, Frankfort, Kentucky.

(8) All examinations shall be graded and the applicants notified on the day of the examination. Examination papers shall not be returned to the applicant, but may be reviewed by the applicant on the day of the examination.

(9) When the application is filed, the State Fire Marshal shall furnish the applicant with a set of instructions and sample examination questions. Instruction sheets shall refer the applicant to appropriate laws, regulations and industry publications.

Section 8. Certification and Renewal Procedures. (1) Effective April 1, 1991, the State Fire Marshal shall issue a certificate to each individual or company as set forth in Sections 5 through 7 of this regulation. The certificate shall be renewed annually for a fee of fifty (50) dollars.

(2) The application or renewal for a certified contractor shall be denied by the State Fire Marshal if any of the following occur:

(a) The applicant failed to provide the information required by the application form prescribed by the State Fire Marshal and outlined in Section 10 of this regulation; or

(b) The applicant failed to provide the insurance certificates or the fee required for application and examination; or

(c) The applicant failed to comply with the experience and education requirements of this regulation; or

(d) The applicant did not successfully pass the examination required by this regulation; or

(e) The applicant made a misrepresentation or submitted false statements with the application.

Section 9. Revocation or Suspension of Certification. A certificate issued pursuant to this regulation may be suspended or revoked by the State Fire Marshal for any of the following reasons:

(1) The certified contractor negligently, incompetently, recklessly or intentionally violated any provision of this regulation or any required code relating to installation, repair, closure or removal; or

(2) The certified contractor recklessly or intentionally caused or permitted a person under the contractor's supervision to install, perform a repair on site to, close, or remove a UPST system in violation of the Kentucky Standards of Safety (815 KAR 10:040); or

(3) The certified contractor obtained the certification through fraud or misrepresentation.

(4) The individual who took the examination, provided the experience requirements and requested the certificate to be issued with a company's name and proof of insurance, is no longer employed by the company in whose name the certificate was issued.

Section 10. Application Form for Certification of Underground Petroleum Storage Tank Contractors.

APPLICATION FOR CERTIFICATION OF UNDERGROUND PETROLEUM STORAGE TANK CONTRACTORS

TYPE: ___Full ___Remover
Application Fee: $150
Examination: $25 __Yes __No
(Remit by check or money order only. Payable to: Kentucky State Treasurer)

FOR OFFICE USE ONLY
Rec'd (Date)_____
Money Rec'd_____
Application #_____
Certification #____

PLEASE PRINT OR TYPE AND SIGN

1. Full Name_____
2. Permanent Residence_____
Street/Box Office Number
_____
City County State Zip
3. Telephone: _____ _____
Residence Business
4. Birthdate _____ 5. Social Security #_____
6. Place of Birth _____
City County State
7. Business Address _____
Street/Box Office Number
_____
City County State Zip
8. Certificate issued in:
____Company Name ____Individual Name
9. Send Mail to: _____
Business Address/#7
_____
Permanent Residence/#2
10. List any schools or training seminars concerning tank installations which you have attended:

| Title | | Presented By | | Date(s) |
|---|---|---|---|---|
| | | | | |
| | | | | |
| | | | | |
| | | | | |

11. With whom did you most recently apprentice as a tank installer?
Business name:_____
Address:_____
Street City State Zip
Person who supervised you:_____
Period of apprenticeship:
From _____ To _____
Month Yr Month Yr

12A. Number of years experience as a tank installer: _____

12B. Number of years experience as a tank remover: _____

13. Approximate # of tank installations you have:

| | Supervised? | Participated in? |
|---|---|---|
| Bare/asphalt coated steel | | |
| Fiberglass | | |
| Fiberglass coated steel | | |
| Cathodically protected steel (STI-P3) | | |
| Dual containment (excavation liner) | | |
| Dual containment (double wall tank) | | |
| TOTALS | | |

14A. Approximate number of piping installations you have:

| | Supervised? | Participated in? |
|---|---|---|
| Black iron/ galvanized | | |
| Copper | | |
| Fiberglass | | |
| Cathodically protected steel | | |
| Dual wall | | |
| TOTALS | | |

14B. Approximate number of tank removals you have: Supervised _____ Participated in _____

15. List the names and addresses of at least 3 people (e.g., employer, supervisors) familiar with your work as a tank installer/remover.

| Name | | Address | | Telephone # |
|---|---|---|---|---|
| 1. | | | | |
| 2. | | | | |
| 3. | | | | |

[16.Compliance with health and worker safety? Yes ___ No ___
40 hour safety training? Yes ___ No ___
8 hour annual refresher? Yes ___ No __]

[17.Compliance with baseline medical and monitoring program? Yes ___ No __]

16. [18.] Attach proof of general liability insurance.

17. [19.] Attach proof of pollution liability insurance.

18. [20.] Attach experience, listing of jobs (i.e., name of project, company name, dates, city, county, state, size and number of tanks, etc.).

I, _____, hereby certify that the information contained on this application and attached Experience Data Sheets is true and correct to the best of my knowledge.

_____
Signature of Applicant

_____
Date

NOTARIZED BY:
State of_____
County of_____
Subscribed and sworn to before me this _____ day of _____, 19____

_____
Notary Public
My Commission expires_____

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: June 27, 1991
FILED WITH LRC: July 8, 1991 at 2 p.m.
PUBLIC HEARING: A public hearing on this regulation shall be held on August 21, 1991 at 10 a.m. in the office of the Department of Housing, Buildings and Construction, U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 16, 1991, (five days prior to the 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 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.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden
(1) Type and number of entities affected: No effect on those regulated (i.e., persons seeking certification) because this item was not being enforced, but was intended only for notice purposes.
(a) Direct and indirect costs or savings to those affected: No effect on agency except to clarify our intentions and not overly regulate.
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: This amendment has no impact on the department.
(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: No anticipated effect on state or local revenue.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Previous method of listing information caused confusion.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: OSHA standards overlap and conflict; so we are removing reference to them.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. Tiering for this amendment was not appropriate.

**PUBLIC PROTECTION & REGULATION CABINET**
**Department of Housing, Buildings & Construction**
**Office of State Fire Marshal**
**(Proposed Amendment)**

**815 KAR 46:010. Aid to fire departments.**

RELATES TO: KRS 17.210, 136.392
STATUTORY AUTHORITY: KRS 17.250
NECESSITY AND FUNCTION: KRS 17.250 requires the State Fire Marshal to allot funds to local volunteer fire departments in order to promote better fire protection through better facilities and equipment. This proposed regulation sets out standards and procedures for determining the amount or use of volunteer fire department aid. This amendment is necessary because the period of time for fire departments to report spending of allotted funds needs to be extended.

Section 1. Definitions. (1) "Certified firefighter" means [. For the purpose of these regulations shall be] one who has received at least 150 hours of certified fire training as recognized by the Commission on Fire Protection Personnel Standards and Education and receives at least twenty (20) hours certified training annually thereafter.
(2) "Certified training" [. For the purpose of these regulations] means firefighter training given or verified by a certified instructor and approved and recorded by the commission.
(3) "Commission" [. For the purpose of these regulations] means the Commission on Fire Protection Personnel Standards and Education established pursuant to KRS 95A.020.
(4) "Fire apparatus" [. For the purpose of these regulations] means a motorized vehicle specifically designed to perform firefighting operations, equipped with a pump having a minimum capacity of pumping 250 gallons per minute and with sufficient space to carry hose and other fire suppression equipment.
(5) "Full-time paid firefighter" [. For the purpose of these regulations] means an individual who works for a minimum salary of $8,000 annually and works a minimum of 2,080 hours per year as an employee of a fire department or fire protection district that is recognized by the State Fire Marshal's Office.
(6) "Volunteer fire department" [. For the purpose of these regulations] means a fire department recognized by the State Fire Marshal's Office which has a membership consisting of less than fifty (50) percent of its members being full-time paid firefighters and the remaining number being volunteer firefighters.
(7) "Newly formed department" [. For the purpose of these regulations] means a department which has organized to the point of having at least twelve (12) members and a chief, having either in their possession or on order an operational fire apparatus. They shall also have

funds, equipment, land and buildings of [such] sufficient value made available to the newly formed fire unit from any source [whatever] for the year in which the allotment is to be made to match or exceed the amount of the aid allotment.

Section 2. Eligibility. (1) The State Fire Marshal shall allot on an annual basis (August 1 through September 30) an equal share of the funds accruing to and appropriated for volunteer fire department aid to all eligible departments.

(2) To qualify to receive aid under the Volunteer Fire Department Aid Law, volunteer fire departments in cities of all classes, fire prevention districts organized pursuant to KRS Chapter 75, county districts established under authority of KRS 67.083 and all other organized volunteer fire departments operated and maintained on a nonprofit basis in the interest of the health, safety, prosperity and security of the inhabitants of the Commonwealth shall [must] maintain at least twelve (12) firefighters, a chief and at least one (1) operational fire apparatus.

(3) Any fire department or entity eligible for and receiving funding pursuant to these regulations shall have a minimum of fifty (50) percent of its personnel certified as recognized by the Commission on Fire Protection Personnel Standards and Education.

(4) Each fire department shall furnish the Office of State Fire Marshal an update list of active firefighting members of the fire department by the 31st of July each year so that the fifty (50) percent certification requirement can be checked.

(5) To be eligible to receive funds, a newly formed fire department shall [must] have at least twelve (12) firefighters, a chief and at least one (1) operational fire apparatus or one (1) on order. They must have fifty (50) percent of their membership with at least one-half (1/2) of their training hours toward certification by July 31 within their first year of existence and plans to receive the balance of the required hours for certification within the second year of their existence. Each year thereafter, they shall meet the requirements of the commission to retain certification.

Section 3. Participation Requirement. (1) It shall be the responsibility of the Chief Officer or his appointed representative of each department to furnish any information required by the Fire Department Aid Coordinator for determination of eligibility.

(2) Any volunteer fire department seeking aid pursuant to the authority of KRS 17.250 shall file an application on blanks which may be obtained from the Office of the State Fire Marshal.

(3) The [Such] applications shall be executed in duplicate, one (1) copy to be retained by the applicant and the original to be forwarded to the State Fire Marshal.

Section 4. Verification and Inspection. (1) The application for aid shall contain or have attached thereto a detailed statement of the equipment to be purchased, repairs to be made, or other purposes for which the allotment is to be expended and such other information as the State Fire Marshal may require to give proper consideration to the request.

(2) Where a new department is being established, there shall be furnished with the application additional information as to the territory to be served and plans and specifications for the establishment of the department.

(3) The Fire Department Aid Coordinator shall, upon receipt of the application, advise the State Fire Marshal as to the validity of the qualifications and approval for grant-in-aid.

(4) The State Fire Marshal or the Fire Department Aid Coordinator or their representative may make an inspection of the applicant's department to determine comparative needs within the department before allotment is made.

Section 5. Processing Applications for and Expenditure of Aid. (1) No allotment shall [may] be expended for any purpose other than that for which it is approved without the approval of the Fire Department Aid Coordinator.

(2) If approved allotment is insufficient to cover cost of equipment or other approved purpose, funds granted for any fiscal year may be deposited in any bank legally authorized by applicant, to be held for a period not to exceed five (5) years from the initial request. If additional time beyond the five (5) years is needed, a written request shall be made to the Fire Department Aid Coordinator giving reasons why additional time is needed. This shall be held in a special and separate bank account marked Fire Department Aid.

(3) If an allotment is granted to a department and is not to be used for purchase of equipment for which it was granted, the chief of the department shall:

(a) Contact the Fire Department Coordinator [directly] giving the reason why he wishes to make a change in the original equipment list; or

(b) Resubmit a new equipment list which shall [is to] be approved by the State Fire Marshal; or

(c) Refund the grant-in-aid allotment.

(4) Amounts expended for expenses of firemen in attending fire related school or classes shall not exceed $200 for any one (1) department. This shall be an item entered on your regular equipment list.

(5) When expenditure is made of any allotted funds, copies of receipted bills shall be forwarded (by the 15th of March [31st of December] of the current fiscal year) to the Fire Department Aid Coordinator and after his approval shall be forwarded to the State Fire Marshal. If grant is to be used toward the retirement of a preexisting debt for purchase of land, buildings or equipment, proof of the [such] expenditure in the form of an affidavit or cancelled note shall be furnished the State Fire Marshal. Any false statements made knowingly by an applicant shall call for refund of grant monies and prosecution under existing statutes.

RODNEY RABY, State Fire Marshal
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: June 28, 1991
FILED WITH LRC: July 8, 1991 at 2 p.m.
PUBLIC HEARING: A public hearing on this regulation shall be held on August 21, 1991 at 10 a.m. in the office of the Department of Housing, Buildings and Construction, U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 16,

1991, (five days prior to the 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 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.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden
(1) Type and number of entities affected: All State Fire Marshal recognized volunteer fire departments; effect is that the amendment gives the fire departments more time to compile their records, etc.
(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: Makes our working relationship with volunteer fire departments to be more favorable.
(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: The alternative December 31 was too early and extending the reporting any later would be burdensome.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.
(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. No tiering because all fire departments will best benefit.

**CABINET FOR HUMAN RESOURCES**
**Department for Health Services**
**(Proposed Amendment)**

**902 KAR 13:080. Authorized procedures.**

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 (EMTs). The function of this regulation is to establish procedures which EMTs are authorized to perform.

Section 1. Authorized Certified EMT Procedures. (1) Except as otherwise provided in subsections (2) and (3) of this section, certified EMTs may perform any of the procedures as set forth in the "Basic Emergency Medical Technician: National Standard Curriculum," Third Edition, 1984, published by the United States Cabinet of Transportation, National Highway and Traffic Safety Administration, Washington, D. C. 20590, and in the accompanying text entitled "Emergency Care," Fifth Edition, 1990, published by The Brady Company, Prentice-Hall, Inc., Englewood Cliffs, N.J. 07632. A copy of both publications, 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.
(2) An EMT shall not [perform any of the following procedures]:
(a) Perform the initiation [administration] of intravenous (I.V.) fluid infusion, but may: [or plasma expanders, or both;]
1. Transport a stable patient with an I.V. infusion entry point maintained patent by a heparin lock placement, to which no I.V. infusion fluid is attached;
2. Transport interfacility or facility to home a stable patient who has a preestablished peripheral I.V. infusion; and as authorized by local medical control may perform procedures for the maintenance and, if needed, discontinuation of the preestablished peripheral I.V. infusion according to the training requirements specified in 902 KAR 13:030;
3. Transport a patient having a preestablished I.V. infusion who is encountered in a prehospital setting to the nearest appropriate medical facility based on local protocol, but may not discontinue the preestablished I.V. infusion; or shall not:
(b) Perform a cricothyrotomy;
(c) Relieve a tension pneumothorax through the use of needles;
(d) Insert an esophageal obturator airway or esophageal gastric tube airway;
(e) Perform external cardiac defibrillation except by use of automatic or semiautomatic defibrillation equipment authorized according to the requirements specified in 902 KAR 13:120; or [.]
(f) [(3) An EMT shall not] Use medical antishock trousers unless:
1. [(a)] He has completed a Kentucky emergency medical technician course during which the use of medical antishock trousers was taught after July 1, 1985; or
2. [(b)] He is currently certified as an emergency medical technician and completes the four (4) hour training session on the medical antishock trousers and successfully passes an examination administered by the cabinet consisting of both written and practical application examinations. The standards for such examinations shall be the same as for an EMT course. The training and examination shall be conducted by an EMT instructor or instructor trainer in accordance with the criteria set

forth in the "Basic Emergency Medical Technician: National Standard Curriculum," Third Edition, 1984 and the standards and protocols of the Cabinet for Human Resources; or

3. [(c)] He has completed an emergency medical technician course in another state which included the use of medical antishock trousers and has taken and passed, as a part of his Kentucky challenge examination, an examination in the use of medical antishock trousers; and

4. [(d)] He uses medical antishock trousers in accordance with the standards and the protocol of the cabinet.

Section 2. EMT-defibrillation Pilot Program. An EMT who has [have] successfully completed the cabinet's ten (10) hour training course for the semiautomatic defibrillation pilot program and has [have] successfully passed an examination consisting of both written and practical application examinations, shall be authorized to perform defibrillation procedures in accordance with the standards and protocols established by the cabinet. Such authorization shall expire on June 30, 1991. Following June 30, 1991, the pilot program EMTs may perform automatic or semiautomatic defibrillation authorized according to the requirements specified in 902 KAR 13:120.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 27, 1991
FILED WITH LRC: July 2, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this regulation will be held on August 21, 1991 at 9 a.m. in the Department for Employment Services Conference Room, 2nd Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 1991: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Robert P. Calhoun

(1) Type and number of entities affected: Only those provider services that apply for and meet the criteria will be affected.

(a) Direct and indirect costs or savings to those affected: This is not a mandatory service. Any costs incurred for training will be born by the ambulance services.

1. First year: This amendment merely authorizes the procedure. No costs are involved except for training the EMTs.

2. Continuing costs or savings: Training costs will likely continue.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Those providers which opt to provide transport of patients with I.V. infusions could provide more services.

(b) Reporting and paperwork requirements: Providers must report to the cabinet prior to commencement of training and at least annually thereafter.

(2) Effects on the promulgating administrative body: Central office staff will have to review applications from providers.

(a) Direct and indirect costs or savings: Will increase costs due to staff time needed to review and process applications.

1. First year: Approximately 5% increase to staff time.

2. Continuing costs or savings: Will increase as more applicants apply.

3. Additional factors increasing or decreasing costs: Regional staff will monitor ambulance services for adherence to requirements.

(b) Reporting and paperwork requirements: Will 1) review training applications and report results to ambulance services; 2) maintain data files and provide status reports to Division of Licensing and Regulation.

(3) Assessment of anticipated effect on state and local revenues: None on the state. Local revenues could increase by providing this procedure.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This amendment will increase availability of this procedure.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation or policy conflicts, overlaps or is duplicated by this regulation.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes

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) Only if the provider that elects to provide this service is partially or fully financed by a local government.

2. State what unit, part or division of local government this administrative regulation will affect. Only as an optional decision. This is not a mandatory procedure.

3. State the aspect or service of local government to which this administrative regulation relates. The ambulance service if they elect to provide this service.

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: Will increase costs to train EMTs to provide this service, but some costs may be offset by increased revenues.

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

**904 KAR 2:006. Technical requirements; AFDC.**

RELATES TO: KRS 205.010, 205.200(2), (3), 45 CFR 205.52, 205.10, 232.11-12, 232.40-48, 233.10, 233.40, 233.50, 45 CFR 233.90, 233.100, 250

STATUTORY AUTHORITY: KRS 194.050, 205.200(2),

(3)

NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility under the provisions of KRS Chapter 205 to administer the assistance program of Aid to Families with Dependent Children (AFDC) in accordance with Title IV-A of the Social Security Act. KRS 205.200(2) requires that the conditions of eligibility to receive AFDC money grants be prescribed by regulations in conformity with the Social Security Act and federal regulations. This regulation sets forth the technical requirements of residence, deprivation, living with a relative, age, one (1) category of assistance, work registration, job opportunities and basic skills (JOBS) program participation, cooperation in child support enforcement activities and potential entitlement for other programs for eligibility for AFDC.

Section 1. Definitions. (1) "Assessment" means the ongoing evaluation of an individual's educational and vocational potential.

(2) "Barriers" are any hardships the individual shall overcome to participate in education, training or employment.

(3) "Case manager" means the Department for Social Insurance (DSI) individual who:

(a) Determines ongoing AFDC or medical assistance (MA) or food stamp (FS) eligibility and benefit levels for all case action in the household of a JOBS participant;

(b) Aids the JOBS participant by brokering services for the participant;

(c) Identifies and resolves barriers to the extent possible; and

(d) Delivers JOBS related services to the participant.

(4) "Conciliation" is a process in which participation problems in the JOBS program can be resolved.

(5) "JOBS" means a program which assists recipients of AFDC in obtaining the necessary education and training that will lead to gainful employment and self-support.

(6) "Target population" means that group composed of each individual who:

(a) Is receiving AFDC, and who has received AFDC for any thirty-six (36) of the sixty (60) months immediately preceding the most recent month for which application has been made;

(b) Makes application for AFDC and has received AFDC for any thirty-six (36) of the sixty (60) months immediately preceding the most recent month for which application has been made;

(c) Is a custodial parent under the age of twenty-four (24) who:

1. Has not completed a high school education and, at the time of application for AFDC, is not enrolled in high school or a high school equivalency course of instruction; or

2. Had little or no work experience in the preceding year; or

(d) Is a member of a family in which the youngest child is within two (2) years of being ineligible for AFDC because of age.

Section 2. Residence and Citizenship. (1) Residence. A resident is anyone who:

(a) Is living in the state;

(b) Entered the state with a job commitment or seeking employment; and

(c) Is not receiving AFDC benefits from another state.

(2) Citizenship. AFDC shall be provided only to:

(a) Citizens;

(b) Aliens lawfully admitted for permanent residence; or

(c) Aliens otherwise permanently residing in the United States under color of law.

Section 3. Deprivation. (1) To be eligible for AFDC, a child shall be in need and shall be deprived of parental support of a natural or adoptive parent or care due to:

(a) Death;

(b) Continued absence from the home;

(c) Physical or mental incapacity; or

(d) Effective October 1, 1990, unemployment.

(2) A married child living with his spouse in the home of his parents is not deprived of parental support or care.

(3) A married child living in the home of his parents but divorced or legally separated from his spouse is deprived of parental support if he is dependent on the parent and a parent is:

(a) Dead;

(b) Incapacitated;

(c) Unemployed; or

(d) Continually absent from the home.

(4) Continued absence from the home.

(a) To be eligible for AFDC, a needy child shall be physically separated from the parent and:

1. The nature of the absence of the parent interrupts or terminates the parent's functioning as a provider of maintenance, physical care, or guidance for the child; and

2. The known or indefinite duration of absence precludes counting on the parent's performance of his function in planning for the present support or care of the child.

(b) Absence may be voluntary or involuntary.

1. Voluntary absence includes:

a. Divorce;

b. Legal separation;

c. Marriage annulment;

d. Desertion of thirty (30) days or more;

e. Forced separation of seven (7) days or more; or

f. Birth out-of-wedlock.

2. Involuntary absence includes:

a. Commitment to a penal institution for thirty (30) days or more;

b. Long-term hospitalization;

c. Deportation; or

d. Single parent adoption.

(c) A parent who is a convicted offender but is permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday is considered absent from the home.

(5) Incapacity.

(a) All determinations regarding whether a child has been deprived of parental support or care by reason of the physical or mental incapacity of a natural or adoptive parent shall be in conformance with federal regulations and the criteria set forth in this subsection.

(b) Each determination shall be based on a full consideration and assessment of all medical, social, and economic factors involving a particular claimant.

(c) If a verified medical condition exists, then all relevant social and economic factors shall be considered to determine whether the parent's condition is the cause of and results in a parent's inability to support or care for the child.

1. Incapacity exists in each case when the following criteria are met:

a. It is medically determined that one (1) parent has a physical or mental defect, illness or impairment which was:

(i) Present at the time of application; and

(ii) Which has continued or is expected to last for a period of at least thirty (30) calendar days. This may include a period in which the claimant is undergoing planned diagnostic studies or evaluation of rehabilitation potential; and

b. It is determined by nonmedical evaluation that such defect, illness or impairment is debilitating to the extent of reducing substantially or eliminating the parent's ability to support or care for an otherwise eligible child.

2. Factors to be considered in making the medical determination shall include:

a. The claimant's medical history and subjective complaints regarding an alleged physical or mental defect, illness or impairment; and

b. Competent medical testimony relevant to:

(i) Whether a physical or mental defect, illness or impairment exists;

(ii) Whether the defect, illness or impairment is enough to reduce the parent's ability to support or care for a child; and

(iii) Whether the defect, illness or impairment is likely to last thirty (30) days. The thirty (30) days is not intended to be a "waiting period." Rather, expected duration is pertinent to causal relationship and substantiality.

3. Factors to be considered in making the nonmedical evaluation shall include:

a. The claimant's:

(i) Age;

(ii) Employment history;

(iii) Vocational training;

(iv) Educational background; and

(v) Subjective complaints regarding the alleged effect of the physical or mental condition on the claimant's ability to support or care for the child; and

b. The extent and accessibility of employment opportunities available in the claimant's area of residence.

4. In determining the extent and accessibility of available employment opportunities, the limited employment opportunities of handicapped individuals shall be taken into account; and

a. Available printed materials that provide information regarding available employment opportunities shall be researched;

b. The local Department for Employment Service (DES) office shall be contacted regarding accessible employment opportunities within the claimant's area of residence; and

c. The claimant shall be referred, if necessary, for further appraisal of his abilities.

5. A written report shall be made of the determination under this subsection.

6. Each claimant shall be provided timely and adequate notice of and an opportunity for a fair hearing as provided in 904 KAR 2:055.

(6) Unemployment. The determination that a child is deprived of parental support due to the unemployment of a parent shall be based on the determination that the principal wage earner meets the criteria of unemployment and has a prior labor market attachment.

(a) Principal wage earner (PWE). The PWE is the parent who earned the greater amount of income in the twenty-four (24) months immediately preceding the month of application.

1. If the agency is unable to secure primary evidence of earnings to determine which parent is the PWE, the agency shall designate the PWE using the best evidence available.

2. If both parents earned identical amounts of income, or no income, the agency shall designate the parent meeting the criteria of unemployment, as specified in subsection (4)(b) of this section.

3. Earnings of each parent shall be considered in determining the PWE regardless of when their relationship began.

4. PWE designation shall remain with the same parent as long as assistance is received on the basis of the same application.

(b) Unemployment. A parent shall be considered to be unemployed if:

1. Employed less than 100 hours in a calendar month; or

2. Employment exceeds 100 hours in a particular month, but the work is intermittent and the excess is of a temporary nature. This would be evidenced by the fact that the parent was under the 100 hour standard in the prior two (2) months and is expected to be under the 100 hour standard in the following month.

(c) Prior labor market attachment (PLMA).

1. PLMA is met if the parent:

a. Earned not less than fifty (50) dollars during each of 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 the application;

b. Within twelve (12) months prior to application, received unemployment compensation; or

c. Is currently receiving unemployment compensation or if potentially eligible, has made application for unemployment insurance benefits.

2. In determining whether or not criteria in subsection (4)(c)1a of this section is met, the following shall be taken into consideration:

a. Participation in CWEP or WIN prior to October 1, 1990, and in JOBS after October 1, 1990, shall be considered as earning an income in determining PLMA.

b. Full-time attendance, as defined by the school or institution, in educational activities may be substituted for two (2) of the six (6) calendar quarters.

c. Gross income from self-employment and farming qualify as earned income in determining prior labor market attachment. The self-employed individual does not have to realize a profit to meet this requirement.

(d) Restrictions. Unemployment shall not exist if the PWE:

1. Is on strike;

2. Is temporarily unemployed:

a. Due to weather conditions or lack of work;

b. If there is a job to return to; and

c. Return can be anticipated within thirty (30) days or at the end of a normal vacation period;

3. Is unavailable for full-time employment;

4. Is under contract for employment, unless a written statement from the employer verifies that the individual is subject to release from the contract if full-time employment is secured;

5. Has not met the criteria of unemployment for at least thirty (30) days;
6. Has not applied for unemployment benefits, if potentially eligible;
7. Is not:
a. Registered for work under Section 8 of this regulation; or
b. Subject to JOBS, under Section 9 of this regulation; or
8. Has refused a bona fide offer of employment or training for employment without good cause in the thirty (30) days prior to AFDC-UP eligibility or during the course of receipt of AFDC-UP benefits. Good cause exists if criteria specified in 904 KAR 2:016, Section 4(4)(a)1, 2, 3, or 4 is met.

Section 4. Living with a Specified Relative. To be eligible for AFDC a needy child shall be living in the home of a relative as follows:
(1) A blood relative, including father, mother, grandfather, grandmother, brother, sister, uncle, aunt, nephew, niece, first cousin.
(2) Also relatives of the half-blood and preceding generations as denoted by prefixes of grand, great or great-great; a stepfather, stepmother, stepbrother, stepsister.
(3) Any person listed above if parent has had paternity established through the administrative determination process. An administrative determination of paternity is limited to situations in which the following types of evidence are present:
(a) A birth certificate listing the alleged parent; or
(b) Legal documents such as:
1. Hospital records;
2. Juvenile court records;
3. Wills; and
4. Other court records which clearly indicate the relationship of the alleged parent or relative; or
(c) Receipt of statutory benefits as a result of the alleged parent's circumstances; or
(d) A sworn statement or affidavit of either parent acknowledging paternity plus one (1) of the following:
1. School records;
2. Bible records;
3. Immigration records;
4. Naturalization records;
5. Church documents, such as baptismal certificates;
6. Passport;
7. Military records;
8. U.S. Census records; or
9. Sworn statement or affidavit from an individual having specific knowledge about the relationship between the alleged parent and child.
(e) Rebuttal of paternity.
1. Effective April 1, 1987, in cases in which the parent or, in the absence of the parent, the caretaker relative alleges the evidence present in paragraphs (a) or (b) of this subsection is erroneous and provides substantiation of the erroneous information, the parent or caretaker relative shall provide a sworn statement or affidavit acknowledging the erroneous information and containing the correct information on the actual alleged parent.
2. Presence of the sworn statement or affidavit will serve as rebuttal to the evidence present in paragraphs (a) or (b) of this subsection and a determination of paternity will not be acknowledged.
(4) Adoptive parents as well as the natural and other legally adopted children and other relatives of such parents.
(5) Husband or wife of any persons listed above even if the marriage may have terminated, providing termination occurred after the birth of the child.
(6) If the parent continues to exercise control over the child, a child is considered as living in the home even when temporarily absent for:
(a) Medical care;
(b) Attendance at boarding school;
(c) College or vocational school;
(d) Emergency foster care; or
(e) Short visits with friends or relatives.

Section 5. Age and School Attendance. (1) A child may be eligible for AFDC from birth to age eighteen (18).
(2) A child may be eligible to age nineteen (19) if:
(a) A full-time student in a secondary school; or
(b) The equivalent level of vocational or technical training; and
(c) Expected to complete the program prior to or during the month of their 19th birthday.
(3) Full- and part-time is defined in 904 KAR 2:016, standards for need and amount; AFDC.
(4) Unless he has indicated an intention not to reenter school, a child is considered in regular attendance in months in which he is not attending because of:
(a) Official school or training program vacation;
(b) Illness;
(c) Convalescence; or
(d) Family emergency.

Section 6. One Category of Assistance. (1) A child or adult relative shall not be eligible for AFDC if receiving supplemental security income (SSI).
(2) If a child who receive SSI meets the AFDC requirements of age, deprivation and living in the home of a specified relative, the specified relative may be approved for AFDC if all other eligibility factors are met.

Section 7. Strikers. (1) A family shall be ineligible for benefits for any month in which the natural or adoptive parent, with whom the child is living is, on the last day of such month, participating in a strike; and
(2) No individual shall be considered eligible for benefits for any month if, on the last day of such month, such individual is participating in a strike.
(3) Strike shall be defined to include 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.

Section 8. Work Registration. (1) In a case based on the deprivation of unemployment, the PWE shall register for work with the DES if:
(a) He resides in a non-JOBS county; or
(b) He resides in a JOBS county and is exempt from participation as specified in Section 9(1)(e) of this regulation.
(2) Failure of the PWE to register for work

shall result in removal of the needs of the sanctioned individual and the second parent, unless the second parent has volunteered or is participating in JOBS.

Section 9. Job Opportunities and Basic Skills (JOBS) Training Program. (1) Exemptions. Effective October 1, 1990, all AFDC recipients are required to participate in the JOBS program if the program is available in the county of residence unless the recipient:

(a) Is a child who:

1. Is under age sixteen (16); or

2. Attends, full time, an elementary secondary, vocational or technical school (unless he was enrolled in school through the JOBS program);

(b) Is ill and the illness or injury is serious enough to temporarily prevent entry into employment or training;

(c) Is incapacitated to the extent that the physical or mental impairment would prevent the recipient from participating in the JOBS program. This may include a period of recuperation after child birth if prescribed by a woman's physician;

(d) Is sixty (60) years old or older;

(e) Resides in a county which offers the JOBS program but in a location in which travel time to the JOBS activity would exceed two (2) hours round trip by reasonably available public or private transportation, exclusive of time necessary to transport children to and from a child care facility;

(f) Is needed in the home because another member of the household requires the individual's presence due to illness or incapacity;

(g) Is working at least thirty (30) hours per week;

(h) Is pregnant and the child is expected to be born within the following six (6) month period;

(i) Is the parent or other relative who is personally providing care for a child under age three (3), except as specified in subsection (5)(c) of this section;

(j) Is a full-time VISTA volunteer.

(k) Is the parent or other relative personally providing care for a child under six (6) years of age unless the state IV-agency assures that child care will be guaranteed.

(2) Volunteers. All persons in active JOBS counties who are exempt as specified in subsection (1) of this section may volunteer to participate in the JOBS program.

(a) The DSI shall give first priority for JOBS services to volunteers within the target population to be served.

(b) A volunteer who is exempt, as specified in subsection (1) of this section and who stops participating without good cause, shall lose priority status for JOBS services if he volunteers at a later time.

(c) A volunteer who is not exempt and who stops participating without good cause shall be subject to sanctions, as specified in subsection (10) of this section.

(3) Components. All JOBS counties shall offer the following services and activities:

(a) Education is provided:

1. Below the postsecondary level:

a. High school or equivalent;

b. Basic or remedial education; and

c. English as a second language; or

2. At the postsecondary level if:

a. The occupational assessment indicates that the participant has the aptitude to perform a specific job for which this education and training is required;

b. The participant has or is capable of achieving the basic literacy skills required by the occupation; and

c. Jobs are available in the specific occupation for which education and training is needed.

(b) Job skills training which includes vocational training for a participant in technical job skills and equivalent knowledge and abilities in a specific occupational area.

(c) Job readiness activities that help prepare participants for work by familiarizing them with workplace expectations, attitudes and appropriate behavior.

(d) Job development and job placement activities for soliciting public and private employers' job openings, marketing participants, and securing job interviews for participants.

(4) Optional components. All JOBS counties shall offer job search, which provides group and individual assistance and training with job-seeking activities, and at least one (1) of the following components:

(a) On-the-job training in which a JOBS participant is hired by a private or public employer and receives job training or skills essential to the full and adequate performance of that job;

(b) Community work experience program which provides unpaid work experience and training to assist participants to move promptly into regular public or private employment.

(c) Work supplementation in which JOBS funds are used to develop and subsidize jobs for AFDC recipients. A participant's AFDC grant shall be reduced and that portion paid to the employer instead of to the participant to subsidize the individual's wages. [This component shall be implemented effective January 1, 1991.]

(5) JOBS participation requirements.

(a) Assessment. When an AFDC recipient has been identified as a JOBS participant, the individual shall be referred to a JOBS case manager. The case manager shall make an assessment of the individual's employability. The assessment shall include consideration of basic skills, work skills, occupational skills, and barriers. The assessment shall be based on:

1. Education, child care and other supportive service needs;

2. The individual's proficiencies, skills deficiencies, and prior work experience;

3. The needs of the family of the participant;

4. Any other relevant factors.

(b) Employability plan. Based on the findings of the assessment, the agency and participant shall jointly develop an employability plan. This plan shall contain:

1. An employment goal for the participant;

2. Services to be provided by the agency (including child care);

3. JOBS activities to be undertaken to achieve the employment goal;

4. Other needs of the family.

(c) Special participation requirements for education.

1. An AFDC parent under age twenty (20) who resides in a JOBS county shall be required to participate in educational activities if:

a. The parent is not otherwise exempt;

b. The parent lacks a high school diploma or has basic skills in reading or math below the 8.9 grade level.

2. For purposes of this requirement, the exemption contained at subsection (1)(i) of this section shall not qualify the participant for exemption from JOBS educational activities.

3. The agency may require a parent aged eighteen (18) or nineteen (19) to participate in work or training activities instead of education if:

a. The parent fails to make good progress in successfully completing educational activities; or

b. Prior to any assignment of the individual to educational activities it is determined, based on an educational assessment and the employment goal established in the individual's employability plan, that participation in educational activities is inappropriate for the parent.

(d) Participation for parents with children under age six (6). Participants with children under age six (6) who are not required to participate in education (as specified in subsection (5)(c) of this section) shall not be required to participate in the JOBS program for more than twenty (20) hours per week.

(6) Self-initiated JOBS activities. Self-initiated JOBS activities refer to approved activities of individuals who of their own accord began education or training activities. These individuals shall be in good standing at an institution of higher education or school or other entity offering a course of vocational or technical training. Activity below the postsecondary level shall be included if it is determined to be appropriate for the participant's employability plan. Both exempt and nonexempt individuals may be approved for self-initiated education or training for their JOBS activity. The participant shall be attending:

(a) At least half time, as defined by the institution;

(b) A JTPA-funded program, if in training;

(c) A public source or private institution that is licensed by the Kentucky Board for Proprietary Education or recognized by the appropriate regulatory agency or licensing body for the state in which the training is located; or

(d) Other education or training which would otherwise be an approved JOBS activity, for example:

1. GED;

2. Literacy;

3. Other approved education attended less than half time.

(7) Good and satisfactory progress.

(a) Each participant in an education or training component shall meet good and satisfactory progress requirements. Good and satisfactory progress criteria for all JOBS educational activities and approved self-initiated education is established by the educational institution. Good and satisfactory progress shall be measured and reported to the DSI at the following intervals:

1. Literacy, adult basic education, or general educational development. Good and satisfactory progress is measured at the end of seventy-five (75) hours or the 12th month of instruction, whichever comes first.

2. High school. Good and satisfactory progress shall be measured at the end of each semester or quarter.

3. Technical. Good and satisfactory progress shall be measured at regularly scheduled intervals, as defined by the institution.

4. Proprietary school. Good and satisfactory progress shall be measured at the end of each regularly scheduled grading period as defined by the institution, never to exceed a twelve (12) month period.

5. College. Good and satisfactory progress shall be measured at the end of a semester or quarter.

6. DES components. Good and satisfactory progress shall be measured on a monthly basis.

(8) Conciliation. A conciliatory meeting shall be conducted in the following instances:

(a) At the request of a JOBS participant;

(b) At the request of a component provider; or

(c) When a situation is identified which could result in a sanction (as specified in subsection (10) of this section).

(d) The DSI, the DES, or both agencies jointly shall conduct the conciliatory meetings. During the meetings, the agency shall determine if additional services are needed to assist with JOBS participation. Participation shall be monitored for thirty (30) days following the initial meeting to ensure that the dispute has been resolved. The thirty (30) day period may be extended for an additional thirty (30) days, if necessary.

(e) At the conclusion of the conciliation period, the participant shall be notified in writing of the results of the conciliation.

(9) Good cause.

(a) Good cause for noncompliance in the JOBS program or refusal to accept employment shall be found if:

1. The participant is personally providing care for a child under age six (6) and employment or JOBS participation would require the individual to work more than twenty (20) hours per week;

2. Necessary child care is not available;

3. Employment would result in a net loss of cash income;

4. The individual is unable to engage in employment or training for mental or physical reasons including participation in a drug and alcohol rehabilitation program;

5. Unavailability of transportation (including unavailability due to costs which exceed the reimbursement) with no readily accessible alternative means of transportation available;

6. Travel time to the work site or JOBS component site exceeds two (2) hours round trip daily;

7. Illness of another household member requiring the presence of the participant;

8. The participant is temporarily incarcerated;

9. Discrimination by an employer based on age, race, sex, color, handicap, religious beliefs, national origin or political beliefs occurs;

10. Work demands or conditions render continued employment unreasonable. Examples are:

a. Consistently not being paid on schedule; or

b. The presence of a risk to the individual's health or safety;

11. Wage rates are decreased subsequent to acceptance of employment;

12. The participant accepts a better job which, because of circumstances beyond the control of the recipient, does not materialize;

13. A household emergency occurs, such as:

a. Death of a member of the immediate family;
b. Entry into a spouse abuse center;
c. Natural disasters;
d. Court appearance;
e. Victim of crime; or
f. Flooded basement; or

14. The participant receives temporary military assignment.

(b) The duration of good cause criteria may vary according to individual circumstances.

(10) Sanctions.

(a) When an AFDC recipient fails to comply with the requirements of the JOBS program, he shall be subject to JOBS and AFDC sanctions. Failure to comply shall be found when the participant:

1. Fails without good cause to participate in the required interview, assessment, and employability plan activities;
2. Fails without good cause to participate in the program;
3. Refuses without good cause to accept employment; or
4. Terminates employment or reduces earnings without good cause.

(b) Persons who have failed to comply without good cause shall be sanctioned, as follows:

1. The participant is excluded from JOBS activities and services;

a. For the first failure to comply, until the failure to comply ceases;
b. For the second failure to comply, until the failure to comply ceases, or three (3) months, whichever is longer; and
c. For any subsequent failure to comply, until the failure to comply ceases, or six (6) months, whichever is longer.

2. In determining the amount of the AFDC grant, the agency shall not take into account the needs of the sanctioned individual, beginning with the first administratively feasible month after JOBS sanctions begin. In a case based on unemployment, the agency shall not take into account the needs of the sanctioned individual and the second parent, unless the second parent is participating in JOBS.
3. A sanctioned individual shall participate in a designated activity for two (2) weeks before the failure to comply is considered to have ceased. At that time, the sanctions shall be terminated.

Section 10. Cooperation in Child Support Enforcement Activities. (1) Inclusion of a specified relative in the AFDC budget is dependent upon his cooperation in child support activities and refusal, except for "good cause," results in ineligibility of the relative with AFDC payments on behalf of the child made to a protective payee.

(2) If, after exclusion from the grant for failure to cooperate, the individual states that he is willing to cooperate and wishes to be reinstated, a supplemental application must be completed. If eligibility criteria are met, the individual will be added to the grant effective with the month of application and the protective payee will be removed.

(3) The Cabinet for Human Resources shall provide written notice to the applicant or recipient that he may claim good cause for refusing to cooperate.

(4) The applicant or recipient shall be determined to have "good cause" for failing to cooperate only when one (1) or more of the following criteria is met:

(a) The applicant or recipient's cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to the child; or

(b) The applicant or recipient's cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to himself to such an extent that it would reduce his capacity to care for the child(ren) adequately; or

(c) The child was conceived as a result of incest or forcible rape and the department believes it would be detrimental to the child to require the applicant's or recipient's cooperation; or

(d) Legal proceedings for adoption of the child by a specific family are pending before a court of competent jurisdiction; and the department believes it would be detrimental to the child to require the applicant's or recipient's cooperation; or

(e) The applicant or recipient is being assisted by a public or licensed private social agency to resolve whether to keep the child or release him for adoption and discussion has not gone on for more than three (3) months and the cabinet believes it would be detrimental to the child to require the applicant's or recipient's cooperation.

(5) Specific requirements in determining the existence of good cause and the time limits for providing substantiation of claims are made.

Section 11. Potential Entitlement for other Programs. (1) All applicants or recipients shall apply for any benefit if potential entitlement exists.

(2) Failure to apply results in ineligibility for AFDC.

Section 12. Furnishing of Social Security Account Numbers. All applicants or recipients shall furnish social security account numbers.

Section 13. Assignment of Rights to Support. By accepting assistance for or on behalf of a child, a recipient is deemed to have made an assignment to the Cabinet for Human Resources of any child support owed for the child not to exceed the amount of AFDC payments made to the recipient.

Section 14. Assignment of Rights to Medical Support. By accepting assistance for or on behalf of a child, a recipient 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 15. Material Incorporated by Reference. (1) Forms necessary for participation in the JOBS program are being incorporated effective October 1, 1990.

(2) Material incorporated by reference 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: June 18, 1991

FILED WITH LRC: June 20, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 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 August 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: The department has no means determining the number of households this amendment will affect as the exemption will also include non-AFDC children being cared for.

(a) Direct and indirect costs or savings to those affected: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: 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. 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.

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.

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 1:004. 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

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance. 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 the [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 federal poverty income guidelines [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 shall be [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 shall be [are] excluded from consideration.

(3) Equity of $6,000 in income-producing, nonhomestead real property, business or nonbusiness, essential for self-support, shall be [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 shall be [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 shall be [is] excluded from consideration; however, if an automobile is used for employment, to obtain medical treatment of a specific or regulation medical problem, of if specially equipped (e.g., as for use by the handicapped) the total value of the [such] automobile shall be [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 shall be [are] excluded from consideration. The cash surrender value of life insurance shall be [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 shall be [is] excluded as income or a resource so long as the [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 shall be [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 shall be [are] also applicable as stated:

(a) Proceeds from the sale of a home shall be [are] excluded from consideration for three (3) months from date of receipt if used to purchase another home.

(b) Applicable with regard to determinations of eligibility made on or after July 1, 1991, income and resources of a blind or disabled person necessary to fulfill an approved plan for achieving self-support (PASS), Impairment Related Work Expense (IRWE) deduction, or the Blind Work Expense (BWE) deduction shall be [are] excluded from consideration.

(c) Payments or benefits from federal statutes, other than Supplemental Security Income, benefits shall be [are] excluded from consideration (as either a resource or income) if precluded from consideration in supplemental security income determinations of eligibility by the specific terms of the statute.

(d) Disaster relief assistance shall be [is] excluded from consideration.

(e) Cash or in-kind replacement for repair or replacement of an excluded resource shall be [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 shall be [is] excluded from consideration for adult medical assistance and state supplementation recipients if:

1. The [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 shall [are] not be 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 shall [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 shall be [) 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 in the eligibility and posteligibility treatment of income and resources 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.

(l) Applicable with regard to determinations of eligibility made on or after July 1, 1991, any amount received from a victims compensation fund established by a state to aid victims of crime shall be excluded as income. To the extent that the individual can show that the amount was paid as compensation for expenses incurred or losses suffered as a result of a crime, the amount is completely excluded as a resource; otherwise the resource shall be excluded as a resource for nine (9) months for pain and suffering.

(m) Applicable with regard to determinations of eligibility made on or after July 1, 1991 through August 31, 1991, veterans receiving the reduced ninety (90) dollars Veterans Administration (VA) benefit shall have the ninety (90) dollars excluded as income in the Medicaid eligibility determination but the

ninety (90) dollar payment shall be considered as income in the posteligibility determination process.

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) shall [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 shall be [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 shall be [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 shall be [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.

(2) The following special factors shall be [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 (DHHS), 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) Applicable with regard to determinations of eligibility for periods beginning on or after July 1, 1991, children born after September 30, 1983, who have attained six (6) years of age but have not attained nineteen (19) years of age may have family income up to, but not to exceed, 100 percent of the official DHHS poverty income guidelines.

(c) [(b)] Pregnant women, infants and children who would be eligible under provisions of 42 USC 1396a(1) of the Social Security Act except for income in excess of the allowable standard shall [may] not become eligible by spending down to the official poverty guidelines;

(d) [(c) Effective with regard to determinations of eligibility made on or after June 1, 1989,] Available resources shall be disregarded;

(e) [(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

(f) [(e)] Changes of income that occur after the determination of eligibility of a pregnant woman shall not affect the [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 applicable for determinations of eligibility of qualified Medicare beneficiaries for the special Medicare 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 percent.

(b) The official poverty income guidelines shall 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 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, 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. For individuals receiving the ninety (90) dollars reduced Veterans Administration (VA) improved pension benefits, the personal needs allowance is ninety (90) dollars effective with the month that the VA payment is reduced. Applicable for determinations of patient liability on or after September 1, 1991, amounts excluded under a plan to achieve self-support (PASS), as an income related work expense (IRWE) or blind work expense (BWE) shall be considered an increased personal needs allowance for all Medicaid recipients except those for whom a quarterly spend-down process is applicable. All income in excess of the amount protected for basic maintenance is applied to the cost of care except as follows:

(a) Available income in excess of the basic maintenance allowance 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(e)(1)(G) 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) 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 <u>one (1)</u> [two (2)], or if other dependents live with either spouse, the family size including such dependents <u>in the month following the month of separation.</u> [, 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 (mental hospital or psychiatric residential treatment 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, the individual allowed the 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 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 of a Minor Parent (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(c)(2)(B), (C) and (D) 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(c)(2)(B) or (C)(i) 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(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 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 (applicable for determinations of eligibility made on or after September 1, 1991, the private pay rate) for the nursing facility [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(c)(1)(B), 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, 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(b)(2)(A), (B), (C), and (D), 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-(f)(3), 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 July [January] 1, 1991 except as specified in Sections 6 and [, 16,] 17[, 18, and 21] of this regulation.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 28, 1991
FILED WITH LRC: July 3, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 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 August 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: Approximately 595 recipients.

(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: (Cost) $824,000.

2. Continuing costs or savings: (Cost) $1,606,500.

3. Additional factors increasing or decreasing costs: Increase in number of recipients.

(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:
TIERING: Was tiering applied? No. Not applicable for eligibility regulations.

**CABINET FOR HUMAN RESOURCES**
**Department for Medicaid Services**
**(Proposed Amendment)**

**907 KAR 1:010. Payment for physicians' services.**

RELATES TO: KRS 205.550[, 205.560]
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.50, 42 CFR 447 Subpart B, 42 USC 1396a-d
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer a 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. [under Title XIX of the Social Security Act. KRS 205.550 and 205.560 require that the secretary prescribe the methods for determining costs for vendor payments for medical care services.] This regulation sets forth the method for establishing payments for physician services.

Section 1. Definition. For purposes of determination of payment, "usual and customary charge refers to the uniform amount the individual physician charges in the majority of cases for a specific medical procedure or service.

Section 2. Reimbursement. Payment for covered services rendered to eligible medical assistance recipients on or after July 1, 1991 [1990] shall be based on the physicians' usual and customary actual billed charges up to the fixed upper limit per procedure established by the cabinet at 100 [sixty-five (65)] percent of the median billed charge for outpatient services and seventy-five (75) [fifty (50)] percent of the median billed charge for inpatient services using 1989 calendar year billed charges. If there is no median available for a procedure, or the cabinet determines that available data relating to the median for a procedure is unreliable, the cabinet shall set a reasonable fixed upper limit for the procedure consistent with the general array of fixed upper limits for the type of service. Fixed upper limits not determined in accordance with the principle shown in this subsection of the regulation (if any) due to consideration of other factors (such as recipient access) shall be specified in the regulation.

Section 3. Reimbursement Exceptions. (1) Effective with regard to services provided on or after October 1, 1988, physicians shall [will] be allowed to secure drugs for specified immunizations identified in 907 KAR 1:009 free from the Department for Health Services to provide immunizations for Medicaid recipients, with reimbursement for the cost of the drugs made from the Department for Medicaid Services to the Department for Health Services upon receipt of notice from the physicians that the drugs were used to provide immunizations to Medicaid recipients.

(2) Effective with regard to services provided on or after October 1, 1988, physicians shall [will] be allowed to purchase drugs for specified immunizations identified in 907 KAR 1:009 in the open market to provide immunizations for Medicaid recipients and the Department for Medicaid Services shall [will] reimburse the physician the same amounts that would have been paid to the Department for Health Services if the drugs had been obtained through that agency upon receipt of appropriate notice that the drugs were used to provide immunizations to Medicaid recipients.
(3) Payments for specified obstetrical services provided on or after July 1, 1991 [1990], shall be at the lower of the actual billed charge or at $900 [650].
(4) For inpatient delivery-related anesthesia services provided on or after July 1, 1991 [December 1, 1988], a physician shall [will] be reimbursed the lesser of the actual billed charge or a standard fixed fee paid by type of procedure. Those procedures and standard fixed fees are:

| | |
|---|---|
| Vaginal [Normal] delivery | $200 |
| [Low cervical c-section | 270] |
| [Classic c-section | 320] |
| Epidural single | 315 |
| Epidural continuous | 335 |
| [Extraperitoneal c-section | 320] |
| [C-section with hysterectomy, subtotal | 320] |
| Cesarean section | 320 |
| [C-section with hysterectomy, total] | |

(5) Payment for individuals eligible for coverage under Medicare [Title XVIII], Part B[, Supplementary Medical Insurance,] is made in accordance with Sections 1 and 2 of this regulation and subsections (1) through (4) and subsection (6) of this section within the individual's deductible and coinsurance liability.
(6) For services provided on or after July 1, 1990, family practice physicians practicing in geographic areas with no more than one (1) primary care physician per 5,000 population, as reported by the United States Department of Health and Human Services, shall be reimbursed at the physicians' usual and customary actual billed charges up to 125 percent of the fixed upper limit per procedure established by the cabinet.
(7) For services provided on or after July 1, 1990, physician laboratory services shall be reimbursed based on the Medicare allowable payment rates. For laboratory services with no established allowable payment rate, the payment shall be sixty-five (65) percent of the usual and customary actual billed charges.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 24, 1991
FILED WITH LRC: June 27, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 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 August 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 physicians participating in the Medicaid Program.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: (Cost) $40 million*.
2. Continuing costs or savings: (Cost) $40 million.
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No 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: *The increased expenditure of state funds shall be offset by the tax assessment of physicians as provided for by House Bill 21, 1991 Special Session of the General Assembly.
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

**CABINET FOR HUMAN RESOURCES**
**Department for Medicaid Services**
**(Proposed Amendment)**

**907 KAR 1:011. 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
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, 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 eligible for MA as categorically needy individuals. In addition, the following classifications of needy persons shall be 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, psychiatric residential treatment facilities, 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 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 also be determined under this provision. Eligibility of an individual whose gross income exceeds 300 percent of the previously specified SSI benefit amount shall 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) 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), would be eligible for SSI or SSP except for such benefits, and are not entitled to hospital insurance benefits under the Medicare program;

(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), 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) Applicable with regard to determinations of eligibility for periods beginning on or after July 1, 1991, children born after September 30, 1983, who have attained six (6) years of age but have not attained nineteen (19) years of age as specified in 42 USC 1396a(l)(1);

(15) [(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; and

(16) Applicable with regard to determinations of eligibility for periods beginning on or after January 1, 1991, disabled widows, widowers and disabled surviving divorced spouses, who should be eligible for SSI except for entitlement to an old-age, survivors, and disability insurance (OASDI) benefit resulting from a change in the definition of disability.

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), 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) 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, psychiatric residential treatment facilities, 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 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 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 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 be considered as a family member(s) for budgeting purposes.

(12) The following citizenship and residency requirements shall be applicable:

(a) To be eligible, an applicant or recipient shall 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 have been admitted for permanent residence except as shown in paragraphs (b), (c) and (d) of this subsection. The applicant or recipient shall 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 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 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. <u>These</u> [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 <u>these</u> [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 <u>shall be</u> [are] subject to the same coverage limitations as shown in paragraph (c) of this subsection.

(13) An individual shall 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 generally be the first day of the month of eligibility. For individuals eligible on the basis of unemployment, eligibility shall 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 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 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 <u>the</u> [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, <u>the</u> [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 not be eligible for medical assistance as a medically needy individual unless the [such] individual is separately eligible for medical assistance without regard to eligibility as a member of the group from which the [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 the [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) shall [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 shall [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 considered to exist when the [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 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 the [such] benefits shows the benefit to be optional and that the potential applicant or recipient for the [such] benefit need not apply for the [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 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 the [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: June 28, 1991
FILED WITH LRC: July 3, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 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 August 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: 5,200 additional poverty level children covered; 20,700 additional AFDC-UP individuals covered; 250 additional disabled widows, widowers, and disabled surviving divorced spouses covered.
(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: (Costs) $23.7 million.
2. Continuing costs or savings: (Costs) $30.4 million.
3. Additional factors increasing or decreasing costs: Increased number of recipients.
(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:
TIERING: Was tiering applied? No. Not applicable for eligibility regulations.

**CABINET FOR HUMAN RESOURCES**
**Department for Medicaid Services**
**(Proposed Amendment)**

**907 KAR 1:012. Inpatient hospital services.**

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.10, 42 USC 1396, a, 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 provisions relating to inpatient hospital services for which payment shall be made by the Medical Assistance program in behalf of both the categorically needy and the medically needy.

Section 1. Length of Stay. Inpatient hospital services except for services in an institution for treatment of tuberculosis or mental diseases shall be limited to a maximum of fourteen (14) days per admission, except as shown in Section 2 of this regulation [with the further exception that effective with regard to medically necessary services provided on or after July 1, 1989 to infants under age one (1) in a disproportionate share hospital as defined in 907 KAR 1:013, Payments for hospital inpatient services, there shall be no limit on the duration of stay or number of admissions]. A recipient may transfer from one (1) hospital to another hospital when the transfer is necessary for the patient to receive medical care which is not available in the first hospital. These transfers and admissions shall begin anew the fourteen (14) day per admission limitation. [; in such situations,] The maximum covered inpatient hospital stay that may result shall be [is] a total of twenty-eight (28) days for the two (2) admissions. Each nonemergency admission shall have prior approval of appropriateness by the designated peer review organization in order for the admission to be covered under the program; this requirement does not apply for emergency admissions. Weekend stays associated with a Friday or Saturday admission shall [will] not be reimbursed unless an emergency exists.

Section 2. Exceptions to Length of Stay. The following exceptions are applicable with regard to medically necessary inpatient hospital services provided on or after July 1, 1991:
(1) For infants under the age of one (1), there shall be no limits on length of stay or number of admissions; and
(2) For children under the age of six (6) in a disproportionate share hospital, there shall be no limit on the length of stay or number of admissions.

Section 3. [2.] Covered Admissions. Admissions for which payment is made shall be limited to those primarily indicated in the management of acute or chronic illness, injury or impairment, or for maternity care that could not be rendered on an outpatient basis. Admissions relating to only observation or diagnostic purposes shall not be covered. Cosmetic surgery shall not be covered except as required for prompt repair of accidental injury or for the improvement of the functioning of a malformed or diseased body member.

Section 4. [3.] Inpatient Hospital Services not Covered by the Medical Assistance Program. (1) Those services which are not medically necessary to the patient's well-being, such as television, telephone and guest meals.
(2) Private duty nursing.
(3) Those supplies, drugs, appliances, and equipment which are furnished to the patient for use outside the hospital unless it would be considered unreasonable or impossible from a medical standpoint to limit the patient's use of the item to the periods during which he is an inpatient.
(4) Those laboratory tests not specifically ordered by a physician and not done on a preadmission basis unless an emergency exists.

(5) Private accommodations unless medically necessary and so ordered by the attending physician.

(6) The following listed surgical procedures, except when a life-threatening situation exists, there is another primary purpose for the admission, or the admitting physician certifies a medical necessity requiring admission to a hospital:

(a) Biopsy: breast, cervical node, cervix, lesions (skin, subcutaneous, submucous), lymph node (except high axillary excision, etc), and muscle.

(b) Cauterization or cryotherapy: lesions (skin, subcutaneous, submucous), moles, polyps, warts/condylomas, anterior nose bleeds, and cervix.

(c) Circumcision.

(d) Dilation: dilation and curettage (diagnostic and/or therapeutic nonobstetrical); dilation/probing of lacrimal duct.

(e) Drainage by incision or aspiration: cutaneous, subcutaneous, and joint.

(f) Exam under anesthesia (pelvic).

(g) Excision: bartholin cyst, condylomas, foreign body, lesions lipoma, nevi (moles), sebaceous cyst, polyps, and subcutaneous fistulas.

(h) Extraction: foreign body, and teeth (per existing policy).

(i) Graft, skin (pinch, splint or full thickness up to defect size three-fourths (3/4) inch diameter).

(j) Hymenotomy.

(k) Manipulation and reduction with or without x-ray; cast change: dislocations depending upon the joint and indication for procedure, and fractures.

(l) Meatotomy/urethral dilation, removal calculus and drainage of bladder without incision.

(m) Myringotomy with or without tubes, otoplasty.

(n) Oscopy with or without biopsy (with or without salpingogram): arthroscopy, bronchoscopy, colonoscopy, culdoscopy, cystoscopy, esophagoscopy, endoscopy, gastroscopy, hysteroscopy, laryngoscopy, laparoscopy, peritoneoscopy, otoscopy, and sigmoidoscopy or procto sidmoidoscopy.

(o) Removal; IUD, and fingernail or toenails.

(p) Tenotomy hand or foot.

(q) Vasectomy.

(r) Z-plasty for relaxation of scar/contracture.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 28, 1991
FILED WITH LRC: July 8, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 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 August 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 hospitals participating in the Medicaid Program.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None*

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No 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: *The cost impact of these changes is reflected in the companion regulation, 907 KAR 1:013.

TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

## CABINET FOR HUMAN RESOURCES
## Department for Medicaid Services
## (Proposed Amendment)

**907 KAR 1:022. 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, 1396a, 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 r opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the provisions relating to nursing facility and

intermediate care facility for the mentally retarded services for which payment shall be made by the medical assistance program in behalf of both the categorically needy and medically needy.

Section 1. Definitions. The following definitions shall be applicable:

(1) "Patient status" means that the individual has care needs meeting the criteria set forth in this regulation for treatment in the institutional setting.

(2) "Intermittent high intensity services" means the individual requires high intensity nursing services at regular or irregular intervals, but not on a twenty-four (24) hour per day basis.

(3) "Stable medical condition" means one which is capable of being maintained in accordance with a planned treatment regimen requiring a minimum amount of medical supervision without significant change or fluctuation in the patient's condition or treatment regimen.

(4) "Nursing facility" (NF) means a facility which has a license as a nursing facility and which is certified to the Department for Medicaid Services by the state survey agency as meeting nursing facility standards. A facility which is certified to the department as meeting skilled nursing facility standards based on a survey agency survey made prior to October 1, 1990 shall be deemed to meet the requirements for participation as a nursing facility until the first survey agency survey of the facility which occurs on or after October 1, 1990. Hospital swing beds providing services in accordance with 42 USC 1395tt and 42 USC 13961 shall also be considered nursing facilities so long as the swing beds are certified to the department as meeting requirements for the provision of swing bed services under federal laws and regulations. Each nursing facility shall have [meet] Medicare participatory status [participation requirements] in at least thirty-five (35) [ten (10)] percent of the facility's Medicaid participating beds (but not less than ten (10) beds); if the facility has less than ten (10) Medicaid participating beds, all participating beds shall participate in the Medicare Program).

(5) "Nursing facility with waiver" (NF-W) means a facility which has a license as a nursing facility and which is certified to the Department for Medicaid Services by the state survey agency as meeting all nursing facility requirements except for the nurse staffing requirement for which a Medicaid waiver has been granted by the survey agency; some nursing facilities with waiver do not meet Medicare participation requirements. A facility which is certified to the department as meeting intermediate care facility standards based on a survey agency survey made prior to October 1, 1990 shall be deemed to meet the requirements for participation as a nursing facility with waiver until the first survey agency survey of the facility which occurs on or after October 1, 1990. If a facility which has a Medicaid waiver chooses to participate in the Medicare Program, the facility shall be required to have Medicare participatory status in at least thirty-five (35) percent of the facility's Medicaid participating beds (but not less than ten (10) beds; if the facility has less than ten (10) Medicaid participating beds, all participating beds shall participate in the Medicare Program).

(6) "Intermediate care facility for the mentally retarded" (ICF-MR) means a licensed intermediate care facility for the mentally retarded certified to the Department for Medicaid Services as meeting all standards for intermediate care facilities for the mentally retarded.

(7) "High intensity nursing care services" means care provided to Medicaid eligible individuals who meet high intensity patient status criteria by nursing facilities (NFs) and nursing facilities with waiver participating in the Medicaid program with the care provided in beds also participating in the Medicare Program. High intensity nursing care patient status criteria shall be equivalent to skilled nursing care standards under Medicare.

(8) "Low intensity nursing care services" means care provided to Medicaid eligible individuals who meet low intensity patient status criteria by nursing facilities (NFs) or nursing facilities with waiver (NFs-W) participating in the Medicaid program. Low intensity nursing care patient status criteria shall be equivalent to the former intermediate care patient status standards.

(9) "Intermediate care for the mentally retarded and persons with related conditions services" means care provided to Medicaid eligible individuals who meet ICF-MR patient status criteria by ICF-MRs participating in the Medicaid program.

Section 2. Participation Requirements. Each facility desiring to participate as a nursing facility, nursing facility with waiver, or ICF-MR shall meet the following requirements:

(1) An application for participation shall be made to the cabinet using the procedures specified by the Commissioner, Department for Medicaid Services, Cabinet for Human Resources. A vendor number shall be assigned to the facility by the cabinet when participation status is achieved.

(2) Each nursing facility shall be required to have participatory status in the program of health care known as Medicare in at least thirty-five (35) [ten (10)] percent of the facility's Medicaid participating beds (but not less than ten (10) beds; if the facility has less than ten (10) Medicaid participating beds, all participating beds shall participate in the Medicare Program) before the conditions of participation for Medicaid shall be deemed met.

(3) If a nursing facility with waiver chooses to participate in the Medicare Program, the facility shall meet Medicare participation requirements in at least thirty-five (35) percent of the facility's Medicaid participating beds (but not less than ten (10) beds; if the facility has less than ten (10) Medicaid participating beds, all participating beds shall participate in the Medicare Program.)

(4) [(3)] Each nursing facility and nursing facility with waiver shall be required to comply with the preadmission screening and annual resident review requirements specified in 42 USC 1396r, effective with regard to admissions and resident stays occurring on or after January 1, 1989. Facilities failing to comply with this requirement shall be subject to disenrollment, with exclusion from participation to be accomplished in accordance with 907 KAR 1:220, Terms and conditions of provider participation;

provider appeals, and federal regulations at 42 CFR 431.153 and 431.154.

(5) [(4)] A facility shall be required to be certified by the state survey agency as meeting NF, NF-W, or ICF-MR status; a facility not appropriately certified shall not participate in the Medicaid program except for appropriately certified SNFs or ICFs during the grandfathered period which ends upon the facility's first survey by the state survey agency on or after October 1, 1990.

Section 3. Provision of Service. (1) Payment for high intensity, low intensity and ICF-MR services shall be limited to those services meeting the care definitions shown in Section 1 of this regulation. A nursing facility or nursing facility with waiver may provide and receive payments for high intensity services provided to Medicaid eligible individuals meeting high intensity patient status criteria so long as the services are provided in beds also participating in the Medicare Program and a nursing facility or nursing facility with waiver may provide and receive payments for low intensity services provided to Medicaid eligible individuals meeting low intensity patient status criteria when the services are provided in any Medicaid participating beds; [a nursing facility with waiver may provide and receive payments for low intensity services only; and] an ICF-MR may provide and receive payments for ICF-MR services only.

(2) A participating nursing facility may be certified, in accordance with standards and conditions specified in 907 KAR 1:374, Incorporation by reference of the skilled nursing facility services manual, to operate a unit providing preauthorized specialized rehabilitation services for persons with brain injuries.

Section 4. Determining Patient Status. Professional staff of the cabinet, or a peer review organization operating under its lawful authority pursuant to the terms of its agreement with the cabinet, shall review and evaluate the health status and care needs of the recipient in need of institutional care giving consideration to the medical diagnosis, care needs, services and health personnel required to meet these needs and the feasibility of meeting the needs through alternative institutional or noninstitutional services.

(1) A patient shall not qualify for Medicaid patient status unless the person is qualified for admission, and continued stay as appropriate, under the preadmission screening and annual resident review criteria specified in 42 USC 1396r with regard to admissions and resident stays occurring on or after January 1, 1989.

(2) Patients qualify for high intensity nursing care when their needs mandate high intensity nursing or high intensity rehabilitation services on a daily basis and when, as a practical matter, the care can only be provided on an inpatient basis. Where the inherent complexity of a service prescribed for a patient exists to the extent that it can be safely or effectively performed only by or under the supervision of technical or professional personnel, the patient would qualify for high intensity nursing care. A patient with an unstable medical condition manifesting a combination of care needs in the following areas shall qualify for high intensity nursing care:

(a) Intravenous, intramuscular, or subcutaneous injections and hypodermoclysis or intravenous feeding;

(b) Nasogastric or gastrostomy tube feedings;

(c) Nasopharyngeal and tracheotomy aspiration;

(d) Recent or complicated ostomy requiring extensive care and self-help training;

(e) In-dwelling catheter for therapeutic management of a urinary tract condition;

(f) Bladder irrigations in relation to previously indicated stipulation;

(g) Special vital signs evaluation necessary in the management of related conditions;

(h) Sterile dressings;

(i) Changes in bed position to maintain proper body alignment;

(j) Treatment of extensive decubitus ulcers or other widespread skin disorders;

(k) Receiving medication recently initiated, which requires high intensity observation to determine desired or adverse effects or frequent adjustment of dosage;

(l) Initial phases of a regimen involving administration of medical gases;

(m) Receiving services which would qualify as high intensity rehabilitation services when provided by or under the supervision of a qualified therapist(s), for example: ongoing assessment of rehabilitation needs and potential; therapeutic exercises which must be performed by or under the supervision of a qualified physical therapist; gait evaluation and training; range of motion exercises which are part of the active treatment of a specific disease state which has resulted in a loss of, or restriction of, mobility; maintenance therapy when the specialized knowledge and judgment of a qualified therapist is required to design and establish a maintenance program based on an initial evaluation and periodic reassessment of the patient's needs, and consistent with the patient's capacity and tolerance; ultrasound, short wave, and microwave therapy treatments; hot pack, hydrocollator infrared treatments, paraffin baths, and whirlpool (in cases where the patient's condition is complicated by circulatory deficiency, areas of desensitization, open wounds, fractures or other complications, and the skills, knowledge, and judgment of a qualified physical therapist are required); and services by or under the supervision of a speech pathologist or audiologist when necessary for the restoration of function in speech or hearing.

(3) An individual shall be determined to meet low intensity patient status when the individual requires intermittent high intensity nursing care, continuous personal care or supervision in an institutional setting. In making the decision as to patient status, the following criteria shall be applicable:

(a) An individual with a stable medical condition requiring intermittent high intensity services not provided in a personal care home shall be considered to meet patient status.

(b) An individual with a stable medical condition, who has a complicating problem which prevents the individual from caring for himself in an ordinary manner outside the institution shall be considered to meet patient status. For example, ambulatory cardiac and hypertensive patients may be reasonably stable on appropriate medication, but have intellectual deficiencies

preventing safe use of self-medication, or other problems requiring frequent nursing appraisal, and thus be considered to meet patient status.

(c) An individual with a stable medical condition manifesting a significant combination of the following care needs shall be determined to meet low intensity patient status when the professional staff determines that such combination of needs can be met satisfactorily only by provision of intermittent high intensity nursing care, continuous personal care or supervision in an institutional setting:

1. Assistance with wheelchair;
2. Physical or environmental management for confusion and mild agitation;
3. Must be fed;
4. Assistance with going to bathroom or using bedpan for elimination;
5. Old colostomy care;
6. In-dwelling catheter for dry care;
7. Changes in bed position;
8. Administration of stabilized dosages of medication;
9. Restorative and supportive nursing care to maintain the patient and prevent deterioration of his condition;
10. Administration of injections during time licensed personnel is available.
11. Services that could ordinarily be provided or administered by the individual but due to physical or mental condition is not capable of such self-care.
12. Routine administration of medical gases after a regimen of therapy has been established.

(d) An individual shall not generally be considered to meet patient status criteria when care needs are limited to the following:

1. Minimal assistance with activities of daily living;
2. Independent use of mechanical devices, for example, assistance in mobility by means of a wheelchair, walker, crutch(es) or cane;
3. Limited diets such as low salt, low residue, reducing and other minor restrictive diets;
4. Medications that can be self-administered or the individual requires minimal supervision.

(4) Evaluation of patient status for persons with mental disorders or mental retardation. A person with a mental disorder or mental retardation meeting the health status and care needs specified in subsections (2) and (3) of this section shall generally be considered to meet patient status. However, these individuals shall be specifically excluded from coverage in the following situations:

(a) When the cabinet determines that in the individual case the combination of care needs are beyond the capability of the facility, and that placement in the facility is inappropriate due to potential danger to the health and welfare of the patient, other patients in the facility, or staff of the facility; and

(b) When the nursing care needs result directly and specifically from a mental disorder; i.e., are essentially symptoms of the mental disorder; and

(c) When the patient does not meet the preadmission screening and annual resident review criteria specified in 42 USC 1396r for entering or remaining in a facility.

(5) An individual shall be determined to meet patient status for an intermediate care facility for the mentally retarded and persons with related conditions when the individual requires physical or environmental management or rehabilitation for moderate to severe retardation. In making the decision as to patient status the following criteria shall be applicable:

(a) An individual with significant developmental disabilities and significantly subaverage intellectual functioning who requires a planned program of active treatment to attain or maintain the individual's optimal level of functioning, but does not necessarily require nursing facility or nursing facility with waiver services, shall be considered to meet patient status.

(b) An individual requiring a protected environment while overcoming the effects of developmental disabilities and subaverage intellectual functioning shall be considered to meet patient status while:

1. Learning fundamental living skills;
2. Learning to live happily and safely within his own limitations;
3. Obtaining educational experiences that will be useful in self-supporting activities;
4. Increasing his awareness of his environment.

(c) An individual with a psychiatric primary diagnosis or needs shall be considered to meet patient status criteria only when the individual also has care needs as shown in paragraph (a) or (b) of this subsection, the mental care needs are adequately handled in a supportive environment (i.e., the intermediate care facility for the mentally retarded), and the individual does not require psychiatric inpatient treatment.

(d) An individual that does not require a planned program of active treatment to attain or maintain the individual's optimal level of functioning shall not be considered to meet patient status.

(e) It shall be the policy of the cabinet that no individual shall be denied patient status soley due to advanced age, or length of stay in an institution, or history of previous institutionalization, so long as the individual qualifies for patient status on the basis of all other factors.

(f) With regard to an individual with a "related condition" (not mental retardation) the illness or ailment shall have manifested itself prior to the individual's 22nd birthday.

Section 5. Reevaluation of Need for Service. Nursing facility, nursing facility with waiver, and ICF-MR services shall be provided for as long as the health status and care needs are within the scope of program benefits as described in Sections 3 and 4 of this regulation. Patient status shall be reevaluated at least once every six (6) months. If a reevaluation of care needs reveals that the patient no longer requires high intensity, low intensity, or intermediate care for the mentally retarded services and payment is no longer appropriate in the facility, payment shall continue for ten (10) days to permit orderly discharge or transfer to an appropriate level of care.

Section 6. Preauthorization of Provision of Specialized Rehabilitation Services for Persons with Brain Injuries. Patients who are brain injured and meet usual high intensity nursing facility patient status criteria may be provided care in a certified unit providing specialized

rehabilitation services for persons with brain injuries (i.e., brain injury unit) when the care is preauthorized by staff of the Department for Medicaid Services using criteria specified in this section. For coverage to occur, authorization of coverage shall be granted prior to admission of the individual with the head injury into the certified head injury unit, or if previously admitted to the unit with other third party coverage, authorization shall be granted prior to exhaustion of those benefits.

(1) Injuries within the scope of benefits shall be:

(a) Central nervous system injury from physical trauma;

(b) Central nervous system damage from anoxia or hypoxic episodes; and

(c) Central nervous system damage from allergic conditions, toxic substances and other acute medical/clinical incidents.

(2) Indications for admission and continued stay shall be as follows:

(a) The individual sustained a traumatic brain injury with structural, nondegenerative brain damage and is medically stable;

(b) The individual shall not be in a persistent vegetative state;

(c) The individual demonstrates physical, behavioral, and cognitive rehabilitation potential;

(d) The individual requires coma management; and

(e) The individual has sustained diffuse brain damage caused by anoxia, toxic poisoning, encephalitis, or cardiovascular accident with rehabilitation potential.

(3) The determination as to whether preauthorization is appropriate shall be made taking into consideration the following:

(a) The presenting problem;

(b) The goals and expected benefits of the admission;

(c) The initial estimated time frames for goal accomplishment; and

(d) The services needed.

(4) The following are indicators that show it shall be inappropriate to preauthorize coverage for services provided in a certified brain injury unit:

(a) Strokes, (note: nursing facilities provide rehabilitation services that are expected to meet the needs of most stroke patients);

(b) Spinal cord injuries in which there are no known or obvious injuries to the intercranial central nervous system;

(c) Progressive dementias and other mentally impairing conditions;

(d) Depression and psychiatric disorders in which there is no known or obvious central nervous system damage;

(e) Mental retardation, developmental disabilities, and birth defect related disorders of long standing; and

(f) Neurological degenerative, metabolic and other medical conditions of a chronic, degenerative nature.

Section 7. Reserved Bed Days. The cabinet shall cover reserved bed days in accordance with the following specified upper limits and criteria.

(1) Reserved bed days for nursing facilities and nursing facilities with wavier shall be covered for a maximum of fourteen (14) days per absence for a hospital stay with an overall maximum of forty-five (45) days per provider during the calendar year. Reserved bed days shall be covered for a maximum of fifteen (15) days per provider during the calendar year for leaves of absence other than for hospitalization.

(2) For intermediate facilities for the mentally retarded and persons with related conditions, reserved bed days shall be covered for a maximum of forty-five (45) days per provider within a calendar quarter. Reserved bed days for hospital stays shall not exceed fifteen (15) days per stay. No more than thirty (30) consecutive reserved bed days (for hospital stay(s) plus leave(s) of absence, or leave of absence only) shall be approved for coverage.

(3) Coverage during a recipient's absence for hospitalization or leave of absence shall be contingent on the following conditions being met:

(a) The person shall be in Medicaid payment status in the level of care he/she is authorized to receive and shall have been a resident of the facility at least overnight. Persons for whom Medicaid is making Medicare coinsurance payments shall not be considered to be in Medicaid payment status for purposes of this policy;

(b) The person can be reasonably expected to return to the same level of care;

(c) Due to demand at the facility for beds at that level, there is a likelihood that the bed would be occupied by some other patient were it not reserved;

(d) The hospitalization shall be for treatment of an acute condition, and not for testing, brace-fitting, etc.; and

(e) In the case of leaves of absence other than for hospitalization, the patient's physician orders and plan of care provide for such leaves. Leaves of absence include visits with relatives and friends, and leaves to participate in state-approved therapeutic or rehabilitative programs.

Section 8. The provisions of [amendments to] this administrative regulation shall apply [be effective with regard] to covered services provided on or after July 1, 1991 [October 1, 1990].

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 28, 1991
FILED WITH LRC: July 1, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 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 August 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: Nursing facilities participating in the Medicaid Program.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None*
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No 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: *In the absence of this action Medicaid expenditures could increase by as much as two million to three million dollars.
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

**CABINET FOR HUMAN RESOURCES**
**Department for Medicaid Services**
**(Proposed Amendment)**

**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:
(a) Physical, occupational and speech therapy.
(b) Laboratory procedures.
(c) X-ray.
(d) Oxygen and other related oxygen supplies.
(e) 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 a facility certified to the Medicaid program by the state survey agency as meeting all nursing facility requirements, and in at least thirty-five (35) [ten (10)] percent of the facility's beds (but not less than ten (1) beds meeting all conditions of participation in the Medicare program. The phrase "nursing facility" also includes a nursing facility with waiver unless the context specifies otherwise.
(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) (Including Nursing Facilities with Waiver) and Intermediate Care Facilities for the Mentally Retarded (ICF-MRs). All nursing facilities (NFs) (including nursing facilities with waiver) 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 have at least thirty-five (35) [ten (10)] percent of its beds (but not less than ten (10) beds; for a facility with less than ten (10) beds, all beds) 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. If a nursing facility with waiver chooses to participate in the Medicare Program, the facility shall be required to have at least thirty-five (35) percent of its beds (but not less than ten (10) beds; if the facility has less than ten (10) beds, all beds) participate in the Medicare Program. The Medicaid program does not recognize multilevel nursing facilities, and therefore all participating beds in nursing facilities (including nursing facilities with waiver but not including ICF-MRs) shall be reimbursed at the same rate established for the entire facility [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, revised July 1, 1991 [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 <u>available</u> [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 <u>with prospective rates based on cost reports which are not audited or desk reviewed subject to adjustment when the audit or desk review is completed</u>. 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 staphlococcus aureaus (MRSA), acquired immune deficiency syndrome (AIDS), or who test positive for human immunodeficiency 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 <u>administrative</u> regulation shall be effective with regard to payments for services provided on or after <u>July 1, 1991</u> [October 1, 1990.]

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 27, 1991
FILED WITH LRC: July 1, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 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 August 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: Nursing facilities participating in the Medicaid Program.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No 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:
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

**CABINET FOR HUMAN RESOURCES**
**Department for Medicaid Services**
**(Proposed Amendment)**

**907 KAR 1:027. Payments for dental services.**

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 441.30, 447 Subpart B, 42 USC 1396a-d
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance [in accordance with Title XIX of the Social Security Act]. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the method for determining amounts payable by the cabinet for dental services.

Section 1. Definition. For purposes of determination of payment, "usual and customary charge" refers to the uniform amount which the individual dentist charges in the majority of cases for a specific dental procedure or service.

Section 2. Reimbursement. For services provided on or after July 1, 1991 [1990], the cabinet shall reimburse participating dentists for covered services rendered to eligible medical assistance recipients at the dentist's usual and customary actual billed charge up to the fixed upper limit per procedure established by the cabinet at 100 [eighty (80)] percent of the median billed charge using 1989 calendar year billed charges. If there is no median available for a procedure, or the cabinet determines that available data relating to the median for a procedure is unreliable, the cabinet shall set a reasonable fixed upper limit for the procedure consistent with the general array of upper limits for the type of service. Fixed upper limits not determined in accordance with the principle shown in this subsection of the regulation (if any) due to consideration of other factors (such as recipient access) shall be specified in the regulation.

Section 3. Hospital Inpatient Care. (1) Hospitalized inpatient care, which is paid in the same manner as shown in Section 2 of this regulation, refers to those services provided inpatients. It does not include dental services provided in the outpatient, extended care or home health units of hospitals. Any dentist submitting a claim for hospital inpatient care benefits must agree to accept payment in full for services rendered that patient during that admission.
(2) A general dentist may submit a claim for hospital inpatient services for the patient termed "medically a high risk." Medically high risk is defined as a patient in one (1) of the following classifications:
(a) Heart disease;
(b) Respiratory disease;
(c) Chronic bleeder;
(d) Uncontrollable patient (retardate, emotionally disturbed); or
(e) Other (car accident, high temperature, massive infection, etc.).

Section 4. Reimbursement Exceptions. (1) Effective with regard to services provided on or after July 1, 1991 [1990], the procedures specified in this section shall have the following fixed upper limits:
(a) Emergency call (intermediate level of service), $31.25 [25]; and
(b) Comprehensive oral examination (limited to one (1) per provider per recipient per year), $18.75 [15].
(2) Effective with regard to services provided on or after July 1, 1991 [1989], the procedures specified in this section shall be paid at the lower of the provider's usual and customary actual billed charge or the fixed upper limit specified in this section with preauthorization required for all procedures except for orthodontic consultation. The procedures and fixed fees are as follows:
(a) Orthodontic consultation, $100, except that the fixed fee is fifty (50) dollars if the provider is referring the recipient to a specialist or the preauthorization for orthodontia services is not approved or a request for preauthorization of orthodontia services is not made;
(b) Preauthorized early phase orthodontic services for moderately severe handicapping malocclusions, $1,200 for orthodontists and $1,080 for general dentists;
(c) [(b)] Preauthorized orthodontic services for moderately severe handicapping malocclusions, $1,600 for orthodontists and

$1,440 for general dentists;
(d) [(c)] Preauthorized orthodontic services for severe handicapping malocclusions, $2,400 for orthodontists and $2,160 for general dentists;
(e) [(d)] Retention visits, $30; and
(f) [(e)] Stabilization visit, $15.

Section 5. Oral surgeons shall be treated in the same manner as physicians for reimbursement purposes, and shall be subject to the terms and conditions of payment shown in 907 KAR 1:010, Payments for physicians' services.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 24, 1991
FILED WITH LRC: June 27, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 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 August 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 dentists participating in the Medicaid Program.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: (Cost) $3 million.*
2. Continuing costs or savings: (Cost) $3 million.
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No 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: *The increased expenditure of state funds shall be offset by the tax assessment of dentists as provided for by House Bill 21, 1991 Special Session of the General Assembly.
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

## CABINET FOR HUMAN RESOURCES
## Department for Medicaid Services
## (Proposed Amendment)

**907 KAR 1:031. Payments for home health services.**

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.70, 447.325, 42 USC 1396a-d
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 home health agency services.

Section 1. Payments to Home Health Agencies. (1) The cabinet shall reimburse participating home health agencies on the basis of interim rates set by the cabinet using available Medicare data and methodology as applied to Medicaid covered services (effective July 1, 1992 using cost data submitted by the home health agency provider on the annual Medicaid home health agency cost report), taking into consideration the upper limit shown in Section 2 of this regulation and the various policies and guidelines specified in the Cabinet for Human Resources Title XIX Home Health Reimbursement Manual, revised [dated] July 1, 1991 [1990], which is hereby incorporated by reference. The Home Health 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 upon payment of an appropriate fee which shall [will] not exceed approximate cost. A home health agency (but not including a publicly operated agency) whose nonaggregated base year costs (as shown in the cost report used to set the agency's interim rate) are below the prospective upper limit for the agency shall receive a cost containment incentive payment in accordance with the incentive payment schedule shown in the reimbursement manual; the incentive payment shall [will] not be subject to retrospective settlement.
(2) Payments made at the interim rate (except for incentive payments) shall [will] be settled back to actual allowable cost at the end of the facilities' fiscal year, with actual allowable costs not to exceed the amounts that would be allowable taking into consideration the upper

limit specified in Section 2 of this regulation. The Medicaid final rates (except for incentive payments) shall [may] not exceed federally established upper limits for Medicare.

Section 2. Application of Upper Limits. Publicly operated home health agencies (except new facilities as shown in Section 5 of this regulation) shall [will] be reimbursed at full allowable cost but shall be [are] subject to the Medicare upper limits. Payments for other agencies (except payments for disposable medical supplies, as shown in Section 4 of this regulation), and incentive payments as shown in Section 1 of this regulation shall [may] not exceed a prospective upper limit which shall [will] be set at 105 percent of the weighted median of the array of allowable per visit costs of those agencies that are [will be] subject to the upper limits with facilities placed in an urban or rural array based on the facility location for the following cost centers or disciplines: skilled nursing, speech pathology, physical therapy, occupational therapy, medical social services, and home health aid services. A determination as to whether a county is urban or rural shall [will] be made taking into account usual standard metropolitan statistical areas. The arrays shall be based on annual cost report data with costs trended through June 30 and indexed for the rate year; the rate year shall begin on July 1 and end on June 30; and the upper limit shall be subject to an annual adjustment to be effective on July 1 of each rate year. Aggregation of costs (i.e., shifting of allowable costs from one cost center to another if the limit is exceeded in one cost center but not in another) shall [will] be permitted. For rate years beginning July 1, 1986 and thereafter, the array shall be based on the latest available cost report as of May 31 preceding the rate year.

Section 3. Payments for Durable Medical Equipment. Effective July 1, 1989, home health agencies shall not be reimbursed for durable medical equipment.

Section 4. Disposal medical supplies shall be reimbursed on an interim basis at a percent of allowable billed charges with a settlement to actual costs at the end of the agency's fiscal year.

Section 5. New home health agencies shall be paid seventy (70) percent of the Medicaid [Title XIX] maximum rate not to exceed Medicare upper limits, until a fiscal year end cost report is available. During this initial period, the rate may [can] be adjusted if the provider documents the justification for a rate change by the submittal of a projected cost report.

Section 6. Owners' compensation shall be limited as shown in the Home Health Reimbursement Manual.

Section 7. Payments to Out-of-state Home Health Agencies Effective with Regard to Services Provided on or after July 1, 1990. (1) The cabinet shall reimburse participating out-of-state home health agencies at the lower of the Medicare [Title XVIII] maximum payment rate, the Medicaid [Title XIX] maximum payment rate, or the agency's actual usual and customary billed charge.

(2) Disposable medical supplies shall be reimbursed at a rate of eighty (80) percent of the actual usual and customary billed charge.

Section 8. Appeals. Participating home health agencies are provided the following mechanism for a review of program decisions relating to the application of the policies and procedures governing home health agency payments.

(1) A home health agency operator may request reconsideration of a program decision by writing to the Director, Division of Reimbursement Operations. This request shall be received within forty-five (45) days following transmittal of the audited cost report to the agency or the notification of the agency's prospective rate. The request for workpapers pertaining to audit adjustments to the home health agency's cost report shall [will] not extend the forty-five (45) day time limit. If the provider fails to appeal the audited cost report within the forty-five (45) days, the audited cost report shall be [is] final and not subject to reopening unless the cabinet determines that there is suspected fraud or misrepresentation. The request for appeal shall indicate which adjustments the home health agency wishes to appeal. A blanket request to appeal the cost report shall [will] not be accepted. Upon receipt of the request for review, the division shall [will] determine the need for a program/vendor conference and shall [will] contact the home health agency to arrange a conference if needed. The conference, if needed, shall be held within sixty (60) days of the program's receipt of the home health agency's request for review unless delayed due to extenuating circumstances. Regardless of the program decision, the provider shall [will] be afforded the opportunity for a conference if he so wishes for a full explanation of the factors involved and the program decision. Following review of the matter, the director shall [will] notify the home health agency of the action to be taken by the division within twenty (20) days of receipt of the request for review or the date of the program/vendor conference, except that additional time may be taken as necessary to secure further information or clarification pertinent to the resolution of the issue.

(2) If the Director of Reimbursement Operations' decision is unsatisfactory, the home health agency may then appeal the question to a reimbursement review panel established by the Commissioner of the Department for Medicaid Services which shall [will] include one (1) member of the Division of Reimbursement Operations, a representative of the Kentucky Association of Home Health Agencies, and a member of the Department for Medicaid Services (but not within the Division of Reimbursement Operations) as designated by the commissioner, with the designated member to serve as chairperson. The request for review by the reimbursement review panel must be postmarked within twenty (20) days following the notification of the initial decision by the Director, Division of Reimbursement Operations. A date for the reimbursement review panel to convene shall [will] be established within twenty (20) days after receipt of a written request for the appeal. The question shall [will] be heard by the panel. The panel shall issue a binding decision on the issue within

thirty (30) days of the hearing of the issue, except that additional time may be taken as necessary to secure further information or clarification pertinent to the resolution of the issue. In carrying out the intent and purposes of the program the panel may take into consideration extenuating circumstances which may be considered in order to provide for equitable treatment and reimbursement of the provider.

Section 9. Audits may be performed by either the Medicare or Medicaid program; if audited by both, the Medicaid audit shall [will] take precedence over the Medicare audit.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 24, 1991
FILED WITH LRC: July 1, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 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 August 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 home health providers participating in the Medicaid Program.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No 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:
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

**CABINET FOR HUMAN RESOURCES**
**Department for Medicaid Services**
**(Proposed Amendment)**

**907 KAR 1:040. Payments for vision care services.**

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.40, 440.60, 447 Subpart B, 42 USC 1396a-d
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 vision care services.

Section 1. Definitions. For purposes of determination of payment the following definition shall be applicable: "usual and customary charge" means the uniform amount the individual optometrist or ophthalmic dispenser charges in the majority of cases for a specific covered procedure or service.

Section 2. Reimbursement for Covered Procedures and Materials for Optometrists.
(1) Effective with regard to services provided on or after July 1, 1991 [1990], reimbursement for covered services, except materials, shall be the optometrists' usual and customary actual billed charges up to the fixed upper limit per procedure established by the cabinet at 100 [eighty-five (85)] percent of the median billed charge using 1989 calendar year billed charges. If there is no median available for a procedure, or the cabinet determines that available data relating to the median for a procedure is unreliable, the cabinet shall set a reasonable fixed upper limit for the procedure consistent with the general array of upper limits for the type of service. Fixed upper limits not determined in accordance with the principle shown in this subsection of the regulation (if any) due to consideration of other factors (such as recipient access) shall be specified in the regulation.
(2) Reimbursement for materials (eyeglasses or parts of eyeglasses) shall be made at the laboratory cost of the materials not to exceed upper limits for materials as set by the cabinet. A laboratory invoice, or proof of actual acquisition cost of materials, shall be maintained in the recipient's medical records for postpayment review.

Section 3. Maximum Reimbursement for Covered Procedures and Materials for Ophthalmic

Dispensers. (1) Effective with regard to services provided on or after July 1, 1991 [1990], reimbursement for covered services (a dispensing service fee or a repair service fee) rendered by licensed ophthalmic dispensers to eligible recipients shall be the ophthalmic dispensers' usual and customary actual billed charges up to the fixed upper limit per procedure established by the cabinet at 100 [eighty-five (85)] percent of the median billed charge using 1989 calendar year billed charges. If there is no median available for a procedure, or the cabinet determines that available data relating to the median for a procedure is unreliable, the cabinet shall set a reasonable fixed upper limit for the procedure consistent with the general array of upper limits for the type of service. Fixed upper limits not determined in accordance with the principle shown in this section of the regulation (if any) due to consideration of other factors (such as recipient access) shall be specified in the regulation.

(2) Reimbursement for materials (eyeglasses or parts of eyeglasses) shall be made at the laboratory cost of the materials not to exceed upper limits for materials as set by the cabinet. A laboratory invoice, or proof of actual acquisition cost of materials, shall be maintained in the recipients's medical records for postpayment review.

Section 4. Reimbursement for other Supplies and Materials. Other supplies and materials such as cleaning fluid, cleaning cloth, carrying cases, etc., which are not eyeglasses or replacement/repair parts for eyeglasses, are considered to be provided in conjunction with and paid for as a part of the vision services rendered, and additional charges shall not be made to the cabinet or the recipient for these items.

Section 5. Effect of Third Party Liability. When payment for a covered service is due and payable from a third party source, such as private insurance, or some other third party with a legal obligation to pay, the amount payable by the cabinet shall be reduced by the amount of the third party payment.

Section 6. Limitations. (1) Program reimbursement for eyeglasses shall be inclusive. The cost of both laboratory materials and dispensing fees shall be billed to either the program or the recipient. If any portion of the amount is billed to or paid by the recipient, no responsibility for reimbursement shall attach to the cabinet and no bill for the service shall be paid by the cabinet. This limitation shall not, however, preclude the issuance of billings for the purpose of establishing the liability of, or collecting from, liable third parties.

(2) Telephone contacts are excluded from payment.

(3) Contact lenses are excluded from payment.

(4) Safety glasses are excluded from payment, unless the recipient is blind in one (1) eye and safety glasses are prescribed for protection.

Section 7. For services provided on or after July 1, 1991, optometrist laboratory services shall be reimbursed based on the Medicare allowable payment rates. For laboratory services with no established allowable payment rate, the payment shall be sixty-five (65) percent of the usual and customary actual billed charges.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 24, 1991
FILED WITH LRC: June 27, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 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 August 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 optometrists participating in the Medicaid Program.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: (Cost) $600,000*

2. Continuing costs or savings: (Cost) $600,000

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: 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: *The increased expenditure of state funds shall be offset by the tax assessment of optometrists as provided for by House Bill 21, 1991 Special Session of the General Assembly.

TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly

situated providers be treated in a similar manner.

**CABINET FOR HUMAN RESOURCES**
**Department for Medicaid Services**
**(Proposed Amendment)**

**907 KAR 1:055. Payments for primary care center and federally-qualified health center services.**

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.130, 447.325, 42 USC 1396a-b, d
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance [in accordance with Title XIX of the Social Security Act]. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the method for determining amounts payable by the cabinet for primary care center and federally-qualified health center services.

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

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

(2) Payment amounts shall be determined by application of the "Primary Care Center and Federally-qualified Health Center Reimbursement Manual" (revised July 1, 1991 [April 1, 1990], and hereby incorporated by reference) developed and issued by the cabinet, supplemented by the use of Medicare [title XVIII-A] reimbursement principles. The Kentucky Medical Assistance Program Primary Care Center and Federally-qualified Health Center 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.

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

(4)(a) Effective January 1, 1989 all primary care centers and, effective April 1, 1990, all federally-qualified health centers, shall [will] be placed on a universal rate year for purposes of payments.

(b) For the purpose of calculating interim rates, costs from the most recent audited cost report shall [will] be used with costs trended to the beginning of the year (e.g., to January 1, 1989 for the first universal rate year) and indexed for inflation to the end of that year.

(5) As an incentive for cost efficiency, providers which at the beginning of the universal rate year have medical and nursing costs in the lowest one-fourth (1/4) of the array shall [will] receive an incentive payment which is set at twenty (20) percent of the average composite interim rate of the incentive eligible group, with the incentive to be paid only on visits which are not in excess of 10,000. The entire interim payment shall [will] be considered prospective in nature for the incentive eligible group in that there shall [will] be no settlement after audit requiring a payback unless charges are less than payments; to the extent that cost exceeds the interim payments, an upward adjustment shall [will] be made to compensate for the additional costs. At the time of settlement, the center shall receive the greater of the interim payment, or actual cost, not to exceed charges.

(6) Effective with regard to services provided on or after October 1, 1988, the cost of drugs for specified immunizations as shown in 907 KAR 1:054 which are provided free from the Department for Health Services to primary care centers and federally-qualified health centers shall be paid by the Department for Medicaid Services to the Department for Health Services upon receipt of notice from the centers that the drugs were used to provide immunizations to Medicaid recipients.

(7) Effective with regard to services provided on or after January 1, 1989, the cost of drugs for specified immunizations as shown in 907 KAR 1:054 shall not be considered an allowable cost even though the drugs are purchased on the open market so long as the drugs could have been obtained free from the Department for Health Services.

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

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

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

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

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

Section 3. Prohibition against Joint Participation. Dual or joint participation in the medical assistance program by a primary care center or federally-qualified health center shall [is] not be permitted. When a primary care center or federally-qualified health center elects to participate as such in the medical assistance program it shall [may] not participate concurrently under other regular ongoing elements of the medical assistance

program, including the rural health clinic services element. In addition, when a center elects to participate as such in the medical assistance program, it is considered to elect participation for all eligible service elements, components, or subunits of the center.

Section 4. Nonallowable Costs. The cabinet shall not make reimbursement under the provisions of this regulation for services not covered by 907 KAR 1:054, primary care center and federally-qualified health center services, nor for that portion of a center's costs found unreasonable or nonallowable in accordance with the cabinet's "Primary Care Center and Federally-qualified Health Center Reimbursement Manual." In addition, when the utilization review processes of the cabinet find that costs have been incurred through provision of unnecessary medical treatment services, the [such] costs shall be disallowed.

Section 5. The amendments to [Sections 1 through 4 of] this regulation shall be applicable [effective] with regard to payments for services provided on or after July 1, 1991 [April 1, 1990].

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 24, 1991
FILED WITH LRC: July 1, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 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 August 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 primary care centers and federally qualified health center services participating in the Medicaid Program.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No 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:
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

**CABINET FOR HUMAN RESOURCES**
**Department for Medicaid Services**
**(Proposed Amendment)**

**907 KAR 1:061. Payments for medical transportation.**

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050
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 medical transportation services.

Section 1. Definitions. For purposes of this regulation, the following definitions apply:
(1) "Attendant" means an individual who accompanies the recipient, if necessary, to, from, and while receiving medical services.
(2) [(1)] "Commercial transportation vendors" means those commercial carriers licensed in accordance with the laws of Kentucky, other states, or of the United States to transport members of the general public.
(3) "Noncommercial group carriers" means those vendors who provide bus or bus-type medical transportation to an identifiable segment of the eligible recipient group, but not including vendors whose transportation costs are allowable costs under their reimbursement system (e.g., mental health centers). Such segment may be identifiable by geographical boundary, type of medical service required, common medical destination (i.e., clinic, primary care center, etc.), or other similar grouping method. Included within this definition are:
(a) Community action agencies (or successor agencies) providing bus or bus-type service for a poverty or near-poverty area target population; and
(b) Other similar providers as identified by the cabinet.
(4) [(2)] "Private automobile vendor" means a person owning or having access to a private

vehicle not used for commercial transportation purposes and who uses that vehicle for the occasional medical transportation of eligible recipients. Included within this definition are ambulance type vendors who are noncertified or who have not chosen or been approved to participate in the Title XIX program, if willing to accept private automobile vendor rates.

(5) "Specialty individual carrier" means a vendor who provides, through specially equipped vehicles, medical transportation for nonambulatory recipients (those who are required to travel by wheelchair) or for ambulatory but disoriented recipients (those who are sufficiently disoriented as to time, place, person or objects so as to be unable to travel to or from medical services unaccompanied or unsupervised), and who provides services not normally available from other transportation vendors. The equipment ordinarily required shall be a van or similar type vehicle with a lift for wheelchairs; and the service shall be the accompaniment of the recipient from point of origin to point of destination where the recipient is placed in the charge of the receiving individual, including physical assistance or guidance to the recipient if necessary. To be considered a specialty individual carrier for purposes of reimbursement from the cabinet, the carrier must be recognized by the cabinet as a specialty individual carrier with approval given by the cabinet for reimbursement at specialty individual carrier rates. The cabinet may require the submission of documentation designed to show that the vendor is capable of providing specialty individual carrier service in an adequate and safe manner.

(6) [(3)] "Waiting time" means that period of time following provision of transportation to a medical vendor during which the private automobile vendor is waiting for the recipient to receive medical treatment, in order to provide the return trip required by the recipient. In the instance of an eligible recipient being admitted to a medical institution for inpatient care, waiting time is considered to have occurred when the private automobile vendor waits a sufficient period of time to ensure the recipient's admittance to the facility.

[(4) "Noncommercial group carriers" means those vendors who provide bus or bus-type medical transportation to an identifiable segment of the eligible recipient group, but not including vendors whose transportation costs are allowable costs under their reimbursement system (e.g., mental health centers). Such segment may be identifiable by geographical boundary, type of medical service required, common medical destination (i.e., clinic, primary care center, etc.), or other similar grouping method. Included within this definition are:]

[(a) Community action agencies (or successor agencies) providing bus or bus-type service for a poverty or near-poverty area target population; and]

[(b) Other similar providers as identified by the cabinet.]

[(5) "Specialty individual carrier" means a vendor who provides, through specially equipped vehicles, medical transportation for nonambulatory recipients (those who are required to travel by wheelchair) or for ambulatory but disoriented recipients (those who are sufficiently disoriented as to time, place, person or objects so as to be unable to travel to or from medical services unaccompanied or unsupervised), and who provides services not normally available from other transportation vendors. The equipment ordinarily required shall be a van or similar type vehicle with a lift for wheelchairs; and the service shall be the accompaniment of the recipient from point of origin to point of destination where the recipient is placed in the charge of the receiving individual, including physical assistance or guidance to the recipient if necessary. To be considered a specialty individual carrier for purposes of reimbursement from the cabinet, the carrier must be recognized by the cabinet as a specialty individual carrier with approval given by the cabinet for reimbursement at specialty individual carrier rates. The cabinet may require the submission of documentation designed to show that the vendor is capable of providing specialty individual carrier service in an adequate and safe manner.]

Section 2. Ambulance Services. (1) The cabinet shall reimburse licensed participating ambulance services at the lesser of their usual and customary charges or the maximum rate established by the cabinet.

(2) The maximum rate shall be the amount arrived at by combining the following component costs, as applicable:

(a) The base rate, which shall be set at fifty (50) dollars per one (1) way trip and includes all mileage costs for the first ten (10) miles;

(b) A mileage allowance of one (1) dollar per mile for mileage above the first ten (10) miles;

(c) An oxygen rate, which is set at eight (8) dollars per one (1) way trip; and

(d) The cost (as determined by the cabinet) of other itemized supplies.

Section 3. Commercial Transportation Vendors. [Effective with regard to services provided on and after October 1, 1990,] The cabinet shall reimburse participating commercial transportation vendors at the normal passenger rate charged to the general public, except that the following maximum rates shall be applicable for franchised (licensed) taxi services in those areas of the state where taxi rates are not regulated by the appropriate local rate setting authority, and for franchised (licensed) taxi services in regulated areas when they go outside the medical service area.

(1) The upper limit shall be the usual and customary charge up to a maximum of six (6) dollars for trips of five (5) miles or less, one (1) way, loaded miles.

(2) The upper limit shall be the usual and customary charge up to a maximum of twelve (12) dollars for trips of six (6) to ten (10) miles, one (1) way, loaded miles.

(3) The upper limit shall be the usual and customary charge up to a maximum of twenty (20) dollars for trips of eleven (11) to twenty-five (25) miles, one (1) way, loaded miles.

(4) The upper limit shall be the usual and customary charge up to a maximum of thirty (30) dollars for trips of twenty-six (26) miles to fifty (50) miles, one (1) way, loaded miles.

(5) The upper limit for trips of fifty-one (51) miles or above shall be the lesser of the usual and customary charge or an amount derived by multiplying one (1) dollar by the actual number of miles, not to exceed a maximum of

seventy-five (75) dollars per trip, one (1) way, loaded miles.

Section 4. Private Automobile Vendors. (1) The cabinet shall reimburse private automobile vendors at the basic rate of twelve (12) cents per mile plus a flat fee of two (2) dollars per eligible passenger if waiting time is required. For round trips of less than five (5) miles the rate shall be computed on the basis of a maximum allowable fee of three (3) dollars for the first passenger plus two (2) dollars each for waiting time for additional eligible passengers. [For services provided on or after January 1, 1991] Private automobile vendors shall have a signed participation agreement with the Department for Medicaid Services prior to furnishing reimbursable medical transportation services.

(2) For round trips of five (5) to twenty-five (25) miles the rate for private automobile vendors shall be computed on the basis of a maximum allowable fee of five (5) dollars for the first passenger plus two (2) dollars each for waiting time for additional eligible passengers. The maximum allowable fee rates shall not be utilized in situations where mileage is paid.

(3) Even though the maximum allowable fee rate when computed on the basis of twelve (12) cents per mile plus two (2) dollars for waiting time would not equal the three (3) dollars or five (5) dollars allowable amounts, that amount may be paid to encourage private automobile vendors to provide necessary medical transportation. Additionally, nothing in this section requires the cabinet to pay the amounts specified in the event the private automobile vendor expresses a preference for reimbursement in a lesser amount; in that event, the lesser amount shall [will] be paid. Toll charges shall be [are] reimbursable when incurred.

(4) Waiting time shall be a reimbursable component of the private automobile vendor transportation fee only when waiting time occurs. When waiting time occurs due to admittance of the recipient into the medical institution, the private automobile vendor may be reimbursed for the return trip to the point of recipient pickup as though the client were in the vehicle; that is, the total reimbursable amount shall be computed on the basis of the maximum allowable fee or mileage rate plus waiting time as shown in this section.

Section 5. Noncommercial Group Carriers. The cabinet shall reimburse participating noncommercial group carriers based on actual reasonable, allowable cost to the provider based on cost data submitted to the cabinet by the provider; however, the minimum rate shall be twenty (20) cents per recipient per mile transported and the rate upper limit shall be fifty (50) cents per recipient per mile transported.

Section 6. Specialty Individual Carriers. (1) Participating specialty individual carriers shall be reimbursed at the lesser of the following rates:

(a) The actual charge for the service; or

(b) The usual and customary charge for that service by the carrier, as shown in the schedule of usual and customary charges submitted by the carrier to the cabinet; or

(c) The program maximum established for the service.

(2) For services provided on or after July 1, 1990, program maximums are:

(a) Nonambulatory, wheelchair patients; for transportation within a distance of ten (10) miles or less, the upper limit shall be twenty-five (25) dollars for the first patient plus ten (10) dollars for each additional nonambulatory patient transported on the same trip, for each time a patient is transported to or transported from the medical service site. To this base rate may be added two (2) dollars per mile per patient for miles the patient(s) is transported above ten (10) (one (1) way), and toll charges actually incurred.

(b) Ambulatory, disoriented patients; for transportation within a distance of ten (10) miles or less, the upper limit shall be twelve (12) dollars and fifty (50) cents per patient for each time a patient(s) is transported to or transported from the medical service site. To this base rate may be added two (2) dollars per mile per patient for miles the patient is transported above ten (10) (one (1) way), and toll charges actually incurred.

(c) For both paragraphs (a) and (b) of this subsection, mileage shall be computed by the most direct accessible route from point of pickup to point of delivery, and reimbursement for mileage shall be allowed only for those miles the recipient is actually transported in excess of ten (10). Empty vehicle miles shall not be included when computing allowable reimbursement for mileage.

(3) Reimbursement shall be made at specialty individual carrier rates for the following types of recipients only:

(a) Nonambulatory recipients who need to be transported by wheelchair, but not including recipients who need to be transported as a stretcher patient; and

(b) Ambulatory but disoriented recipients, defined as persons confused, especially with respect to time, place and identity of persons or objects. The extent of disorientation shall be such as to preclude the recipient from safely utilizing, unaccompanied, alternate methods of transportation.

(4) The specialty carrier shall obtain a statement from the recipient's physician (or, if the recipient is in a skilled nursing or intermediate care facility, from the director of nursing, charge nurse, or medical director in lieu of physician) to verify that transportation by the specialty carrier is medically necessary due to the recipient's nonambulatory or disoriented condition. Claims for payment which are submitted without the required statement of verification shall not be paid.

Section 7. Specially authorized transportation services provided by participating ambulance services may be paid for at a rate of forty (40) dollars per one (1) way trip, which includes all mileage costs for the first ten (10) miles, and a mileage allowance of seventy-five (75) cents per mile above the first ten (10) miles, unless otherwise authorized; specially authorized transportation services provided by participating specialty carriers, or as otherwise authorized in unforeseen circumstances, may be paid for at a rate adequate to secure the necessary service; in no event, however, shall the amount allowed exceed the usual and customary charge of the provider.

Section 8. Use of Flat Rates. When a recipient chooses to use a medical provider outside the medical service area (i.e., the medical service is available within the medical service area and the recipient has not been appropriately referred to a medical provider outside the medical service area), transportation payment shall not exceed the lesser of six (6) dollars per trip, one (1) way (or twelve (12) dollars for a round trip), or the usual fee for the participating transportation provider computed in the usual manner.

Section 9. Meals and Lodging. Effective with regard to services provided on or after July 1, 1991, the upper limits for meals and lodgings for recipients and attendants when preauthorized (or postauthorized if appropriate) by the cabinet shall be as follows:

(1) Standard area:

(a) Meals: breakfast - $4 per day; lunch - $5 per day; dinner - $11 per day; and

(b) Lodgings: actual cost up to $40 per day if known; if not known, $40 per day.

(2) High rate area:

(a) Meals: breakfast - $5 per day; lunch - $6 per day; dinner - $15 per day; and

(b) Lodgings: actual cost up to $55 per day if known; if not known, $55 per day.

Section 10. [9.] Limitations. Any reimbursement for medical transportation shall be contingent upon the recipient receiving the appropriate pre- or postauthorization for medical transportation as required by the cabinet.

[Section 10. The amendments to this regulation shall be effective for services provided on or after October 1, 1990 except as specified in Section 4 of this regulation.]

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 27, 1991
FILED WITH LRC: July 1, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 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 August 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 recipients receiving medical transportation.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None*
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No 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:
*This action is for administrative purposes and establishes upper limits for services already covered; no savings or costs are anticipated.
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

## CABINET FOR HUMAN RESOURCES
## Department for Medicaid Services
## (Proposed Amendment)

### 907 KAR 1:340. Payments for hospice services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 USC 1396a-d
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 policies of the cabinet with regard to payments for hospice services.

Section 1. Conditions for Participation. A hospice program shall [must] meet the Medicare conditions for participation and any other standards set by the cabinet in order to participate in the Medicaid program.

Section 2. Provision of Service. Payment for services shall be limited to those hospice program services as defined in 907 KAR 1:330, provided to eligible individuals meeting the

criteria for receipt of hospice care as set forth in 907 KAR 1:330.

Section 3. Payment Rates. The payment rates shall be the same as those used in the Medicare program. If for some reason a Medicare payment rate is unavailable, the payment rate used by Medicaid shall be determined in the same manner as Medicare rates. In addition, for hospice patients in nursing facility [skilled nursing, intermediate care, dual licensed, and swing] beds participating in the Medicaid program, the hospice shall be paid an amount for room and board furnished by the facility which is equal to ninety-five (95) percent of the Medicaid rate for the facility [upper limit for that type of care].

Section 4. Copayments. (1) The Medicaid program shall pay the Medicare copayments if the Medicaid recipient qualifies for and has elected Medicaid hospice benefits as specified in 907 KAR 1:330.

(2) No copayments shall be applied to Medicaid payment rates for hospice services.

Section 5. Coverage of Drugs. When the hospice provides to a participating recipient a medically necessary drug which is for a condition not relating to the terminal illness, the Medicaid program shall reimburse the hospice separately for the drug taking into consideration usual program constraints on drug coverage and payments. (Drugs relating to the terminal illness are reimbursed as a part of the usual hospice payment rate.)

Section 6. Effective Date. The amendments to this regulation shall be applicable [effective] for hospice services provided on or after July 1, 1991 [April 1, 1990].

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 28, 1991
FILED WITH LRC: July 3, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 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 August 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: 20 hospice providers.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No 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:
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

## CABINET FOR HUMAN RESOURCES
## Department for Mental Health and Mental Retardation Services
## (Proposed Amendment)

**908 KAR 3:080. Policies and procedures of Hazelwood Center [ICF-MR].**

RELATES TO: KRS Chapters 202A, 202B, 210
STATUTORY AUTHORITY: KRS 194.050, 202A.196, 202B.060, 210.010, 210.040, 210.045, 210.055, 210.285, 42 CFR 440 through 489
NECESSITY AND FUNCTION: KRS 210.010 directs that the Secretary for the Cabinet for Human Resources shall adopt rules and regulations which insure proper administration and enforcement of these chapters.

Section 1. Polices and procedures of Hazelwood Center [ICF/MR] as set forth in the August 15, 1991 [August 15, 1990] edition of the Hazelwood policy manual consisting of five (5) volumes relating to the operation of Hazelwood Center [ICF-MR] are incorporated by reference.

Section 2. These policies and procedures contained in five (5) volumes relating to the operation of Hazelwood Center [with a total of 186 pages]. They are available for inspection or copy at the office of the Commissioner of the Department of Mental Health/Mental Retardation Services, 275 East Main Street, Frankfort, Kentucky, and at Hazelwood Center, 1800 Bluegrass Avenue, Louisville, Kentucky.

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: July 10, 1990
FILED WITH LRC: July 12, 1990 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for August 21, 1991 at 9 a.m. in the Employment Services Conference Room, Second Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 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: Dennis D. Boyd
(1) Type and number of entities affected: The group of persons who could be affected are approximately 220 with mental retardation and their families.
(a) Direct and indirect costs or savings to those affected: None. This regulation deals with the treatment of residents.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body: There will be very little change in procedures.
(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: This has no effect on revenue.
(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: There is no statute or regulation in conflict.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: This is an administory to incorporate manuals by reference.
TIERING: Was tiering applied? Yes

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. This regulation incorporates by reference manual material used by agency staff and is federally mandated.
2. State compliance standards. This regulation incorporates by reference manual material used by agency staff and contains state compliance standards.
3. Minimum or uniform standards contained in the federal mandate. There are standards cited in 42 CFR 440 through 42 CFR 489. These federal regulations mandate requirements implemented by this regulation. The requirements contained in this regulation are neither stricter, in addition to, or different from those in the federal requirement.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This regulation incorporates by reference manual material used by agency staff. Stricter requirements or responsibilities are not imposed.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standards, requirements, or responsibilities are imposed.

**CABINET FOR HUMAN RESOURCES**
**Department for Mental Health and Mental Retardation Services**
**(Proposed Amendment)**

**908 KAR 3:090. Policies and procedures of Central State Hospital ICF-MR (intermediate care facility-mental retardation).**

RELATES TO: KRS Chapters 202A, 202B, 210
STATUTORY AUTHORITY: KRS 202A.196, 202B.060, 210.010, 210.040, 210.045, 210.055, 210.285, 42 CFR 440 through 489
NECESSITY AND FUNCTION: KRS 210.010 directs that the Secretary for the Cabinet for Human Resources shall adopt rules and regulations which insure proper administration and enforcement of these chapters. The function of this regulation is to describe the medical care and treatment and residential care of persons at Central State Hospital ICF-MR.

Section 1. The polices and procedures set forth in the July 15, 1991 [April 15, 1989], edition of the Central State Hospital ICF-MR policy and procedures manual are adopted by reference.

Section 2. These regulations are contained in one (1) volume relating to the operation of Central State Hospital, ICF-MR. This volume is available for inspection or copy in the office of the Commissioner at 275 East Main Street, Frankfort, Kentucky 40621, and at the office of the Director, Central State Hospital ICF-MR, LaGrange Road, Louisville, Kentucky 40223.

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: July 10, 1990
FILED WITH LRC: July 12, 1990 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for August 21, 1991 at 9 a.m. in the Employment Services Conference Room, Second Floor West, CHR Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 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: Dennis D. Boyd
(1) Type and number of entities affected: The group of persons who could be affected are 60 mentally retarded individuals and their families.
(a) Direct and indirect costs or savings to those affected: None. This regulation deals with the treatment of residents.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body: There will be very little change in policies and procedures at this facility.
(a) Direct and indirect costs or savings: These policies and procedures deal with treatment and do not indicate economic 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: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute or regulation in conflict.
(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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. This regulation incorporates by reference manual material used by agency staff and is federally mandated.
2. State compliance standards. This regulation incorporates by reference manual material used by agency staff and contains state compliance standards.
3. Minimum or uniform standards contained in the federal mandate. There are standards cited in 42 CFR 440 through 42 CFR 489. These federal regulations mandate requirements implemented by this regulation. The requirements contained in this regulation are neither stricter, in addition to, or different from those in the federal requirement.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This regulation incorporates by reference manual material used by agency staff. Stricter requirements or responsibilities are not imposed.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standards, requirements, or responsibilities are imposed.

**CABINET FOR HUMAN RESOURCES**
**Department for Mental Health and Mental Retardation Services**
**(Proposed Amendment)**

**908 KAR 3:100. Policies and procedures of Eastern State Hospital.**

RELATES TO: KRS Chapters 202A, 202B, 210
STATUTORY AUTHORITY: KRS 202A.196, 202B.060, 210.010, 210.040, 210.055, 210.285, 42 CFR 440 through 489
NECESSITY AND FUNCTION: KRS 210.010 directs that the Secretary for the Cabinet for Human Resources shall adopt rules and regulations which insure proper administration and enforcement of these chapters. These polices and procedures describe the treatment and care of patients at Eastern State Hospital.

Section 1. The function of this regulation is to incorporate by reference the polices and procedures of Eastern State Hospital as found in the July 15, 1991 [April 15, 1990], edition of the policy and procedure manual.

Section 2. The Eastern State Hospital policy and procedure manual consists of twelve (12) volumes relating to the operation of Eastern State Hospital. They are available for inspection and copy at the office of the Commissioner for Mental Health/Mental Retardation Services, 275 East Main Street, Frankfort, Kentucky 40621, and at the Facility Director's Office, Eastern State Hospital, 627 West Fourth Street, Lexington, Kentucky 40508.

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: July 10, 1991
FILED WITH LRC: July 12, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for August 21, 1991 at 9 a.m. in the Employment Services Conference Room, Second Floor, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 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: Dennis D. Boyd
(1) Type and number of entities affected: There are 2000 persons each year admitted to Eastern State Hospital. These along with their families, would be affected.
(a) Direct and indirect costs or savings to those affected: This regulation incorporates the policies and procedures of Eastern State Hospital by reference and does not relate to costs or savings.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional facts to be considered.
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body: There is very little effect on the 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: These were not alternative methods.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute in conflict.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: This is an administory to incorporate manuals by reference.
TIERING: Was tiering applied? Yes

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. This regulation incorporates by reference manual material used by agency staff and is federally mandated.
2. State compliance standards. This regulation incorporates by reference manual material used by agency staff and contains state compliance standards.
3. Minimum or uniform standards contained in the federal mandate. There are standards cited in 42 CFR 440 through 42 CFR 489. These federal regulations mandate requirements implemented by this regulation. The requirements contained in this regulation are neither stricter, in addition to, or different from those in the federal requirement.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This regulation incorporates by reference manual material used by agency staff. Stricter requirements or responsibilities are not imposed.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standards, requirements, or responsibilities are imposed.

**CABINET FOR HUMAN RESOURCES**
**Department for Mental Health and Mental Retardation Services**
**(Proposed Amendment)**

**908 KAR 3:110. Policies and procedures of Central State Hospital.**

RELATES TO: KRS Chapters 202A, 202B, 210
STATUTORY AUTHORITY: KRS 194.050, 202A.196, 202B.060, 210.010, 210.040, 210.055, 210.285, 42 CFR 440 through 489
NECESSITY AND FUNCTION: KRS 210.010, relating to the hospitalization of mentally ill and mentally retarded person, directs that the Secretary for the Cabinet for Human Resources shall adopt rules and regulations which insure proper administration and enforcement of these chapters.

Section 1. Polices and procedures of Central State Hospital as set forth in the July 15, 1991 [April 15, 1989], edition of the Central State Hospital Policy and procedure manual consisting of two (2) volumes relating to the operation of Central State Hospital are incorporated by reference.

Section 2. These policies have [in] two (2) volumes [have 159 pages]. They are available for inspection or copy at the office of the Commissioner for the Department of Mental Health/Mental Retardation Services, 275 East Main Street, Frankfort, Kentucky 40621, and in the office of the Director at Central State Hospital, LaGrange Road, Louisville, Kentucky 40223.

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: July 10, 1991
FILED WITH LRC: July 12, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for August 21, 1991 at 9 a.m. in the Employment Services Conference Room, Second Floor, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 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: Dennis D. Boyd
(1) Type and number of entities affected: The group of persons affected are those 1800 admissions to Central State Hospital each year, and their families.
(a) Direct and indirect costs or savings to those affected: These regulations concern treatment and do not directly involve cost savings.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional facts.
(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: There are no alternative methods.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute in conflict.
(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: There is no additional information.
TIERING: Was tiering applied? Yes

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. This regulation incorporates by reference manual material used by agency staff and is federally mandated.
2. State compliance standards. This regulation incorporates by reference manual material used by agency staff and contains state compliance standards.
3. Minimum or uniform standards contained in the federal mandate. There are standards cited in 42 CFR 440 through 42 CFR 489. These federal regulations mandate requirements implemented by this regulation. The requirements contained in this regulation are neither stricter, in addition to, or different from those in the federal requirement.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This regulation incorporates by reference manual material used by agency staff. Stricter requirements or responsibilities are not imposed.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standards, requirements, or responsibilities are imposed.

**CABINET FOR HUMAN RESOURCES**
**Department for Mental Health and Mental Retardation Services**
**(Proposed Amendment)**

**908 KAR 3:120. Policies and procedures of Western State Hospital.**

RELATES TO: KRS Chapters 202A, 202B, 210
STATUTORY AUTHORITY: KRS 194.050, 202A.196, 202B.060, 210.010, 210.040, 210.055, 210.285, 42 CFR 440 through 489
NECESSITY AND FUNCTION: KRS 210.010, relating to the hospitalization of mentally ill and mentally retarded persons, directs that the Secretary for the Cabinet for Human Resources shall adopt rules and regulations which insure proper administration and enforcement of these chapters.

Section 1. Polices and procedures of Western State Hospital as set forth in the July 15, 1991 [May 15, 1990], edition of the Western State Hospital policy manual consisting of thirteen (13) volumes relating to the operation of Western State Hospital are incorporated by reference.

Section 2. These policies and procedures are in thirteen (13) volumes relating to the operation of Western State Hospital [with a total of 225 pages]. They are available for inspection and copy at the office of the Commissioner for the Department for Mental Health and Mental Retardation Services, 275 East Main Street, Frankfort, Kentucky 40621, and in the office of the Director, Western State Hospital, P.O. Box 2200, Hopkinsville, Kentucky 42240.

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: July 10, 1990
FILED WITH LRC: July 12, 1990 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for August 21, 1991 at 9 a.m. in the Employment Services Conference Room, Second Floor West, CHR Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 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: Dennis D. Boyd
(1) Type and number of entities affected: Those affected are 950 mentally ill patients admitted each year from 42 counties along with their families.
(a) Direct and indirect costs or savings to those affected: These policies and procedures are concerned with care and treatment and are not directly related to budget.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors to be considered.
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body: There will be very little change in the operation of the hospital.
(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: This will have no effect on revenue.
(4) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternative methods.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute in conflict.
(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: There is no additional information.
TIERING: Was tiering applied? Yes

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. This regulation incorporates by reference manual material used by agency staff and is federally mandated.
2. State compliance standards. This regulation incorporates by reference manual material used by agency staff and contains state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. There are standards cited in 42 CFR 440 through 42 CFR 489. These federal regulations mandate requirements implemented by this regulation. The requirements contained in this regulation are neither stricter, in addition to, or different from those in the federal requirement.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This regulation incorporates by reference manual material used by agency staff. Stricter requirements or responsibilities are not imposed.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standards, requirements, or responsibilities are imposed.

**CABINET FOR HUMAN RESOURCES**
**Department for Mental Health and Mental Retardation Services**
**(Proposed Amendment)**

**908 KAR 3:160. Policies and procedures of Kentucky Correctional Psychiatric Center.**

RELATES TO: KRS Chapters 202A, 202B, 210

STATUTORY AUTHORITY: KRS 194.050, 202A.196, 202B.060, 210.010, 210.040 210.055, 210.285, 42 CFR 440 through 489

NECESSITY AND FUNCTION: KRS 210.010, relating to the hospitalization of mentally ill and mentally retarded persons, directs that the Secretary for the Cabinet for Human Resources shall adopt rules and regulations which insure proper administration and enforcement of this chapter.

Section 1. Policies and procedures of Kentucky Correctional Psychiatric Center as set forth in the July 15, 1991 [April 15, 1989], edition of the Kentucky Correctional Psychiatric Center policy manual consisting of four (4) volumes relating to the operation of Kentucky Correctional Psychiatric Center are incorporated by reference.

Section 2. These policies and procedures are contained in four (4) volumes [with 171 pages]. They are available for inspection and copy at the office of the Commissioner for the Department for Mental Health/Mental Retardation Services, 275 East Main Street, Frankfort, Kentucky 40621, and in the office of the Director at Kentucky Correctional Psychiatric Center, 1612 Dawkins Road, P. O. Box 67, LaGrange, Kentucky 40031.

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: July 10, 1990
FILED WITH LRC: July 12, 1990 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for August 21, 1991 at 9 a.m. in the Employment Services Conference Room, Second Floor West, CHR Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 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: Dennis D. Boyd

(1) Type and number of entities affected: There were approximately 380 patients and approximately 800 outpatients treated by staff of this facility last year.

(a) Direct and indirect costs or savings to those affected: Hospital personnel cost was approximately $3,917,519 last year.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Staff will use patient charts and records.

(2) Effects on the promulgating administrative body: There will be very little change in procedures.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings: The costs should be fairly constant each year.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Reports and data from patient folders.

(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: This does not conflict with other statutes or regulations.

(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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. This regulation incorporates by reference manual material used by agency staff and is federally mandated.

2. State compliance standards. This regulation incorporates by reference manual material used by agency staff and contains state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. There are standards cited in 42 CFR 440 through 42 CFR 489. These federal regulations mandate requirements implemented by this regulation. The requirements contained in this regulation are neither stricter, in addition to, or different from those in the federal requirement.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This regulation incorporates by reference manual material used by agency staff. Stricter requirements or responsibilities are not imposed.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional

standards, requirements, or responsibilities are imposed.

**CABINET FOR HUMAN RESOURCES**
**Department for Mental Health and Mental Retardation Services**
**(Proposed Amendment)**

**908 KAR 3:180. Policies and procedures of Oakwood [ICF/MR].**

RELATES TO: KRS Chapters 202A, 202B, 210
STATUTORY AUTHORITY: KRS 202A.196, 202B.060, 210.010, 210.040, 210.045, 210.055, 210.285, 42 CFR 440 through 489
NECESSITY AND FUNCTION: KRS 210.010, directs that the Secretary for the Cabinet for Human Resources shall adopt rules and regulations which insure proper administration and enforcement of these chapters.

Section 1. Polices and procedures of Oakwood [ICF-MR (intermediate care facility-mental retardation)] as set forth in the July 15, 1991 [1990], edition of the Oakwood [ICF-MR] consisting of five (5) volumes relating to the operation of Oakwood [ICF-MR] are incorporated by reference.

Section 2. These policies and procedures are contained in five (5) volumes relating to the operation of Oakwood [with a total of twenty-two (22) pages]. They are available for inspection and copy at the office of the Commissioner of the Department of Mental Health/Mental Retardation Services, 275 East Main Street, Frankfort, Kentucky 40621, and in the office of the Director at Oakwood [ICF/MR], U.S. 27 South, P.O. Box 1106, Somerset, Kentucky 42501.

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: July 10, 1990
FILED WITH LRC: July 12, 1990 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for August 21, 1991 at 9 a.m. in the Employment Services Conference Room, Second Floor West, CHR Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 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: Dennis D. Boyd
(1) Type and number of entities affected: Persons affected are 420 residents from counties throughout the state along with their families.
(a) Direct and indirect costs or savings to those affected: These policies and procedures affect the treatment and residential care of residents and do not directly relate to costs or savings.
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: There is no financial effect on the 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: This has no effect on revenue.
(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: There is no statute in conflict.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: This is a regulation to incorporate manuals by reference.
TIERING: Was tiering applied? Yes

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. This regulation incorporates by reference manual material used by agency staff and is federally mandated.
2. State compliance standards. This regulation incorporates by reference manual material used by agency staff and contains state compliance standards.
3. Minimum or uniform standards contained in the federal mandate. There are standards cited in 42 CFR 440 through 42 CFR 489. These federal regulations mandate requirements implemented by this regulation. The requirements contained in this regulation are neither stricter, in addition to, or different from those in the federal requirement.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This regulation incorporates by reference manual material used by agency staff. Stricter requirements or responsibilities are not imposed.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standards, requirements, or responsibilities are imposed.

PROPOSED REGULATIONS RECEIVED THROUGH JULY 15, 1991 AT NOON

GENERAL GOVERNMENT CABINET
State Board of Elections

**31 KAR 4:070. Recanvass Procedures.**

RELATES TO: KRS 117.305, 118.425
STATUTORY AUTHORITY: KRS 117.015(1)
NECESSITY AND FUNCTION: The purpose of this regulation is to set reporting standards for those elections where a recanvass is requested and received in a timely manner.

Section 1. (1) The Official Recanvass of Count and Record of Election Totals form, which is incorporated by reference, shall be used by the county board of elections to report all recanvassed votes. This form may be obtained from the State Board of Elections, Room 71, The Capitol, Frankfort, Kentucky 40601, which is open Monday through Friday, 8 a.m. to 4:30 p.m.

(2) The county board of elections shall state the county making the report, the date of the report, the date of the election, the office for which the recanvass is being made, the names of each candidate in the office being recanvassed, and the machine votes, absentee votes and total votes for each candidate. The report shall be signed by each member of the county board of election.

Section 2. (1) The county board of elections shall file its recanvass report on the Thursday before the third Monday after the election.

(2) The county board of elections shall file the yellow copy of the recanvass report on forms supplied by the State Board of Elections with the county clerk.

(3) The original recanvass report shall be filed with the Secretary of State when the candidate was voted for by: the state at large, by a district greater than one (1) county, or by a city whose boundaries extend beyond those of a single county, or was a candidate for a member of Congress or the General Assembly.

Section 3. (1) In a general election the county board of elections shall check and tabulate the votes of the candidate requesting a recanvass and each opposing candidate seeking the same office.

(2) In a partisan primary election the county board of election shall check and tabulate the votes of the candidate requesting a recanvass and each opposing candidate of the same political party seeking the same office.

(3) In a nonpartisan election the county board of election shall check and tabulate the votes of the candidate requesting a recanvass and each opposing candidate seeking the same office.

BREMER EHRLER, Secretary of State
APPROVED BY AGENCY: July 15, 1991
FILED WITH LRC: July 15, 1991 at noon
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 26, 1991, at 10 a.m. at Room 327, The Capitol, Frankfort, KY. Individuals interested in being heard at this hearing shall notify this agency in writing by August 22, 1991, five days prior to the 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 the contact person: George Russell, Director, State Board of Elections, The Capitol, Room 71, Frankfort, Kentucky, 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Russell
(1) Type and number of entities affected: County board of elections who are asked to recanvass an election.
(a) Direct and indirect costs or savings to those affected: This regulation imposes no fee. It specifies what candidate's votes are to be counted, when the count is to be reported and the form to be used.
1. First year: N/A
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: A single page form is created to make the recanvass process more uniform.
(2) Effects on the promulgating administrative body: There will be a minimal effect because we estimate that there will be recanvass requests. The process will be fairer because it will be uniform.
(a) Direct and indirect costs or savings: The forms will be printed and mailed.
1. First year: Cost of forms and mailing.
2. Continuing costs or savings: There will be minimal costs to process the documents and maintain the records.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: Minimal: cost of forms and mailing.
(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative is to not have a uniform procedure. This leads to confusion.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: N/A
TIERING: Was tiering applied? No. All elections will use the same recanvass procedures and form.

**NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET**
**Department for Environmental Protection**

**400 KAR 1:070. Pollutants or contaminants and hazardous substances: designation, reportable quantities, and release notification.**

RELATES TO: KRS 224.033, 224.060, 224.320, 224.330, 224.830, 224.835, 224.842, 224.862, 224.864, 224.876, 224.877, 224.895
STATUTORY AUTHORITY: KRS Chapter 13A, 224.033, 224.877
NECESSITY AND FUNCTION: KRS 224.877 requires the cabinet to promulgate administrative regulations to designate pollutants or contaminants and hazardous substances. The cabinet is additionally required to designate for each pollutant or contaminant and each hazardous substance the quantity of the material for which immediate release notification shall be provided to the cabinet. This regulation establishes these requirements.

Section 1. Applicability. (1) Sections 2 through 4 of this regulation shall apply to any person possessing or controlling a pollutant or contaminant or a hazardous substance, except as follows:
(a) Consumer usage of a product in accordance with the manufacturer's recommended instructions;
(b) Releases of petroleum excluded from the definition of a "pollutant or contaminant" at KRS 224.877; and
(c) Releases of solid particles (other than radionuclides) of antimony, arsenic, beryllium, cadmium, chromium, copper, lead, nickel, selenium, silver, thallium, or zinc, if the mean diameter of the particles released or threatened to be released is larger than 100 micrometers (0.004 inches) and if cleanup is complete and immediate.
(2) Sections 2(1), (2), and 5 of this regulation shall apply to:
(a) Any person creating an environmental emergency;
(b) Any person releasing or threatening to release a pollutant or contaminant not specifically identified in Section 3 of this regulation; and
(c) Any person releasing or threatening to release a pollutant or contaminant or a hazardous substance in a quantity or concentration that is below the reportable quantity established by Section 4 of this regulation, but in a quantity or concentration that threatens human health, other living organisms, or an ecosystem.

Section 2. Notification. (1) Immediate notification.
(a) Any person possessing or controlling a pollutant or contaminant or a hazardous substance that is released or threatened to be released in excess of the reportable quantity established by Section 4 of this regulation in any seven (7) day period, and any person possessing or controlling a material released or threatened to be released under Section 5 of this regulation, shall immediately notify the Department for Environmental Protection's twenty-four (24) hour environmental response line at (502) 564-2380.
(b) In the notice pursuant to paragraph (a) of this subsection, the person shall state, at a minimum, the location of the release or threatened release, the material released or threatened to be released, and the approximate quantity and concentration of the release or threatened release.
(2) Written report. The cabinet may require the person subject to subsection (1) of this section to provide a written report on the release or threatened release. This report shall be submitted to the Environmental Response Section of the Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet, 18 Reilly Road, Frankfort, Kentucky 40601 within seven (7) days of the department's demand for the report. The report shall identify the following:
(a) The precise location of the release or threatened release;
(b) The name, address, and phone number of the person possessing or controlling the material at the time of the release or threatened release;
(c) The name, address, and phone number of all individuals who had actual knowledge of the facts surrounding the release or threatened release;
(d) The specific pollutant or contaminant or hazardous substance released or threatened to be released;
(e) The concentration and quantity of the pollutant or contaminant or hazardous substance in the release or threatened release;
(f) The circumstances and cause of the release or threatened release;
(g) Efforts taken by the person to control or mitigate the release or threatened release;
(h) To the extent known, the harmful effects of the release or threatened release;
(i) The transportation characteristics of the medium or matrix into which the material was released or threatened to be released;
(j) Any present or future remedial action by the person at the site of the release or threatened release;
(k) The name, address, and phone number of the individual who can be contacted for additional information concerning the release or threatened release; and
(l) Any other information that may facilitate cost recovery, an emergency spill response, or remediation of the site.
(3) Continuous releases.
(a) The person possessing or controlling a pollutant or contaminant or a hazardous substance shall immediately notify the department pursuant to subsection (1) of this section whenever notification is provided to U.S. Environmental Protection Agency under 40 CFR 302.8(c). Within seven (7) days of providing any written notification to the U.S. Environmental Protection Agency under 40 CFR 302.8, the person shall submit, to the Environmental Response Section, a copy of the notification submitted to the U.S. Environmental Protection Agency.
(b) The cabinet shall not require additional information under this regulation for releases subject to 40 CFR 302.8 if in compliance with paragraph (a) of this subsection, unless a written report is required under subsection (2) of this section or the release or threatened release constitutes an environmental emergency or otherwise threatens human health, other living organisms, or an ecosystem, in accordance with Section 5 of this regulation.

Section 3. Designated Pollutants or Contaminants and Hazardous Substances. (1) Pollutants or contaminants. Except as provided in Section 1(1)(b) of this regulation, the following lists and criteria shall comprise the designated pollutants or contaminants for the purpose of this regulation and KRS 224.877:

(a) The following federal regulations as in effect June 30, 1990, and hereby incorporated by reference:

1. 29 CFR 1910.1200, Appendix A;
2. 40 CFR 141.11(b);
3. 40 CFR 148.12;
4. 40 CFR 152.175;
5. 40 CFR 180, Alphabetical Listing of Pesticide Chemicals;
6. 40 CFR 180.3(e)(4) through (6);
7. 40 CFR 261, Appendix VIII;
8. 40 CFR 261.31 and 261.33(e);
9. 40 CFR 264, Appendix IX;
10. 40 CFR 268, Appendix III;
11. 40 CFR 268.32;
12. 40 CFR 268.41, Table CCWE;
13. 40 CFR 268.43, Table CCW;
14. 40 CFR 302.4(b) and 302.4, Appendix B and Table 302.4;
15. 40 CFR 355, Appendix A;
16. 40 CFR 372.65(a);
17. 40 CFR 704.43(b) and 704.95(a);
18. 40 CFR 712.30(d) through (w); and
19. 40 CFR 716.120(a) through (c);

(b) Nerve and blister agents listed in 52 FR 48459, December 22, 1987, hereby incorporated by reference;

(c) Carcinogens in groups A, B1, B2, and C of Table B of the U.S. Environmental Protection Agency's Health Effects Assessment Summary Tables (July 1990, NTIS No. P890-021100), hereby incorporated by reference;

(d) 401 KAR 63:022, Appendix B; and

(e) 42 USC 7412 (Section 112 of the Clean Air Act, as amended through November 15, 1990) hereby incorporated by reference.

(2) Those materials included in subsection (1) of this section that are included within the definition of "hazardous substance" at 42 USC 9601 (the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended through November 15, 1990) shall be considered hazardous substances for the purposes of KRS 224.877.

(3) The lists and criteria referenced in subsections (1) and (2) of this section are available for copying and inspection at the Department for Environmental Protection, 18 Reilly Road, Frankfort, Kentucky 40601. The office hours are 8 a.m. to 4:30 p.m. Monday through Friday.

Section 4. Reportable Quantities. (1) For a pollutant or contaminant or a hazardous substance incorporated by reference in Section 3 of this regulation, the reportable quantity specified in the list or criteria shall apply, except as follows:

(a) If the material has more than one (1) reportable quantity referenced, the lowest applicable reportable quantity shall apply:

(b) If the material is listed but does not have a reportable quantity referenced, or if the material is unlisted but designated as a health hazard under 29 CFR 1910.1200 Appendix A or as a corrosive, reactive, or ignitable material under 40 CFR 302.4(b), the reportable quantity shall be one (1) pound, except the reportable quantity shall be ten (10) pounds if:

1. The release or threatened release occurred in a facility with controlled access maintained by the person possessing or controlling the material;
2. The facility in which the release or threatened release occurred is operating under an emergency response plan approved under 42 USC 6901 et seq. (the Resource Conservation and Recovery Act, as amended through November 1, 1988), 42 USC 11001 et seq. (Title III of the Superfund Amendments and Reauthorization Act of 1986), or PL 101-380 (the Oil Pollution Act of 1990);
3. All personnel handling or responsible for the material while at the facility have been trained in accordance with standards of the Occupational Safety and Health Administration;
4. Cleanup of released material is complete and immediate; and
5. A written report containing the information required by Section 2(2) of this regulation is filed with the Environmental Response Section within seven (7) days of the release or threatened release.

(c) If the material is listed, but has a reportable quantity of more than 100 pounds, the reportable quantity shall be 100 pounds;

(d) An unlisted hazardous substance designated under 40 CFR 302.4(b) as exhibiting toxicity under the toxicity characteristic leaching procedure (TCLP) shall have the reportable quantity established in 40 CFR 302.4 Table 302.4 for the constituent on which the characteristic of TCLP toxicity is based, subject to a lower reportable quantity established under paragraphs (a) through (c) and (e) through (g) of this subsection. The reportable quantity applies to the substance itself, not merely to the toxic constituent. If an unlisted hazardous substance exhibits TCLP toxicity on the basis of more than one (1) constituent, the reportable quantity for that substance shall be the lowest of the reportable quantities listed in Table 302.4 for those constituents. If an unlisted hazardous substance exhibits the characteristic of TCLP toxicity and one (1) or more of the other characteristics in 40 CFR 302.4(b) or 29 CFR 1910.1200 Appendix A, the reportable quantity for that substance shall be the lowest of the applicable reportable quantities;

(e) Nerve and blister agents referenced in Section 3(1)(b) of this regulation shall be reported when any quantity of these materials is released or threatened to be released;

(f) Carcinogens referenced in Section 3(1)(c) of this regulation shall have a reportable quantity of one-tenth (0.1) pound;

(g) If the material is listed as a radionuclide, the reportable quantity shall be in curies, as incorporated by reference in Section 3 of this regulation, except for the following:

1. If the radionuclide is listed, but does not have a reportable quantity referenced, the reportable quantity shall be one (1) curie; and
2. If the radionuclide is listed, but has a reportable quantity of more than one (1) curie, the reportable quantity shall be one (1) curie; and

(h) If a valid permit issued by Kentucky or the federal government allows the discharge of a specific pollutant or contaminant or hazardous substance exceeding the reportable quantity established in paragraphs (a) through (g) of

this subsection, the reportable quantity shall be the permitted level.

(2) If the release or threatened release contains more than one (1) pollutant or contaminant or hazardous substance, or if the identity of a pollutant or contaminant or hazardous substance in a release or threatened release is unknown, determination of whether the release or threatened release shall be reported shall be made as follows:

(a) If the identity and quantity of each pollutant or contaminant and each hazardous substance in the mixture or solution is known, the ratio between the quantity released or threatened to be released and the reportable quantity, as specified in subsection (1) of this section, shall be determined for each pollutant or contaminant and each hazardous substance. The release or threatened release shall be reported if the sum of the ratios for the mixture or solution is equal to or greater than one (1);

(b) If the identify of each pollutant or contaminant and each hazardous substance in a mixture or solution is known, but the quantity released or threatened to be released of one (1) or more of these materials is unknown, the release or threatened release shall be reported if the total quantity of the mixture or solution is equal to or greater than the lowest reportable quantity of any individual pollutant or contaminant or any individual hazardous substance in the mixture or solution; and

(c) If the identity of one (1) or more pollutant or contaminant or hazardous substance in a mixture or solution is unknown (or if the identity of a pollutant or contaminant or hazardous substance released or threatened to be released by itself is unknown), the release or threatened release shall be reported if the total quantity is equal to or greater than either one (1) curie or one (1) pound, or the lowest reportable quantity of any known individual pollutant or contaminant or hazardous substance in the mixture or solution, whichever is lower.

Section 5. Environmental Emergencies and Other Releases and Threatened Releases that Threaten Human Health, Other Living Organisms, or Ecosystems. Releases and threatened releases not otherwise addressed in this regulation shall be reported to the department in accordance with Section 2 of this regulation if the following apply:

(1) The release or threatened release constitutes an environmental emergency. Environmental emergencies shall include, but not be limited to, the following:

(a) A release or threatened release of petroleum, including crude oil or any fraction thereof, which places a visible sheen on the surface of waters of the Commonwealth;

(b) A release or threatened release of more than twenty-five (25) gallons of nondiesel gasoline; and

(c) A release or threatened release of more than seventy-five (75) gallons of diesel fuel.

(2) The release or threatened release of any material in a quantity that threatens human health, other living organisms, or an ecosystem, but is not otherwise specifically identified in Section 3 of this regulation.

(3) The release or threatened release of any material identified in Section 3 of this regulation, in a quantity below the reportable quantity established in Section 4 of this regulation, but in a sufficient quantity or concentration to threaten human health, other living organisms, or an ecosystem.

CARL H. BRADLEY, Secretary
FRANK DICKERSON, Commissioner
APPROVED BY AGENCY: July 11, 1991
FILED WITH LRC: July 12, 1991 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on August 29, 1991, at 10 a.m. in the Ground Floor Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify William C. Eddins in writing at the address noted below by August 24, 1991, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. Persons testifying at the hearing are requested to provide a written copy of their testimony at the hearing. 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. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation to Mr. Eddins. Written comments must be received by Mr. Eddins no later than 4:30 p.m. on August 19, 1991.

CONTACT PERSON: William C. Eddins, Commissioner, Department for Environmental Protection, 18 Reilly Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: William C. Eddins

(1) Type and number of entities affected: House Bill 893, adopted during the 1990 legislative session and codified at KRS 224.877, required that the cabinet promulgate a regulation designating "pollutants or contaminants" and "hazardous substances" and establishing the quantity for which release notification must be provided to the cabinet. This regulation and the materials incorporated by reference designate hazardous substances and pollutants or contaminants and their reportable quantities. The regulation also establishes reporting requirements for environmental emergencies. This regulation affects all persons in the Commonwealth possessing or controlling hazardous substances and pollutants or contaminants that are released into the environment. The regulation also effects persons responsible for environmental emergencies.

The list of such persons potentially affected by this regulation is long. Not only does it include industry personnel that are responsible for a hazardous substance or pollutant or contaminant that is spilled, but it also includes military units if they release nerve or blister agents, farmers that have an accidental spillage of pesticides, and any other person who releases material in a quantity that can have detrimental impacts on the environment or citizens of Kentucky.

Under this regulation, persons who so endanger the Commonwealth will have to report the release to the cabinet. The cabinet can then use this report for short-term and long-term action. In the short term, the cabinet can develop and implement an emergency response plan to minimize

environmental damage and to maximize protection of our citizens. In the long term, resources permitting, the cabinet can track accumulation of toxics in the environment, and assess and prioritize regional and statewide regional health threats. With this information, the cabinet and the legislature can determine the appropriate long-term corrective action, such as statutory or regulatory changes or reprioritization or reproportionment of resources.

(a) Direct and indirect costs or savings to those affected:

1. First year: All persons will be able to identify whether or not materials that are released or threatened to be released are subject to notification requirements. Initial costs will vary from entity to entity, based upon each particular act or circumstance, and cannot be realistically estimated. Previously, the U.S. EPA, under EPA contract 68-03-3452 dated June 1989, indicated the reporting costs to the regulated community to be $133 per report of releases of less than 55 gallons (or 440 pounds, assuming an average specific gravity equal to that of water), with the recordkeeping cost to be $31 per reportable incident. Therefore, the additional potential cost for each entity to report to the states would only be a small percentage increase. Notifications are already generally required to be given to federal, state, and local governments. These reports have been required for approximately ten years. Without reportable quantities specified, all releases must be reported, regardless of quantity.

2. Continuing costs or savings: Continued awareness of the need to report releases, coupled with the existing reporting mechanisms and a minimum reportable quantity specified for each material or class of materials, will allow site-specific contingency plans to be created or updated. Some small spills previously required to be reported will no longer require notification. However, with publication of this regulation will come a heightened awareness of the responsibility to report, making some persons aware of their reporting responsibilities for the first time.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The greater awareness of the requirements to report release or threatened releases, the more likely it becomes that persons will act to reduce the number and quantity of release through loss control and improved safety management. Additionally, the sooner a release is noticed and reported, the smaller the amount of product lost. This will result in a decrease in down-time and reduced cleanup costs.

(b) Reporting and paperwork requirements: In theory, the number of reports required will be reduced since all spills are no longer required to be reported. However, in reality this may be offset by the fact that promulgation of this regulation will create a heightened awareness of reporting responsibilities. A written report may be required in some instances.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The agency anticipates that with promulgation of specific hazardous substances and pollutants or contaminants and their reportable quantities, the number of notifications may increase. Theoretically, there should be fewer notifications; however, heightened awareness may result in an increase. The United States EPA, under contract number 68-03-3452 dated June 1989, estimated their agency cost to be $79 for processing each notification, with the cost of off-scene monitoring to be $267 per report and the cost of on-scene monitoring to be $3,133 per report. State costs will average less than federal costs due to proximity to spill sites. Incident notifications increased 70 percent from 1988 to 1989 with an estimated increase of 36 percent for 1990, totaling approximately 2,200 notifications for 1990.

2. Continuing costs or savings: Costs recovery funds may reduce agency costs.

3. Additional factors increasing or decreasing costs: Specific reportable quantities will reduce a number of incident notifications currently being received. This may be offset by notifications that may be received after this regulation has been promulgated, due to heightened awareness.

(b) Reporting and paperwork requirements: Each notification received is recorded by department employees on the Environmental Incidents Report Form. These are filed manually. Current plans call for implementation of a computerized incident tracking system that could ultimately be expanded to include all divisions and regional offices in the Department for Environmental Protection.

(3) Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) House Bill 893, codified at KRS 224.877, requires that the cabinet promulgate regulations which designate hazardous substances and pollutants or contaminants along with the quantity for which release notification must be provided to the cabinet.

Alternative: 1. Less stringent. A less stringent approach would not allow the state the discretion to respond to spills of materials that may have the potential to create environmental or public health problems, or cause adverse effect to human health or the environment.

2. More stringent. More stringent requirements would return to a situation where even minute amounts of any hazardous substance or pollutant or contaminant would require a notification, creating an unmanageable situation.

3. Present proposal. The current proposal attempts to create a balance between items one and two above where adequate reporting requirements are created, providing the appropriate state agencies with the information necessary to perform their statutory mandates to protect human health and the environment.

(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, administrative regulations, or government 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: There is no additional information.

TIERING: Was tiering applied? Yes. This regulation requires reporting only for releases and threatened releases proposed reportable quantities that pose the greatest threat to human health or the environment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The proposed regulation is not based on a federal mandate.

2. State compliance standards. House Bill 893 of the 1990 regular session, codified at KRS 224.877, requires that the cabinet promulgate an administrative regulation which designates pollutants or contaminants and hazardous substances along with the quantities for which release notification must be provided to the cabinet. This proposed regulation designates these chemicals, their reportable quantities, and notification procedures.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate.

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

**405 KAR 7:035. Exemption for coal extraction incidental to the extraction of other minerals.**

RELATES TO: KRS 350.010, 350.028, 350.060, 350.151, 350.465, 30 CFR Parts 702, 730-733, 735, 917, 30 USC 1253, 1255, 1291

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.465, 30 CFR Parts 702, 730-733, 735, 917, 30 USC 1253, 1255, 1291

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate regulations pertaining to surface coal mining and reclamation operations. KRS Chapter 350 also recognizes exemptions from regulation for certain types of operations. This regulation recognizes a regulatory exemption for operations in which coal is extracted incidental to the extraction of other minerals. The regulation sets forth application requirements and procedures for obtaining approval of these exemptions, requirements for public notice and disclosure of information concerning the exemption, standards for cabinet approval of the exemption, conditions for maintaining the exemption, rights of entry and inspection to the site for which the exemption was granted, and enforcement procedures and reporting requirements applicable to the exemption.

Section 1. Definitions. (1) "Cumulative measurement period" means the period of time over which both cumulative production and cumulative revenue are measured.

(a) The beginning of the period is:

1. For mining areas where extraction of coal or other minerals commenced on or after August 3, 1977, the date extraction of coal or other minerals commenced at that mining area; and

2. For mining areas where coal or other minerals were extracted prior to August 3, 1977, the operator shall select and consistently use one (1) of the following, subject to cabinet approval: the date extraction of coal or other minerals commenced at that mining area or August 3, 1977.

(b) The end of the period is (for annual reporting purposes pursuant to Section 9 of this regulation):

1. For mining areas where extraction of coal or other minerals commenced on or after the effective date of this regulation, the last day of the calendar quarter during which coal extraction commenced, and each anniversary of that day thereafter; and

2. For mining areas where coal or other minerals were extracted prior to the effective date of this regulation, December 31, 1992 and each anniversary of that day thereafter.

(2) "Cumulative production" means the total tonnage of coal or other minerals extracted from a mining area during the cumulative measurement period. The inclusion of stockpiled coal and other mineral tonnages in this total shall be governed by Section 7 of this regulation.

(3) "Cumulative revenue" means the total revenue derived from the sale of coal or other minerals and the fair market value of coal or other minerals transferred or used, but not sold, during the cumulative measurement period.

(4) "Mining area" means an individual excavation site or pit from which coal, other minerals, and overburden are removed.

(5) "Other mineral" means any commercially valuable substance mined for its mineral value, excluding coal, topsoil, waste, and fill material.

Section 2. Application Requirements and Procedures. (1)(a) Any person who plans to commence or continue coal extraction after the effective date of this regulation, in reliance on the incidental mining exemption, shall file a complete application for exemption with the cabinet for each mining area.

(b) Following the effective date of this regulation, a person shall not commence coal extraction based upon the exemption until the cabinet approves the application for exemption, except as provided in subsection (5)(c) of this section.

(2) Existing operations. Any person who has commenced coal extraction at a mining area, prior to the effective date of this regulation, in reliance upon the incidental mining exemption, may continue mining operations for sixty (60) days after the effective date of this regulation. Coal extraction shall not continue after this sixty (60) day period unless that person files an administratively complete application for exemption with the cabinet. If an administratively complete application is filed within sixty (60) days, the person may continue extracting coal in reliance on the exemption beyond the sixty (60) day period until the cabinet makes an administrative decision on the application.

(3) Additional information. The cabinet shall notify the applicant if the application for exemption is incomplete and may at any time

require submittal of additional information.

(4) Public comment period. Following publication of the newspaper notice required by Section 3(9) of this regulation, the cabinet shall provide a period of no less than thirty (30) days during which any person having an interest that is or may be adversely affected by a decision on the application may submit written comments or objections.

(5) Exemption determination.

(a) No later than ninety (90) days after filing of an administratively complete application, the cabinet shall make a written determination whether, and under what conditions, the persons claiming the exemption are exempt under this regulation, and shall notify the applicant and persons submitting comments on the application of the determination and the basis for the determination.

(b) The determination of exemption shall be based upon information contained in the application and any other information available to the cabinet at that time.

(c) If the cabinet fails to provide an applicant with the determination specified in paragraph (a) of this subsection, an applicant who has not begun may commence coal extraction pending a determination on the application unless the cabinet issues an interim finding, together with reasons therefore, that the applicant shall not begin coal extraction.

(6) Administrative review.

(a) In accordance with the procedures established under 405 KAR 7:090, Section 5, within thirty (30) days of the notification of a determination under subsection (5) of this section, any person adversely affected by the determination may request a formal hearing to review the determination.

(b) A request for formal hearing filed under 405 KAR 7:090, Section 5 shall not suspend the effect of a determination under subsection (5) of this section.

Section 3. Contents of Application for Exemption. An application for exemption shall include at a minimum:

(1) The name and address of the applicant;

(2) A list of the minerals sought to be extracted;

(3) Estimates of annual production of coal and the other minerals within each mining area over the anticipated life of the mining operation;

(4) Estimated annual revenues to be derived from bona fide sales of coal and other minerals to be extracted within the mining area;

(5) If coal or the other minerals are to be used rather than sold, estimated annual fair market values at the time of projected use of the coal and other minerals to be extracted from the mining area;

(6) The basis for all annual production, revenue, and fair market value estimates;

(7) A description, including county, city if within municipal boundaries, and boundaries of the land, of sufficient certainty that the mining areas can be located and distinguished from other mining areas;

(8) An estimate to the nearest acre of the number of acres that will compose the mining area over the anticipated life of the mining operation;

(9) Evidence of publication, in the newspaper of largest bona fide circulation (according to the definition in KRS 424.110 to 424.120) in the county of the mining area, of a public notice that an application for exemption has been filed with the cabinet. The public notice shall identify the persons claiming the exemption and shall contain a description of the proposed operation and its locality sufficient for interested persons to identify the operation;

(10) Representative stratigraphic cross-section(s) based on test borings or other information identifying and showing:

(a) The relative position, approximate thickness, and density of the coal and each other mineral to be extracted for commercial use or sale; and

(b) The relative position and thickness of any material, not classified as other minerals, that will also be extracted during the conduct of mining activities;

(11) A map of appropriate scale that clearly identifies the mining area;

(12) A general description of mining and mineral processing activities for the mining area;

(13) A summary of sale commitments and agreements, if any, that the applicant has received for future delivery of other minerals to be extracted from the mining area, or a description of potential markets for the other minerals;

(14) If the other minerals are to be commercially used by the applicant, a description specifying the use;

(15) For operations having extracted coal or other minerals prior to filing an application for exemption, in addition to the information required above, the following information:

(a) Any relevant documents the operator has received from the cabinet documenting the operation's exemption from the requirements of the SMCRA, KRS Chapter 350, and KAR Title 405;

(b) The cumulative production of the coal and other minerals from the mining area; and

(c) Estimated tonnages of stockpiled coal and other minerals; and

(16) Any other information pertinent to the qualification of the operation as exempt.

Section 4. Public Availability of Information. (1) Except as provided in subsection (2) of this section, all information submitted to the cabinet under this regulation shall be made immediately available for public inspection and copying at the department's regional office with jurisdiction over coal mining in the locality of the subject exempt operation, until at least three (3) years after expiration of the period during which the subject mining area is active.

(2) The cabinet may keep information submitted to the cabinet under this regulation confidential if the person submitting it requests in writing, at the time of submission, that it be kept confidential and if the information concerns trade secrets or is privileged commercial or financial information of the persons intending to conduct operations under this regulation.

(3) Information requested to be held as confidential under subsection (2) of this section shall not be made publicly available until after notice and opportunity to be heard is afforded persons both seeking and opposing disclosure of the information.

Section 5. Requirements for Exemption. (1) Activities are exempt from the requirements of

SMCRA, KRS Chapter 350, and KAR Title 405 (excluding this regulation) if all of the following are satisfied:

(a) The cumulative production of coal extracted from the mining area does not exceed sixteen and two-thirds (16 2/3) percent of the total cumulative production of coal and other minerals removed for purposes of bona fide sale or reasonable commercial use, determined annually.

(b) The coal is produced from one (1) or more seams lying above the deepest stratum from which other minerals are extracted for purposes of bona fide sale or reasonable commercial use, or from a seam immediately below this deepest stratum.

(c) The cumulative revenue derived from the coal extracted from the mining area does not exceed fifty (50) percent of the total cumulative revenue derived from the coal and other minerals removed for purposes of bona fide sale or reasonable commercial use, determined annually. If the coal extracted or the minerals removed are used by the operator or transferred to a related entity for use instead of being sold in a bona fide sale, then the fair market value of the coal or other minerals shall be calculated at the time of use or transfer and shall be considered rather than revenue.

(2) Persons that are seeking or have obtained an exemption under this regulation from the requirements of SMCRA, KRS Chapter 350, and 405 KAR Chapters 7 through 24 (excluding this regulation) shall comply with the following:

(a) Each other mineral upon which an exemption under this regulation is based shall be a commercially valuable mineral for which a market exists or which is mined in bona fide anticipation that a market will exist for the mineral in the reasonably foreseeable future, not to exceed twelve (12) months from the end of the current period for which cumulative production is calculated. A legally binding agreement for the future sale of other minerals shall be sufficient to demonstrate this standard.

(b) If either coal or other minerals are transferred or sold by the operator to a related entity for its use or sale, the transaction shall be made for legitimate business purposes.

Section 6. Conditions of Exemption and Right of Inspection and Entry. (1) A person conducting activities covered by this regulation shall:

(a) Maintain on-site, or at other locations available to authorized representatives of the cabinet and the Secretary of the U.S. Department of the Interior, information necessary to verify the exemption including, but not limited to, commercial use and sales information, extraction tonnages, and a copy of the exemption application and exemption approved by the cabinet;

(b) Notify the cabinet upon completion of the mining operations or permanent cessation of all coal extraction activities; and

(c) Conduct operations in accordance with the approved application or, if authorized to extract coal under Section 2(2) or (5)(c) of this regulation prior to submittal or approval of an exemption application, in accordance with the standards of this regulation.

(2) Authorized representatives of the cabinet and the Secretary of the U.S. Department of the Interior shall have the right to conduct inspections of operations claiming exemption under this regulation.

(3) Each authorized representative of the cabinet and the Secretary of the U.S. Department of the Interior conducting an inspection under this regulation shall:

(a) Have a right of entry to, upon, and through any mining and reclamation operations without advance notice or a search warrant, upon presentation of appropriate credentials;

(b) At reasonable times and without delay, have access to and copy any records relevant to the exemption; and

(c) Have a right to gather physical and photographic evidence to document conditions, practices, or violations at a site.

(4) No search warrant shall be required with respect to any activity under subsections (2) and (3) of this section, except that a search warrant may be required for entry into a building.

Section 7. Stockpiling of Minerals. (1) Coal. Coal extracted and stockpiled may be excluded from the calculation of cumulative production until the time of its sale, transfer to a related entity, or use:

(a) Up to an amount equaling a twelve (12) month supply of the coal required for future sale, transfer, or use as calculated based upon the average annual sales, transfer, and use from the mining area over the two (2) preceding years; or

(b) For a mining area where coal has been extracted for a period of less than two (2) years, up to an amount that would represent a twelve (12) month supply of the coal required for future sales, transfer, or use as calculated based on the average amount of coal sold, transferred, or used each month.

(2) Other minerals.

(a) The cabinet shall disallow all or part of an operator's tonnages of stockpiled other minerals for purposes of meeting the requirements of this regulation if the operator fails to maintain adequate and verifiable records of the mining area of origin or the disposition of stockpiles, or if the disposition of the stockpiles indicates the lack of commercial use or market for the minerals.

(b) The cabinet shall only allow an operator to utilize tonnages of stockpiled other minerals for purposes of meeting the requirements of this regulation if:

1. The stockpiling is necessary to meet market conditions or is consistent with generally accepted industry practices; and

2. Except as provided in paragraph (c) of this subsection, the stockpiled other minerals do not exceed a twelve (12) month supply of the mineral required for future sales as approved by the cabinet on the basis of the exemption application.

(c) The cabinet may allow an operator to utilize tonnages of stockpiled other minerals beyond the twelve (12) month limit established in paragraph (b) of this subsection if the operator can demonstrate to the cabinet's satisfaction that the additional tonnage is required to meet future business obligations of the operator, such as may be demonstrated by a legally binding agreement for future delivery of the minerals.

(d) The cabinet may periodically revise the other mineral stockpile tonnage limits in accordance with the criteria established by

paragraphs (b) and (c) of this subsection based on additional information available to the cabinet.

Section 8. Revocation and Enforcement. (1) Cabinet responsibility. The cabinet shall conduct an annual compliance review of the mining area, utilizing:

(a) The annual report submitted pursuant to Section 9 of this regulation;

(b) An on-site inspection; and

(c) Any other information available to the cabinet.

(2) If the cabinet has reason to believe that a specific mining area was not exempt under the provisions of this regulation at the end of the previous reporting period, is not exempt, or will be unable to satisfy the exemption criteria at the end of the current reporting period, the cabinet shall notify the operator that the exemption may be revoked and the reason(s) therefore. The exemption shall be revoked unless the operator demonstrates to the cabinet within thirty (30) days that the mining area in question does meet the criteria for exemption.

(3)(a) If the cabinet finds that an operator has not demonstrated that activities conducted in the mining area qualify for the exemption, the cabinet shall revoke the exemption and immediately notify the operator and interveners. If a decision is made not to revoke an exemption, the cabinet shall immediately notify the operator and interveners.

(b) In accordance with the procedures established under 405 KAR 7:090, Section 5, within thirty (30) days of the notification of a decision whether to revoke an exemption, any person adversely affected by the decision may request a formal hearing to review the decision.

(c) A request for formal hearing filed under 405 KAR 7:090, Section 5 shall not suspend the effect of a decision whether to revoke an exemption.

(4) Direct enforcement.

(a) An operator mining in accordance with the terms of an approved exemption shall not be cited for violations of KRS Chapter 350 or 405 KAR Chapters 7 through 24 that occurred prior to the revocation of the exemption.

(b) An operator who does not conduct activities in accordance with the terms of an approved exemption and knows or ought to know that the activities are not in accordance with the approved exemption shall be subject to direct enforcement action for violations of KRS Chapter 350 and 405 KAR Chapters 7 through 24 that occur during the period of the activities.

(c) Upon revocation of an exemption or denial of an exemption application, an operator shall stop conducting surface coal mining operations until a permit is obtained, and shall comply with the reclamation standards of KRS Chapter 350 and 405 KAR Chapters 7 through 24 with regard to conditions, areas, and activities existing at the time of revocation or denial.

Section 9. Reporting Requirements. (1)(a) Following approval by the cabinet of an exemption for a mining area, the person receiving the exemption shall, for each mining area, file a written report annually with the cabinet containing the information specified in subsection (2) of this section.

(b) The report shall be filed no later than thirty (30) days after the end of the twelve (12) month period as determined in accordance with the definition of "cumulative measurement period" in Section 1(1) of this regulation.

(c) The information in the report shall cover:

1. Annual production of coal and other minerals and annual revenue derived from coal and other minerals during the preceding twelve (12) month period; and

2. The cumulative production of coal and other minerals and the cumulative revenue derived from coal and other minerals.

(2) For each period and mining area covered by the report, the report shall specify:

(a) The number of tons of extracted coal sold in bona fide sales and the total revenue derived from these sales;

(b) The number of tons of coal extracted and used or transferred by the operator or related entity and the estimated total fair market value of this coal;

(c) The number of tons of coal stockpiled;

(d) The number of tons of other commercially valuable minerals extracted and sold in bona fide sales and total revenue derived from these sales;

(e) The number of tons of other commercially valuable minerals extracted and used or transferred by the operator or related entity and the estimated total fair market value of these minerals; and

(f) The number of tons of other commercially valuable minerals removed and stockpiled by the operator.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 12, 1991
FILED WITH LRC: July 15, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed regulation has been scheduled for 9 a.m. (EDT) Thursday, August 29, 1991, in the Department for Surface Mining Reclamation and Enforcement's Main Conference Room (Room B-31) 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 August 24, 1991. The schedule hearing may be cancelled if the contact person has not received any written notice of intent to testify by August 24, 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 regulation 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 regulation but does not wish to testify at the hearing may submit written comments on the proposed regulation at any time before 4:30 p.m. (EDT) on Thursday, August 29, 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:

CONTACT PERSON: 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 regulation establishes an exemption from the surface coal mining regulations for operations where coal is extracted incidental to the extraction of other minerals and sets forth procedures and criteria for obtaining and maintaining the exemption. At present there are 3 existing operations that have previously been granted this exemption. These operations and any new ones in the future will have to apply for the exemption under these new provisions, which exactly mirror the latest federal regulations. This regulation indirectly affects the general public that might be affected by these exempted operations.

(a) Direct and indirect costs or savings to those affected:

1. First year: Existing operations that have been granted an exemption previously will have to reapply for the exemption within 60 days of the effective date of this regulation. Some small to moderate cost will be incurred in gathering the data required for the exemption application.

2. Continuing costs or savings: Those operations that are granted the exemption will have to file an annual report with the cabinet showing the tonnages of coal and other minerals produced, stockpiled and sold, as well as revenues derived from these sales. There will be a minimal cost to assemble and file this report, which asks for data the operator would normally have available from ordinary business records.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: There is an application required to obtain the exemption, and an annual report thereafter.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be a small cost involved in reviewing applications from existing operations.

2. Continuing costs or savings: There will be a small cost involved in reviewing the annual reports and conducting an annual on-site inspection of each operation granted the exemption.

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 alternatives were considered.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering is not applicable to this proposed regulation because the basic criteria of the exemption are set forth in federal and state law, and under the federal regulations the application and reporting requirements must apply equally to all persons subject to this exemption.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 USC 1253, 1255, 1291. 30 CFR Parts 702, 730-733, 735, 917.

2. State compliance standards. This new regulation establishes criteria for an exemption from the surface mining regulations for operations that extract coal incidental to the extraction of other minerals and establishes application requirements and procedures for obtaining the exemption, conditions for maintaining the exemption, enforcement procedures, and other requirements.

3. Minimum or uniform standards contained in the federal mandate. 30 CFR Part 702 is a recent federal regulation which establishes criteria and procedures for exemptions for extraction of coal incidental to the extraction of other minerals. It contains the same requirements as are established in this proposed regulation.

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. Not applicable.

## JUSTICE CABINET
## Office of the Secretary

### 500 KAR 8:020. Breath alcohol analysis instruments.

RELATES TO: KRS 189A.300

STATUTORY AUTHORITY: KRS 15A.160, 189A.103(3)(a)

NECESSITY AND FUNCTION: This regulation establishes procedures for providing breath alcohol analysis instruments as mandated by KRS 189A.300.

Section 1. (1) The Forensic Laboratory Section, Department of State Police, shall be responsible for standards relating to the purchase of breath alcohol analysis instruments and related units.

(2) All breath alcohol analysis instruments and related units owned by the state used pursuant to KRS Chapter 189A shall be assigned to the Department of State Police, Forensic Laboratories Section.

(3) The Forensic Laboratory Section, Department of State Police, shall establish standards and procedures for the maintenance and calibration of breath and blood alcohol analysis instruments and related units used pursuant to KRS Chapter 189A.

(4) All breath alcohol analysis instruments used pursuant to KRS Chapter 189A shall be listed in the "Qualified Products List of Evidential Breath Alcohol Measuring Devices" prepared by the National Highway Traffic Safety Administration of the United States Department of Transportation.

(5) Any breath alcohol analysis instruments

and related units used pursuant to KRS Chapter 189A shall meet the minimum qualifications for maintenance and calibration as set forth by the Forensic Laboratory Section, Department of State Police.

Section 2. (1) An instrument must be accurate within plus or minus 0.005 alcohol concentration units reading to be certified. To determine accuracy of instruments, a certified technician shall perform analyses using a certified reference sample at regular intervals.

(2) All breath alcohol analysis instruments shall be examined by a certified technician prior to being placed into operation and after repairs of any malfunctions.

RAY CORNS, Secretary
APPROVED BY AGENCY: June 19, 1991
FILED WITH LRC: July 1, 1991 at 8:05 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Wednesday, August 21, 1991 at 10 a.m. at 403 Wapping Street, Bush Building, Second Floor, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 1991, five days prior to the 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 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 be heard at the public hearing or written comments on the proposed administrative regulation to: Mr. Christopher W. Johnson, Justice Cabinet, 403 Wapping Street, Bush Building, 2nd Floor, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Chris Johnson
(1) Type and number of entities affected: Approximately 500 state and local law enforcement agencies.
(a) Direct and indirect costs or savings to those affected: No fiscal impact.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: No fiscal impact.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements.
(3) Assessment of anticipated effect on state and local revenues: No fiscal impact.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives applicable.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None in conflict.
(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 are equally applicable to all agencies.

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. Law enforcement agencies.
3. State the aspect or service of local government to which this administrative regulation relates. Breath analysis instruments in DUI enforcement.
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: No fiscal impact.

## JUSTICE CABINET
## Office of the Secretary

**500 KAR 8:030. Administration of chemical analysis tests.**

RELATES TO: KRS 189A.103
STATUTORY AUTHORITY: KRS 15A.160, 189A.103
NECESSITY AND FUNCTION: This regulation establishes procedures for administering chemical analysis tests pursuant to KRS 189A.103.

Section 1. The following procedures shall apply to breath alcohol tests:
(1) A certified operator shall have continuous control of the person by present sense perception for at least twenty (20) minutes prior to the breath alcohol analysis. During that period the subject shall not have oral or nasal intake of substances which will affect the test.
(2) A breath alcohol concentration test shall consist of the following steps in this sequence:
(a) Ambient air analysis;
(b) Alcohol simulator analysis;
(c) Ambient air analysis;
(d) Subject breath sample analysis; and
(e) Ambient air analysis.
(3) Each ambient air analysis performed as part of the breath alcohol testing sequence shall be less than 0.010 alcohol concentration units.

Section 2. The following procedures shall apply regarding chemical tests of blood for alcohol or other substances:
(1) The blood sample shall be collected in the

presence of the arresting officer or a representative of the arresting officer's agency who can authenticate the sample.

(2) The blood sample shall be collected by a person authorized to do so by KRS 189A.103(6).

(3) Collection of the blood sample shall be by the following method:

(a) No alcohol or other volatile organic substance shall be used to clean the skin where a sample is to be collected.

(b) All samples shall be collected with needles and syringes or vacuum-type collecting containers approved by the licensing agency of the collector.

(c) Blood collecting containers shall not contain an anticoagulant or preservative which will interfere with the intended analytical method.

(d) Individual containers shall be appropriate and securely labeled to provide the following information:

1. Name of person giving sample;
2. Date and time of collection;
3. Collector's name and agency identification;
4. Requesting officer's name and agency identification;
5. Complete uniform citation number; and
6. Officer present during collection of sample.

(4) The blood sample shall be delivered to a laboratory for analysis.

Section 3. The following procedures shall apply regarding chemical analysis of urine for alcohol or other substances:

(1) Urine samples shall be collected at two (2) separate times in the presence of the arresting officer, or another person at the direction of the officer, who can authenticate the samples. The witnessing person shall be of the same sex as the person providing the sample.

(2) The subject person shall empty his bladder and this first sample shall be tested for substances of abuse other than alcohol.

(3) Thirty (30) minutes following the initial emptying of the bladder, the subject person shall be requested to again empty his bladder and this second sample shall be tested for alcohol and may be tested for substances of abuse other than alcohol.

(4) Samples shall be collected in clean, dry containers. No preservatives shall be used. Each container shall be securely sealed.

(5) Each container shall be appropriately and securely labeled to provide the following information:

(a) Name of person giving the sample;
(b) Date and time of collection;
(c) Collecting attendant's name and agency identification;
(d) Complete uniform citation number; and
(e) Requesting officer's name and agency identification.

(6) The urine samples shall be delivered to the laboratory for analysis.

RAY CORNS, Secretary
APPROVED BY AGENCY: June 19, 1991
FILED WITH LRC: July 1, 1991 at 8:05 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Wednesday, August 21, 1991 at 10 a.m. at 403 Wapping Street, Bush Building, Second Floor, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 1991, five days prior to the 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 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 be heard at the public hearing or written comments on the proposed administrative regulation to: Mr. Christopher W. Johnson, Justice Cabinet, 403 Wapping Street, Bush Building, 2nd Floor, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Chris Johnson

(1) Type and number of entities affected: Approximately 500 state and local law enforcement agencies.

(a) Direct and indirect costs or savings to those affected: Unknown period additional tests are within the discretion of the agency.

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No fiscal impact.

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: No fiscal impact.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives available or appropriate.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None in conflict.

(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 are equally applicable to all agencies.

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. Law enforcement agencies.

3. State the aspect or service of local government to which this administrative regulation relates. Chemical analysis of breath, blood, or urine in DUI enforcement.

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: Unknown. The new statutes permit multiple tests at the discretion of the arresting/investigating police officer. Extensive use of multiple tests will increase costs to the agency relative to any cost associated with collection of samples, containers for samples, laboratory costs, or transportation costs.

**TRANSPORTATION CABINET**
**Department of Vehicle Regulation**
**Division of Driver Licensing**

**601 KAR 12:060. Hardship driver's license.**

RELATES TO: KRS 189A.400 through 189A.460

STATUTORY AUTHORITY: KRS 189A.460

NECESSITY AND FUNCTION: KRS 189A.400 through 189A.460 provides for the issuance of a hardship driver's license to a person whose driving privilege has been withdrawn for a conviction of a first-time violation of KRS 189A.010 or a person who is under the age of twenty-one (21) years, who has been accused of a first-time violation of KRS 189A.010 and who did not refuse to take an alcohol concentration or substance test. The district court withdrawing the person's driving privilege has exclusive jurisdiction to decide whether the person shall be issued a hardship driver's license. The hardship driver's license is to be issued by the Transportation Cabinet. The circuit court clerks acting on behalf of the Kentucky Transportation Cabinet issue all motor vehicle operator's licenses. It is the Transportation Cabinet's intention that the circuit court clerks shall also issue the hardship driver's license. KRS 189A.460 requires the Transportation Cabinet to promulgate administrative regulations relating to the implementation of the hardship driver's license provisions of KRS Chapter 189A. Therefore, this regulation sets forth procedures to be followed in applying to the circuit court clerk for a hardship driver's license and for the circuit clerk to issue the license. It further sets forth the fee for the hardship driver's license, provides for cancellation of a hardship driver's license, and allows a replacement hardship driver's license to be issued.

Section 1. A person who has been given a court order authorizing the issuance of a hardship driver's license by the district court which withdrew his driving privilege, shall apply for the issuance of the license at the driver licensing issuance office of the circuit court clerk in his county of residence. The license to be issued by the circuit clerk shall be a photo license clearly designated "hardship" on the face of the license. He shall not be issued a hardship driver's license sooner than the 31st day of his ninety (90) day driving privilege withdrawal period imposed by the district court in accordance with KRS 189A.070 or 189A.200.

Section 2. When applying for the issuance of the hardship driver's license, the applicant shall present the district court order granting hardship driving privilege, the driving privilege withdrawal notice from the Transportation Cabinet, Division of Driver Licensing, and some form of identification to the driver licensing issuance office. If the applicant does not have the withdrawal notice from the Transportation Cabinet, Division of Driver Licensing, the circuit court clerk shall contact the Division of Driver Licensing to determine the date of expiration of the hardship driver's license.

Section 3. If the applicant for the hardship driver's license who has been charged with a first-time violation of KRS 189A.010 is under the age of eighteen (18) years, he shall not be issued the hardship driver's license until there are no more than sixty (60) days remaining in his driving privilege withdrawal period.

Section 4. (1) Only a person whose Kentucky operator's license has been suspended or revoked as a result of the current charge of driving while under the influence of alcohol or other impairing substances may be issued a hardship driver's license.

(2) If the applicant for a hardship driver's license is a new Kentucky resident who had his driving privilege withdrawn in another jurisdiction, he shall not be eligible for a hardship driver's license until the jurisdiction imposing the driving privilege withdrawal provides a statement that the person is eligible to have his driving privilege restored.

Section 5. The applicant for a hardship driver's license shall pay a five (5) dollar fee to the circuit court clerk for his photo hardship driver's license.

Section 6. The circuit court clerk shall attach the yellow copy of the court order to the hardship driver's photo license before it is given to the applicant. The hardship driver's license shall not be considered complete or official unless the copy of the court order is attached.

Section 7. If a valid hardship driver's license is lost or destroyed, the licensee may apply for a replacement photo license by presenting another copy of the court order and a five (5) dollar fee to the circuit court clerk in the county of his residence.

Section 8. When the person was convicted of driving under the influence of intoxicants or other substances in another state or licensing jurisdiction, the Kentucky court of jurisdiction for the purpose of determining if a hardship driver's license should be issued shall be the district court in his county of residence.

Section 9. (1) If the district court authorizes the issuance of the hardship driver's license, the circuit court clerk in the person's county of residence shall issue the hardship driver's license.

(2) If the Transportation Cabinet upon review of the person's complete driving history record determines that the person holding a hardship driver's license was not eligible to receive the

license, i.e., he did not meet the requirements of KRS 189A.410, the Transportation Cabinet shall cancel the hardship driver's license and notify both the licensee and the district court of this action.

(3) The district court withdrawing the person's driving privilege as a result of the charge of first-time violation of KRS 189A.010 has exclusive jurisdiction over the issuance of a hardship driver's license. If another court were to inadvertently order that a hardship license be issued, the Transportation Cabinet shall cancel the hardship driver's license and notify both the licensee and the district court of this action.

(4) If the person is convicted of an additional offense which would cause the withdrawal of his driving privilege or reported by a court to have not satisfied an outstanding citation which would cause the withdrawal of his driving privilege, the Transportation Cabinet shall cancel the hardship driver's license and notify the licensee.

Section 10. The decal required by KRS 189A.430 shall be placed in the lower corner of the rear window on the driver's side in a motor vehicle which has a rear window. If the motor vehicle does not have a rear window, the decal shall be placed so that it is plainly visible from the rear of the motor vehicle.

JEROME L. LENTZ, Acting Commissioner
MILO D. BRYANT, Secretary
APPROVED BY AGENCY: June 25, 1991
FILED WITH LRC: July 11, 1991 at 11 a.m.

PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on August 22, 1991 at 10 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 August 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 August 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, State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen

(1) Type and number of entities affected: The approximately 10,000 persons in Kentucky who will be eligible for a hardship license each year.

(a) Direct and indirect costs or savings to those affected:

1. First year: The cost for the hardship license will be $5 per person. However, the savings to the same individuals in terms of employment and continuing education would be worth an average of $2,000 per person, making a net savings of $1,095 per person.

2. Continuing costs or savings: The cost for the hardship license will be $5 per person. However, the savings to the same individuals in terms of employment and continuing education would be worth an average of $2,000 per person, making a net savings of $1,095 per person.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: Complete brief application form.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: It has been determined that the $5 cost of the hardship driver's license should approximately compensate the Transportation Cabinet for the administrative cost of this program.

2. Continuing costs or savings: It has been determined that the $5 cost of the hardship driver's license should approximately compensate the Transportation Cabinet for the administrative cost of this program.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: The driver licensing computer information system will have to be updated continuously to show the issuance of hardship licenses.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: The hardship driver's license, by state law, is to be issued by the Transportation Cabinet. The circuit court clerks acting on the behalf of the Kentucky Transportation Cabinet issue all motor vechicle operator's licenses; therefore, the Transportation Cabinet asked the circuit court clerks to also issue the hardship driver's license in order to minimize confusion among those persons eligible for the hardship license. The Transportation Cabinet rejected issuing hardship licenses out of Frankfort because of inconvenience and hardship it would place on the applicants.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. Those persons under the age of 18 are treated slightly different from those persons over the age of 18.

## EDUCATION AND HUMANITIES CABINET
## Department of Education
## Educational Innovation Incentive Committee

### 701 KAR 7:011. Repeal of 701 KAR 7:010.

RELATES TO: KRS 158.805
STATUTORY AUTHORITY: KRS 156.070
NECESSITY AND FUNCTION: KRS 158.805 no longer authorizes educational innovation incentive

grants, so this regulation is no longer necessary.

Section 1. 701 KAR 7:010, Educational innovation incentive grants, is hereby repealed.

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).

THOMAS C. BOYSEN, Commissioner

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: July 5, 1991
FILED WITH LRC: July 9, 1991 at 8 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 26, 1991 at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 21, 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: J. Gary Bale, General Counsel, Office of Legal Services, Department of Education, 120 Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dr. H. M. Snodgrass
(1) Type and number of entities affected: N/A
(a) Direct and indirect costs or savings to those affected: N/A
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: N/A
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: N/A
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: N/A
(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. Educational incentive grants repealed.

## EDUCATION AND HUMANITIES CABINET
## Department of Education
## Office of School Administration and Finance

### 702 KAR 1:001. School facilities manual.

RELATES TO: KRS 157.420, 157.622
STATUTORY AUTHORITY: KRS 156.070, 157.420
NECESSITY AND FUNCTION: KRS 157.420(3) requires that the capital outlay allotment from the public school fund be used by school districts for capital outlay projects approved by the chief state school officer in accordance with requirements of law and based on a survey made in accordance with regulations of the State Board for Elementary and Secondary Education; and KRS 157.622 sets forth certain requirements for school facilities plans relative to participation in funding by the School Facilities Construction Commission. This regulation provides for the development and adoption of a written plan describing construction and use of school facilities to guide school administrators in meeting the needs of the district, and it repeals appropriate regulations.

Section 1. The chief state school officer shall conduct or cause to be conducted a facilities survey of each school district every four (4) years, except for requested and justified amendments approved by the state board, and shall deliver to the local board of education the state board-approved report which contains an assessment of existing conditions and a facilities plan which designates an organizational pattern, classification of school centers, and a priority schedule for construction and renovation needs.

Section 2. Each school district's facilities plan, and requested amendments thereto, shall be developed in accordance with the standards and hearing procedures contained in the "School Facilities Manual", July 1991, which is hereby adopted and incorporated by reference. Copies of this document may be inspected, copied, and obtained from the Division of Facilities Management, Department of Education, 15th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

Section 3. The facilities plan shall remain in effect until any changes have been approved by the State Board for Elementary and Secondary Education.

Section 4. The adopted facilities plan shall become the facilities plan of the local school district and shall be implemented to the extent that the financial ability of the district shall permit as determined by the chief state school officer and the School Facilities Construction Commission. The scope of any construction project recommended in the facilities plan shall remain in effect until any changes have been approved by the state board.

Section 5. 702 KAR 1:010, Facilities surveys and plans; 702 KAR 4:110, Program space; space

allocation; 702 KAR 4:120, Square foot costs and maximum budget; and 702 KAR 4:130, Increase in financial budget are hereby repealed.

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).

THOMAS C. BOYSEN, Commissioner

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: July 5, 1991
FILED WITH LRC: July 8, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 26, 1991 at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 21, 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: J. Gary Bale, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Michael Luscher
(1) Type and number of entities affected: 176 school districts.
(a) Direct and indirect costs or savings to those affected:
1. First year: No effect.
2. Continuing costs or savings: No effect.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: No effect.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: No effect.
2. Continuing costs or savings: No effect.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: No effect.
(3) Assessment of anticipated effect on state and local revenues: No effect.
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments:

TIERING: Was tiering applied? No. Application is applied equally to all districts.

**EDUCATION AND HUMANITIES CABINET**
**Department of Education**
**Office of School Administration and Finance**

**702 KAR 5:141. Repeal of 702 KAR 5:140, Reimbursement for midday transportation of kindergarten pupils.**

RELATES TO: KRS 157.370
STATUTORY AUTHORITY: KRS 156.070, 157.320, 157.370
NECESSITY AND FUNCTION: KRS 157.370 sets forth the funding mechanism under the Fund to Support Education Excellence in Kentucky for reimbursing school districts for transportation costs. This regulation is no longer necessary since the state budget contains no line item for reimbursement to be made to those districts which provide midday transportation of kindergarten pupils and since costs of such will be absorbed within the regulation transportation reimbursement calculations.

Section 1. 702 KAR 5:140, Reimbursement for midday transportation of kindergarten pupils, is hereby repealed.

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).

THOMAS C. BOYSEN, Commissioner

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: July 5, 1991
FILED WITH LRC: July 9, 1991 at 8 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 26, 1991 at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 21, 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: J. Gary Bale, General Counsel, Office of Legal Services, Department of Education, 120 Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Prince
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected: None
1. First year:

2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: Savings in the time involved collecting data and completing a separate calculation for midday calculation.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: The repeal of this regulation will save the Department of Education $6.5 million annually.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Since all but 12 districts are now providing midday kindergarten transportation their costs should be comparable. The transportation formula will provide adequate compensation without a bonus reimbursement.
(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: Kindergarten students whose residence is a mile or more from school and are transported daily will be included in the transportation formula whether in a half day or all day program.
TIERING: Was tiering applied? No. This regulation applies equally to all districts.

**EDUCATION AND HUMANITIES CABINET**
**Department of Education**
**Office of Instruction**

**704 KAR 3:006. Annual performance reports and standards of student, program, service, and operational performance.**

RELATES TO: KRS 158.650 to 158.710
STATUTORY AUTHORITY: KRS 158.650, 158.685
NECESSITY AND FUNCTION: KRS 158.650 to 158.710 mandate a program of annual performance reports, educational improvement plans, performance standards, and assistance and various sanctions by the Department of Education pursuant to regulations of the State Board for Elementary and Secondary Education. This regulation implements the state board duty to promulgate administrative regulations.

Section 1. (1) The annual performance report which KRS 158.650 requires each local school district to publish shall be submitted to the State Board for Elementary and Secondary Education by September 15 of each year and shall be published in the newspaper with the largest circulation in the county by October 1. The purpose of the October 1 publishing requirement is to inform the public in each school district regarding the operation and performance of each school district.
(2) The annual performance report shall include local district data for the following factors:
(a) Student data. Results of the biennial state-mandated testing program; results of Scholastic Aptitude Test and American College Board Test; dropout rate; retention rate; percentage of average daily attendance; number and percentage of students entering the workforce, military service, going to college or other postsecondary training; number and percentage of students with disabilities receiving specially designed instruction and related services according to individual education programs; and percentage of enrollment classified as economically deprived shall be reported and published.
(b) Staff data. Percentage of attendance by professional staff; student/teacher ratio; teacher/administrator ratio; salary data by rank; the number of teachers teaching out of their field of specialty and the number of classes taught by teachers out of their field of specialty; and average cost per professional staff for staff development activities shall be reported and published.
(c) Management data. Transportation cost per pupil transported; current expenses per pupil in average daily attendance; cost per pupil for instruction; cost per pupil for administration; percentage of district revenue received from local, state and federal sources; local revenue per child in average daily attendance; assessed property value per child in average daily attendance; and district goals for the succeeding year shall be reported and published.

Section 2. Each local district board of education shall achieve and maintain minimum performance standards established by the State Board for Elementary and Secondary Education in student, program, service and operational performance, as follows:
(1) Program and service performance standards. A local school district shall have a deficiency in program and service performance when one (1) or more of the following standards are not met:
(a) The local school district and each school within the district shall be in compliance with all applicable federal and state statutes and regulations and with federal, state, and local ordinances pertaining to the health and safety of pupils, faculty, and staff of the school district.
(b) Each local district board of education shall adopt and implement, by September 1, 1991, a continuous student assessment program designed to monitor student progress toward attaining the valued outcomes as defined by the state board.
(c) The local school district and schools within that district providing vocational education programs shall meet the requirements as established in 705 KAR 4:230, general program standards for secondary vocational education programs, and shall meet any additional requirements imposed by federal or state law.
(d) The local school district and schools within that district shall have special education programs and related services for children and youth who have educational disabilities. These programs and services shall meet the requirements of 707 KAR Chapter 1 programs for exceptional children, and shall meet any additional requirements imposed by federal or state law.
(e) The local school district and each school within the district shall, by July 1, 1992, have

policies and procedures to assist in the reduction of physical and mental health barriers to learning. The policies and procedures shall provide for:

1. Systematic efforts to define and identify physical and mental health barriers to learning which may impede the successful attainment of the goals and capacities specified in KRS 158.645 and 158.6451;

2. Systematic screening of students to identify physical and mental health barriers impacting the learning of individual students;

3. Referral of students for medical, educational, social, mental health, and family support services, including prevention, evaluation and intervention, to in-school and district programs and public and nonpublic agencies;

4. Coordination with existing community, regional, and state resources for provision of services to students; and

5. Development of a written plan to assist in reducing physical and mental health barriers to learning which includes:

a. A systematic needs assessment process to provide current data for long-term and annual planning, including data on the service needs of the district and its schools' student population;

b. Strategies and activities designed to reduce physical and mental health barriers to learning; and

c. Evaluation of the implementation of the plan and effectiveness of the activities and strategies for reducing the identified physical and mental health barriers to learning.

(2) Student performance standards. The determination of district performance and individual school performance within the district shall be based on data collected through an individual student identification system. A local school district shall have a deficiency in student performance when one (1) or more of the following standards are not met, after any applicable percentage figures are rounded to the nearest one-tenth (.1) of one (1) percent:

(a) Academic performance. Academic performance shall be based on student performance, and standards shall be established by administrative regulation, based on the Council on School Performance Standards' definition of the statutory goals in measurable terms under KRS 158.6451, once that task is completed.

(b) Attendance standard. The percentage of attendance shall be calculated by dividing the aggregate days attendance by the aggregate days membership. The local school district shall achieve an annual attendance rate of ninety-four (94) percent or above.

(c) Dropout standard. The dropout rate shall be defined as the annual percentage of students leaving school prior to graduation in grades 7-12 and include withdrawals in attendance accounting codes W6 (child turns sixteen (16) years of age and drops out), W10 (pupil discharged), W11 (drop out on account of marriage), and W14 (drop out on account of birth of child). The local school district shall achieve an annual dropout percentage equal to or less than five (5) percent.

(d) Completion rate. The percentage of first grade students completing the 12th grade, with this standard to be established by administrative regulation after the implementation of an individual student identification system.

(e) Retention rate. The percentage of the schools' pupils who are retained shall decrease each year until the percentage retained in the district does not exceed four (4) percent.

(f) Transition to work, postsecondary education and military. The annual percentage of the district's students completing a program of studies who enter the workforce, postsecondary training, or military service shall equal seventy-five and four-tenths (75.4) percent or above.

(3) Operational performance standards. A local school district shall have a deficiency in operational performance when one (1) or more of the following standards are not met:

(a)1. The total cost of maintenance and operation of a school district, less the cost of salaries, shall not have a deviation of more than one and one-tenth (1.1) standard deviation above the average per pupil per year costs as compared to the statewide average for comparably sized school districts.

2. Line item codes, excluding salaries that deviate significantly (more than one and one-tenth (1.1)) above state averages for comparably sized school districts shall be reason for the state department to provide consultation to assist the district in eliminating the line item deviation.

3. The following average daily attendance ranges shall constitute the size groups within which county and independent districts are placed for comparative deviation analysis:

| County Districts | Independent Districts |
|---|---|
| 10,000 and up | 16,000 and up |
| 5,000 to 9,999 | 900 to 1,599 |
| 3,000 to 4,999 | 500 to 899 |
| 2,200 to 2,299 | 0 to 499 |
| 1,500 to 2,199 | |
| 0 to 1,499 | |

4. Approval for major deviations (more than one and one-tenth (1.1) standard deviation) due to renovations, improvements, and additional programs with long-range planning requirements may be authorized annually by the Commissioner of Education.

(b)1. The adjusted total cost of transportation of a school district, as defined in 702 KAR 5:020 shall not have a deviation of more than one and one-tenth (1.1) standard deviations above the per pupil per year cost of transported pupils as compared with the statewide average for comparable density school districts.

2. Line item codes, excluding salaries that deviate significantly (more than one and one-tenth (1.1) standard deviations) in a district above the applicable state average shall be cause to be provided Department of Education consultation to promote efficiency.

3. The buses in operation in a school district, less the spare units, shall have a load capacity of students that shall not vary more than one and one-tenth (1.1) standard deviations as compared with statewide comparable density averages. Approval shall be authorized by the Commissioner of Education for contract buses prior to the beginning of each school year.

4. The following transported pupil density per square mile of area served shall constitute the size groups within which county and independent

districts are placed for comparative deviation analysis:

| County Districts | Independent Districts |
|---|---|
| 0 – 4.0 | 0 – 15.0 |
| 4.1 – 5.0 | 15.1 – 30.0 |
| 5.1 – 6.0 | 30.1 – 50.0 |
| 6.1 – 7.0 | 50.1 – 70.0 |
| 7.1 – 9.0 | 70.1 –100.0 |
| 9.1 – 12.0 | 100.0 – 150.0 |
| 12.1 – 16.0 | 150.1 – 200.0 |
| 16.1 – 40.0 | All over 200 |
| 40.1 – 75.0 | |
| All over 75 | |

5. Approval for major deviations (more than one and one-tenth (1.1) standard deviations), due to major single year improvements of equipment or vehicles, or implementation of new, expanded or required programs, may be authorized annually by the Commissioner of Education.

Section 3. (1) The Kentucky Department of Education shall identify and present to the state board for formal declaration those districts failing to meet minimum student, program, service or operational standards as defined in Section 2 of this regulation.

(2) The performance of districts failing to meet minimum standards and such other information as may be required by this regulation shall be reviewed by the Educational Improvement Advisory Committee quarterly.

Section 4. (1) The State Board for Elementary and Secondary Education shall declare a school district to be educationally deficient when, in any school year, the district fails to meet any of the minimum student, program, service, or operational standards as defined in Section 2 of this regulation.

(2) Each local school district declared educationally deficient by the State Board for Elementary and Secondary Education shall submit a district improvement plan for approval to the state board, within thirty (30) working days from the date of declaration. The district improvement plan as adopted by the local board shall address each deficiency area in accordance with KRS 158.650, 158.685, and 158.710. The initial plan shall address a period of not less than twelve (12) months.

Section 5. The Commissioner of Education shall determine the extent of and provide appropriate consultation and assistance to any school district which has been declared educationally deficient by the State Board for Elementary and Secondary Education. These services shall be provided in accordance with KRS 158.685(3) and shall be included in the contract of services required in KRS 158.685(3).

Section 6. Failure by an educationally deficient school district to meet the process goals, interim performance goals, or timelines set in the district improvement plan shall constitute grounds for the Commissioner of Education to initiate action in accordance with KRS 158.685(4).

Section 7. 704 KAR 3:005, Educational Improvement Act, is hereby repealed.

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: July 3, 1991
FILED WITH LRC: July 9, 1991 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 26, 1991 at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 21, 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: J. Gary Bale, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dr. H. M. Snodgrass

(1) Type and number of entities affected: 176 school districts.

(a) Direct and indirect costs or savings to those affected: No change from current statutory requirements which have been in place since 1984.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No change from current: annual performance report published in newspaper and improvement plans prepared to address any deficiencies.

(2) Effects on the promulgating administrative body: N/A

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Monitoring and reporting on district status.

(3) Assessment of anticipated effect on state and local revenues: N/A

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: N/A

TIERING: Was tiering applied? No. This regulation applies equally to all districts.

**EDUCATION AND HUMANITIES CABINET**
**Department of Education**
**Office of Instruction**

**704 KAR 3:012. Repeal of 704 KAR 3:010, 704 KAR 3:025, and 704 KAR 3:030.**

RELATES TO: KRS 157.360
STATUTORY AUTHORITY: KRS 157.320
NECESSITY AND FUNCTION: KRS 157.360 no longer authorizes the allocation of state funds to local school districts on the basis of administrative and special instructional services provided, so these regulations are no longer necessary.

Section 1. 704 KAR 3:010, Administrative and special services; 704 KAR 3:025, Classroom units; and 704 KAR 3:030, Special instructional service units, is hereby repealed.

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).

THOMAS C. BOYSEN, Commissioner

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: July 5, 1991
FILED WITH LRC: July 9, 1991 at 8 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 26, 1991 at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 21, 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: J. Gary Bale, General Counsel, Office of Legal Services, Department of Education, 120 Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ron Moubray
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected: None
1. First year: 0
2. Continuing costs or savings: 0
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year: 0
2. Continuing costs or savings: 0
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: None
TIERING: Was tiering applied? Foundation Program repealed. Regulation no longer needed.

**EDUCATION AND HUMANITIES CABINET**
**Department of Education**
**Office of Instruction**

**704 KAR 15:091. Repeal of 704 KAR 15:090.**

RELATES TO: KRS 156.611, 164.768
STATUTORY AUTHORITY: KRS 156.070
NECESSITY AND FUNCTION: KRS 156.611 has been repealed, reenacted, and amended as KRS 164.768 and is now under the jurisdiction of the Higher Education Assistance Authority, so this regulation is no longer necessary.

Section 1. 704 KAR 15:090, Incentive loan program; mathematics and science, is hereby repealed.

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).

THOMAS C. BOYSEN, Commissioner

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: July 5, 1991
FILED WITH LRC: July 9, 1991 at 8 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 26, 1991 at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 21, 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: J. Gary Bale, General Counsel, Office of Legal Services, Department of Education, 120 Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: J. Gary Bale
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected: None
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: N/A
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: N/A
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs:N/A
(b) Reporting and paperwork requirements: N/A
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: 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. Incentive Loan Program repealed.

**EDUCATION AND HUMANITIES CABINET**
**Department of Education**
**Office of Secondary Vocational Education**

**705 KAR 3:011. Repeal of 705 KAR 3:050, 705 KAR 3:090, and 705 KAR 5:050.**

RELATES TO: KRS 156.031, 156.033
STATUTORY AUTHORITY: KRS 156.070
NECESSITY AND FUNCTION: Adult vocational-technical education is now under the jurisdiction of the State Board for Adult Vocational Education and Vocational Rehabilitation, so these regulations are no longer necessary.

Section 1. 705 KAR 3:050, College or university, department of standards; 705 KAR 3:090, Equipment specifications and requirements; and 705 KAR 5:050, Policy for vocational-technical education regional advisory committee, are hereby repealed.

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).

THOMAS C. BOYSEN, Commissioner

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: July 5, 1991
FILED WITH LRC: July 9, 1991 at 8 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 26, 1991 at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 21, 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: J. Gary Bale, General Counsel, Office of Legal Services, Department of Education, 120 Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Rodney Kelly
(1) Type and number of entities affected: 24 colleges, universities, and community colleges; 54 state-operated area vocational centers and 17 state voc tech schools and 14 regional regions.
(a) Direct and indirect costs or savings to those affected:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: Similar to previous years.
(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: Similar to previous years.
(3) Assessment of anticipated effect on state and local revenues: Jurisdiction of adult vocational education has been transferred to State Board for Adult Vocational Education and Vocational Rehabilitation.
(4) Assessment of alternative methods; reasons why alternatives were rejected: None – method mandated by House Bill 814.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: The regulations repealed by this action are no longer necessary because jurisdiction of adult vocational education was transferred by House Bill 814.
TIERING: Was tiering applied? No. Local school district funding is not affected by this regulation.

WORKFORCE DEVELOPMENT CABINET
Governor's Commission on Literacy

**784 KAR 1:010. Adult literacy program fund.**

RELATES TO: KRS 151B.140
STATUTORY AUTHORITY: KRS 13A.100, 151B.140
NECESSITY AND FUNCTION: As an agency of the Cabinet for Workforce Development, the Governor's Commission on Literacy is authorized by KRS 151B.140 to administer a statewide adult literacy program. This regulation is necessary to assure uniformity in the administration of literacy program grants under the statewide adult literacy program.

Section 1. Program Purpose and Announcements. (1) The goal for the use of the literacy program grants is to encourage and promote the development and implementation of local literacy programs, or the improvement or supplementation of existing programs, in each county. Except as special circumstances require and as recommended by the Governor's Commission on Literacy, hereinafter referred to as the commission, no more than one (1) grant per county shall be awarded each funding cycle.

(2) Funding cycle(s) during which applications will be received for the program shall be announced annually. Deadlines for receiving proposals shall be established and advertised in each county. More than one (1) funding cycle is anticipated annually, but this shall be dependent upon the level of funding available and number of applicants funded during the first funding cycle.

Section 2. Eligibility Requirements. (1) The following may apply for funding:

(a) State agencies and units of local government (including county, municipality, city, town, local public authority and special district agencies). This also includes such intrastate entities as districts, councils of governments and multicounty units, and other state and local organizations and institutions.

(b) Profit or nonprofit public or private businesses.

(c) Community based organizations or subgroups of such organizations organized expressly for the purpose of providing adult literacy services and who are incorporated, or, are a legal entity, or who have an individual who accepts responsibility for appropriate use of the grant funds.

(2) To be eligible for funding, projects shall:

(a) Provide or coordinate direct adult literacy services or provide training or technical assistance to such programs.

(b) Provide services to individuals age sixteen (16) and above who read at or below a fifth grade level, unless the application demonstrates the need and method for providing services to different ages and reading abilities, and can demonstrate that this is not a duplication of services.

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

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

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

(f) Comply with nondiscrimination requirements.

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

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

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

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

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

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

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

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

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

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

1. The documented need for an adult literacy program, considering both the number of adults who cannot read or read well (under the standard used in Section 2(2)(b) of this regulation) and the extent to which there are existing literacy programs in the county.

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

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

4. Ability to evaluate the effectiveness of the program.

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

6. Ability to keep required records.

7. Completeness and appropriateness of budget

and cost effectiveness.
8. Strength of plans for continuation of projects.
(b) The Grant Review Committee reserves the right to recommend for funding any, all, or none of the proposals submitted in response to requests for proposals. The committee may also choose to negotiate with competing applicants from any county to encourage a joint program.
(c) Recommendations of the Grant Review Committee shall go to the full commission for consideration. The recommendations of the commission shall be forwarded to the Secretary of Workforce Development Cabinet who shall make the final decision regarding funding awards.
(d) Applicants selected for funding shall be notified by mail of the decision on their proposals no later than sixty (60) days after the deadline established for the funding cycle.

Section 5. Funding Terms and Conditions. (1) State funds appropriated for literacy programs shall be allocated by county, based on the percent of adults in that county as compared to the state total who have completed only the eighth grade or less. Funds not granted to that county during the first funding cycle each year shall subsequently be made available statewide.
(2) Grant fund awards shall be made as determined by the commission. If inappropriate or unapproved use of funds occurs, the remainder of the award may be suspended or revoked. Misused funds shall be recovered.
(3) Funding of projects shall be established by a document of grant conditions to be finalized after grantees are notified. The document shall include requirements stipulated in this regulation and in the application guidelines.
(4) To insure proper use of funds, grantees shall be held accountable for project expenses in a manner acceptable to the commission and the Secretary of the Workforce Development Cabinet. A separate bank account for each project requiring two (2) signatures on each check shall be required. All records shall be kept for three (3) years after the end of the funding cycle, or until any audits have been completed.
(5) Grantees may invest grant funds and retain any interest earnings except that such earnings shall be deemed grant funds and be used only for express purposes of the grant and shall be reported in all documents recording project financing.
(6) After completion of each project grantees shall return any unspent grant funds.
(7) Equipment and material purchased with grant funds shall be owned by the grantee. If the grantee organization dissolves, the property shall be given to an organization serving a public purpose and meeting nondiscrimination requirements. This organization shall be selected by the commission.

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

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

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

MARTIN BELL, Chairperson
APPROVED BY AGENCY: June 20, 1991
FILED WITH LRC: July 15, 1991 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 26, 1991, at 1:30 p.m., at Workforce Development Cabinet, Conference Room, Second Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, KY. Individuals interested in being heard at this hearing shall notify this agency in writing by August 21, 1991, five days prior to the 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 the contact person: Audrey Tayse Haynes, Executive Director, Kentucky Literacy Commission, 1100 U.S. 127 South, Building A, Suite 1, Frankfort, Kentucky 40601, (502) 564-4062.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Audrey Tayse Haynes
(1) Type and number of entities affected: 121

subcontract grantees.
(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: No additional costs will be borne by the state beyond legislature appropriation. Each county will be allocated a specific sum for which only one applicant may be funded. Dollars may or may not go to general purpose local governments.
(4) Assessment of alternative methods; reasons why alternatives were rejected:
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? Yes

## WORKFORCE DEVELOPMENT CABINET
## Governor's Commission on Literacy

**784 KAR 1:020. State adult literacy program plan.**

RELATES TO: KRS 151B.135, 151B.140
STATUTORY AUTHORITY: KRS 13A.100, 151B.135, 151B.140
NECESSITY AND FUNCTION: The Governor's Commission on Literacy is authorized by KRS 151B.140 to administer a statewide adult literacy program. KRS 151B.135 authorizes the commission to review and evaluate literacy programs and report findings and recommendations to the Governor, the Legislative Research Commission, and appropriate cabinet and department heads. The function of this regulation is to assist in the evaluation of existing resources and to set planning goals and guidelines which will provide for optional utilization of all resources directed toward adult literacy programs.

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

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

MARTIN BELL, Chairperson
APPROVED BY AGENCY: June 20, 1991
FILED WITH LRC: July 15, 1991 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 26, 1991, at 1:30 p.m., at Workforce Development Cabinet, Conference Room, Second Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, KY. Individuals interested in being heard at this hearing shall notify this agency in writing by August 21, 1991, five days prior to the 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 the contact person: Audrey Tayse Haynes, Executive Director, Kentucky Literacy Commission, 1100 U.S. 127 South, Building A, Suite 1, Frankfort, Kentucky 40601, (502) 564-4062.

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Audrey Tayse Haynes
(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: Task mandated by statute.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? Yes

## CABINET FOR HUMAN RESOURCES
## Department for Health Services

### 902 KAR 10:140. On-site sewage disposal system installer certification program standards.

RELATES TO: KRS Chapter 211.350 to 211.380, 211.990(2)
STATUTORY AUTHORITY: KRS 194.050, 211.090(3), 211.180(3), 211.357
NECESSITY AND FUNCTION: KRS 211.350 to 211.380 directs the cabinet to regulate the construction, installation, or alteration of on-site sewage disposal systems except for systems with a surface discharge: KRS 211.357 directs the cabinet to establish a program of certification for installers of on-site sewage disposal systems. The purpose of this regulation is to fulfill the requirement to establish a certification program including competency testing, training, continuing education, and enforcement procedures relative to maintenance of an acceptable standard of competency for installers.

Section 1. Definitions. As used in this regulation the following terms shall have the meanings set forth below:
(1) "Approved" means that which has been considered acceptable to the cabinet.
(2) "Cabinet" means the Cabinet for Human Resources and includes its authorized agents.
(3) "Certification level" means the level of technical skills and knowledge attained by an installer as categorized below:
(a) "Probationary level" means the certification entry level for an installer as specified in KRS 221.357(2). Installers at this level may possess minimal technical knowledge and require additional training and frequent technical assistance in design and installation procedures; and
(b) "Full level" means the certification level attained by an installer as specified in KRS 211.357(2). Installers at this level are expected to possess competency in design and installation of conventional and modified conventional on-site systems but may require additional training and occasional technical assistance for alternative systems or complex designs;
(4) "Certified inspector" means a person employed by the cabinet or by a local health department who has met the requirements for certification contained in KRS 211.357.
(5) "Certified installer" means a specific individual person who has met the requirements for certification contained in KRS 211.357 and the certification maintenance requirements contained in this regulation.
(6) "Competency" means an acceptable level of professional conduct, workmanship, and technical knowledge in the design and installation of on-site sewage disposal systems.
(7) "On-site sewage disposal system" means a complete system installed on a parcel of land, under the control or ownership of any person, which accepts sewage for treatment and ultimate disposal under the surface of the ground. The common terms "on-site sewage system" or "on-site system" also have the same meaning. This definition includes, but is not limited to, the following:
(a) A conventional system consisting of a sewage pretreatment unit(s), distribution box(es), and lateral piping within rock-filled trenches or beds;
(b) A modified system consisting of a conventional system enhanced by shallower trench or bed placement, artificial drainage systems, dosing, alternating lateral fields, fill soil over the lateral field, or other necessary modifications to the site, system or wasteload to overcome site limitations;
(c) An alternative system consisting of a sewage pretreatment unit(s), necessary site modifications, wasteload modifications, and a subsurface soil absorption system using other methods and technologies than a conventional or modified system to overcome site limitations;
(d) Cluster systems which accept effluent from more than one (1) structure's or facility's sewage pretreatment unit(s) and transport the collected effluent through a sewer system to one (1) or more common subsurface soil absorption system(s) of conventional, modified or alternative design; and
(e) A holding tank which provides limited pretreatment and storage for off-site disposal where site limitations preclude immediate installation of a subsurface soil absorption system, or connection to a municipal sewer.
(8) "Person" means any individual, firm, corporation, association, organization, partnership, business trust, company or governmental unit.

Section 2. Application for Certification. (1) Any person proposing to offer services to construct, install, alter or repair on-site sewage disposal systems shall first have met the application requirements of the cabinet for certification and have obtained a valid certificate from the cabinet. Applications shall be made on form DFS-233 - Application for Certification to Install On-site Sewage Disposal Systems provided by the cabinet and shall include necessary information about the applicant, and shall be accompanied by an applicable fee as established in KRS 211.357(3).
(2) For probationary certification applicant's qualifications shall be as follows:
(a) Applicant shall be a specific individual person of legal age to conduct business in

Kentucky;
(b) Applicant shall have sufficient skills and knowledge of regulations and construction techniques to pass a minimum competency examination;
(c) Applicant shall possess or have ready access to use of necessary construction equipment including a backhoe, dump truck, hand tools, transit or level and leveling rod; and
(d) Applicant shall submit proof of business bonding in the amount of $5,000 payable to the Cabinet for Human Resources.
(3) Applicant's qualifications for full certification shall be as follows:
(a) As specified in subsection (2)(a) through (d) of this section; and
(b) As specified in KRS 211.357(2).
(4) Applicants meeting the qualifications listed above shall be issued the appropriate certificate by the cabinet.
(5) Certification shall be valid only for the specific individual person to which it was issued and is not transferable to another person. Certification shall remain in effect and be valid statewide subject to the provisions of this regulation and KRS 211.357.

Section 3. Maintenance of Certification. (1) All persons holding valid certification under KRS 211.357 shall be required to attend training workshops offered by the cabinet to maintain certification and improve competency.
(2) Attendance at a minimum of two (2) training workshops per year with passing scores on workshop tests shall meet certification maintenance requirements.
(3) Attendance at workshops, seminars, or conferences not sponsored by the cabinet may be substituted on a one (1) for one (1) basis to meet certification maintenance requirements at the discretion of the cabinet. Requests for consideration of other training for substitution shall be based upon the following:
(a) Submission of a copy of the training agenda and course outlines; and
(b) Submission of proof of attendance and results of any testing or other performance measurement with verification by the training sponsor.
(4) Upon receipt of a request for training substitution the cabinet shall compare that training for equivalency with similar training it provides. If equivalency is demonstrated, the cabinet shall accept that training for substitution as specified in subsection (3) of this section.
(5) Any person failing to meet certification maintenance requirements shall be subject to administration action under Section 7 of this regulation and KRS 211.357(4).

Section 4. Training. (1) The cabinet shall develop and implement a series of training workshops for certified installers in the areas of on-site sewage disposal system design, technology, application and function.
(2) Training workshops shall be conducted throughout the state at frequencies, times, and locations necessary to provide all certified installers a reasonable opportunity to attend a number of workshops sufficient to maintain certification.
(3) A schedule of training workshops, including dates, times, location, topics, and registration forms shall be prepared and made available to all certified installers to notify them of training opportunities and allow for scheduling attendance.
(4) A series of training courses shall be developed including instructor and student manuals, and other audiovisual and written materials.
(5) The cabinet may charge a reasonable fee at each training workshop to support program costs.
(6) The cabinet shall establish, through grants or contracts, a training staff composed of local health department certified inspectors to conduct training workshops on a regional basis. These local instructors shall serve as supplemental staff to the cabinet and act under the direct supervision of the cabinet.
(7) Training workshops for staff and supplemental staff instructors shall be conducted to assure uniformity of training for certified installers.
(8) The cabinet may contract with other governmental agencies, private consultants, or professional organizations for specialized instructor services.

Section 5. Materials and Equipment. (1) Each training course shall be developed into a training materials packet consisting of the following:
(a) Course outline.
(b) Instructor script.
(c) Trainee guide.
(d) Audiovisual materials.
(e) Trainee worksheets and reference sheets.
(f) Test.
(g) Instructor comment sheet.
(h) Trainee comment sheet.
(2) A complete training materials packet, assembled in a loose-leaf, three (3) ring binder, shall be provided to each instructor for each course.
(3) A training material packet, excluding subsection (1)(b), (d) and (g) of this section, shall be provided to each trainee for each course.
(4) A loose-leaf, three (3) ring binder shall be provided to each trainee at the first workshop attended. This binder shall be used by the trainee to assemble a reference manual for the first course and all subsequent courses attended.
(5) Sufficient stocks of instructor and trainee material packets shall be maintained for each course to meet demand.
(6) Audiovisual equipment, including an overhead projector, slide projector, projection screen, videocassette player, and television monitor shall be available to each instructor.

Section 6. Enforcement. (1) Failure of any certified installer to comply with the requirements of KRS 211.350, 211.357(4) and (5), 902 KAR 10:081, 902 KAR 10:085, or this regulation shall result in administrative action being taken.
(2) A minimum six (6) months probationary period shall be assigned to any certified installer who:
(a) Fails final inspection on any two (2) consecutive systems which require follow-up inspections before approval is granted;
(b) Backfills any system before final inspection is conducted and approval to backfill is given;
(c) Fails final inspection on any system which

results in reconstruction of the system before approval can be given;

(d) Fails to place, cause to be placed, or fails to supervise placement of any required additional fill soil over an installed system;

(e) Fails to call for final inspection of any system;

(f) Fails to be present on the site anytime work is being performed on the system under construction.

(3) Probation may be assigned to a certified installer by the cabinet or by the certified inspector having local jurisdiction. Terms of the probationary period shall stipulate any restrictions, requirements, or additional training deemed necessary to correct performance.

(4) For other violations, the provisions of KRS 211.357(4) and (5) relating to suspension or revocation of certification shall apply. In addition, if necessary to correct damaged or abandoned systems or sites, surrender of business bond shall be required.

(5) In all instances of administrative ation being taken for probation, suspension or revocation, a certified installer shall have the right to request an administrative hearing. The request shall be submitted in writing on form DFS-212 - Request for Hearing to the local health department having jurisdiction or to the cabinet. The local health department or cabinet shall establish a time, date, and location for the hearing and notify the requestee in writing. At the conclusion of the hearing, the hearing officer shall make a finding of fact and conclusion of law with recommendations for action. A transcript of the hearing need not be made unless the requestee makes a request for a transcript at the time of the hearing request and assumes the cost of transportation.

(6) If immediate legal action is necessary to prevent the creation or continuance of a health hazard, damage to the environment, or compel compliance with KRS 211.350(2) and (3), 211.357(4) and (5) or regulations pursuant to those statutes, the cabinet or local health department concerned may maintain, in its own name, injunctive action against any person engaged in the construction, installation, or alteration of an on-site sewage disposal system.

(7) The cabinet shall be notified in writing of any administrative action taken by a local health department against any certified installer, so that other local health departments can be alerted to that installer's status.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 18, 1991
FILED WITH LRC: June 27, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for August 21, 1991, at 9 a.m. in the Department for Employment Services Conference Room, 2nd Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 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: James T. Corum

(1) Type and number of entities affected: Approximately 2,350 certified installers of on-site sewage disposal systems.

(a) Direct and indirect costs or savings to those affected: Direct and indirect costs to certified installers would include training fees for a minimum of two training seminars per year at an approximate $30 per seminar plus travel (actual cost will vary slightly as it will be based upon cost of training site rental, trainer cost and training materials cost on an at-cost basis). As to savings anticipated, this will vary from installer to installer as increased competency to install on-site sewage systems should reduce or eliminate installation and design mistakes which increase downtime and reduce profits through having to rework or redo deficient installations.

1. First year: See above.

2. Continuing costs or savings: See above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): As an installer's competency increases through training, his share of the market should increase through his ability to design and install more complex systems and through his reputation. Those installers who cannot maintain or attain competency would be eliminated through competition and through enforcement action against deficient on-site systems installation. Developers, general contractors, the public's health, and the environment will benefit from higher competency levels among installers of on-site sewage disposal systems.

(b) Reporting and paperwork requirements: Paperwork requirements would increase only as it affects registration for training seminars, competency test taking, and document production for new applications for certification.

(2) Effects on the promulgating administrative body: The Cabinet for Human Resources, Division of Local Health, will be affected through implementation of the training program, development of training materials and establishment of a regional training staff through grants to local health department for staff time and expenses. Division staff should be increased by at least one technical position to meet program development, consultation and future training needs and help relieve current staff to allow work time for program start-up.

(a) Direct and indirect costs or savings:

1. First year: One new staff position Grade 13 (est. $28,000 salary and fringe). Grants to local health departments for fifteen regional trainers: $10,500 for 60 seminars; Division staff travel reimbursement - $1,800; Developmental, printing, materials & administrative costs - (est. $35,000); Mail, telephone, misc. costs - $10,000; Estimated total - $85,300.

2. Continuing costs or savings: Staff position (est. $29,000 salary & fringe); Grants for 60 seminars/year - $12,000; Division staff travel - $2,200; New course development, printing/materials replacement, and administrative - $37,000; Mail, telephone, misc. costs - $12,000; Adjusted for inflation and normal cost increases; Est. total - $92,200.

3. Additional factors increasing or decreasing costs: Possible rental cost for meeting space, audiovisual equipment, contracts for specialty

speakers, etc., estimated at $6,000 per year.

(b) Reporting and paperwork requirements: Will increase due to program needs: development of training materials (printed material, audiovisual aids, etc.); copying sufficient stocks of training packets for attendees, registration forms for attendees, test materials, etc.; processing registration fee; maintaining data bank on certified installer's performance on training attendance, testing and certification status; assembly and distribution of notification of training schedules to all certified installers and trainers.

(3) Assessment of anticipated effect on state and local revenues: Anticipated effect on state revenues will be a need for $85,000 - 88,000 in new monies for first year costs and $92,000 - 95,000 per year continuing costs. However, a new state revenue source would be created through training registration fees. Registration fees, estimated at approximately $30 per registrant per seminar would yield to $141,000 per year new monies if only the required minimum of two seminars per year per certified installer were attended. Attendance at all four seminars within each region by all certified installers would yield $282,000 in new monies. Actual new monies would fall within that range. At a maintenance cost (nonprofit) level, registration fees would be $18-20 per seminar, yielding $85,000 - 94,000 per year, assuming number of certified installers remained stable. However, it is anticipated that attrition through various avenues will reduce overall numbers to around 1500 - 1900 after the first year.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No change alternative - not a viable alternative as continuing problems statewide reveal a large number of installers who lack technical competency or motivation to design and install even basic systems, let alone more complex systems. There are also problems being created through installer ignorance of susceptibility of soils to irreparable damage by mechanical compaction, how on-site sewage systems function, and regulatory requirements for design and construction procedures. There is a demand by the more knowledgeable and professional certified installers for training to increase their competency as well as that of their competitors. There is a demand by the consumer for quality workmanship and design as most on-site systems installed will be the only sewage disposal and treatment method accessible during the life of the structures they serve; and, in many instances there is only one chance to do it right or face expensive corrective measures. No charge alternative - not a viable alternative as existing budget cannot handle the added expense of new program development, nor can existing overloaded staff take on additional workloads without further degradation of their already strained ability to meet statutory and regulatory mandates. Alternative training sources - this is not a viable alternative as there are no other known sources of training in on-site sewage disposal system design and construction within the Commonwealth. While proprietary training is available in heavy equipment (i.e., backhoe and bulldozer) operation, such training is aimed at general construction work rather than at more specialized on-site system work which goes far beyond routine trenching or grading. On-the-job experience is the only current training available for on-site system installers, unfortunately, the mistakes made while learning can have serious financial impact on the installer and the person who hired him.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: This proposed regulation is aimed at producing the most positive improvement in certified installer competency at the lowest cost to the installer and the cabinet. It assures that entry level installers possess the equipment and skills necessary to perform basic work while providing them with opportunity for increasing their skills and business share. It assures the experienced installer that his competition in bidding for jobs is bidding for equal work and quality, rather than undercutting his bid by shortchanging the consumer, and provides him with a means to improve the variety and complexity of the services he offers to meet more challenging design problems. It assures the consumer that he is receiving quality construction, and provides an expeditious method for resolving inferior work problems if they should occur.

TIERING: Was tiering applied? No. Since all installers of on-site sewage systems are required to be certified, tiering beyond that provided by statute (i.e., probationary level, and full certification level) would be counterproductive.

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) Relates to local health department on-site sewage systems program carried out by state certified inspectors.

2. State what unit, part or division of local government this administrative regulation will affect. Will affect only local health department environmental staff activities.

3. State the aspect or service of local government to which this administrative regulation relates. Relates to certification issuance to installers of on-site sewage systems by local health departments acting as agents to the cabinet.

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: Will only affect environmental staff certified inspectors during issuance of installer certifications. Probationary level certification will require a minimum competency test be given to applicants as well as document review for certification. Some environmental staff certified inspectors

(15 total statewide) will be involved in installer training program under state grant for services. Issuance of installer certifications is a current on-going activity so no change in revenues/expenditures should occur. New revenues for installer training programs received by 15 local health departments through grants are basically a straight reimbursement for services, so expenditures/revenues should balance out with no appreciable net gain or loss.

**CABINET FOR HUMAN RESOURCES**
**Department for Health Services**

**902 KAR 13:130. Emergency medical technician maintenance and discontinuation of a preestablished peripheral intravenous (I.V.) infusion.**

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 the training course requirements for a new emergency medical technician (EMT) procedure, the maintenance and discontinuation of a preestablished peripheral intravenous (I.V.) infusion as described in 902 KAR 13:080; and to establish requirements related to medical director authorization for the EMT to perform the procedures while employed with an approved ambulance service provider.

Section 1. Training Course Requirements. The training course shall:
(1) Be designed primarily for the purpose of interfacility or facility to home transportation of a stable patient having a preestablished peripheral I.V. infusion;
(2) Be designed so that peripheral will be understood to mean I.V. entry locations limited to areas on the arms, hands or feet of the patient;
(3) Be designed for instruction related to the maintenance and discontinuation of a preestablished peripheral I.V. infusion limited to an infusion of saline (up to nine-tenths (0.9) percent sodium chloride); D5W (a five (5) percent solution of dextrose in water); lactated Ringer's solution; or any combination of saline, dextrose or Ringer's solution. No infusion solution shall have had other additives included at the place of manufacture or at the initiating facility, nor shall a pump be required for the administration of the infusion;
(4) Be designed so that maintenance shall include adjustment of the infusion flow rate consistent with the physician's orders; the addition of identical infusion solution, if required, by changing the infusion solution container; and monitoring for detection of adverse patient signs and symptoms;
(5) Be designed so that discontinuation, if ordered by the medical director, shall include the stopping of the infusion flow and removal of the cannula. If the cannula is removed, a sterile dressing shall be applied to the infusion entry site;
(6) Be coordinated by an ambulance service that has filed an appropriate application and has been approved by the cabinet for coordinating the training. The approved ambulance service shall assume all responsibilities required for conducting the training course;
(7) Include the curriculum developed by the Kentucky Cabinet for Human Resources Emergency Medical Services Branch and the Emergency Medical Services Advisory Committee. A copy of this curriculum, which is incorporated by reference as if fully incorporated therein, 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; or
(8) Include a cabinet equivalent curriculum developed by an outside source, but meeting the cabinet established criteria of this administrative regulation, that has been submitted to and approved by the cabinet;
(9) Be a minimum of four (4) hours in duration;
(10) Utilize equipment, tests, and other materials approved by the cabinet;
(11) Not be started until all equipment and other materials specified are available in proper quantities, in proper working condition, and placed in secure storage;
(12) Not share equipment between courses unless such equipment is available equally to all classes for training EMTs in the maintenance and discontinuation of a preestablished peripheral I.V. infusion;
(13) Have a medical director under written contract with the ambulance service provider who shall review and approve all instruction curriculum, instructors and examiners; and who shall be present and participate as appropriate during the training program course;
(14) Be taught by an instructor, at a ratio of one (1) instructor per six (6) students, approved by the medical director pursuant to Section 2 of this regulation;
(15) Have an appropriate number of assistant instructors available for practice sessions so that there are no more than six (6) additional students per assistant. An individual meeting the criteria specified for an instructor in Section 2 of this regulation, or an EMT who has completed the training program for preestablished peripheral I.V. maintenance and discontinuation, and is currently authorized to perform the procedures, may be used as an assistant for practice sessions;
(16) Have a class certification number assigned by the cabinet;
(17) Not permit any absenteeism, or the student shall repeat the entire course;
(18) Not permit any student to be on call during training sessions; and
(19) Require the lead 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 and the EMT certification numbers of those students who have participated in the course, with identification of those who have successfully completed the training in procedures for the maintenance and discontinuation of a preestablished peripheral I.V. infusion in accordance with limitations established by the cabinet; and
(b) The name of the ambulance service for which these EMTs will be working.

Section 2. Instructors and Examiners For Training EMTs in the Maintenance and Discontinuation of a Preestablished Peripheral I.V. Infusion. One (1) of the following currently certified or licensed persons shall be eligible for the training and testing of the EMTs upon approval of the medical director:
(1) A paramedic;
(2) Registered nurse; or
(3) A physician.

Section 3. Requirements For Each Eligible Trainee Applicant. Each eligible trainee applicant who is employed with an ambulance service shall provide to the lead class instructor:
(1) Proof of current Kentucky EMT certification. If EMT certification expires, the eligibility as an applicant for training in the maintenance and discontinuation of a preestablished peripheral I.V. infusion also lapses until the EMT is recertified; and
(2) Approval to enroll from the student's emergency medical (ambulance) service director and the emergency medical (ambulance) service medical director (EMS-MD).

Section 4. Course Examination. The cabinet shall prescribe the format and content of the 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 eleven (11) enabling objectives:
(a) The student shall be able to determine the type of preestablished infusion for which he is authorized to maintain and discontinue. In addition, the EMT shall be able to identify the common patient conditions and signs and symptoms that may require maintenance or potential treatment by personnel trained beyond the EMT level;
(b) The student shall define patient assessment, and care and treatment of the patient with a preestablished peripheral infusion;
(c) The student shall be able to list the most common types and sizes of I.V. fluid containers, and describe the uses and differences between micro and macro administration sets;
(d) The student shall be able to list the basic values needed to calculate the flow rate of the infusion solution to be maintained;
(e) The student shall be able to list the procedures required for adjusting an infusion flow rate from provided data;
(f) The student shall be able to list the procedures required for adding identical solution to the infusion;
(g) The student shall be able to list the common causes and patient signs and symptoms that may indicate a need for the discontinuation of a peripheral I.V. infusion;
(h) The student shall be able to list the steps necessary to discontinue a preestablished peripheral I.V. infusion;
(i) The student shall be able to list the procedures required for controlling bleeding and applying a sterile dressing to the wound when an I.V. cannula has been removed from the infusion administration site;
(j) The student shall be able to identify the common causes and patient signs and symptoms that may indicate the need for notification of the medical director or another on-line medical control physician; and
(k) The student shall describe personal safety precautions to be followed while performing the maintenance and discontinuation of a preestablished peripheral I.V. infusion.
(2) Practical test. At the end of this course, the student shall pass a practical examination managing a patient with a preestablished peripheral I.V. infusion, utilizing the following eleven (11) enabling objectives:
(a) The student shall demonstrate control of the simulated scene and shall correctly determine whether or not he is authorized to maintain the preestablished I.V. infusion. In addition, the EMT shall correctly identify whether or not the patient's condition and signs and symptoms may require the maintenance or potential treatment by personnel trained beyond the EMT level;
(b) The student shall demonstrate, from data provided, correct evaluation of the flow rate of the preestablished peripheral I.V. infusion and whether or not the flow rate needs adjusting;
(c) The student shall demonstrate correct evaluation of the flow rate of the preestablished peripheral I.V. infusion after the patient has been moved from one level to another, as would be the case in moving the patient from the pick-up location to securing the patient and stretcher in the patient compartment of the ambulance, and whether or not the flow rate needs adjusting;
(d) If it is determined that the flow rate needs adjusting in paragraph (b) or (c) of this subsection, the student demonstrates a correct adjustment;
(e) The student shall demonstrate correct procedures for adding identical solution to the infusion;
(f) The student shall be able to verbalize and understand the common causes and patient signs and symptoms that may indicate a need for the discontinuation of a preestablished I.V. infusion;
(g) The student shall demonstrate correct discontinuation of a preestablished I.V. infusion;
(h) The student shall demonstrate correct procedures for controlling the bleeding and applying a sterile dressing to the infusion entry site from which the I.V. cannula has been removed;
(i) The student shall be able to verbalize and understand the common causes and patient signs and symptoms that may indicate a need for the notification of the medical director or another on-line medical control physician;
(j) The student shall demonstrate appropriate assessment and care of the patient before, during and after the maintenance of a preestablished I.V. infusion; and
(k) The student shall demonstrate appropriate safety precautions before, during and after the maintenance of a preestablished I.V. infusion.

Section 5. Failure of Examination and Eligibility For Retesting. (1) 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.
(2) Failure to successfully pass one (1)

retest shall require that the student retake the entire training program course before becoming authorized to perform procedures for the maintenance and discontinuation of a preestablished I.V. infusion.

Section 6. Authorization and Continuation of Authorization. (1) Upon the effective date of this administrative regulation, an EMT shall not perform the maintenance and discontinuation of a preestablished peripheral I.V. infusion during an interfacility or facility to home transportation of a patient, unless the EMT has:

(a) Been trained according to the requirements of this regulation; and

(b) Is an employee of an approved ambulance service.

(2) Authorization for the EMT to perform maintenance and discontinuation of a preestablished peripheral I.V. infusion shall be granted by the medical director (EMS-MD) of the approved ambulance service.

(3) In addition to having approval from the ambulance service medical director, in order to continue the authorization for maintenance and discontinuation of a preestablished peripheral I.V. infusion, the EMT shall during his period of authorization provide proof of:

(a) Current Kentucky certification as an emergency medical technician;

(b) Continued employment with an ambulance service approved to provide services for the maintenance and discontinuation of a preestablished I.V. infusion; and

(c) Having completed a practical skills review every six (6) months to be documented by the EMS-medical director or the EMS-MD designee. This practical skills review shall address the demonstration of correct patient assessment, care and treatment of a patient with a preestablished peripheral I.V. infusion as addressed in the practical test of the initial training course of this regulation.

(4) The continuing medical education classes shall include, but are not limited to:

(a) Drills that utilize the skills necessary to evaluate the maintenance and discontinuation of a preestablished I.V. infusion, as addressed in the practical test of the initial training course of this regulation; and

(b) Knowledge of current standing orders.

(5) The following are not eligible for credit as inservice training or continuing education:

(a) Ambulance runs, rescues, firefighting, emergency or nonemergency responses, or similar actual activities;

(b) Instruction in material, techniques or procedures not approved to be performed by an EMT authorized to maintain and discontinue a preestablished peripheral I.V. infusion.

(6) Evidence of continuing education related to the maintenance and discontinuation of a preestablished peripheral I.V. infusion shall be submitted to and maintained on file at the ambulance service with which the EMT is employed, and be subject to inspection by a representative of the Emergency Medical Services Branch of the cabinet.

(7) Each subject or training course claimed shall be countersigned by the instructor of the subject or course.

(8) The qualifications for instructors who may provide inservice and continuing education for the EMT authorized to maintain and discontinue a preestablished I.V. infusion are the same as those identified under Section 2 of this regulation.

Section 7. Denial of Authorization For the EMT To Maintain and Discontinue a Preestablished I.V. Infusion. The denial of authorization for the EMT to perform procedures for the maintenance and discontinuation of a preestablished I.V. infusion 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 procedures for the maintenance and discontinuation of preestablished I.V. infusion, and has made it known to the EMT and the ambulance service involved, with subsequent notice having been made by the ambulance service 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 ambulance service approved for providing procedures in the maintenance and discontinuation of a preestablished peripheral I.V. infusion;

(4) The previously approved ambulance service provider with whom the EMT works has been denied approval to provide maintenance and discontinuation of a preestablished I.V. infusion service 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 8. Utilization of Services. No ambulance service provider shall employ, utilize, permit the operation of, or advertise that said provider employs an EMT authorized to perform procedures for the maintenance and discontinuation of a preestablished peripheral I.V. infusion during interfacility or facility to home patient transportation, unless the provider is approved by the cabinet to provide these services. An approved ambulance service provider shall:

(1) Be licensed minimally as a basic life support (i.e., conforming emergency) ambulance service in the Commonwealth of Kentucky;

(2) Assure that in a prehospital setting where the patient has a preestablished I.V. infusion, that the patient is transported to the nearest appropriate medical facility according to the requirements specified in local protocol;

(3) Develop and maintain a written agreement with the commonly used initiating facilities for interfacility transfers, such as hospital to hospital and skilled nursing facility to hospital, and for transfers from a facility to a private home that specifies the responsibilities each service shall assume in order to provide appropriate staffing and equipment to meet the needs of the patient during the ambulance transportation; and

(4) Have a written agreement with a medical director to provide medical supervision, control and performance authorization of the EMT who is in the employ of the provider (whether the EMT is paid or is a volunteer). The medical director shall:

(a) Be a licensed physician in the Commonwealth of Kentucky;
(b) Review and approve all instruction curriculum, instructors and examiners for the maintenance and discontinuation of a preestablished peripheral I.V. infusion training program;
(c) Participate in the training program, including presentation of lectures and assisting in student practice sessions as appropriate;
(d) Approve each EMT who is to be a student trainee in the training program;
(e) Supply written authorization of standing orders relating to performance of procedures for the maintenance and discontinuation of a preestablished peripheral I.V. infusion;
(f) Supervise the continuing education and six (6) month evaluations of each EMT authorized to perform procedures for the maintenance and discontinuation of a preestablished peripheral I.V. infusion;
(g) Review, per an established quality assessment plan, the written documentation of procedures performed by each EMT related to the maintenance and discontinuation of a preestablished peripheral I.V. infusion while the EMT is in the employ of the ambulance service for which the EMS-MD is under written contract;
(h) Exercise authority to remove permission for the EMT to perform procedures for the maintenance and discontinuation of a preestablished I.V. infusion as referenced in Section 6(1) of this regulation, including the provision of written notice to the EMT and ambulance service involved; and
(5) Submit required information to the EMS Branch of the cabinet prior to the commencement of any EMT training program for the maintenance and discontinuation of a preestablished peripheral I.V. infusion, and at least annually thereafter.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 25, 1991
FILED WITH LRC: July 2, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing on this regulation will be held on August 21, 1991 at at 9 a.m. in the Department for Employment Services Conference Room, 2nd Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by August 16, 1991: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street – 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Robert P. Calhoun
(1) Type and number of entities affected: Only those provider services that apply for and meet the criteria will be affected.
(a) Direct and indirect costs or savings to those affected: This is not a mandatory service. Any costs incurred for training will be born by the ambulance services.
1. First year: No costs are involved except for the providers that choose to train their EMTs in this procedure.
2. Continuing costs or savings: Training costs will likely continue.
3. Additional factors increasing or decreasing costs (note any effects upon competition): Those providers which opt to provide transport of patients with I.V. infusions could provide more services.
(b) Reporting and paperwork requirements: Providers must report to the cabinet prior to commencement of training and at least annually thereafter.
(2) Effects on the promulgating administrative body: Central office staff will have to review applications from providers.
(a) Direct and indirect costs or savings: Will increase costs due to staff time needed to review and process applications.
1. First year: Approximately 5% increase to staff time.
2. Continuing costs or savings: Will increase as more applicants apply.
3. Additional factors increasing or decreasing costs: Regional staff will monitor ambulance services for adherence to requirements.
(b) Reporting and paperwork requirements: Will 1) Review training applications and report results to ambulance services; 2) Maintain data files and provide status reports to Division of Licensing and Regulation.
(3) Assessment of anticipated effect on state and local revenues: None on the state. Local revenues could increase by providing this procedure.
(4) Assessment of alternative methods; reasons why alternatives were rejected: This proposed regulation will increase availability of this procedure.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation or policy conflicts, overlaps or is duplicated by this regulation.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? Yes.

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) Only if the provider that elects to provide this service is partially or fully financed by a local government.
2. State what unit, part or division of local government this administrative regulation will affect. Only as an optional decision. This is not a mandatory procedure.
3. State the aspect or service of local government to which this administrative regulation relates. The ambulance service if they elect to provide this service.
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: Will increase costs to train EMTs to provide this service, but some costs may be offset by increased revenue.

**CABINET FOR HUMAN RESOURCES**
**Department for Health Services**

**902 KAR 45.006. Kentucky bed and breakfast regulation.**

RELATES TO: KRS 217.005 to 217.215, 217.992
STATUTORY AUTHORITY: KRS 194.050, 217.125
NECESSITY AND FUNCTION: KRS 217.215(1) authorizes the Secretary of the Cabinet for Human Resources to promulgate regulations for the efficient administration and enforcement of the Kentucky Food, Drug and Cosmetic Act. The function of this regulation is to establish a uniform code for the regulation of food service operations of all bed and breakfast establishments within the Commonwealth of Kentucky for the purpose of protecting the public health.

Section 1. Definitions. (1) "Secretary" means the Secretary of the Cabinet for Human Resources.
(2) "Cabinet" means the Cabinet for Human Resources or its designee.
(3) "Bed and breakfast establishment" means a bed and breakfast home or a bed and breakfast inn.
(4) "Bed and breakfast home" means a private owner-occupied house where up to five (5) guest rooms are provided and in which the only meal served to guests is breakfast.
(5) "Bed and breakfast inn" means a private inn or other unique residential facility where not more than nine (9) guest rooms are provided and in which the only meal served to guests is breakfast. The innkeeper resides on the premises or property immediately adjacent to it during periods of occupancy.
(6) "Continental breakfast" means a breakfast meal restricted to the following foods:
(a) Beverages such as coffee, tea and fruit juices;
(b) Pasteurized Grade A milk;
(c) Fresh fruits;
(d) Frozen and commercially processed fruits;
(e) Baked goods, such as pastries, rolls, breads, and muffins which are nonpotentially hazardous food;
(f) Cereals;
(g) Jams, jellies, honey, sorghum syrup and other table syrups;
(h) Pasteurized Grade A creams and butters, nondairy creamers or similar products;
(i) Commercially manufactured hard cheeses, commercially manufactured cream cheese and commercially manufactured yogurt.
(7) "Full breakfast" means a breakfast meal including foods other than those listed in the definition of "continental breakfast".
(8) "Person" means an individual, or a firm, partnership, company, corporation, trustee, association, or any public or private entity.
(9) "Potentially hazardous food" means any food or ingredient, natural or synthetic:
(a) In a form capable of supporting the:
1. Rapid and progressive growth of infectious or toxigenic microorganisms; or
2. Slower growth of Clostridium botulinum.
(b) Of animal origin, either raw or heat treated; and
(c) Of plant origin which:
1. Has been treated; or
2. Is raw seed sprouts.
(d) The following are excluded:
1. Air dried hard boiled eggs with shells intact;
2. Food with water activity (aw) value of 0.85 or less;
3. Food with a hydrogen ion concentration (pH) level of four and six-tenths (4.6) or below;
4. Food in unopened hermetically sealed containers that have been commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution; and
5. Food for which laboratory evidence demonstrates that rapid and progressive growth of infectious and toxigenic microorganisms or the slower growth of Clostridium botulinum cannot occur.

Section 2. Application for a Permit to Operate; Fees. (1) Any person desiring to operate a bed and breakfast establishment shall make written application for a permit on form DFS-200 provided by the cabinet. Such application shall include the name and address of the applicant, the location and type of the proposed establishment, and the signature of the applicant. Prior to approval of an application for a permit, the cabinet shall inspect the proposed establishment to determine compliance with the provisions of this regulation. The cabinet shall issue a permit to operate if the inspection reveals that the establishment complies with the requirements of the regulation.
(2) Each permit to operate a bed and breakfast establishment shall be issued only for the premises and person named in the application and shall not be transferable. Permits issued shall be posted in a conspicuous place in the establishment.
(3) Each permit to operate a bed and breakfast establishment unless previously suspended or revoked shall expire on December 31, following date of issuance and be renewable annually upon application accompanied by the required fee as follows:
(a) Bed and breakfast establishments that provide a full breakfast - sixty-five (65) dollars;
(b) Bed and breakfast establishments that serve only a continental breakfast - fifty (50) dollars.

Section 3. Food Supplies. (1) Food shall be in sound condition and safe for human consumption. Food shall be obtained from sources that comply with the applicable laws relating to food safety. The use of food in hermetically sealed containers that was not prepared in an approved food processing establishment is prohibited.
(2) Fluid milk and fluid milk products used shall be pasteurized and shall comply with applicable law. Dry milk and milk products used shall be made from pasteurized milk and milk products. Raw milk shall not be provided or used in a bed and breakfast establishment.
(3) Only clean shell eggs meeting applicable grade standards or pasteurized liquid, frozen, or dry eggs, or pasteurized dry egg products shall be used.
(4) Only ice which has been manufactured with potable water and handled in a sanitary manner shall be used.

Section 4. Food Protection. (1) At all times, including while being stored, prepared, offered, dispensed, or transported, food shall be protected from cross-contamination between foods

and from potential contamination by insects, insecticides, rodents, rodenticides, unclean equipment or utensils, unnecessary hand contact, draining, or overhead leakage or condensation, dust, coughs and sneezes or other agents of public health significance.

(2) The temperature of potentially hazardous foods shall be forty-five (45) degrees Fahrenheit or below or 140 degrees Fahrenheit or above at all times, except during necessary times of preparation or service.

(3) Hermetically sealed packages shall be handled so as to maintain product and container integrity.

(4) Pets may be present on the premises, but should not be permitted in the kitchen and shall be kept out of food preparation and dining areas during food preparation and service to the public.

(5) Laundry facilities may be present in the residential kitchen, but shall not be used during food preparation and service.

(6) Cooking facilities in the residential kitchen shall not be available to guests.

Section 5. Food Preparation. (1) Food shall be prepared with a minimum of manual contact. Food shall be prepared on food-contact surfaces and with utensils that are clean and have been sanitized.

(2) Raw fruits and raw vegetables that will be cooked, cut or combined with other ingredients or that will be otherwise processed into food products by the food establishment shall be thoroughly cleaned with potable water before being used.

(3) Potentially hazardous food processed by cooking shall be cooked to heat all parts of the food to a minimum temperature of 140 degrees Fahrenheit.

(4) For kitchens in bed and breakfast establishments serving a continental breakfast only, ingredients which are potentially hazardous such as milk, cream, and eggs, may be used in food preparation provided the final product is not a potentially hazardous food. For example, stove top skillet, or microwave produced items such as pancakes, waffles, and french toast are prohibited.

(5) For kitchens in bed and breakfast establishments serving a full breakfast, potentially hazardous foods shall be cooked and immediately served to guests. The following food handling practices shall be prohibited here:

(a) Cooling and reheating prior to service.

(b) Hot holding for more than two (2) hours.

(c) Service of leftovers.

(6) Potentially hazardous foods shall be thawed:

(a) In refrigerated units at a temperature not to exceed forty-five (45) degrees Fahrenheit; or

(b) Under potable running water at a temperature of seventy (70) degrees Fahrenheit or below, with sufficient water velocity to agitate and float off loose food particles into the overflow and for a period not to exceed that reasonably required to thaw the food; or

(c) In a microwave oven only when the food will be immediately transferred to conventional cooking units as part of a continuous cooking process or when the entire, uninterrupted cooking process takes place in the microwave oven; or

(d) As part of the conventional cooking process if the food is less than or equal to three (3) pounds.

Section 6. Food Display and Service. (1) Food on display, other than whole, unprocessed raw fruits and unprocessed raw vegetables, shall be protected from contamination by the use of packaging, or by the use of easily cleanable display cases, serving line or salad bar protector devices, covered containers for self-service, or by other effective means. Potentially hazardous food other than milk, cream, cream cheese, or yogurt shall not be provided for consumer self-service in bed and breakfast establishments serving a continental breakfast only.

(2) Condiments, seasonings and dressings for self-service use shall be provided in individual packages, or in dispensers or containers except that, for table service, catsup and other sauces may be served in the original container or pour-type dispenser. Sugar for consumer use shall be provided in individual packages or in pour-type dispensers.

(3) Ice for consumer use shall be dispensed with scoops, tongs, or other ice-dispensing utensils or through automatic self-service ice-dispensing equipment. Ice-dispensing utensils shall be stored on a clean surface or in the ice with the dispensing utensil's handle extended out of the ice. Between uses, ice transfer receptacles shall be stored in a way that protects them for contamination.

(4) Once served to a consumer, portions of leftover food shall not be reused or re-served except that nonpotentially hazardous packaged food, that is still packaged and is still in sound condition may be re-served. However, single-service creamers and completely wrapped pats of butter or margarine may be reserved if still packaged and in sound condition.

Section 7. Employee Health and Practices. (1) No employee, while infected with a disease in a communicable form that can be transmitted by foods, or who is a carrier of organisms that cause such a disease or while affected with a boil, infected wound, or acute respiratory infection, shall work in a bed and breakfast establishment in any capacity in which there is a likelihood of such person contaminating food or food-contact surfaces with pathogenic organisms or transmitting disease to other persons.

(2) Employees engaged in food preparation, service and warewashing operations shall thoroughly wash their hands and the exposed portions of their arms with soap or detergent and warm water before starting work, after smoking, eating, or using the toilet, and as often as is necessary during work to keep them clean. Employees shall keep their fingernails trimmed and clean.

(3) Employees shall wear clean outer clothing.

(4) Hairnets, hats, scarfs or similar hair coverings that effectively restrain head and facial hair shall be required for all employees working in food preparation areas. Employees working in other areas of bed and breakfast establishments shall arrange their hair to prevent the contamination of food, equipment and utensils.

(5) Employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices during all working periods.

(6) Employees shall consume food or use tobacco only in designated areas. Such designated areas shall not be located in food preparation areas or in areas where the eating or tobacco use of an employee may result in contamination of food, equipment, or utensils.

(7) All employees shall wash their hands thoroughly with soap and warm water in an adequate hand-washing facility before starting work and as often as necessary to remove soil and contamination. The hands of all employees shall be kept clean while engaged in handling of food and food-contact surfaces.

Section 8. Equipment and Utensils. (1) Equipment and utensils shall be constructed and repaired with safe materials, including finishing materials; shall be corrosion resistant and nonabsorbent; and shall be smooth, easily cleanable, and durable under conditions of normal use. Single-service articles shall be made from clean, sanitary, safe materials. Equipment, utensils, and single-service articles shall not impart odors, color, taste, nor contribute to the contamination of food.

(2) Safe plastic or safe rubber or safe rubber-like materials that are resistant under normal conditions of use to scratching, scoring, decomposition, crazing, chipping, and distortion, that are of sufficient weight and thickness to permit cleaning and sanitizing by normal warewashing methods are permitted for repeated use.

(3) Single-service articles shall not be reused.

(4) All equipment and utensils shall be maintained in good repair.

Section 9. Equipment and Utensils/Cleaning and Sanitization. (1) Food utensils and equipment shall be stored in a manner to avoid contamination.

(2) Food-contact surfaces and sinks shall be smooth and easily cleanable.

(3) Food-contact equipment, surfaces, tableware and utensils shall be cleaned and sanitized prior to food preparation for the public and after each use.

(4) Sinks, basins or other receptacles used for cleaning of equipment and utensils shall be cleaned and sanitized before use.

(5) Equipment and utensils shall be preflushed or prescraped and, when necessary, presoaked to remove food particles and soil.

(6) Manual cleaning and sanitizing shall be conducted as follows:

(a) For manual cleaning and sanitizing of cooking equipment, utensils and tableware, three (3) compartments shall be provided and used. The regulatory authority may allow the use of compartments other than sinks.

(b) All five (5) steps of the warewashing process shall be completed: prerinsing or scraping; application of cleaners for soil removal; rinsing to remove any abrasives and remove or dilute cleaning chemicals; sanitization; air-drying and draining.

(c) A sanitizing method approved by applicable provisions of the state retail food code shall be used.

(d) Wash, rinse and sanitizing solutions shall be maintained in a clean condition.

(e) The washing solution shall be maintained at a temperature of 110 degrees Fahrenheit or above, or as specified on the manufacturer's label.

(f) When chemicals are used for sanitization, they shall not have concentrations higher than the maximum permitted by law and a test kit or other device that measures the parts per million concentration of the solution shall be provided and used at least once each business day and each time the sanitizing solution is changed.

(7) Mechanical cleaning and sanitizing shall be conducted as follows:

(a) Commercial dishwashers must comply with applicable provisions of the state retail food code.

(b) A domestic or homestyle dishwasher may be used provided the following performance criteria are met:

1. The dishwasher must effectively remove physical soil from all surfaces of dishes.

2. The dishwasher must sanitize dishes by the application of sufficient accumulative heat.

3. The operator shall provide and use daily a maximum registering thermometer or a heat thermal label to determine that the dishwasher's internal temperature is a minimum of 150 degrees Fahrenheit after the final rinse and drying cycle.

4. The dishwasher must be installed and operated according to manufacturer's instructions for the highest level of sanitization possible when sanitizing kitchen facilities' utensils and tableware; a copy of the instructions must be available on the premises at all times.

(8) There shall be sufficient area or facilities such as portable dish tubs and drain boards for the proper handling of soiled utensils prior to washing and of cleaned utensils after sanitization so as not to interfere with safe food handling, hand washing and the proper use of dishwashing facilities. Equipment, utensils and tableware shall be air-dried.

Section 10. Water Supply and Sewage Disposal. (1) Sufficient potable water for the needs of the establishment shall be provided from a source constructed, maintained, and operated pursuant to applicable requirements of the Cabinet for Natural Resources and Environmental Protection.

(2) Bottled and packaged potable water shall be obtained from a source that complies with applicable provisions of the Cabinet for Natural Resources and Environmental Protection and the cabinet and shall be handled and stored in a way that protects it from contamination. Bottled and packaged potable water for consumer self-service shall be dispensed from the original container.

(3) All sewage, including liquid waste, shall be disposed of by a public sewerage system or by a sewage disposal system constructed, maintained, and operated pursuant to the requirements of the Cabinet for Natural Resources and Environmental Protection and the cabinet. Mop water shall not be disposed of in the dishwashing sink.

Section 11. Toilet Facilities for Employees. (1) Toilet facilities shall be installed pursuant to requirements of the State Plumbing Code, shall be conveniently located, and shall be accessible to employees at all times.

(2) Bathrooms opening to the kitchen or dining area shall have adequate ventilation and a self-closing door. Ventilation may be provided

by window(s) or by mechanical means. A soap dispenser and disposable towels shall be provided for hand washing in bathrooms used by food handlers.

(3) Toilet facilities, including toilet fixtures and any related vestibules, shall be kept clean and in good repair. A supply of toilet tissue shall be provided at each toilet at all times. Easily cleanable receptacles shall be provided for waste materials.

Section 12. Hand-washing Facilities for Employees. (1) Hand-washing facilities shall be installed pursuant to the requirements of the State Plumbing Code and shall be conveniently located.

(2) Each hand-washing facility shall be provided with hot and cold potable water tempered by means of a mixing valve or combination faucet.

(3) A supply of hand-cleansing soap or detergent shall be available from a dispensing unit at each hand-washing facility. A supply of sanitary towels or a hand-drying device providing heated air shall be conveniently located near each hand-washing facility. Common towels are prohibited. If disposable towels are used, easily cleanable waste receptacles shall be conveniently located near the hand-washing facilities.

(4) A soap dispenser and disposable towels for use in hand washing shall be provided at the kitchen sink. This sink shall not be used for hand washing after toilet use. After visiting the toilet, hands shall be first washed in an approved hand-washing facility before they are washed in the kitchen sink.

(5) Hand-washing facilities, soap or detergent dispensers, hand-drying devices, and all related facilities shall be kept clean and in good repair.

Section 13. Floors, Walls, Ceilings, and Lighting. The floors, walls, and ceilings and attached equipment in food preparation and service areas and in employee bathrooms of bed and breakfast establishments shall be fabricated from easily cleanable material, shall be maintained in good repair and clean. Artificial lighting shall be provided sufficient to facilitate sanitary food handling and cleaning of facilities.

Section 14. Insect and Rodent Control. (1) Effective measures shall be utilized to minimize the entry, presence, and propagation of rodents or of flies, cockroaches, other insects. The premises shall be maintained in a condition that prevents the harborage or feeding of insects or rodents.

(2) Pesticides and rodenticides.

(a) No person shall apply insecticides or rodenticides except:

1. In accordance with applicable requirements of Kentucky Department of Agriculture's Pesticide Use and Application Act; and

2. In accordance with the manufacturer's labeling; and

3. In such a way that food, food-contact surfaces, and the supply of potable water are not contaminated.

(b) No open pesticide or rodenticide bait boxes shall be used.

(c) Pesticides, rodenticides and other toxic materials shall be stored apart from food, equipment, and utensils and all containers of toxic material shall be clearly labeled for easy identification.

(d) Pesticides and rodenticides shall be stored separated from other toxic and chemical compounds at all times.

(3) Garbage and refuse shall be disposed of often enough and in a manner to prevent the development of objectionable odors and the attraction of pests.

Section 15. Plan Review of Future Construction. When the kitchen or employee bathroom facilities of a bed and breakfast establishment are hereafter constructed or extensively remodeled, properly prepared plans and specifications for such construction, remodeling, or alteration, showing layout, arrangements, and construction materials and the location, size and type of fixed equipment facilities, and a plumbing riser diagram shall be submitted to the cabinet for approval before such work is begun.

Section 16. Inspections; Notices. (1) Inspections. At least once every twelve (12) months, the cabinet shall inspect each bed and breakfast establishment and shall make as many additional inspections and reinspections as are necessary for the enforcement of this regulation.

(2) Inspection records. Whenever the cabinet makes an inspection of a bed and breakfast establishment, its representative shall record the findings on an inspection report form provided for this purpose, and shall furnish a copy of such inspection report form to the permit holder or his representative in charge.

(3) Issuances of notices. Whenever the cabinet makes an inspection of a bed and breakfast establishment and determines that any of the requirements of this regulation have been violated, the cabinet shall notify the permit holder or person in charge of such violations by means of an inspection report form or other written notice. In such notification, the cabinet shall:

(a) Set forth the specific violations found.

(b) Establish a specific and reasonable period of time for the correction of the violations found pursuant to the following provisions:

1. When the rating score of the establishment is eighty-five (85) or more, all violations of one (1) or two (2) point weighted items shall be corrected as soon as possible, but in any event, by the time of the next routine inspection.

2. When the rating score of the establishment is at least seventy (70) but not more than eighty-four (84), all violations of one (1) or two (2) point weighted items shall be corrected as soon as possible, but in any event, within a period not to exceed thirty (30) days.

3. Regardless of the rating score of the establishment, all violations of four (4) or five (5) point weighted items shall be corrected within a time specified by the cabinet but in any event, not to exceed ten (10) days.

4. When the rating score of the establishment is less than seventy (70), the establishment shall be issued a notice of intent to suspend the permit. The permit shall be suspended within ten (10) days after receipt of such notice unless a written request for a hearing is filed with the cabinet, by the permit holder, within such ten (10) day period.

5. The report of inspection shall state that

failure to comply with any time limits for corrections may result in suspension of permit and that an opportunity for appeal from any notice or inspection findings will be provided if a written request for hearing is filed within ten (10) days. If a request for hearing is received, a hearing shall be held at a time and place designated by the cabinet.

(c) State that failure to comply with any notice issued in accordance with the provisions of this regulation may result in suspension of the permit.

(d) State that an opportunity for appeal from any notice of inspection findings will be provided if a written request for a hearing is filed with the cabinet within ten (10) days following the service of the notice for correction.

(4) Service of notices. Notices provided for under this section shall be deemed to have been properly served when a copy of the inspection report form or other notice has been delivered personally to the permit holder or person in charge, or such notice has been sent by registered or certified mail, return receipt requested, to the last known address of the permit holder. A copy of such notice shall be filed with the records of the cabinet.

Section 17. Suspension and Revocation of Permits. (1) Whenever the cabinet has reason to believe that an imminent public health hazard exists, or whenever the permit holder has interfered with the cabinet in the performance of its duties, or if the establishment rating score is less than sixty (60), the permit may be suspended immediately upon notice to the permit holder without a hearing. In such event, the permit holder may request a hearing which shall be granted as soon as practicable.

(2) In all other instances of violation of the provisions of this regulation, the cabinet shall serve upon the holder of the permit a written notice specifying the violations in question and afford the holder a reasonable opportunity to correct same. Whenever a permit holder or operator has failed to comply with any written notice issued under the provisions of this regulation, the permit holder or operator shall be notified in writing that the permit shall be suspended at the end of ten (10) days following service of such notice, unless a written request for a hearing is filed with the cabinet by the permit holder within such ten (10) day period.

(3) Reinstatement of suspended permits. Any person whose permit has been suspended may at any time make application for a reinspection for the purpose of reinstatement of the permit. Within ten (10) days following receipt of a written request, including a statement signed by the applicant that in his opinion the conditions causing suspension of the permit have been corrected, the cabinet shall make a reinspection. If the applicant is complying with the requirements of this regulation, the permit shall be reinstated.

(4) Revocation of permits. For serious or repeated violations of any of the requirements of this regulation or for interference with the cabinet in the performance of its duties, the permit may be permanently revoked after an opportunity for a hearing has been provided by the cabinet. Prior to such action, the cabinet shall notify the permit holder in writing, stating the reasons for which the permit is subject to revocation and advising that the permit shall be permanently revoked at the end of ten (10) days following service of such notice, unless a request for a hearing is filed with the cabinet, by the permit holder, within such ten (10) day period. A permit may be suspended for cause pending its revocation or a hearing relative thereto.

(5) Hearings. The hearings provided for in this section shall be conducted by the cabinet at a time and place designated by it. Based upon the record of such hearing the cabinet shall make a finding and shall sustain, modify, or rescind any official notice or order considered in the hearing. A transcript of the hearing shall not be made unless the interested party assumes the costs thereof and a request is made therefor at the time a hearing is requested.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: May 24, 1991
FILED WITH LRC: June 20, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for August 21, 1991 at 9 a.m. in the Health Services Auditorium located on the first floor of the Health Services Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 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: James Corum

(1) Type and number of entities affected: Approximately 200± bed and breakfast establishments statewide.

(a) Direct and indirect costs or savings to those affected:

1. First year: Annual permit/inspection fee - $65 maximum.

2. Continuing costs or savings: Annual renewal fee $65 maximum.

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: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes

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. Environmental-food safety.
3. State the aspect or service of local government to which this administrative regulation relates. Inspections of food service (breakfasts).
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: At least annual inspections required.

**CABINET FOR HUMAN RESOURCES**
**Department for Employment Services**
**Division of Unemployment Insurance**

**903 KAR 5:390. Reduction in work force; no disqualification.**

RELATES TO: KRS 341.370
STATUTORY AUTHORITY: KRS 13A.100, 341.115
NECESSITY AND FUNCTION: This regulation delineates the proper adjudication procedures for determining qualifications to benefits for claimants that are unemployed as a result of a reduction of work force initiated by the employer.

Section 1. For purposes of adjudicating claims with respect to those workers who resign as a result of action initiated by the employer to accomplish a reduction of the work force, such resignation will be considered voluntary with good cause attributable to the employment and no disqualification for benefits will be imposed pursuant to KRS 341.370.

DARVIN ALLEN, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: July 12, 1991
FILED WITH LRC: July 15, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1991 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 16,1991, of their desire to appear and testify at the hearing: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ron Holland
(1) Type and number of entities affected: Unemployment Insurance claimants and employers covered by UI law on a taxing or reimbursement basis.
(a) Direct and indirect costs or savings to those affected:
1. First year: There would be no costs or savings.
2. Continuing costs or savings: To claimants per se, but they may fare better by receiving UI benefits. Employers tax or reimbursing costs may increase.
3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no means to calculate the number of employers who would initiate a reduction in force, or the claimants who would be affected.
(b) Reporting and paperwork requirements: There would be no additional requirements of either.
(2) Effects on the promulgating administrative body: The Division of UI would not incur any workload increase. The UI Trust Fund balance would decrease, but there would be no significant impact unless there was a prolonged recession or depression.
(a) Direct and indirect costs or savings: Benefit payments and charges to the Trust Fund would be based on claims paid. There is no way to forecast that amount.
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: There would be no effect on local revenue. State revenue may increase if individual employer tax rates increased.
(4) Assessment of alternative methods; reasons why alternatives were rejected: There are three alternatives available. One is to simply pay these affected claimants when the claims are filed. The second and third alternatives would be to respectively change the statute (KRS 341.370) or implement this proposed regulation. At first blush changing the way the division rules in each case would be a more simple way of handling this problem. However, this would be an obvious retreat from division policy and precedent decisions from the Kentucky Unemployment Commission. Although there are no Kentucky court cases on this particular point, our courts have widely held that quitting one's job when continued work was available was without good cause attributable to the employment and disqualifying. If the division were to suddenly change its decisions herein, the reasoning contained in our earlier rulings would only serve as a logical basis for our defeat in a higher court on appeal. Incentive based work force reductions were almost, if not unheard of when the roots of unemployment case law began to grow. However, today's business climate is rapidly changing. Improved technology has provided today's employers with the ability to produce the same with less people. It is because of this social phenomemon that we implement this regulation to assist those who are unemployed through no fault of their own. That has forever been the intent of Kentucky Unemployment Insurance Law. Without this regulation we have no basis to pay benefits in these cases.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict with other regulations, statutes or policy.

(a) Necessity of proposed regulation if in conflict:N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:N/A
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. Respectively, all claimants and employers will be treated the same.

**CABINET FOR HUMAN RESOURCES**
**Department for Social Services**

**905 KAR 8:150. Board home registration.**

RELATES TO: KRS 216B.300-320, 216B.990(7)
STATUTORY AUTHORITY: KRS 194.050, 216B.300(1), 216B.305(1)
NECESSITY AND FUNCTION: KRS 216B.305 mandates the Cabinet for Human Resources to register boarding homes, as defined in KRS 216B.300(4), on an annual basis. In accordance with KRS 216B.300(1) and 216B.305(1) the Department for Social Services has drafted procedures that enable provisions of KRS 216B.305 to be implemented.

Section 1. Registration Process. (1) The area development district office shall forward the boarding home registration form, herein incorporated by reference, to the boarding home;
(a) Upon request pursuant to the public notice; or
(b) Upon identification of the boarding home by other agencies.
(2) The registration form shall be returned to the appropriate area development district office, which shall forward a receipt of registration to the boarding home for their records.
(3) The area development district office shall forward copies of all pertinent documents, including notification of failure to return the registration form, to the Division of Aging Services so that a list of registered boarding homes may be maintained to comply with KRS 216B.310.

Section 2. Renewal Registration. Registration shall be on an annual basis from January 1, through December 31. Registered boarding homes shall receive a renewal notice each January from the area development district office.

Section 3. Material Incorporated by Reference. (1) Forms necessary for the implementation of boarding home registration are herein incorporated by reference.
(2) Material incorporated by reference may be inspected and copied at the Department for Social Services, CHR Building, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

LARRY MICHALCZYK, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: July 1, 1991
FILED WITH LRC: July 2, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing on this regulation will be held on August 21, 1991, at 9 a.m. in the Department for Employment Services Conference Room, 2nd Floor, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by August 16, 1991. Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jerry Whitley
(1) Type and number of entities affected: The type of entities affected are any home, facility, institution, lodging or other establishment which accommodates three or more adults (excluding students) not requiring supervision or assistance, not related by blood or marriage and which offers or holds itself out to offer room and board on a 24 hour basis for hire or compensation. The exact number of entities is undeterminable.
(a) Direct and indirect costs or savings to those affected: The only cost to the affected entities is in requesting, completing and returning the registration form.
1. First year: First year cost to the affected entities is limited to the requesting, completing and returning the registration form.
2. Continuing costs or savings: Since this is an annual registration, continuing cost to the entities is for completing and returning the renewal registration form.
3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing the costs and this regulation has no effect upon competition.
(b) Reporting and paperwork requirements: The completion of the registration form by the affected entities is the only increase in reporting or paperwork requirements.
(2) Effects on the promulgating administrative body: The effects on the promulgation administrative body is an increase in both the administrative work and costs associated with maintaining records on registered boarding homes and maintaining the mandated quarterly list.
(a) Direct and indirect costs or savings: Direct and indirect cost to the agency involve the increase in administrative work in coordinating and maintaining the registration process under the contract with the ADD.
1. First year: Direct and indirect cost to the agency involve the increase in administrative work in coordinating and maintaining the registration process under the contract with the ADD.
2. Continuing costs or savings: Since the registration is to be completed on an annual basis, continuing costs will be associated with the renewal registration of the existing boarding homes.
3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing the cost to the Department for Social Services.
(b) Reporting and paperwork requirements: The agencies reporting and paperwork requirements have increased with the registration process, the required follow-up and with the annual renewal of the registration form.
(3) Assessment of anticipated effect on state and local revenues: With the exception of an increase in administrative costs there is no anticipated effect on state and local revenues.
(4) Assessment of alternative methods; reasons

why alternatives were rejected: No alternative methods were considered as pursuant to KRS 216B.305, the secretary of the cabinet shall prescribe the manner and form of the registration process.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations or policies in conflict or duplication.

(a) Necessity of proposed regulation if in conflict: There are no conflicts with the proposed regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There was no regulation with conflicting provisions.

(6) Any additional information or comments: There is no additional information or comments.

TIERING: Was tiering applied? No. This regulation is to be implemented statewide to register all boarding homes as defined pursuant to KRS 216B.300(4).

## CABINET FOR HUMAN RESOURCES
## Department for Medicaid Services

### 907 KAR 1:021. Amounts payable for drugs.

RELATES TO: KRS 205.560

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.120, 447.331, 447.332, 447.333, 42 USC 1396a-d

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer a program of Medical Assistance. KRS 205.560 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 drugs.

Section 1. Maximum Allowable Cost Reimbursement Limits. (1) Reimbursement to pharmacies participating in the Medical Assistance Program for those drugs contained on the Kentucky Medical Assistance Program Outpatient Drug List (as published by the Cabinet for Human Resources) or preauthorized for individual recipients based on medical necessity and provided to eligible recipients shall be determined in accordance with the following policies:

(a) An appropriate rebate agreement must have been signed by the manufacturer or labeler or the drug must be provided based on a preauthorized exemption from the rebate requirement.

(b) Drug costs shall be determined in the pharmacy program using a computerized price listing service with pricing based on the actual package size utilized.

(c) If an average wholesale price is listed, reimbursement for the drug cost shall be the lesser of the federal maximum allowable cost (FMAC) or average wholesale price (AWP) minus ten (10) percent plus a dispensing fee (and unit dose add-on, as appropriate) or the usual and customary billed charge unless the physician has written "do not substitute" or "brand necessary" on the prescription.

(d) If an AWP is not listed, reimbursement shall be the lesser of the FMAC or direct price plus a dispensing fee (and unit dose add-on, as appropriate), or the usual and customary billed charge unless the physician has written "do not substitute" or "brand necessary" on the prescription.

(e) If the physician has written "do not substitute" or "brand necessary" on the prescription, reimbursement shall be based on the lower of the pharmacy's usual and customary charge or the estimated acquisition cost (EAC) (AWP minus ten (10) percent or direct price as appropriate) for the respective drug plus a dispensing fee (and unit dose add-on, as appropriate).

(f) For nursing facility residents meeting Medicaid patient status criteria, there shall be no more than one (1) dispensing fee allowed per drug within a calendar month for maintenance drugs (as determined by the Medicaid agency), and no more than two (2) dispensing fees allowed per drug within a calendar month for other drugs, except for Schedules II, III, and IV controlled substances and for nonsolid dosage forms, including topical medication preparations, for which no more than four (4) dispensing fees per drug shall be allowed within a calendar month. For nursing facility residents not meeting Medicaid patient status criteria and nonresidents of nursing facilities, there shall be no more than one (1) dispensing fee allowed per drug per calendar month for drugs classified by the Medicaid Program as maintenance drugs and no more than four (4) dispensing fees shall be allowed per drug within a calendar month for legend intravenous drugs. Though dispensing fees are limited, this shall not be construed as placing a limit on the quantity of reimbursable drugs for which the program will pay for any patient, since the reasonable cost of the drug (as defined herein) is reimbursable as a covered service in whatever quantity is considered medically necessary for the patient. Nonsolid dosage forms include all covered drug items other than oral tablets or capsule forms.

(g) Whenever possible, unused drugs paid for by the cabinet shall be returned to the pharmacy with the credit for the cost of the drug and the unit dose packaging cost (if applicable) accruing to the cabinet.

(2) Reimbursement to hospitals for drugs provided to eligible recipients shall be on the basis of reasonable cost pursuant to 907 KAR 1:013. While reimbursement for drugs provided to patients in brain injury units in nursing facilities and units providing ventilator dependent care in nursing facilities is within the all-inclusive rate for the brain injury unit or ventilator care unit, the upper limits in this regulation shall be applicable with regard to payments for drugs provided in those settings.

Section 2. Dispensing Fees. (1) The dispensing fee shall be four (4) dollars and seventy-five (75) cents per prescription for drugs reimbursed through the outpatient drug program to all eligible recipients except those in nursing facilities meeting Medicaid patient status criteria.

(2) For eligible recipients in nursing facilities meeting the appropriate patient status criteria requirements, the dispensing fee shall be five (5) dollars and seventy-five (75) cents per prescription for drugs reimbursed through the outpatient drug program; for these

recipients, a unit dose addition to the usual dispensing fee shall be made for drugs dispensed through the pharmacy outpatient drug program in the amount of two (2) cents per unit dose for unit dose drugs packaged in unit dose form by the manufacturer and four (4) cents per unit dose for unit dose drugs packaged in unit dose form by the pharmacist; the unit dose dispensing fee amount shall be paid, as appropriate, even though the usual dispensing fee of five (5) dollars and seventy-five (75) cents is not paid due to monthly limits on dispensing fees.

Section 3. Reimbursement to Dispensing Physicians. Participating dispensing physicians who practice in counties where no pharmacies are located are reimbursed for the cost of the drug only, with the cost computed as the maximum allowable cost or estimated acquisition cost as shown in Section 1(1) of this regulation, or the physician's usual and customary charge to the general public for the drug if less, or in accordance with 907 KAR 1:010 for drugs purchased on the open market for specified immunizations shown in 907 KAR 1:009.

Section 4. Implementation Date. The provisions of this regulation shall be applicable with regard to services provided on or after July 1, 1991.

Section 5. 907 KAR 1:020 is hereby repealed.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 24, 1991
FILED WITH LRC: June 27, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 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 August 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 pharmacies participating in the Medicaid Program.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: (Cost) $9.1 million*
2. Continuing costs or savings: (Cost) $9.1 million
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No 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:
*The increased expenditure of state funds shall be offset by the tax assessment of pharmacies as provided for by HB 21, 1991 Special Session of the GA.
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

## CABINET FOR HUMAN RESOURCES
## Department For Medicaid Services

**907 KAR 1:480. Tax assessment schedule for physicians.**

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 205.577
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance under Title XIX of the Social Security Act. This regulation sets forth provisions relating to the tax assessment of physicians as authorized by KRS 205.577.

Section 1. Tax Assessments. (1) The tax assessment for each Medicaid participating physician for each calendar quarter shall be one-half (1/2) of the increase in revenues realized by the physician which results from the July 1, 1991 fee schedule update but not to exceed fifteen (15) percent of the physician's gross Medicaid revenues for the calendar quarter.
(2) Due date for tax assessments.
(a) The tax assessment for each physician shall be due by the 45th day following the end of each calendar quarter.
(b) A physician may request a delay in his assessment payment due date based on unforeseeable circumstances affecting his ability to pay in a timely manner. Unforeseeable circumstances may include, but are not limited to, substantial disruptions of management or operations from occurrences such as fire, flood, storm, bankruptcy or other demonstrated financial hardship. Simple inability to pay, unless combined with a filing of bankruptcy of other demonstrated financial hardship by the physician, shall not constitute justification for a delayed payment schedule. If a delay is granted, the delay shall not exceed sixty (60) days. An appeal to the Franklin Circuit Court

(or a higher court as appropriate) with regard to the assessment payment amount shall be justification for a delay in payment of the assessment until the court case is resolved.

Section 2. Waiver of the Late Payment Penalties. The Commissioner of the Department for Medicaid Services shall waive the late payment penalty specified in KRS 205.577 only when good cause exists. Good cause shall be determined to exist only when an unforeseeable circumstance occurs affecting timely payments. Unforeseeable circumstances may include substantial disruptions of management or operations from occurrences such as fire, flood, storm or similar events. Failure to pay due to insufficient funds shall not be good cause for a waiver of the penalty unless combined with a bankruptcy filing of the provider. An appeal to the Franklin Circuit Court (or a higher court as appropriate) with regard to the assessment payment amount shall be considered to meet the criteria for good cause.

Section 3. The provisions of this regulation shall be applicable for calendar quarters beginning on and after July 1, 1991.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 24, 1991
FILED WITH LRC: June 27, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 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 August 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: Physicians participating in the Medicaid Program.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None*
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No 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: *Tax funds in excess of those paid to physicians as part of their reimbursement will be placed in the Medicaid Assessment Improvement Trust (MAIT) fund.
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal statute or regulation constituting a federal mandate for the tax assessment schedule for physicians.
2. State compliance standards. This regulation establishes the tax assessment schedule for physicians.
3. Minimum or uniform standards contained in the federal mandate. There are no minimum or uniform standards contained in a federal mandate.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Not applicable. This regulation does not set stricter requirements.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The standards and responsibilities specified in the regulation are established pursuant to KRS 205.577 which provides for tax assessments for physicians.

**CABINET FOR HUMAN RESOURCES**
**Department For Medicaid Services**

**907 KAR 1:485. Tax assessment schedule for dentists.**

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 205.577
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance under Title XIX of the Social Security Act. This regulation sets forth provisions relating to the tax assessment of dentists as authorized by KRS 205.577.

Section 1. Tax Assessments. (1) The tax assessment for each Medicaid participating dentist for each calendar quarter shall be one-half (1/2) of the increase in revenues realized by the dentist which results from the July 1, 1991 fee schedule update but not to exceed fifteen (15) percent of the dentist's gross Medicaid revenues for the calendar quarter.

(2) Due date for tax assessments.
(a) The tax assessment for each dentist shall be due by the 45th day following the end of each calendar quarter.
(b) A dentist may request a delay in his assessment payment due date based on unforeseeable circumstances affecting his ability to pay in a timely manner. Unforeseeable circumstances may include, but are not limited to, substantial disruptions of management or operations from occurrences such as fire, flood, storm, bankruptcy or other demonstrated financial hardship. Simple inability to pay, unless combined with a filing of bankruptcy or other demonstrated financial hardship by the dentist, shall not constitute justification for a delayed payment schedule. If a delay is granted, the delay shall not exceed sixty (60) days. An appeal to the Franklin Circuit Court (or a higher court as appropriate) with regard to the assessment payment amount shall be justification for a delay in payment of the assessment until the court case is resolved.

Section 2. Waiver of the Late Payment Penalties. The Commissioner of the Department for Medicaid Services shall waive the late payment penalty specified in KRS 205.577 only when good cause exists. Good cause shall be determined to exist only when an unforeseeable circumstance occurs affecting timely payments. Unforeseeable circumstances may include substantial disruptions of management or operations from occurrences such as fire, flood, storm or similar events. Failure to pay due to insufficient funds shall not be good cause for a waiver of the penalty unless combined with a bankruptcy filing of the provider. An appeal to the Franklin Circuit Court (or a higher court as appropriate) with regard to the assessment payment amount shall be considered to meet the criteria for good cause.

Section 3. The provisions of this regulation shall be applicable for calendar quarters beginning on and after July 1, 1991.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 24, 1991
FILED WITH LRC: June 27, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 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 August 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 dentists participating in the Medicaid Program.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None*
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No 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:
*Tax funds in excess of those paid to dentists as part of their reimbursement will be placed in the Medicaid Assessment Improvement Trust (MAIT) fund.
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal statute or regulation constituting a federal mandate for the tax assessment schedule for dentists.
2. State compliance standards. This regulation establishes the tax assessment schedule for dentists.
3. Minimum or uniform standards contained in the federal mandate. There are no minimum or uniform standards contained in a federal mandate.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Not applicable. This regulation does not set stricter requirements.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The standards and responsibilities specified in the regulation are established pursuant to KRS 205.577 which provides for tax assessments for dentists.

CABINET FOR HUMAN RESOURCES
Department For Medicaid Services

**907 KAR 1:490. Tax assessment schedule for optometrists.**

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 205.577
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance under Title XIX of the Social Security Act. This regulation sets forth provisions relating to the tax assessment of optometrists as authorized by KRS 205.577.

Section 1. Tax Assessments. (1) The tax assessment for each Medicaid participating optometrist for each calendar quarter shall be one-half (1/2) of the increase in revenues realized by the optometrist which results from the July 1, 1991 fee schedule update but not to exceed fifteen (15) percent of the optometrist's gross Medicaid revenues for the calendar quarter.
(2) Due date for tax assessments.
(a) The tax assessment for each optometrist shall be due by the 45th day following the end of each calendar quarter.
(b) An optometrist may request a delay in his assessment payment due date based on unforeseeable circumstances affecting his ability to pay in a timely manner. Unforeseeable circumstances may include, but are not limited to, substantial disruptions of management or operations from occurrences such as fire, flood, storm, bankruptcy or other demonstrated financial hardship. Simple inability to pay, unless combined with a filing of bankruptcy of other demonstrated financial hardship by the optometrist, shall not constitute justification for a delayed payment schedule. If a delay is granted, the delay shall not exceed sixty (60) days. An appeal to the Franklin Circuit Court (or a higher court as appropriate) with regard to the assessment payment amount shall be justification for a delay in payment of the assessment until the court case is resolved.

Section 2. Waiver of the Late Payment Penalties. The Commissioner of the Department for Medicaid Services shall waive the late payment penalty specified in KRS 205.577 only when good cause exists. Good cause shall be determined to exist only when an unforeseeable circumstance occurs affecting timely payments. Unforeseeable circumstances may include substantial disruptions of management or operations from occurrences such as fire, flood, storm or similar events. Failure to pay due to insufficient funds shall not be good cause for a waiver of the penalty unless combined with a bankruptcy filing of the provider. An appeal to the Franklin Circuit Court (or a higher court as appropriate) with regard to the assessment payment amount shall be considered to meet the criteria for good cause.

Section 3. The provisions of this regulation shall be applicable for calendar quarters beginning on and after July 1, 1991.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 24, 1991
FILED WITH LRC: June 27, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 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 August 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 optometrists participating in the Medicaid Program.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None*
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No 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: *Tax funds in excess of those paid to optometrists as part of their reimbursement will be placed in the Medicaid Assessment Improvement Trust (MAIT) fund.
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal statute or regulation constituting a federal mandate for the tax assessment schedule for optometrists.

2. State compliance standards. This regulation establishes the tax assessment schedule for optometrists.

3. Minimum or uniform standards contained in the federal mandate. There are no minimum or uniform standards contained in a federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Not applicable. This regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The standards and responsibilities specified in the regulation are established pursuant to KRS 205.577 which provides for tax assessments for optometrists.

## CABINET FOR HUMAN RESOURCES
## Department For Medicaid Services

### 907 KAR 1:495. Tax assessment schedule for pharmacies.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 205.577

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance under Title XIX of the Social Security Act. This regulation sets forth provisions relating to the tax assessment of pharmacies as authorized by KRS 205.577.

Section 1. Tax Assessments. (1) The tax assessment for each Medicaid participating pharmacy for each calendar quarter shall be one-half (1/2) of the increase in revenues realized by the pharmacy which results from the July 1, 1991 dispensing fee schedule update but not to exceed fifteen (15) percent of the pharmacy's gross Medicaid revenues for the calendar quarter.

(2) Due date for tax assessments.

(a) The tax assessment for each pharmacy shall be due by the 45th day following the end of each calendar quarter.

(b) A pharmacy may request a delay in its assessment payment due date based on unforeseeable circumstances affecting its ability to pay in a timely manner. Unforeseeable circumstances may include, but are not limited to, substantial disruptions of management or operations from occurrences such as fire, flood, storm, bankruptcy or other demonstrated financial hardship. Simple inability to pay, unless combined with a filing of bankruptcy of other demonstrated financial hardship by the pharmacy, shall not constitute justification for a delayed payment schedule. If a delay is granted, the delay shall not exceed sixty (60) days. An appeal to the Franklin Circuit Court (or a higher court as appropriate) with regard to the assessment payment amount shall be justification for a delay in payment of the assessment until the court case is resolved.

Section 2. Waiver of the Late Payment Penalties. The Commissioner of the Department for Medicaid Services shall waive the late payment penalty specified in KRS 205.577 only when good cause exists. Good cause shall be determined to exist only when an unforeseeable circumstance occurs affecting timely payments. Unforeseeable circumstances may include substantial disruptions of management or operations from occurrences such as fire, flood, storm or similar events. Failure to pay due to insufficient funds shall not be good cause for a waiver of the penalty unless combined with a bankruptcy filing of the provider. An appeal to the Franklin Circuit Court (or a higher court as appropriate) with regard to the assessment payment amount shall be considered to meet the criteria for good cause.

Section 3. The provisions of this regulation shall be applicable for calendar quarters beginning on and after July 1, 1991.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 24, 1991
FILED WITH LRC: June 27, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 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 August 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 pharmacies participating in the Medicaid Program.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None*

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No 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: *Tax funds in excess of those paid to pharmacies as part of their reimbursement will be placed in the Medicaid Assessment Improvement Trust (MAIT) fund.
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal statute or regulation constituting a federal mandate for the tax assessment schedule for pharmacies.
2. State compliance standards. This regulation establishes the tax assessment schedule for pharmacies.
3. Minimum or uniform standards contained in the federal mandate. There are no minimum or uniform standards contained in a federal mandate.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Not applicable. This regulation does not set stricter requirements.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The standards and responsibilities specified in the regulation are established pursuant to KRS 205.577 which provides for tax assessments for pharmacies.

**CABINET FOR HUMAN RESOURCES**
**Department For Medicaid Services**

**907 KAR 1:505. Psychiatric residential treatment facility services.**

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 447.325, 42 CFR 440.160, 42 USC 1396a-d
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 provisions relating to coverage of psychiatric residential treatment facility services.

Section 1. Definition. "Psychiatric residential treatment facility" (PRTF) means an appropriately licensed PRTF participating in the Medicaid Program.

Section 2. Covered Admissions. Covered admissions must be preauthorized and shall be limited to those for children age six (6) through twenty (20) years of age meeting patient status criteria. Coverage may continue, based on medical necessity, for an individual in a PRTF on his 21st birthday so long as he has not reached his 22nd birthday. Services shall not be covered if appropriate alternative services are available in the community.

Section 3. Durational Limitations. Patient stays are subject to utilization review by the cabinet.

Section 4. Determining Patient Status. The cabinet or its designated agent shall review and evaluate the health status and care needs of the recipient in need of inpatient psychiatric care using the same standards as set forth for inpatient psychiatric hospital care in 907 KAR 1:016. The care needs of the patient shall meet PRTF patient status criteria only when the individual meeting the patient status criteria in 907 KAR 1:016 requires long-term inpatient psychiatric care or crisis stabilization more suitably provided in the PRTF rather than a psychiatric hospital; the individual must require PRTF services on a continuous basis as a result of a severe mental or psychiatric illness (including severe emotional disturbances).

Section 5. Reevaluation of Need for Services. Patient status shall be reevaluated for PRTF patients at thirty (30) day intervals. If a reevaluation reveals the patient no longer requires PRTF care, payment shall continue only through the last day for which the stay is certified unless an appeal is made in a timely manner.

Section 6. Reconsideration and Appeals. Reconsiderations and appeals shall be handled in the same manner as specified in 907 KAR 1:016, Section 6.

Section 7. Exclusions from Coverage. Chemical dependency treatment services shall be excluded from coverage when the need for the services is the primary diagnosis of the patient. Chemical dependency treatment services shall be covered as incidental treatment related to the primary diagnosis if minimal chemical dependency treatment is necessary for successful treatment of the primary diagnosis.

Section 8. Reserved Bed Days. The cabinet will cover reserved bed days in accordance with the following specified upper limits and criteria:
(1) The following upper limits (applied per provider) shall be applicable for reserved bed days:
(a) A maximum of fourteen (14) days per admission for an acute care hospital stay;
(b) A maximum of fourteen (14) days per calendar year for admissions to a mental hospital or a psychiatric bed of an acute care hospital;
(c) A maximum of twenty-one (21) days per six (6) months during a calendar year for other leaves of absence; and
(d) A maximum of thirty (30) consecutive days for hospital and other leaves of absence combined.
(2) The following criteria must be met for reserved bed days to be covered:
(a) The person is in Medicaid payment status in the PRTF and has been a resident of the facility at least overnight;
(b) The person can be reasonably expected to return to the same level of care;
(c) Due to the demand at the facility for PRTF care, there is likelihood the bed would be occupied by some other patient were it not reserved;
(d) Hospitalization must be in Medicaid

participating hospitals with the admission appropriately approved by the cabinet or its designated agency; and

(e) For leaves of absence other than for hospitalization, the patient's physician orders and plan of care provide for such leaves; leaves of absence include visits with relatives and friends.

Section 9. Implementation Date. The provisions shown in this regulation shall be applicable with regard to services provided on or after July 1, 1991.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 24, 1991
FILED WITH LRC: July 3, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 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 August 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 psychiatric residential treatment facilities (PRTFs) participating in the Medicaid Program.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None*
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No 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: *The estimated cost is reflected in the companion payment regulation 907 KAR 1:510.
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

**CABINET FOR HUMAN RESOURCES**
**Department For Medicaid Services**

**907 KAR 1:510. Payments for psychiatric residential treatment facility services.**

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.160, 42 USC 1396a-d
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 provisions relating to payments for psychiatric residential treatment facility services.

Section 1. Definition. "Psychiatric residential treatment facility" (PRTF) means an appropriately licensed PRTF participating in the Medicaid Program.

Section 2. Payment Rates. Covered inpatient psychiatric facility services for individuals under twenty-two (22) years of age provided in PRTFs of sixteen (16) beds or less shall be paid for in accordance with the following:
(1) The PRTFs shall be paid a fixed rate of $225 per diem or usual and customary charge if less; however, the payment shall not exceed prevailing charges in the locality for comparable services provided under comparable circumstances.
(2) The fixed rate (or usual and customary charge, if less) covers total facility costs for covered PRTF services (except for the cost of drugs), including specifically the following:
(a) All care and treatment costs;
(b) Costs for all ancillary services (except for the cost of drugs which shall be reimbursed through the pharmacy program);
(c) Capital costs; and
(d) Room and board costs.

Section 3. Cost Reports and Audits. PRTFs shall file a cost report annually using a uniform cost report form prescribed by the single state agency. The cabinet may audit the cost reports as determined necessary by the cabinet.

Section 4. Access to PRTF Fiscal and Services Records. The cabinet shall have access to PRTF fiscal and services records to the extent determined necessary by the cabinet to assure accuracy of the cost report, that services are provided in accordance with the standards shown in this regulation and in 907 KAR 1:505, and that the PRTF is complying with all terms and conditions of the provider agreement between the

cabinet and PRTF. Representatives of the United States Department of Health and Human Services, Inspector General's Office, and Attorney General's Office shall have access to PRTF records to the extent necessary to perform their functions which relate to the Medicaid Program.

Section 5. Implementation Date. The provisions of this regulation shall be applicable for services provided on or after July 1, 1991.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 24, 1991
FILED WITH LRC: July 3, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 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 August 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 psychiatric residential treatment facilities participating in the Medicaid Program.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: (Cost) $4.1 million.
2. Continuing costs or savings: (Cost) $13.8 million second year; $21.7 million third year.
3. Additional factors increasing or decreasing costs: Increased need for additional beds.
(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:
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

## CABINET FOR HUMAN RESOURCES
## Department For Medicaid Services

**907 KAR 1:515. Targeted case management services for adults with chronic mental illness.**

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 USC 1396a-d, n
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 provisions relating to the coverage of targeted case management services for adults with chronic mental illness.

Section 1. Definition. (1) "Case management services" means services necessary to assist the targeted recipient in gaining access to needed medical, social, educational, and other services.
(2) "Chronic mental illness" means that clinically significant symptoms of mental illness have persisted in the individual for a continuous period of at least two (2) years, or that the individual has been hospitalized for mental illness more than once in the last two (2) years, and that the individual is presently significantly impaired in his ability to function socially or occupationally.
(3) "Target group" means the group of Medicaid eligible individuals that are chronically mentally ill (as defined in KRS 210.005) adults, with a diagnosis of a major mental disorder (other than substance abuse or mental retardation as the sole diagnosis) included in the DSM-III R classification.
(4) "Targeted recipient" means a recipient within the target group of chronically mentally ill adults for whom case management services are provided.

Section 2. Case Management Services. The following services shall be covered as case management services when provided by a qualified case manager to a Medicaid eligible recipient in the target group:
(1) Assessment of the client;
(2) Participation in development of the client's service plan;
(3) Referrals, linkage, and coordination of Medicaid and non-Medicaid services;
(4) Advocacy;
(5) Monitoring;
(6) Reassessment and follow-up;
(7) Establishment and maintenance of case record; and
(8) Crisis assistance planning.

Section 3. Excluded Activities. The following activities shall not be considered case management activities:
(1) The actual provision of mental health or

other Medicaid covered services or treatments;
(2) Outreach to potential recipients;
(3) Administrative activities related to Medicaid eligibility determinations; and
(4) Institutional discharge planning.

Section 4. Provider Qualifications. Provider participation shall be limited to the fourteen (14) regional mental health mental retardation centers, licensed in accordance with 902 KAR 20:091.

Section 5. Case Manager Qualifications and Supervision Requirements. (1) Case management qualifications. Each case manager shall be required to meet the following minimum requirements:
(a) Have a bachelor of arts or bachelor of science degree in any of the behavioral sciences, from an accredited institution; and
(b) Have one (1) year of experience in performing case management or working with chronically mentally ill (except that a master's degree in a human services field may be substituted for the one (1) year of experience); and
(c) Have completed a case management certification program (within six (6) months) offered or approved by the Department for Mental Health and Mental Retardation Services; and
(d) Have supervision by a mental health professional (psychiatrist, psychologist, master's degree social worker, psychiatric nurse, or professional equivalent as determined by the cabinet) for a minimum of one (1) year.
(2) Case manager supervision requirement. For one (1) year, each case manager shall have supervision performed at least once a month, both individually (per case plan) and in group (resource development).

Section 6. Implementation Date. The provisions of this regulation shall be applicable with regard to services provided on or after July 1, 1991.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 26, 1991
FILED WITH LRC: July 3, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 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 August 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: 2,880 chronic mentally ill adults.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None*
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No 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: *Any cost impact is reflected in companion regulation 907 KAR 1:520.
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

## CABINET FOR HUMAN RESOURCES
## Department For Medicaid Services

### 907 KAR 1:520. Payments for targeted case management services for adults with chronic mental illness.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 USC 1396a-d, n
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 provisions relating to payments for targeted case management services for adults with chronic mental illness.

Section 1. Provision of Service. Payment for services shall be limited to those case management services provided in accordance with 907 KAR 1:515.

Section 2. Reimbursement Methodology. Payments shall be based on cost. An interim rate based on projected cost may be used as necessary with a settlement to cost at the end of the fiscal year.

Section 3. Other Reimbursement Factors. The following factors shall be considered when making payments:
(1) The billable unit of service shall be one (1) month.
(2) The interim (or prospective final) rate shall be payable when at least four (4) service contracts have occurred during a month; at least two (2) of the contacts shall be face-to-face with the recipient, and the balance of the contacts may be by telephone or face-to-face, with the recipient or with others on his behalf.

Section 4. Nonduplication of Services. Payments shall not be made for case management services to the extent that payments have been made by the Medicaid Program as a part of other program elements for the same purposes.

Section 5. Implementation Date. The provisions of this regulation shall be applicable with regard to services provided on or after July 1, 1991.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 26, 1991
FILED WITH LRC: July 3, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 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 August 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: 2,880 chronic mentally ill adults.
(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: (Cost) $1.4 million.
2. Continuing costs or savings: (Cost) $2.6 million.
3. Additional factors increasing or decreasing costs: Program phase-in.
(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:
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

## CABINET FOR HUMAN RESOURCES
## Department For Medicaid Services

### 907 KAR 1:525. Targeted case management services for severely emotionally disturbed children.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 USC 1396a-d, n
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 provisions relating to provision of targeted case management services for severely emotionally disturbed children.

Section 1. Definition. (1) "Case management services" means services necessary to assist the targeted recipient in gaining access to needed medical, social, educational, and other services.
(2) "Severely emotionally disturbed child" means a child that meets the following conditions and circumstances:
(a) The child has a clinically significant disorder of thought, mood, perception, orientation, memory, or behavior that is listed in the current edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (excluding those children who are singularly diagnosed as chemically dependent, mentally retarded, or developmentally delay); and
(b) The child presents one (1) of the following conditions:
1. The child shows substantial limitations that have persisted for at least one (1) year or is judged by a mental health professional to be at risk of continuing for one (1) year without professional intervention in at least two (2) of the following five (5) areas:
a. Self-care: defined as the ability to provide, sustain, and protect himself at a level appropriate to his age;
b. Interpersonal relationships: defined as the ability to build and maintain satisfactory relationships with peer and adults;
c. Family life: defined as the capacity to live in a family or family type environment;
d. Self direction: defined as the child's

ability to control his behavior and to make decisions in a manner appropriate to his age; and

e. Education: defined as the ability to learn social and intellectual skills from teachers in an educational setting; or

2. Is a Kentucky resident and is receiving treatment for emotional disturbance through the interstate compact; or

3. The Department for Social Services has removed the child from the child's home and has been unable to maintain the child in a stable setting due to behavioral or emotional disturbance; or

4. The child presents impairment/behavior of short duration yet of high intensity. Included are severe emotional problems such as suicidal or psychotic trauma reactions where prognosis regarding duration of symptoms cannot be accurately assessed; and

(c) The child has been identified by a regional interagency council (RIAC) as a severely emotionally disturbed child in need of case management services.

(3) "Target group" means the group of Medicaid eligible children that are severely emotionally disturbed.

(4) "Targeted recipient" means a recipient within the target group of severely emotionally disturbed children for whom case management services are provided.

Section 2. Case Management Services. The following services shall be covered as case management services when provided by a qualified case manager to Medicaid eligible recipients in the target group:

(1) A written comprehensive assessment of the child's needs;

(2) Arranging for the delivery of the needed services as identified in the assessment;

(3) Assisting the child and his family in accessing needed services;

(4) Monitoring the child's progress by making referrals, tracking the child's appointments, performing follow-up on services rendered, and performing periodic reassessments of the child's changing needs;

(5) Performing advocacy activities on behalf of the child and his family;

(6) Preparing and maintaining case records documenting contacts, services needed, reports, the child's progress, etc.;

(7) Providing case consultation (i.e., consulting with the service providers/collateral's in determining child's status and progress); and

(8) Performing crisis assistance (i.e., intervention on behalf of the child, making arrangements for emergency referrals, and coordinating other needed emergency services).

Section 3. Excluded Activities. The following activities shall not be considered case management activities:

(1) The actual provision of mental health or other Medicaid covered services or treatments;

(2) Outreach to potential recipients;

(3) Administrative activities related to Medicaid eligibility determinations; and

(4) Institutional discharge planning.

Section 4. Provider Qualifications. Provider participation shall be limited to the Department for Social Services and the fourteen (14) regional mental health mental retardation centers, licensed in accordance with 902 KAR 20:091.

Section 5. Case Manager Qualifications and Supervision Requirements. (1) Case manager qualifications. Each case manager shall be required to meet the following minimum requirements:

(a) Have a bachelor of arts or bachelor of science degree in any of the behavioral sciences from an accredited institution; and

(b) Have one (1) year of experience working directly with children or performing case management services (except that a master's degree in a human services field may be substituted for the one (1) year of experience); and

(c) Have received training within six (6) months designed and provided by each participating provider directed toward the provision of case management services to the targeted population; and

(d) Have supervision for a minimum of one (1) year by provider staff with at least a master's degree in a human services field.

(2) Case manager supervision requirement. For at least one (1) year, each case manager shall have supervision performed at least once a month for each case plan.

Section 6. Implementation Date. The provisions of this regulation shall be applicable with regard to services provided on or after July 1, 1991.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 26, 1991
FILED WITH LRC: July 3, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 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 August 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: 3,000 severely emotionally disturbed children.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing

costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None*
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No 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: *Any cost impact will be reflected in the companion regulation 907 KAR 1:530.
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

## CABINET FOR HUMAN RESOURCES
## Department For Medicaid Services

**907 KAR 1:530. Payments for targeted case management services for severely emotionally disturbed children.**

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 USC 1396a-d, n
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 provisions relating to payments for targeted case management services for severely emotionally disturbed children.

Section 1. Provision of Service. Payment for services shall be limited to those case management services provided in accordance with 907 KAR 1:525.

Section 2. Reimbursement Methodology. Payments shall be based on cost. An interim rate based on projected cost may be used as necessary with a settlement to cost at the end of the fiscal year.

Section 3. Other Reimbursement Factors. The following factors shall be considered when making payments:
(1) The billable unit of service shall be one (1) month.
(2) The interim (or prospective final) rate shall be payable when at least four (4) service contracts have occurred during a month; at least two (2) of the contacts shall be face-to-face, at least one (1) contact with the recipient, while the second may be with the recipient's parent, guardian or other person exercising custodial control and supervision, and the balance of the contacts may be by telephone or face-to-face, with the recipient or with others on his behalf.

Section 4. Nonduplication of Services. Payments shall not be made for case management services to the extent that payments have been made by the Medicaid Program as a part of other program elements for the same purposes.

Section 5. Implementation Date. The provisions of this regulation shall be applicable with regard to services provided on or after July 1, 1991.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 26, 1991
FILED WITH LRC: July 3, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 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 August 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: 3,000 severely emotionally disturbed children.
(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: (Cost) $2 million.
2. Continuing costs or savings: (Cost) $5 million.
3. Additional factors increasing or decreasing costs: Phase-in program.
(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:

TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

REPRINT

**COMPILER'S NOTE:** This regulation, 903 KAR 5:270, is being reprinted because the Compiler's Office failed to change "$199" to "$209" in Section 2 when this regulation was originally printed on page 201 of the July 1, 1991 Administrative Register.

**CABINET FOR HUMAN RESOURCES**
**Department for Employment Services**
**Division of Unemployment Insurance**
**(Proposed Amendment)**

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

RELATES TO: KRS 341.380
STATUTORY AUTHORITY: KRS 194.050, 341.380
NECESSITY AND FUNCTION: KRS 341.380 requires the Secretary for Human Resources to determine the average weekly wage for insured employment. Fifty-five (55) percent of this amount adjusted to the nearest multiple of one (1) dollar constitutes the maximum weekly unemployment insurance benefit rate for those workers whose benefit year commences on or after July 1, 1991 [1990], and prior to July 1, 1992 [1991]. This regulation applies the mathematical computation required by statute and contains the determination of the maximum weekly benefit rate.

Section 1. The secretary finds the following to exist:
(1) The "total monthly employment" reported by subject employers for the calendar year of 1990 [1989] was 16,400,301 [15,976,767];
(2) The "average monthly employment," obtained by dividing the total monthly employment by twelve (12), was 1,366,692 [1,331,397];
(3) The "total wages" reported by subject employers for the calendar year of 1990 [1989] was $27,005,770,439 [25,064,324,258];
(4) The "average weekly wage" for the calendar year of 1990 [1989] for insured employment, obtained by dividing the average monthly employment into total wages for such year and dividing by fifty-two (52), was $380 [362.03];
(5) Fifty-five (55) percent of the average weekly wage of $380 [362.03] for the calendar year of 1990 [1989] was $209 [199.12].

Section 2. On the basis of the above findings, and in accordance with KRS 341.380(3), the maximum weekly benefit rate for those workers whose benefit year commences on or after the first day of July, 1991 [1990], and prior to the first day of July, 1992 [1991], is determined to be $209 [199].

DARVIN ALLEN, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: May 28, 1991
FILED WITH LRC: June 11, 1991 at 10 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for July 22, 1991, at at 9 a.m. in the Department of Employment Services Conference Room, 2nd Floor, in the Cabinet of 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 July 17, 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: Darvin Allen
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year: All eligible UI recipients for the year 7/1/91 through 6/30/92.
2. Continuing costs or savings: An estimated additional $12,395,000 paid to eligible UI recipients.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings:
1. First year: An additional $12,395,000 paid from the UI Trust Fund to UI recipients.
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: The number of people filing UI claims may increase or decrease.
(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 alternate methods available in accordance with statutory requirements.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: This regulation satisfies the statutory requirements of KRS 341.380(3), which mandates that the secretary determines the maximum weekly rate prior to July 1 of each year.
TIERING: Was tiering applied? No. All claimants treated equally.

## ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
### Minutes of the July 1 and 2, 1991 Meeting

The July meeting of the Administrative Regulation Review Subcommittee was held on Monday, July 1, 1991 at 2 p.m. in Room 327 of the Capitol and on Tuesday, July 2, 1991 at 10 a.m. in Room 327 of the Capitol. Chairman Tom Kerr called the meeting to order, and the secretary called the roll. The minutes of the June 3 and 4, 1991 meeting were approved.

**Present were:**

**Members:** Representative Tom Kerr, Chairman; Senators Gene Huff and Bill Quinlan; Representatives Woody Allen and James Yates.

**Guests:** Representative Richard Sanders; Paul P. Borden, Richard Casey, Joyce A. Bryan, Teresa Rutledge, Jane Stewart, Kentucky Higher Education Assistance Authority; Cathy Snell, Secretary of State; James H. Molloy, Lucille Orlando, Robert Buntin, Disaster and Emergency Services; Jim Ramsey, Mary Lassiter, John Merchant, Marilyn Eaton, Chris Bowling, Charles Wickliffe, Jolene Greenwell, Finance and Administration Cabinet; Commissioner Sam Potter, Jr., Don McCormick, E. Norman Sims, John Wilson, Bill Graves, Ted Crowell, Tom Young, Pete Pfeiffer, Department of Fish and Wildlife Resources; Ed Henson, Bob Bender, Hugh Smith, Department of Parks; Vicki Pettus, Linda Stacy, Betty Beshoar, Jack Wilson, Kathryn Hargraves, Natural Resources; Richard Hannan, Nature Preserves Commission; William Doyle, Attorney General's Office; Ellen Tharpe, Tom Campbell, Corrections Cabinet; Sandra G. Pullen, Transportation; Gary Bale, Akeel H. Zaheer, Elizabeth Nelli, Education Department; Kevin Noland, Anne Stanley Hoffman, Workforce Development Cabinet; Tom Barnes, Judy Walden, Charlie Wiley, Housing, Buildings and Construction; Kembra Taylor, Guy Schoolfield, Labor Cabinet; Larry Schneider, Gene Attkinson, Department of Mines and Minerals; Edward Crews, David Nichols, Mark Hoops, Kenneth Wade, James Corum, Kathy G. Mobley, Janice Kline, Ked Fitzpatrick, Judy Trigg, Ralph Von Duran, Eric Friedlander, Stacy Searcy, Cabinet for Human Resources; Mr. Joyner, Richard Bowling, Richard Wilson, Billy Joe Chadwick, Norm Davis, Western Kentucky Shell Harvesters of Kentucky; Raymond Key, Morris Key, Earl Key, Kentucky Shell; Ronald Kibort, Tennessee Shell Company; Tony Modica, Lexington/Fayette LEPC; Billy G. Rice, Paris/Bourbon County DES; Mike Withrow, Paris Dept. of Public Safety; Thomas A. Marshall, Stoles & Harbison; Jay Spurrier, Kentucky Utilities Company, Dan Yates, Kentucky Association of Electric Cooperatives; Jim Honaker, Kenton, Campbell, Boone County Water District; Ted Bradshaw; John Barnett, SCB.

**LRC Staff:** Greg Karambellas, Susan Wunderlich, Donna Pierce, Peggy Jones, and Susan Eastman.

**The Subcommittee determined that the following administrative regulations, as amended, complied with KRS Chapter 13A:**

**General Government Cabinet: Secretary of State**

30 KAR 1:040 (Indistinguishable names.) Chairman Kerr stated that Section 1(5) permits the use of an indistinguishable corporate name by only two corporations at the same time. He pointed out that KRS 271B.4-010(3) does not contain this restriction. It provides that a corporation may apply for authorization to "use a name that is not distinguishable...from one(1) or more...names...." Agency personnel responded that the restriction in Section 1(5) was intended to prevent confusion; and that KRS 271B.4-010 provides that a corporation may apply for the use of an indistinguishable name. Chairman Kerr stated that the word "may" was not a limitation of the number of corporations that may use indistinguishable corporate names. He added that the agency may wish to pursue an amendment to applicable statutes, but that Section 1(5) violated KRS Chapter 271B and should be deleted. Agency personnel agreed. Motion was made and passed to delete Section 1(5) in its entirety.

30 KAR 1:050 (Dishonored checks.) Section 1(1) was amended to delete "prior to the filing of" and to insert "when" in lieu thereof; and to insert "is filed" after "document". These changes were necessary to make it clear that payment of fees was required at filing, rather than prior to filing, as could be incorrectly assumed from the existing language.

**Finance and Administration Cabinet: State Investment Commission**

Objections had been raised to the following three regulations because in Sections 3(2), (3), and 6 of 200 KAR 14:010; Section 8 of 200 KAR 14:080; and Sections 2, 3, 4 and 6 of 200 KAR 14:090, authority had been granted to the Office of Financial Management and Economic Analysis and the executive director regarding state investments. It was pointed out that KRS Chapter 42 grants this authority to the State Investment Commission and that these sections improperly delegated that authority to the Office. Agency personnel agreed to amend these sections to delete "office", or other language that would substitute the "office" for the "commission", and to insert "Commission" where necessary in lieu thereof.

200 KAR 14:010 (General rules.)

200 KAR 14:080 (Repurchase agreement.)

200 KAR 14:090 (Guidelines for money market instruments.)

**Corrections Cabinet: Office of the Secretary**

The following three regulations were amended to conform to the drafting requirements of KRS 13A.222 and KRS 197.170, and to clarify a policy relating to the transportation of visitors to and from a penitentiary, as suggested by the initial staff review of these regulations.

501 KAR 6:030 (Kentucky State Reformatory.)

501 KAR 6:040 (Kentucky State Penitentiary.)

501 KAR 6:070 (Kentucky Correctional Institution for Women.)

**Public Protection and Regulation Cabinet: Department of Housing, Buildings and Construction: Plumbing**

815 KAR 20:030 (License application; qualifications for examination, examination revival or reinstatement of licenses.) This regulation was amended in order to underline new language as required by KRS Chapter 13A.

**Mobile Homes and Recreational Vehicles**

The following two regulations were amended in various sections to comply with the drafting

requirements of KRS 13A.222, to delete statutory definitions, superfluous words and phrases, prohibited words or expressions, repetition or summary of statutory language; and to delete contradictory definitions. Chairman Kerr reminded agency personnel that additional changes may be required in order to comply with the 1990 amendments to KRS Chapter 13A relating to incorporation by reference, the use of federal and professional standards; and that agency personnel, Subcommittee and other interim joint committee staff would meet in the future to suggest appropriate amendments.

815 KAR 25:010 (Mobile homes.)

815 KAR 25:020 (Recreational vehicles.)

**Cabinet for Human Resources: Department for Social Insurance: Public Assistance**

904 KAR 2:016 (Standards for need and amount; AFDC.) This regulation was amended to conform to federal interpretations and regulatory changes.

**Cabinet for Human Resources: Department for Medicaid Services**

907 KAR 1:017 (Hospital indigent care assurance program (HICAP).) Section 1 of this regulation was amended to delete the definitions in subsection (1) because they repeated or summarized KRS 205.575. Section 2(1) through (7) was deleted. Only language relating to the manner in which a participating hospital shall show the posting of required signs was retained. Section 3 was amended to make a cross-reference to KRS 205.575, and to clarify the procedure by which the Department shall provide a hospital with the opportunity to discuss department determination and to present evidence of the hospital's compliance. Section 4 was amended to delete the first sentence because it repeated or summarized statutory language and to mandate the contingency reserve and the percentage reserve of assessments as required by KRS Chapter 205. Section 5(1) and (2), and portions of Section 6(1), were deleted because they repeated or summarized language in KRS Chapter 205.

**The Subcommittee determined that the following regulations complied with KRS Chapter 13A:**

**Kentucky Higher Education Assistance Authority: KHEAA Grant Program**

11 KAR 5:030 (Student eligibility requirements.)

11 KAR 5:130 (Student application.)

11 KAR 5:140 (Award determination procedure.)

**Teacher Scholarship Loan Program**

11 KAR 8:030 (Teacher scholarships.) An objection had been raised to language in Sections 1(3), 2(1) and 5(1), that provided for teacher scholarships for Kentucky residents who, upon graduation, teach in accredited schools of the state. The objections stated that benefits from this program were limited by KRS 164.770(1),(2) to those who taught in public, rather than private or parochial, schools. In addition, OAG 91-82 expressed the opinion that KRS Chapter 164 and the Kentucky Constitution required beneficiaries under the program to teach in public schools. The agency proposed an amendment to comply with the objections and the OAG. Members of the Subcommittee stated that the legislative intent was to provide benefits to teachers who teach in accredited schools of the Commonwealth, regardless of whether they were considered public or not. No motion was made to accept the amendment. Therefore, the regulation was approved without change.

**College Access Program**

11 KAR 11:020 (Student application.)

11 KAR 11:030 (Award determination procedure.)

**Kentucky Educational Savings Plan Trust**

11 KAR 12:010 (Kentucky educational savings plan trust definitions.)

11 KAR 12:020 (General rules for investments and fund transfers.)

11 KAR 12:030 (Eligibility of beneficiary and participant.)

11 KAR 12:040 (Residency classification for Kentucky educational savings plan trust vested participation agreements.)

11 KAR 12:050 (Substitution of beneficiary.)

11 KAR 12:060 (Cancellation and payment of refund.)

11 KAR 12:070 (Benefits payable from the Kentucky educational savings plan trust program fund.)

11 KAR 12:080 (Benefits payable from the Kentucky educational savings plan trust endowment fund.)

11 KAR 12:090 (Transfer of ownership of Kentucky educational savings plan trust program fund.)

**Department for Military Affairs: Disaster and Emergency Services**

An objection to these regulations was raised by Fred Rial of the Fayette County Local Emergency Planning Committee. Mr. Rial stated that the Statement of Consideration was deficient because the agency did not respond to the comments on the regulation in the detail required by KRS 13A.280. Agency personnel stated that they preferred not to defer this regulation because of a statutory deadline requiring the promulgation of these regulations at this time. Members of the Subcommittee stated that, since this objection had not been submitted to the Subcommittee until July 1, 1991, there was insufficient time to consider it. They pointed out that these regulations would be reviewed by a second legislative subcommittee, at which time this objections could be considered, and that the objection would be forwarded to that subcommittee in sufficient time to be reviewed.

106 KAR 1:080 (Kentucky Emergency Response Commission fee system requirements.)

106 KAR 1:090 (Kentucky Emergency Response Commission fee account grant requirements for local emergency planning committees.)

106 KAR 1:100 (Kentucky Emergency Response Commission fee account grants requirements for state agencies.)

106 KAR 1:110 (Kentucky Emergency Response Commission fee account grant review committee.)

106 KAR 1:120 (Kentucky Emergency Response Commission fee account grant distribution formula.)

106 KAR 1:130 (Kentucky Emergency Response Commission civil penalty assessment and hearings.)

**Finance and Administration Cabinet: State Investment Commission**

200 KAR 14:061 (Repeal of 200 KAR 14:060.)

**Tourism Cabinet: Department of Fish and Wildlife Resources: Fish**

301 KAR 1:085 (Mussel shell harvesting.) Norm Davis, Western Kentucky Shell Harvesters;

Commissioner Sam Potter, Department of Fish and Wildlife Resources Commission; Representative Richard Sanders; Commissioner Don McCormick and Pete Pfeiffer, Department of Fish and Wildlife Resources appeared before the Subcommittee on this regulation. Representative Sanders told the Subcommittee that in his district constituents had complained about the interference by mussell harvesters with trotline fishing, boaters and tourism, especially because of brailing. Mr. Davis explained that mussell shells were purchased by the Japanese for the production of pearls, and that the regulation would have a harmful effect on the $12 million mussell shell industry in Kentucky. He stated that the proposed sanctuary was larger than what was required; that the migratory habit of the mussells would preclude irreversible harm to the endangered species, the orange-footed pimple-back, the pink mucket, and the rough pigtoe. In response to comments that brailing damaged both the mussells and trotlines, Mr. Davis stated that properly marked trotlines were not intentionally damaged and that the mussells were not irreparably harmed. Representative Allen stated that the proposed sanctuaries were a small portion of the total area available to mussell harvesters, and would not adversely affect the industry. Commissioner Potter pointed out that some species exist in only one area and that permitting unrestricted mussell harvesting, or failing to increase the size of the sanctuaries, would disrupt the breeding of the endangered mussells. The Subcommittee approved this regulation without change.

**Corrections Cabinet: Office of the Secretary**
501 KAR 6:060 (Northpoint Training Center.)

**Transportation Cabinet: Division of Motor Carriers**
601 KAR 1:025 (Transporting hazardous materials; permit.)

**Education and Humanities Cabinet: Department of Education: Education Professional Standards Board**
704 KAR 20:580 (Certification revocation procedures.)

**Workforce Development Cabinet: Department for Adult and Technical Education: General Administration**
780 KAR 1:010 (1992-94 program plan.)
**Adult Education**
780 KAR 9:100 (Provision of instruction for individuals sentenced by a court to participate in educational programs.)
780 KAR 9:110 (Standards for successful completion of "Sentenced to Learn" program.)
780 KAR 9:120 (Maintenance of records and reporting to courts for "Sentenced to Learn" program.)

**Labor Cabinet: Occupational Safety and Health**
Chairman Kerr stated that the regulations of the Cabinet that incorporate federal materials would be reviewed by agency and Subcommittee staff in order to determine the proper method by which these regulations may be brought into compliance with KRS Chapter 13A. Agency staff agreed to meet with Subcommittee staff on the issues raised by these regulations. With regard to 803 KAR 2:408, 803 KAR 2:411, and 803 KAR 2:423, the agency provided a more detailed summary of the material incorporated by reference, as requested. With regard to 803 KAR 2:423, agency personnel explained that the $530,000 figure in the fiscal analysis was a figure for the total cost of compliance, and not an annual cost to each employer. Agency personnel asked Subcommittee staff whether KRS Chapter 13A prohibited or permitted state standards that were more stringent than federally-imposed standards. It was explained to agency personnel that KRS Chapter 13A appeared both to prohibit and to permit such standards; that amendments to KRS Chapter 13A to clarify this apparent inconsistency would be proposed at the next regular session; and that the members of legislative subcommittees reviewing regulations in which state standards were stricter than federal standards, not legislative staff, would make the determination whether such standards violated KRS Chapter 13A or other applicable statutes.
803 KAR 2:309 (Adoption of 29 CFR Part 1910.141 - 1910.149.)
803 KAR 2:320 (Adoption of 29 CFR Part 1910.1000 - 1910.1500.)
803 KAR 2:408 (Adoption of 29 CFR Part 1926.300 - 1926.305.)
803 KAR 2:411 (Adoption of 29 CFR Part 1926.450 - 1926.452.)
803 KAR 2:412 (Adoption of 29 CFR Part 1926.500 - .502.)
803 KAR 2:416 (Adoption of 29 CFR Part 1926.)
803 KAR 2:423 (Adoption of 29 CFR Part 1026.1050 - .1060.)

**Public Protection and Regulation Cabinet: Department of Mines and Minerals: Division of Explosives and Blasting**
805 KAR 4:010 (Licensing and classification of blasters.)

**Cabinet for Human Resources: Department for Health Services: Health Services and Facilities**
902 KAR 20:008 (License procedures and fee schedule.)
**Controlled Substances**
902 KAR 55:080 (Written prescriptions to be signed by practitioner.)
**Department for Medicaid Services**
907 KAR 1:013 (Payments for hospital inpatient services.)
907 KAR 1:019 (Pharmacy services.)
907 KAR 1:382 (Incorporation by reference of the preventive health services manual.)
907 KAR 1:390 (Incorporation by reference of the hearing services manual.)
907 KAR 1:400 (Incorporation by reference of the renal dialysis services manual.)
907 KAR 1:476 (Incorporation by reference of the advanced registered nurse practitioner manual.)

**The following regulations were deferred at the promulgating agency's request:**

**Finance and Administration Cabinet: Kentucky Infrastructure Authority**
Chairman Kerr informed the agency that a detailed review of the following four regulations had determined that they did not comply with statutory authority. He stated that the amendments offered by the agency did not correct or address many of the deficiencies pointed out in the review. The agency agreed to defer these regulations and to meet with

Subcommittee staff in order to determine whether the regulations could be corrected and made to conform to statutory authority.

200 KAR 17:020 (Guidelines for solid waste revolving fund and solid waste grant program.)

200 KAR 17:030 (Guidelines for drinking water loan fund.)

200 KAR 17:040 (Guidelines for drinking water grant fund.)

200 KAR 17:050 (Guidelines for federally assisted wastewater revolving fund.)

**General Government Cabinet: Board of Veterinary Examiners**

201 KAR 16:010 (Code of conduct.)

**Public Protection and Regulation Cabinet: Public Service Commission**

807 KAR 5:014 (Management and Operation audits.) This regulation was deferred until agency personnel and Subcommittee staff could review additional objections raised.

**Cabinet for Human Resources: Office of the Secretary: Family Resource & Youth Services Centers**

900 KAR 4:010 (Criteria for awarding grants for family resource and youth services centers.)

**Department for Health Services: Controlled Substances**

902 KAR 55:075 (Sale of seized and forfeited controlled substances.)

**Department for Social Services: Child Welfare**

905 KAR 1:180 (DSS policy and procedures manual.)

**OTHER BUSINESS:**

**Finance and Administration Cabinet: Purchasing**

200 KAR 5:316 (Works of art.) The Finance and Administration Cabinet, the Kentucky Department of Parks, and the Office of Historic Properties had been requested to appear before the Subcommittee concerning the procedure followed in scheduling a public auction of items offered by Parks and Historic Properties. Chairman Kerr stated that the concerned administrative bodies had been informed that although these agencies believed that an auction was authorized by this regulation and KRS 45A.050(2)(a), this was not the case. While Section 1 of this regulation provides that a state agency may sell works of art and artifacts without approval by the Finance and Administration Cabinet, KRS 45A.050(2)(a) provides that the only thing permitted without approval by the Secretary of the Cabinet is "the acquisition" of such items. He added that the agencies were informed that KRS 45A.045(4) sets out the procedure to be followed by an agency in order to auction surplus property. Since KRS Chapter 13A prohibits the promulgation of an administrative regulation that modifies or vitiates a statute or its intent (KRS 13A.120(2)(i)), this regulation should be repealed. Agency personnel stated that they were conducting a review of relevant regulations and that, legislation would probably be requested to provide for a different method of disposal of historic or art works. The Subcommittee approved a motion that this regulation exceeds statutory authority, and that LRC be requested to refer this regulation and the issues raised by it to the Interim Joint Committee on State Government for review and recommendations for legislation.

**Cabinet for Human Resources: Department of Health Services: Sanitation**

Dr. James Corum, Kenneth Wade, David Nichols, and Mark Hooks were requested to appear before the Subcommittee concerning the following two regulations. Implementation of these regulations have created problems for citizens who are not permitted to repair or replace septic tank systems or components thereof, with lot sizes insufficient to comply with lateral requirements, and where there is no sewer to which they may connect. Because of the refusal to permit repair or replacement, those who could not afford to meet the regulatory requirements were forced to move from their homes, or to stop construction on housing for which permits had already been granted.

Representatives Yates and Allen and Senator Quinlan and Chairman Kerr asked agency personnel why strict enforcement of requirements, which agency personnel alleged were imposed by these regulations, was delayed for a number of years; why local governmental agencies had not been informed until recently of these requirements; why there appeared to be a lack of coordination between state agencies and local governmental bodies; whether individual on-site inspections to determine whether permission to repair existing systems could be permitted without damage to the environment and public health were conducted; why systems in existence at the time the regulations became effective were not grandfathered in; why strict enforcement was not limited to areas in which sewers were available; why the requirements were being imposed even though an EPA study had concluded that pollution or other detrimental environmental effects had not occurred in the areas being considered by agency personnel and the Subcommittee at this meeting; and whether the agency would be willing to amend the regulations to alleviate the hardships caused by agency implementation.

It was pointed out that although the agency determined in 1987 that existing regulations permitted the imposition of stricter requirements, the regulation was not amended until 1988 in order to impose the stricter requirements. Agency personnel admitted that strict enforcement of these requirements did not occur until relatively recently and after a change of personnel in the agency; and in many cases only after the agency had been notified by complaint or otherwise. The agency stated that many older lots had systems that were not now adequate, but that some funds for low interest loans to homeowners were available. Members of the Subcommittee pointed out that a great number of constituents were faced with costs in the thousands of dollars in order to meet agency requirements, were not affluent enough to carry even low interest loans, and should be permitted to repair existing systems. Although agency personnel stated that the EPA study omitted certain items, it was pointed out that initial drafts were not relevant, that the study and its conclusions as issued were relevant, and that the study concluded that contamination or pollution had not occurred.

Agency personnel were asked why variances could not be granted. They discussed several alternatives, such as manmade wetlands, but it was not certain that the problems faced by citizens could be solved by such alternatives.

Agency personnel agreed with Chairman Kerr's recommendation that they draft amendments to the

appropriate regulation to resolve the problems created by enforcement of these regulations; that they submit such proposals to the Subcommittee and Subcommittee staff. The Subcommittee agreed to defer a decision on the issues raised by these regulations until its August 1991 meeting.

902 KAR 10:081 (Construction standards for components of on-site sewage disposal systems.)

902 KAR 10:085 (Kentucky on-site sewage disposal systems.)

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

**The Subcommittee adjourned at 11 a.m. until August 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 AND WELFARE
### Meeting of June 19, 1991

The Interim Joint Committee on Health and Welfare met on Wednesday, June 19, 1991, and submits this report:

A motion was approved to find 907 KAR 1:020 & E, relating to Medicaid payments for drugs, deficient because the Committee questioned whether the proposal would comply with the federal OBRA 1990 and could have an adverse impact on rural pharmacies.

The Committee approved 902 KAR 10:030, 902 KAR 55:020 & E, 902 KAR 55:025 & E and 905 KAR 5:060.

### INTERIM JOINT COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES
### Meeting of June 26, 1991

The Interim Joint Committee on Agriculture and Natural Resources met June 26, 1991, and submits this report:

The committee determined that Natural Resources and Environmental Protection Cabinet administrative regulation 400 KAR 1:040 complies with KRS Chapter 13A.

The committee determined that two Department of Fish and Wildlife Resources administrative regulations 301 KAR 2:170 and 301 KAR 2:210 comply with KRS Chapter 13A.

The committee determined that Division of Water administrative regulation 401 KAR 4:220 complies with KRS Chapter 13A.

The committee also determined that the following Department of Mines and Minerals administrative regulations comply with KRS Chapter 13A: 805 KAR 4:030, 805 KAR 4:050, 805 KAR 4:060, 805 KAR 4:075, 805 KAR 4:085, 805 KAR 4:087, 805 KAR 4:100, 805 KAR 4:110, 805 KAR 4:120, 805 KAR 4:140, 805 KAR 4:155, 805 KAR 4:160, and 805 KAR 4:165.

The committee adjourned at 3:20 p.m., June 26, 1991.

### INTERIM JOINT COMMITTEE ON TRANSPORTATION
### Meeting of July 2, 1991

The Interim Joint Committee on Transportation met on Tuesday, July 2, 1991, and submits this report:

**The Committee determined that the following administrative regulation complied with KRS Chapter 13A:**

600 KAR 2:010

The regulation 603 KAR 5:250 was adopted by the Interim Joint Committee on Transportation with an amendment. The amendment to the regulation is attached. (**COMPILER'S NOTE:** The amendments made to this regulation are printed on page 280 of this August 1991 Administrative Register.)

The Committee adjourned at 2:30 p.m.

### INTERIM JOINT COMMITTE ON EDUCATION
### Meeting of July 8, 1991

At its July 8, 1991 meeting, the Interim Committee on Education reviewed 11 KAR 8:030 (Teacher scholarships) and, with the approval of Mr. Paul Borden representing the Kentucky Higher Education Assistance Authority, adopted the following amendments:

Amend Section 1(3) to read:

(3) "Qualified teaching service" means teaching the major portion of each school day for at least seventy (70) days each semester in a <u>public</u> school <u>of</u> [, accredited by] the Commonwealth [, located in Kentucky].

Amend Section 2(1) to read:

Section 2. Eligibility. (1) The authority may, to the extent of appropriations and other funds avilable to it for this purpose, award teacher scholarships to persons enrolled or accepted for enrollment at participating institutions, who declare an intention to enter the teaching profession in <u>public</u> [state accredited] schools of the Commonwealth, and who are eligible under subsection (3) and (4) of this section.

## CUMULATIVE SUPPLEMENT

## LOCATOR INDEX — EFFECTIVE DATES

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

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