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MEETING NOTICE: The next meeting of the Administrative Regulation Review Subcommittee is tentatively scheduled on January 3 and 6, 1992. See tentative agenda on pages 2105-2107 in this Administrative Register.

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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

ADMINISTRATIVE REGISTER OF KENTUCKY

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ADMINISTRATIVE REGISTER - 2105

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA - January 3, 1992 at 2 p.m.
Room 327, State Capitol**

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

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Board of Examiners and Registration of Landscape Architects.

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Division of Water

Water Quality

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Department for Surface Mining Reclamation and Enforcement

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CORRECTIONS CABINET

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501 KAR 6:030. Kentucky State Reformatory

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501 KAR 6:150. Eastern Kentucky Correctional Complex.

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Department of Vehicle Regulation

Division of Motor Carriers

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EDUCATION AND HUMANITIES CABINET

Department of Education

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Exceptional and handicapped Programs

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Western Kentucky University

Board of Regents.

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Department of Workplace Standards

Occupational Safety and Health

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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA - January 6, 1992 at 2 p.m.
Room 327, State Capitol

State Racing Commission

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- 810 KAR 1:002. Racing commission.
- 810 KAR 1:003. Licensing. (Found Deficient by ARRS, August 14, 1990; Found Deficient by IJC on BOP, August 17, 1990)
- 810 KAR 1:004. Stewards.
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Department of Housing, Buildings and Construction

Mobile Homes and Recreational Vehicles

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Office of Inspector General

Long-Term Care

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Maternal and Child Health

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- 902 KAR 13:020. Applicant's requirements; priority for training. (Deferred from December)

Health Services and Facilities

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- 904 KAR 3:010 & E. Definitions.
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Department for Social Services

Aging Services

- 905 KAR 8:090. Personal care assistance services.
- 905 KAR 8:210. Kentucky long-term care ombudsman program. (Repeals 905 KAR 8:070.)

Office of Inspector General

Office of Inspector General

- 906 KAR 1:100. Nurse aide registry, and hearing procedures.

Department for Medicaid Services

Medicaid Services

- 907 KAR 1:037. Hospital furnished nursing facility services. (Amended After Hearing)
- 907 KAR 1:140 & E. Alternative home and community based services for the mentally retarded (AIS/MR).
- 907 KAR 1:150 & E. Payments for alternative home and community based services for the mentally retarded.
- 907 KAR 1:160. Home and community based services. (Not Amended After Hearing)
- 907 KAR 1:190. Payments for alternative birth center services. (Amended After Hearing)
- 907 KAR 1:545. Incorporation by reference of the nursing facility services manual.

Department for Mental Health and Mental Retardation

Substance Abuse

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- 908 KAR 1:310 & E. Administrative procedures for DUI facilities and programs.

Institutional Care

- 908 KAR 3:020. Care and treatment of inmates of penal institutions.
- 908 KAR 3:050. Per diem rate pursuant to the "Patient Liability Act of 1978".
- 908 KAR 3:100. Policies and procedures of Eastern State Hospital.
- 908 KAR 3:110. Policies and procedures of Central State Hospital.
- 908 KAR 3:120. Policies and procedures of Western State Hospital.
- 908 KAR 3:180. Policies and procedures of Oakwood.

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
405 KAR 7:001E

This emergency administrative regulation defines terms used in 405 KAR Chapter 7. It is necessary to promulgate this emergency administrative regulation because the Administrative Regulation Review Subcommittee has determined that the locations of the definitions in 405 KAR Chapters 7-24 do not conform to KRS Chapter 13A. By agreement with the Administrative Regulation Review Subcommittee, the definitions located in 405 KAR 7:020 and other regulations of 405 KAR Chapters 7-24 are being moved to new administrative regulations at the beginning of each chapter, namely 405 KAR 7:001, 8:001, 10:001, 12:001, 16:001, 18:001, 20:001 and 24:001, and 405 KAR 7:020 is being repealed. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on November 25, 1991.

WALLACE G. WILKINSON, Governor
JOHN F. NICHOLS, JR., Secretary

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

405 KAR 7:001E. Definitions for 405 KAR Chapter 7.

RELATES TO: KRS Chapter 350, 7 CFR Part 657, 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, 7 CFR Part 657, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 USC 1253, 1255, 1291

EFFECTIVE: November 27, 1991

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

Section 1. Definitions. (1) "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.

(2) "Administratively complete application" means an application for permit approval, or approval for coal exploration if 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.

(3) "Affected area" means any land or water

area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, 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.

(4) "Applicant" means any person 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.

(5) "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 required, seeking approval for coal exploration.

(6) "Approximate original contour" is defined in KRS 350.010.

(7) "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.

(8) "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 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.

(9) "Blaster" means a person who is directly

responsible for surface blasting operations in surface coal mining and reclamation operations or coal exploration operations.

(10) "Cabinet" is defined in KRS 350.010.

(11) "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.

(12) "CFR" means Code of Federal Regulations.

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

(14) "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 405 KAR Chapters 7 through 24 if the activity may cause any disturbance of the land surface or may cause any appreciable effect upon land, air, water, or other environmental resources.

(15) "Coal mine waste" means coal processing waste and underground development waste.

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

(17) "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.

(18) "Cumulative measurement period" means the period of time over which both cumulative production and cumulative revenue are measured.

(19) "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.

(20) "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.

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

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

(23) "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 405 KAR Chapter 10 is released.

(24) "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.

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

(26) "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 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 405 KAR Chapters 7 through 24.

(27) "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.

(28) "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, finances construction.

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

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

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

(32) "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.

(33) "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.

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

(35) "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.

(36) "KAR" means Kentucky administrative regulations.

(37) "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.

(38) "KRS" means Kentucky Revised Statutes.

(39) "Land use" means specific functions, uses, or management-related activities of an area, 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.

(40) "Mining area", as used in 405 KAR 7:035, means an individual excavation site or pit from which coal, other minerals, and overburden are removed.

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

(42) "MSHA" means Mine Safety and Health Administration.

(43) "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, 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.

(44) "Operations" is defined in KRS 350.010.

(45) "Operator" is defined in KRS 350.010.

(46) "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, 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.

(47) "OSM" means Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior.

(48) "Other mineral" means any commercially valuable substance mined for its mineral value, excluding coal, topsoil, waste, and fill material.

(49) "Overburden" is defined in KRS 350.010.

(50) "Performance bond" means a surety bond, a 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 KRS 350.700 through 350.755), by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the requirements of the permit and reclamation plan.

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

(52) "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.

(53) "Permittee" means an operator or a person holding or required by KRS Chapter 350 or 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 405 KAR Chapters 7 through 24 are satisfied.

(54) "Person" is defined in KRS 350.010.

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

(56) "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.

(57) "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.

(58) "Reclamation" is defined in KRS 350.010.

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

(60) "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 contiguous appendages 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 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.

(61) "SCS" means Soil Conservation Service.

(62) "Secretary" is defined in KRS 350.010.

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

(64) "Significant, imminent environmental harm" means 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 harm; or

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

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

(65) "Small operator", as used in 405 KAR 7:080, means an operator whose combined actual and attributed production of coal does not exceed 300,000 tons during any period of twelve (12) consecutive months.

(66) "SMCRA" means Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87), as amended.

(67) "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 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.

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

(69) "Surety bond" means an indemnity agreement in a sum certain, payable to the cabinet and 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.

(70) "Surface blasting operations" means the on-site storage, transportation, and use of explosives in association with coal exploration operations, surface mining activities, and surface disturbances of underground mining activities. The term shall be interpreted broadly and shall encompass activities including, but not limited to, the design of individual blasts, the implementation of blast designs, the initiation of blasts, the monitoring of airblast and ground vibration, and the use of protective measures such as access control and warning and all-clear signals.

(71) "Surface coal mining and reclamation operations" is defined in KRS 350.010.

(72) "Surface coal mining operations" is defined in KRS 350.010.

(73) "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.

(74) "Ton" means 2000 pounds avoirdupois (.90718 metric ton).

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

(76) "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.

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

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

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

(78) "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, 405 KAR Chapters 7 through 24, or permit conditions; or

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

(79) "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.

JOHN F. NICHOLS, JR., Secretary
FRANK DICKERSON, Commissioner

APPROVED BY AGENCY: November 25, 1991
FILED WITH LRC: November 27, 1991 at 3 p.m.

STATEMENT OF EMERGENCY
405 KAR 7:021E

This emergency administrative regulation repeals 405 KAR 7:020. It is necessary to promulgate this emergency administrative regulation because the Administrative Regulation Review Subcommittee has determined that the locations of the definitions in 405 KAR Chapters 7-24 do not conform to KRS Chapter 13A. By agreement with the Administrative Regulation Review Subcommittee, the definitions located in 405 KAR 7:020 and other regulations of 405 KAR Chapters 7-24 are being moved to new administrative regulations at the beginning of each chapter, namely 405 KAR 7:001, 8:001, 10:001, 12:001, 16:001, 18:001, 20:001 and 24:001, and 405 KAR 7:020 is being repealed because it is no longer necessary. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on November 25, 1991.

WALLACE G. WILKINSON, Governor
JOHN F. NICHOLS, JR., Secretary

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

405 KAR 7:021E. Repeal of 405 KAR 7:020.

RELATES TO: KRS Chapter 350, 7 CFR Part 657, 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, 7 CFR Part 657, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 USC 1253, 1255, 1291

EFFECTIVE: November 27, 1991

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to surface coal mining and reclamation operations under the permanent regulatory program. This administrative regulation repeals 405 KAR 7:020, which defines certain terms used in 405 KAR Chapters 7 through 24. 405 KAR 7:020 is no longer necessary because a new administrative regulation is being promulgated in each chapter of 405 KAR Chapters 7 through 24 that will contain the definitions for that chapter.

Section 1. 405 KAR 7:020 is hereby repealed.

JOHN F. NICHOLS, JR., Secretary
FRANK DICKERSON, Commissioner
APPROVED BY AGENCY: November 25, 1991
FILED WITH LRC: November 27, 1991 at 3 p.m.

STATEMENT OF EMERGENCY
405 KAR 8:001E

This emergency administrative regulation defines terms used in 405 KAR Chapter 8. It is necessary to promulgate this emergency administrative regulation because the Administrative Regulation Review Subcommittee has determined that the locations of the definitions in 405 KAR Chapters 7-24 do not conform to KRS Chapter 13A. By agreement with the Administrative Regulation Review Subcommittee, the definitions located in 405 KAR 7:020 and other regulations of 405 KAR Chapters 7-24 are being moved to new administrative regulations at the beginning of each chapter, namely 405 KAR 7:001, 8:001, 10:001, 12:001, 16:001, 18:001, 20:001 and 24:001, and 405 KAR 7:020 is being repealed. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on November 25, 1991.

WALLACE G. WILKINSON, Governor
JOHN F. NICHOLS, JR., Secretary

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

405 KAR 8:001E. Definitions for 405 KAR Chapter 8.

RELATES TO: KRS 146.410, Chapter 350, 7 CFR Part 657, 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, 7 CFR Part 657, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 USC 1253, 1255, 1291

EFFECTIVE: November 27, 1991

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to surface coal mining and reclamation operations under the permanent regulatory program. This regulation provides for the defining of certain essential terms used in 405 KAR Chapter 8.

Section 1. Definitions. (1) "Acid drainage" means water with a pH of less than six (6.0) and in which total acidity exceeds total alkalinity, discharged from an 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 if 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 area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, 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) "Applicant" means any person 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.

(7) "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 required, seeking approval for coal exploration.

(8) "Approximate original contour" is defined in KRS 350.010

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

(10) "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 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.

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

(12) "Cabinet" is defined in KRS 350.010.

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

(14) "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.

(15) "CFR" means Code of Federal Regulations.

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

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

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

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

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

(19) "Coal processing plant" means a facility where coal is subjected to chemical or physical processing or cleaning, concentrating, crushing, sizing, screening, or other processing or preparation including all associated support facilities including but not limited to: loading facilities; storage and stockpile facilities; sheds, shops, and other buildings; water treatment and water storage facilities; settling basins and impoundments; and coal processing and other waste disposal areas.

(20) "Coal processing waste" means materials which are separated from the product coal during the cleaning, concentrating, or other processing

or preparation of coal.

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

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

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

(24) "Complete and accurate application" means an application for permit approval, or approval for coal exploration if required, which the cabinet determines to contain all information required under, and necessary to comply with, KRS Chapter 350 and 405 KAR Chapters 7 through 24, in order to make decisions concerning its administrative and technical acceptability and whether a permit or exploration approval may be issued.

(25) "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.

(26) "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.

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

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

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

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

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

(32) "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.

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

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

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

(36) "Federal lands" means any lands, 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.

(37) "Forest land" means land used or managed for the long-term production of wood, wood fiber, or wood derived products.

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

(39) "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.

(40) "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.

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

(42) "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.

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

(44) "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 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. Lands 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.

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

(46) "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.

(47) "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.

(48) "Important stream" means 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, "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, September 13, 1991. This document is incorporated by reference, only for purposes of the definitions in this chapter. It may be reviewed, copied, 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.; 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.

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

(50) "Incidental boundary revision" means an extension to a permit area that is necessary for reasons unforeseen when the original permit application was prepared and that is small in relation to the original or amended permit area.

(51) "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.

(52) "Intermittent stream" means:

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

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

(54) "KAR" means Kentucky administrative regulations.

(55) "KRS" means Kentucky Revised Statutes.

(56) "Land use" means specific functions, uses, or management-related activities of an area, 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.

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

(58) "MRP" means mining and reclamation plan.

(59) "MSHA" means Mine Safety and Health Administration.

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

(61) "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, 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.

(62) "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.

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

(64) "Operations" is defined in KRS 350.010.

(65) "Operator" is defined in KRS 350.010.

(66) "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, 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.

(67) "OSM" means Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior.

(68) "Other mineral" means any commercially valuable substance mined for its mineral value, excluding coal, topsoil, waste, and fill material.

(69) "Overburden" is defined in KRS 350.010.

(70) "Owned or controlled" and "owns or controls" mean 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.

(71) "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.

(72) "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 runoff. The term does not include "intermittent stream" or "ephemeral stream."

(73) "Performance bond" means a surety bond, a 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 KRS 350.700 through 350.755), by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the requirements of the permit and reclamation plan.

(74) "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.

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

(76) "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.

(77) "Permittee" means an operator or a person holding or required by KRS Chapter 350 or 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 405 KAR Chapters 7 through 24 are satisfied.

(78) "Person" is defined in KRS 350.010.

(79) "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.

(80) "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.

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

(82) "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.

(83) "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.

(84) "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.

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

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

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

(88) "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.

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

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

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

(92) "Reclamation" is defined in KRS 350.010.

(93) "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.

(94) "Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetative ground cover, productivity, and plant species diversity that are produced naturally or by crop production methods approved by the cabinet.

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

(96) "Remining" means conducting surface coal mining and reclamation operations which affect previously mined areas.

(97) "Renewable resource lands."

(a) As used in 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 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.

(98) "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.

(99) "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 contiguous appendages 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 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.

(100) "SCS" means Soil Conservation Service.

(101) "Secretary" is defined in KRS 350.010.

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

(103) "Significant, imminent environmental harm" means 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 harm; or
2. May reasonably be expected to cause environmental 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.

(104) "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.

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

(106) "Small operator", as used in 405 KAR 8:030, Section 3(5) and 405 KAR 8:040, Section 3(5), is defined at KRS 350.450(4)(c).

(107) "SMCRA" means Surface Mining Control and

Reclamation Act of 1977 (Public Law 95-87), as amended.

(108) "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 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.

(109) "Soil survey" means a field and 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 soils for use. Soil surveys shall meet the standards of the National Cooperative Soil Survey.

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

(111) "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.

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

(113) A "stream or reach of stream with valuable environmental resources" means one that:

(a) 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;

(b) Is an intermittent or perennial stream that supports a high level of habitat development and quality as reflected by the integrity of fish or macroinvertebrate populations, as set forth in TRM #20; or

(c) Is an important stream.

(114) "Substantial legal and financial commitments" means significant investments, that have been made on the basis of a long-term coal contract, consisting of actual expenditures of substantial monies or execution of valid and binding contracts involving substantial monies for such things as power plants; railroads; coal handling, preparation, extraction, and storage facilities; and other capital-intensive

activities such as:

(a) 1. Improvement or modification of coal lands within, for access to, or in support of surface coal mining and reclamation operations in the petitioned area;

2. Acquisition of capital equipment for use in, for access to, or for use in support of surface coal mining and reclamation operations in the petitioned area; and

3. Exploration, mapping, surveying, and geological work, as well as expenditures of engineering and legal fees, associated with the acquisition of the property or preparation of an application to conduct surface coal mining and reclamation operations in the petitioned area.

(b) The costs of acquiring the coal in place or the right to mine such coal are not sufficient to constitute a substantial legal and financial commitment in the absence of other investments as described in paragraph (a) of this subsection.

(115) "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 activities, or to remove more than twenty-five (25) tons of coal.

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

(117) "Surety bond" means an indemnity agreement in a sum certain, payable to the cabinet and 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.

(118) "Surface coal mining and reclamation operations" is defined in KRS 350.010.

(119) "Surface coal mining operations" is defined in KRS 350.010.

(120) "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.

(121) "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 regulations for waste water and analyses (40 CFR 136).

(122) "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.

(123) "Ton" means 2000 pounds avoirdupois (.90718 metric ton).

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

(125) "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.

(126) "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.

(127) "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.

(128) "TRM" means Technical Reclamation Memorandum.

(129) "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.

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

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

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

(131) "USDA" means United States Department of Agriculture.

(132) "U.S. EPA" means United States Environmental Protection Agency (133) "USGS" means United States Geological Survey.

(134) "Valid existing rights" means:

(a) Except for haul roads, property rights in existence on August 3, 1977, that were created by a legally binding conveyance, lease, contract or other instrument which authorizes the applicant to produce coal and the person proposing to conduct a surface coal mining operation on the lands either:

1. Had been validly issued or had made a good faith effort to obtain, on or before August 3, 1977, all state and federal permits necessary to conduct surface coal mining operations on those lands, application for the permits being deemed to constitute good faith efforts to obtain the permits; or

2. Can demonstrate to the cabinet that the coal is both needed for, and immediately adjacent to, an ongoing surface coal mining operation for which all permits were obtained prior to August 3, 1977.

(b) For haul roads:

1. A recorded right-of-way, recorded easement, or a permit for coal haul road recorded as of August 3, 1977; or

2. Any other road in existence as of August 3, 1977.

(c) Valid existing rights does not mean the mere expectation of a right to conduct surface coal mining operations or the right to conduct underground coal mining.

(135) "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.

(136) "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.

(137) "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.

JOHN F. NICHOLS, JR., Secretary

FRANK DICKERSON, Commissioner

APPROVED BY AGENCY: November 25, 1991

FILED WITH LRC: November 27, 1991 at 3 p.m.

STATEMENT OF EMERGENCY 405 KAR 10:001E

This emergency administrative regulation defines terms used in 405 KAR Chapter 10. It is necessary to promulgate this emergency administrative regulation because the Administrative Regulation Review Subcommittee has determined that the locations of the definitions in 405 KAR Chapters 7-24 do not conform to KRS Chapter 13A. By agreement with the Administrative Regulation Review Subcommittee, the definitions located in 405 KAR 7:020 and other regulations of 405 KAR Chapters 7-24 are being moved to new administrative regulations at the beginning of each chapter, namely 405 KAR 7:001, 8:001, 10:001, 12:001, 16:001, 18:001, 20:001 and 24:001, and 405 KAR 7:020 is being repealed. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on November 25, 1991.

WALLACE G. WILKINSON, Governor

JOHN F. NICHOLS, JR., Secretary

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

405 KAR 10:001E. Definitions for 405 KAR Chapter 10.

RELATES TO: KRS Chapter 350, 7 CFR Part 657, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 40 CFR Part 136, 30 USC 1253, 1255, 1291

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.465, 7 CFR Part 657, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 40 CFR Part 136, 30 USC 1253, 1255, 1291

EFFECTIVE: November 27, 1991

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to surface coal mining and reclamation operations under the permanent regulatory program. This regulation provides for the defining of certain essential terms used in 405 KAR Chapter 10.

Section 1. Definitions. (1) "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.

(2) "Administrator" or "bond pool administrator", as used in 405 KAR 10:200, 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.

(3) "Affected area" means any land or water area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, 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.

(4) "Applicant", as used in 405 KAR 10:010, means any person 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 pursuant to KRS Chapter 350 and all applicable regulations.

(5) "Bond pool" or "Kentucky Bond Pool" means the voluntary alternative bonding program established at KRS 350.700 through 350.755.

(6) "Cabinet" is defined in KRS 350.010.

(7) "CFR" means Code of Federal Regulations.

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

(9) "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.

(10) "Commission" or "bond pool commission" means the body established at KRS 350.705.

(11) "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.

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

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

(14) "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 405 KAR Chapter 10 is released.

(15) "FDIC" means Federal Deposit Insurance Corporation.

(16) "Federal lands" means any lands, 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.

(17) "FSLIC" means Federal Savings and Loan Insurance Corporation.

(18) "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 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. Lands 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.

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

(20) "KAR" means Kentucky administrative regulations.

(21) "KRS" means Kentucky Revised Statutes.

(22) "Land use" means specific functions, uses, or management-related activities of an area, 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.

(23) "Month of operation," as used in 405 KAR 10:200, Section 7, 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.

(24) "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, 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.

(25) "Operations" is defined in KRS 350.010.

(26) "Operator" is defined in KRS 350.010.

(27) "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, 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.

(28) "Owned or controlled" and "owns or controls" mean 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.

(29) "Performance bond" means a surety bond, a 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 KRS 350.700 through 350.755), by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the requirements of the permit and reclamation plan.

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

(31) "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.

(32) "Permittee" means an operator or a person holding or required by KRS Chapter 350 or 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 405 KAR Chapters 7 through 24 are satisfied.

(33) "Person" is defined in KRS 350.010.

(34) "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.

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

(36) "Reclamation" is defined in KRS 350.010.

(37) "Secretary" is defined in KRS 350.010.

(38) "SMCRA" means Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87), as amended.

(39) "Surety bond" means an indemnity agreement in a sum certain, payable to the cabinet and 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.

(40) "Surface coal mining and reclamation operations" is defined in KRS 350.010.

(41) "Surface coal mining operations" is defined in KRS 350.010.

(42) "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 regulations for waste water and analyses (40 CFR 136).

(43) "Ton" means 2000 pounds avoirdupois (.90718 metric ton).

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

(45) "U.S. EPA" means United States Environmental Protection Agency.

(46) "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.

JOHN F. NICHOLS, JR., Secretary

FRANK DICKERSON, Commissioner

APPROVED BY AGENCY: November 25, 1991

FILED WITH LRC: November 27, 1991 at 3 p.m.

STATEMENT OF EMERGENCY 405 KAR 12:001E

This emergency administrative regulation defines terms used in 405 KAR Chapter 12. It is necessary to promulgate this emergency administrative regulation because the Administrative Regulation Review Subcommittee has determined that the locations of the definitions in 405 KAR Chapters 7-24 do not conform to KRS Chapter 13A. By agreement with the Administrative Regulation Review Subcommittee, the definitions located in 405 KAR 7:020 and other regulations of 405 KAR Chapters 7-24 are being moved to new administrative regulations at the beginning of each chapter, namely 405 KAR 7:001, 8:001, 10:001, 12:001, 16:001, 18:001, 20:001 and 24:001, and 405 KAR

7:020 is being repealed. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on November 25, 1991.

WALLACE G. WILKINSON, Governor

JOHN F. NICHOLS, JR., Secretary

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

405 KAR 12:001E. Definitions for 405 KAR Chapter 12.

RELATES TO: KRS Chapter 350, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 USC 1253, 1255, 1291
STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.465, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 USC 1253, 1255, 1291

EFFECTIVE: November 27, 1991

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to surface coal mining and reclamation operations under the permanent regulatory program. This regulation provides for the defining of certain essential terms used in 405 KAR Chapter 12.

Section 1. Definitions. (1) "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.

(2) "Affected area" means any land or water area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, 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.

(3) "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 required, seeking approval for coal exploration.

(4) "Cabinet" is defined in KRS 350.010.

(5) "CFR" means Code of Federal Regulations.

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

(7) "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 405 KAR Chapters 7 through 24 if the activity may cause any disturbance of the land surface or may cause any appreciable effect upon land, air, water, or other environmental resources.

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

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

(10) "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 405 KAR Chapter 10 is released.

(11) "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.

(12) "KAR" means Kentucky administrative regulations.

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

(14) "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, 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.

(15) "Operations" is defined in KRS 350.010.

(16) "Operator" is defined in KRS 350.010.

(17) "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, 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.

(18) "Performance bond" means a surety bond, a 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 KRS 350.700 through 350.755), by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the requirements of the permit and reclamation plan.

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

(20) "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.

(21) "Permittee" means an operator or a person holding or required by KRS Chapter 350 or 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 405 KAR Chapters 7 through 24 are satisfied.

(22) "Person" is defined in KRS 350.010.

(23) "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.

(24) "Reclamation" is defined in KRS 350.010.

(25) "Secretary" is defined in KRS 350.010.

(26) "Significant, imminent environmental harm" means 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 harm; or
2. May reasonably be expected to cause environmental 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.

(27) "Surface coal mining and reclamation operations" is defined in KRS 350.010.

(28) "Surface coal mining operations" is defined in KRS 350.010.

FRANK DICKERSON, Commissioner

JOHN F. NICHOLS, JR., Secretary

APPROVED BY AGENCY: November 25, 1991

FILED WITH LRC: November 27, 1991 at 3 p.m.

STATEMENT OF EMERGENCY 405 KAR 16:001E

This emergency administrative regulation defines terms used in 405 KAR Chapter 16. It is necessary to promulgate this emergency administrative regulation because the Administrative Regulation Review Subcommittee has determined that the locations of the definitions in 405 KAR Chapters 7-24 do not conform to KRS Chapter 13A. By agreement with the Administrative Regulation Review Subcommittee, the definitions located in 405 KAR 7:020 and other regulations of 405 KAR Chapters 7-24 are being moved to new administrative regulations at the beginning of each chapter, namely 405 KAR 7:001, 8:001, 10:001, 12:001, 16:001, 18:001, 20:001 and 24:001, and 405 KAR 7:020 is being repealed. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on November 25, 1991.

WALLACE G. WILKINSON, Governor
JOHN F. NICHOLS, JR., Secretary

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

405 KAR 16:001E. Definitions for 405 KAR Chapter 16.

RELATES TO: KRS Chapter 350c 7 CFR Part 657, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917c 30 USC 1253, 1255, 1291

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

EFFECTIVE: November 27, 1991

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to surface coal mining and reclamation operations under the permanent regulatory program. This regulation provides for the defining of certain essential terms used in 405 KAR Chapter 16.

Section 1. Definitions. (1) "Acid drainage" means water with a pH of less than six (6.0) and in which total acidity exceeds total alkalinity, discharged from an 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) "Affected area" means any land or water area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, 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.

(5) "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.

(6) "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 required, seeking approval for coal exploration.

(7) "Approximate original contour" is defined in KRS 350.010.

(8) "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.

(9) "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 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.

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

(11) "Blaster" means a person who is directly responsible for surface blasting operations in surface coal mining and reclamation operations or coal exploration operations.

(12) "Bond pool" or "Kentucky Bond Pool" means the voluntary alternative bonding program established at KRS 350.700 through 350.755.

(13) "Cabinet" is defined in KRS 350.010.

(14) "CFR" means Code of Federal Regulations.

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

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

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

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

(17) "Coal mine waste" means coal processing waste and underground development waste.

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

(19) "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.

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

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

(22) "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.

(23) "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.

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

(25) "dB" means decibels.

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

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

(28) "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 405 KAR Chapter 10 is released.

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

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

(31) "Durable rock" means rock that does not slake in water and that is not reasonably expected to degrade to such a size or condition as to block, cause failure of, or otherwise impair or restrict the effectiveness of the internal drainage system. The cabinet shall consider rock to be durable if it is demonstrated, to the satisfaction of the cabinet in the application, that the rock has an SDI

value of ninety (90) or greater as determined by the Kentucky Department of Transportation "Method for Determination of Stake Durability Index" (Kentucky Method 64-513-79), incorporated herein by reference. This document may be obtained from the Kentucky Transportation Cabinet, Division of Materials, Wilkinson Blvd., Frankfort, KY 40601; or the Kentucky Transportation Cabinet, Division of Management Services, State Office Building, Frankfort, KY 40601. It may be reviewed, copied, 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. The cabinet may accept other test methods of demonstrating that rock is durable if it is demonstrated to the satisfaction of the cabinet that the alternative test methods yield equivalent measure of durability based upon correlation of results with Kentucky Method 64-513-79.

(32) "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.

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

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

(35) "Fish and wildlife land use", as used in 405 KAR 16:210 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 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.

(36) "Forest land" means land used or managed for the long term production of wood, wood fiber, or wood derived products.

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

(38) "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.

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

(40) "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.

(41) "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.

(42) "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 uses.

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

(44) "Highwall remnant" means that portion of highwall that remains after backfilling and grading of a remining permit area.

(45) "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 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. Lands 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.

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

(47) "Hz" means hertz.

(48) "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.

(49) "Important stream" means 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, "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, September 13, 1991. This document is incorporated by reference, only for purposes of the definitions in this chapter. It may be reviewed, copied, 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.; 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.

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

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

(a) Extraction or transformation of materials for fabrication of products, wholesaling of products, or 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. Land used for facilities in support of commercial operations which is adjacent to or an integral part of these operations is also included.

(52) "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.

(53) "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 a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and groundwater discharge.

(54) "KAR" means Kentucky administrative regulations.

(55) "KPDES" means Kentucky Pollutant Discharge Elimination System.

(56) "KRS" means Kentucky Revised Statutes.

(57) "Land use" means specific functions, uses, or management-related activities of an area, 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.

(58) "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.

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

(60) "MRP" means mining and reclamation plan.

(61) "MSHA" means Mine Safety and Health Administration.

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

(63) "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, 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.

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

(65) "Operations" is defined in KRS 350.010.

(66) "Operator" is defined in KRS 350.010.

(67) "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, 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.

(68) "OSM" means Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior.

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

(70) "Overburden" is defined in KRS 350.010.

(71) "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.

(72) "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 runoff. The term does not include "intermittent stream" or "ephemeral stream."

(73) "Performance bond" means a surety bond, a 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 KRS 350.700 through 350.755), by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the requirements of the permit and reclamation plan.

(74) "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.

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

(76) "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.

(77) "Permittee" means an operator or a person holding or required by KRS Chapter 350 or 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 405 KAR Chapters 7 through 24 are satisfied.

(78) "Person" is defined in KRS 350.010.

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

(80) "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.

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

(82) "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.

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

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

(85) "RAM" means Reclamation Advisory Memorandum.

(86) "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.

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

(88) "Reclamation" is defined in KRS 350.010.

(89) "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.

(90) "Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetative ground cover, productivity, and plant species diversity that are produced naturally or by crop production methods approved by the cabinet.

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

(92) "Remining" means conducting surface coal mining and reclamation operations which affect previously mined areas.

(93) "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.

(94) "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 contiguous appendages 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 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.

(95) "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.

(96) "SCS" means Soil Conservation Service.

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

sedimentation pond.

(98) "Significant, imminent environmental harm" means 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 harm; or
2. May reasonably be expected to cause environmental harm at any time before the end of the reasonable abatement time that would be set by the cabinet's authorized agents pursuant to the provisions of KRS Chapter 350.

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

(99) "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.

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

(101) "SMCRA" means Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87), as amended.

(102) "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 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.

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

(104) "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.

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

(106) "Stream or reach of stream with valuable environmental resources" means one that:

(a) 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;

(b) Is an intermittent or perennial stream that supports a high level of habitat development and quality as reflected by the integrity of fish or macroinvertebrate populations, as set forth in TRM #20; or

(c) Is an important stream.

(107) "Surety bond" means an indemnity agreement in a sum certain, payable to the cabinet and 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.

(108) "Surface blasting operations" means the on-site storage, transportation, and use of explosives in association with coal exploration operations, surface mining activities, and surface disturbances of underground mining activities. The term shall be interpreted broadly and shall encompass activities including, but not limited to, the design of individual blasts, the implementation of blast designs, the initiation of blasts, the monitoring of airblast and ground vibration, and the use of protective measures such as access control and warning and all-clear signals.

(109) "Surface coal mining and reclamation operations" is defined in KRS 350.010.

(110) "Surface coal mining operations" is defined in KRS 350.010.

(111) "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.

(112) "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 regulations for waste water and analyses (40 CFR 136).

(113) "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.

(114) "Ton" means 2000 pounds avoirdupois (.90718 metric ton).

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

(116) "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.

(117) "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.

(118) "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.

(119) "TRM" means Technical Reclamation Memorandum.

(120) "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.

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

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

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

(122) "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.

(123) "U.S. EPA" means United States Environmental Protection Agency.

(124) "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.

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

(126) "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.

(127) "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.

FRANK DICKERSON, Commissioner
JOHN F. NICHOLS, Jr., Secretary

APPROVED BY AGENCY: November 25, 1991

FILED WITH LRC: November 27, 1991 at 3 p.m.

STATEMENT OF EMERGENCY 405 KAR 18:001E

This emergency administrative regulation defines terms used in 405 KAR Chapter 18. It is necessary to promulgate this emergency administrative regulation because the Administrative Regulation Review Subcommittee has determined that the locations of the definitions in 405 KAR Chapters 7-24 do not conform to KRS Chapter 13A. By agreement with the Administrative Regulation Review Subcommittee, the definitions located in 405 KAR 7:020 and other regulations of 405 KAR Chapters 7-24 are being moved to new administrative regulations at the beginning of each chapter, namely 405 KAR 7:001, 8:001, 10:001, 12:001, 16:001, 18:001, 20:001 and 24:001, and 405 KAR 7:020 is being repealed. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on November 25, 1991.

WALLACE G. WILKINSON, Governor
JOHN F. NICHOLS, JR., Secretary

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

405 KAR 18:001E. Definitions for 405 KAR Chapter 18.

RELATES TO: KRS Chapter 350, 7 CFR Part 657, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 USC 1253, 1255, 1291

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

EFFECTIVE: November 27, 1991

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to surface coal mining and reclamation operations under the permanent regulatory program. This regulation provides for the defining of certain essential terms used in 405 KAR Chapter 18.

Section 1. Definitions. (1) "Acid drainage" means water with a pH of less than six (6.0) and in which total acidity exceeds total alkalinity, discharged from an 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) "Affected area" means any land or water area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, 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.

(5) "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.

(6) "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 required, seeking approval for coal exploration.

(7) "Approximate original contour" is defined in KRS 350.010.

(8) "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.

(9) "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 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.

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

(11) "Blaster" means a person who is directly responsible for surface blasting operations in surface coal mining and reclamation operations or coal exploration operations.

(12) "Bond pool" or "Kentucky Bond Pool" means the voluntary alternative bonding program established at KRS 350.700 through 350.755.

(13) "Cabinet" is defined in KRS 350.010.

(14) "CFR" means Code of Federal Regulations.

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

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

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

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

(17) "Coal mine waste" means coal processing waste and underground development waste.

(18) "Coal processing plant" means a facility where coal is subjected to chemical or physical processing or cleaning, concentrating, crushing, sizing, 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.

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

(20) "Collateral bond" means an indemnity agreement in a sum certain payable to the cabinet executed by the permittee and which is supported by the deposit with the cabinet of

cash, negotiable certificates of deposit, or an irrevocable letter of credit of any bank organized and authorized to transact business in the United States.

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

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

(23) "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.

(24) "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.

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

(26) "dB" means decibels.

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

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

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

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

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

(32) "Durable rock" means rock that does not slake in water and that is not reasonably expected to degrade to such a size or condition as to block, cause failure of, or otherwise impair or restrict the effectiveness of the internal drainage system. The cabinet shall consider rock to be durable if it is demonstrated, to the satisfaction of the cabinet in the application, that the rock has an SDI value of ninety (90) or greater as determined by the Kentucky Department of Transportation

"Method for Determination of Slake Durability Index" (Kentucky Method 64-513-79), incorporated herein by reference. This document may be obtained from the Kentucky Transportation Cabinet, Division of Materials, Wilkinson Blvd., Frankfort, KY 40601; or the Kentucky Transportation Cabinet, Division of Management Services, State Office Building, Frankfort, KY 40601. It may be reviewed, copied, 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. The cabinet may accept other test methods of demonstrating that rock is durable if it is demonstrated to the satisfaction of the cabinet that the alternative test methods yield equivalent measure of durability based upon correlation of results with Kentucky Method 64-513-79.

(33) "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.

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

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

(36) "Fish and wildlife land use", as used in 405 KAR 16:210 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 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.

(37) "Forest land" means land used or managed for the long term production of wood, wood fiber, or wood derived products.

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

(39) "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.

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

(41) "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.

(42) "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.

(43) "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 uses.

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

(45) "Highwall remnant" means that portion of highwall that remains after backfilling and grading of a remining permit area.

(46) "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 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. Lands 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.

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

(48) "Hz" means hertz.

(49) "Important stream" means 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, "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, September 13, 1991. This document is incorporated by reference, only for purposes

of the definitions in this chapter. It may be reviewed, copied, 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.; 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.

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

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

(a) Extraction or transformation of materials for fabrication of products, wholesaling of products, or 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. Land used for facilities in support of commercial operations which is adjacent to or an integral part of these operations is also included.

(52) "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.

(53) "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 a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and groundwater discharge.

(54) "KAR" means Kentucky administrative regulations.

(55) "KPDES" means Kentucky Pollutant Discharge Elimination System.

(56) "KRS" means Kentucky Revised Statutes.

(57) "Land use" means specific functions, uses, or management-related activities of an area, 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.

(58) "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.

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

(60) "MRP" means mining and reclamation plan.

(61) "MSHA" means Mine Safety and Health Administration.

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

suitable for germination and growth.

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

(64) "Operations" is defined in KRS 350.010.

(65) "Operator" is defined in KRS 350.010.

(66) "OSM" means Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior.

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

(68) "Overburden" is defined in KRS 350.010.

(69) "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.

(70) "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 runoff. The term does not include "intermittent stream" or "ephemeral stream."

(71) "Performance bond" means a surety bond, a 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 KRS 350.700 through 350.755), by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the requirements of the permit and reclamation plan.

(72) "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.

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

(74) "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.

(75) "Permittee" means an operator or a person holding or required by KRS Chapter 350 or 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 405 KAR Chapters 7 through 24 are satisfied.

(76) "Person" is defined in KRS 350.010.

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

(78) "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.

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

(80) "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.

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

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

(83) "RAM" means Reclamation Advisory Memorandum.

(84) "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.

(85) "Reclamation" is defined in KRS 350.010.

(86) "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.

(87) "Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetative ground cover, productivity, and plant species diversity that are produced naturally or by crop production methods approved by the cabinet.

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

(89) "Remining" means conducting surface coal mining and reclamation operations which affect previously mined areas.

(90) "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.

(91) "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 contiguous appendages 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 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.

(92) "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.

(93) "SCS" means Soil Conservation Service.

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

(95) "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.

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

(97) "SMCRA" means Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87), as amended.

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

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

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

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

(100) "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.

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

(102) "Stream or reach of stream with valuable

environmental resources" means one that:

(a) 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;

(b) Is an intermittent or perennial stream that supports a high level of habitat development and quality as reflected by the integrity of fish or macroinvertebrate populations, as set forth in TRM #20; or

(c) Is an important stream.

(103) "Surety bond" means an indemnity agreement in a sum certain, payable to the cabinet and 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.

(104) "Surface blasting operations" means the on-site storage, transportation, and use of explosives in association with coal exploration operations, surface mining activities, and surface disturbances of underground mining activities. The term shall be interpreted broadly and shall encompass activities including, but not limited to, the design of individual blasts, the implementation of blast designs, the initiation of blasts, the monitoring of airblast and ground vibration, and the use of protective measures such as access control and warning and all-clear signals.

(105) "Surface coal mining and reclamation operations" is defined in KRS 350.010.

(106) "Surface coal mining operations" is defined in KRS 350.010.

(107) "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.

(108) "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 regulations for waste water and analyses (40 CFR 136).

(109) "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.

(110) "Ton" means 2000 pounds avoirdupois (.90718 metric ton).

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

(112) "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.

(113) "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.

(114) "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.

(115) "TRM" means Technical Reclamation Memorandum.

(116) "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.

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

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

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

(118) "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.

(119) "U.S. EPA" means United States Environmental Protection Agency.

(120) "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.

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

(122) "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.

(123) "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.

FRANK DICKERSON, Commissioner
JOHN F. NICHOLS, JR., Secretary

APPROVED BY AGENCY: November 25, 1991

FILED WITH LRC: November 27, 1991 at 3 p.m.

STATEMENT OF EMERGENCY 405 KAR 20:001E

This emergency administrative regulation defines terms used in 405 KAR Chapter 20. It is necessary to promulgate this emergency administrative regulation because the Administrative Regulation Review Subcommittee has determined that the locations of the definitions in 405 KAR Chapters 7-24 do not conform to KRS Chapter 13A. By agreement with the Administrative Regulation Review Subcommittee, the definitions located in 405 KAR 7:020 and other regulations of 405 KAR Chapters 7-24 are being moved to new administrative regulations at the beginning of each chapter, namely 405 KAR 7:001, 8:001, 10:001, 12:001, 16:001, 18:001, 20:001 and 24:001, and 405 KAR 7:020 is being repealed. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on November 25, 1991.

WALLACE G. WILKINSON, Governor
JOHN F. NICHOLS, JR., Secretary

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

405 KAR 20:001E. Definitions for 405 KAR Chapter 20.

RELATES TO: KRS Chapter 350, 7 CFR Part 657, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 USC 1253, 1255, 1291

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

EFFECTIVE: November 27, 1991

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to surface coal mining and reclamation operations under the permanent regulatory program. This regulation provides for the defining of certain essential terms used in 405 KAR Chapter 20.

Section 1. Definitions. (1) "Acid drainage" means water with a pH of less than six (6.0) and in which total acidity exceeds total alkalinity, discharged from an 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) "Affected area" means any land or water area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, 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.

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

(6) "Applicant" means any person(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.

(7) "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 required, seeking approval for coal exploration.

(8) "Approximate original contour" is defined in KRS 350.010.

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

(10) "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 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.

(11) "Bond pool" or "Kentucky Bond Pool" means the voluntary alternative bonding program established at KRS 350.700 through 350.755.

(12) "Cabinet" is defined in KRS 350.010.

(13) "CFR" means Code of Federal Regulations.

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

(15) "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 405 KAR Chapters 7 through 24 if the activity may cause any disturbance of the land surface or may cause any appreciable effect upon land, air, water, or other environmental resources.

(16) "Coal mine waste" means coal processing waste and underground development waste.

(17) "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.

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

(19) "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.

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

(21) "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.

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

(23) "Department" means the Department for

Surface Mining Reclamation and Enforcement.

(24) "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 405 KAR Chapter 10 is released.

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

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

(27) "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.

(28) "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.

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

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

(31) "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.

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

(33) "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 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. Lands 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.

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

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

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

(a) Extraction or transformation of materials for fabrication of products, wholesaling of products, or 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. Land used for facilities in support of commercial operations which is adjacent to or an integral part of these operations is also included.

(37) "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.

(38) "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 a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and groundwater discharge.

(39) "KAR" means Kentucky administrative regulations.

(40) "KRS" means Kentucky Revised Statutes.

(41) "Land use" means specific functions, uses, or management-related activities of an area, 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.

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

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

(44) "Operations" is defined in KRS 350.010.

(45) "Operator" is defined in KRS 350.010.

(46) "OSM" means Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior.

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

(48) "Overburden" is defined in KRS 350.010.

(49) "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 runoff. The term does not include "intermittent stream" or "ephemeral stream."

(50) "Performance bond" means a surety bond, a 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 KRS 350.700 through 350.755), by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the requirements of the permit and reclamation plan.

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

(52) "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.

(53) "Permittee" means an operator or a person holding or required by KRS Chapter 350 or 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 405 KAR Chapters 7 through 24 are satisfied.

(54) "Person" is defined in KRS 350.010.

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

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

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

(58) "RAM" means Reclamation Advisory Memorandum.

(59) "Reclamation" is defined in KRS 350.010.

(60) "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.

(61) "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.

(62) "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 contiguous appendages 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 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.

(63) "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.

(64) "SCS" means Soil Conservation Service.

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

(66) "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.

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

(68) "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 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.

(69) "Soil survey" means a field and 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 soils for use. Soil surveys shall meet the standards of the National Cooperative Soil Survey.

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

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

(72) "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 activities, or to remove more than twenty-five (25) tons of coal.

(73) "Surety bond" means an indemnity agreement in a sum certain, payable to the cabinet and 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.

(74) "Surface coal mining and reclamation operations" is defined in KRS 350.010.

(75) "Surface coal mining operations" is defined in KRS 350.010.

(76) "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 regulations for waste water and analyses (40 CFR 136).

(77) "Ton" means 2000 pounds avoirdupois (.90718 metric ton).

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

(79) "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.

(80) "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.

(81) "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.

(82) "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.

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

(a) Surface operations incident to underground extraction of coal or in situ processing, including construction, use, maintenance, and reclamation of roads, aboveground repair areas, storage areas, processing areas, and shipping areas; areas upon which are sited support facilities including hoist and ventilating

ducts; areas utilized for the disposal and storage of waste; and areas on which materials incident to underground mining operations are placed; and

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

(84) "U.S. EPA" means United States Environmental Protection Agency.

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

FRANK DICKERSON, Commissioner

JOHN F. NICHOLS, JR., Secretary

APPROVED BY AGENCY: November 25, 1991

FILED WITH LRC: November 27, 1991 3 p.m.

STATEMENT OF EMERGENCY 405 KAR 24:001E

This emergency administrative regulation defines terms used in 405 KAR Chapter 24. It is necessary to promulgate this emergency administrative regulation because the Administrative Regulation Review Subcommittee has determined that the locations of the definitions in 405 KAR Chapters 7-24 do not conform to KRS Chapter 13A. By agreement with the Administrative Regulation Review Subcommittee, the definitions located in 405 KAR 7:020 and other regulations of 405 KAR Chapters 7-24 are being moved to new administrative regulations at the beginning of each chapter, namely 405 KAR 7:001, 8:001, 10:001, 12:001, 16:001, 18:001, 20:001 and 24:001, and 405 KAR 7:020 is being repealed. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on November 25, 1991.

WALLACE G. WILKINSON, Governor

JOHN F. NICHOLS, JR., Secretary

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

405 KAR 24:001E. Definitions for 405 KAR Chapter 24.

RELATES TO: KRS Chapter 350, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 USC 1253, 1255, 1291

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

EFFECTIVE: November 27, 1991

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

Section 1. Definitions. (1) "Affected area" means any land or water area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, 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.

(2) "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.

(3) "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 required, seeking approval for coal exploration.

(4) "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.

(5) "Area", as used in 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.

(6) "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 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.

(7) "Cabinet" is defined in KRS 350.010.

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

(9) "CFR" means Code of Federal Regulations.

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

(11) "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 405 KAR Chapters 7 through 24 if the activity may cause any disturbance of the land surface or may cause any appreciable effect upon land, air, water, or other environmental resources.

(12) "Coal mine waste" means coal processing waste and underground development waste.

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

(14) "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.

(15) "Complete and accurate application" means an application for permit approval, or approval for coal exploration if required, which the cabinet determines to contain all information required under, and necessary to comply with, KRS Chapter 350 and 405 KAR Chapters 7 through 24, in order to make decisions concerning its administrative and technical acceptability and whether a permit or exploration approval may be issued.

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

(17) "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 405 KAR Chapter 10 is released.

(18) "Federal lands" means any lands, 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.

(19) "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.

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

(21) "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.

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

(23) "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 significance to native Americans or religious groups, and properties for which historic designation is pending.

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

(25) "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.

(26) "KAR" means Kentucky administrative regulations.

(27) "KRS" means Kentucky Revised Statutes.

(28) "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.

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

(30) "Operations" is defined in KRS 350.010.

(31) "Operator" is defined in KRS 350.010.

(32) "Overburden" is defined in KRS 350.010.

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

(34) "Person" is defined in KRS 350.010.

(35) "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.

(36) "Petitioner" means a person who submits a petition under 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 405 KAR Chapter 24 to terminate such a designation.

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

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

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

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

(41) "RAM" means Reclamation Advisory Memorandum.

(42) "Reclamation" is defined in KRS 350.010.

(43) "Renewable resource lands" means geographic areas which contribute significantly to the long-range productivity of water supplies or of food or fiber products, these lands to include aquifers and aquifer recharge areas.

(44) "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 contiguous appendages 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 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.

(45) "Secretary" is defined in KRS 350.010.

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

(47) "SMCRA" means Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87), as amended.

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

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

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

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

(50) "Substantial legal and financial commitments" means significant investments, that have been made on the basis of a long-term coal contract, consisting of actual expenditures of substantial monies or execution of valid and binding contracts involving substantial monies for such things as power plants; railroads; coal handling, preparation, extraction, and storage facilities; and other capital-intensive activities such as:

1. Improvement or modification of coal lands within, for access to, or in support of surface coal mining and reclamation operations in the petitioned area;

2. Acquisition of capital equipment for use in, for access to, or for use in support of surface coal mining and reclamation operations in the petitioned area; and

3. Exploration, mapping, surveying, and geological work, as well as expenditures of engineering and legal fees, associated with the acquisition of the property or preparation of an application to conduct surface coal mining and reclamation operations in the petitioned area.

(b) The costs of acquiring the coal in place or the right to mine such coal are not sufficient to constitute a substantial legal and financial commitment in the absence of other investments as described in paragraph (a) of this subsection.

(51) "Surface coal mining and reclamation operations" is defined in KRS 350.010.

(52) "Surface coal mining operations" is defined in KRS 350.010.

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

(54) "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.

(55) "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.

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

- (a) Surface operations incident to underground extraction of coal or in situ processing, including construction, use, maintenance, and reclamation of roads, aboveground repair areas,

storage areas, processing areas, and shipping areas; areas upon which are sited support facilities including hoist and ventilating ducts; areas utilized for the disposal and storage of waste; and areas on which materials incident to underground mining operations are placed; and

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

(57) "Valid existing rights" means:

- (a) Except for haul roads, property rights in existence on August 3, 1977, that were created by a legally binding conveyance, lease, contract or other instrument which authorizes the applicant to produce coal and the person proposing to conduct a surface coal mining operation on the lands either:

1. Had been validly issued or had made a good faith effort to obtain, on or before August 3, 1977, all state and federal permits necessary to conduct surface coal mining operations on those lands, application for the permits being deemed to constitute good faith efforts to obtain the permits; or

2. Can demonstrate to the cabinet that the coal is both needed for, and immediately adjacent to, an ongoing surface coal mining operation for which all permits were obtained prior to August 3, 1977.

(b) For haul roads:

1. A recorded right-of-way, recorded easement, or a permit for coal haul road recorded as of August 3, 1977; or

2. Any other road in existence as of August 3, 1977.

(c) Valid existing rights does not mean the mere expectation of a right to conduct surface coal mining operations or the right to conduct underground coal mining.

(58) "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.

FRANK DICKERSON, Commissioner
JOHN F. NICHOLS, JR., Secretary

APPROVED BY AGENCY: November 25, 1991

FILED WITH LRC: November 27, 1991 at 3 p.m.

STATEMENT OF EMERGENCY
806 KAR 17:066E

This emergency administrative regulation prescribes minimum standards for Medicare supplement insurance policies. Pursuant to 42 USC 1395ss, as amended by the Omnibus Budget Reconciliation Act of 1990 (PL 101-508), states are required to adopt new regulations for minimum standards for Medicare supplement insurance. The federal laws in question are already in effect and insurers need immediate guidance concerning compliance with these laws. This is particularly true in light of the fact that many policies are purchased on a calendar year basis and the beginning of the calendar year is in the very near future. Therefore, an emergency administrative regulation under KRS 13A.190 is necessary to provide guidelines for review of Medicare supplement insurance policies by the Department of Insurance. This emergency regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Administrative Regulations Compiler on December 2, 1991.

WALLACE G. WILKINSON, Governor
ELIZABETH P. WRIGHT, Commissioner
THEODORE T. COLLEY, Secretary

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

806 KAR 17:066E. Medicare supplement insurance policies.

RELATES TO: KRS 304.12-020, 304.14-500 to 304.14-550, 304.17-305, 304.17-318, 304.18-036, 304.18-095, 304.18-110, 304.32-157, 304.32-165, 304.32-270, 304.38-193, 304.38-196, 304.38-200
STATUTORY AUTHORITY: KRS 304.2-110, 304.14.510, 304.32-250, 304.38-150

EFFECTIVE: December 6, 1991

NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.14-510 provides that the Commissioner of Insurance may make reasonable regulations establishing minimum standards for Medicare supplement insurance policies. KRS 304.32-250 provides that the Commissioner of Insurance may make reasonable regulations which he deems necessary for the proper administration of KRS 304.32. KRS 304.38-150 provides that the Commissioner of Insurance may make reasonable regulations which he deems necessary for the proper administration of KRS Chapter 304.38. This regulation establishes minimum standards for Medicare supplement insurance policies.

Section 1. Definitions. For the purposes of this regulation:

- (1) "Applicant" means:
 - (a) In the case of an individual Medicare supplement policy, the person who seeks to contract for insurance benefits; and
 - (b) In the case of a group Medicare supplement policy, the proposed certificate holder.
- (2) "Certificate" means any certificate delivered to or issued under a group Medicare supplement policy[, which certificate has been delivered or issued for delivery in this state].

(3) "Certificate form" means the form on which the certificate is delivered or issued for delivery by the insurer.

(4) [(3)] "Commissioner" means the Commissioner of the Kentucky Department of Insurance.

(5) [(4)] "Insurance policy" means an insurance policy, a subscriber contract issued by a nonprofit hospital, medical-surgical, dental, and health service corporation, and an enrollee contract issued by a health maintenance organization.

(6) "Issuer" includes insurance companies, fraternal benefit societies, health care service plans, health maintenance organizations, and any other entity delivery or issuing for delivery in this state Medicare supplement policies or certificates.

(7) "Medicare" means the "Health Insurance for the Aged Act," "Title XVIII of the Social Security Amendments of 1965," as then constituted or later amended.

(8) [(5)] "Medicare supplement policy" means a group or individual policy of insurance, a subscriber contract issued by a nonprofit hospital, medical-surgical, dental, and health service corporation, or an enrollee contract issued by a health maintenance organization, other than as policy issued pursuant to a contract under Section 1876 or Section 1833 of the federal Social Security Act (42 USC Section 1395 et seq.) or an issued policy under a demonstration project authorized pursuant to amendments to the federal Social Security Act, which is advertised, marketed, or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical, or surgical expenses of persons eligible for Medicare by reason of age.

(9) "Policy form" means the form on which the policy is delivered or issued for delivery by the issuer.

Section 2. Purpose, Applicability, and Scope.

(1) The purpose of this regulation is to provide for the reasonable standardization of coverages and simplification of terms and benefits of Medicare supplement policies, to facilitate public understanding and comparison of such policies, to eliminate provisions contained in such policies which may be misleading or confusing in connection with the purchase of such policies or in connection with the settlement of claims, and to provide for full disclosure in the sale of health insurance coverages to persons eligible for Medicare by reason of age.

(2) Except as otherwise specifically provided in Sections 11 and 12 [8 and 9] of this regulation, this regulation shall apply to:

- (a) All Medicare supplement policies delivered or issued for delivery in this state on or after the effective date of this regulation; and
- (b) All certificates issued under group Medicare supplement policies, which certificates have been delivered or issued for delivery in this state.

(3) This regulation shall not apply to a policy or contract of one (1) or more employers or labor organizations, or of the trustees of a fund established by one (1) or more employers or labor organizations, or combination thereof, for employees or former employees, or a combination thereof, or for members or former members, or a combination thereof, of the labor organizations.

Section 3. Policy Definitions and Terms. No [insurance] policy or certificate shall be advertised, solicited, or issued for delivery in Kentucky as a Medicare supplement policy or certificate unless the policy or certificate contains [subject to this regulation shall contain] terms or definitions which [do not] conform to those in this section.

(1) "Accident," "accidental injury," or "accidental means" shall be defined to employ "result" language and shall not include words which establish an accidental means test or use words such as "external, violent, visible wounds" or similar words of description or characterization.

(a) The definition shall not be more restrictive than the following: "injury or injuries for which benefits are provided means accidental bodily injury sustained by the injured person which is a direct result of an accident, independent of disease or bodily infirmity or any other cause, and occurs while insurance coverage is in force."

(b) Such definition may provide that injury shall not include injuries for which benefits are provided or available under any workers' compensation, employer's liability, or similar law, or motor vehicle no-fault insurance plan, unless such a definition is prohibited by law.

(2) "Benefit period," or "Medicare benefit period," shall not be defined as more restrictive than as that defined in the Medicare program.

(3) "Convalescent nursing home," "extended care facility," or "skilled nursing facility" shall not be defined more restrictively than as defined in the Medicare program. [in relation to its status, facilities, and available resources.]

[(a) A definition of such home or facility shall not be more restrictive than one requiring that it:]

[1. Be operated pursuant to law;]

[2. Be approved for payment of Medicare benefits or be qualified to receive such approval, if so requested;]

[3. Be primarily engaged in providing, in addition to room and board accommodations, skilled nursing care under the supervision of a duly licensed physician;]

[4. Provide continuous twenty-four (24) hours a day nursing service by or under the supervision of a registered graduate professional nurse (R.N.); and]

[5. Maintain a daily medical record of each patient.]

[(b) The definition of such home or facility may provide that such term not be inclusive of:]

[1. Any home, facility, or part thereof used primarily for rest;]

[2. A home or facility for the aged or for the care of drug addicts or alcoholics; or]

[3. A home or facility used primarily for the care and treatment of mental diseases or disorders, or custodial or educational care.]

(4) "Health care expenses" means expenses of health maintenance organizations associated with the delivery of health care services, which expenses are analogous to incurred losses of insurers.

(a) These [Such] expenses shall not include:

1. [(a)] Home office and overhead costs;

2. [(b)] Advertising costs;

3. [(c)] Commissions and other costs of acquiring insurance business;

4. [(d)] Taxes;

5. [(e)] Capital costs;

6. [(f)] Administrative costs; and [or]

7. [(g)] Claims processing costs.

(5) "Hospital" may be defined in relation to its status, facilities, and available services or to reflect its accreditation by the Joint Commission on Accreditation of Hospitals, but shall not be defined more restrictively than as defined in the Medicare program.

[(a) The definition of the term "hospital" shall not be more restrictive than one requiring that the hospital:]

[1. Be an institution operated pursuant to law;]

[2. Be primarily and continuously engaged in providing or operating, either on its premises or in facilities available to the hospital on a prearranged basis and under the supervision of a staff of duly licensed physicians, medical, diagnostic, and major surgical facilities for the medical care and treatment of sick or injured persons on an inpatient basis for which charges made; and]

[3. Provide twenty-four (24) hour nursing service by or under the supervision of registered graduate professional nurses (R.N.s.)]

[(b) The definition of the term "hospital" may state that such term shall not include:]

[1. Convalescent homes, convalescent, rest, or nursing facilities;]

[2. Facilities primarily affording custodial, educational, or rehabilitative care;]

[3. Facilities for the aged, drug addicts, or alcoholics; or]

[4. Any military or veterans hospital or soldiers home or any hospital contracted for or operated by any national government or agency thereof for the treatment of members or ex-members of the armed forces, except for services rendered on an emergency basis where a legal liability exists for charges made to the individual for such services.]

(6) "Medicare" shall be defined in the policy and certificate. Medicare may be substantially defined as "the Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as then constituted or later amended," or Title I, Part I of P.L. 89-97, as enacted by the 89th Congress of the United States of America and properly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof, or words of similar import.

(7) "Medicare eligible expenses" shall mean [health care] expenses of the kinds covered by Medicare, to the extent recognized as reasonable and medically necessary by Medicare. [Payment of benefits by insurers for Medicare eligible expenses may be conditioned upon the same or less restrictive payment conditions, including determinations of medical necessity as are applicable to Medicare claims.]

[(8) "Mental or nervous disorders" shall not be defined more restrictively than a definition including neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder of any kind.]

[(9) "Nurses" may be defined so that the description of nurse is restricted to a type of nurse, such as a registered graduate professional nurse (R.N.), a licensed practical nurse (L.P.N.), or a licensed vocational nurse (L.V.N.). If the words "nurse," "trained nurse," or "registered nurse," are used without specific instruction, then the use of such terms requires

the insurer to recognize the services of any individual who qualified under such terminology in accordance with the statutes and regulations administered by the Kentucky Board of Nursing.]

(8) [(10)] "Physician" shall not [may] be defined more restrictively than as defined in the Medicare program. [by including the words such as "duly qualified physician" or "duly licensed physician." The use of such terms requires an insurer to recognize and to accept, to the extent of its obligations under the contract, all providers of medical care and treatment when such services are within the scope of the provider's licensed authority and are provided pursuant to applicable laws.]

(9) [(11)] "Sickness" shall not be defined to be more restrictive than the following: "sickness means illness [sickness] or disease of an insured person which first manifests itself after the effective date of insurance and while the insurance is in force." The definition may be further modified to exclude sicknesses or diseases for which benefits are provided under any workers' compensation, occupational disease, or employer's liability, or similar law.

Section 4. [Prohibited] Policy Provisions. (1) Except for permitted preexisting condition clauses as described in Sections 5(1)(a) and 6(1)(a) of this regulation, no policy or certificate may be advertised, solicited or issued for delivery in this state as a Medicare supplement policy if such policy or certificate contains limitations or exclusions on coverage that are more restrictive than those of Medicare.

(2) [(1)] A Medicare supplement policy shall not contain a probationary or elimination period.

[(2)] No insurance policy may be advertised, solicited, or issued for delivery in this state as a Medicare supplement policy if such policy limits or excludes coverage by type of illness, or accident, treatment, or medical condition, except as follows:]

[(a)] Foot care in connection with corns, calluses, flat feet, fallen arches, weak feet, chronic foot strain, or symptomatic complaints of the feet;]

[(b)] Mental or emotional disorders, alcoholism and drug addiction, unless coverage for such conditions is purchased as an option;]

[(c)] Illness, treatment, or medical condition arising out of:]

[1. War or act of war (whether declared or undeclared); participation in a felony, riot, or insurrection; service in the armed forces or units auxiliary thereto;]

[2. Suicide (sane or insane), attempted suicide, or intentionally self-inflicted injury; or]

[3. Aviation.]

[(d)] Cosmetic surgery, except that cosmetic surgery shall not include reconstructive surgery when such service is incidental to or follows surgery resulting from trauma, infection, or other diseases of the involved body part;]

[(e)] Care in connection with the detection and correction of manual or mechanical means of structural imbalance, distortion, or subluxation in the human body for purposes of removing nerve interference and the effect thereof, or such interference is the result of or related to distortion, misalignment, or subluxation of or in the vertebral column, except that such coverage must be provided to the extent required by law;]

[(f)] Treatment provided in a governmental hospital; benefits provided under Medicare or other governmental program (except Medicaid), any state or federal workers' compensation, employer's liability for occupational disease, or any motor vehicle no-fault insurance law (except where prohibited by law); services rendered by employees of hospitals, laboratories, or other institutions; services performed by a member of the covered person's immediate family and services for which no charge is normally made in the absence of insurance;]

[(g)] Dental care or treatment;]

[(h)] Eye glasses, hearing aids, and examination for the prescription or fitting thereof;]

[(i)] Rest cures, custodial care, transportation, and routine physical examinations; or]

[(j)] Territorial limitations outside the United States.]

[However, Medicare supplement policies shall not contain, when issued, limitations or exclusions of the type enumerated in paragraphs (a), (e), (i), or (j) of this subsection that are more restrictive than those of Medicare. Medicare supplement policies may exclude coverage for any expense to the extent of any benefit available to the insured under Medicare.]

(3) A [No] Medicare supplement policy or certificate shall not [may] use waivers to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions.

[(4)] The terms "Medicare supplement," "medigap," and words of similar import shall not be used unless the policy is issued in compliance with KRS 304.14-500 to 304.14-550 and this regulation.]

(4) [(5)] No Medicare supplement insurance policy in force in this state shall contain benefits which duplicate benefits provided by Medicare.

[Section 5. Benefit Conversion Requirements. (1) Effective January 1, 1990, no Medicare supplement insurance policy, contract, or certificate in force in Kentucky shall contain benefits which duplicate benefits provided by Medicare.]

[(2)] Benefits eliminated by operation of the Medicare Catastrophic Coverage Act of 1988 transition provisions shall be restored.]

[(3)] For Medicare supplement policies subject to the minimum standards adopted by the states pursuant to the Medicare Catastrophic Coverage Act of 1988, the minimum benefits shall be:]

[(a)] Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period.]

[(b)] Coverage for either all or none of the Medicare Part A inpatient deductible amount.]

[(c)] Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days.]

[(d)] Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage is ninety (90) percent of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days.]

[(e) Coverage under Medicare Part A for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations or already paid for under Part B.]

[(f) Coverage for the coinsurance amount of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out of pocket amount equal to Medicare Part B deductible.]

[(g) Effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations), unless replaced in accordance with federal regulations or already paid for under Part A, subject to the Medicare deductible amount.]

Section 5. [6.] Minimum Benefit Standards. (1) A [An insurance] policy or certificate shall not be advertised, solicited, or issued for delivery in Kentucky as a Medicare supplement policy or certificate if it does not meet or exceed the following minimum standards. These are minimum standards and do not preclude the inclusion of other provisions or benefits which are consistent with these standards. This section applies to Medicare supplement policies issued prior to January 1, 1992.

(2) [(1)] General standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this regulation.

(a) A Medicare supplement policy or certificate shall not exclude or limit benefits [deny a claim] for losses incurred more than six (6) months from the effective date of coverage because it involved [for] a preexisting condition. The policy or certificate shall not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage.

(b) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(c) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with these [such] changes.

(d) A "noncancellable," "guaranteed renewable," or "noncancellable and guaranteed renewable" Medicare supplement policy shall not:

1. Provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than nonpayment of premium; or

2. Be cancelled or nonrenewed by the insurer solely on the grounds of deterioration of health.

(e) 1. Except as authorized by the commissioner, an issuer [insurer] shall neither cancel nor nonrenew a Medicare supplement policy or certificate for any reason other than nonpayment of premium or material misrepresentation.

2. If a group Medicare supplement insurance

policy is terminated by the group policyholder and not replaced as provided in subparagraph 4 of this paragraph, the issuer [insurer] shall offer certificate holders an individual Medicare supplement policy. The issuer [insurer] shall offer the certificate holder at least the following choices:

a. An individual Medicare supplement policy currently offered by the issuer having comparable benefits to those contained in the terminated group Medicare supplement policy [which provides for continuation of the benefits contained in the group policy]; and

b. An individual Medicare supplement policy which provides only such benefits as are required to meet the minimum standards as defined in Section 6(2) of this regulation.

3. If membership in the group is terminated, the insurer shall:

a. Offer the certificate holder the conversion opportunities described in subparagraph 2 of this paragraph; or

b. Offer the certificate holder continuation of coverage under the group policy.

4. If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the succeeding insurer shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new group policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

(f) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or to payment of the maximum benefits.

(2) Minimum benefit standards.

(a) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(b) Coverage for either all or none of Medicare Part A inpatient hospital deductible amount;

(c) Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days;

(d) Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of ninety (90) percent of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days;

(e) Coverage under Medicare Part A for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations or already paid for under Part B; and

(f) Coverage for the coinsurance amount of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out of pocket amount equal to the Medicare Part B deductible maximum benefit.

(g) Effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations), unless replaced in accordance with federal regulations or already paid for under Part A, subject to the Medicare deductible amount.

[(4) Medicare eligible expenses. Medicare eligible expenses shall mean health care expenses of the kinds covered by Medicare, to the extent recognized as reasonable by Medicare. Payment of benefits by insurers for Medicare eligible expenses may be conditioned upon the same or less restrictive payment conditions, including determinations of medical necessity, as are applicable to Medicare claims.]

Section 6. Benefit Standards for Policies or Certificates Issued or Delivered on or after January 1, 1992. The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in Kentucky on or after January 1, 1992. A policy or certificate shall not be advertised, solicited, delivered, or issued for delivery in Kentucky as a Medicare supplement policy or certificate unless it complies with these benefit standards.

(1) General standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this regulation:

(a) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition. The policy or certificate shall not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage.

(b) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents, and shall not contain a probationary or elimination period.

(c) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost-sharing amounts under Medicare shall be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with such changes.

(d) A Medicare supplement policy or certificate shall not provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium.

(e) Each Medicare supplement policy shall be guaranteed renewable; and

1. The issuer shall not cancel or nonrenew the policy solely on the ground of health status of the individual; and

2. The issuer shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.

3. If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under subparagraph 5 of this paragraph, the issuer shall offer

certificateholders an individual Medicare supplement policy which (at the option of the certificateholder):

a. Provides for continuation of the benefits contained in the group policy; or

b. Provides for benefits which otherwise meet the requirements of this subsection.

4. If an individual is a certificate holder in a group Medicare supplement policy and the individual terminates membership in the group, the issuer shall offer continuation and conversion coverages in accordance with KRS 304.18-110 and subparagraph 3 of this paragraph.

5. If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the succeeding issuer shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

(f) Termination of a Medicare supplement policy or certificate shall be without prejudice or any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits.

(g)1. A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificateholder for the period (not to exceed twenty-four (24) months) in which the policyholder or certificateholder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the policyholder or certificateholder notifies the issuer of such policy or certificate within ninety (90) days after the date the individual becomes entitled to such assistance. Upon receipt of timely notice, the issuer shall return to the policyholder or certificateholder that portion of the premium attributable to the period of Medicaid eligibility, subject to adjustment for paid claims.

2. If the suspension occurs and if the policyholder or certificateholder loses entitlement to medical assistance, the policy or certificate shall be automatically reinstituted (effective as of the date of termination of the entitlement to medical assistance) as of the termination of the entitlement if the policyholder or certificateholder provides notice of loss of the entitlement within ninety (90) days after the date of the loss and pays the premium attributable to the period, effective as of the date of termination of the entitlement.

3. Reinstitution of coverages:

(i) Shall not provide for any waiting period with respect to treatment of preexisting conditions;

(ii) Shall provide for coverage which is substantially equivalent to coverage in effect before the date of suspension; and

(iii) Shall provide for classification of premiums on terms at least as favorable to the policyholder or certificateholder as the premium classification terms that would have applied to the policyholder or certificateholder had the

coverage not been suspended.

(2) Standards for basic ("core") benefits common to all benefit plans. Every issuer shall make available a policy or certificate including only the following basic "core" package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other Medicare supplement insurance benefit plans in addition to the basic "core" package, but not in lieu thereof.

(a) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(b) Coverage of Part A Medicare eligible expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used;

(c) Upon exhaustion of the Medicare hospital inpatient coverage including the lifetime reserve days, coverage of the Medicare Part A eligible expenses for hospitalization paid at the diagnostic related group (DRG) day outlier per diem or other appropriate standard of payment, subject to a lifetime maximum benefit of an additional 365 days;

(d) Coverage under Medicare Parts A and B for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations; and

(e) Coverage for the coinsurance amount of Medicare eligible expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible.

(3) Standards for additional benefits. The following additional benefits shall be included in Medicare supplement benefit Plans "B" through "J" only as provided by Section 7 of this regulation.

(a) Medicare Part A deductible: coverage for all of the Medicare Part A inpatient hospital deductible amount per benefit period;

(b) Skilled nursing facility care: coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for posthospital skilled nursing facility care eligible under Medicare Part A;

(c) Medicare Part B deductible: coverage for all of the Medicare Part B deductible amount per calendar year regardless of hospital confinement;

(d) Eighty (80) percent of the Medicare Part B excess charges: coverage for eighty (80) percent of the difference between the actual Medicare Part B charges as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge;

(e) 100 percent of the Medicare Part B excess charges: coverage for all of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge;

(f) Basic outpatient prescription drug benefit: coverage for fifty (50) percent of outpatient prescription drug charges, after a \$250 calendar year deductible, to a maximum of \$1,250 in benefits received by the insured per calendar year, to the extent not covered by Medicare.

(g) Extended outpatient prescription drug benefit: coverage for fifty (50) percent of

outpatient prescription drug charges, after a \$250 calendar year deductible to a maximum of \$3,000 in benefits received by the insured per calendar year, to the extent not covered by Medicare.

(h) Medically necessary emergency care in a foreign country: coverage to the extent not covered by Medicare for eighty (80) percent of the billed charges for Medicare-eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first sixty (60) consecutive days of each trip outside the United States, subject to a calendar year deductible of \$250, and a lifetime maximum benefit of \$50,000. For purposes of this benefit, "emergency care" shall mean care needed immediately because of an injury or an illness of sudden and unexpected onset.

(i) Preventive medical care benefit: coverage for the following preventive health services:

1. An annual clinical preventive medical history and physical examination that may include tests and services from subparagraph 2 of this paragraph and patient education to address preventive health care measures.

2. Any one (1) or a combination of the following preventive screening tests or preventive services, the frequency of which is considered medically appropriate:

a. Fecal occult blood test and/or digital rectal examination;

b. Mammogram;

c. Dipstick urinalysis for hematuria, bacteriuria and proteinuria;

d. Pure tone (air only) hearing screening test, administered or ordered by a physician;

e. Serum cholesterol screening (every five (5) years);

f. Thyroid function test; or

g. Diabetes screening.

3. Influenza vaccine administered at any appropriate time during the year and tetanus and diphtheria booster (every ten (10) years).

4. Any other tests or preventive measure determined appropriate by the attending physician.

Reimbursement shall be for the actual charges up to 100 percent of the Medicare-approved amount for each service, as if Medicare were to cover the service as identified in American Medical Association Current Procedural Terminology (AMA CPT) codes, to a maximum of \$120 annually under this benefit. This benefit shall not include payment for any procedure covered by Medicare.

(j) At-home recovery benefit: coverage for services to provide short-term, at-home assistance with activities of daily living for those recovering from an illness, injury, or surgery.

1. For purposes of this benefit, the following definitions shall apply:

a. "Activities of daily living" include, but are not limited to bathing, dressing, personal hygiene, transferring, eating, ambulating, assistance with drugs that are normally self-administered, and changing bandages or other dressings.

b. "Care provider" means a duly qualified or licensed home health aide/homemaker, personal care aide or nurse provided through a licensed home health care agency or referred by a

licensed referral agency or licensed nurses registry.

c. "Home" shall mean any place used by the insured as a place of residence, provided that such place would qualify as a residence for home health care services covered by Medicare. A hospital or skilled nursing facility shall not be considered the insured's place of residence.

d. "At-home recovery visit" means the period of a visit required to provide at-home recovery care, without limit on the duration of the visit, except each consecutive four (4) hours in a twenty-four (24) hour period of services provided by a care provider is one (1) visit.

2. Coverage requirements and limitations:

a. At-home recovery services provided must be primarily services which assist in activities of daily living.

b. The insured's attending physician must certify that the specific type and frequency of at-home recovery services are necessary because of a condition for which a home care plan of treatment was approved by Medicare.

c. Coverage is limited to:

(i) No more than the number and type of at-home recovery visits certified as necessary by the insured's attending physician. The total number of at-home recovery visits shall not exceed the number of Medicare-approved home health care visits under a Medicare-approved home care plan of treatment.

(ii) The actual charges for each visit up to a maximum reimbursement of forty (40) dollars per visit.

(iii) \$1,600 per calendar year.

(iv) Seven (7) visits in any one (1) week.

(v) Care furnished on a visiting basis in the insured's home.

(vi) Services provided by a care provider as defined in this section.

(vii) At-home recovery visits while the insured is covered under the policy or certificate and not otherwise excluded.

(viii) At-home recovery visits received during the period the insured is receiving Medicare-approved home care services or no more than eight (8) weeks after the service date of the last Medicare-approved home health care visit.

3. Coverage is excluded for:

a. Home care visits paid for by Medicare or other government programs; and

b. Care provided by family members, unpaid volunteers, or providers who are not care providers.

(k) New or innovative benefits: an issuer may, with the prior approval of the commissioner, offer policies or certificates with new or innovative benefits in addition to the benefits provided in a policy or certificate that otherwise complies with the applicable standards. New or innovative benefits may include benefits that are appropriate to Medicare supplement insurance, new or innovative, not otherwise available, cost-effective, and offered in a manner which is consistent with the goal of a simplification of Medicare supplement policies.

Section 7. Standard Medicare Supplement Benefit Plans. (1) An issuer shall make available to each prospective policyholder and certificateholder a policy form or certificate form containing only the basic "core" benefits, as defined in Section 6(2) of this regulation.

(2) Groups, packages, or combinations of Medicare supplement benefits other than those listed in this section shall not be offered for sale in this state, except as may be permitted in Sections 6(3)(k) and 8 of this regulation.

(3) Benefit plans shall be uniform in structure, language, designation, and format to the standard benefit Plans "A" through "J" listed in this subsection and conform to the definitions in Section 8 of this regulation. Each benefit shall be structured in accordance with the format provided in Section 6(2) and (3) of this regulation and list the benefits in the order shown in this subsection. For purposes of this section, "structure, language, and format" means style, arrangement and overall content of a benefit.

(4) An issuer may use, in addition to the benefit plan designations required in subsection (3) of this section, other designations to the extent permitted by law.

(5) Make-up of benefit plans:

(a) Standardized Medicare supplement benefit Plan "A" shall be limited to the basic ("core") benefits common to all benefit plans, as defined in Section 6(2) of this regulation.

(b) Standardized Medicare supplement benefit Plan "B" shall include only the following: the core benefit as defined in Section 6(2) of this regulation, plus the Medicare Part A deductible as defined in Section 6(3)(a) of this regulation.

(c) Standardized Medicare supplement benefit Plan "C" shall include only the following: the core benefit as defined in Section 6(2) of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, and medically necessary emergency care in a foreign country as defined in Section 6(3)(a), (b), (c), and (h) of this regulation, respectively.

(d) Standardized Medicare supplement benefit Plan "D" shall include only the following: the core benefit as defined in Section 6(2) of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country, and the at-home recovery benefit as defined in Section 6(3)(a), (b), (h), and (j) of this regulation, respectively.

(e) Standardized Medicare supplement benefit Plan "E" shall include only the following: the core benefit as defined in Section 6(2) of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country, and preventive medical care as defined in Section 6(3)(a), (b), (h), and (i) of this regulation, respectively.

(f) Standardized Medicare supplement benefit Plan "F" shall include only the following: the core benefit as defined in Section 6(2) of this regulation, plus the Medicare Part A deductible, the skilled nursing facility care, the Part B deductible, 100 percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in Section 6(3)(a), (b), (c), (f), and (h) of this regulation, respectively.

(g) Standardized Medicare supplement benefit Plan "G" shall include only the following: the core benefit as defined in Section 6(2) of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, eighty (80) percent of the Medicare Part B excess charges, medically necessary emergency care in a foreign

country, and the at-home recovery benefit as defined in Section 6(3)(a), (b), (d), (h), and (j) of this regulation, respectively.

(h) Standardized Medicare supplement benefit Plan "H" shall consist of only the following: the core benefit as defined in Section 6(2) of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, basic prescription drug benefit, and medically necessary emergency care in a foreign country as defined in Section 6(3)(a), (b), (f), and (h) of this regulation, respectively.

(i) Standardized Medicare supplement benefit Plan "I" shall consist of only the following: the core benefit as defined in Section 6(2) of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, 100 percent of the Medicare Part B excess charges, basic prescription drug benefit, medically necessary emergency care in a foreign country, and at-home recovery benefit as defined in Section 6(3)(a), (b), (e), (f), (h), and (j) of this regulation, respectively.

(j) Standardized Medicare supplement benefit Plan "J" shall consist of only the following: the core benefit as defined in Section 6(2) of this regulation, plus the Medicare part A deductible, skilled nursing facility care, Medicare Part B deductible, 100 percent of the Medicare Part B excess charges, extended prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care, and at-home recovery benefit as defined in Section 6(3)(a), (b), (c), (e), (g), (h), (i), and (j) of this regulation, respectively.

Section 8. Medicare Select Policies and Certificates. (1)(a) This section shall apply to Medicare select policies and certificates, as defined in this section.

(b) No policy or certificate may be advertised as a Medicare select policy or certificate unless it meets the requirements of this section.

(2) For the purpose of this section:

(a) "Complaint" means any dissatisfaction expressed by an individual concerning a Medicare select issuer or its network providers.

(b) "Grievance" means dissatisfaction expressed in writing by an individual insured under a Medicare select policy or certificate with the administration, claims practices, or provision of services concerning a Medicare select issuer or its network providers.

(c) "Medicare select issuer" means an issuer offering, or seeking to offer, a Medicare select policy or certificate.

(d) "Medicare select policy" or "Medicare select certificate" means respectively a Medicare supplement policy or certificate that contains restricted network provisions.

(e) "Network provider" means a provider of health care, or a group of providers of health care, which has entered into a written agreement with the issuer to provide benefits insured under a Medicare select policy.

(f) "Restricted network provision" means any provision which conditions the payment of benefits, in whole or in part, on the use of network providers.

(g) "Service area" means the geographic area approved by the commissioner within which an issuer is authorized to offer a Medicare select policy.

(3) The commissioner may authorize an issuer

to offer a Medicare select policy or certificate, pursuant to this section and Section 4358 of the Omnibus Budget Reconciliation Act (OBRA) of 1990, if the commissioner finds that the issuer has satisfied all of the requirements of this regulation.

(4) A Medicare select issuer shall not issue a Medicare select policy or certificate in this state until its plan of operation has been approved by the commissioner.

(5) A Medicare select issuer shall file a proposed plan of operation with the commissioner in a format prescribed by the commissioner. The plan of operation shall contain at least the following information:

(a) Evidence that all covered services that are subject to restricted network provisions are available and accessible through network providers, including a demonstration that:

1. Covered services can be provided by network providers with reasonable promptness with respect to geographic location, hours of operation, and after-hour care. The hours of operation and availability of after-hour care shall reflect usual practice in the local area. Geographic availability shall reflect the usual travel times within the community.

2. The number of network providers in the service area is sufficient, with respect to current and expected policyholders, either:

a. To deliver adequately all services that are subject to a restricted network provision; or
b. To make appropriate referrals.

3. There are written agreements with network providers describing specific responsibilities.

4. Emergency care is available twenty-four (24) hours per day and seven (7) days per week.

5. In the case of covered services that are subject to a restricted network provision and are provided on a prepaid basis, there are written agreements with network providers prohibiting the providers from billing or otherwise seeking reimbursement from or recourse against any individual insured under a Medicare select policy or certificate. This paragraph shall not apply to supplemental charges or coinsurance amounts as stated in the Medicare select policy or certificate.

(b) A statement or map providing a clear description of the service area.

(c) A description of the grievance procedure to be utilized.

(d) A description of the quality assurance program, including:

1. The formal organizational structure;

2. The written criteria for selection, retention and removal of network providers; and

3. The procedures for evaluating quality of care provided by network providers, and the process to initiate corrective action when warranted.

(e) A list and description, by specialty, of the network providers.

(f) Copies of the written information proposed to be used by the issuer to comply with paragraph (9) of this subsection.

(g) Any other information requested by the commissioner.

(6)(a) A Medicare select issuer shall file any proposed changes to the plan of operation, except for changes to the list of network providers, with the commissioner prior to implementing any changes. Any changes shall be considered approved by the commissioner thirty (30) days after filing unless specifically

disapproved by the commissioner.

(b) An updated list of network providers shall be filed with the commissioner at least quarterly.

(7) A Medicare select policy or certificate shall not restrict payment for covered services provided by nonnetwork providers if:

(a) The services are for symptoms requiring emergency care or are immediately required for an unforeseen illness, injury, or a condition; and

(b) It is not reasonable to obtain these services through a network provider.

(8) A Medicare select policy or certificate shall provide payment for full coverage under the policy for covered services that are not available through network providers.

(9) A Medicare select issuer shall make full and fair disclosure in writing of the provisions, restrictions, and limitations of the Medicare select policy or certificate to each applicant. This disclosure shall include at least the following:

(a) An outline of coverage sufficient to permit the applicant to compare the coverage and premiums of the Medicare select policy or certificate with:

1. Other Medicare supplement policies or certificates offered by the issuer; and

2. Other Medicare select policies or certificates.

(b) A description (including address, phone number, and hours of operation) of the network providers, including primary care physicians, specialty physicians, hospitals, and other providers.

(c) A description of the restricted network provisions, including payments for coinsurance and deductibles when providers other than network providers are utilized.

(d) A description of coverage for emergency and urgently needed care and other out-of-service area coverage.

(e) A description of limitations on referrals to restricted network providers and to other providers.

(f) A description of the policyholder's rights to purchase any other Medicare supplement policy or certificate otherwise offered by the issuer.

(g) A description of the Medicare select issuer's quality assurance program and grievance procedure.

(10) Prior to the sale of a Medicare select policy or certificate, a Medicare select issuer shall obtain from the applicant a signed and dated form stating that the applicant has received the information provided pursuant to subsection (9) of this section and that the applicant understands the restrictions of the Medicare select policy or certificate.

(11) A Medicare select issuer shall have and use procedures for hearing complaints and resolving written grievances from the subscribers. These procedures shall be aimed at mutual agreement for settlement and may include arbitration procedures.

(a) The grievance procedure shall be described in the policy and certificates and in the outline of coverage.

(b) At the time the policy or certificate is issued, the issuer shall provide detailed information to the policyholder describing how a grievance may be registered with the issuer.

(c) Grievances shall be considered in a timely manner and shall be transmitted to appropriate

decision-makers who have authority to fully investigate the issue and take corrective action.

(d) If a grievance is found to be valid, corrective action shall be taken promptly.

(e) All concerned parties shall be notified about the results of a grievance.

(f) The issuer shall report no later than each March 31st to the commissioner regarding its grievance procedure. The report shall be in a format prescribed by the commissioner and shall contain the number of grievances filed in the past year and a summary of the subject, nature and resolution of such grievances.

(12) At the time of initial purchase, a Medicare select issuer shall make available to each applicant for a Medicare select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate otherwise offered by the issuer.

(13)(a) At the request of an individual insured under a Medicare select policy or certificate, a Medicare select issuer shall make available to the individual insured the opportunity to purchase a Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make these policies or certificates available without requiring evidence of insurability after the Medicare supplement policy or certificate has been in force for six (6) months.

(b) For the purpose of this subsection, a Medicare supplement policy or certificate shall be considered to have comparable or lesser benefits unless it contains one (1) or more significant benefits not included in the Medicare select policy or certificate being replaced. For the purposes of this paragraph, a significant benefit means coverage for the Medicare Part A deductible, coverage for prescription drugs, coverage for at-home recovery services, or coverage for Part B excess charges.

(14) Medicare select policies and certificates shall provide for continuation of coverage in the event the Secretary of the United States Department of Health and Human Services determines that Medicare select policies and certificates issued pursuant to this section should be discontinued due to either the failure of the Medicare select program to be reauthorized under law or its substantial amendment.

(a) Each Medicare select issuer shall make available to each individual insured under a Medicare select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make such policies and certificates available without requiring evidence of insurability.

(b) For the purposes of this subsection, a Medicare supplement policy or certificate shall be considered to have comparable or lesser benefits unless it contains one (1) or more significant benefits not included in the Medicare select policy or certificate being replaced. For the purposes of this paragraph, a significant benefit means coverage for the Medicare Part A deductible, coverage for prescription drugs, coverage for at-home recovery services, or coverage for Part B excess

charges.

(15) A Medicare select issuer shall comply with reasonable requests for data made by state or federal agencies, including the United States Department of Health and Human Services, for the purpose of evaluating the Medicare select program.

Section 9. Open Enrollment. (1) No issuer shall deny or condition the issuance or effectiveness of any Medicare supplement policy or certificate available for sale in Kentucky, nor discriminate in the pricing of a Medicare supplement policy or certificate because of the health status, claims experience, receipt of health care, or medical condition of an applicant where an application for such policy or certificate is submitted during the six (6) month period beginning with the first month in which an individual (who is sixty-five (65) years of age or older) first enrolled for benefits under Medicare Part B. Each Medicare supplement policy and certificate currently available from an insurer shall be made available to all applicants who qualify under this subsection without regard to age.

(2) Subsection (1) of this section shall not be construed as preventing the exclusion of benefits under a policy, during the first six (6) months, based on a preexisting condition for which the policyholder or certificateholder received treatment or was otherwise diagnosed during the six (6) months before it became effective.

Section 10. [7.] Standards for Claims Payment. (1) An issuer shall comply with section 1882(e)(3) of the Social Security Act (as enacted by section 4081(b)(2)(C) of the Omnibus Budget Reconciliation Act of 1987, PL No. 100-203) by:

(a) Accepting a notice from a Medicare carrier on dually assigned claims submitted by participating physicians and suppliers as a claim for benefits in place of any other claim form otherwise required and making a payment determination on the basis of the information contained in that notice;

(b) Notifying the participating physician or supplier and the beneficiary of the payment determination;

(c) Paying the participating physician or supplier directly;

(d) Furnishing, at the time of enrollment, each enrollee with a card listing the policy name, number, and a central mailing address to which notices from a Medicare carrier may be sent;

(e) Paying user fees for claim notices that are transmitted electronically or otherwise; and

(f) Providing to the Secretary of the United States Department of Health and Human Services, at least annually, a central mailing address to which all claims may be sent by Medicare carriers. [Under Section 4081 of the Omnibus Budget Reconciliation Act of 1987 (PL 100-203). (1) Every person providing Medicare supplement policies shall comply with all provisions of Section 4081 of the Omnibus Budget Reconciliation Act of 1987 (PL 100-203).]

(2) Compliance with the requirements set forth in subsection (1) of this section shall [must] be certified on the Medicare Supplement Insurance Experience Reporting Form.

Section 11. [8.] Loss Ratio Standards and Refund or Credit of Premium. (1) Loss ratio standards. A Medicare supplement policy form or certificate form shall not be delivered or issued for delivery in Kentucky unless it can be expected, as estimated [policies shall return to policyholders in the form of aggregate benefits under the policy,] for the entire period for which rates are computed to provide coverage, to return to policyholders and certificateholders in the form of aggregate benefits (not including anticipated refunds or credits) provided under the policy form or certificate form:

1. At least seventy-five (75) percent of the aggregate amount of premiums earned in the case of group policies; or

2. At least sixty-five (65) percent of the aggregate amount of premiums earned in the case of individual policies, calculated on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis, and earned premiums for such period and in accordance with accepted actuarial principles and practices. [.]

[(a) At least seventy-five (75) percent of the aggregate amount of premiums earned in the case of group policies; and]

[(b) At least sixty (60) percent of the aggregate amount of premiums earned in the case of individual policies.]

[(c) All filings and rate schedules shall demonstrate that actual and expected losses in relation to premiums comply with the requirements of this section.]

(b) All filings of rates and rating schedules shall demonstrate that expected claims in relation to premiums comply with the requirements of this section when combined with actual experience to date. Filings of rate revisions shall also demonstrate that the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage can be expected to meet the appropriate loss ratio standards.

(c) For purposes of applying subsection (1)(a) of this section and Section 3(c) of this regulation only, policies issued as a result of solicitations of individuals through the mails or by mass media advertising (including both print and broadcast advertising) shall be deemed to be individual policies.

(2) Refund or credit calculation.

(a) An issuer shall collect and file with the commissioner by May 31 of each year the data contained in the reporting form contained in Appendix A for each type in a standard Medicare supplement benefit plan.

(b) If on the basis of the experience as reported the benchmark ratio since inception (ratio 1) exceeds the adjusted experience ratio since inception (ratio 3), then a refund of credit calculation is required. The refund calculation shall be done on a statewide basis for each type in a standard Medicare supplement benefit plan. For purposes of the refund or credit calculation, experience on policies issued within the reporting year shall be excluded.

(c) A refund or credit shall be made only when the benchmark loss ratio exceeds the adjusted experience loss ratio and the amount to be refunded or credited exceeds a de minimis level. The refund shall include interest from the end of the calendar year to the date of the refund

or credit at a rate specified by the Secretary of the United States Department of Health and Human Services, but shall not be less than the average rate of interest for thirteen (13) week treasury notes. A refund or credit against premiums due shall be made by September 30 following the experience year upon which the refund or credit is based.

(3) [(2)] Annual filing of premium rates. An issuer of [Every person providing] Medicare supplement policies and certificates issued before or after January 1, 1992, in this state shall file annually its rates, rating schedule, and supporting documentation, including ratios of incurred losses to earned premiums by [number of years of] policy duration for approval by the commissioner in accordance with the filing requirements and procedures prescribed by the commissioner. The supporting documentation shall also demonstrate in accordance with actuarial standards of practice using reasonable assumptions that the appropriate loss ratio standards can be expected to be met over the entire period for which rates are computed. The demonstration shall exclude active life reserves. An expected third year loss ratio which is greater than or equal to the applicable percentage shall be demonstrated for policies or certificates in force less than three (3) years. [demonstrating that it is in compliance with the foregoing applicable loss ratio standards and that the period for which the policy is rated is reasonable in accordance with accepted actuarial principles and experience.]

[(3) For the purposes of this section, policy forms shall be deemed to comply with the loss ratio standards if:]

[(a) For the most recent year, the ratio of incurred losses to earned premiums for policies or certificates which have been in force for three (3) years or more is greater than or equal to the applicable percentages contained in this section; and]

[(b) The expected losses in relation to premiums over the entire period for which the policy is rated comply with the requirements of this section.]

[An expected third year loss ratio which is greater than or equal to the applicable percentage shall be demonstrated for policies or certificates in force less than three (3) years.]

(a) [(4)] As soon as practicable prior to the effective date of enhancements in Medicare benefits [changes], every issuer of [person providing] Medicare supplement policies or certificates in Kentucky shall file with the commissioner, in accordance with applicable filing procedures:

1. [(a)] Appropriate premium adjustments necessary to produce loss ratios as [originally] anticipated for the current premium for the applicable Medicare supplement policies or certificates. [Such] Supporting documents as necessary to justify the adjustment shall accompany the filing. An issuer [Every person providing Medicare supplement policies to residents of Kentucky] shall make [such] premium adjustments as are necessary to produce an expected loss ratio under the [such] policies and certificates as will conform to the minimum loss ratio standards for Medicare supplement policies and which are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the issuer for [such] Medicare

supplement policies or certificates. No premium adjustment which would modify the loss ratio experience under the policy other than the adjustments described in this subsection should be made with respect to a policy at any time other than upon its renewal date or anniversary date. If an issuer fails to make premium adjustments acceptable to the commissioner, he may order premium adjustments, refunds, or premium credit deemed necessary to achieve the loss ratios required by this section. [Premium adjustments shall be in the form of refunds or premium credits and shall be made no later than upon renewal if a credit is given, or within sixty (60) days of the renewal date or anniversary date if a refund is provided to the insured or other person paying the premium. Premium adjustments shall be calculated for the period commencing with Medicare benefit changes; and]

(b) Any appropriate riders, endorsements, or policy forms needed to accomplish the Medicare supplement policy or certificate [insurance] modifications necessary to eliminate benefit duplications with Medicare. These [Any such] riders, endorsements, or policy forms shall provide a clear description of the Medicare supplement insurance benefits provided by the Medicare supplement policy or certificate.

(4) Public hearings. The commissioner may conduct a public hearing to gather information concerning a request by an issuer for an increase in a rate for a policy form or certificate form issued before or after January 1, 1992, if the experience of the form for the previous reporting period is not in compliance with the applicable loss ratio standard. The determination of compliance is made without consideration of any refund or credit for the reporting period. Public notice of the hearing shall be furnished in accordance with KRS Chapter 304.2.

Section 12. Filing and Approval of Policies and Certificates and Premium Rates. (1) An issuer shall not deliver or issue for delivery a policy or certificate to a resident of this state unless the policy form or certificate form has been filed with and approved by the commissioner in accordance with filing requirements and procedures prescribed by the commissioner.

(2) An issuer shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule, and supporting documentation have been filed with and approved by the commissioner in accordance with the filing requirements and procedures prescribed by the commissioner.

(3)(a) Except as provided in paragraph (b) of this subsection, an issuer shall not file for approval more than one (1) form of a policy or certificate of each type for each standard Medicare supplement benefit plan.

(b) An issuer may offer, with the approval of the commissioner, up to four (4) additional policy forms or certificate forms of the same type for the same standard Medicare supplement benefit plan, one (1) for each of the following cases:

1. The inclusion of new or innovative benefits;
2. The addition of either direct response or agent marketing methods;
3. The addition of either guaranteed issue or underwritten coverage; and

4. The offering of coverage to individuals eligible for Medicare by reason of disability.

(c) For the purposes of this section, a "type" means an individual policy, a group policy, an individual Medicare select policy, or a group Medicare select policy.

(4)(a) Except as provided in subparagraph 1 of this paragraph, an issuer shall continue to make available for purchase any policy form or certificate form issued after January 1, 1992, that has been approved by the commissioner. A policy form or certificate form shall not be considered to be available for purchase unless the issuer has actively offered it for sale in the previous twelve (12) months.

1. An issuer may discontinue the availability of a policy form or certificate form if the issuer provides to the commissioner in writing its decision at least thirty (30) days prior to discontinuing the availability of the form of the policy or certificate. After receipt of the notice by the commissioner, the issuer shall no longer offer for sale the policy form or certificate form in this state.

2. An issuer that discontinues the availability of a policy form or certificate form pursuant to subparagraph 1 of this paragraph shall not file for approval a new policy form or certificate form of the same type for the same standard Medicare supplement benefit plan as the discontinued form for a period of five (5) years after the issuer provides notice to the commissioner of the discontinuance. The period of discontinuance may be reduced if the commissioner determines that a shorter period is appropriate.

(b) The sale or other transfer of Medicare supplement business to another issuer shall be considered a discontinuance for the purposes of this subsection.

(c) A change in the rating structure or methodology shall be considered a discontinuance under paragraph (a) of this subsection unless the issuer complies with the following requirements:

1. The issuer provides an actuarial memorandum, in a form and manner prescribed by the commissioner, describing the manner in which the revised rating methodology and resultant rates differ from the existing rating methodology and resultant rates; and

2. The issuer does not subsequently put into effect a change of rates or rating factors that would cause the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum to change. The commissioner may approve a change to the differential which is in the public interest.

(5)(a) Except as provided in paragraph (b) of this subsection, the experience of all policy forms or certificate forms of the same type in a standard Medicare supplement benefit plan shall be combined for purposes of the refund or credit calculation prescribed in Section 11 of this regulation.

(b) Forms assumed under an assumption reinsurance agreement shall not be combined with the experience of other forms for purposes of the refund or credit calculation.

[Section 9. Filing Requirements for Out-of-state Group Policies. All group Medicare supplement policies and all certificates used under such policies in this state shall not be

used in this state until filed with and approved by the commissioner.]

Section 13. [10.] Permitted Compensation Arrangements. (1) An issuer [insurer] or other entity may provide commission or other compensation to an agent or other representative for the sale of a Medicare supplement policy or certificate only if the first year commission or other first year compensation is no more than 200 percent of the commission or other compensation paid for selling or servicing the policy or certificate in the second year or period.

(2) The commission or other compensation provided in subsequent (renewal) years must be the same as that provided in the second year or period and shall [must] be provided for not less than five (5) [a reasonable number of renewal] years.

(3) No issuer or other entity shall provide compensation to its agents or other producers and no agent or producer shall receive compensation greater than the renewal compensation payable by the replacing issuer [insurer] on renewal policies or certificates if an existing policy or certificate is replaced [unless benefits of the new policy or certificate are clearly and substantially greater than the benefits under the replaced policy].

(4) For purposes of this section, "compensation" includes pecuniary or nonpecuniary remuneration of any kind relating to the sale or renewal of the policy or certificate including, but not limited to, bonuses, gifts, prizes, awards, and finders' fees.

Section 14. [11.] Required Disclosure Provisions. (1) General rules.

(a) Medicare supplement policies and certificates shall include a renewal or continuation provision. The language or specifications of such provision must be consistent with the type of insurance policy issued. The [Such] provision shall be appropriately captioned and shall appear on the first page of the policy, and shall include any reservation by the issuer of the right to change premiums and any automatic renewal premium increases on the insured's age.

(b) Except for riders or endorsements by which the issuer [insurer] effectuates a request made in writing by the insured, exercises a specifically reserved right under a Medicare supplement policy, or is required to reduce or eliminate benefits to avoid duplication of Medicare benefits, all riders or endorsements added to a Medicare supplement policy after the date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require a signed acceptance by the insured. After the date of policy or certificate issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term shall [must] be agreed to in writing signed by the insured, unless the benefits are required by the minimum standards for Medicare supplement policies, or if the increased benefits or coverage is required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, such premium charge shall be set

forth in the policy.

(c) [A] Medicare supplement policies or certificates shall not provide [policy which provides] for the payment of benefits based on standards described as "usual and customary," "reasonable and customary," or words of similar import[, shall include a definition of such terms and an explanation of such terms in its accompanying outline of coverage].

(d) If a Medicare supplement policy or certificate contains any limitations with respect to preexisting conditions, these [such] limitations shall [must] appear as a separate paragraph of the policy and be labeled as "preexisting condition limitations."

(e) Medicare supplement policies and [or] certificates shall have a notice prominently printed on the first page of the policy or certificate or attached thereto stating in substance that the policyholder or certificate holder shall have the right to return the policy or certificate within at least thirty (30) days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the insured is not satisfied for any reason.

(f) Issuers of [Insurers issuing] insurance policies and certificates thereunder covering accident and sickness and hospital or medical expenses on an expense incurred or indemnity basis, other than incidentally, to persons eligible for Medicare by reason of age shall provide to these [all] applicants a Medicare supplement buyer's guide in the form developed jointly by the National Association of Insurance Commissioners and the Health Care Financing Administration and in a type size no smaller than twelve (12) point type. Delivery of the buyer's guide shall be made whether or not the [such] policies or certificates are advertised, solicited, or issued as Medicare supplement policies as defined in this regulation. Delivery of the buyer's guide shall be made to the applicant at the time of application and acknowledgment of receipt of the buyer's guide shall be obtained by the insurer, except that direct response issuers [insurers] shall deliver the buyer's guide to the applicant upon request, but not later than the time the policy is delivered.

(2) Notice requirements.

(a) As soon as practicable, but no later than thirty (30) days prior to the annual effective date of any Medicare benefit changes, an issuer [every insurer providing coverage to a resident of Kentucky under a Medicare supplement policy] shall notify its insureds of modifications it has made to Medicare supplement policies or certificates. The [Such] notice shall be in a format acceptable to the commissioner. The [For the years 1989 and 1990, and if prescription drugs are covered in 1991, such notice shall be in the format prescribed in Appendices A, B, and

C. In addition, such] notice shall:

1. Include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the Medicare supplement insurance policy or certificate [contract]; and

2. Inform each policyholder or certificateholder [covered person] as to when any premium adjustment is to be made due to changes in Medicare.

(b) The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.

(c) The [Such] notices shall not contain or be accompanied by any solicitation.

(3) Outline of coverage requirements for Medicare supplement policies.

(a) Issuers [Insurers issuing Medicare supplement policies or certificates for delivery in this state] shall provide an outline of coverage to all applicants at the time application is presented to the applicant [made] and, except for direct response issuers [insurers], shall obtain an acknowledgment of receipt of the [such] outline from the applicant.

(b) If an outline of coverage is provided at the time of application and the Medicare supplement policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate shall [must] accompany such policy or certificate when it is delivered and contain the following statement, in no less than twelve (12) point type immediately above the issuer's [insurer's] name:

"NOTICE: READ THIS OUTLINE OF COVERAGE CAREFULLY. IT IS NOT IDENTICAL TO THE OUTLINE OF COVERAGE PROVIDED UPON APPLICATION AND THE COVERAGE ORIGINALLY APPLIED FOR HAS NOT BEEN ISSUED."

(c) The outline of coverage provided to applicants pursuant to this subsection consists of four (4) parts: a cover page, premium information, disclosure pages, and charts displaying the features of each benefit plan offered by the issuer. The outline of coverage shall be in the language and format prescribed below in no less than twelve (12) point type. All Plans A-J shall be shown on the cover page, and the plan(s) that are offered by the issuer shall be prominently identified. Premium information for plans that are offered shall be shown on the cover page or immediately following the cover page and shall be prominently displayed. The premium and mode shall be stated for all plans that are offered to the prospective applicant. All possible premiums for the prospective applicant shall be illustrated.

(d) The following items shall be included in the outline of coverage in the order prescribed below [shall be in the form prescribed below]:

ADMINISTRATIVE REGISTER - 2157

COMPILER'S NOTE: The following chart is new and being inserted in this regulation.

(COMPANY NAME)
Outline of Medicare Supplement Coverage - Cover Page:
Benefit Plan(s) (Insert letter(s) of plan(s) being offered)

Medicare supplement insurance can be sold in only ten standard plans. This chart shows the benefits included in each plan. Every company must make available Plan "A". Some plans may not be available in your state.

BASIC BENEFITS: Included in all plans.

Hospitalization: Part A coinsurance plus coverage for 365 additional days after Medicare benefits end.

Medical expenses: Part B coinsurance (20% of Medicare-approved expenses).

Blood: First three pints of blood each year.

A	B	C	D	E	F	G	H	I	J
Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits
		Skilled Nursing Coinsurance	Skilled Nursing Coinsurance	Skilled Nursing Coinsurance	Skilled Nursing Coinsurance	Skilled Nursing Coinsurance	Skilled Nursing Coinsurance	Skilled Nursing Coinsurance	Skilled Nursing Coinsurance
	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible
		Part B Deductible			Part B Deductible				Part B Deductible
					Part B Excess (100%)	Part B Excess (80%)		Part B Excess (100%)	Part B Excess (100%)
		Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency
			At-home Recovery			At-home Recovery		At-home Recovery	At-home Recovery
							Basic Drugs (\$1,250 Limit)	Basic Drugs (\$1,250 Limit)	Extended Drugs (\$3,000 Limit)
				Preventive Care					Preventive Care

[(INSURER NAME)
OUTLINE OF MEDICARE SUPPLEMENT COVERAGE
AND PREMIUM INFORMATION
Use this outline to compare benefits
and premiums among policies]

PREMIUM INFORMATION (Boldface Type)
We (insert issuer's name) can only raise your premium if we raise the premium for all policies like yours in this state. (If the premium is based on the increasing age of the insured, include information specifying when premiums will change).

DISCLOSURES (Boldface Type)
Use this outline to compare benefits and premiums among policies.

1. **READ YOUR POLICY VERY CAREFULLY (Boldface Type)**
This is only an outline describing your policy's most important features. The policy

is your insurance contract. You must read the policy itself to understand all of the rights and duties of both you and your insurance company. [Read your policy carefully - this outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR POLICY CAREFULLY!]

2. **RIGHT TO RETURN POLICY (Boldface Type)**
If you find that you are not satisfied with your policy, you may return it to (insert issuer's address). If you send the policy back to us within thirty (30) days after you receive it, we will treat the policy as if it had never been issued and return all of your payments. [Medicare supplement coverage - policies of this category are designed to

supplement Medicare by covering some hospital, medical, and surgical services which are partially covered by Medicare. Coverage is provided for hospital inpatient charges and some physician charges, subject to any deductibles and copayment provisions which may be in addition to those provided by Medicare, and subject to other limitations which may be set forth in the policy. The policy does not provide benefits for custodial care such as help in walking, getting in and out of bed, eating, dressing, bathing, and taking medicine (this final sentence may be deleted if coverage for custodial care is, in fact, provided).]

3. **POLICY REPLACEMENT (Boldface Type)**
If you are replacing another health insurance policy, do NOT cancel it until you have actually received your new policy and are sure you want to keep it.

4. **NOTICE (Boldface Type)**
This policy may not fully cover all of your medical costs.
a. (for agents)
Neither (insert insurer's name) nor its agents are connected with Medicare.
b. (for direct response insurers:)
(insert insurer's name) is not connected with Medicare.
[4. A brief summary of the major medical benefit gaps in Medicare Parts A and B with a parallel description of supplemental benefits, including dollar amounts (and indexed copayments or deductibles as appropriate), provided by Medicare supplement coverage in the following order:]

COMPILER'S NOTE: The following tables are being deleted in their entirety.

DESCRIPTION	[THIS POLICY PAYS**	YOU PAY
I. Minimum Standards		
SERVICE		
PART A		
Inpatient Hospital Services:		
Semiprivate Room & Board		
Miscellaneous Hospital Services		
& Supplies, such as Drugs,		
X-rays, Lab Tests & Operating		
Room		
Blood		

PART B
Medical Expense:
Services of a Physician/Outpatient
Services
Medical Supplies other than Prescribed
Drugs

BLOOD

MISCELLANEOUS
Immunosuppressive Drugs

II. Additional Benefits

PART A
Part A Deductible
Private Rooms
In-hospital Private Nurses
Skilled Nursing Facility Care

PARTS A & B
Home Health Services

PART B
Part B Deductible
Medical Charges in Excess of Medicare
Allowable Expenses (Percentage Paid)

OUT-OF-POCKET MAXIMUM

PRESCRIPTION DRUGS

MISCELLANEOUS
Respite Care Benefits
Expenses Incurred in Foreign Country
Other:

TOTAL PREMIUM \$ _____

IN ADDITION TO THIS OUTLINE OF COVERAGE, (INSURANCE COMPANY NAME) WILL SEND AN ANNUAL NOTICE TO YOU 30 DAYS PRIOR TO THE EFFECTIVE DATE OF MEDICARE CHANGES WHICH WILL DESCRIBE THESE CHANGES AND THE CHANGES IN YOUR MEDICARE SUPPLEMENT COVERAGE.

**If this policy does not provide coverage for a benefit listed above, the insurer must state "no coverage" beside that benefit in the first column. (The order of benefits in this outline of coverage should be adjusted by those states which have adopted additional minimum standards.)]

[5. (The following charts shall accompany the outline of coverage:)]

[(COMPANY NAME)
NOTICE OF CHANGES IN MEDICARE AND YOUR MEDICARE SUPPLEMENT COVERAGE - 1990

THE FOLLOWING CHART BRIEFLY DESCRIBES THE MODIFICATIONS IN MEDICARE AND IN YOUR MEDICARE SUPPLEMENT COVERAGE. PLEASE READ THIS CAREFULLY!

(A BRIEF DESCRIPTION OF THE REVISIONS TO MEDICARE PARTS A & B WITH A PARALLEL DESCRIPTION OF SUPPLEMENTAL BENEFITS WITH SUBSEQUENT CHANGES, INCLUDING DOLLAR AMOUNTS, PROVIDED BY THE MEDICARE SUPPLEMENT COVERAGE IN SUBSTANTIALLY THE FOLLOWING FORMAT.)

SERVICES	MEDICARE BENEFITS	YOUR MEDICARE SUPPLEMENT COVERAGE	
	In 1989 Medicare Pays Per Calendar Year	Effective January 1, 1990, Medicare Will Pay	In 1989 Your Coverage Pays
			Effective January 1, 1990 Your Coverage Will Pay

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MEDICARE PART A SERVICES AND SUPPLIES

Inpatient Hospital Services:	Unlimited number of hospital days after \$560 deductible	All but \$592 for first 60 days/benefit period
Semiprivate Room & Board		All but \$148 a day for 61st-90th days/benefit period
Miscellaneous Hospital Services & Supplies, such as Drugs, X-rays, Lab Tests & Operating Room		All but \$296 a day for 91st-150th days (if individual chooses to use 60 nonrenewable lifetime reserve days)
BLOOD	Pays all costs except payment of deductible (equal to costs for 1st 3 pints) each calendar year. Part A blood deductible reduced to the extent paid under Part B	Pays all costs except nonreplacement fees (blood deductible) for 1st 3 pints in each benefit year
Skilled Nursing Facility Care	There is no prior confinement requirement for this	100% of costs for 1st 20 days (after a 3 day prior hospital confinement)/benefit period
	First 8 days-All but \$25.50 a day	All but \$74 a day for 21st-100th days/benefit period
	9th-150th day 100% of costs	Beyond 100 days - Nothing/benefit period
	Beyond 150 days - Nothing	
MEDICARE PART B SERVICE & SUPPLIES	80% of allowable charges (after \$75 deductible)	80% of allowable charges (after \$75 deductible/calendar year)
PRESCRIPTION DRUGS	Inpatient prescription drugs. 80% of allowable charges for immunosuppressive drugs during the first year following a covered transplant (after \$75 deductible/calendar year)	Inpatient prescription drugs. 80% of allowable charges for immunosuppressive drugs during the first year following a covered transplant (after \$75 deductible/calendar year)
BLOOD	80% of all costs except nonreplacement fees (blood deductible) for 1st 3 pints in each benefit period (after \$75 deductible/calendar year)	80% of costs except nonreplacement fees (blood deductible) for 1st 3 pints (after deductible/calendar year)

(Any other policy benefits not mentioned in this chart should be added to the chart in the order prescribed by the outline of coverage. If there are corresponding Medicare benefits, they should be shown.)

(Describe any coverage provisions changing due to Medicare modifications.)

(Include information about when premium adjustments that may be necessary due to changes in Medicare benefits will be effective.)

THIS CHART SUMMARIZING THE CHANGE IN YOUR MEDICARE BENEFITS AND IN YOUR MEDICARE SUPPLEMENT PROVIDED BY (COMPANY) ONLY BRIEFLY DESCRIBES SUCH BENEFITS. FOR INFORMATION ON YOUR MEDICARE BENEFITS CONTACT YOUR SOCIAL SECURITY OFFICE OR THE HEALTH CARE FINANCING ADMINISTRATION. FOR INFORMATION ON YOUR MEDICARE SUPPLEMENT (policy) CONTACT:

(COMPANY OR FOR AN INDIVIDUAL POLICY - NAME OF AGENT)
(ADDRESS/PHONE NUMBER)]

5. [6.] This outline of coverage does not give all the details of Medicare coverage. Contact your local Social Security office or consult "The Medicare Handbook" for more details. [A statement that the policy does not cover the following:]

- [a. Private duty nursing;]
- [b. Skilled nursing home care costs (beyond what is covered by Medicare);]
- [c. Custodial nursing home care costs;]
- [d. Intermediate nursing home care costs;]
- [e. Home health care above the number of visits covered by Medicare;]
- [f. Physician charges (above Medicare's reasonable charges);]
- [g. Drugs (other than prescription drugs furnished during a hospital or skilled nursing facility stay);]
- [h. Care received outside the United States; and]
- [i. Dental care or dentures, checkups, routine immunizations, cosmetic surgery, routine foot care, and examinations for the cost of eyeglasses or hearing aids.]

COMPLETE ANSWERS ARE VERY IMPORTANT

(Boldface Type)

When you fill out the application for the new policy, be sure to answer truthfully and completely all questions about your medical and health history. The company may cancel your policy and refuse to pay any claims if you leave out or falsify important medical information. (If the policy or certificate is guaranteed issue, this paragraph need not appear.)

Review the application carefully before you sign it. Be certain that all information has been recorded properly.

(Include for each plan prominently identified in the cover page, a chart showing the services, Medicare payments, plan payments, and insured payments for each plan, using the same language, in the same order, using uniform layout and format as shown in the charts below. More than four (4) plans shall not be shown on one (1) chart. For purposes of illustration, charts for each plan are included in this regulation. An issuer may use additional benefit plan designations on these charts pursuant to Section 7(4) of this regulation.)

(Include an explanation of any innovative benefits on the cover page and in the chart, in a manner approved by the commissioner.) [7. A description of any policy provisions which exclude, eliminate, resist, reduce, limit, delay, or in any manner operate to qualify payments of benefits described in paragraph 4 above, including conspicuous statements:]

[a. That the chart summarizing Medicare benefits only briefly describes such benefits; and]

[b. That the Health Care Financing Administration or its Medicare publications should be consulted for further details and limitations.]

[8. A description of policy provisions respecting renewability or continuation of coverage, including any reservation of rights to change premium.]

[9. The amount of premium for this policy.]

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COMPILER'S NOTE: The following tables are new, but due to length and format, are not underlined.

PLAN A MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but \$628	\$0	\$628 (Part A deductible)
61st thru 90th day	All but \$157 a day	\$157 a day	\$0
91st day and after:			
- While using 60 lifetime reserve days	All but \$314 a day	\$314 a day	\$0
- Once lifetime reserve days are used:			
- Additional 365 days	\$0	100% of Medicare Eligible expenses	\$0
- Beyond the additional 365 days	\$0	\$0	All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	\$0	\$0
21st thru 100th day	All but \$78.50 a day	\$0	Up to \$78.50 a day
101st day and after	\$0	\$0	All costs
BLOOD First 3 pints	\$0	3 pints	\$0
Additional amounts	100%	\$0	\$0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for out-patient drugs and inpatient respite care	\$0	Balance

PLAN A MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed \$100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT , such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First \$100 of Medicare-approved amounts*	\$0	\$0	\$100 (Part B deductible)
Remainder of Medicare-approved amounts	80%	20%	\$0
Part B excess charges (above Medicare approved amounts)	\$0	\$0	All costs
BLOOD First 3 pints	\$0	All costs	\$0
Next \$100 of Medicare-approved amounts*	\$0	\$0	\$100 (Part B deductible)
Remainder of Medicare-approved amounts	80%	20%	\$0
CLINICAL LABORATORY SERVICES-BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0

PARTS A & B

HOME HEALTH CARE

MEDICARE APPROVED SERVICES

- Medically necessary skilled care services and medical supplies	100%	\$0	\$0
- Durable medical equipment			
- First \$100 of Medicare-approved amounts*	\$0	\$0	\$100 (Part B deductible)
- Remainder of Medicare-approved amounts	80%	20%	\$0

PLAN B

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION*			
Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but \$628	\$628 (Part A deductible)	\$0
61st thru 90th day	All but \$157 a day	\$157 a day	\$0
91st day and after:			
- While using 60 lifetime reserve days	All but \$314 a day	\$314 a day	\$0
- Once lifetime reserve days are used:			
- Additional 365 days	\$0	100% of Medicare eligible expenses	\$0
- Beyond the additional 365 days	\$0	\$0	All costs

SKILLED NURSING FACILITY CARE*

You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital

First 20 days	All approved amounts	\$0	\$0
21st thru 100th day	All but \$78.50 a day	\$0	Up to \$78.50 a day
101st day and after	\$0	\$0	All costs

BLOOD

First 3 pints	\$0	3 pints	\$0
Additional amounts	100%	\$0	\$0

HOSPICE CARE

Available as long as your doctor certifies you are terminally ill and you elect to receive these services.

All but very limited coinsurance for out-patient drugs and in-patient respite care	\$0	Balance
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PLAN B

MEDICARE (PART A) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed \$100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES: IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT , such as physician's services, inpatient and out-patient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First \$100 of Medicare-approved amounts*	\$0	\$0	\$100 (Part B deductible)

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Remainder of Medicare-approved amounts	80%	20%	\$0
Part B excess charges (above Medicare-approved amounts)	\$0	\$0	All costs
BLOOD			
First 3 pints	\$0	All costs	\$0
Next \$100 of Medicare-approved amounts*	\$0	\$0	\$100 (Part B deductible)
Remainder of Medicare-approved amounts	80%	20%	\$0
CLINICAL LABORATORY SERVICES - BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0

PARTS A & B

HOME HEALTH CARE			
MEDICARE APPROVED SERVICES			
- Medically necessary skilled care services and medical supplies	100%	\$0	\$0
- Durable medical equipment			
- First \$100 of Medicare-approved amounts*	\$0	\$0	\$100 (Part B deductible)
- Remainder of Medicare-approved amounts	80%	20%	\$0

PLAN C

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION*			
Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but \$628	\$628 (Part A deductible)	\$0
61st thru 90th day	All but \$157 a day	\$157 a day	\$0
91st day and after:			
- While using 60 lifetime reserve days	All but \$314 a day	\$314 a day	\$0
- Once lifetime reserve days are used:			
- Additional 365 days	\$0	100% of Medicare Eligible expenses	\$0
- Beyond the additional 365 days	\$0	\$0	All costs
SKILLED NURSING FACILITY CARE*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	\$0	\$0
21st thru 100th day	All but \$78.50 a day	Up to \$78.50 a day	\$0
101st day and after	\$0	\$0	All costs
BLOOD			
First 3 pints	\$0	3 pints	\$0
Additional amounts	100%	\$0	\$0
HOSPICE CARE			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for out-patient drugs and inpatient respite care	\$0	Balance

PLAN C
MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed \$100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT , such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First \$100 of Medicare-approved amounts*	\$0	\$100 (Part B deductible)	\$0
Remainder of Medicare-approved amounts	80%	20%	\$0
Part B excess charges (above Medicare approved amounts)	\$0	\$0	All costs
BLOOD			
First 3 pints	\$0	All costs	\$0
Next \$100 of Medicare-approved amounts*	\$0	\$100 (Part B deductible)	\$0
Remainder of Medicare-approved amounts	80%	20%	\$0
CLINICAL LABORATORY SERVICES-BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0

PARTS A & B

HOME HEALTH CARE MEDICARE APPROVED SERVICES			
- Medically necessary skilled care services and medical supplies	100%	\$0	\$0
- Durable medical equipment			
- First \$100 of Medicare-approved amounts*	\$0	\$100 (Part B deductible)	\$0
- Remainder of Medicare-approved amounts	80%	20%	\$0

PLAN C
OTHER BENEFITS - NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL-NOT COVERED BY MEDICARE			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First \$250 each calendar year	\$0	\$0	\$250
Remainder of charges	\$0	80% to a lifetime maximum benefit of \$50,000	20% and amounts over the \$50,000 lifetime maximum

PLAN D
MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION*			
Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but \$628	\$628 (Part A deductible)	\$0

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61st thru 90th day	All but \$157 a day	\$157 a day	\$0
91st day and after:			
- While using 60 lifetime reserve days	All but \$314 a day	\$314 a day	\$0
- Once lifetime reserve days are used:			
- Additional 365 days	\$0	100% of Medicare eligible expenses	\$0
- Beyond the additional 365 days	\$0	\$0	All costs

SKILLED NURSING FACILITY CARE*

You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital

First 20 days	All approved amounts	\$0	\$0
21st thru 100th day	All but \$78.50 a day	Up to \$78.50 a day	\$0
101st day and after	\$0	\$0	All costs

BLOOD

First 3 pints	\$0	3 pints	\$0
Additional amounts	100%	\$0	\$0

HOSPICE CARE

Available as long as your doctor certifies you are terminally ill and you elect to receive these services.

All but very limited coinsurance for out-patient drugs and in-patient respite care	\$0	Balance
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PLAN D

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed \$100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES: IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and out-patient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First \$100 of Medicare-approved amounts*	\$0	\$0	\$100 (Part B deductible)
Remainder of Medicare-approved amounts	80%	20%	\$0
Part B excess charges (above Medicare-approved amounts)	\$0	\$0	All costs
BLOOD			
First 3 pints	\$0	All costs	\$0
Next \$100 of Medicare-approved amounts*	\$0	\$0	\$100 (Part B deductible)
Remainder of Medicare-approved amounts	80%	20%	\$0
CLINICAL LABORATORY SERVICES - BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0

PARTS A & B

HOME HEALTH CARE

MEDICARE APPROVED SERVICES

- Medically necessary skilled care services and medical supplies	100%	\$0	\$0
- Durable medical equipment			
- First \$100 of Medicare-approved amounts*	\$0	\$0	\$100 (Part B deductible)
- Remainder of Medicare-approved amounts	80%	20%	\$0

ADMINISTRATIVE REGISTER - 2166

AT-HOME RECOVERY SERVICES - NOT COVERED BY MEDICARE

Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a home care treatment plan

- Benefit for each visit	\$0	Actual charges to \$40 a visit	Balance
- Number of visits covered (must be received within 8 weeks of last Medicare-approved visit)	\$0	Up to the # of Medicare-approved visits, not to exceed 7 each week	
- Calendar year maximum	\$0	\$1,600	

OTHER BENEFITS - NOT COVERED BY MEDICARE

FOREIGN TRAVEL - NOT COVERED BY MEDICARE

Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA

First \$250 each calendar year

Remainder of charges

\$0	\$0	\$250
\$0	80% to a lifetime maximum benefit of \$50,000	20% and amounts over the \$50,000 lifetime maximum

PLAN E

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION*			
Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but \$628	\$628 (Part A deductible)	\$0
61st thru 90th day	All but \$157 a day	\$157 a day	\$0
91st day and after:			
- While using 60 lifetime reserve days	All but \$314 a day	\$314 a day	\$0
- Once lifetime reserve days are used:			
- Additional 365 days	\$0	100% of Medicare Eligible expenses	\$0
- Beyond the additional 365 days	\$0	\$0	All costs

SKILLED NURSING FACILITY CARE*

You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital

First 20 days

21st thru 100th day

101st day and after

All approved amounts	\$0	\$0
All but \$78.50 a day	Up to \$78.50 a day	\$0
\$0	\$0	All costs

BLOOD

First 3 pints

Additional amounts

\$0	3 pints	\$0
100%	\$0	\$0

HOSPICE CARE

Available as long as your doctor certifies you are terminally ill and you elect to receive these services.

All but very limited coinsurance for out-patient drugs and inpatient respite care	\$0	Balance
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ADMINISTRATIVE REGISTER - 2167

**PLAN E
MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR**

*Once you have been billed \$100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First \$100 of Medicare-approved amounts*	\$0	\$0	\$100 (Part B deductible)
Remainder of Medicare-approved amounts	80%	20%	\$0
Part B excess charges (above Medicare approved amounts)	\$0	\$0	All costs
BLOOD			
First 3 pints	\$0	All costs	\$0
Next \$100 of Medicare-approved amounts*	\$0	\$0	\$100 (Part B deductible)
Remainder of Medicare-approved amounts	80%	20%	\$0
CLINICAL LABORATORY SERVICES-BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0

PARTS A & B

HOME HEALTH CARE MEDICARE APPROVED SERVICES			
- Medically necessary skilled care services and medical supplies	100%	\$0	\$0
- Durable medical equipment			
- First \$100 of Medicare-approved amounts*	\$0	\$0	\$100 (Part B deductible)
- Remainder of Medicare-approved amounts	80%	20%	\$0

**PLAN E
OTHER BENEFITS - NOT COVERED BY MEDICARE**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL-NOT COVERED BY MEDICARE			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First \$250 each calendar year	\$0	\$0	\$250
Remainder of charges	\$0	80% to a life-time maximum benefit of \$50,000	20% and amounts over the \$50,000 lifetime maximum
PREVENTIVE MEDICAL CARE BENEFIT-NOT COVERED BY MEDICARE			
Annual physical and preventive tests and services such as: fecal occult blood test, digital rectal exam, mammogram, hearing screening, dipstick urinalysis, diabetes screening, thyroid function test, influenza shot, tetanus and diphtheria booster and education, administered or ordered by your doctor when not covered by Medicare			
First \$120 each calendar year	\$0	\$120	\$0
Additional charges	\$0	\$0	All costs

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PLAN F
MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION*			
Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but \$628	\$628 (Part A deductible)	\$0
61st thru 90th day	All but \$157 a day	\$157 a day	\$0
91st day and after:			
- While using 60 lifetime reserve days	All but \$314 a day	\$314 a day	\$0
- Once lifetime reserve days are used:			
- Additional 365 days	\$0	100% of Medicare eligible expenses	\$0
- Beyond the additional 365 days	\$0	\$0	All costs
SKILLED NURSING FACILITY CARE*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	\$0	\$0
21st thru 100th day	All but \$78.50 a day	Up to \$78.50 a day	\$0
101st day and after	\$0	\$0	All costs
BLOOD			
First 3 pints	\$0	3 pints	\$0
Additional amounts	100%	\$0	\$0
HOSPICE CARE			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for out-patient drugs and in-patient respite care	\$0	Balance

PLAN F
MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed \$100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and out-patient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First \$100 of Medicare-approved amounts*	\$0	\$100 (Part B deductible)	\$0
Remainder of Medicare-approved amounts	80%	20%	\$0
Part B excess charges (above Medicare-approved amounts)	\$0	100%	\$0
BLOOD			
First 3 pints	\$0	All costs	\$0
Next \$100 of Medicare-approved amounts*	\$0	\$100 (Part B deductible)	\$0
Remainder of Medicare-approved amounts	80%	20%	\$0
CLINICAL LABORATORY SERVICES - BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0

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PARTS A & B

HOME HEALTH CARE

MEDICARE APPROVED SERVICES

- Medically necessary skilled care services and medical supplies	100%	\$0	\$0
- Durable medical equipment			
- First \$100 of Medicare-approved amounts*	\$0	\$100 (Part B deductible)	\$0
- Remainder of Medicare-approved amounts	80%	20%	\$0

PLAN F

OTHER BENEFITS - NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL-NOT COVERED BY MEDICARE			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First \$250 each calendar year	\$0	\$0	\$250
Remainder of charges	\$0	80% to a life-time maximum benefit of \$50,000	20% and amounts over the \$50,000 lifetime maximum

PLAN G

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION*			
Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but \$628	\$628 (Part A deductible)	\$0
61st thru 90th day	All but \$157 a day	\$157 a day	\$0
91st day and after:			
- While using 60 lifetime reserve days	All but \$314 a day	\$314 a day	\$0
- Once lifetime reserve days are used:			
- Additional 365 days	\$0	100% of Medicare eligible expenses	\$0
- Beyond the additional 365 days	\$0	\$0	All costs

SKILLED NURSING FACILITY CARE*

You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital

First 20 days	All approved amounts	\$0	\$0
21st thru 100th day	All but \$78.50 a day	Up to \$78.50 a day	\$0
101st day and after	\$0	\$0	All costs

BLOOD

First 3 pints	\$0	3 pints	\$0
Additional amounts	100%	\$0	\$0

HOSPICE CARE

Available as long as your doctor certifies you are terminally ill and you elect to receive these services.

All but very limited coinsurance for out-patient drugs and inpatient respite care	\$0	Balance
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PLAN G
MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed \$100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First \$100 of Medicare-approved amounts*	\$0	\$0	\$100 (Part B deductible)
Remainder of Medicare-approved amounts	80%	20%	\$0
Part B excess charges (above Medicare approved amounts)	\$0	80%	20%
BLOOD			
First 3 pints	\$0	All costs	\$0
Next \$100 of Medicare-approved amounts*	\$0	\$0	\$100 (Part B deductible)
Remainder of Medicare-approved amounts	80%	20%	\$0
CLINICAL LABORATORY SERVICES-BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0

PARTS A & B

HOME HEALTH CARE			
MEDICARE APPROVED SERVICES			
- Medically necessary skilled care services and medical supplies	100%	\$0	\$0
- Durable medical equipment			
- First \$100 of Medicare-approved amounts*	\$0	\$0	\$100 (Part B deductible)
- Remainder of Medicare-approved amounts	80%	20%	\$0
AT-HOME RECOVERY SERVICES-NOT COVERED BY MEDICARE			
Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a home care treatment plan			
- Benefit for each visit	\$0	Actual charges to \$40 a visit	Balance
- Number of visits covered (must be received within 8 weeks of last Medicare-approved visit)	\$0	Up to the # of Medicare-approved visits, not to exceed 7 each week	
- Calendar year maximum	\$0	\$1,600	

OTHER BENEFITS

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL-NOT COVERED BY MEDICARE			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First \$250 each calendar year	\$0	\$0	\$250
Remainder of charges	\$0	80% to a life-time maximum benefit of \$50,000	20% and amounts over the \$50,000 lifetime maximum

ADMINISTRATIVE REGISTER - 2171

**PLAN H
MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD**

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION*			
Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but \$628	\$628 (Part A deductible)	\$0
61st thru 90th day	All but \$157 a day	\$157 a day	\$0
91st day and after:			
- While using 60 lifetime reserve days	All but \$314 a day	\$314 a day	\$0
- Once lifetime reserve days are used:			
- Additional 365 days	\$0	100% of Medicare eligible expenses	\$0
- Beyond the additional 365 days	\$0	\$0	All costs
SKILLED NURSING FACILITY CARE*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	\$0	\$0
21st thru 100th day	All but \$78.50 a day	Up to \$78.50 a day	\$0
101st day and after	\$0	\$0	All costs
BLOOD			
First 3 pints	\$0	3 pints	\$0
Additional amounts	100%	\$0	\$0
HOSPICE CARE			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for out-patient drugs and inpatient respite care	\$0	Balance

**PLAN H
MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR**

*Once you have been billed \$100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First \$100 of Medicare-approved amounts*	\$0	\$0	\$100 (Part B deductible)
Remainder of Medicare-approved amounts	80%	20%	\$0
Part B excess charges (above Medicare approved amounts)	\$0	80%	All costs
BLOOD			
First 3 pints	\$0	All costs	\$0
Next \$100 of Medicare-approved amounts*	\$0	\$0	\$100 (Part B deductible)
Remainder of Medicare-approved amounts	80%	20%	\$0
CLINICAL LABORATORY SERVICES-BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0

ADMINISTRATIVE REGISTER - 2172

PARTS A & B

HOME HEALTH CARE

MEDICARE APPROVED SERVICES

- Medically necessary skilled care services and medical supplies	100%	\$0	\$0
- Durable medical equipment			
- First \$100 of Medicare-approved amounts*	\$0	\$0	\$100 (Part B deductible)
- Remainder of Medicare-approved amounts	80%	20%	\$0

PLAN H

OTHER BENEFITS - NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL-NOT COVERED BY MEDICARE			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First \$250 each calendar year	\$0	\$0	\$250
Remainder of charges	\$0	80% to a lifetime maximum benefit of \$50,000	20% and amounts over the \$50,000 lifetime maximum
BASIC OUTPATIENT PRESCRIPTION DRUGS NOT COVERED BY MEDICARE			
First \$250 each calendar year	\$0	\$0	\$250
Next \$2,500 each calendar year	\$0	50% - \$1,250 calendar year maximum benefit	50%
Over \$2,500 each calendar year	\$0	\$0	All costs

PLAN I

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION*			
Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but \$628	\$628 (Part A deductible)	\$0
61st thru 90th day	All but \$157 a day	\$157 a day	\$0
91st day and after:			
- While using 60 lifetime reserve days	All but \$314 a day	\$314 a day	\$0
- Once lifetime reserve days are used:			
- Additional 365 days	\$0	100% of Medicare eligible expenses	\$0
- Beyond the additional 365 days	\$0	\$0	All costs
SKILLED NURSING FACILITY CARE*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	\$0	\$0
21st thru 100th day	All but \$78.50 a day	Up to \$78.50 a day	\$0
101st day and after	\$0	\$0	All costs
BLOOD			
First 3 pints	\$0	3 pints	\$0
Additional amounts	100%	\$0	\$0

ADMINISTRATIVE REGISTER - 2173

HOSPICE CARE

Available as long as your doctor certifies you are terminally ill and you elect to receive these services.

All but very limited \$0 coinsurance for out-patient drugs and inpatient respite care

Balance

PLAN I

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed \$100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT , such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First \$100 of Medicare-approved amounts*	\$0	\$0	\$100 (Part B deductible)
Remainder of Medicare-approved amounts	80%	20%	\$0
Part B excess charges (above Medicare approved amounts)	\$0	100%	\$0
BLOOD			
First 3 pints	\$0	All costs	\$0
Next \$100 of Medicare-approved amounts*	\$0	\$0	\$100 (Part B deductible)
Remainder of Medicare-approved amounts	80%	20%	\$0
CLINICAL LABORATORY SERVICES-BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0

PARTS A & B

HOME HEALTH CARE

MEDICARE APPROVED SERVICES

- Medically necessary skilled care services and medical supplies	100%	\$0	\$0
- Durable medical equipment			
- First \$100 of Medicare-approved amounts*	\$0	\$0	\$100 (Part B deductible)
- Remainder of Medicare-approved amounts	80%	20%	\$0

AT-HOME RECOVERY SERVICES NOT COVERED BY MEDICARE

Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a home care treatment plan

- Benefit for each visit	\$0	Actual charges to \$40 a visit	Balance
- Number of visits covered (must be received within 8 weeks of last Medicare-approved visit)	\$0	Up to the # of Medicare-approved visits, not to exceed 7 each week	
- Calendar year maximum	\$0	\$1,600	

OTHER BENEFITS

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL-NOT COVERED BY MEDICARE			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			

ADMINISTRATIVE REGISTER - 2174

First \$250 each calendar year	\$0	\$0	\$250
Remainder of charges	\$0	80% to a life-time maximum benefit of \$50,000	20% and amounts over the \$50,000 lifetime maximum
BASIC OUTPATIENT PRESCRIPTION DRUGS NOT COVERED BY MEDICARE			
First \$250 each calendar year	\$0	\$0	\$250
Next \$2,500 each calendar year	\$0	50% - \$1,250 calendar year maximum benefit	50%
Over \$2,500 each calendar year	\$0	\$0	All costs

**PLAN J
MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD**

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION*			
Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but \$628	\$628 (Part A deductible)	\$0
61st thru 90th day	All but \$157 a day	\$157 a day	\$0
91st day and after:			
- While using 60 lifetime reserve days	All but \$314 a day	\$314 a day	\$0
- Once lifetime reserve days are used:			
- Additional 365 days	\$0	100% of Medicare eligible expenses	\$0
- Beyond the additional 365 days	\$0	\$0	All costs
SKILLED NURSING FACILITY CARE*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	\$0	\$0
21st thru 100th day	All but \$78.50 a day	Up to \$78.50 a day	\$0
101st day and after	\$0	\$0	All costs
BLOOD			
First 3 pints	\$0	3 pints	\$0
Additional amounts	100%	\$0	\$0
HOSPICE CARE			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for outpatient drugs and inpatient respite care	\$0	Balance

**PLAN J
MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR**

*Once you have been billed \$100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First \$100 of Medicare-approved amounts*	\$0	\$100 (Part B deductible)	\$0

ADMINISTRATIVE REGISTER - 2175

Remainder of Medicare-approved amounts	80%	20%	\$0
Part B excess charges (above Medicare approved amounts)	\$0	100%	\$0
BLOOD			
First 3 pints	\$0	All costs	\$0
Next \$100 of Medicare-approved amounts*	\$0	\$100 (Part B deductible)	\$0
Remainder of Medicare-approved amounts	80%	20%	\$0
CLINICAL LABORATORY SERVICES-BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0
PARTS A & B			
HOME HEALTH CARE			
MEDICARE APPROVED SERVICES			
- Medically necessary skilled care services and medical supplies	100%	\$0	\$0
- Durable medical equipment			
- First \$100 of Medicare-approved amounts*	\$0	\$100 (Part B deductible)	\$0
- Remainder of Medicare-approved amounts	80%	20%	\$0
AT-HOME RECOVERY SERVICES - NOT COVERED BY MEDICARE			
Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a home care treatment plan			
- Benefit for each visit	\$0	Actual charges to \$40 a visit	Balance
- Number of visits covered (must be received within 8 weeks of last Medicare-approved visit)	\$0	Up to the # of Medicare-approved visits, not to exceed 7 each week	
- Calendar year maximum	\$0	\$1,600	
OTHER BENEFITS			
SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL-NOT COVERED BY MEDICARE			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First \$250 each calendar year	\$0	\$0	\$250
Remainder of charges	\$0	80% to a lifetime maximum benefit of \$50,000	20% and amounts over the \$50,000 lifetime maximum
EXTENDED OUTPATIENT PRESCRIPTION DRUGS NOT COVERED BY MEDICARE			
First \$250 each calendar year	\$0	\$0	\$250
Next \$6,000 each calendar year	\$0	50% - \$3,000 calendar year maximum benefit	50%
Over \$6,000 each calendar year	\$0	\$0	All costs
PREVENTIVE MEDICAL CARE BENEFIT NOT COVERED BY MEDICARE			
Annual physical and preventive tests and services such as: fecal occult blood test, digital rectal exam, mammogram, hearing screening, dipstick urinalysis, diabetes screening, thyroid function test, influenza shot, tetanus and diphtheria booster and education, administered or ordered by your doctor when not covered by Medicare			
First \$120 each calendar year	\$0	\$120	\$0
Additional charges	\$0	\$0	All costs

(4) Notice regarding policies or certificates [subscriber contracts] which are not Medicare supplement policies. Any accident or sickness insurance policy or certificate (other than a Medicare supplement policy), a policy issued pursuant to a contract under Section 1876 of the Federal Social Security Act (42 U.S.C. §1395 et seq.), disability income policy, basic, catastrophic, or major medical expense policy, or single premium nonrenewable policy issued for delivery in Kentucky to persons eligible for Medicare by reason of age shall notify insureds under such policy that the policy is not a Medicare supplement policy or certificate. The [Such] notice shall either be printed on or attached to the first page of the outline of coverage delivered to insureds under the policy, or if no outline of coverage is delivered, printed on or attached to the first page of the policy or certificate delivered to insureds. Such notice shall be in no less than twelve (12) point type and shall contain the following language:

"THIS (POLICY OR CERTIFICATE) IS NOT A MEDICARE SUPPLEMENT POLICY. If you are eligible for Medicare, review the Medicare supplement buyer's guide available from the insurance company."

Section 15. [12.] Requirements for Application Forms and Replacement Coverage. (1) Comparison statement. When a Medicare supplement policy or certificate is to replace another health insurance [Medicare supplement] policy or certificate, there shall be presented to the applicant, no later than at the time of taking the application, a comparison statement which shall be substantially identical to Appendix C [in the form prescribed by the commissioner]. Direct response issuers [insurers] shall present the comparison statement to the applicant not later than at the time of delivery of the policy. Agents shall obtain the signature of the applicant on the comparison statement and shall sign the comparison statement and send the comparison statement to the issuer [insurer]. A copy of the comparison statement shall be attached to the replacement policy.

(2) Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application, the applicant has another Medicare supplement or other health insurance policy or certificate in force or a Medicare supplement policy or certificate is intended to replace any other accident and sickness policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and the agent[, except where the coverage is sold without an agent,] containing these questions and statements may be used:

(a) Do you have another Medicare supplement [insurance] policy or certificate in force?

1. If so, with which company?

(b) Do you have any other health insurance policies that provide benefits which this Medicare supplement policy would duplicate? [Did you have another Medicare supplement policy or certificate in force during the last twelve (12) months?]

1. If so, with which company?

2. What kind of policy? [If that policy lapsed, when did it lapse?]

[(c) Are you covered by Medicaid?]

(c) If the answer to (a) or (b) is yes, [(d)]

do you intent to replace these [any of your] health policies [insurance coverage] with this policy (or certificate)?

(d) Are you covered by Medicaid?

(3) Agents shall list any other health insurance policies they have sold to the applicant.

(a) List policies sold which are still in force.

(b) List policies sold in the last five (5) years which are no longer in force.

(4) In the case of a direct response issuer, a copy of the application or supplemental form, signed by the applicant, and acknowledged by the insurer, shall be returned to the applicant by the insurer upon delivery of the policy.

(5) [(4)] Upon determining that a sale will involve replacement of Medicare supplement coverage, an issuer [insurer] (other than a direct response issuer [insurer]), or its agent, shall furnish the applicant, prior to issuance or delivery of the Medicare supplement policy or certificate, a notice regarding replacement of Medicare supplement coverage [accident and sickness insurance]. One (1) copy of the [such] notice signed by the applicant and the agent, except where coverage is sold without an agent, shall be provided to the applicant and an additional signed copy shall be retained by the issuer [insurer]. A direct response issuer [insurer] shall deliver to the applicant at the time of the issuance of the policy the notice regarding replacement of Medicare supplement [accident and sickness] coverage. [In no event, however, will such a notice be required in the solicitation of "accident only" and "single premium nonrenewable" policies.]

(6) [(5)] The notice required by subsection (5) [(4)] of this section for an issuer [insurer] (other than a direct response insurer) shall be provided in substantially the following form in no less than ten (10) point type:

NOTICE TO APPLICANT REGARDING REPLACEMENT
OF MEDICARE SUPPLEMENT INSURANCE
(Insurer Name and Address)
SAVE THIS NOTICE! IT MAY BE IMPORTANT
TO YOU IN THE FUTURE.

According to (your application or information you have furnished), you intend to [lapse or otherwise] terminate existing accident and sickness insurance and replace it with a policy to be issued by (insurer name). Your new policy provides (insert here an amount of time not less than thirty (30) days) within which you may decide without cost whether you desire to keep the policy. [For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.]

You should review this new coverage carefully. Compare [, comparing] it with all health insurance you now have. Terminate [, and terminate] your present policy only if, after due consideration, you find that purchase of this Medicare supplement coverage is a wise decision.

STATEMENT TO APPLICANT BY ISSUER OR AGENT (OR OTHER REPRESENTATIVE): [(Use additional sheets, as necessary).]

I have reviewed your current health insurance coverage. [I believe] The replacement of insurance involved in this transaction does not

duplicate coverage, to the best of my knowledge. The replacement policy is being purchased for the following reason(s) (check one) [materially improves your position. My conclusion has taken into account the following considerations, which I call to your attention]:

- Additional benefits.
- No change in benefits, but lower premiums.
- Fewer benefits and lower premiums.
- Other (please specify).

(a) Health conditions which you may presently have (so-called preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy (this paragraph may be modified if preexisting conditions are, in fact, covered under the new policy).

(b) State law provides that your replacement policy or certificate may not contain new preexisting conditions, waiting periods, elimination periods, or probationary periods. The insurer will waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.

[(c) If you are replacing existing Medicare supplement insurance coverage, you may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.]

[(c) [(d)] If[, after due consideration,] you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical and health history. Failure to include all material medical information on an application may provide a basis for the insurer to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, review [reread] it carefully to be certain that all information has been recorded properly. (If the policy or certificate is guaranteed issue, this paragraph need not appear).

(d) Do not cancel your present policy until you have your new policy and are sure that you want to keep it.

Signature of Agent or Other Representative

Typed Name and Address of Agent

The above "Notice to Applicant" was delivered to me on:

Date

Applicant's Signature

(6) Subsection (5)(a) and (b) of this section may be omitted from the replacement notice if the replacement policy or certificate does not involve application of a new preexisting condition limitation. [The notice required by

subsection (4) of this section for a direct response insurer shall be as follows:]

[NOTICE TO APPLICANT REGARDING REPLACEMENT OF MEDICARE SUPPLEMENT INSURANCE
(Insurer's Name and Address)
SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.]

[According to (your application or information you have furnished) you intend to lapse or otherwise terminate existing Medicare supplement insurance and replace it with the policy delivered with this notice issued by (insurer name). Your new policy provides thirty (30) days within which you may decide without cost whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy. You should review this new coverage carefully, comparing it with all accident and sickness coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this Medicare supplement coverage is a wise decision.]

[(a) Health conditions which you may presently have (so-called preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.]

[(b) State law provides that your replacement policy or certificate may not contain new preexisting conditions, waiting periods, elimination periods, or probationary periods. Your insurer will waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.]

[(c) If you are replacing existing Medicare supplement insurance coverage, you may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.]

[(d) (To be included only if the application is attached to the policy). If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Check the application and write to (insurer name and address) within thirty (30) days if any information is not correct and complete, or if any past medical history has been left out of the application.]

[Insurer Name]

Section 16. [13.] Filing Requirements for Advertising of Medicare Supplement Policies. (1) An issuer [Every insurer, nonprofit hospital, medical-surgical, dental, and health service corporation, or health maintenance organization providing Medicare supplement policies in

Kentucky] shall provide a copy of any Medicare supplement policy advertisement intended for use in Kentucky whether through written, radio, or television, to the commissioner prior to such use. Advertisements need not be approved prior to use, but an advertisement shall not be used if it has been disapproved by the commissioner and notice of the [such] disapproval has been given to the issuer [insurer, nonprofit hospital, medical-surgical, dental, and health service corporation, or health maintenance organization].

(2) Issuers [Insurers] and agents shall not use the names and addresses of persons purchased as "leads" unless the solicitation material used to obtain the names and addresses of the "leads" are filed as advertisements as required by this section. Issuers [Insurers] and agents shall not use such "leads" if the solicitation materials have been disapproved by the commissioner.

Section 17. [14.] Policy Delivery. If a Medicare supplement policy is not delivered by mail, the agent or insurer shall obtain a signed and dated delivery receipt from the insured. If the delivery receipt is obtained by an agent, the agent shall forward the delivery receipt to the issuer [insurer].

Section 18. [15.] Standards for Marketing. (1) An issuer [Every insurer, nonprofit hospital, medical-surgical, dental, and health service corporation, and health maintenance organization marketing Medicare supplement insurance coverage in Kentucky], directly or through its agents or other representatives, shall:

(a) Establish marketing procedures to assure that any comparison of policies by its agents or other representatives will be fair and accurate.

(b) Establish marketing procedures to assure excessive insurance is not sold or issued.

(c) Display prominently by type, stamp, or other appropriate means, on the first page of the outline of coverage and the policy the following disclosure: "Notice to buyer: This policy may not cover all of your medical expenses [the costs associated with medical care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations]."

(d) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for Medicare supplement insurance already has accident and sickness insurance and the types and amounts of any such insurance.

(e) [Every insurer or entity marketing Medicare supplement insurance shall] Establish auditable procedures for verifying compliance with this subsection.

(2) In addition to the practices prohibited in KRS Chapter 304.12 and 806 KAR Chapter 12, the following acts and practices are prohibited:

(a) Twisting. Making any unfair or deceptive representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance with another insurer.

(b) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit

or implied, or undue pressure to purchase or recommend the purchase of insurance.

(c) Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

Section 19. [16.] Appropriateness of Recommended Purchase and Excessive Insurance.

(1) In recommending the purchase or replacement of any Medicare supplement policy or certificate an agent shall make reasonable efforts to determine the appropriateness of recommended purchase or replacement.

(2) Any sale of medicare supplement coverage that [which] will provide an individual more than one (1) Medicare supplement policy or certificate is prohibited[, but additional Medicare supplement coverage may be sold if, it would insure no more than 100% of the individual's actual medical expenses covered under the combined policies].

Section 20. [17.] Reporting of Multiple Policies. (1) On or before March 1 of each year, an issuer [, every insurer or other entity providing Medicare supplement insurance coverage in this state] shall report the following information for every individual resident of this state for which the issuer [insurer or entity] has in force more than one (1) Medicare supplement insurance policy or certificate:

(a) Policy and certificate number; and

(b) Date of issuance.

(2) The items set forth above shall be grouped by individual policyholder.

Section 21. [18.] Prohibition Against Preexisting Conditions, Waiting Periods, Elimination Periods, and Probationary Periods in Replacement Policies or Certificates. (1) If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate, the replacing insurer shall waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, and probationary periods in the new Medicare supplement policy for similar benefits to the extent such time was spent under the original policy.

(2) If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate which has been in effect for at least six (6) months, the replacing policy shall not provide any time period applicable to preexisting conditions, waiting period, elimination periods, and probationary periods.

[Section 19. Transition of Medicare Supplement Policy Benefits and Premiums Due to Changes in Medicare. (1) The purpose of this section is to assure the orderly implementation and conversion of Medicare supplement insurance benefits and premiums due to changes in the federal Medicare program, to provide for the reasonable standardization of the coverage, terms, and benefits of Medicare supplement policies, to facilitate public understanding of such policies or contracts, to eliminate provisions contained in such policies or contracts which may be misleading or confusing in connection with the

purchase of such policies or contracts, to eliminate policy or contract provisions which may duplicate Medicare benefits, to provide for adjustment of required minimum benefits for Medicare supplement policies, to provide notice to former policy holders of an offer to reinstitute coverage, to provide full disclosure of policy or contract benefits and benefit changes, and to provide for appropriate premium adjustments.]

[(2) This section shall take precedence over other requirements relating to Medicare supplement policies only to the extent necessary to assure that benefits are not duplicated and to adjust minimum required benefits to changes in Medicare benefits, that applicants receive adequate notice and disclosure of changes in Medicare supplement policies and contracts, that appropriate premium adjustments are made in a timely manner, and that premiums are reasonable in relation to benefits. Except as otherwise provided, this regulation shall apply to:]

[(a) All Medicare supplement policies and contracts delivered, issued for delivery, or which are otherwise subject to the jurisdiction of Kentucky on or after the effective date of this regulation; and]

[(b) All certificates issued under group Medicare supplement policies as provided in paragraph (a) of this subsection.]

[(3) Benefit conversion requirements.]

[(a) Effective January 1, 1990, no Medicare supplement insurance policy, contract, or certificate in force in this state shall contain benefits which duplicate benefits provided by Medicare.]

[(b) Benefits eliminated by operation of the Medicare Catastrophic Coverage Act of 1988 transition provisions shall be restored.]

[(c) For Medicare supplement policies subject to the minimum standards adopted by the states pursuant to the Medicare Catastrophic Coverage Act of 1988, the minimum benefits shall be:]

[1. Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;]

[2. Coverage for either all or none of the Medicare Part A inpatient hospital deductible amounts;]

[3. Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days;]

[4. Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of ninety (90) percent of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days;]

[5. Coverage under Medicare Part A for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations or already paid for under Part B.]

[6. Coverage for the coinsurance amount of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out of pocket amount equal to the Medicare Part B deductible; and]

[7. Effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of the

first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations), unless replaced in accordance with federal regulations or already paid for under Part A, subject to the Medicare deductible amount.]

[(d) General requirements. No later than January 31, 1990, every entity providing Medicare supplement insurance or benefits to a Kentucky resident shall notify its policyholders of modifications it has made to Medicare supplement insurance policies or contracts. Such notice shall be in the format set forth in Appendix A.]

[1. The notice shall not contain or be accompanied by any solicitation.]

[2. No modifications to an existing Medicare supplement policy shall be made at the time of or in connection with the notice requirements of this section except to the extent necessary to accomplish the purposes set forth in subsection (1) of this section.]

[(4) Rate and form filing requirements.]

[(a) As soon as practicable, but no later than forty-five (45) days after the effective date of the Medicare benefit changes, every entity issuing Medicare supplement policies in Kentucky shall file with the commissioner, in accordance with the applicable filing procedures, the following:]

[1. Appropriate premium adjustments necessary to produce loss ratios as originally anticipated for the applicable policies or contracts. Supporting documents which are necessary to justify the adjustment shall accompany the filing.]

[2. Any appropriate riders, endorsements, or policy forms needed to accomplish Medicare supplement policy modifications necessary to eliminate benefit duplications with Medicare and to provide the benefits required by subsection (3) of this section. Any such riders, endorsements, or policy forms shall provide a clear description of the Medicare supplement benefits provided by the policy or contract.]

[(b) Upon satisfying the filing and approval requirements, every entity providing Medicare supplement policies in Kentucky shall provide each covered person with any rider, endorsement, or policy form necessary to make the adjustment outlined in subsection (3) of this section.]

[(c) Any premium adjustments shall produce an expected loss ratio under such policy or contract as will conform with minimum loss ratio standards for Medicare supplement policies and shall result in an expected loss ratio of at least as great as that originally anticipated by the insurer for such Medicare supplement insurance policies or contracts. Premium adjustments may be calculated for the period commencing with Medicare benefit changes.]

[(5) Offer of reinstitution of coverage.]

[(a) Except as provided in paragraph (b) of this subsection, in the case of an individual who had in effect on December 31, 1988, a Medicare supplement policy or certificate and the individual terminated coverage under such policy before the date of the enactment of the repeal of the Medicare Catastrophic Coverage Act of 1988, the insurer shall:]

[1. Provide written notice as soon as practicable to the policyholder or certificate holder at the last address known to the insurer of the offer described below; and]

[2. Offer the individual, reinstitution of

coverage effective as of January 1, 1990, under the following terms:]

[a. There will be no provision for any waiting period with respect to treatment of preexisting conditions;]

[b. Provision for coverage which is substantially equivalent to coverage in effect before the date of termination; and]

[c. Provision for classification of premiums on terms which are at least as favorable to the policyholder or certificate holder as the premium classification terms that would have applied to the policyholder or certificate holder had the coverage never terminated.]

[(b) An insurer is not required to make the offer under paragraph (a)2 of this subsection in the case of an individual who is a policyholder or certificate holder of another Medicare supplement policy as of January 1, 1990, if the individual is not subject to a waiting period with respect to treatment of preexisting condition under the other policy.]

[(6) Requirements for new policies and certificates.]

[(a) Effective January 1, 1990, no Medicare supplement insurance policy, contract or certificate shall be delivered or issued for delivery in Kentucky which provides benefits which duplicate benefits provided by Medicare. No such policy, contract, or certificate shall provide less benefits than those required under this regulation, except where duplication of Medicare benefits would result and except as required by this section.]

[(b) General requirements.]

[1. Within ninety (90) days after the effective date of this regulation, every entity issuing Medicare supplement policies shall file new Medicare supplement policies or contracts which eliminate any duplication of Medicare supplement benefits provided by Medicare, which adjust minimum required benefits to changes in Medicare benefits and which provide a clear description of the policy or contract benefit.]

[2. The filing required under subsection (4)(a)1 of this section shall provide for loss ratios which are in compliance with all minimum standards.]

[3. Every applicant for a Medicare supplement insurance policy or certificate shall be provided an outline of coverage which simplifies and accurately describes benefits provided by Medicare and policy or certificate benefits and limitations.]

[Section 20. Severability. If any provision of this regulation or the application of this regulation to any person or circumstance is for any reason held to be invalid, the remainder of the regulation and the application of such provision to other persons or circumstances shall not be affected thereby.]

[Section 21. Effective Date. This regulation shall become effective upon completion of its review pursuant to KRS Chapter 13A.]

[(For Appendix A, see Chart in Section 5 of the "OUTLINE OF MEDICARE SUPPLEMENT COVERAGE AND PREMIUM INFORMATION", (Section 11(3)(c) of this regulation)]

COMPILER'S NOTE: The following "Appendix A" and "Appendix B" are new appendices being inserted.

APPENDIX A
MEDICARE SUPPLEMENT REFUND CALCULATION FORM
FOR CALENDAR YEAR _____

TYPE _____ SMSBP (W) _____
For the State of _____
Company Name _____
NAIC Group Code _____ NAIC Company Code _____
Person Completing This Exhibit _____
Title _____ Telephone Number _____

Line	(a) Earned Premium (x)	(b) Incurred Claims (y)
1. Current year's experience		
a. Total (all policy years)		
b. Current year's issues (2)		
c. Net (for reporting purposes - 1a - 1b)	_____	_____
2. Past year's experience (all policy years)	_____	_____
3. Total experience (net current year + past years' experience)	_____	_____
4. Refunds last year (excluding interest)		
5. Previous since inception (excluding interest)		
6. Refunds since inception (excluding interest)		
7. Benchmark ratio since inception (SEE WORK-SHEET FOR RATIO 1)		
8. Experienced ratio since inception		
Total actual incurred claims (line 3, col b) = Ratio 2		
Tot. earned prem. (line 3, col a) - refunds since inception (line 6)		
9. Life years exposed since inception _____		
If the experienced ratio is less than the benchmark ratio, and there are more than 500 life years exposure, then proceed to calculation of refund.		
10. Tolerance permitted (obtained from credibility table) _____		
11. Adjustment to incurred claims for credibility		
ratio 3 = ratio 2 + tolerance		
If ratio 3 is more than benchmark ratio (ratio 1), a refund or credit to premium is not required.		
If ratio 3 is less than the benchmark ratio, then proceed.		
12. Adjusted incurred claims = (tot. earned premiums (line 3, col a) - refunds since inception (line 6)) x ratio 3 (lines 11)		
13. Refund = total earned premium (line 3, col a) - refunds since inception (line 6) -		

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Adjusted incurred claims (line 12)
benchmark ratio (ratio 1)

If the amount on line 13 is less than .005 times the annualized premium in force as of December 31 of the reporting year, then no refund is made. Otherwise, the amount on line 13 is to be refunded or credited, and a description of the refund and/or credit against premiums to be used must be attached to this form.

(w) "SMSBP" = Standardized Medicare Supplement Benefit Plan.

(x) Includes model loadings and fees charged.

(y) Excludes active life reserves.

(z) This is to be used as "Issue Year Earned Premium" for Year 1 of next year's "Worksheet for Calculation of Benchmark Ratios".

I certify that the above information and calculations are true and accurate to the best of my knowledge and belief.

Medicare Supplement Credibility Table

Life Years Exposed Since Inception	Tolerance
10,000 +	0.0%
5,000 - 9,999	5.0%
2,500 - 4,999	7.5%
1,000 - 2,499	10.0%
500 - 999	15.0%
If less than 500, no credibility.	

Signature _____

Name - Please Type _____

Title _____

Date _____

REPORTING FORM FOR THE CALCULATION OF BENCHMARK RATIO
SINCE INCEPTION FOR INDIVIDUAL POLICIES
FOR CALENDAR YEAR _____
TYPE _____ SMSBP (P) _____
FOR THE STATE OF _____
Company Name _____
NAIC Group Code _____ NAIC Company Code _____
Address _____
Person Completing this Exhibit _____
Title _____ Telephone Number _____

(a) Year	(b) Earned Premium	(c) Factor	(d) (b)x(c)	(e) Cumulative Loss Ratio	(f) (d)x(e)	(g) Factor	(h) (b)x(g)	(i) Cumulative Loss Ratio	(j) (h)x(i)	(o) Policy Year Loss Ratio
1		2.770		0.442		0.000		0.000		0.4
2		4.175		0.493		0.000		0.000		0.55
3		4.175		0.493		1.194		0.659		0.65
4		4.175		0.493		2.245		0.669		0.67
5		4.175		0.493		3.170		0.678		0.69
6		4.175		0.493		3.998		0.686		0.71
7		4.175		0.493		4.754		0.695		0.73
8		4.175		0.493		5.445		0.702		0.75
9		4.175		0.493		6.075		0.708		0.76
10		4.175		0.493		6.650		0.713		0.76
11		4.175		0.493		7.176		0.717		0.76
12		4.175		0.493		7.655		0.720		0.77
13		4.175		0.493		8.093		0.723		0.77
14		4.175		0.493		8.493		0.725		0.77
15		4.175		0.493		8.684		0.725		0.77
TOTAL:		(k):	-----	(l):	-----	(m):	-----	(n):	-----	

Benchmark ratio since inception: $(1 + n) / (k + m)$:

(a): Year 1 is the current calendar year - 1
Year 2 is the current calendar year - 2
(etc.)

(Example: If the current year is 1991, then:
year 1 is 1990; year 2 is 1989; etc.)

(b): For the calendar year on the appropriate line in column (a), the premium earned during that year for policies issued in that year.

(o): Those loss ratios are not explicitly used in computing the benchmark loss ratios. They are the loss ratios, on a policy year basis, which result in the cumulative loss ratios displayed on this worksheet. They are shown here for informational purposes only.

(p): "SMSBP" = Standardized Medicare Supplement Benefit Plan.

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REPORTING FORM FOR THE CALCULATION OF BENCHMARK RATIO
SINCE INCEPTION FOR GROUP POLICIES FOR CALENDAR YEAR _____
TYPE _____ SMSBP (P) _____
FOR THE STATE OF _____
Company Name _____
NAIC Group Code _____ NAIC Company Code _____
Address _____
Person Completing this Exhibit _____
Title _____ Telephone Number _____

(a) Year	(b) Earned Premium	(c) Factor	(d) (b)x(c)	(e) Cumulative Loss Ratio	(f) (d)x(e)	(g) Factor	(h) (b)x(g)	(i) Cumulative Loss Ratio	(j) (h)x(i)	(o) Policy Year Loss Ratio
1		2.770		0.507		0.000		0.000		0.46
2		4.175		0.567		0.000		0.000		0.63
3		4.175		0.567		1.194		0.759		0.75
4		4.175		0.567		2.245		0.771		0.77
5		4.175		0.567		3.170		0.782		0.8
6		4.175		0.567		3.998		0.792		0.82
7		4.175		0.567		4.754		0.802		0.84
8		4.175		0.567		5.445		0.811		0.87
9		4.175		0.567		6.075		0.818		0.88
10		4.175		0.567		6.650		0.824		0.88
11		4.175		0.567		7.176		0.828		0.88
12		4.175		0.567		7.655		0.831		0.88
13		4.175		0.567		8.093		0.834		0.89
14		4.175		0.567		8.493		0.837		0.89
15		4.175		0.567		8.684		0.838		0.89
TOTAL:		(k):	_____	(l):	_____	(m):	_____	(n):	_____	

Benchmark ratio since inception: $(1 + n) / (k + m)$:

(a): Year 1 is the current calendar year - 1
Year 2 is the current calendar year - 2
(etc.)
(Example: If the current year is 1991, then:
year 1 is 1990; year 2 is 1989; etc.)

(b): For the calendar year on the appropriate line in column (a), the premium earned during that year for policies issued in that year.

(o): Those loss ratios are not explicitly used in computing the benchmark loss ratios. They are the loss ratios, on a policy year basis, which result in the cumulative loss ratios displayed on this worksheet. They are shown here for informational purposes only.

(p): "SMSBP" = Standardized Medicare Supplement Benefit Plan.

APPENDIX B FORM FOR REPORTING MEDICARE SUPPLEMENT POLICIES

Company Name: _____
Address: _____

Phone Number: _____

Due March 1, annually

The purpose of this form is to report the following information on each resident of this state who has in force more than one Medicare supplement policy or certificate. The information is to be grouped by individual policyholder.

Policy and Certificate # _____ Date of Issuance _____

Signature

Name and Title (Please Type)

Date

ADMINISTRATIVE REGISTER - 2183

KENTUCKY MEDICARE SUPPLEMENT COMPARISON STATEMENT

Current Insurance _____ Annual Premium _____
(Insurer Name)

Proposed Insurance _____ Annual Premium _____
(Insurer Name)

MEDICARE (PART A): HOSPITAL INSURANCE - COVERED SERVICES PER BENEFIT PERIOD (1)				PRIVATE INSURANCE CHECKLIST	
Services	Benefit	Medicare Pays*	You Pay*	Current Insurance Pays (Plan)**	Proposed Insurance Pays (Plan)
HOSPITALIZATION	First 60 days	All but \$	\$		
Semiprivate room and board, general nursing and miscellaneous hospital services and supplies.	61st to 90th day	All but \$ a day	\$ a day		
	91st to 150th day***	All but \$ a day	\$ a day		
	Beyond 150 days	Nothing	All costs		
POSTHOSPITAL SKILLED NURSING FACILITY CARE In a facility approved by Medicare. You must have been in a hospital for at least 3 days and enter the facility within 30 days after hospital discharge (2).	First 20 days	100% of approved amount	Nothing		
	Additional 80 days	All but \$ a day	\$ a day		
	Beyond 100 days	Nothing	All costs		
HOME HEALTH CARE	Visits limited to medically necessary skilled care.	Full cost of services; 80% of approved amount for durable medical equipment	Nothing for services; 20% of approved amount for durable medical equipment		
HOSPICE CARE Available to terminally ill.	Up to days if doctor certifies need.	All but limited costs for outpatient drugs and inpatient respite care.	Limited cost sharing for outpatient drugs and inpatient respite care.		
BLOOD	Blood.	All but first 3 pints	For first 3 pints.****		
FOREIGN TRAVEL	Medically necessary emergency care in a foreign country.	Emergency hospital services in qualified Mexican or Canadian hospitals.*****	All costs not covered by Medicare		

- * These figures are for 19__ and are subject to change each year.
 ** If the policy being replaced is not a standardized policy, insert "N/A".
 *** 60 reserve days may be used only once; days used are not renewable.
 **** To the extent the blood deductible is met under one part of Medicare during the calendar year, it does not have to be met under the other part.
 ***** Please refer to your Medicare Handbook for more information.
 (1) A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital or skilled nursing facility for 60 days in a row.
 (2) Medicare and private Medicare supplement insurance will not pay for most nursing home care. You pay for custodial care and most care in a nursing home.

Form LHM-2
(November, 1991)

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KENTUCKY MEDICARE SUPPLEMENT COMPARISON STATEMENT

MEDICARE (PART B): HOSPITAL INSURANCE - COVERED SERVICES PER CALENDAR YEAR

PRIVATE INSURANCE
CHECKLIST

Service	Benefit	Medicare Pays	You Pay	Current Insurance Pays (Plan)*	Proposed Insurance Pays (Plan)
MEDICAL EXPENSE Physician's services, inpatient and outpatient medical services and supplies, physical and speech therapy, ambulance, etc.	Medicare pays for medical services in or out of the hospital.	80% of approved amount (after \$ deductible)	\$ Deductible** plus 20% of balance of approved amount (plus any charge above approved amount)***		
HOME HEALTH CARE	Visits limited to medically necessary skilled care	Full cost of services; 80% of approved amount for durable medical equipment (after \$ deductible).	Nothing for services; 20% of approved amount for durable medical equipment (after \$ deductible).		
AT-HOME RECOVERY BENEFIT	Short-term at-home assistance with activities of daily living.****	Nothing	All costs		
OUTPATIENT HOSPITAL TREATMENT	Unlimited if medically necessary.	80% of approved amount (after \$ deductible).	Subject to deductible plus 20% of approved amount.		
BLOOD	Blood	80% of approved amount (after \$ deductible and starting with 4th pint).	First 3 pints plus 20% of approved amount (after \$ deductible)*****		
PREVENTIVE CARE-PATIENT EDUCATION	Annual physical exam, preventive testing, influenza vaccines	Screening pap smears once every 3 years; screening mammograms every second year.	All costs not covered by Medicare		
OUTPATIENT PRESCRIPTION DRUGS	Outpatient prescription drugs	Nothing	All costs		
FOREIGN TRAVEL	Medically necessary emergency care in foreign country.	Nothing	All costs not covered by Medicare		
OTHER*****					

- * If the policy being replaced is not a standardized policy, insert "N/A".
- ** Once you have had \$ of expense for covered services in 19 , the Part B deductible does not apply to any further covered services you receive for the rest of the year.
- *** YOU PAY FOR charges higher than the amount approved by Medicare unless the doctor or supplier agrees to accept Medicare's approved amount as the total charge for services rendered.
- **** At home recovery benefits must be received in conjunction with Medicare approved home health care benefits.
- ***** To the extent the blood deductible is met under one part of Medicare during the calendar year, it does not have to be met under the other part.
- ***** Use this area to compare prestandardization and/or innovative benefits.

NOTICE TO APPLICANT:

Do not sign this form unless it has been explained to you.

Applicant	Date	Agent	Date
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NOTICE TO AGENT/INSURER:

This form is to be retained by the replacing insurer and attached to the replacement policy.

Form LHM-2
(November, 1991)

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ELIZABETH P. WRIGHT, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: November 18, 1991
FILED WITH LRC: December 6, 1991 at 9 a.m.

STATEMENT OF EMERGENCY
902 KAR 22:010E

This emergency administrative regulation establishes the procedures by which the Kentucky Board of Family Health Care Providers shall approve the treatment protocols, the drug formulary and the quality assurance program of a network. The Kentucky Board of Family Health Care Providers must complete the approvals prior to the licensure and operation of a network. In order to facilitate and expedite licensure it is necessary that this emergency administrative regulation be in place as soon as possible. Licensure is required prior to operation of a network including the recruitment, certification and use of midlevel health care practitioners. Networks and midlevel health care practitioners cannot fully participate until administrative regulations are in place. This emergency administrative regulation will be replaced by an ordinary administrative regulation which was filed with the Regulations Compiler on December 6, 1991.

WALLACE G. WILKINSON, Governor
KAREN A. MAIN, Chair

BOARD OF FAMILY HEALTH CARE PROVIDERS

902 KAR 22:010E. Kentucky Board of Family Health Care Providers.

RELATES TO: KRS 216.900 through 216.925
STATUTORY AUTHORITY: KRS 216.920
EFFECTIVE: December 9, 1991

NECESSITY AND FUNCTION: KRS Chapter 216 mandates that the Kentucky Board of Family Health Care Providers promulgate regulations necessary to implement their duties and responsibilities. The regulation responds to provisions of KRS 216.920 which requires board approval of treatment protocols, drug formularies and quality assurance programs before an applicant can receive a network license and begin full operation.

Section 1. Approval of Protocols. (1) An applicant for a licensed network shall submit for approval to the Board of Family Health Care Providers at time of application their twenty (20) protocols to be used by the midlevel health care practitioners or may use twenty (20) protocols that the board has developed.

(2) Protocols submitted to the board shall be designed for use by the midlevel health care practitioner and shall include items as issued in KRS 216.910(2).

(3) Network protocols to be used by the midlevel health care practitioner shall be designed to ensure a basic treatment plan for maintenance of identified chronic conditions.

(4) Approval for protocols will be based on the following:

(a) The conditions for which protocols are established shall be chronic.

(b) Chronic conditions are those conditions that have a prolonged course that do not resolve spontaneously, and for which a complete cure is

rarely achieved even with long-term maintenance.

(c) The protocol shall contain clear and concise instructions of procedures necessary for assessment, maintenance, treatment of a chronic condition diagnosed by the staff M.D. in the network; to include but not limited to: definition, patient assessment, review of relevant lab findings, medication management, requirements for physician consultation and with strong emphasis on health education.

(d) The protocol shall be written in a manner that prevents the need for a diagnostic decision by the midlevel health care practitioner.

(e) The protocol shall contain a list of drugs from the approved drug formulary that the midlevel health care practitioner may reorder for each condition.

(f) Board approval of the protocols for each licensed network will limit the certified midlevel health care practitioner to only those submitted and approved or prescribed by the board.

(g) After initial protocol approval, the licensed network shall submit any changes or additions to the board for approval.

Section 2. Drug Formulary. (1) The network formulary will contain at a minimum, a list of the names of the pharmaceuticals approved for the use by the network and will include information regarding dosage, unit dispensing size, and contraindications.

(2) The network will clearly designate within the formulary, pharmaceuticals which can be reordered by the midlevel health care practitioner. The pharmaceuticals will be included in the treatment diagnosis protocols with clearly stated instructions of the midlevel health care practitioner's duties, responsibilities and limitations.

(3) The network will develop and provide an addendum to the network formulary which will include all pharmaceuticals with complete formulary information, which will be reordered, by the midlevel health care practitioner. This formulary will be correlated with the protocols handbook to be provided to each midlevel health care practitioner.

(4) After initial drug formulary approval, the licensed network shall submit any changes or additions to the board for approval.

Section 3. Quality Assurance. (1) The quality assurance program shall include specific mechanisms for reviewing and evaluating patient care stipulated by the twenty (20) chronic condition protocols which have been approved by the board for the use of the network and the midlevel health care practitioner. The mechanisms will be clearly designated to the protocols and clearly defined in the program.

(2) The Kentucky Board of Family Health Care Providers shall review for approval those parts of the networks quality assurance program that pertain to implementation of the protocols to be utilized by the midlevel health care practitioner.

(3) After initial quality assurance program approval, the licensed network shall submit any changes or additions to the board for approval.

Section 4. Process. (1) The Cabinet for Human Resources, Division of Licensing and Regulations shall inform the network applicant that their twenty (20) treatment protocols, the quality

assurance program and drug formulary shall be submitted to the Kentucky Board of Family Health Care Providers for review and approval prior to issuance of a license to operate a network.

(2) The network applicant shall submit the twenty (20) treatment protocols, quality assurance program and drug formulary to: Kentucky Board of Family Health Care Providers, Cabinet for Human Resources, Department for Health Services, Division of Vital Records and Health Development, 275 East Main Street, Frankfort, Kentucky 40621.

(3) Upon receipt of the twenty (20) protocols, quality assurance program and drug formulary, a committee of the Kentucky Board of Family Health Care Providers shall review and make recommendation for approval/disapproval to the full board. If the recommendation of the committee is for disapproval, the committee shall define the deficiencies causing the recommended disapproval and allow ten (10) days for revision and resubmittal to the committee.

(4) The board shall take action at their quarterly meeting by approving or disapproving the applicants treatment protocols, drug formulary and quality assurance programs based on the recommendation of the review committee. The Department for Health Services shall document the actions of the board and forward a copy of the documentation to the Division of Licensing and Regulations.

KAREN A. MAIN, Chairman

APPROVED BY AGENCY: November 15, 1991

FILED WITH LRC: December 9, 1991 at 4 p.m.

STATEMENT OF EMERGENCY 902 KAR 22:030E

This emergency administrative regulation establishes the procedures by which the Kentucky Board of Family Health Care Providers shall administer the qualifying examination for certification and recertification of midlevel health care practitioners. There have been numerous requests for certification by potential applicants of midlevel health care practitioners. In accordance with KRS 216.920 the Kentucky Board of Family Health Care Providers must certify midlevel health care practitioners to work in licensed networks. In order to facilitate this certification process and because of the direct effect on the full operation of licensed networks it is necessary that this emergency administrative regulation be in place as soon as possible. This emergency administrative regulation will be replaced by an ordinary administrative regulation which was filed with the Regulations Compiler on December 6, 1991.

WALLACE G. WILKINSON, Governor

KAREN A. MAIN, Chair

KENTUCKY BOARD OF FAMILY HEALTH CARE PROVIDERS

902 KAR 22:030E. Midlevel health care practitioner.

RELATES TO: KRS 216.900 through 216.925

STATUTORY AUTHORITY: KRS 216.920, 216.925

EFFECTIVE: December 9, 1991

NECESSITY AND FUNCTION: KRS Chapter 216 mandates that the Kentucky Board of Family

Health Care Providers promulgate regulations necessary to implement their duties and responsibilities. The regulation responds to provisions of KRS 216.920 which requires the Kentucky Board of Family Health Care Providers to certify and recertify midlevel health care practitioners; develop and administer qualifying examinations for midlevel health care practitioners; identify continuing education requirements for midlevel health care practitioners.

Section 1. Application for Certification. (1) The application form as shown in these regulations for the general practice of midlevel health care practitioners (MLPs) shall be completed in its entirety by all applicants.

(2) The application forms shall be obtained through the Kentucky Board of Family Health Care Providers, c/o Division of Vital Records and Health Development, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

(3) The application shall be executed and sworn before a notary and returned to the Kentucky Board of Family Health Care Providers with a postmark of at least sixty (60) days prior to the scheduled examination with the fee of fifty (50) dollars.

(4) The Kentucky Board of Family Health Care Providers may reject an application for the following reasons:

(a) Applicant has been convicted of a misdemeanor involving moral turpitude or a felony;

(b) Applicant has had a health care profession license or certificate denied or revoked in any state or territory;

(c) Applicant has an addiction to alcohol or any other chemical substances;

(d) Applicant has misrepresented any facts on the application;

(e) Applicant has failed to provide additional information requested by the Kentucky Board of Family Health Care Providers;

(f) Applicant has not properly completed or sworn to the information to meet all the requirements pursuant to KRS Chapter 216.

(5) The Kentucky Board of Family Health Care Providers shall notify the candidate of acceptance or rejection of the application and/or date, time, place of the examination at least thirty (30) days prior to the examination.

Section 2. Approved Qualifying Examinations.

(1) The examination for certification as a midlevel health care practitioner shall consist of a written portion and a clinical/skills practicum portion.

(2) The qualifying examination for certification as a midlevel health care practitioner shall consist of the following components as approved by the Kentucky Board of Family Health Care Providers:

(a) The written portion of the examination shall consist of items based on medical treatment protocols developed and approved by the Kentucky Board of Family Health Care Providers.

(b) The clinical practicum portion of the examination shall test the applicant's skills and shall be based on the medical treatment protocols developed and/or approved by the Kentucky Board of Family Health Care Providers.

(c) A score of seventy (70) percent shall be

achieved on the written portion of the qualifying examination and a score of 100 percent shall be achieved on the clinical/skills portion of the examination for certification as a midlevel health care practitioner.

(3) The board shall recognize the national or state qualifying examinations for certification or licensure of advanced registered nurse practitioners, physician assistants and registered nurses as the qualifying examination for the certified midlevel health care practitioner.

Section 3. Qualifying Examination Administration. (1) Examination sites and examination frequency shall be designated by the Kentucky Board of Family Health Care Providers and published annually.

(2) There shall be no limit on the number of times a candidate can take the examination for certification.

(3) The candidate shall notify the Kentucky Board of Family Health Care Providers if a new test date is desired.

Section 4. Certification of Midlevel Health Care Practitioners. (1) To be certified by the Kentucky Board of Family Health Care Providers as a midlevel health care practitioner, a person shall:

(a) Be a health care professional who, by license or certification directly deals with physical or psychological illness of a patient;

(b) Submit a completed application with the required fee;

(c) Be of good character and reputation;

(d) Meet the requirement for application pursuant to KRS 216.925;

(e) Have passed an examination approved by the Kentucky Board of Family Health Care Providers.

(2) The certified midlevel health care practitioner shall practice only in licensed networks following the guidelines pursuant to KRS 216.925.

(3) Certification shall begin on or before July 1, 1992, and certification shall be renewed every five (5) years thereafter.

Section 5. Recertification of Midlevel Health Care Practitioners. (1) The application form as shown in these regulations for the general practice of midlevel health care practitioners (MLPs) shall be completed in its entirety by all applicants.

(2) The application forms shall be obtained through the Kentucky Board of Family Health Care Providers, c/o Division of Vital Records and Health Development, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

(3) The application shall be executed and sworn before a notary and returned to the Kentucky Board of Family Health Care Providers with a postmark of at least sixty (60) days prior to the end of the licensure period with the fee of fifty (50) dollars.

(4) The Kentucky Board of Family Health Care Providers may reject an application for the following reasons:

(a) Applicant has been convicted of a misdemeanor involving moral turpitude or a felony;

(b) Applicant has had a health care profession license or certificate denied or revoked in any state or territory;

(c) Applicant has an addiction to alcohol or any other chemical substances;

(d) Applicant has misrepresented any facts on the application;

(e) Applicant has failed to provide additional information requested by the Kentucky Board of Family Health Care Providers;

(f) Applicant has not properly completed or sworn to the information to meet all the requirements pursuant to KRS Chapter 216;

(g) Applicant has failed to complete mandatory education requirements.

(5) Certification shall be renewed at least every five (5) years thereafter according to procedures established by the Kentucky Board of Family Health Care Providers. In conjunction with the renewal of his/her certification, the midlevel health care practitioner shall provide evidence of having completed the required ten (10) medical education hours annually.

(6) The Kentucky Board of Family Health Care Providers shall notify the candidate of acceptance or rejection of the application and/or date, time, place of the examination at least thirty (30) days prior to the examination.

Section 6. Mandatory Continuing Education Requirements. (1) Any human immunodeficiency virus education courses shall be in accordance with 902 KAR 2:160, Human immunodeficiency virus education continuing education for professionals.

(2) Courses shall utilize organized learning experiences through personal professional presentations or educational programs meeting the criteria for AMA Category 1 or the Kentucky Board of Nursing requirements.

(3) Other courses shall be reviewed for approval by a committee of the Kentucky Board of Family Health Care Providers in accordance with the following:

(a) The potential provider of continuing education requirements for the midlevel health care practitioner shall request an application for approval as a provider and the board shall assign the potential provider of continuing education a permanent, nontransferable number. The provider of continuing education number shall be used to identify all communications, offering announcements, records, and reports.

(b) Applications for approval as a provider of continuing education may be submitted at any time during the year.

(c) If the potential provider of continuing education meets the board's standards and criteria, approval shall be granted.

(4) At the time of recertification the certified midlevel health care practitioner shall submit to the Kentucky Board of Family Health Care Providers in the form of certificates, examinations, signed forms, etc., proof of completion of ten (10) approved medical education hours per year to the following address: Kentucky Board of Family Health Care Providers, c/o Division of Vital Records and Health Development, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

COMPILER'S NOTE: (See Forms published with 902 KAR 22:030, the ordinary regulation, in this Administrative Register.)

KAREN A. MAIN, Chairman
APPROVED BY AGENCY: November 15, 1991
FILED WITH LRC: December 9, 1991 at 4 p.m.

STATEMENT OF EMERGENCY
904 KAR 2:015E

This emergency administrative regulation revises the cost-of-living adjustments to state supplementation recipients by increasing the amounts as follows: (a) Recipients in personal care homes receive a \$35 increase per month; (b) Recipients in family care homes receive a \$26 increase per month; (c) Recipients in caretaker situations receive the following increases: single individual - \$23, couple (one requiring care) - \$33, couple (both requiring care) - \$35. This emergency administrative regulation is necessary in order to comply with the department's pass-along agreement with the Social Security Administration which requires cost-of-living increases for eligibility determinations made on or after January 1, 1992. In order to implement these revisions by January 1, 1992, an emergency administrative regulation must be promulgated. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler for the December 1991 filing.

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

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

904 KAR 2:015E. Supplemental programs for the aged, blind and disabled.

RELATES TO: KRS 205.245, 20 CFR 416.2095, 20 CFR 416.2096

STATUTORY AUTHORITY: KRS 194.050, Cabinet for Human Resources, v. Additional Budget Items, 1990-92 Final Enacted Budget Memorandum, Vol. II, p. 261

EFFECTIVE: December 4, 1991

NECESSITY AND FUNCTION: The Cabinet for Human Resources is responsible under Title XVI of the Social Security Act as amended by Public Law 92-603 to administer a state funded program of supplementation to all December, 1973, recipients of aid to the aged, blind and disabled, referred to as AABD, disadvantaged by the implementation of the Supplemental Security Income Program, referred to as SSI. KRS 205.245 provides not only for the mandatory supplementation program but also for supplementation to other needy aged, blind and disabled persons. The cabinet shall operate a supplement program for certified personal care homes (PCH) which accept state supplementation recipients and have a thirty-five (35) percent mentally ill or mentally retarded (MI or MR) population in all of the PCH's occupied licensed personal care beds. Personal care services are described in 902 KAR 20:036. This regulation sets forth the provisions of the supplementation program.

Section 1. Mandatory State Supplementation. Mandatory state supplementation payments shall be equal to the difference between the AABD payment for the month of December, 1973, plus any other income available to the recipient as of that month and the total of the SSI payment and other income. Also included are those former

aged, blind or disabled recipients ineligible for SSI due to income but whose special needs entitled them to an AABD payment as of December, 1973. Mandatory payments shall continue until the needs of the recipient as recognized in December, 1973, have decreased or income has increased to the December level.

(1) The mandatory payment is increased only when income as recognized in December, 1973, decreases, the SSI payment is reduced but the recipient's circumstances are unchanged, or the standard of need utilized by the department in determining optional supplementation payments for a class of recipients is increased.

(2) In cases of man and wife, living together, income changes after September, 1974, will result in increased mandatory payment only if total income of the couple is less than December, 1973, total income.

Section 2. Optional State Supplementation. Optional state supplementation is available to those persons meeting technical requirements and resource limitations of the aged, blind or disabled medically needy program as contained in 907 KAR 1:011 and 907 KAR 1:004 (except when specified in 904 KAR 2:015) who require special living arrangements and who have insufficient income to meet their need for care. Special living arrangements include residence in a personal care home as defined in 902 KAR 20:036 or family care home as defined in 902 KAR 20:041 or situations in which a caretaker must be hired to provide care other than room and board. A supplemental payment is not made to or on behalf of an otherwise eligible individual when the caretaker service is provided by the spouse, parent (of an adult disabled child or a minor child), or adult child (of an aged or disabled parent) who is living with the otherwise eligible individual. When this circumstance exists and a person living outside the home is hired to provide caretaker services, the supplemental payment may be made. Application for SSI, if potential eligibility exists, is mandatory.

Section 3. Resources Considerations. In determining countable resources and the effect of resources on eligibility, the following policies are applied.

(1) Consider resources according to policies for the medically needy as contained in 907 KAR 1:004, except as noted in subsection (2) of this section.

(2) The upper limit for resources for an individual and for a couple is set at \$1,700 and \$2,550, respectively, effective January 1, 1986; at \$1,800 and \$2,700, respectively, effective January 1, 1987; at \$1,900 and \$2,850, respectively, effective January 1, 1988; and at \$2,000 and \$3,000, respectively, effective January 1, 1989.

(3) Resources determined in accordance with subsection (1) of this section to be in excess of excluded amounts must be considered countable resources when determining whether the individual or couple exceeds the upper limits specified in subsection (2) of this section. If resources exceed the upper limits, the individual or couple is ineligible.

Section 4. Income Considerations. Establish the amount of income according to policies for the medically needy in 907 KAR 1:004. In

determining the amount of optional supplementation payment, total net income of the applicant or recipient, or applicant or recipient and spouse, including any payments made to a third party in behalf of an applicant or recipient, is deducted from the standard of need with the following exceptions:

(1) Income of the ineligible spouse is conserved for the needs of the ineligible, non-SSI spouse or minor dependent children in the amount of one-half (1/2) of the SSI standard for an individual for each person adjusted by deduction of sixty-five (65) dollars and one-half (1/2) of the remainder from monthly earnings of spouse. Income of the eligible individual is not conserved for the needs of the ineligible spouse or minor dependent children. When conserving for the needs of the minor dependent children, income of the children shall be appropriately considered so that the amount conserved does not exceed the allowable amount. When the eligible individual and spouse each have earnings, the earnings shall be combined prior to the application of the earnings disregard of sixty-five (65) dollars and one-half (1/2) of the remainder.

(2) If one (1) member of a couple is institutionalized and the SSI spouse maintains a home, income in the amount of the SSI standard for one (1) is conserved for the spouse.

Section 5. Standard of Need. (1) The standard, based on living arrangement, from which income as computed in Section 4 of this regulation is deducted to determine the amount of optional payment is as follows:

(a) For eligibility determinations for personal care homes made on or after January 1, 1992 [July 1, 1991]: not less than \$720 [705];

(b) For eligibility determinations for family care homes made on or after January 1, 1992 [Family care home]: not less than \$525 [510, effective January 1, 1991];

(c) Caretaker.

1. For eligibility determinations for Single individual, or eligible individual with ineligible spouse (one who is not aged, blind, or disabled) made on or after January 1, 1992: not less than \$445 [440, effective January 1, 1991];

2. For eligibility determinations for married couple, both eligible (aged, blind, or disabled), with one (1) requiring care made on or after January 1, 1992: not less than \$661 [638, effective January 1, 1991];

3. For eligibility determinations for married couple, both eligible and both requiring care made on or after January 1, 1992: not less than \$705 [682, effective January 1, 1991].

(2) In couple cases, both eligible, the couple's income is combined prior to comparison with the standard of need, and one-half (1/2) of the deficit is payable to each.

(3) The standard includes forty (40) dollars personal needs allowance which shall be retained by the client.

Section 6. Temporary Stay in a Medical Institution. A recipient of optional or mandatory state supplementation shall have continuation of state supplementation benefits during a temporary stay in a hospital, psychiatric hospital, skilled nursing facility or intermediate care facility.

Section 7. Residency. (1) 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. An alien shall have been admitted for permanent residence. The applicant or recipient shall also be a resident of Kentucky. Generally, this means the individual shall be residing in the state for other than a temporary purpose; however, there are exceptions with regard to applicants for or recipients of a state supplementary payment and institutionalized individuals. The residency criteria specified in federal regulations at 42 CFR 435.403 shall be applicable except as specified in Section 6 of this regulation.

(2) Supplemental payments may be made to Kentucky residents residing outside the state only when the individual has been placed in the other state by this state. In these situations, the other requirements for eligibility shown in other sections of this regulation shall be applicable, except that with regard to the requirement shown in Section 6 of this regulation, the licensure shall be in accordance with a similar licensure act of the other state. If there is no similar licensure act in the other state, the payment may be made only if this state determines that, except for being in another state, the facility meets standards for licensure under the provisions of KRS 216B.010 to 216B.131. To be eligible for a supplemental payment while placed out-of-state the individual shall require the level of care provided in the out-of-state placement, there shall be no suitable placement available in Kentucky, and the placement shall be preauthorized by staff of the Department for Social Insurance.

(3) When determining residency, ability of the individual to indicate intent (to become a Kentucky resident) shall be considered if the individual is institutionalized. The individual is considered incapable of indicating intent if:

(a) His I.Q. is forty-nine (49) or less or he has a mental age of seven (7) or less, based on tests acceptable to the department; or

(b) He is judged legally incompetent; or

(c) Medical documentation, or other documentation acceptable to the state, supports a finding that he is incapable of indicating intent.

(4) An individual is institutionalized if he is residing in a facility providing some services other than room and board. Personal care facilities are considered to be institutions.

(5) For any noninstitutionalized individual under age twenty-one (21) whose eligibility for a supplemental payment is based on blindness or disability, his state of residence is Kentucky if he is actually residing in the state.

(6) For any noninstitutionalized individual age twenty-one (21) or over, his state of residence is Kentucky if he is residing in the state and has the intention to remain permanently or for an indefinite period (or, if incapable of indicating intent, is simply residing in the state).

(7) For any institutionalized individual living in Kentucky who is under age twenty-one (21) or who is age twenty-one (21) or older and became incapable of indicating intent before age twenty-one (21), the state of residence is Kentucky if:

(a) The state of residence of the individual's

parents, or his legal guardian if one has been appointed, is Kentucky; or

(b) The state of residence of the parent applying for the supplemental payment on behalf of the individual is Kentucky, when the other parent lives in another state and there is no appointed legal guardian.

(8) For any institutionalized individual living in Kentucky who became incapable of indicating intent at or after age twenty-one (21), the state of residence is Kentucky if he was living in Kentucky when he became incapable of indicating intent. If this cannot be determined, the state of residence is Kentucky unless he was living in another state when he was first determined to be incapable of indicating intent.

(9) For individuals subject to determinations of residency pursuant to subsections (7) and (8) of this section, the state of residency is Kentucky when the individual is residing in Kentucky, and a determination of residency applying those criteria does not show the individual to be a resident of another state.

(10) For an individual subject to a determination of residency pursuant to subsections (7) and (8) of this section, the state of residence is Kentucky when Kentucky and the state which would otherwise be the individual's state of residency have entered into an interstate residency agreement providing for reciprocal residency status; i.e., when a similarly situated individual in either state would by written agreement between the states be considered a resident of the state in which he is actually residing.

(11) For other institutionalized individuals (i.e., those individuals who are both age twenty-one (21) or over and capable of indicating intent), the state of residence is Kentucky if the individual is residing in Kentucky with the intention to remain permanently or for an indefinite period.

(12) Except in subsections (3) through (11) of this section, any individual placed by the cabinet in an institution in another state may, with appropriate preauthorization, be considered a resident of Kentucky, and any individual placed in an institution in Kentucky by another state may not be considered a resident of Kentucky.

(13) An individual receiving a mandatory state supplemental payment from Kentucky shall be considered a resident of Kentucky so long as he continues to reside in Kentucky. An individual receiving a mandatory or optional supplemental payment from another state shall not be considered a resident of Kentucky.

(14) An individual eligible for and receiving a supplemental payment in October, 1979, shall be considered a Kentucky resident through July 4, 1984, even if he does not meet the residency requirements specified in this section, so long as the individual continues to reside in Kentucky and his receipt of supplementary payments has not since October, 1979 been interrupted by a period of ineligibility.

(15) Except in the preceding provisions of this section, a former Kentucky resident who becomes incapable of indicating intent while residing out of this state may be considered a Kentucky resident if he returns to this state and he has a guardian, parent or spouse residing in this state. This individual may not be considered a Kentucky resident on the basis of

this subsection whenever, subsequent to that time, he leaves this state to reside in another state except when the provisions of subsection (11) of this section are met. An individual leaving the state may, however, reestablish Kentucky residency by returning to the state if he has a guardian, parent or spouse residing in this state.

(16) No aged, blind, or disabled person shall be eligible for state supplementation while residing in a personal care home or family care home unless such home is licensed under KRS 216B.010 to 216B.131.

Section 8. Mentally Ill or Mentally Retarded Supplement. Certified PCH may qualify for quarterly supplement payments of fifty (50) cents per diem for each state supplementation recipient in their care as of the first calendar day of each qualifying month. In order to qualify, PCH shall meet the following criteria:

(1) The PCH shall be licensed in accordance with KRS 216B.010 to 216B.131.

(2) The PCH shall care for residents who have a primary or secondary diagnosis of mental retardation (such as mild or moderate, or other ranges of retardation whose needs can be met in a personal care home) or mental illness (excluding such diagnoses as organic brain syndrome, senility, chronic brain syndrome, Alzheimer's). An individual whose medical history includes a previous hospitalization in a psychiatric facility shall meet the criteria of mental illness, regardless of the present diagnosis.

(3) The PCH shall care for a thirty-five (35) MI or MR percent population in all of its occupied licensed PCH beds.

(4) The PCH shall not be eligible for payments during the time it is rated by the Office of Inspector General as "conditional". Rating requirements are specified in KRS 216.550 and 900 KAR 2:030.

(5) The PCH shall have a licensed nurse or certified medication technician (CMT) on duty for at least four (4) hours during the first or second shift. The PCH may not decrease licensed nurse or CMT staffing hours in effect prior to July 1990, as a result of this minimum requirement.

(6) The PCH shall file an application with the Department for Social Insurance (DSI) by the tenth working day of the first month of the calendar quarter to be eligible for payment in that quarter. Quarters shall begin in January, April, July and October. Once certified, eligibility continues as long as criteria continues to be met.

(7) For state fiscal year (SFY) 1991 implementation only, PCH interested in being certified for the MI or MR supplement shall file a letter of intent with DSI by July 31, 1990. To assure adequate time for the MI or MR training and certification process for both the cabinet and the PCH, the letter of intent shall secure money for the first and second quarters of SFY 1991.

(8) The PCH shall provide DSI with its tax identification number and address annually and with a monthly report of all residents of the PCH (including resident's social security number) who were residents of the PCH on the first day of the month. In order to maintain confidentiality, the PCH shall annotate the monthly listing with a star which indicates a

resident has a MI or MR diagnosis and note with a check mark those residents who receive state supplementation but are not mentally ill or mentally retarded. A star and a check mark shall indicate the resident is both MI or MR and a recipient of state supplementation. The monthly report shall be used for certification, payment, and audit purposes. The monthly report shall be postmarked to DSI by the fifth working day of the month. For implementation in SFY 1991, facilities which file a timely letter of intent with DSI shall file the monthly reports for July and August, 1990, on or before August 15, 1990.

(9) The PCH shall notify DSI when its MI or MR percentage goes below thirty-five (35) percent for all personal care residents. Facilities may be randomly audited to verify percentages and payment accuracy.

Section 9. Training. The PCH licensed nurse or CMT shall attend MI or MR training provided through the Department for Mental Health and Mental Retardation Services. Other staff may be trained in order to assure the facility always has at least one (1) certified staff employed for certification purposes.

(1) MI or MR training shall be provided through a one (1) day workshop. Training will cover at least the following:

(a) Importance of proper medication administration.

(b) Side affects and adverse medication reactions especially with regard to psychotropics.

(c) Signs and symptoms of an acute onset of a psychiatric episode.

(d) Characteristics of each major diagnosis, for example, paranoia, schizophrenia, bi-polar disorder, mental retardation, etc.

(e) Guidance in the area of supervision versus patient rights for the MI or MR population.

(f) How to provide necessary activities to meet the needs of mentally ill or mentally retarded residents.

(2) Initial training shall include the licensed nurse or CMT and may include the owner or operator. These individuals shall be trained in the quarter during which the application is filed. For implementation in SFY 1991 only, the initial training shall take place in the quarter during which the letter of intent is filed or the following quarter. To assure that a certified staff member is always employed at the facility, a maximum of five (5) may be trained during a year (one (1) additional staff member in each of the quarters following the initial training). If staff turnover results in the loss of the licensed nurse or CMT and five (5) staff have been trained, the PCH shall request in writing to DSI an exemption of the five (5) staff rule. The PCH shall have on staff a licensed nurse or CMT who has received the MI or MR training or is enrolled in the next scheduled MI or MR training workshop at the closest location.

(3) The Department for Mental Health and Mental Retardation Services will provide a certificate to direct care staff who complete the workshop.

(4) DSI shall pay twenty-five (25) dollars for each staff member receiving training up to the maximum of five (5) staff per year, in accordance with 904 KAR 2:050.

Section 10. MI or MR Certification. The Office of the Inspector General, Division of Licensing and Regulation, shall visit PCH to certify their eligibility to participate in the MI or MR supplement. The PCH's initial MI or MR certification may be separate from the annual survey. However, after the initial MI or MR certification, the certification shall be in effect until the subsequent licensure survey, which can be greater than or less than twelve (12) months.

(1) Written notification to DSI from the PCH shall be postmarked within five (5) working days after staff have completed the training workshop. DSI shall notify the Division of Licensing and Regulation that the facility is ready to be certified.

(2) The Division of Licensing and Regulation shall review records, observe and interview residents and staff during the certification process. The Division of Licensing and Regulation shall review records to assure the following criteria is met:

(a) Certification is on file at the PCH to verify staff training by the Department for Mental Health and Mental Retardation Services.

(b) The PCH's certified staff have trained all other direct care staff through in-service training or orientation regarding the information obtained at the MI or MR training workshop. The PCH shall maintain documentation of attendance at the in-service training for all direct care staff.

(c) Activities are being regularly provided and meet the needs of the residents. When residents do not attend group activities, activities shall also be designed to meet the needs of individual residents, for example, reading or other activity which may be provided on an individual basis. Individualized care plans are not required to meet this criteria.

(d) Medication administration meets licensure requirements and licensed nurse or CMT demonstrates a knowledge of psychotropic drug side affects.

(3) The Division of Licensing and Regulation shall be provided the MI or MR training package to assure survey staff are aware of what has been taught for MI or MR certification purposes.

(4) The Division of Licensing and Regulation shall also review the PCH copy of the listing submitted to DSI prior to performing their record review during the MI or MR certification process.

(5) If thirty-five (35) percent MI or MR population is met on the day of the visit, the PCH shall be deemed to have an ongoing qualifying percentage effective with month of request for certification. This certification shall be in effect until next annual survey which can be greater than or less than twelve (12) months. The PCH is responsible for notifying DSI, within ten (10) working days, when the MI or MR population goes below thirty-five (35) percent of all occupied personal care beds in the facility.

(6) The Office of the Inspector General, Division of Licensing and Regulation, shall provide a form to DSI monthly identifying certified PCH eligible for MI or MR supplement. This information shall be provided by the fifth working day of each month for the prior month.

(7) The Office of Inspector General, Division of Licensing and Regulation, shall inform DSI monthly of PCH which receive a conditional

rating. This information shall be provided by the fifth working day of each month for the prior month.

Section 11. Hearings and Appeals. Applicants or recipients of benefits under programs described herein who are dissatisfied with any action or inaction on the part of the cabinet shall have the right to a hearing under 904 KAR 2:055.

MIKE ROBINSON, Commissioner

HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: November 21, 1991

FILED WITH LRC: December 4, 1991 at 2 p.m.

STATEMENT OF EMERGENCY
904 KAR 2:116E

This emergency administrative regulation is necessary for the timely implementation and administration of the Low Income Home Energy Assistance Program in accordance with the federal fiscal year 1992 Low Income Home Energy Assistance Block Grant Application and Plan Narrative. In order to implement the program on November 4, 1991, as specified in the plan narrative, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

WALLACE G. WILKINSON, Governor

HARRY J. COWHERD, M.D., Secretary

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

904 KAR 2:116E. Low income home energy assistance program.

RELATES TO: KRS 194.050, 42 USC 8621 et seq., CHR, et al, v. Northern Kentucky Welfare Rights Association, et al (U.S. District Court, Eastern District, Ky., Civil Action No. 9-71, January 28, 1991)

STATUTORY AUTHORITY: KRS 194.050, 42 USC 8621 et seq.

EFFECTIVE: November 21, 1991

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility as prescribed by 42 USC 8621 et seq. [(Title XXVI of the Omnibus Budget Reconciliation Act of 1981 as amended)] and Augustus F. Hawkins Human Services Reauthorization Act of 1990 to administer a program to provide assistance for eligible low income households within the Commonwealth of Kentucky to help meet the costs of home energy. This regulation states the eligibility and benefits criteria for energy assistance.

Section 1. Definitions. (1) An "authorized representative" means the person who presents to the cabinet or its representative a written statement signed by the appropriate household member authorizing that person to apply on the household's behalf.

(2) "Crisis component" means the component that provides assistance to households which are experiencing a home heating crisis.

(3) "Economic unit" means one (1) or more persons sharing common living arrangements.

(4) "Emergency" means the household is without heat at the time of application or will be disconnected from a utility service within forty-eight (48) hours.

(5) "Energy" means electricity, gas, and any other fuel that is used to sustain reasonable living conditions.

(6) "Gross income" means all earned and unearned income, including lump sum payments received by the households during the calendar month preceding the month of the application.

(7) "Heating season" means the period from October through April.

(8) "Household" means any individual or group of individuals who are living together in the principal residence as one (1) economic unit and who share complete kitchen facilities for the exclusive use of the individual or individuals. [for whom residential energy is customarily purchased in common or who make undesignated payments for energy in the form of rent.]

(9) "Life threatening situation" means without heat or will be without heat within forty-eight (48) hours and temperatures are at a dangerous level for household members.

(10) "Principal residence" means the place:

(a) Where a person is living voluntarily and not on a temporary basis;

(b) He considers home;

(c) To which, when absent, he intends to return; and

(d) Is identifiable from other residences, commercial establishments, or institutions.

(11) "Subsidy component" means the component that provides eligible households with a one (1) time payment to the household's energy provider [energy assistance for heating].

Section 2. Application. (1) Each household or authorized representative shall complete an application and provide information necessary to determine eligibility and benefit amount.

(2) An application shall not be considered completed until all information needed is received.

Section 3. Eligibility Criteria. (1) Income.

(a) Gross income shall be at or below 110% of the federal poverty income guidelines as published annually by the U.S. Department of Health and Human Services. The Department for Social Insurance shall announce the income guidelines after being published by the Department of Health and Human Services. [the applicable amount shown on the income scale for the appropriate size household.]

[Income Scale]

Family Size	Monthly	Yearly
1	\$ 575	\$ 6,908
2	771	9,262
3	968	11,616
4	1,164	13,970
5	1,360	16,324
6	1,556	18,678]

[(b) For each household member more than six (6), the above income eligibility limitation shall be increased by \$196 monthly or \$2,354 yearly.]

(b) [(c)] Excluded from income are:

1. Payments received by a household from a federal, state, or local agency designated for a special purpose and which the applicant must

spend for that purpose;

2. Payments made to others on the household's behalf;

3. Loans;

4. Reimbursements for expenses;

5. Incentive payments (JET and JTPA) normally disregarded in AFDC;

6. Federal payments or benefits which shall be excluded according to federal law; and

7. Supplemental medical insurance premiums.

(2) Liquid assets.

(a) The household shall have total liquid assets at the time of application of not more than \$5,000.

(b) Excluded assets are:

1. Cars;

2. Household or personal belongings;

3. Principal residence;

4. Cash surrender value of insurance policies;

5. Prepaid burial policies;

6. Real property; and

7. Cash on hand or in a bank account if the cash is income considered under subsection (1)(a) of this section.

(3) Crisis component.

(a) Applicants shall meet the income and liquid assets criteria; and

(b) Be without heat; or

(c) Be without fuel within five (5) days; or

(d) Have received a notice of disconnection of service and will be disconnected within forty-eight (48) hours; or

(e) Require a heat system repair to obtain adequate heat; or

(f) For those households whose home heating costs are included as an undesignated portion of the rent, the household must have received a notice of eviction for nonpayment of rent.

Section 4. Benefit Levels. (1)(a) Payments to the households' heating fuel providers shall be made for the full benefit amount.

(b) Benefits shall be determined from fuel usage data and from the average heating season energy cost for [of] the six (6) primary heating fuels prior to the implementation of the subsidy component.

[(c)] The average heating season energy cost for the six (6) primary heating fuels used in determining the benefits in the subsidy component shall be:

[1. Coal \$796;]

[2. Electricity \$656;]

[3. Fuel oil \$973;]

[4. Natural gas \$656;]

[5. Propane \$1083; and]

[6. Wood \$812.]

[(d)] Households shall receive benefits based on the household's poverty level and the type of heating fuel. Those households with the lowest incomes and highest heating season fuel costs shall receive the highest benefits.

[(e)] For residents of subsidized and unsubsidized housing, Benefits shall be a percentage of the average annual heating season energy costs of the primary heating fuel.

[(f)] Pursuant to the judgment of the United States District Court in Civil Action No. 90-71, the cabinet shall calculate benefits that subsidized households should have received. The cabinet shall pay subsidized households the difference between the amount received and the amount to which such households were entitled.]

[(d)] [(g)] Benefit matrix subsidy component.

Households Income as a Percent of 100% Federal Poverty Level

Benefit Amount as a Percent of Heating Season Energy Costs (October through April)

0- 22%	18.5%
23- 44%	16.5%
45- 66%	14.5%
67- 88%	12.5%
89-110%	10.5%

[0- 14%	19.6%
15- 29%	17.1%
39- 44%	14.6%
45- 59%	12.1%
60- 74%	9.6%
75- 89%	7.1%
90-110%	4.6%]

(2) Crisis component. Benefits to households shall be the minimum amount necessary to alleviate the crisis. Benefits may be fuel or other energy for heating, heaters, blankets, or [sleeping bags,] emergency shelter[, or repair to a heating system to obtain adequate heat]. Space heaters shall be a temporary service and shall be loaned to a household until fuel is delivered, the heating system is repaired or other resources are located which will alleviate the crisis. The contracting agency shall determine the type and value of assistance necessary to alleviate the crisis.

(a) In determining the minimum amount of assistance, the contracting agency shall take into consideration direct subsidies for payment of utility cost received by the household from other programs.

(b) A household shall receive assistance more than once, but shall not receive more than the maximum allowable for the primary heating fuel [which shall be the cost of an average sixty (60) day supply based on energy usage data and the cost of fuel] as determined prior to component implementation.

(c) The benefits for a household threatened with eviction whose heat is an undesignated portion of the rent shall not receive more than the maximum allowable for the primary heating fuel as determined prior to component implementation. [exceed the energy portion, (in gas and electric) of the monthly Standard Utility Allowance (SUA) in the Food Stamp Program. Those benefits are as follows:]

[Household Size	SUA
1 and 2	\$105
3	\$109
4 or more	\$120]

[These benefit amounts are available per each month that the household is in arrears on the rent with the maximum benefits not to exceed the average sixty (60) day supply for the primary heating fuel.]

[(d)] A household needing a heat system repair shall be referred to the local weatherization program. The weatherization program staff shall evaluate the heating system and have all repairs, necessary to make the system operable, performed as soon as possible. Such repairs shall be considered an emergency and shall supercede all other dwellings being considered for weatherization services at the time.

Section 5. Benefit Delivery Methods. (1) Payment under the subsidy component is authorized by a one (1) party check made payable to the vendor or landlord if the heating is included as an undesignated portion of rent. At the recipient's discretion, the total benefit may be made in separate authorizations to more than one (1) provider (for example, when the recipient heats with both a wood stove and electric space heaters). However, the total amount of the payments shall not exceed the maximum for the primary source of heating.

(2) For the crisis component, no direct cash payments shall be made to the recipient. Payments shall be authorized to the energy provider by one (1) party checks upon delivery of fuel, heaters, blankets, [sleeping bags,] emergency lodging, or restoration or continuation of service[, or upon repair of the heating system].

Section 6. Right to a Fair Hearing. Any individual has a right to request and receive a fair hearing in accordance with 904 KAR 2:055.

Section 7. Time Standards. (1) Under the subsidy component, an eligibility determination shall be made promptly after receipt of a completed and signed application but not to exceed thirty (30) days.

(2) Under the crisis component, completed applications shall be processed so that the crisis is resolved within forty-eight (48) hours and in life threatening situations within eighteen (18) hours.

(3) Applicants shall have five (5) working days from the date of application to provide information necessary to complete the application.

Section 8. Effective Dates. (1) Implementation and termination dates for HEAP, depending upon the availability of funds, are:

(a) Applications for the subsidy component shall be accepted beginning November 4, 1991 [October 15, 1990] and ending by November 27, 1991 [October 31, 1990]. Applications shall be accepted after November 27, 1991 until the opening of the crisis component for any household unable to apply during the regular application period.

(b) Applications for the crisis component shall be accepted beginning January 6, 1991 [December 3, 1990] and ending by March 31, 1992 [29, 1991], or until all available funds have been expended. Applications shall be processed in the order taken until funds are expended.

(2) HEAP may be reactivated after termination under the same terms and conditions as shown in this regulation if additional federal funds are made available.

Section 9. Allocation of Funds. (1) Up to fifteen (15) percent of the federal [total] HEAP

allocation shall be reserved for weatherization assistance. These funds shall be used for regular weatherization services and for all heating system repairs identified during the subsidy and crisis components of HEAP.

(2) An amount of funds sufficient to provide benefits to all eligible households that apply during the subsidy application period shall be reserved for the subsidy component.

(3) The balance of benefit funds for HEAP shall be reserved for the crisis component. All benefit [The] funds reserved for the crisis component shall be allocated based upon each local administering agency's share of nonduplicated households assisted in the preceding year's crisis component. [the 1980 census poverty levels of the counties served by the local administering agency.]

(4) Each agency shall reserve ten (10) percent of the allocation [An amount shall be reserved from the crisis component] under subsection (3) of this section to assure component availability until March 31, 1992 [29, 1991] for emergency crisis assistance for households who are without heat or will be disconnected from utility services within forty-eight (48) hours.

(5) Up to \$25,000 shall be reserved for the Preventive Assistance Program administered by the Department for Social Services to assist families with an energy payment not to exceed \$300 for each family if the payment shall prevent the removal of a child from a family or if it shall assist in reuniting a child with the family.

Section 10. Energy Provider Responsibilities. Any provider accepting payment from HEAP for energy or services provided to eligible recipients shall comply with the following:

(1) Reconnection of utilities and delivery of fuel shall be accomplished upon certification for payment;

(2) The household shall be charged in the normal billing process the difference between the actual cost of the home energy and the amount of payment made through this program. [For balances remaining after acceptance of the HEAP payment, the customer shall be offered the opportunity for a deferred payment arrangement or a level payment plan];

(3) HEAP recipients shall not be treated worse than households not receiving benefits;

(4) The household on whose behalf benefits are paid shall not be discriminated against, either in the costs of goods supplied or the services provided; and

(5) A landlord shall not increase the rent of recipient households due to receipt of this payment.

MIKE ROBINSON, Commissioner

HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: November 12, 1991

FILED WITH LRC: November 21, 1991 at 3 p.m.

REGULATIONS AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

COMPILER'S NOTE: The following regulations, unless otherwise noted, were amended by the promulgating agency and the Administrative Regulation Review Subcommittee at its December 6 and 9, 1991, meeting. These regulations will become effective upon adjournment of the second reviewing Subcommittee's meeting or 30 days following referral (January 10, 1992), whichever occurs first.

**AUDITOR OF PUBLIC ACCOUNTS
(As Amended)**

45 KAR 1:030. Audits of sheriff's tax settlements.

RELATES TO: KRS 43.070(1)(a), (2), (3), (4), 43.075, 64.810

STATUTORY AUTHORITY: KRS 43.070(1)(b), 43.075, 64.810

NECESSITY AND FUNCTION: The Auditor of Public Accounts is required to develop uniform auditing standards, procedures, and formats for performing and reporting audits of elected county officials. This administrative regulation establishes the auditing standards, procedures and formats, and the interpretation of these items by the Auditor of Public Accounts, that shall be applied to sheriff's tax settlement audits.

Section 1. Definitions. "Generally accepted government auditing standards" means, for reporting purposes, the "Government Auditing Standards" issued by the Comptroller General of the United States, July 1988.

Section 2. Auditing Standards. (1) The financial and compliance audit of the funds contained in each sheriff's tax settlement shall be conducted in accordance with:

(a) Generally accepted government auditing standards; and

(b) "Audit Guide for Sheriff's Tax Settlements".

(2) Financial statements shall be prepared on a cash basis.

(3)(a) The following documents are incorporated by reference:

1. "Audit Guide for Sheriff's Tax Settlements", Auditor of Public Accounts, August 15, 1991;

2. "Government Auditing Standards" issued by the Comptroller General of the United States, July, 1988; and

3. "Codification of Statements on Auditing Standards", Numbers 1 through 64, American Institute of Certified Public Accountants (Commerce Clearing House, Inc., January 1, 1991).

(b) These documents are available for public inspection and copying at the office of the Auditor of Public Accounts, 2439 U.S. 127 South, Frankfort, Kentucky 40601, Monday through Friday between the hours of 8 a.m. to 5 p.m.

Section 3. The requirements of this administrative regulation shall not be interpreted in a manner that restricts the independent judgment of a certified public accountant or the Auditor of Public Accounts.

Section 4. Audit Objective. (1) The primary objective of an audit of a sheriff's tax settlement [fiscal court] shall be an audit report that provides an opinion on whether the financial statement of a sheriff's tax settlement presents fairly, in all material

respects, the taxes charged, credited, and paid during the tax year.

(2) An auditor shall make tests sufficient to determine whether:

(a) The sheriff has complied with the requirements of KRS 68.210;

(b) Receipts have been accurately recorded by source;

(c) Expenditures have been accurately recorded by payee;

(d) The sheriff has complied with applicable statutory requirements relating to the management of public tax funds; and

(e) Situations or transactions indicate fraud, abuse, or other illegal acts.

(3) If a situation or transaction indicates fraud, abuse, or other illegal act, an auditor shall:

(a) Extend audit steps and procedures to ascertain the effect on the sheriff's financial statement; and

(b) Issue a written report of such situations and effects, as required by auditing standards incorporated by reference in this administrative regulation.

(4) An auditor shall:

(a) Determine the fund balance of sheriff's official tax account;

(b) Issue a written report on internal control structure, as required by "Government Auditing Standards";

(c) Separately identify reportable conditions, and those that are considered material weaknesses, in the report required by paragraph (b) of this subsection;

(d) Issue a written report on compliance with the requirements of statutes and administrative regulations specified by "Government Auditing Standards"; and

(e) In reports required by paragraph (d) of this subsection, set forth:

1. All material compliance violations;

2. A statement of positive assurance concerning items actually tested; and

3. Negative assurance concerning items that were not tested.

Section 5. Reporting Format. (1) An auditor's report shall state that the audit was conducted in accordance with:

(a) Generally accepted government auditing standards; and

(b) "Audit Guide for Sheriff's Tax Settlements".

(2) An auditor's report shall comply with the format specified in the "Sample Audit Report", in the "Audit Guide for Sheriff's Tax Settlements".

(3) An auditor's report shall include, as applicable, documents listed in the "Sample Audit Report" of the "Audit Guide for Sheriff's Tax Settlements".

(4) An auditor shall express an overall opinion on whether the financial statement of a sheriff's tax settlement presents fairly the taxes charged, credited, and paid during the tax year.

(5) If an auditor is unable to express the opinion required by subsection (4) [(3)] of this section, he shall state the reasons why.

(6) Financial statements included in an auditor's report shall be prepared on a cash basis.

(7) The "Report on Compliance with Laws and Regulations", required by the "Sample Audit Report", in the "Audit Guide for Sheriff's Tax Settlements", and the auditing procedures shall comply with the "Compliance Auditing Applicable to Governmental Entities and other Recipients of Governmental Financial Assistance", in No. 63, "Codification of Statements on Auditing Standards".

(8)(a) The internal control structure of a sheriff's tax settlement shall be evaluated, and a report shall be prepared as provided by paragraph (b) of this subsection.

(b) The evaluation shall be conducted as provided by "Consideration of the Internal Control Structure In A Financial Statement Audit", in No. 55, "Codification of Statements on Auditing Standards".

(c) The report shall be prepared as provided by "Report on Internal Control Structure In Accordance With Government Auditing Standards" ("Sample Audit Report", in the "Audit Guide for Sheriff's Tax Settlements").

(9) An auditor's report shall include reports on other material findings.

(10) If law or regulation prohibits the disclosure of information, an auditor's report shall state the:

(a) Nature of the information that has been omitted; and

(b) Law or regulation that prohibits disclosure.

Section 6. Allowance of Audit Fees; Acceptance of Report. (1) Fees for sheriff's tax settlement audits shall be allowable as reasonable and necessary expenses of a county if the independent accountant's examination has been performed in compliance with the standards and procedures required by this administrative regulation.

(2) A sheriff shall obtain written approval of an audit report and workpapers from the Auditor of Public Accounts prior to the:

(a) Release of an audit report; and

(b) Payment of fees for a sheriff's tax settlement audit report.

(3) Failure by an independent certified public accountant to comply with the "Audit Guide for Sheriff's Tax Settlements" and this regulation shall disqualify him from conducting sheriff's tax settlement audits.

BOB BABBAGE, Auditor

APPROVED BY AGENCY: October 14, 1991

FILED WITH LRC: October 15, 1991 at 11 a.m.

AUDITOR OF PUBLIC ACCOUNTS (As Amended)

45 KAR 1:040. Audits of county fee officials.

RELATES TO: KRS 43.070(1)(b), 43.075, 64.810

STATUTORY AUTHORITY: KRS 43.070(1)(b), 43.075, 64.810

NECESSITY AND FUNCTION: The Auditor of Public Accounts is required to develop uniform auditing standards, procedures, and formats for

performing and reporting audits of elected county officials. This administrative regulation establishes the auditing standards, procedures and formats, and the interpretation of these items by the Auditor of Public Accounts, that shall be applied to county fee officials audits.

Section 1. Definitions. "Generally accepted government auditing standards" means, for reporting purposes, the "Government Auditing Standards" issued by the Comptroller General of the United States, July 1988.

Section 2. Auditing Standards. (1) The financial and compliance audit of the funds administered by each county fee official shall be conducted in accordance with:

(a) Generally accepted government auditing standards; and

(b) "Audit Guide for County Fee Officials".

(2) Financial statements shall be prepared on a cash basis.

(3)(a) The following documents are incorporated by reference:

1. "Audit Guide for County Fee Officials", Auditor of Public Accounts, August 15, 1991;

2. "Government Auditing Standards" issued by the Comptroller General of the United States, July, 1988; and

3. "Codification of Statements on Auditing Standards", Numbers 1 through 64, American Institute of Certified Public Accountants (Commerce Clearing House, Inc., January 1, 1991).

(b) These documents are available for public inspection and copying at the office of the Auditor of Public Accounts, 2439 U.S. 127 South, Frankfort, Kentucky 40601, Monday through Friday between the hours of 8 a.m. to 5 p.m.

Section 3. The requirements of this administrative regulation shall not be interpreted in a manner that restricts the independent judgment of a certified public accountant or the Auditor of Public Accounts.

Section 4. Audit Objective. (1) The primary objective of an audit of fee officials shall be an audit report that provides an opinion on whether the financial statements of fee officials present fairly, in all material respects, the receipts, disbursements, and excess fees arising from the cash transactions.

(2) An auditor shall make tests sufficient to determine whether:

(a) The fee officials have complied with the requirements of KRS 68.210;

(b) Receipts have been accurately recorded by source;

(c) Expenditures have been accurately recorded by payee;

(d) The fee officials have complied with applicable statutory requirements relating to the management of public funds; and

(e) Situations or transactions indicate fraud, abuse, or other illegal acts.

(3) If a situation or transaction indicates fraud, abuse, or other illegal act, an auditor shall:

(a) Extend audit steps and procedures to ascertain the effect on the official's financial statement; and

(b) Issue a written report of such situations and effects, as required by auditing standards incorporated by reference in this administrative regulation.

- (4) An auditor shall:
- (a) Determine the fund balance of each official's accounts;
 - (b) Issue a written report on internal control structure, as required by "Government Auditing Standards";
 - (c) Separately identify reportable conditions, and those that are considered material weaknesses, in the reports required by paragraph (b) of this subsection;
 - (d) Issue a written report on compliance with the requirements of statutes and administrative regulations specified by "Government Auditing Standards"; and
 - (e) In reports required by paragraph (d) of this subsection, set forth:
 - 1. All material compliance violations;
 - 2. A statement of positive assurance concerning items actually tested; and
 - 3. Negative assurance concerning items that were not tested.

Section 5. Reporting Format. (1) An auditor's report shall state that the audit was conducted in accordance with:

- (a) Generally accepted government auditing standards; and
 - (b) "Audit Guide for County Fee Officials".
- (2) An auditor's report shall comply with the format specified in the "Sample Audit Report", in the "Audit Guide for County Fee Officials".
- (3) An auditor's report shall include, as applicable, documents listed in the "Sample Audit Report" of the "Audit Guide for County Fee Officials".
- (4) An auditor shall express an overall opinion on whether the financial statement of fee officials present fairly the receipts, disbursements, and excess fees arising from cash transactions.
- (5) If an auditor is unable to express the opinion required by subsection (4) [(3)] of this section, he shall state the reasons why.
- (6) Financial statements included in an auditor's report shall be prepared on a cash basis.
- (7) The "Report on Compliance with Laws and Regulations", required by the "Sample Audit Report", in the "Audit Guide for County Fee Officials", and the auditing procedures shall comply with the "Compliance Auditing Applicable to Governmental Entities and Other Recipients of Governmental Financial Assistance", in No. 63, "Codification of Statements on Auditing Standards".
- (8)(a) The internal control structure of a fee official shall be evaluated, and a report shall be prepared as provided by paragraph (b) of this subsection.
- (b) The evaluation shall be conducted as provided by "Consideration of the Internal Control Structure In A Financial Statement Audit", in No. 55, "Codification of Statements on Auditing Standards".
 - (c) The report shall be prepared as provided by "Report on Internal Control Structure In Accordance With Government Auditing Standards" ("Sample Audit Report", in the "Audit Guide for County Fee Officials").
- (9) An auditor's report shall include reports on other material findings.
- (10) If law or regulation prohibits the disclosure of information, an auditor's report shall state the:
- (a) Nature of the information that has been

omitted; and

- (b) Law or regulation that prohibits disclosure.

Section 6. Allowance of Audit Fees; Acceptance of Report. (1) Fees for county fee official audits [officials] shall be allowable as reasonable and necessary expenses of a county fee official if the independent accountant's examination has been performed in compliance with the standards and procedures required by this administrative regulation.

(2) A fee official shall obtain written approval of an audit report and workpapers from the Auditor of Public Accounts prior to the:

- (a) Release of an audit report; and
- (b) Payment of fees for a fee officials' audit report.

(3) Failure by an independent certified public accountant to comply with the "Audit Guide for County Fee Officials" and this regulation shall disqualify him from conducting fee officials audits.

BOB BABBAGE, Auditor

APPROVED BY AGENCY: October 14, 1991

FILED WITH LRC: October 15, 1991 at 11 a.m.

AUDITOR OF PUBLIC ACCOUNTS (As Amended)

45 KAR 1:050. Audits of fiscal courts.

RELATES TO: KRS 43.070(1)(a), (2), (3), (4), 43.075, 64.810, 31 USC 7501-7507, "Audits of State and Local Governments", OMB Circular A-128 (Federal Register, Doc. 10877, May 3, 1985)

STATUTORY AUTHORITY: KRS 43.070(1)(a), (2), (3), (4), 43.075, 64.810, 31 USC 7501-7507, "Audits of State and Local Governments", OMB Circular A-128 (Federal Register, Doc. 10877, May 3, 1985)

NECESSITY AND FUNCTION: The Auditor of Public Accounts is required to develop uniform auditing standards, procedures, and formats for performing and reporting audits of county governments. This administrative regulation establishes the auditing standards, procedures and formats, and the interpretation of these items by the Auditor of Public Accounts, that shall be applied to fiscal court audits.

Section 1. Definitions. "Generally accepted government auditing standards" means, for reporting purposes, the "Government Auditing Standards" issued by the Comptroller General of the United States, July 1988.

Section 2. Auditing Standards. (1) The financial and compliance audit of the funds contained in each county entity shall be conducted in accordance with:

- (a) Generally accepted government auditing standards;
 - (b) The Single Audit Act of 1984 (31 USC 7501-7507);
 - (c) "Audits of State and Local Governments", OMB Circular A-128; and
 - (d) "Audit Guide for Fiscal Court Audits".
- (2) Financial statements shall be prepared on a cash basis.
- (3)(a) The following documents are incorporated by reference:
- 1. "Audit Guide for Fiscal Court Audits",

Auditor of Public Accounts, August 15, 1991;

2. "Government Auditing Standards" issued by the Comptroller General of the United States, July, 1988; and

3. "Codification of Statements on Auditing Standards", Numbers 1 through 64, American Institute of Certified Public Accountants (Commerce Clearing House, Inc., January 1, 1991).

(b) These documents are available for public inspection and copying at the office of the Auditor of Public Accounts, 2439 U.S. 127 South, Frankfort, Kentucky 40601, Monday through Friday between the hours of 8 a.m. to 5 p.m.

Section 3. The requirements of this administrative regulation shall not be interpreted in a manner that restricts the independent judgment of a certified public accountant or the Auditor of Public Accounts.

Section 4. Audit Objective. (1) The primary objective of an audit of a fiscal court shall be an audit report that provides an opinion on whether the financial statements of a fiscal court present fairly, in all material respects, the:

(a) Assets, liabilities, and fund balances arising from the cash transactions; and

(b) Cash receipts, cash disbursements, and changes in fund or cash balances.

(2) An auditor shall make tests sufficient to determine whether:

(a) The fiscal court has complied with the requirements of KRS 68.210;

(b) Receipts have been accurately recorded by source;

(c) Expenditures have been accurately recorded by payee;

(d) The county has complied with applicable statutory requirements relating to the management of public funds; and

(e) Situations or transactions indicate fraud, abuse, or other illegal acts.

(3) If a situation or transaction indicates fraud, abuse, or other illegal act, an auditor shall:

(a) Extend audit steps and procedures to ascertain the effect on the entity's financial statements; and

(b) Issue a written report of such situations and effects, as required by auditing standards incorporated by reference in this administrative regulation.

(4) An auditor shall:

(a) Determine the fund balance of each fund of a reporting entity;

(b) Issue written reports on Internal Control Structure, as required by:

1. 31 USC 7501-7507; and

2. "Government Auditing Standards";

(c) Separately identify reportable conditions, and those that are considered material weaknesses, in the reports required by paragraph (b) of this subsection;

(d) Issue written reports on compliance with the requirements of statutes and administrative regulations specified by:

1. 31 USC 7501-7507, with regard to specific and general requirements; and

2. "Government Auditing Standards";

(e) In reports required by paragraph (d) of this subsection, set forth:

1. All compliance violations, whether or not they are material;

2. A statement of positive assurance

concerning items actually tested; and

3. Negative assurance concerning items that were not tested.

Section 5. Reporting Format. (1) An auditor's report shall state that the audit was conducted in accordance with:

(a) The Single Audit Act of 1984 (31 USC 7501-7507);

(b) "Audits of State and Local Governments", OMB Circular A-128; and

(c) "Audit Guide for Fiscal Court Audits".

(2) An auditor's report shall comply with the format specified in the "Sample Audit Report", in the "Audit Guide for Fiscal Court Audits".

(3) An auditor's report shall include, as applicable, documents listed in the "Sample Audit Report" of the "Audit Guide for Fiscal Court Audits".

(4) An auditor shall express an overall opinion on whether the financial statements of a fiscal court present fairly the:

(a) Assets, liabilities, and fund balances arising from cash transactions; and

(b) The cash receipts, cash disbursements, and changes in fund or cash balances.

(5) If an auditor is unable to express the opinion required by subsection (4) [(3)] of this section, he shall state the reasons why.

(6) Financial statements included in an auditor's report shall be prepared on a cash basis.

(7) The "Report on Compliance with Laws and Regulations", required by the "Sample Audit Report", in the "Audit Guide for Fiscal Court Audits", and the auditing procedures shall comply with the "Compliance Auditing Applicable to Governmental Entities and other Recipients of Governmental Financial Assistance", in No. 63, "Codification of Statements on Auditing Standards".

(8)(a) The internal control structure of a fiscal court shall be evaluated, and reports shall be prepared as provided by paragraph (b) of this subsection.

(b) The evaluation shall be conducted as provided by "Consideration of the Internal Control Structure in a Financial Statement Audit", in No. 55, "Codification of Statements on Auditing Standards".

(c) The reports shall be prepared as provided by:

1. "Report on Internal Control Structure as Required by 31 USC 7501-7507" ("Sample Audit Report", in the "Audit Guide for Fiscal Court Audits"); and

2. "Report on Internal Control Structure In Accordance with Government Auditing Standards" ("Sample Audit Report", in the "Audit Guide for Fiscal Court Audits").

(9) An auditor's report shall include reports on other material findings.

(10) If law or regulation prohibits the disclosure of information, an auditor's report shall state the:

(a) Nature of the information that has been omitted; and

(b) Law or regulation that prohibits disclosure.

Section 6. Allowance of Audit Fees; Acceptance of Report. (1) Fees for county audits shall be allowable as reasonable and necessary expenses of a county if the independent accountant's examination has been performed in compliance

with the standards and procedures required by this administrative regulation.

(2) A county shall obtain written approval of an audit report and workpapers from the Auditor of Public Accounts prior to the:

(a) Release of an audit report; and

(b) Payment of fees for a fiscal court audit report.

(3) Failure by an independent certified public accountant to comply with the "Audit Guide for Fiscal Court Audits" and this regulation shall disqualify him from conducting fiscal court audits.

Section 7. 45 KAR 1:020 is repealed.

BOB BABBAGE, Auditor

APPROVED BY AGENCY: October 14, 1991

FILED WITH LRC: October 15, 1991 at 11 a.m.

**DEPARTMENT OF LOCAL GOVERNMENT
(As Amended)**

109 KAR 13:010. Uniform financial information report.

RELATES TO: KRS 65.900 to 65.925

STATUTORY AUTHORITY: KRS 65.905

NECESSITY AND FUNCTION: KRS 65.905 [65.906] requires the Department of Local Government to prescribe the format of the uniform financial information report. This administrative regulation prescribes the format that shall be used for the report. This administrative regulation also describes the mechanism for initiating the penalty provisions of KRS 65.920 for failure to submit the report annually.

Section 1. (1) The County Uniform Financial Information Report, Fiscal Year 1990-91, form F-65 (KY-2), dated August 7, 1991, is hereby incorporated by reference.

(2) The City Uniform Financial Information Report, Fiscal Year 1990-91, form F-65 (KY-3), dated August 1, 1991, is hereby incorporated by reference.

(3) The Special Taxing Districts Uniform Financial Information Report, Fiscal Year 1990-91, form F-65 (KY-5), dated September 3, 1991, is hereby incorporated by reference.

(4)(a) The appropriate form shall [will] be provided to each county, city, and special district by the Department of Local Government.

(b) Other interested parties may inspect and obtain copies of the forms at the offices of the Department of Local Government, 1024 Capital Center Drive, Frankfort, Kentucky 40601, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

Section 2. (1)(a) Each county, city and special district which has not completed and submitted a uniform financial information report to the Department of Local Government by February 1 of each year shall be notified by mail of its noncompliance.

(b) The notice to a county or city shall also advise it of the possible suspension of its road aid moneys pursuant to KRS 65.920.

(c) A list of all noncomplying counties, cities and special districts shall be sent to the Legislative Research Commission, the Kentucky League of Cities, the Kentucky

Association of Counties, area development districts, and such other state agencies which may have an interest.

(2)(a) Each county and city which has not completed and submitted a uniform financial information report by March 1 of each year shall be notified by mail of the suspension of its road aid moneys pursuant to KRS 65.920.

(b) A list of all noncomplying counties and [,] cities [and special districts] shall be sent to the Legislative Research Commission, the Kentucky League of Cities, the Kentucky Association of Counties, area development districts, and such other state agencies which may have an interest.

(c) Specific notice shall be sent to the Transportation Cabinet and the Finance and Administration Cabinet to suspend payments of road aid moneys to the listed counties and cities.

(3) Each county, city and special district which submits an incomplete or incorrect report shall be notified in writing and shall be given thirty (30) days to complete or correct the report.

(4) The Department of Local Government shall notify the Transportation Cabinet and the Finance and Administration Cabinet to resume payment of road aid moneys upon submission of a complete and correct report by the affected county or city.

LEE TROUTWINE, Commissioner

APPROVED BY AGENCY: October 3, 1991

FILED WITH LRC: October 3, 1991 at 2 p.m.

**FINANCE AND ADMINISTRATION CABINET
(As Amended)**

200 KAR 3:045. Monthly meal charges at mansions.

RELATES TO: KRS 42.035, 42.037

STATUTORY AUTHORITY: KRS 42.035, 42.037

NECESSITY AND FUNCTION: KRS 42.035 and 42.037 direct that reasonable amounts shall be deducted from the salary or other allowance, of the Governor and Lieutenant Governor for the consumption of food by them and their families. This regulation sets forth the maintenance charges to be paid by the Governor and the Lieutenant Governor relative to members of their families living at the respective mansions and maintenance charges to be paid by other state employees required by their regular duties to receive meals at the respective mansions. The amendment brings the regulation into compliance with KRS 13A.222(4)(c) as requested by the Interim Joint Committee on State Government.

Section 1. (1) Monthly maintenance charges shall be paid by all persons receiving meals on a regular basis in the Executive Mansion and the Lieutenant Governor's Mansion.

(2) Payment shall be made bimonthly by means of a deduction from the salary paid on the regular payroll.

Section 2. The monthly maintenance charges to be paid by the Governor and Lieutenant Governor relative to the members of their respective families living at the respective mansions shall be as follows:

(1) The Governor, Lieutenant Governor, and

adult members of their respective families, eighty (80) dollars each.

(2) Children twelve (12) years of age or older, forty-eight (48) dollars each.

(3) Children under twelve (12) years of age, thirty-six (36) dollars each.

Section 3. Except as provided in Section 4 of this regulation, the monthly maintenance charges to be paid by all other state employees, required by their regular duties to receive meals at the respective mansions, shall be as follows:

- (1) Forty (40) dollars for one (1) meal;
- (2) Sixty-two (62) dollars for two (2) meals;
- (3) Eighty (80) dollars for three (3) meals.

Section 4. If [When] the executive officer having use of the particular mansion is not regularly occupying it as a residence, monthly maintenance charges to be paid by state employees, required by their regular duties to receive meals at that [such] mansion, shall be as follows:

- (1) Sixteen (16) dollars for one (1) meal;
- (2) Twenty-five (25) dollars for two (2) meals;
- (3) Thirty-two (32) dollars for three (3) meals.

L. ROGERS WELLS, JR., Secretary
APPROVED BY AGENCY: September 27, 1991
FILED WITH LRC: September 27, 1991 at 2 p.m.

FINANCE AND ADMINISTRATION CABINET (As Amended)

200 KAR 5:050. Central purchasing for political subdivisions.

RELATES TO: KRS Chapter 45A

STATUTORY AUTHORITY: KRS 45A.050 [45.365]

NECESSITY AND FUNCTION: KRS 45A.050 [45.365] provides for central purchasing for political subdivisions. This regulation establishes the guidelines to be followed by political subdivisions in order to utilize price contracts negotiated by the Commonwealth. The amendments to this regulation are for the purpose of bringing this regulation into compliance with the drafting requirements of KRS Chapter 13A and to clarify the provisions pertaining to eligible political subdivisions purchasing from state price contracts.

[Section 1. General. The Division of Purchases shall include in all price contracts for the purchase of materials or supplies made and entered into on and after June 18, 1970, a provision that, as approved by the Secretary of the Finance and Administration Cabinet, any political subdivision of this Commonwealth, including cities of all classes, counties, school districts or special districts, may participate in such contracts to the same extent as the agencies, boards and commissions of state government. Where political subdivisions are required by law to purchase materials or supplies by competitive bidding, such subdivisions must comply with the applicable statute before participating in the state's price contract unless such contract has been let by competitive bidding.]

[Section 2. Award of Price Contract. (1) Invitations to bid for and the award of price contracts shall be made by the Division of Purchases in accordance with the division's established practices and procedures pursuant to the authority of KRS 45.360, 45.370, and 45.390.]

[(2) Standards and specifications used in establishing price contracts shall be those promulgated or adopted by the Division of Purchases for use by all state agencies.]

[(3) The prices established for a price contract are firm for the duration of that contract; negotiation or bargaining by governmental units using the established prices as a base is prohibited.]

Section 1. [3.] Administration. (1) Each political subdivision desiring to participate in and use the Commonwealth's price contracts for the purchase of materials or supplies shall file written notice of its [such] desire with the Director of the [Manager,] Division of Purchases.

(2)(a) Except as provided in paragraph (c) of this subsection, the Division of Purchases shall not perform administrative services for any participating political subdivision. [The Division of Purchases shall [will] perform no administrative services for any participating political subdivision except as provided herein. Each political [such] subdivision shall issue its own purchase orders, accept its own deliveries, and make its own payments for goods received and accepted. Any circumstances requiring that the Division of Purchases assume some administrative responsibility relative to a purchase by a political subdivision shall be done only by prior agreement between or among the parties and administrative costs incurred by the division will be charged against the political subdivision involved.]

(b) Each political subdivision shall:

- 1. Issue its own purchase order;
- 2. Accept its own deliveries; and
- 3. Make its own payments for goods received and accepted.

(c) Assumption of some administrative responsibility relative to a purchase by a political subdivision, by the Division of Purchases shall only be made after prior agreement between or among the parties. Administrative costs incurred by the Division of Purchases shall be charged against the political subdivision involved.

(3) If [In the event of] a dispute between a [any] participating political subdivision and a vendor under a [any] price contract [which] cannot be satisfactorily resolved between the parties to the dispute, the matter shall be referred to the Director, Division of Purchases for mediation.

(4) At the discretion of the Director of Purchases, a participating political subdivision may be barred from further participation in purchasing from state price contract if it:

- (a) Fails to promptly pay for materials and supplies purchased from state price contracts; or
- (b) Otherwise abuses the use of state price contracts. [Any participating political subdivision which fails to promptly pay for materials or supplies purchased from state price contracts or otherwise abuse the use of state price contracts may, in the discretion of the Director of Purchases, [received and accepted shall] be barred from further participation in purchasing from state [that] price contracts]

[for the duration of its existence].]

[(5) In the exercise of his sound discretion and for good cause, the Secretary of the Finance and Administration Cabinet may revoke his approval for participation in the Commonwealth's price contracts by any political subdivision.]

L. ROGERS WELLS, JR., Secretary
APPROVED BY AGENCY: September 27, 1991
FILED WITH LRC: September 27, 1991 at 2 p.m.

**FINANCE AND ADMINISTRATION CABINET
(As Amended)**

200 KAR 5:306. Competitive sealed bidding.

RELATES TO: KRS [Chapter] 45A.080

STATUTORY AUTHORITY: KRS 45A.035, 45A.080

NECESSITY AND FUNCTION: The Secretary of the Finance and Administration Cabinet is authorized by KRS 45A.055 to publish state purchasing regulations for the implementation of the Kentucky Model Procurement Code (KRS Chapter 45A). This regulation implements the provisions of KRS 45A.080. This regulation is amended to more clearly state that this regulation pertains only to those contracts exceeding the small purchase limits established by KRS 45A.100. These amendments also change the reference to "bidders' list" to "source list" and "purchasing official" and "buyer" to "purchasing officer." These amendments further provide that only those late bids postmarked prior to the scheduled opening date shall be considered for award, and that facsimile bids and responses shall not be accepted by the Division of Purchases. These amendments make revisions to bring the regulation into compliance with the drafting rules established under KRS Chapter 13A.

[Section 1. All contracts exceeding the small purchase authority limits established pursuant to KRS 45A.100 [for construction exceeding an estimated cost of \$5,000, and \$1,000 for all other purchases,] shall be awarded upon the basis of competitive sealed bids unless it is determined in writing that this method is not practicable and that the procurement may, in the best interests of the Commonwealth, more practically be obtained through competitive negotiations.]

Section 1. [2.] The purchasing agencies shall cause public notice of invitations for bids for furnishing procurement requirements of the Commonwealth and its agencies through newspaper advertisement in the manner set forth in KRS 45A.080(3) and shall solicit bids from interested persons listed on the source [bidders'] lists for particular requirements by sending invitations for bids to at least ten (10) persons listed in such source [bidders'] lists. If there are not ten (10) persons listed on a particular source [bidders'] list, invitations shall be sent to all persons listed on that particular [such] list.

Section 2. [3.] Bidders shall complete, execute and submit their bids in strict compliance with the instructions contained in the invitation for bids. Bid forms shall be provided by the purchasing agencies and a bidder responding to an invitation for bids shall use

only the bid form or form of proposal furnished by the purchasing agency in submitting his bids.

Section 3. [4.] Bidders shall submit their bids at the place and at, or prior to the date and hour set in the invitation for bids. Bids received after the hour set for opening bids are late bids and shall be so marked. A late bid shall not be considered for an award unless no other bid is received in response to an invitation for bids. The late bid, together with the envelope in which the bid was submitted bearing the stamped date and hour of receipt of the bid, [and a note, signed by the buyer, indicating whether or not the bid was considered for an award] shall be retained in the file pertaining to the invitation for bids. Only those late bids postmarked prior to the scheduled opening date shall be considered for award [to which the late bid relates].

Section 4. [5.] All bids, and any modifications to bids previously filed, received prior to the date and hour fixed for opening bids shall be kept secure and unopened. Envelopes containing bids but not marked to indicate that they contain a bid and listing the invitation for bids number and the date and hour of opening bids for that invitation may be opened for the purpose of identification of the contents of the envelope and will be marked and resealed.

Section 5. [6.] The purchasing officer [buyer] or other employee of the purchasing agency designated to open the bids shall determine when the time set for opening bids has arrived and shall so declare the time to those present for the bid opening. He shall then and there personally, in the presence of the bidders or their representatives and anyone else who may wish to attend the bid opening, open all bids received as of that date and hour; when practical, the names of the bidders and the amounts of their bids may be read aloud to the persons present. Except where, due to the nature or complexity of an invitation for bids, it may be deemed impractical, a bid tabulation summary sheet shall be prepared for each invitation for bids recording the name of each bidder, a description of the supplies or services bid and the amounts of the bids received. The bid tabulation summary sheet shall be permanently retained in the file pertaining to that invitation for bids and shall be available for public inspection. Inspection of bids by interested persons shall not be permitted or authorized during the formal bid opening process.

Section 6. [7.] The bids shall be examined by the purchasing officer [buyer] responsible for the procurement for any clerical or technical errors, reviewed for technical compliance with the terms of the invitation for bids, and the supplies or services bid evaluated for conformity with the specifications contained in the invitation for bids. Every bidder shall, when requested by the purchasing officer [official] responsible for the particular procurement, clarify or explain, in writing, any matter contained in his bid about which the purchasing officer may have question or believes in good faith needs to be clarified and explained. The bid of any bidder who fails or refuses, within a reasonable time to give a

written clarification or explanation of his bid, or any part thereof, when requested to do so by the purchasing officer, shall not be considered further for an award on the basis of that invitation for bids. The written clarification or explanation of a bid, or a part of a bid, shall be incorporated in and become a part of any contract awarded on the basis of that bid. In due course, and after a reasonable bid evaluation period, the contract shall be awarded to the responsive and responsible bidder whose bid is either the lowest bid price or the lowest evaluated bid price, whichever is determined by the purchasing officer [official] to be in the best interests of the Commonwealth or as designated in the invitation for bids as the basis for award of the contract. If, after evaluation of the bids, including consideration of any clarifying or explanatory information submitted by the bidders, it is determined by the purchasing officer that no satisfactory bid has been received, all bids may be rejected and, in the discretion of the purchasing officer, the invitation for bids cancelled, new bids invited on the basis of the same or revised specifications, or competitive negotiations undertaken for the procurement. The basis for the rejection of all bids and subsequent action taken or to be taken with respect to the invitation for bids shall be recorded in writing and filed in the invitation for bids file relating to the particular procurement.

Section 7. [8.] (1) The right to reject any and all bids and to waive technicalities and minor irregularities in bids shall be maintained and preserved in the case of all invitations for bids issued by purchasing agencies within the Finance and Administration Cabinet or pursuant to delegations of purchasing authority by the Finance and Administration Cabinet.

(2) Grounds for the rejection of bids include [but shall not be limited to]:

(a) Failure of a bid to conform to the essential requirements of an invitation for bids.

(b) Any bid which does not conform to the specifications contained or referenced in any invitation for bids shall be rejected unless the invitation authorized the submission of alternate bids and the items offered as alternatives meet the requirements specified in the invitation.

(c) Any bid which fails to conform to a delivery schedule established in an invitation for bids.

(d) A bid imposing conditions which would modify the terms and conditions of the invitation for bids, or limit the bidder's liability to the state on the contract awarded on the basis of such invitation for bids.

(e) Any bid determined by the purchasing officer in writing to be unreasonable as to price.

(f) Bids received from bidders determined to be not responsible bidders.

(g) Failure to furnish a bid guarantee when required by an invitation for bids.

(h) For other cause as documented by the purchasing officer pursuant to a written determination and finding.

(3) Technicalities or minor irregularities in bids which may be waived when the purchasing officer [official] determines that it will be in the Commonwealth's best interest to do so, are mere matters of form not affecting the material

substance of a bid or some immaterial deviation from or variation in the precise requirements of the invitation for bids and having no or a trivial or negligible effect on price, quality, quantity or delivery of supplies or performance of the services being procured, the correction or waiver of which will not affect the relative standing of, or be otherwise prejudicial to other bidders. The purchasing officer may either give a bidder an opportunity to cure any deficiency resulting from a technicality or minor irregularity in his bid, or waive such deficiency where it is advantageous to the Commonwealth to do so.

Section 8. [9.] Where a mistake in a bid is claimed, and the evidence is clear and convincing that a material mistake was made in the bid and that due to such mistake, the bid submitted was not the bid intended, the bidder may be permitted to withdraw his bid. It shall be the duty of all contractors bidding to carefully review and verify the accuracy of their bids both before submitting them and prior to execution of a contract. When a mistake in a bid is claimed after the award and execution of a contract, on the basis of such bid, the contractor shall be required to perform according to the terms and conditions of the contract unless it is established by clear and convincing evidence that a material mistake had been made in the original bid and that the contractor would sustain a financial loss if required to perform the contract according to its terms; a reduction or diminution in profit margin shall not be deemed a financial loss under this section. Where the evidence is clear and convincing that a material mistake has been made in a bid after the award of a contract, and the contractor will sustain a financial loss if required to perform the contract, the contract shall be rescinded and the contractor shall be ineligible to submit a bid upon readvertisement for the commodity or service [for the construction services].

Section 9. [10.] The following matters shall be applicable to all invitations for bids issued, bids submitted, and contracts awarded for the purchase of commodities, supplies and equipment pursuant to KRS 45A.080 and this regulation:

(1) Time discounts or cash discounts shall not be considered.

(2) Trade discounts. Trade discounts should be deducted by the vendor in calculating the unit price quoted, unless otherwise indicated in the bid.

(3) Quantity discounts. Quantity discounts shall [should] be included in the price of the item. When not included in the item price, the discount shall be considered only if the purchasing agency[, or the agency for whose benefit the procurement has been undertaken,] deems it to be in the Commonwealth's best interests. The unit price shown on the contract shall be the net price, less the discount, unless otherwise indicated in the bid.

(4) Unit prices. In case of a discrepancy in the extension of a price, the unit or item price shall govern over the total price of all items.

(5) Awards on an aggregate or individual item basis. An award may be made to the lowest aggregate bidder for all items, group of items, or on an individual item basis, whichever is

deemed to be in the Commonwealth's best interest. The methods and bases of award of contract and of evaluation of bids shall be stated in the invitation for bids.

(6) Telegraphic or facsimile bids. When the purchasing agency has invited competitive sealed bids or request for proposals [requested written quotations], telegraphic or facsimile responses shall not be accepted.

L. ROGERS WELLS, JR., Secretary

APPROVED BY AGENCY: September 27, 1991

FILED WITH LRC: September 27, 1991 at 2 p.m.

COMPILER'S NOTE: The following regulation, 201 KAR 30:120, was amended by the promulgating agency and the Interim Joint Committee on Business Organizations and Professions, and became effective on November 22, 1991. This regulation was also found deficient by the Administrative Regulation Review Subcommittee on November 7, 1991, and will expire on sine die adjournment of the next regular session of the General Assembly.

**GENERAL GOVERNMENT CABINET
Kentucky Real Estate Appraisers Board
(As Amended)**

201 KAR 30:120. Temporary appraisal licenses and certificates [permits].

RELATES TO: KRS 324A.015, 324A.020, 324A.030, 324A.035, 324A.040, 324A.045, 324A.050, 324A.070, 324A.075, 12 USC 3331-3351

STATUTORY AUTHORITY: KRS 324A.020

NECESSITY AND FUNCTION: This regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, (12 USC 3331 through 12 USC 3351), to set standards, and to protect the public.

Section 1. A real estate appraiser from another state who is licensed or certified by the appraiser licensing or certifying agency in such state may apply for registration to receive temporary appraiser licensing or certification privileges in this state by paying a fee of fifty (50) dollars and filing with the board a notarized application on a form prescribed by the board for such purpose which shall set forth and include:

(1) The applicant's name, address, Social Security number and such other information as may be necessary to identify the applicant;

(2) A statement under seal issued by the appraiser licensing or certifying agency in the applicant's resident state setting forth:

(a) The applicant's name, business name and address;

(b) The type license or certificate held by the applicant and the license or certificate number;

(c) The dates of licensure or certification and the expiration date of the applicant's current license or certificate;

(d) Whether or not the license or certificate was issued as a result of passing a licensure/certification examination, by reciprocity, or by some other means; and

(e) A complete record of any disciplinary actions taken or disciplinary proceedings pending against the applicant;

(3) An irrevocable consent that service of process in any action against the applicant arising out of the applicant's appraisal activities in this state may be made by delivery of the process on the executive director of the board;

(4) A statement that the applicant has read and agrees to abide by all appraiser laws and rules in this state and agrees to cooperate with any investigation initiated by the board at the direction of the board including supplying relevant documents and personally appearing before the board or its investigators;

(5) Information sufficient to identify the appraisal assignment to be performed under the temporary practice certificate or license, including the projected beginning and ending dates for performing such appraisal assignment, but shall not require the applicant to divulge any information concerning the appraisal assignment which would breach the applicant's duty of confidentiality to his client under the provisions of the Uniform Standards of Professional Appraisal Practice; and

(6) Such other information as may be necessary to determine the applicant's eligibility for temporary appraiser licensing or certification privileges in this state.

Section 2. Upon filing a properly completed application accompanied by the required fee, and otherwise satisfying the board as to his qualifications, eligibility and moral fitness for temporary licensing or certification privileges, an applicant shall be granted a temporary practice certificate of license by the board authorizing the applicant to perform in this state the appraisal assignment described in such application, provided that the length of time projected by the applicant for the completion of the assignment is reasonable given the scope and complexity of the assignment.

Section 3. Licensing and certification privileges granted under the provisions of this rule shall expire upon the completion of the appraisal assignment described in the application for temporary licensing or certification privileges or on the expiration date set forth in the temporary practice certificate of license, whichever shall come first. However, upon a showing by the applicant satisfactory to the board that, notwithstanding the applicant's diligent attention to the appraisal assignment, additional time is needed to complete the assignment, the board shall extend the licensing or certification privileges granted under the applicant's temporary practice certificate of license to afford him additional time to complete the appraisal assignment.

Section 4. Persons granted temporary licensing or certification privileges under this rule shall not advertise or otherwise hold themselves out as being a Kentucky state-licensed or state-certified appraiser.

[Section 1. (1) The board shall grant temporary appraisal permits to those appraisers, licensed or certified by another state, and whose name appears on the federal roster of the Federal Financial Institutions Examination Council's Appraisal Subcommittee.]

[(2) Temporary appraisal permits shall be granted only to persons who are qualified under

this administrative regulation and who apply to the board on a "Nonresident Application for Temporary Appraiser Permit", revised May, 1991. This application form is hereby incorporated by reference and may be obtained at the Real Estate Appraisers Board, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Monday through Friday from 8 a.m. to 4:30 p.m.]

[(3) Temporary appraisal permits shall be granted only to persons whose appraisal assignment in Kentucky is temporary in nature, not to exceed six (6) months.]

[(4) A temporary appraisal permit must be obtained for each appraisal assignment.]

[(5) The temporary appraisal permit shall be only for the appraiser classification designated on the federal roster of the Appraisal Subcommittee.]

[(6) The board shall collect a \$200 fee for each temporary appraisal permit, which shall be paid at the time of application and which shall be nonrefundable.]

Section 5. [2.] This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

DON PARIS, Chairman

APPROVED BY AGENCY: August 12, 1991

FILED WITH LRC: August 14, 1991 at 4 p.m.

COMPILER'S NOTE: The following regulation, 405 KAR 7:080, was amended by the promulgating agency and the Interim Joint Committee on Agriculture and Natural Resources. This regulation became effective on November 26, 1991.

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining
Reclamation and Enforcement
(As Amended)**

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 1991 [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.

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining
Reclamation and Enforcement
(As Amended)

405 KAR 8:030. Surface coal mining permits.

RELATES TO: KRS 350.060, 350.465, 7 CFR Part 657, 30 CFR Parts 77.216-1, 77.216-2, 730-733, 735, 773.13(a), 778-780, 785.17(b), (d), 917, 40 CFR Parts 136, 434, 16 USC 1276(a), 1531 et seq., 30 USC 1253, 1255, 1257, 1258, 1267

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.060, 350.465, 7 CFR Part 657, 30 CFR Parts 77.216-1, 77.216-2, 730-733, 735, 773.13(a), 778-780, 785.17(b), (d), 917, 40 CFR Parts 136, 434, 16 USC 1276(a), 1531 et seq., 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)(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 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 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; ephemeral, 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, December 6 [September 13] [June 28], 1991. This document is [hereby] incorporated by reference. This document may be reviewed, copied 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 delineations shall be conducted in accordance with the "Corps of Engineers Wetlands Delineation Manual", U.S. Army Corps of Engineers, (January, 1987), as modified by U.S. Army Corps of Engineers Public Notice, October 15, 1991, and U.S. Army Corps of Engineers Regulatory Guidance Letter No. 90-7 (September 26, 1990). The modifications to this material include replacement of Sections 1 and 2 of Appendix C with the "National Lists of Plant Species that Occur in Wetlands and Biological Reports and Summary", Fish and Wildlife Service, U.S. Department of the Interior (May, 1988); and, in Appendix D, Section 2, use of the "List of Hydric Soils of the United States, All Kentucky Counties", Soil Conservation Service (SCS), U.S. Department of Agriculture (December, 1991).

3. This document, and related material, is incorporated by reference. It may be obtained from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. Telephone (703) 487-4650. It may also be reviewed, copied, 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. [Wetland delineations 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 and their credentials (education and experience) shall be included in the permit application. 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 and his credentials (education and experience) shall be included in the permit application. 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: September 13, 1991

FILED WITH LRC: September 13, 1991 at noon

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining
Reclamation and Enforcement
(As Amended)**

405 KAR 8:040. Underground coal mining permits.

RELATES TO: KRS 350.060, 350.151, 7 CFR Part 657, 30 CFR Parts 77.216-1, 77.216-2, 730-733, 735, 773.13(a), 778, 783, 784, 785.17(b), (d), 917, 40 CFR Parts 136, 434, 16 USC 1276(a), 1531 et seq., 30 USC 1253, 1255, 1257, 1258, 1266, 1267

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.060, 350.151, 350.465, 7 CFR Part 657, 30 CFR Parts 77.216-1, 77.216-2, 730-733, 735, 773.13(a), 778, 783, 784, 785.17(b), (d), 917, 40 CFR Parts 136, 434, 16 USC 1276(a), 1531 et seq., 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)(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 receiverun-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; ephemeral, 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) 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 (December 6, 1991). This document is

incorporated by reference. It may be reviewed, copied or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. through 4:30 p.m.

2. Wetland delineations shall be conducted in accordance with the "Corps of Engineers Wetlands Delineation Manual", U.S. Army Corps of Engineers, (January 1987), as modified by U.S. Army Corps of Engineers Public Notice, October 15, 1991, and U.S. Army Corps of Engineers Regulatory Guidance Letter No. 90-7 (September 26, 1990). The modifications to this material include replacement of Sections 1 and 2 of Appendix C with the "National Lists of Plant Species that Occur in Wetlands and Biological Reports and Summary", Fish and Wildlife Service, U.S. Department of the Interior (May, 1988); and, in Appendix D, Section 2, use of the "List of Hydric Soils of the United States, All Kentucky Counties", Soil Conservation Service (SCS), U.S. Department of Agriculture (December, 1991).

3. This document, and related material, is incorporated by reference. It may be obtained from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. Telephone (703) 487-4650. It may also be reviewed, copied, 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. [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 and their credentials (education and experience) shall be included in the permit application. 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;

(1) 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 and his credentials (education and experience) shall be included in the permit application. 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: September 13, 1991

FILED WITH LRC: September 13, 1991 at noon

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining
Reclamation and Enforcement
(As Amended)**

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, 16 USC 668 et seq., 1531 et seq., 30 USC 1253, 1255, 1265, 33 USC 1344

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.465, 30 CFR Parts 730-733, 735, 816.57, 816.97, 917, 16 USC 668 et seq., 1531 et seq., 30 USC 1253, 1255, 1265, 33 USC 1344

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, or 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 (33 USC 1344).

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 such as installation of a groundwater monitoring well; or [; 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.

(b) [(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. The monitoring shall be conducted 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, December 6, 1991. This document is incorporated by reference. It may be reviewed, copied, 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.

(b) If biological monitoring is required under paragraph (a) of this subsection, it [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.

Section 5. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

FRANK DICKERSON, Commissioner

CARL H. BRADLEY, Secretary

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**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining
Reclamation and Enforcement
(As Amended)**

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, "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 (December 6, 1991). This document is incorporated by reference. It may be reviewed, copied, or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. through 4:30 p.m. [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 two (2) [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 "Kentucky Agricultural Statistics 1989-1990", and "Kentucky Agricultural Statistics 1990-1991" [yield data available from the Kentucky Department of Agriculture], with a statistical confidence of ninety (90) percent.

3. "Kentucky Agricultural Statistics 1989-1990" and "Kentucky Agricultural Statistics 1990-1991", Kentucky Agricultural Statistics Service, Kentucky Department of Agriculture, and National Agricultural Statistics Service, U.S. Department of Agriculture, are incorporated by reference. These documents may be reviewed, copied, 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.

(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. [TRM #20 is incorporated by reference in 405 KAR 8:030, Section 20.]

(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: September 13, 1991

FILED WITH LRC: September 13, 1991 at noon

COMPILER'S NOTE: The following regulation, 405 KAR 16:210, was amended by the promulgating agency and the Interim Joint Committee on Agriculture and Natural Resources. This regulation became effective on November 26, 1991.

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining
Reclamation and Enforcement
(As Amended)**

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.

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining
Reclamation and Enforcement
(As Amended)**

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, 16 USC 668 et seq., 1531 et seq., 30 USC 1253, 1255, 1266, 33 USC 1344

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.151, 350.465, 30 CFR Parts 730-733, 735, 817.57, 817.97, 917, 16 USC 668 et seq., 1531 et seq., 30 USC 1253, 1255, 1266, 33 USC 1344

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, or 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 (33 USC 1344).

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 such as installation of a groundwater monitoring well; or [; 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.

(b) [(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. The monitoring shall be conducted 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, December 6, 1991. This document is incorporated by reference. It may be reviewed, copied, 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.

(b) If biological monitoring is required under paragraph (a) of this subsection, it [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 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 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.

Section 5. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

FRANK DICKERSON, Commissioner

CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: September 13, 1991

FILED WITH LRC: September 13, 1991 at noon

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET**
Department for Surface Mining
Reclamation and Enforcement
(As Amended)

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 two (2) [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. Re seeding 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. 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, December 6, 1991, is incorporated by reference. It may be reviewed, copied, 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. [TRM #20 is incorporated by reference in 405 KAR 8:030, Section 20.]

[(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 QSM 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 reseeded 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, 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 incorporated by reference. It may be reviewed, copied, 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. [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: September 13, 1991

FILED WITH LRC: September 13, 1991 at noon

COMPILER'S NOTE: The following regulation, 405 KAR 18:220, was amended by the promulgating agency and the Interim Joint Committee on Agriculture and Natural Resources. This regulation became effective on November 26, 1991.

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining
Reclamation and Enforcement
(As Amended)**

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.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Learning Programs Development
(As Amended)

704 KAR 4:020. Comprehensive school health.

RELATES TO: KRS [156.031,] 156.160, HJR 124 (1990 RS)

STATUTORY AUTHORITY: KRS 156.070, 156.160

NECESSITY AND FUNCTION: [KRS 156.031 requires that regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary, and resubmitted to the Legislative Research Commission prior to December 30, 1990; and] KRS 156.160 requires the State Board for Elementary and Secondary Education to adopt regulations governing medical inspection, physical education and recreation, and other rules and regulations deemed necessary or advisable for the protection of the physical welfare and safety of the public school children; and HJR 124 (1990 RS) directs the Cabinet for Human Resources, in conjunction with the Department of Education, to develop a policy to promote appropriate and early diagnosis and treatment of scoliosis by licensed members of the healing arts. This regulation implements the duty of the State Board relative to medical inspections and the physical welfare and safety of public school children; and it formalizes the appropriate interagency agreement on scoliosis detection and treatment.

Section 1. School employee medical examinations shall be required as follows for the protection of the physical welfare and safety of the public school children.

(1) All local boards of education shall require a medical examination of each teacher upon initial employment which shall include a tuberculin skin test. All positive reactors shall be required to comply with the

recommendations of the local board of health and the Cabinet for Human Resources for further evaluation and treatment of the tuberculosis infection. Following the required medical examinations for initial employment and any subsequent examinations as may be required for positive tuberculin reactors, each teacher shall submit to the local school superintendent a statement indicating his or her medical status.

(2) All local boards of education shall require upon initial employment and each year thereafter a medical examination of each school bus driver and drivers of special vehicles used to transport school children to and from school and events related to such schools. The medical examination shall include test 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 initial examination shall include tests for tuberculosis and other items mandated by 702 KAR 5:080. All positive reactors shall be required to comply with the recommendations of the local board of health and the Cabinet for Human Resources for further evaluation and treatment of the tuberculosis infection. Following the required medical examination for initial employment and any subsequent examinations, as may be required for positive tuberculin reactors, each bus driver shall submit to the local school superintendent a statement indicating his or her medical status. All medical examinations of the school bus drivers shall be reported on a form prescribed by the State Department of Education and entitled, "Medical Examination Report for School Bus Drivers and Substitute School Bus Driver," which is incorporated herein by reference, and submitted to the local school superintendent.

(3) All local boards of education shall require a medical examination of each custodian, cafeteria worker, and other classified school employees not specifically covered by subsection (2) of this section upon initial employment. The medical examination shall include tests for tuberculosis, 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. All positive tuberculin reactors shall be required to comply with the recommendations of the local board of health and the Cabinet for Human Resources for further evaluation and treatment of the tuberculosis infection. Following the required evaluation, each employee shall submit to the local school superintendent a statement indicating his or her medical status. Medical examinations shall be reported on forms prescribed by the State Department of Education and entitled, "Medical Examination of School Employees," which is incorporated herein by reference.

(4) The local board of education shall require all school personnel exhibiting symptoms of chronic respiratory disease to be examined for tuberculosis. The evaluation and any required treatment for tuberculosis infection shall be based upon the recommendations of the local board of health and the standards developed by the Cabinet for Human Resources.

(a) Any personnel exposed to infectious tuberculosis shall be tested and, if necessary,

treated for tuberculosis infection according to the recommendation of the local board of health.

(b) In counties with high incidence rates for tuberculosis infection defined as equal to or greater than one (1) percent, the local board of health may, with the approval of the Cabinet for Human Resources, exercise its legal sanction to require more extensive testing for tuberculosis than outlined above.

Section 2. (1) All local boards of education shall require a medical examination of each child within six (6) months prior to, or one (1) month following, his or her initial admission to school, and, effective with the 1992-93 school year, a second examination shall be required within six (6) months prior to entry into the sixth grade. The initial medical examination, performed and signed for by a physician, shall be reported on forms prescribed by the Department of Education and entitled, "School Medical Examination Form," October 29, 1991, which is incorporated herein by reference, and shall include a medical history; record of immunizations and tuberculosis testing; assessment of growth and development and general appearance; physical assessment including hearing and vision screening; and recommendations to the school regarding health problems that may require special attention in classroom or physical education activities. A valid immunization certificate shall be presented prior to school enrollment. The second student physical may be performed and signed for by an advanced registered nurse practitioner (ARNP) or by a health care provider in the Early Periodic Screening, Diagnosis and Treatment (EPSDT) Program and shall be reported on forms prescribed by the Department of Education and entitled, "School Medical Examination Form," October 29, 1991, which is incorporated herein by reference, and shall include the same medical information as described for the initial student physical.

(2) All boards of education shall adopt a program of continuous health supervision for all school enrollees; [such] supervision shall include scheduled, appropriate screening tests for vision, hearing and scoliosis. The need for any further tuberculin skin test shall depend on the risk of exposure of the child and prevalence of tuberculosis in the community, and the [such] need is to be determined pursuant to KRS KRS 214.034. Local spinal screening programs for scoliosis shall include:

(a) Training sessions for teachers or lay volunteers who will be doing the screening;

(b) Obtaining parental permission for scoliosis screening;

(c) Established screening times, at least in grades six (6) and eight (8) and appropriate procedures and referral criteria, with the Department of Education to provide technical advice on these areas;

(d) Mandated education of students regarding scoliosis screening; and

(e) Required referral of all children with abnormal screening results for appropriate diagnosis and treatment and follow-up on these referrals. Local referral and follow-up procedures shall include:

1. Notification of parents of students who need further evaluation by a physician;

2. Tracking referrals to assure that all children with abnormal screening results receive

appropriate diagnosis and treatment; and

3. Reporting of data on screening, referral and follow-up tracking to the Department of Education.

(3) The Department of Education shall appropriately monitor the spinal screening and referral programs provided by local boards of education, provide consultation and technical assistance to local boards of education concerning spinal screening, referral and follow-up for appropriate diagnosis and treatment, and encourage local school systems to work cooperatively with local health departments and local Commission for Handicapped Children offices to plan, promote and implement scoliosis screening programs.

(4) [(1)] An effective mechanism for referral and appropriate follow-up of any apparent abnormality noted by screening assessment or teacher observation shall be recorded on school health records within nine (9) weeks of screening program or detection of abnormality.

(5) [(2)] Each school shall have emergency care procedures. The emergency care procedures shall include first aid facilities, at least two (2) adults in each school who have completed and been certified in a standard first aid course, parents' telephone number, name of family physician, and means of transportation.

(6) [(3)] Local boards of education shall require all vaccinations and immunizations and tuberculosis testing as required by law or regulations:

(a) Except as otherwise provided by law, all children shall be required to present a valid immunization certificate upon enrollment in school, and a valid up-to-date immunization certificate shall be on file for all children at all times. All children shall also present a tuberculin test certificate or the school medical examination form to the public or private school showing tuberculin skin test administration within one (1) year prior to initial enrollment in school. The governing body of private and public schools shall enforce the provisions of this subsection in accordance with the established laws.

(b) Children transferring into any school district shall comply with the above requirements.

Section 3. (1) Each elementary and secondary school shall initiate a cumulative health record for each pupil entering school. Such record shall be maintained throughout the pupil's attendance. Such record shall be uniform and shall be on forms prescribed by the Department of Education and entitled "Pupil's Cumulative Health Record," which is incorporated herein by reference. Such record shall include screening tests related to growth and development, vision and hearing; teacher observations of general appearance and behavior; and findings and recommendations of physician and dentist including immunization record. A follow-up by the proper health or school authorities shall be made on each defect noted and the result shall be recorded.

(2) Local school authorities shall report all known or suspected cases of communicable disease immediately to the local health department.

Section 4. All boards of education shall, in relation to each school under its jurisdiction, provide and maintain a physical environment that

is conducive to the health and safety of school children. It shall be the responsibility of all local boards of education to comply with current laws and regulations applicable to all public buildings pertinent to health, sanitation, and safety. In accordance with current regulations and standards by authorities having jurisdiction, it shall be the responsibility of all local boards of education to establish:

- (1) An adequate supply of water of safe, potable, sanitary quality.
- (2) A state-approved sanitary disposal of sewage, other water-carried waste, and solid waste.
- (3) Adequate toilet and lavatory facilities and other sanitary fixtures.
- (4) Adequate heating, lighting, and ventilation in all school buildings.
- (5) Adequate facilities and equipment for cafeterias and lunchrooms.
- (6) Supervision of general sanitation and safety of the school buildings, grounds, and playground equipment.
- (7) Adequate first aid facilities.
- (8) Adequate control of air pollutants.

Section 5. Each board of education shall designate a person to serve as school health coordinator. The [Such] person designated shall meet the minimum qualifications required of this position. The school health coordinator shall work in cooperation with all school personnel, the local board of education, the State Department for Elementary and Secondary Education, and the local health department in planning, promoting, and implementing a school health services program that meets the regulations adopted by the State Board of Education.

Section 6. Each local board of education shall require an annual medical examination of each child as a prerequisite for eligibility in interscholastic athletics. A local board of education may require the [such] examination to be paid by the parent of the child.

Section 7. All forms incorporated herein by reference may be inspected, copied, and obtained from the Division of Student Services, Department of Education, 17th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

THOMAS C. BOYSEN, Commissioner

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: September 6, 1991

FILED WITH LRC: September 12, 1991 at 4 p.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings & Construction
Division of Building Codes Enforcement
(As Amended)

815 KAR 7:070. Requirements for certification of Kentucky Building Code inspectors.

RELATES TO: KRS 198B.040(3), 198B.050(3)(c), (6), 198B.090

STATUTORY AUTHORITY: KRS 198B.050(5)

NECESSITY AND FUNCTION: The department is required by KRS 198B.090 to create and administer a building official's certification program which is designed to ensure uniform statewide enforcement of applicable state building codes. This regulation establishes the testing, training and continuing education requirements for two (2) specifically designated professional classifications of building code inspectors: building inspector and plans and specifications inspector. This amendment is necessary to upgrade the criteria for enrolling, actively pursuing certification and for full certification to provide for better qualified inspectors under the Kentucky Building Code.

Section 1. Definitions and Categories of Inspectors. The scope of authority for each category of inspector identified is specifically limited according to the following description of responsibilities. Depending on the type and level of inspection responsibility [assumed by the jurisdiction], certification in more than one (1) category may be required.

(1) "Actively pursuing departmental certification" means that each person who is seeking certification pursuant to this regulation shall sit for examination of at least one (1) module of the NCPCCI as defined in subsection (5) of this section, per year. Failure of any candidate to receive a passing score on each required module within three (3) years of employment shall terminate that person's ability to qualify under this definition. Limited certificates as defined in subsection (4) of this section, may continue to be renewed after three (3) years. EXCEPTION: The commissioner, in his discretion, may waive the literal requirements of this subsection, as applied to an entire class of candidates, whenever circumstances warrant a waiver because changes in testing procedures, standards or dates or other reasons would render strict application unfair.

(2) [(1)] "Certified building inspector" means a person classified under this definition as either a level I, level II or level III building inspector whose responsibility it is to inspect buildings as part of a permit application, to determine that the structures are free from conditions that would present a life safety, health or fire hazard to persons using the [such] buildings, and to determine that the buildings are constructed in accordance with the Kentucky Building Code. [This person must have been tested for competency in NCPCCI modules 1B and 3B and otherwise met the requirements of the department. This person is authorized by this regulation to make on-site inspections of all buildings, including one (1) and two (2) family dwellings within his/her jurisdiction, regardless of size. This person is further authorized to review and approve plans on those buildings which are the responsibility of local

governments under KRS 198B.060(2).]

(a) "Level I inspector" means a person who has been tested for competency in NCPCCI modules 1B and 3B and otherwise met the requirements of this regulation. This person shall be deemed qualified to review and approve plans and make on-site inspections only on those buildings which are the responsibility of local governments under KRS 198B.060(2).

(b) "Level II inspector" means a person who has been tested for competency in NCPCCI modules 1B, 3B and 4B and otherwise met the requirements of this regulation. This person shall be deemed qualified to review and approve plans for buildings which are the responsibility of local government under KRS 198B.060(2) and to make on-site inspections of all buildings, regardless of size, pursuant to KRS 198B.060(4).

(3) [(2)] "Certified plans and specifications inspector [Level III inspector]" means a person whose responsibility it is to determine that the plans submitted as part of a building permit application comply with the Kentucky Building Code and referenced standards, and who has been tested for competency in NCPCCI modules 1B, 1C, 3B, [and] 3C and 4B and otherwise met the requirements of the department as set forth in this regulation. This person shall also be deemed qualified to review and approve plans and [is further authorized] to make on-site inspections of all buildings [within his/her jurisdiction], regardless of size, within the inspector's jurisdiction as established pursuant to KRS 198B.060 to determine if those buildings are constructed in accordance with the plans and in accordance with the Kentucky Building Code.

(4) [(3)] "Limited certificate" means a document [limited authorization] issued by the department which represents the level of competency for which a person has been tested. [The department will issue a document specifying on its face that the person is qualified to perform the stated activity only.] This certificate shall be issued only after the person has met the training requirements stated in Section 3 of this regulation.

(5) [(4)] NCPCCI means "National Certification Program for Construction Code Inspectors" and are exam modules developed by the national code enforcement organizations in collaboration with the Educational Testing Service for the purpose of providing nationally recognized evidence of competence and professionalism in construction code enforcement and shall be used to meet the module testing requirements required herein. Other required training or testing shall be provided through the department.

Section 2. Inspection Operations. (1) It is the specific intention of this regulation to ensure that all Kentucky Building Code inspection programs require plan review and on-site inspection of buildings only by persons who comply with [have been tested for competency under] this regulation.

(2) Any [Each] person who has successfully completed any NCPCCI exam module as listed in this regulation may apply for [shall be given] a "limited certificate." The [This] certificate shall be issued and shall qualify the individual only for that inspection or plan review function on which the individual [he/she] has been tested. For example, persons holding a limited certificate for NCPCCI Module Building One (1) and Two (2) Family-1A are deemed qualified to

inspect and review plans for single family and duplex residential buildings only. Each person must renew the certification as required by Section 5(2) of this regulation and otherwise comply with this regulation.

(3) Each local government and the department shall provide for the services of certified inspectors. In circumstances where the governmental entity [jurisdiction] chooses to distribute the inspection or plan review functions to more than one (1) person, each person shall be certified in the [his/her] respective area of responsibility.

(4) Certification of plumbing, elevator and electrical inspectors are not covered by this regulation.

Section 3. Training and Testing Requirements to Become Certified as a Kentucky Building Code Inspector. [(1)] Each candidate seeking certification shall comply with the provisions of this section [possess the ability to read and write the English language and possess a general educational level satisfactory to perform his duties].

(1) [(2)] Each candidate seeking to become certified pursuant to this regulation shall be required to be trained [and/or] tested on the administrative and accessibility sections of the Kentucky Building Code as set forth in 815 KAR 7:010 and 7:060 [as determined by the board].

(2) [(3)] Each candidate seeking certification shall successfully complete the NCPCCI exam module[(s)] which is/[are] applicable to the category of inspector [activity in] which the [said] candidate is applying for [shall be engaged]. Unless the candidate qualifies as actively pursuing departmental certification under Section 4 of this regulation, no person shall be responsible for any inspection or plan review activity unless the candidate [person] has [for which he/she has not] been tested and passed the appropriate [said] tests. The testing modules are as follows:

- (a) Building One (1) and Two (2) Family - 1A;
- (b) Building General - 1B;
- (c) Fire Protection General - 3B;
- (d) Building Plan Review - 1C;
- (e) Fire Protection Plan Review - 3C;
- (f) Mechanical - 4B.

(3) [(4)] Continuing education. [From time to time,] The department shall establish continuing education programs for the purpose of keeping the inspectors updated on code requirements. Participation in these programs shall be mandatory for all inspectors in order to maintain certification.

Section 4. Minimum Requirements [Deadline] for Certification. (1) All persons charged with the responsibility of inspecting buildings or [and] reviewing building plans for compliance with the Kentucky Building Code shall be certified or enrolled and actively pursuing departmental certification within ninety (90) days after employment of the [such] inspector. All [Such] persons shall register with the department, complete the necessary application forms and pay the required fees stated in Section 5 of this regulation, within the ninety (90) day [said] timetable.

(2) Except where personnel rules have been established by local ordinance [for any jurisdiction], the minimum requirements set forth in paragraphs (3)(a) through (d) of this

section shall apply.

(3) No applicant shall be enrolled for the purpose of actively pursuing certification unless and until the applicant shows proof that he possesses at least one (1) of the following credentials:

(a) High school graduate or general education diploma (GED); plus three (3) years experience in a responsible directly related construction position, such as a foreman, requiring the ability to effectively read and interpret building plans and specifications, or three (3) years experience in an architect's or engineer's office performing building design or drafting duties; or

(b) College or university graduate with an associate degree in construction related subject; or

(c) College or university graduate with a bachelor degree in architecture, engineering, fire science or building technology; or

(d) Successful passage of at least one (1) examination module listed in Section 3(2) of this regulation.

(4) If an applicant seeks to be enrolled to actively pursue certification and he does not meet at least one (1) of the requirements in subsection (3)(a) through (d) of this section, he shall show proof that he complies with the personnel rules of the jurisdiction for which he is employed.

[(2) "Actively pursuing departmental certification" means that each person who is seeking certification pursuant to this regulation shall sit for examination of at least one (1) module of the NCPCCI per year. Failure of any candidate to receive a passing score on each required module within three (3) years of employment shall terminate that person's ability to qualify under this definition. Limited certificates may continue to be renewed after three (3) years.]

[EXCEPTION 1: Where any candidate has been employed by a local jurisdiction and his three (3) years have expired, he shall be allowed one (1), and only one (1), additional year from the date of his original employment to achieve certification, upon written petition of the jurisdiction to the commissioner and still be covered by this definition. This exception is available only to those candidates who have passed at least one (1) required NCPCCI test module within the three (3) year period. No candidate shall be allowed to use this exception more than once. The petition must be filed prior to the expiration date of the certificate holder and prior to June 30, 1988.]

[EXCEPTION 2: The commissioner, in his discretion, may waive the literal requirements of this section, as applied to an entire class of candidates, whenever circumstances warrant such waiver because changes in testing procedures, standards or dates or other reasons would render such strict application unfair.]

[(3) Time constraints for certification as stated in subsection (2) of this section shall not apply to those persons seeking certification who are not engaged in an inspection or plan review capacity.]

Section 5. Application for Training and Certification. (1) Each person seeking to become a candidate for certification pursuant to this regulation shall submit an application on a form provided by the department, together with a fee

of twenty-five (25) dollars to cover the administrative costs of processing the application, establishing the training program and issuing certificates.

(2) Each certified inspector and each candidate enrolled and actively pursuing certification shall be required to pay an additional annual renewal fee [of the sum] of twenty-five (25) dollars no later than June 30, of each year in order to maintain [his/her] certification.

Section 6. Suspension and Revocation of Certification. (1) Formal written complaints concerning an inspector must be submitted to [through] the Department [to the Board] of Housing, Buildings and Construction for review and appropriate action.

(2) No action shall be taken against any building inspector governed under this regulation unless after a hearing to review the inspector's procedures, the department determines that the inspector is not enforcing the Kentucky Building Code. [If, upon investigation, the board determines that there is reason to believe that the certified inspector has willfully, negligently or recklessly violated his/her duties as set forth in this regulation, the board may take action for the revocation or suspension of his/her certificate. No such action shall be taken unless the inspector is afforded the opportunity to be heard.]

Section 7. "Grandfather Clause." Any person enrolled and actively pursuing certification prior to the effective date of this amended regulation shall be governed by the applicable requirements of the law in existence at the time of their enrollment or certification.

CHARLES A. COTTON, Commissioner

THEODORE T. COLLEY, Secretary

APPROVED BY AGENCY: October 11, 1991

FILED WITH LRC: October 15, 1991 at 11 a.m.

CABINET FOR HUMAN RESOURCES
Office of Policy and Budget
(As Amended)

900 KAR 1:060. Protection of human subjects.

RELATES TO: 45 CFR 46.101 to 46.409 [KRS 194.050]

STATUTORY AUTHORITY: KRS 194.050, 45 CFR 46.101 to 46.409

NECESSITY AND FUNCTION: The cabinet is required, by 45 CFR 46.101 through 46.409, to have an Institutional Review Board for the Protection of Human Subjects [(IRB)] to protect the rights and welfare of human subjects of research conducted or sponsored by the cabinet. [KRS 194.050 authorizes the Secretary for Human Resources to adopt such regulations as are necessary to qualify for the receipt of federal funds.] This regulation: (a) incorporates [adopts,] by reference, applicable federal regulations and publications which set forth the type of projects covered, definitions, assurances, membership, functions and operations, review procedures, criteria for approval of research, record requirements, informed consent requirements, consent documentation, ethical principles and

guidelines, a listing of research activities which may be reviewed through expedited review procedures and other relevant matters; and (b) covers specific requirements for protecting human subjects in studies sponsored or funded by the Cabinet for Human Resources within the larger requirements defined by federal regulation.

Section 1. Definitions. As used in this regulation the following terms shall have the meanings set forth below:

(1) "Board" means the cabinet's Institutional Review Board established by this regulation and attached to the Office of Policy and Budget.

(2) "Health risk project" means a project in which the intervention variable is judged by the board to have a potential for adversely affecting the health of human research subjects.

(3) "Research" shall have the meaning set forth in 45 CFR 46.102(e) and in addition shall include descriptive and exploratory research activities, that lay the ground work for contributions to knowledge.

[(4)] Research shall be considered ["sponsored"] by the Cabinet for Human Resources if:

(a) It is supported financially by the cabinet;

(b) [if] It uses staff or facilities provided by the cabinet; or

(c) [if] It is sponsored or endorsed by cabinet policy makers.

(4) [(5)] "Auxiliary review board" means an independently functioning local board [IRB] within the Cabinet for Human Resources established to serve a particular facility or institution.

(5) "Cabinet" means the Cabinet for Human Resources. ["Cabinet for Human Resources" shall be referred to as the cabinet.]

(6) "Principal investigator" means [is] the investigator involved in the research project who has responsibility for making decisions regarding the research study.

[Section 2. Incorporation by Reference. The cabinet hereby incorporates by reference 45 CFR 46.101 through 45 CFR 46.409, revised as of 3/8/83, pertaining to the Protection of Human Subjects. The decisions of the board concerning the protection of human subjects shall be guided by the "Belmont Report: Ethical Principles and Guidelines for the Protection of Human Subjects of Research, Report of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research," published 4/18/79. The federal regulations incorporated by reference and the Belmont Report are available upon request from the Office of Policy and Budget, Kentucky Cabinet for Human Resources and as a two (2) volume appendix (DHEW Publication No.(OS) 78-0013 and No.(OS) 78-0014) from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.]

Section 2. [3.] Institutional Review Board.

(1) An Institutional Review Board [(IRB)] for the Protection of Human Subjects within the cabinet [for Human Resources (CHR)] is hereby created. The board shall be attached to the Office of Policy and Budget [(OPB)].

(2) The board [IRB] shall consist of not less than five (5) nor more than eleven (11) members appointed by the secretary. Members representing various professional and academic fields shall

be nominated by department commissioners or by office heads and appointed by the secretary. The board shall meet as needed to review projects. The board shall include a chairman appointed by the secretary of the cabinet.

(3) The Executive Director of the Office of Policy and Budget shall provide the necessary staff and administrative support and shall serve as liaison between the board and the U.S. Department of Health and Human Services. Staff appointed by the Executive Director of the Office of Policy and Budget shall ensure the following:

(a) Maintenance of appropriate records;

(b) Conduct a preliminary review of submitted projects on a timely basis;

(c) Refer all projects, to which the regulations are applicable, to the board; and

(d) Make recommendations to the board on the disposition of the applicable projects.

Section 3. [4.] Project Submission. (1) It shall be the responsibility of the appropriate division director, commissioner, or office head to direct the project administrators under their jurisdiction to submit research projects, involving human subjects, to the Office of Policy and Budget [OPB] for possible consideration by the board. Project submission shall include three (3) copies each where applicable of the following:

(a) Institutional Review Board for the Protection of Human Subjects, request for approval of research activity form; [a request for approval form,]

(b) A narrative description of the project's purpose and proposed research procedures;

(c) The research instrument(s) to be used;

(d) A narrative description of how subject confidentiality will be addressed; and

(e) The research subject consent form that is appropriate for the research project.

(2) No modification in the research protocol or design of an approved research project, that could increase the level of risk to the subjects shall be implemented unless first approved by the board. If [In the event that such] alterations are necessary, it shall be the responsibility of the research administrator to obtain the prior approval of the board. Failure to obtain such approval may result in the suspension or termination of the initial board approval and the requirement that all research activity be stopped.

Section 4. [5.] Scope of Board Approval. (1) Board approval of a project represents only a judgment that human subjects have been adequately protected and shall not in any way represent a judgment concerning its ultimate research value or a policy decision regarding the value of the research to the cabinet [for Human Resources].

(2) The board shall have the ultimate responsibility of reviewing all research projects involving human subjects, when the research is sponsored by the Cabinet for Human Resources and when it is not specifically exempted from board review. Where the primary review is performed by an approved auxiliary review board, the board may limit its review to the findings and recommendations of the auxiliary review board or the board may choose to conduct its own review of the project.

(3) A research administrator may request a

reconsideration of an adverse decision by the board by submitting a written request for reconsideration to the Executive Director of the Office of Policy and Budget.

(4) The [Such a] request shall [must] be made within thirty (30) days of the principal investigator's notification of adverse decision.

(5) Upon receipt, the request for reconsideration and any related documents shall be conveyed to the board chairman for reconsideration. [Such] A reconsideration shall be made in the same manner as the initial review.

Section 5. [6.] Board Responsibilities. (1) The board chairman shall, in coordination with the Office of Policy and Budget, call [such] meetings as needed to conduct board business on a timely basis.

(2) Reviews and recommendations concerning projects shall be consistent with the criteria specified in the federal regulations 45 CFR 46.101 to 46.409 incorporated by reference and using the Institutional Review Board for the Protection of Human Subjects Request for Approval for Research Activity [guidelines and] form[s] adopted by the board.

Section 6. [7.] Responsibilities of Principal Investigators. (1) If any changes are made in research design or protocol that in any way affect the level of risk to subjects, confidentiality procedures, or consent procedures, such changes shall be submitted, before implementation, to the board for approval.

(2) Any unanticipated problems involving risks to subjects or others as a result of research activity, shall [are to] be reported to the board within ten (10) working days.

(3) [(2)] If a project is defined as a ["health risk project"] by the board, the principal investigator shall report to the board all research subject deaths, which become known to him [or her], whether the death appears likely to be related to participation in the research project. Reports of such deaths shall be made to the board in writing within seven (7) days of the principal investigator's knowledge of the death.

(4) Prepare annual reports and submit annual requests for reapproval of ongoing research studies. Submit a copy of final research finding and conclusions.

Section 7. [8.] Auxiliary Review Boards. (1) The chief executive of the cabinet [CHR] institutions or facilities conducting research, subject to the federal regulations pertaining to human subjects, may form auxiliary review boards to conduct the required review of such projects. The establishment of auxiliary review boards shall be approved by the Secretary of the cabinet [for Human Resources].

(2) Auxiliary review boards, as institutional review boards, shall conduct reviews consistent with these administrative regulations.

(a) The findings and recommendations of the auxiliary review board on all research studies involving risk to human subjects shall be forwarded, at least five (5) working days before initiation of the research, to the Office of Policy and Budget for review by the board.

(b) The board shall respond to the auxiliary review board, within twenty-one (21) days of the board's receipt of the auxiliary review board's finding and recommendations.

Section 9. Confidentiality. [Except as otherwise provided by law or by regulation of the cabinet,] Research information that identifies individual subjects shall be regarded as confidential and shall not be disclosed to persons outside the research project staff or published without the subject's prior written authorization. Nothing contained herein shall be deemed to prevent the release of raw or summary data, that does not identify subjects.

Section 10. The decisions of the board concerning the protection of human subjects shall be guided by:

(1) The "Belmont Report" Ethical Principles and Guidelines for the Protection of Human Subjects of Research", report, National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research (April 18, 1979); and

(2) 45 CFR 46.101 through 45 CFR 46.409. [Material Incorporated by Reference. The cabinet incorporates by reference the following: 45 CFR 46.101 through 45 CFR 46.409, revised as of October 1, 1990, pertaining to the protection of human subjects. The decisions of the board concerning the protection of human subjects shall be guided by the "Belmont Report: Ethical Principles and Guidelines for the Protection of Human Subjects of Research, Report of the National Commission for the Protection of the Human Subjects of Biomedical and Behavioral Research," published April 18, 1979. The Institutional Review Board for the Protection of Human Subjects, Request for Approval of Research Activity form which was adopted October, 1981. This form shall be submitted by the IRB to request approval for projects involving human subjects. Material incorporated by reference is available for inspection at the Cabinet for Human Resources, Office of Policy and Budget, Fourth Floor West, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. through 4:30 p.m.]

Section 11. (1) The following material is incorporated by reference:

(a) The "Belmont Report: Ethical Principles and Guidelines for the Protection of Human Subjects of Research, "report, National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research" (April 18, 1979);

(b) 45 CFR 46.101 through 45 CFR 46.409; and

(c) Institutional Review Board for the Protection of Human Subjects, Request for Approval for Research Activity form (October, 1981).

(2) This material is available for inspection and copying at the Cabinet for Human Resources, Office of Policy and Budget, Fourth Floor Center, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. through 4:30 p.m.

FRANK J. WILLEY, Executive Director

DONALD G. DIXON, Secretary

APPROVED BY AGENCY: October 14, 1991

FILED WITH LRC: October 15, 1991 at 11 p.m.

**CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Maternal and Child Health
(As Amended)**

902 KAR 4:090. Lead poisoning prevention.

RELATES TO: KRS 211.900, 211.905, 211.994

STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.901(5)

NECESSITY AND FUNCTION: KRS 211.901(6) provides that local boards of health may by the adoption of local regulations establish programs for the prevention, screening, diagnosis and treatment of lead poisoning; if [provided that such] regulations are the same as the provisions of KRS 211.900 to 211.905 and 211.994 and the regulations promulgated by the Secretary for Human Resources pursuant to subsection (5) of KRS 211.901. The function of this regulation is to set forth the criteria that shall [must] be included in local board of health regulations relating to the prevention, screening, diagnosis and treatment of lead poisoning.

Section 1. Definitions. As used in this regulation:

(1) "Board" means [shall mean] the board of health of any county, city-county or district including the Louisville and Jefferson County Board of Health and the Lexington-Fayette Urban-County Board of Health.

(2) "Department" means [shall mean] the department of health of any county, city-county or district health department including the Louisville and Jefferson County Health Department and the Lexington-Fayette Urban-County Health Department.

(3) "Director" means [shall mean] the chief administrative officer of any county, city-county or district health department including the Louisville and Jefferson County Health Department and the Lexington-Fayette Urban-County Health Department.

(4) "Cabinet" means [shall mean] the Cabinet for Human Resources.

(5) "Secretary" means [shall mean] the Secretary for Human Resources or his authorized representative.

(6) "Chewable surface" means [shall include but not be limited to such] surfaces such as windowsills, window frames, door frames, handrails, toys, furniture, food utensils and other appurtenances offering a biting surface to a child or other person. [Lead based substance] shall mean any substance containing more than 0.06 percent lead by weight of nonvolatile content as provided in KRS 217.801.]

(7) "Dwelling" means [shall mean] any structure, all or a part of which is designed for human habitation.

(8) "Dwelling unit" means [shall mean] any room or group of rooms or other interior areas of a dwelling designed or used for human habitation.

(9) "Elevated blood lead level" means [shall mean] a confirmed concentration of lead in whole blood of twenty-five (25) micrograms (ug) per deciliter (dl) or greater.

(10) "Exposed surface" means [shall mean] all interior surfaces of a dwelling or dwelling unit and those exterior surfaces of a dwelling or dwelling unit which are readily accessible to children under six (6) years of age, such as

stairs, decks, porches, railings, windows, doors and siding. All areas in the vicinity of a dwelling or dwelling unit subject to contamination from flaking or peeling lead based materials shall [are] also be considered an exposed surface.

(11) "Lead based substance" is defined by [as provided in] KRS 211.900(3).

(12) [(9)] "Owner" means [shall mean] any person who, alone, jointly, or severally with others, has legal title to, charge, care, or control of any dwelling or dwelling unit as owner, agent of the owner, or as executor, administrator, trustee, conservator or guardian of the estate of the owner.

(13) [(10)] "Occupant" means [shall mean] any person living, sleeping, cooking, eating in or having actual possession of a dwelling unit or rooming unit.

[(11)] "Elevated blood lead level" shall mean a confirmed concentration of lead in whole blood of twenty-five (25) micrograms (ug) per deciliter (dl) or greater.]

(14) [(12)] "Surface" means [shall mean] the outermost layer or superficial area of the materials of which a dwelling unit is constructed, excluding paint, plaster or putty of the interior or exterior of a dwelling unit, such as [including but not limited to] the outermost layer of superficial area of walls, ceilings, floors, stairs, windows, windowsills, window frames, window sashes, doors, door frames, baseboard and woodwork of a dwelling or dwelling unit.

[(13)] "Exposed surface" shall mean all interior surfaces of a dwelling or dwelling unit and those exterior surfaces of a dwelling or dwelling unit which are readily accessible to children under six (6) years of age, such as stairs, decks, porches, railings, windows, doors and siding. All areas in the vicinity of a dwelling or dwelling unit subject to contamination from flaking or peeling lead based materials are also considered an exposed surface.]

[(14)] "Chewable surface" shall include but not be limited to such surfaces as windowsills, window frames, door frames, handrails, toys, furniture, food utensils and other appurtenances offering a biting surface to a child or other person.]

Section 2. Lead Based Paint Health Hazard. (1) Any lead based substance shall be considered a health hazard to children under six (6) years of age if it:

(a) [Said lead based substance] Exists in or about a dwelling, dwelling unit, household, school or day care facility in which children commonly reside or visit; and

(b) [Said lead based substance] Is determined to be on any surface, exposed surface or chewable surface and contains more than 0.06 percent lead by weight of nonvolatile content or in excess of seven-tenths (0.7) milligrams per square centimeter of surface if [when] tested by radioisotope x-ray fluorescent analyzer.

(2) Any lead based substance found to be a health hazard under subsection (1) of this section shall be corrected within the time period specified by the director in a written order. Failure to correct the health hazard within the specified time period shall result in the appropriate court action against the owner,

operator or occupant for noncompliance unless an extension is granted by the director due to undue hardship.

(3) Correction procedures shall be approved by the director and shall include one (1) or more of the following:

(a) Stripping of the surface to the bare underlying materials which do not contain lead at the unsafe levels.

(b) Covering of surfaces that contain lead at unacceptable levels with permanently affixed covering that are:

1. Lead free; and

2. Incapable of being readily chewed through, torn from the surface; pierced or otherwise removed in such a manner as to expose the hazardous surface. [The covering of such surfaces which contain lead at unacceptable levels with permanently affixed coverings, the surfaces of which are lead free and which with said permanently affixed coverings, are incapable of being readily chewed through, torn from the surface, pierced, or otherwise removed in such manner as to expose the hazardous surface.]

Section 3. Inspections. (1) If [there is found the presence of] flaking, peeling, chipping, or loose paint, plaster, or structural material is found in or around any building used for housing, specimens of the flaking, chipped or loose paint, plaster or structural material shall be collected to determine whether or not the materials contain lead. In lieu of taking samples, the surface may be tested with an "in situ" analyzer approved by the director.

(2) The chemical determination of the lead content in surface materials may be made by the quantitative measurements of samples of those materials.

(3) The physical determination of the lead content of surface material may be made by nondestructive measurements using radioisotope x-ray fluorescent analyzers (XRF) or other instruments approved by the director.

(4)(a) If a dangerous level of lead is found in a dwelling, the director may require the examination of:

1. All children under six (6) years of age; and
2. Other children who reside, or recently resided, in the dwelling.

(b) The results of examinations conducted under this subsection shall be reported to the:

1. Director;

2. Affected individual; and

3. His parents or legal guardian. [When a dangerous level of lead is found in a dwelling, the director may cause to have examined all children under six (6) years of age, and [such] other children [as] he may find advisable to examine, residing or who have recently resided in said dwelling. The results of these [such] examinations shall be reported to the director, the affected individual and his parent or legal guardian.]

Section 4. Hazard Abatement. (1) If [When] the director determines that the presence of lead based substances in any dwelling or dwelling unit or premises creates a health hazard to children under six (6) years of age, he shall issue a written order to the owner, operator or occupant to eliminate the hazard within a time period not to exceed thirty (30) days. Methods for compliance shall be in accordance with

Section 2 of this regulation.

(2) Upon completion of the correction procedure, an inspection shall be made by the department to determine if the hazard has been satisfactorily eliminated.

(3) If [In the event] the dwelling, [or] dwelling unit or premises in which lead based hazardous substances [such] are located is vacated by the occupant who occupied it when [same at the time of] the [issuance of] corrective order was issued, the [such] dwelling, dwelling unit or premises shall not be let or occupied by any other person until the [such] corrective order is complied with.

C. HERNANDEZ, M.D., Commissioner

HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: October 2, 1991

FILED WITH LRC: October 15, 1991 at 11 a.m.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(As Amended)

902 KAR 10:010. Public restrooms.

RELATES TO: KRS 211.180

STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.990

NECESSITY AND FUNCTION: KRS 211.180 authorizes the Cabinet for Human Resources [Cabinet] to regulate the sanitation of public restrooms. This regulation provides standards for public restrooms in order to protect the health of the public.

[Section 1. Citation of Regulation. This regulation may be cited as the "Kentucky Public Restroom Regulation".]

Section 1. [2.] [Section 1.] Definitions. The following definitions shall apply in the interpretation and enforcement of this regulation:

(1) "Cabinet" means the Cabinet for Human Resources [Cabinet] and the local health department having jurisdiction and their duly designated representatives.

(2) "Public rest room" means a [any] facility that provides toilet and hand-washing facilities for the general public.

(3) "Septic tank" means a watertight receptacle which receives the discharge of a building sanitary drainage system (or part thereof) and is designed and constructed so as to digest organic matter through a period of detention that allows the liquids to discharge into the soil outside the tank through a system of open joints or perforated piping, or a seepage pit.

Section 2. [3.] [2.]. Water Flushed Toilet Facilities. If [Whenever] water flushed toilet facilities are provided for the accommodation of the public or patrons at [any] public places:

(1) The floors shall be of smooth construction and relatively impervious to water.

(2) The walls and ceilings shall have a smooth washable surface and shall be painted or finished in light color and shall be maintained in good condition.

(3) All openings shall be effectively screened against flies and other insects.

(4) All doors shall be self-closing.

(5) The plumbing installations shall comply with the state plumbing code.

(6) All wastes resulting from flush toilets, lavatories or other fixtures shall be disposed of in a public sewer or, in the absence of a public sewer, by a method approved by the Natural Resources and Environmental Protection Cabinet.

(7) An adequate supply of toilet tissue shall be provided at each toilet facility at all times.

(8) The rooms shall be adequately lighted and ventilated.

(9) If drinking water is provided, it shall be from a source approved by the Natural Resources and Environmental Protection Cabinet.

(10) If drinking fountains are provided, they shall be installed in accordance to the state plumbing code and shall be maintained in a sanitary manner.

(11) The use of the common drinking cup is prohibited.

(12) Hand-washing facilities, including running water, soap and individual cloth or paper towels, or [any] other method for drying hands approved by the cabinet, shall be provided.

(13) The use of the common towel is prohibited.

(14) All trash or refuse shall be kept in nonabsorbent containers and removed from the premises as frequently as necessary to prevent an unsanitary condition from developing. A covered waste container shall be provided in each women's toilet facility.

(15) The rooms, including all fixtures therein, shall be kept clean, in good repair and free from dust, dirt, insects and other contaminating material.

Section 3. [4.] [3.] Earth Pit Privies. Outdoor toilets (earth pit privies) not connected to a public sewerage system or septic tank shall be prohibited within the boundaries of cities of the first or second class as provided by KRS 381.780. In other areas, if [whenever] water under pressure is not available, earth pit privies may be used for the accommodation of the public or patrons at [any] public place provided they comply with the following requirements:

(1) Construction of pit privies.

(a) The pit shall not be located within 100 feet of any source of water supply and shall have a capacity of not less than fifty (50) cubic feet and shall be not less than four and one-half (1/2) feet or more than six (6) feet deep, measured from the original ground surface.

(b) The pit shall be lined with curbing of sound lumber, concrete, or other material approved by the cabinet and extend to the full depth of the pit.

(c) The floor and seat riser shall be constructed of impervious material or tongue and groove lumber, and in a manner to exclude insects and rodents. The seat riser shall be so constructed and bonded with the floor as to prevent seepage through the riser onto the floor and the seat opening shall be elevated at least twenty (20) inches above floor level.

(d) The superstructure of the privy shall be constructed of substantial material fastened solidly to the floor.

(2) Maintenance of pit privies.

(a) The floor, seat and other fixtures shall be kept in good repair and clean at all times.

(b) An adequate supply of toilet tissue shall be provided.

(c) If [When] the pit is filled to within eighteen (18) inches of the floor, the pit shall be cleaned or a new pit shall be constructed. Old pits shall be filled and mounded with earth.

(d) The privy shall be adequately ventilated.

C. HERNANDEZ, M.D., Commissioner

HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: October 2, 1991

FILED WITH LRC: October 15, 1991 at 11 a.m.

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

902 KAR 10:110. Issuance of on-site sewage disposal system [installation] permits [and certification of installers].

RELATES TO: KRS 211.350 to 211.380, 211.990(2)
STATUTORY AUTHORITY: KRS 194.050, 211.090(3), 211.180(1)(d) [(3)]

NECESSITY AND FUNCTION: KRS 211.350 provides that no person, firm, or corporation shall construct, install, alter or cause to be constructed, installed, or altered any on-site sewage disposal system subject to regulation by the cabinet without having first obtained an on-site sewage disposal permit from the cabinet. The purpose [function] of this regulation is to set forth the requirements for issuance of [such] permits [and to provide for the certification of installers].

Section 1. Definitions. As used in this regulation the following terms shall have the meanings set forth below: [Citation of Regulation. This regulation may be cited as the "On-site Sewage Disposal System Installation Permit and Certification of Installers Regulation."]

(1) "Alter" means to make a physical change in the original design, sizing, layout, components, location, or method of operation (individually or in any combination of changes) of an existing on-site sewage disposal system, as a result of necessary repair or a change in wasteload volume or wasteload characteristics.

(2) "Cabinet" means the Cabinet for Human Resources and includes its authorized agents.

(3) "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 211.360.

(4) "Certified installer" means a specific individual person who has met the requirements for certification contained in KRS 211.357 and 902 KAR 10:140.

(5) "Component" means any device used in the construction, installation or alteration of an on-site sewage disposal system which forms an integral part of that disposal system, and is necessary to its proper operation and maintenance. It includes, but is not limited to:

(a) Sewage pretreatment units, holding tanks, grease traps, pump or dosing tanks, and necessary equipment and appurtenances;

(b) Distribution boxes, alternating valves, filters, and similar devices; and

(c) Piping, fittings, valves, and leaching chambers.

(6) "Construct" means the physical assembly of various necessary components and materials into an on-site sewage disposal system and includes

all necessary design, site layout, excavation, backfilling and additional site fill work that may be required to produce a finished on-site system. The term "install" shall be considered to have the same meaning.

(7) "Homeowner" means a specific individual person who actually occupies the single family residence that a proposed new on-site sewage disposal system is intended to serve, or that an existing system that is proposed to be altered serves, or who proposes to construct or have constructed a single family residence for his personal use and occupancy that a proposed new on-site system is intended to serve. This term shall not include any person who is a builder or contractor who engages in a business of constructing or rehabilitating residential structures for sale or resale.

(8) "On-site sewage disposal system, on-site sewage system and on-site system" mean[s] 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. Examples of such systems are: [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 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.

(9) "Person" means any individual, firm, association, organization, partnership, business trust, corporation, company or governmental unit.

Section 2. Issuance of Permits. (1) Except as otherwise provided by subsection (2) of this section, permits to construct, install or alter on-site sewage disposal systems shall be issued only to certified installers.

(2) Permits to construct, install or alter on-site sewage disposal systems may be issued to homeowners [who desire to install such systems for homes actually occupied by them or for a home to be constructed by them for their own personal residential use,] provided:

(a) Application is made for a [the] permit as specified in 902 KAR 10:085, Section 3(1)(d) [on

forms provided by the cabinet] prior to construction of any portion of the proposed on-site sewage disposal system [the beginning of the work]; and

(b) All work is performed in compliance with 902 KAR 10:081, 902 KAR 10:085 [the on-site sewage disposal systems laws] and this regulation(s); and

(c) All [the] work is personally performed by the homeowner, except that necessary excavation and backfilling work may be performed by a certified installer if notification of intent is made at the time of application for a permit, and the certified installer's name and certification number are included on the application; and

(d) If local electrical codes require electrically operated components of an on-site sewage disposal system to be connected to electrical service only by a certified or licensed professional electrician, and do not permit homeowner performed work, that work shall also be excepted from the requirements of paragraph (c) of this subsection; and

(e) No person shall be issued more than one (1) homeowner permit to construct or alter an on-site sewage disposal system in any five (5) year period, except in instances of necessary repair or alteration of the originally permitted on-site system.

[Section 3. System Construction, Installation, or Alteration. (1) All work in the construction, installation, or alteration of an on-site sewage disposal system shall be performed by a certified installer, except those systems for which a homeowner has secured a permit to personally perform such work.]

[(2) Persons certified as installers except master plumbers licensed pursuant to KRS Chapter 318 shall pay a fee of twenty-five (25) dollars for such certification.]

C. HERNANDEZ, M.D., Commissioner

HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: October 10, 1991

FILED WITH LRC: October 15, 1991 at 11 a.m.

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

902 KAR 13:010. Definitions for 902 KAR Chapter 13.

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 define terms that are used in regulations promulgated by the cabinet relating to emergency medical technicians.

Section 1. Definitions. As used in cabinet regulations relating to EMTs, the following terms shall have the meanings set forth below unless the context requires otherwise:

(1) "Applicant" means a [any] person applying for training or certification as an EMT or EMT-first responder under this regulation.

(2) "Cabinet" means the Cabinet for Human

Resources.

(3) "Certificate" means the certificate issued by the cabinet [pursuant to this regulation] to an [any] individual qualified [qualifying pursuant to this regulation] to perform the duties of an [any] EMT or EMT-first responder.

(4) "Certified" means a person [one] who holds a certificate issued pursuant to this regulation.

(5) "Committee" means the emergency medical services [technician's training] advisory committee (EMSAC) [as] appointed by the secretary of [for] the cabinet [for Human Resources] to act in an advisory capacity.

(6) "Emergency medical technician-first responder (EMT-first responder)" means an individual certified by the cabinet to perform a portion of the patient care skills of certified EMTs in order to stabilize a patient's condition until an EMT or other higher level of certified or licensed emergency medical services (EMS) personnel arrives.

(7) "Emergency medical technician-first responder instructor" means a person, other than an emergency medical technician instructor or emergency medical technician instructor trainer, who is qualified to teach EMT-first responder courses and who is certified by the cabinet to teach EMT-first responder courses. ["Emergency situation" means an unforeseen circumstance or combination of circumstances, regardless of place of occurrence, requiring immediate and continued medical response and intervention to safeguard the life or physical well-being of a [any] patient.]

(8) [(7)] "Emergency medical technician (EMT)" means an [a qualified] individual [currently] certified by the [Kentucky] cabinet [for Human Resources] as an emergency medical technician or as an emergency medical technician-ambulance and who is trained to provide immediate emergency medical care and intervention to stabilize a patient's condition at the scene of an emergency and enroute to definitive medical care.

(9) [(8)] "Emergency medical technician instructor" means a person [qualified to teach emergency medical technician or EMT-first responder courses and who is] certified [to do so] by the [Kentucky] cabinet to teach emergency medical technician and EMT-first responder courses [for Human Resources].

(10) [(9)] "Emergency medical technician instructor trainee" means a certified emergency medical technician undergoing approved instruction and evaluation as an emergency medical technician instructor under the supervision of a certified emergency medical technician instructor.

(11) [(10)] "Emergency medical technician instructor trainer" means a person certified by the cabinet to teach emergency medical technician instructor courses and evaluate emergency medical technician instructor trainees.

[(11)] [(12)] "Emergency medical technician-first responder (EMT-first responder)" means an [a qualified] individual [currently] certified by the [Kentucky] cabinet [for Human Resources] to perform a portion of the patient care skills of certified EMTs in order to stabilize a patient's condition until an EMT or other higher level of certified or licensed emergency medical services (EMS) personnel arrives.]

[(12)] [(13)] "Emergency medical technician-first responder instructor" means a

person, other than an emergency medical technician instructor or emergency medical technician instructor trainer, who is qualified to teach EMT-first responder courses and who is certified [approved to do so] by the cabinet to teach EMT-first responder courses [for Human Resources].]

(12) "Emergency situation" means an unforeseen circumstance or combination of circumstances, regardless of place of occurrence, requiring immediate and continuing medical response and intervention to safeguard the life, or physical well-being of a patient.

(13) [(11)] "Implementing agency" means a [any] public or private organization, other than an instructor, instructor trainee, or instructor trainer, approved by the cabinet to [other than an instructor, instructor trainee, or instructor trainer, who is] conduct[ing], supervise [ing], coordinate [ing], and [or otherwise] operate [ing] an emergency medical technician or EMT-first responder training course.

C. HERNANDEZ, M.D., Commissioner

HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: October 3, 1991

FILED WITH LRC: October 10, 1991 at 11 a.m.

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

902 KAR 13:070. Instructors and trainers.

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 requirements for attaining certification as an emergency medical technician-instructor and emergency medical technician instructor-trainer.

Section 1. [In order to become certified by the cabinet as an EMT instructor, a person shall have] A [No] person shall not hold himself out as an EMT-instructor unless he has:

(1) Been certified as an EMT by the cabinet;

(2) Been recommended by a certified EMT-instructor as having outstanding ability in the EMT field;

(3) Attended an approved EMT-training seminar and successfully passed a written proficiency examination;

(4) Assisted an EMT-instructor for a minimum of one (1) complete EMT training course in which he:

(a) Participated in the conduct of each lesson;

(b) Conducted, under supervision, at least one (1) complete lesson during the course;

(c) Served as a small-group instructor during practical exercises;

(d) Conducted class demonstrations of manipulative skills;

(e) Performed other related duties as directed by the EMT-instructor;

(f) Been recommended, in writing, for final evaluation by the EMT-instructor [for] whom the applicant assisted in teaching the complete EMT training course; [upon completion of the course; and]

(5) Been evaluated by a panel of EMT-instructor-trainers; [,] and [received a score of eighty (80) percent or higher.]

(6) Received an evaluation score of eighty (80) percent or higher.

Section 2. Reevaluation of Instructor-trainees by Panel. (1) If [In the event] an EMT-instructor-trainee fails to score eighty (80) percent or higher on his initial evaluation, he shall be given another opportunity, upon application, to be reevaluated.

(2) An EMT instructor-trainee shall, upon application, be given another opportunity to be reevaluated if he: [If [In the event] he]

(a) Again fails to obtain a score of eighty (80) percent or higher; and

(b) [, but] Scores at least seventy (70) percent or higher[, he shall, upon application, be given another [an] opportunity to be reevaluated].

Section 3. Certification of EMT-instructor-trainers. A [No] person shall not be certified [hold himself out] as an EMT-instructor-trainer unless he has:

(1) Complied with all requirements of Section 1 of this regulation; and

(2) Been evaluated by the EMS [EMT] advisory committee and recommended to the cabinet for certification as an EMT-instructor-trainer.

Section 4. Renewal of EMT-instructor Certification. If [Unless renewed,] the certification of an EMT-instructor's certification] is not renewed, it shall become invalid two (2) years from the date of issue [unless renewed]. In order to obtain renewal, the EMT-instructor shall meet all requirements of 902 KAR 13:050, Section 5(4).

Section 5. EMT-instructors Certified in Other States. A person who is certified in another state as an EMT-instructor and who wishes to become certified in Kentucky as an EMT-instructor, shall:

(1) Comply with the requirements of Sections 1 and 2 of this regulation; and

(2) Comply with the challenge examination procedures outlined in 902 KAR 13:050, Section 7. [Upon proper application, EMT-instructors certified in other states may take the Kentucky "Challenge Examination" consisting of both written and practical parts for certification as an EMT. In addition, such persons shall meet the requirements of Sections 1 and 2 of this regulation.]

C. HERNANDEZ, M.D., Commissioner

HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: October 3, 1991

FILED WITH LRC: October 10, 1991 at 11 a.m.

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

902 KAR 13:090. Disciplinary actions.

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 procedures for taking disciplinary action against a certified emergency medical technician, EMT-first responder, EMT-first responder instructor and emergency medical technician-instructor.

Section 1. Denial, Revocation, and Suspension of Certificates. The cabinet may deny, revoke, or suspend the certificate of a [any] person who:

(1) Has engaged in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public;

(2) Becomes a drug dependent person or drug abuser as defined in KRS 222.011(8);

(3) Becomes an alcoholic person who suffers from alcoholism as defined in KRS 222.011(3);

(4) Develops such physical or mental disability or other condition that continued practice or performance of his duties may be dangerous to patients or the public; or

(5) Fails to comply with an administrative [any] regulation of the cabinet relating to the certification of an EMT[s].

Section 2. Hearings. (1) The cabinet shall furnish the certificate holder with written notice setting out the substance of each offense charged with sufficient detail to reasonably apprise him [such person] of the nature, time and place thereof.

(2) The certificate holder shall have the right to:

(a) Be present in person;

(b) [or] Be represented by counsel;

(c) [, and to] Present evidence; and

(d) [to] Be heard in opposition to the charges which may be instituted.

(3) The hearing may be conducted by a hearing officer appointed by the cabinet.

(4) The hearing officer shall:

(a) Make findings of fact and conclusions of law; and

(b) Submit them to the cabinet for a final decision. [cabinet shall make a finding of fact and conclusion of law. The hearing may be conducted by a hearing officer appointed by the cabinet.]

C. HERNANDEZ, M.D., Commissioner

HARRY J. COWHERD, M.D., Secretary

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

902 KAR 13:110. EMT-first responder training, examination, and certification.

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 a new classification of emergency medical technician, the Emergency medical technician-first responder (EMT-first responder), and to establish requirements for training, examinations, and certifications.

Section 1. Training Course Requirements. The EMT-first responder training course shall:

(1)(a) Include the curriculum of the "Emergency Medical Services: First Responder Training Course", ([published] March 1979); [by the] U.S. Department of Transportation, National Highway Traffic Safety Administration, Washington, D.C. 20590, and the accompanying text [entitled] "First Responder" (Third [Second] Edition), (1991) [published by] The Brady Company, Prentice-Hall, Inc., Englewood Cliffs, N.J. 07632, and such additions to the curriculum as specified by the cabinet].

(b) A copy of these publications is [thereby] incorporated [, included] by reference. They [and] [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 40601, and shall be available for public inspection and copying Monday through Friday from 8 a.m. until 4:30 p.m.;

(2) Be at least forty (40) hours in duration;

(3) Utilize equipment, texts, and other materials approved by the cabinet;

(4) Not begin [be started] until all equipment, texts, and other materials specified are available, in proper quantities, in proper working condition, and placed in secure storage;

(5) [Not] Share equipment between courses if it [unless such equipment] is available equally to all EMT-first responder classes;

(6) Be taught by an instructor approved by the cabinet [for Human Resources] pursuant to Section 2 of this regulation;

(7) Have one (1) assistant instructor for every ten (10) students during a practice session [an appropriate number of assistant instructors available for practice sessions so that there are no more than ten (10) students per assistant].

(b) A certified emergency medical technician or paramedic may be used as an assistant for practice sessions;

(8) Have a class certification number assigned by the cabinet;

(9) Be limited to a maximum of thirty (30) students;

(10) [Not] Permit more than one (1) lesson absence per student if the absence is made up;

(a) With the approval of the instructor; or

(b) [, unless made up at the discretion of the instructor, or made up] In a subsequent EMT-first responder course;

(11) Require each student to sign in for each lesson on attendance sheets provided by the cabinet; and

(12)(a) Require the instructor at the end of each course, to provide the cabinet with the [following]:

(a) "Final Course Records Form" [master grade sheet];

(b) [,] "Answer Sheet" [for the written exam];

(c) [,] "Final Practical Exams";

(d) [,] "Application for Certification";

(e) The fee prescribed by 902 KAR 13:030, Section 1(3);

(f) [with the prescribed fee outlined in 902 KAR 13:030, Section 1(3).] Two (2) "Master Student Attendance Sheets"; [master attendance form] and

(g) "Attendance sheets" for each lesson.

(b) The following forms: "Final Course Records Form", dated 11/87, "Kentucky First Responder Examination Answer Sheet", dated 88-89, "Application for Certification", dated 7/90, "Master Student Attendance Sheet", dated 11/87, and "Attendance Sheet", dated 11/87 are hereby incorporated by reference. These forms may be obtained from the Emergency Medical Services Branch, Department for Health Services, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, between 8 a.m. and 4:30 p.m., Monday through Friday.]

(13)(a) The following forms are incorporated by reference:

1. "Final Course Records Form" (11/87);

2. "Kentucky First Responder Examination Answer Sheet" (88-89);

3. "Application for Certification" (7/90);

4. "Master Student Attendance Sheet" (11/87); and

5. "Attendance Sheet" (11/87).

(b) They may be inspected, copied or obtained from the Emergency Medical Services Branch, Department for Health Services, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. through 4:30 p.m., Monday through Friday.

Section 2. EMT-First Responder Instructors.

(1) A [No] person shall not hold himself out as an EMT-first responder instructor if [unless] he:

(a) Is not an EMT-instructor certified by the cabinet; [,] or

(b) Has not been approved by the cabinet to teach the EMT-first responder course. [The following shall be eligible for such approval]

(2) Upon submission of appropriate documentation to the cabinet, the following shall be eligible for approval:

(a) [(1)] An individual certified by the:

1. Kentucky Law Enforcement council to teach the first responder course; and

2. [who is also certified by the] Cabinet [for Human Resources] as an EMT or EMT-first responder.

(b) [(2)] An individual certified by the:

1. Commission on Fire Protection Personnel Standards and Education as a fire protection instructor; and

2. [who is also certified by the] Cabinet [for Human Resources] as an EMT or EMT-first responder.

(c) [(3)] A physician, registered nurse, paramedic, or emergency medical technician who has:

1. Completed a basic instructional methodology course approved by the cabinet; and

2. [Has] Experience, or is active in teaching or providing emergency medical services.

Section 3. Requirements for Applicants. Each applicant shall:

(1) Be eighteen (18) years of age or older;

[(2) Be of good moral character;]

(2) [(3)] Not be habitually addicted to or an abuser of alcoholic beverages, drugs, or controlled substances; and

(3) [(4)] Understand and be able to read, speak, and write the English language. [, and]

[(5) Submit a signed application on a form prescribed by the cabinet.]

Section 4. EMT-First Responder Certification Examination. The cabinet shall prescribe the format and content of the EMT's certification examination, which shall consist of two (2) parts:

(1) Written.

(a) A passing grade of seventy-five (75) percent shall be required.

(b) If [In the event that] an applicant's grade average [is less than seventy-five (75) percent, but] is seventy (70) percent or more, the applicant may, upon proper application, retake the written examination.

(c) If [However, should] the applicant fails again [fail], he shall be required to retake the entire EMT-first responder course before being eligible for reexamination.

(2) Practical.

(a) The applicant shall [successfully] pass all parts of the final practical examination.

(b) If [In the event] he fails to [successfully] pass all portions of the final practical examination, he shall be permitted one (1) opportunity to retake the part which he failed to pass.

(c) If [However, should] the applicant fails again [fail] to pass that [the] particular part of the examination, he shall be required to retake the entire EMT-first responder training course before being eligible for reexamination.

(3) Examiners.

(a) Except as provided in paragraph (b) of this subsection, examiners for EMT-first responder course practical examinations shall be:

1. EMT-instructors certified by the cabinet; or
2. EMT-first responder instructors approved by the cabinet pursuant to Section 2 of this administrative regulation.

(b) An instructor who is employed by the organization for whom the EMT-first responder course is conducted shall not be used as an examiner in the practical examination of that course. [EMT-instructors certified by the cabinet or EMT-first responder instructors approved by the cabinet pursuant to Section 2 of this regulation shall be used as examiners for EMT-first responder course practical examinations. An instructor who is employed by the organization for whom the EMT-first responder course is conducted shall not be used as an examiner in the practical examination of that course.]

Section 5. Expiration of Certification. An [All] EMT-first responder certificate shall expire three (3) years from the date of issuance.

Section 6. Renewal of Certification: In-service Training or Continuing Education Requirements. (1) Prior to the renewal of an EMT-first responder certificate, an EMT-first responder shall complete the training or continuing education requirements of this section.

(2) During his certification period, he shall:

(a) Complete:

1. Twelve (12) hours of in-service training, or continuing education; or
2. A combination thereof;

(b) Be certified in cardiopulmonary resuscitation (CPR) as required by the:

1. American Heart Association; or
2. American National Red Cross; and

(c) Submit evidence of the training and certification required by this subsection to the cabinet not less than thirty (30) days prior to the expiration of his EMT-first responder certificate. [In order to renew a certificate, the EMT-first responder shall, during his period of certification, attain at least twelve (12) hours of in-service training or continuing education, or a combination thereof, and show evidence of certification in cardiopulmonary resuscitation (CPR) as required by the American Heart Association or the American National Red Cross. Evidence of training and CPR certification shall be submitted to the cabinet not less than thirty (30) days prior to the expiration of his EMT-first responder certification.]

[(1) Subject matter requirements for EMT-first responder in-service training or continuing education.]

(3) [(2)] [(a)] An applicant for recertification shall receive credit for completion of [To receive credit for in-service training or continuing education, the applicant for recertification may take] in-service training or continuing education on a [any] subject:

(a) Covered by the U.S. Department of Transportation EMT-First Responder curriculum; [,] or

(b) [any subject] For which instruction is authorized by the cabinet [for Human Resources].

(4) [(3)] Each subject or training course claimed shall be countersigned by the instructor of the subject or course.

(5) [(4)] Training received as a requirement for continuing education in medicine, nursing, paramedic, or as an EMT in a coal mining situation required by KRS 351.127 shall be eligible for in-service training or continuing education credit if it meets the criteria of subsection (2) of this section.

(6)(a) [(5)] The EMT-first responder shall submit to the cabinet a "First Responder Official Record of Continuing Education or In-service" (9-30-91) record of his in-service training or continuing education on a form [provided by the cabinet].

(b) The form shall be:

1. Signed by the EMT-first responder;
2. [and shall] Contain a certification as to the truth of the information supplied; and
3. A statement that misrepresentation of the information may be cause for suspension or revocation of a certificate.

(c) [This form.] "First Responder Official Record of Continuing Education/In-service" [dated] (9-30-91), is [hereby] incorporated by reference and may be obtained from the Emergency Medical Services Branch, Department for Health Services, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, between 8 a.m. and 4:30 p.m., Monday through Friday.

(7) [(6)] [(b)] The following shall [are] not be eligible for credit as in-service training or continuing education:

(a) [1.] Ambulance runs, rescues, firefighting, emergency responses, or similar actual emergency activities; and [.]

(b) [2.] Instruction in material, techniques or procedures not authorized to be performed by EMT-first responders.

[(c) Evidence of training and CPR certification shall be submitted to the cabinet

not less than thirty (30) days before the expiration of the EMT's certification on forms supplied by the cabinet.]

[(d) The form provided by the cabinet shall contain a certification as to the truth of the information supplied and a statement that all training claimed conforms to the requirements of this regulation and a warning that submission of false information constitutes a violation of law.]

[(e) Each subject or training course claimed shall be countersigned by the instructor of the subject or course.]

[(f) Training received as a requirement for continuing education in medicine, nursing, paramedic, or as an EMT in a coal mining situation required by KRS 351.127 is eligible for in-service training or continuing education credit if it meets the criteria of paragraph (a) of this subsection.]

Section 7. [(2)] Instructor[s] Requirements for EMT-first Responder In-service Training and Continuing Education. The following persons shall be [are] considered [as] qualified to conduct in-service training and continuing education courses for EMT-first responders [emergency medical technicians]:

(a) A physician licensed pursuant to KRS Chapter 311;

(b) A registered nurse licensed pursuant to KRS Chapter 314;

(c) A paramedic certified by the State Board of Medical Licensure;

(d) An emergency medical technician instructor or instructor trainer certified by the Cabinet for Human Resources; or

(e) An instructor who:

1. Is certified by a state or federal agency to teach a subject; and

2. Teaches [who is teaching] [within an [the] area authorized by his certification,] a course which qualifies [shall [will]] qualify] for EMT-first responder [emergency medical technician] in-service training or continuing education.

[(2)] [(f)] As applicable, a physician[s], registered nurse[s], paramedic[s] or emergency medical technician instructor[s] currently licensed or certified by another state of the United States of America shall be considered as meeting the requirements of subsection (1)(a) through (e) of this section [paragraphs (a) through (e) of this subsection, as applicable].

Section 8. [(3)] Cardiopulmonary Resuscitation Requirement. (1) During the second year of the certification period, the EMT-first responder shall obtain or renew certification in cardiopulmonary resuscitation and related techniques as follows:

(a) The course shall be conducted:

1. By, or under the authority of, the American Heart Association or the American National Red Cross; or

2. Under its authority, by an instructor certified by the American Heart Association or the American National Red Cross;

(b) The course shall be:

1. Taught for record; and

2. [shall be] Certified by the instructor to the American Heart Association or the American National Red Cross as meeting all applicable standards of the organization;

(c) The course shall provide instruction and

testing in:

1. One (1) rescuer cardiopulmonary resuscitation;

2. Two (2) rescuer cardiopulmonary resuscitation;

3. Techniques of changing from one (1) rescuer to two (2) rescuers during the performance of cardiopulmonary resuscitation;

4. Techniques of changing rescuers during the performance of two (2) rescuer cardiopulmonary resuscitation;

5. Techniques for relief of obstruction of the airway;

6. Cardiopulmonary resuscitation of infants and small children; and

7. Mouth to mouth or [/] mouth to nose resuscitation for adults, small children, and infants.

(d) The course shall provide for individual skill testing of all adult and infant related skills in subsection (1) [(3)] of this section.

[(2)] [(e)] The applicant for renewal of certification shall forward to the cabinet [for Human Resources] a copy of both sides of the CPR card [their certificate] issued to him indicating successful completion of the CPR course as required in Section 6(1) of this administrative regulation.

[Section 7. Certification on the Basis of Prior Training. Upon proper application and documentation, and upon payment of the prescribed fee, persons who can document that they have successfully completed a formal course of instruction approved by the cabinet which utilized the U.S. Department of Transportation First Responder Course prior to the effective date of this regulation may be issued an EMT-first responder certificate valid for up to three (3) years from the date of course completion. Organizations which conducted or sponsored such courses shall provide documentation to the cabinet that the courses meet or exceed the U.S. Department of Transportation guidelines.]

Section 9. [8.] Authorized Procedures. Certified EMT-first responders may perform any of the procedures [as] set forth in the:

[(a)] U.S. Department of Transportation curriculum [en][titled] "Emergency Medical Services: First Responder Training Course" (March 1979); and

[(b)] [the] Accompanying text entitled "First Responder," (Third [Second] Edition), (1991) [published by] The Brady Company, Prentice-Hall, Inc., referenced in Section 1 of this administrative regulation.]

C. HERNANDEZ, M.D., Commissioner

HARRY J. COWHERD, M.D., Secretary

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CABINET FOR HUMAN RESOURCES
Department for Social Services
(As Amended)

905 KAR 8:160. Adult day and Alzheimer's respite program.

RELATES TO: KRS 205.201, 205.203, 205.455-465, 902 KAR 20:066, 902 KAR 20:200, 905 KAR 8:180, 42 USC 3001 et seq.

STATUTORY AUTHORITY: KRS 194.050, 205.204(2)

NECESSITY AND FUNCTION: 42 USC 3001 et seq., the Older Americans Act of 1965, as amended, authorizes grants to states to provide assistance in the development of new or improved programs for older persons. KRS 194.050 authorizes the Cabinet for Human Resources to adopt regulations as necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds. KRS 205.204 designates the Cabinet for Human Resources as the state agency to administer the Older Americans Act in Kentucky. The function of this regulation is to set forth the standards of operation for the adult day and Alzheimer's respite program in Kentucky, in compliance with the statutory requirement of KRS 13A.221 that requires a separate administrative regulation for each topic of general subject matter.

Section 1. Definitions. (1) "Adult day services" means a supportive and therapeutic social program of supervision and care provided to an eligible adult during a [any] part of a day, but less than twenty-four (24) hour care.

[All] Programs provide supervision for:

- (a) Self-administration of medications;
- (b) Personal care services;
- (c) Self-care training;
- (d) Social activities; and
- (e) Recreational opportunities.

(2) "Adult day health services" means a licensed program to provide continuous supervision of the participant's medical and health needs.

(3) "Adult day center" means a community based facility in which adult day supervision is provided in a group setting.

(4) "Alzheimer's disease and related dementing diseases" mean neurological diseases causing gradual and irreversible impairment of intellectual functioning of a sufficient severity to interfere with an individual's daily activities.

(5) "Alzheimer's respite" means a therapeutic social program of supervision and care provided to a participant with Alzheimer's disease or related dementing disease to enable the caregiver temporary relief from caregiving duties.

(6) "Assessment" means the collection of information about a person's situation and functioning which identifies needs and resources so that a comprehensive plan of care can be developed.

(7) "Case management" means:

(a) A process for ensuring that participants receive appropriate, comprehensive and timely services to meet their needs as identified in the assessment process;

(b) Planning;

(c) Linking the participant to [all] appropriate agencies in the formal and informal caregiving systems;

(d) Monitoring; and

(e) Advocacy through case work activities in order to achieve the best possible resolution of individual needs.

(8) "Center respite" means respite provided in a group setting outside the home.

(9) "Identifiable space" means space set apart by visible barriers from other activities within the setting.

(10) "In-home respite" means respite provided in the participant's home.

(11) "Licensed adult day health center" means a program licensed by the Kentucky Commission for Health Economics Control in accordance with 902 KAR 20:066.

(12) "Personal care services" means activities to help participants achieve and maintain good personal hygiene, including assistance with walking, eating, grooming and toileting.

(13) "Plan of care" means a written guide of action:

(a) Developed and agreed upon by the participant, the primary caregiver, the director and program case manager;

(b) Based upon the participant's needs, goals, and resources; and

(c) Including appropriate services to meet identified needs and achieve objectives.

(14) "Reassessment" means the formal reevaluation of the participant's situation and functioning and of the services delivered to identify changes which may have occurred since the last assessment.

(15) "Unit of service" means one-half (1/2) hour of direct service.

Section 2. Eligibility. To participate in the adult day and Alzheimer's respite programs, an individual shall be able to respond and share in program activities without health and safety problems to self or others and shall meet at least one (1) of the following requirements:

(1) A person age sixty (60) or older who is physically disabled or frail as a result of medical condition or age and who needs supervision or assistance during part of the day;

(2) A person age sixty (60) or older who is mentally confused and needs supervision to prevent injury and assure proper nutrition and medication use;

(3) A person age sixty (60) or older who, because of emotional or social needs, may benefit from the individualized attention and social structure available through these services which are not otherwise available; or

(4) A person of any age with a diagnosis of probable Alzheimer's or related dementing disease, as confirmed by a written statement from a physician after a diagnostic evaluation.

Section 3. Assessment and Case Management. (1) Each applicant for services shall be assessed and certified eligible and in need of services. A plan of care shall be developed using the completed assessment, with participant involvement to the fullest extent of his abilities.

(2) The participant shall be referred by the case manager for other needed services identified by the assessment. Case management shall be provided to those participants receiving multiple services, but shall be provided by one (1) service provider only.

(3) The program director shall arrange or provide a formal reassessment at least every six (6) months.

Section 4. Fee for Service. (1) The following adult day and Alzheimer's respite fee schedule shall be utilized in determining the minimum fee which shall be charged an eligible individual who has received service. The cost of the service unit as determined by the state or contracting entity in accordance with its contract shall be multiplied by the applicable

percentage rate based upon income and size of family as set forth below.

Adult Day and Alzheimer's Respite Participant
Income and Applicable Percentage of Fee

Annual Income	1 Person	2 Persons
\$ 8000 and below	0%	0%
\$ 8001 - \$10150	20%	0%
\$10151 - \$12300	40%	20%
\$12301 - \$14450	60%	40%
\$14451 - \$16650	80%	60%
\$16651 - \$18850	100%	80%
\$18851 - \$20950		100%

For each additional family member, add \$2150.

(2) In determining the eligible individual's ability to pay a fee, any extraordinary medical or other related expense may be taken into consideration.

(3) SSI income shall not be considered available to other family members. If [When] an applicant is receiving SSI benefits, he shall be considered a family of one (1) for the purpose of fee determination.

Section 5. Responsibilities of the Service Provider. (1) The service provider shall meet the following general requirements:

(a) Assure that program staff shall treat the participant and caregiver in a respectful and dignified manner, involving them in decisions regarding the delivery of services;

(b) Assure that services are provided in a safe manner;

(c) Provide a unit cost figure to the case manager or assessor to be used as a basis for determining the applicable percentage of the fee schedule;

(d) Collect the fee for service as determined by the case manager or assessor. Fees and donations shall be budgeted and used to increase services;

(e) Have and use appropriate procedures for referrals to other service agencies or programs;

(f) Conduct community education and outreach activities to reach prospective participants;

(g) Comply with [all] applicable administrative policies and procedures and service contracts; and

(h) Provide access for staff of the area development district and the Cabinet for Human Resources for monitoring and evaluation purposes.

(2) The service provider shall meet the following program requirements for in-center services:

(a) Establish a schedule of days and hours of operation to be posted in a conspicuous place. A written copy of the schedule shall be given to the participant and the caregiver;

(b) Operate the program a minimum of four (4) hours per day, three (3) days per week, excluding holiday and emergency closings;

(c) Supervise program activities. Supervision shall be provided by staff or volunteers meeting staff requirements as set forth in Section 7 of this regulation;

(d) Provide a balance of planned individual and group activities to meet participant needs, abilities and interests as determined by the individual plan of care;

(e) Provide participants an opportunity to plan and evaluate activities on a monthly basis;

(f) Provide participants a choice of activities and an opportunity to refuse to participate in the activity;

(g) Post a monthly calendar of planned activities and available services in a conspicuous place. Records shall be maintained for monitoring purposes;

(h) Provide assistance, when necessary, with activities of daily living including:

1. Walking;
2. Eating;
3. Grooming;
4. Toileting; and
5. Personal hygiene;

(i) Comply with the Division of Aging Services, Department for Social Services policies and procedures for self-administration of medications;

(j) Provide a meal that complies with the Division of Aging Services' nutrition program policies if the program is in operation during a normal meal hour. Therapeutic diets shall be available in accordance with a physician's order at licensed adult day centers;

(k) Allow participants, as a supplementary activity to staff assignments, an opportunity to assist in planning menus;

(l) Offer nutrient dense snacks, water and other liquids at regularly scheduled times during the day;

(m) Post a monthly calendar of menus in a conspicuous place if meals are provided. Maintain menus for monitoring purposes;

(n) Provide first aid and make arrangements for medical care with the participant's physician or hospital for [in case of] accidents or medical emergencies;

(o) Notify the family or other appropriate person of any significant changes in the participant's mental or physical condition;

(p) Refer participants to health professionals of their choice, as needed;

(q) Establish linkages with other community agencies and institutions to better coordinate services;

(r) Assist participants and their families in identifying and accessing community agencies for:

1. Financial;
2. Social;
3. Recreational;
4. Educational;
5. Medical; and
6. Other services;

(s) Assist the family in arranging transportation; and

(t) Notify the area agency on aging immediately of a negative incident or accident involving a participant or employee, providing a written report if requested.

(3) The service provider operating a licensed adult day health center shall:

(a) Comply with licensure requirements of 902 KAR 20:066;

(b) Assure that health care needs are met;

(c) Provide self-care training;

(d) Provide personal care services; and

(e) Maintain a medication sheet in accordance with 902 KAR 20:066 if medications are administered to a participant.

(4) In-home respite care service providers shall comply with the following:

(a) Establish a monthly schedule of days and hours of service for each client based on the assessment, plan of care, and agreement with the participant and caregiver;

- (b) Provide a copy of the schedule to the caregiver; and
- (c) Supervise the participant and program activities as determined by the assessment and plan of care.

Section 6. Facility Requirements. Adult day and Alzheimer's respite program providers operating facilities for services shall:

- (1) Comply with requirements outlined in 902 KAR 20:066 for a licensed adult day health center;
- (2) Locate the center in a geographic area that provides convenient access to a majority of older persons;
- (3) Locate, design, and furnish the center to assure access and to accommodate the special needs of older persons, including individuals with handicaps;
- (4) Provide sufficient space and arrangements of furnishings to allow for:
 - (a) Adequate client movement;
 - (b) Program activities;
 - (c) Food service; and
 - (d) Socialization;
- (5) Provide sufficient private office space to permit individual counseling and confidential maintenance of records;
- (6) Provide appropriate lighting, heating, cooling and ventilation for participant comfort and program activities;
- (7) Equip each center with bathroom facilities meeting the following requirements:
 - (a) A minimum of one (1) toilet for each ten (10) participants with equal number of wash basins;
 - (b) Easy accessibility to the handicapped;
 - (c) In men's bathrooms urinals may be substituted for up to one-half (1/2) the number of toilets required;
 - (d) Cleaned and sanitized daily; and
 - (e) Hot and cold running water, mirror, soap and towels;
- (8) Comply with applicable housing and health codes;
- (9) Obtain initial and annual inspection by state or local fire safety officials and comply with requirements;
- (10) Maintain at least one (1) fire extinguisher with initial and annually updated inspection tags;
- (11) Maintain a fully equipped first aid kit, with unexpired contents, as defined by the American Red Cross;
- (12) Provide identifiable space during hours of operation for participants in need of a more private environment or rest area;
- (13) Provide separate identifiable space during operational hours, if co-located in a facility housing other services. Certain space may be shared, like [such as] the dining room, kitchen and therapy rooms.

Section 7. Program Staff. (1) Staffing requirements for in-center programs shall include:

- (a) Trained and experienced staff shall be present each day of operation;
- (b) Staffing ratios shall be one (1) staff for each five (5) participants;
- (c) There shall be at least two (2) responsible persons at the center at times when there are more than one (1) participant in attendance, one (1) of whom shall be a paid staff member;

(d) Volunteers may be included in the staff ratio if they meet staff qualifications and training requirements;

(e) At least one (1) staff member who has completed first aid training shall be present at times that participants are in attendance.

(2) Staff qualifications for programs shall be as follows:

(a) Directors of centers shall meet one (1) of the following requirements:

- 1. A trained social worker possessing:
 - a. A minimum of a bachelor's degree in social work or a related field relevant to geriatrics; and
 - b. Two (2) years professional experience; or
 - c. A master's degree in social work; and
 - d. Six (6) months professional experience working directly with the elderly; or
- 2. A registered or practical nurse licensed in Kentucky with two (2) years professional experience working directly with the elderly while an employee of a:
 - a. Home health agency;
 - b. Long-term care facility;
 - c. Public health agency; or
 - d. Social service agency;

3. An individual at least twenty-one (21) years of age with:

- a. A high school diploma or GED certificate;
- b. Two (2) years professional education in social services, health or geriatrics; and
- c. Two (2) years professional experience working directly with the elderly;
- d. Professional experience shall substitute for professional education on a year-for-year basis, and shall include working directly with the elderly while an employee of a public or private health or social service agency.

(b) Administrators of licensed adult day health programs shall meet requirements as governed by 902 KAR 20:066, Operations and services, day health care programs.

(c) Staff responsible for assessments or case management for participants shall meet one (1) of the following:

- 1. A bachelor's degree in social work or related field relevant to geriatrics;
- 2. A master's degree in social work;
- 3. A bachelor's or master's degree in nursing with a Kentucky registered nursing license;
- 4. A bachelor's degree supplemented by two (2) years professional experience in working directly with the elderly; or
- 5. A registered or practical nurse licensed in Kentucky with two (2) years professional experience working directly with the elderly.

(d) Employees and volunteers with ongoing client contact shall submit evidence of tuberculosis testing as governed by 902 KAR 20:200:

- 1. Within one (1) year prior to employment; or
- 2. During the first week of employment; and
- 3. Annually thereafter;
- 4. Evidence of testing shall be maintained in the personnel file.

(e) An employee or volunteer contracting an infectious disease shall not appear at work until the infectious disease can no longer be transmitted.

(f) In-home respite staff shall meet the above requirements and shall:

- 1. Be twenty-one (21) years of age if working independently; or
- 2. If working as a team to provide direct services, one (1) member shall be at least

twenty-one (21) years of age and the other staff member shall be at least eighteen (18) years of age.

(3) Training of staff shall be provided by appropriate qualified professionals as follows:

(a) Prior to assuming duties, paid and volunteer personnel shall receive orientation to the program and center including:

1. Program objectives;
2. Program policies and procedures;
3. Health, sanitation, emergency and safety codes and procedures;
4. Participant confidentiality; and
5. Personnel policies and procedures;
6. Policies and procedures shall be explained verbally and provided in writing.

(b) Within three (3) months of employment, personnel shall be provided basic training that includes:

1. The aging process;
2. Communications;
3. Personal care;
4. First aid;
5. Identifying and reporting health problems; and
6. Stress management.

(c) In addition to basic training, Alzheimer's respite personnel shall be provided training in:

1. Dementia;
2. Causes and manifestations of dementia;
3. Managing the participant with dementia;
4. Crisis intervention with combative participants; and
5. Effects of dementia on the caregiver.

(d) A minimum of eight (8) hours of annual training to review and update knowledge and skills shall be provided.

(e) If in-home respite care is provided in teams, at least one (1) member shall have orientation and basic training and the other member shall be provided:

1. Orientation within two (2) weeks of employment; and
2. Basic training within three (3) months of employment.

Section 8. Participant Records. (1) Records shall be typed or legibly written in ink with each entry dated and signed by the recorder and shall include the recorder's title. Each participant record shall be maintained at the program site and shall contain:

- (a) Signed and dated medical summary and care plan, if referred on orders of a physician;
- (b) A completed assessment;
- (c) Signed eligibility statements;
- (d) Application for services;
- (e) Client notification;
- (f) Fee assessment;
- (g) An individualized plan of care including specific activities and objectives and signed DSS 1253, Quality Assurance Statement, as incorporated by reference into 905 KAR 8:180, prepared by the center director and case manager with the input and agreement of the participant and primary caregiver;
- (h) An ongoing record, indicating any changes in the participant's:

1. Objectives and goals;
2. Progress;
3. Physical and mental conditions;
4. Behaviors;
5. Responses;
6. Attitudes;
7. Appetite; or

8. Other changes or observations noted by program staff and case manager;

(i) Emergency contact information including responsible party and personal physician;

(j) Attendance record;

(k) Record of services provided by in-home or other program services;

(l) Signed authorization for participant to receive emergency medical care if necessary;

(m) Ongoing reassessments and care plans;

(n) Correspondence; and

(o) Closing summary.

(2) Licensed day care centers shall maintain records as governed by 902 KAR 20:066.

(3) The service provider shall comply with reporting requirements of the area agency on aging and the Cabinet for Human Resources.

LARRY MICHALCZYK, Commissioner

HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: September 30, 1991

FILED WITH LRC: October 11, 1991 at 3 p.m.

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

905 KAR 8:170. Supportive services for the elderly.

RELATES TO: KRS 205.201, 205.203, 205.455-465, 905 KAR 8:180, 42 USC 3001 et seq.

STATUTORY AUTHORITY: KRS 194.050, 205.204(2)

NECESSITY AND FUNCTION: 42 USC 3001 et seq., the Older Americans Act of 1965, as amended, authorizes grants to states to provide assistance in the development of new or improved programs for older persons. KRS 194.050 authorizes the Cabinet for Human Resources to adopt regulations as necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds. KRS 205.204 designates the Cabinet for Human Resources as the state agency to administer the Older Americans Act in Kentucky. The function of this regulation is to set forth the standards of operation for the Supportive Services Program in Kentucky, in compliance with the statutory requirement of KRS 13A.221 that requires a separate administrative regulation for each topic of general subject matter.

Section 1. Definitions. (1) "Access" means information and referral services, outreach service and transportation service.

(2) "Adequate proportion" means no less than sixty-five (65) percent of the federal funding allocated by the Older Americans Act of 1965, as amended, excluding administrative funds.

(3) "Agency" means the area agency on aging, an entity designated by the state to administer, at the local level, the programs funded by the Older Americans Act of 1965, as amended.

(4) "Division" means the Division of Aging Services, Department for Social Services, Cabinet for Human Resources.

(5) "In-home services" means the following supportive services:

- (a) Homemaker and home health aide;
 - (b) Visiting and telephone reassurance;
 - (c) Chore maintenance;
 - (d) In-home respite; and
 - (e) Home repair.
- (6) "Legal assistance" means:

(a) Legal advice and representation by an attorney;

(b) Counseling or other appropriate assistance by a paralegal or law student under the supervision of an attorney; or

(c) Counseling or representation by a nonlawyer, where permitted by law, to older individuals with economic or social needs.

(7) "OAA" means the Older Americans Act of 1965, as amended.

(8) "Supportive service provider" means an entity that provides supportive services[, authorized and] funded by the OAA, under an approved area plan.

(9) "Unit of service" means:

(a) One-half (1/2) hour of direct contact with or on behalf of the participant;

(b) One (1) contact for the information and referral service;

(c) One (1) call for the telephone reassurance service;

(d) One (1) mile for the transportation service; and

(e) For federal reporting purposes, the following:

1. One (1) visit for the friendly visiting service;

2. One (1) session for the health promotion and recreation services;

3. One (1) contact for the outreach service; and

4. One (1) one-way trip for the transportation service.

Section 2. Eligibility. (1) Participants receiving supportive services funded by the OAA shall be sixty (60) years of age or older.

(2) Agencies shall establish systems for prioritizing applicants to ensure services are targeted to those in greatest need.

(3) Means tests shall not be allowed to determine eligibility.

Section 3. Service Provider Responsibilities.

(1) Services shall be provided in accordance with the approved agency plan which shall ensure an adequate proportion is planned and expended to fund access, in-home and legal assistance services.

(2) Eligibility of each participant shall be established and personnel who approve services shall be designated.

(3) Volunteers and paid staff with the same written job description and responsibilities shall meet comparable requirements for training and skills.

(4) Services shall be provided under the supervision of qualified personnel.

(5) Services shall be accessible to participants by telephone, home visit, center location or person-to-person contact.

(6) Center services shall be available on a regularly scheduled basis. Major permanent changes shall have prior approval of the agency and be publicized to participants.

(7) Staff training shall be as follows:

(a) New staff shall receive an orientation;

(b) New staff shall be trained prior to assuming responsibilities or shall receive on-the-job training from qualified agency staff;

(c) Existing staff shall receive training on job-related topics at a minimum of once per year.

(8) Staff shall not accept personal gratuities from participants or vendors.

(9) Staff shall not, without prior approval of

the supervisor, pay bills or cash checks for participants.

(10) Designated staff, who are trained and skilled in assessing and dealing with the needs of the elderly and in the delivery of each service, shall be provided.

(11) There shall be a staff person, qualified by training and experience, responsible for administering each service and supervising assigned staff.

(12) The following activities shall not be reported as units of service except where required for a specific service:

(a) Review, update or maintenance of resource or agency files;

(b) Travel time incurred in the delivery of services;

(c) Training sessions or staff meetings; or

(d) Project management.

(13) A record documenting participant identification data, requests for service, eligibility for services provided and follow-up shall be maintained for each participant.

(14) A procedure shall be utilized annually for the evaluation of unmet need, the results to be made available to the agency.

(15) The legal assistance provider shall:

(a) Specify how it intends to target services for the needs of low-income minority individuals;

(b) Attempt to provide services to the population of low-income minority individuals in at least the same proportion as the population bears to the older population as a whole;

(c) Provide individual legal casework, legal referral, and legal education to the elderly and training for attorneys in areas of law relevant to the elderly;

(d) Contact institutionalized elderly and inform and educate these individuals about the legal assistance services available;

(e) Specify how it intends to coordinate its efforts with the efforts of the Long-term Care Ombudsman Office;

(f) Meet at least annually with the local ombudsman program;

(g) Submit a written quarterly activities report to the agency, documenting the legal activities and services provided to participants as follows:

1. Aggregate data as requested by the agency shall be provided on the quarterly program performance report, herein incorporated by reference; and

2. Information protected by the attorney-client privilege shall not be divulged.

Section 4. Support Services. Services funded by the OAA and administered by the area agencies on aging shall be provided as follows:

(1) Advocacy shall be action taken on behalf of an older person or group of older persons to secure rights or benefits. Advocacy services shall:

(a) Include receiving, investigating, and working to resolve disputes or complaints;

(b) Not include services provided by an attorney or person under the supervision of an attorney;

(c) Arrange annual public hearings within each area development district to:

1. Provide public information;

2. Identify areas of concern; and

3. Develop plans to address concerns;

(d) Keep the public informed of available services through other means identified in the

area plan; and

(e) Include assessments as to whether or not provided services are reaching the population most in need.

(2) Counseling services shall be either singly or in a group and provided in a private, confidential setting to:

(a) Interview, discuss and actively listen to participants to advise and enable participants and families to resolve problems;

(b) Relieve temporary stress encountered by participants and families.

(3) Education services shall:

(a) Provide formal or informal opportunities for individuals or groups to acquire knowledge, experience or skills and increase awareness;

(b) Be presented by persons qualified by education or experience, on topics relevant to participant need and interest as identified through staff and participant input;

(c) Use donated resources for the provision of services if [whenever] possible; and

(d) Maintain records which include topics, presenters, location and number of participants.

(4) Employment services shall include:

(a) Provision of consultation, job development and other services designed to assist participants in securing paid employment:

1. Information to participants concerning available employment;

2. Counseling which may include advise on taking tests, preparing a resume, attitude during an interview, and how to locate potential employers; and

3. Educating prospective employers;

(b) Referrals to prospective employers;

(c) Transportation assistance to participants involved in job search activities; and

(d) Follow-up activities on participants seeking paid employment.

(5) Friendly visiting services shall be planned visits to socially or geographically isolated participants:

(a) To express interest in his welfare by providing companionship and continuing contact with the community;

(b) Provided by trained staff or trained volunteers who have a staff person identified as supervisor;

(c) With consideration given for participant preference regarding the person providing service, schedule of times for, and length of service; and

(d) Using volunteers to provide the service if [whenever] possible.

(6) Health promotion services shall develop programs designed to maintain or improve the health and well-being of older persons, including health screening, health promotion and other related activities. Services shall include:

(a) Assisting participants in securing and utilizing the available health services for attaining and maintaining a favorable condition of health;

(b) Education on the need for health care;

(c) Assistance to participants to help them understand health insurance policies; and

(d) Wellness activities like [such as] walking programs, exercise programs and other group activities.

(7) Information and referral services shall:

(a) Provide information in response to an inquiry regarding opportunities and services available;

(b) Assist in accessing opportunities and

services;

(c) Follow-up to determine whether services were received and identified needs were met; and

(d) Utilize current records of appropriate community resources, including local procedures for assessing participant needs and for making referrals to appropriate agencies.

(8) Legal assistance services shall:

(a) Be available for institutionalized older persons and other elderly persons otherwise entitled to legal assistance;

(b) Not be denied because of a person's failure to disclose information about income or resources; and

(c) Assure providers maintain records to include individual client services and group activities, covering topics, presenters, locations and numbers of participants.

(9) Outreach services shall:

(a) Locate or reestablish contact initiated by providers, to identify participants in need of services;

(b) Provide information;

(c) Encourage the use of existing services;

(d) Be provided in the total geographic area served by the agency, in accordance with a plan to identify the elderly in the area, with priority given to low income minority; and

(e) Be provided by a worker with current knowledge of services available to the elderly, in accordance with an established procedure for worker assistance to the participant in accessing appropriate services, including follow-up to assure needs have been met.

(10) Recreation services shall provide activities which foster the health or social well-being of individuals through social interaction and the satisfying use of leisure time:

(a) By a person who is knowledgeable and skilled in the recreational activities provided, including a volunteer under the supervision of the center director; and

(b) With consideration for the physical and mental conditions and activity preferences of the participants.

(11) Telephone reassurance services shall:

(a) Provide regular telephone contact to or from isolated individuals:

1. To determine if they are safe and well;

2. To determine if they require special assistance; or

3. To provide psychological reassurance;

(b) Include a prearranged schedule for contacting the participant, and:

1. A plan of action for each participant to be implemented in the event of a nonanswered call;

2. The participant's preference regarding the person providing service; and

3. A record of calls and length of calls.

(12) Transportation services shall:

(a) Carry older persons to or from community resources to access or receive needed services;

(b) Comply with federal, state, and local regulations to ensure a safe journey from the point of departure to destination; and

(c) Use vehicles safe and accessible to older persons and properly insured to protect the participants in accordance with state laws.

(13) Provision of the following supportive services shall be governed by 905 KAR 8:180, homecare program for the elderly:

(a) Assessment;

(b) Case management;

(c) Chore;

- (d) Escort;
- (e) Home health aide;
- (f) Homemaker, home management and homemaker, personal care;
- (g) Home repair; and
- (h) Respite.

Section 5. Material Incorporated by Reference.
(1) The form necessary for the implementation of the supportive services for the elderly program shall be 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: September 30, 1991

FILED WITH LRC: October 4, 1991 at 4 p.m.

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

905 KAR 8:180. Homecare program for the elderly.

RELATES TO: KRS 205.010(6), 205.201, 205.203, 205.455-465, 42 USC 3001 et seq.

STATUTORY AUTHORITY: KRS 194.050, 205.204(2)

NECESSITY AND FUNCTION: 42 USC 3001 et seq., Older Americans Act of 1965, as amended, authorizes grants to states to provide assistance in the development of new or improved programs for older persons. KRS 194.050 authorizes the Cabinet for Human Resources to adopt regulations as necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds. KRS 205.204 designates the Cabinet for Human Resources as the state agency to administer the Older Americans Act in Kentucky and promulgate regulations for this purpose. The function of this regulation is to set forth the standards of operation for the homecare program for older persons in Kentucky, in compliance with the statutory requirements of KRS 13A.221 that requires a separate administrative regulation for each topic of general subject matter. This administrative regulation consolidates the provisions of 905 KAR 8:020, 8:110, 8:120, and 8:130 which shall be repealed.

Section 1. Definitions. (1) "Activities of daily living" means activities of self-help: being able to feed, bathe, dress, transfer and toilet oneself.

(2) "Assessment" means the collection of in-depth information about a person's situation and functioning. Assessment shall identify needs and resources so that a comprehensive plan can be made with the client.

(3) "Case management" means a process for ensuring clients receive appropriate, comprehensive and timely services to meet their needs as identified in the assessment by:

- (a) Planning;
- (b) Linking the client to appropriate agencies in the formal and informal caregiving systems;
- (c) Monitoring; and
- (d) Advocacy through the employment of casework activities in order to achieve the best

possible resolution to individual needs in the most effective way.

(4) "Homecare services" means those services to eligible individuals directed toward preventing unnecessary institutionalization of functionally impaired older persons and toward maintaining those eligible for services in the least restrictive environment, excluding residential facilities. Homecare services shall include:

- (a) Homemaker;
- (b) Home health aide;
- (c) Chore;
- (d) Home delivered meals;
- (e) Core;
- (f) Escort;
- (g) Home repair; and
- (h) Respite care services.

(5) "Personal care services" means services directed toward maintaining, strengthening or safeguarding the functioning of a person in his home. These services may include:

- (a) Assisting the individual in activities of daily living; and
- (b) Helping to identify and report health needs.

(6) "Home management services" means those services ordinarily involved with housekeeping necessary to maintain a person in his own home. These services may include:

- (a) Shopping;
- (b) Budgeting;
- (c) Meal preparation;
- (d) Laundry; and
- (e) Cleaning.

(7) "Instrumental activities of daily living" means the components identified in home management plus the taking of prescribed medication.

(8) "Reassessment" means the formal reevaluation of the client's situation and functioning and of the services delivered to identify changes which may have occurred since the previous assessment.

Section 2. Service Provider Responsibilities. The service provider contracting to provide homecare services supported in whole or in part from funds received from the Cabinet for Human Resources shall:

(1) Assure the provision of services throughout the geographic area covered under its plan or proposal;

(2) Justify in the area plan a decision not to fund a defined homecare service, including an assurance of adequate availability from another funding source;

(3) Treat the client in a respectful and dignified manner, involve the client and caregiver in the delivery of services and provide services in a safe manner;

(4) Permit staff of the Cabinet for Human Resources and the area development districts to monitor and evaluate services provided;

(5) Assure that each paid or voluntary staff member meets qualification and training standards established for each specific service by the Division of Aging Services, Cabinet for Human Resources;

(6) Maintain written job descriptions for [all] staff and volunteer positions involved in direct service delivery;

(7) Develop and maintain written personnel policies and wage scales for each job category; and

(8) Designate a supervisor and assure that staff providing homecare services are provided professional supervision.

Section 3. Homecare Plan. For program approval, the area development district shall submit to the Cabinet for Human Resources a proposal included in the area plan to include at least the following:

(1) An assurance of access for the Division of Aging Services to records of the contracting agency pertaining to its contract for delivery of homecare services;

(2) A plan for the delivery of homecare services in the area to be served by the contracting agency containing:

(a) Identification of services currently provided in the district;

(b) Identification of uniform procedures for certification and eligibility and case management;

(c) Methods for referral for service to other appropriate programs and services;

(d) Explanation of volunteer programs to be utilized;

(e) Identification of service providers for each specific service;

(f) Methods for the periodic monitoring of clients for the appropriateness of service;

(g) Unit cost and number of proposed clients for services to be provided directly or by contract;

(h) Procedures for the acceptance of voluntary contributions and assurance that income shall be used to maintain or increase the level of service; and

(i) Identification of linkages to existing services including adult protective services;

(3) A plan for implementation of case management responsibilities;

(4) A description of long- and short-range goals in the provision of approved homecare services;

(5) A description of the manner in which delivery of services to eligible individuals is to be undertaken;

(6) A procedure published for monitoring subcontracts for direct services;

(7) Assurance that assessment for eligibility shall be conducted initially and at least every six (6) months thereafter; and

(8) Assurance that assessment shall include the following:

(a) Physical health;

(b) Activities of daily living and instrumental activities of daily living (potential and actual performance);

(c) Physical environment and living arrangements;

(d) Mental status (cognitive and emotional);

(e) Financial resources;

(f) Social support and participation; and

(g) Current services utilization.

Section 4. Eligibility. (1) Each applicant for homecare services shall file an application for participation and demonstrate that he is a person sixty (60) years of age or older and meets at least one (1) of the following criteria:

(a) The applicant has functional limitations that require a sheltered environment with provision of social and health related services specific to his activities of daily living and who has been determined impaired in at least:

1. Two (2) physical activities of daily

living; or

2. Three (3) instrumental activities of daily living;

(b) The applicant has a stable medical condition requiring skilled health services along with services related to activities of daily living **requiring** [who would otherwise require] an institutional level of care; or

(c) The applicant is currently residing in a skilled nursing facility, an intermediate care facility or a personal care facility and can be maintained at home if appropriate living arrangements and support systems can be established.

(2) Eligibility shall be determined at the initial assessment and at each reassessment. Only individuals who have been trained and meet the qualifications of an assessor or case manager pursuant to Section 5(1) of this regulation shall determine eligibility.

(3) Homecare clients shall be informed that they shall be eligible for services as long as they meet eligibility requirements.

(4) Eligibility determination shall be based upon physical (functional) impairments; however, the assessor and case manager may consider individuals whose deficiencies are caused by mental or emotional impairments including Alzheimer's or other related disorders if these impairments affect physical (functional) capacities.

(5) The assessor or case manager shall determine eligibility for individuals being referred as needing adult day care, adult day health care, Alzheimer's respite care, or in-home services. Use of this procedure may be waived by the Director, Division of Aging Services, Cabinet for Human Resources, for those area development districts who provide generic assessment and case management.

(6) The homecare program shall not supplant or replace services provided by the client's informal support system. If needs are being met by the informal support system, the client shall be deemed ineligible. An applicant who needs respite services shall not be deemed ineligible as a result of this subsection.

Section 5. Case Management. (1) Case managers shall meet one (1) of the following qualifications:

(a) A bachelor's degree or master's degree in social work, no experience required;

(b) A bachelor's degree or master's degree in nursing with a current Kentucky nursing license, no experience required;

(c) A bachelor's degree with two (2) years experience in working with the elderly; or

(d) A Kentucky nursing license with two (2) years experience in working with the elderly.

(2) Each client shall be assigned a specific case manager.

(3) Clients shall be assessed initially and reassessed every six (6) months thereafter by a person who meets case manager qualifications. After each assessment or reassessment, the Homecare Certification of Eligibility, herein incorporated by reference, shall be completed. If the client is ineligible, the case shall be closed with the reason documented in the case record.

(4) The case manager shall be responsible for arranging and documenting those services provided by other funding sources or volunteers. Reasonable effort shall be made to secure and

utilize informal supports for each client.

(5) Case managers shall:

(a) Monitor each client monthly including one (1) home visit with face-to-face contact at least every other month; and

(b) Document in the case record each contact with a client or on behalf of a client.

(6) Case management providers shall assure a minimum of one (1) full-time equivalent case manager for each 100 homecare clients. If [When] the case manager also provides assessment services, his caseload shall not exceed seventy-five (75) clients. Time used to provide agency administration or supervision of other staff shall not be counted toward meeting the full-time equivalency requirement. Two (2) adult day care, adult day health care or Alzheimer's respite care clients may be counted as one (1) for the purpose of determining compliance with this subsection.

(7) Each homecare client shall receive services in accordance with an individualized care plan developed cooperatively with his case manager and revised if [whenever] appropriate. The plan shall:

- (a) Relate to the assessed problem;
- (b) Identify the goal to be achieved;
- (c) Identify the scope, duration and units of service required;
- (d) Identify the source of service;
- (e) Include a plan for reassessment; and
- (f) Be signed by the client and case manager.

Section 6. Quality Assurance. (1) Upon admission to the homecare program, each client shall:

(a) Read, or have read and explained to him if necessary;

(b) Sign and receive a copy of a completed DSS 1253, Quality Assurance Agreement, herein incorporated by reference. The agreement shall contain the name, address and telephone number of:

- 1. The current case manager; and
- 2. The area development district homecare coordinator.

(2) A client call or other contact with the case manager, area development district or Division of Aging Services shall be documented on the DSS 1254, Report of Complaint or Concern, herein incorporated by reference. The identity of the complainant shall be kept confidential if [when] requested.

(3) Copies of written complaints and detailed reports of telephoned or verbal complaints, concerns or service suggestions shall be maintained in the case manager's permanent file. Documentation of investigation and efforts at resolution or service improvement shall be available for monitoring by the area development district and Division of Aging Services staff.

Section 7. Fees and Contributions. (1) The assessor or case manager shall be responsible for determining fee paying status, using the following criteria:

(a) A fee shall not be assessed for the provision of assessment or case management services.

(b) The assessor or case manager shall consider extraordinary out-of-pocket expenses to determine [when determining] a client's ability to pay. Waiver or reduction of fee due to extraordinary out-of-pocket expenses shall be documented on the Homecare Authorization

Statement for Extraordinary Expenses, herein incorporated by reference.

(c) A fee shall not be assessed an eligible individual who meets the definition of "needy aged" as governed by KRS 205.010(6).

(d) SSI income shall not be deemed available to other family members. The applicant receiving SSI benefits shall be considered a family of one (1) for the purpose of fee determination.

(2) Eligible persons shall be charged a fee determined by the cost of the service unit multiplied by the applicable percentage rate based upon income and size of family as set forth below. Service unit cost shall be determined by the state agency or contracting entity in accordance with its contract.

Homecare Client Income and
Applicable Percentage of Fee

Annual Income	1 Person	2 Persons
\$ 8000 and below	0%	0%
\$ 8001 - \$10150	20%	0%
\$10151 - \$12300	40%	20%
\$12301 - \$14450	60%	40%
\$14451 - \$16650	80%	60%
\$16651 - \$18850	100%	80%
\$18851 - \$20950		100%

For each additional family member add \$2150.

(3) Contributions from individuals, families or other entities shall be encouraged. Suggested contribution or donation rates may be established; however, pressure shall not be placed upon the client to donate or contribute. Services shall not be withheld from an otherwise eligible individual based upon his failure to voluntarily contribute to support services.

(4) The area development district shall review and approve the procedures implemented by provider agencies for the collecting, accounting, spending and auditing of fees and donations.

Section 8. Allocation Formula. The homecare program funding formula shall consist of a \$20,000 base for each district, with the remaining amount of funds distributed in proportion to the district's elderly (sixty (60) plus) population in the state.

Section 9. Termination or Reduction of Services. (1) The case manager and the client shall decide [when] to terminate services. Services may be reduced or terminated when:

(a) The client's condition or support system improves; or

(b) A determination is made that the care plan cannot be followed.

(2) If [When] services are terminated or reduced, the case manager shall:

(a) Complete page two (2) of the Application for Homecare Services, Notification to Client, herein incorporated by reference;

(b) Inform the client of his right to file a complaint;

(c) Complete section IV of the DSS 864 Homecare Services, herein incorporated by reference, listing the closure reason; and

(d) Assist the client and family in making referrals to other agencies if applicable.

(3) If [When] services are terminated or reduced due to reasons unrelated to the clients

needs or condition, the homecare coordinator, in conjunction with the case manager, shall determine reduction or termination on a case-by-case basis.

Section 10. Material Incorporated by Reference. (1) Forms necessary for the implementation of the homecare program for the elderly shall be 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..

Section 11. Repeal. The following administrative regulations are hereby repealed:

- (1) 905 KAR 8:020;
- (2) 905 KAR 8:110;
- (3) 905 KAR 8:120; and
- (4) 905 KAR 8:130.

LARRY MICHALCZYK, Commissioner
HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: September 30, 1991
FILED WITH LRC: October 4, 1991 at 4 p.m.

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

905 KAR 8:190. Nutrition program for the elderly.

RELATES TO: KRS 205.201, 205.203, 205.460-465, 902 KAR 45:005, 42 USC 3001 et seq.

STATUTORY AUTHORITY: KRS 194.050, 205.204(2)

NECESSITY AND FUNCTION: 42 USC 3001 et seq., the Older Americans Act of 1965, as amended, authorizes grants to states to provide assistance in the development of new or improved programs for older persons. KRS 194.050 authorizes the Cabinet for Human Resources to adopt regulations as necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds. KRS 205.204 designates the Cabinet for Human Resources as the state agency to administer the Older Americans Act in Kentucky. The function of this regulation is to set forth the standards of operation for the nutrition program as implemented by the area agencies on aging. This regulation is promulgated to comply with the statutory requirement of KRS 13A.221 that requires a separate administrative regulation for each topic of general subject matter. This regulation contains the substance of 905 KAR 8:030 which is repealed.

Section 1. Definitions. (1) "Acceptable brands list" means a listing of food brands which have been tested and approved by the State Food Committee, Cabinet for Finance and Administration, Division of Purchases.

(2) "Agency" means the area agency on aging, an entity designated by the state to administer, at the local level, the programs funded by the Older Americans Act of 1965, as amended.

(3) "Area development district" means any of fifteen (15) regional planning and development agencies with which the Division of Aging Services contracts for the local delivery of aging services.

(4) "Certified nutritionist" means one who has completed a master's degree in food science, nutrition or a closely related field and has a minimum of twelve (12) semester hours of graduate credit in nutrition from an accredited college or university.

(5) "Chilled food system" means any system of food production which results in the partial or complete cooking of a prepared product which is then chilled, maintained at refrigeration temperatures and reheated before [at the time of] service.

(6) "Dietitian" means one who has met the training and education requirements for membership in the American Dietetic Association, including a master's degree or advanced training in addition to an undergraduate degree in dietetics, food and nutrition, or institutional management.

(7) "District nutrition program" means the program approved by the division and administered in each of the fifteen (15) planning and service areas in Kentucky by the area development districts or other contract agencies. The district program shall include meals or nutrition services funded by the:

- (a) Older Americans Act of 1965;
- (b) United States Department of Agriculture;
- (c) Homecare program;
- (d) Adult day care program;
- (e) Adult day health care program;
- (f) Alzheimer's respite program; or
- (g) Other funds designated in the approved plan.

(8) "Division" means the Division of Aging Services, Department for Social Services, Cabinet for Human Resources.

(9) "Meal" means a portion of food consisting of a minimum of:

- (a) Five (5) dissimilar components;
- (b) Three (3) cups total volume; and
- (c) The equivalent of one-third (1/3) of the daily recommended dietary allowances as established by the Food and Nutrition Board of the National Academy of Sciences - National Research Council.

(10) "Nutrition service provider" means an entity that is awarded a contract under the area plan to provide nutrition services covered under this regulation.

(11) "OAA" means the Older Americans Act of 1965, as amended.

(12) "Registered dietitian" means one who has successfully completed a standard competency test administered by the American Dietetic Association.

(13) "Standardized recipe" means a written formula for producing food items of a consistent quality and quantity.

(14) "State nutrition program for the elderly" means the nutrition program administered by the division and shall include meals or nutrition services funded as designated in subsection (6) of this section.

(15) "USDA" means the United States Department of Agriculture.

Section 2. Responsibilities of Nutrition Service Providers. (1) The service provider contracting to provide meals and services shall:

- (a) Provide the agency with statistical and other information necessary for state reporting requirements;
- (b) Provide recipients with an opportunity to voluntarily contribute to the cost of the

service;

(c) Assure that an older person shall not be denied service because he does not or cannot contribute to the cost of the service;

(d) Protect the privacy of each older person with respect to contributions;

(e) Use meal contributions to increase the number of meals served, and to facilitate access to these meals;

(f) Report to appropriate officials for follow-up, conditions or circumstances which place the older person or his household in imminent danger;

(g) If feasible and appropriate, make arrangements for services to older persons in weather-related emergencies;

(h) Assist participants in taking advantage of benefits under other programs;

(i) Employ adequate numbers of qualified staff to ensure satisfactory conduct of the service;

(j) Have a site director, on a paid or volunteer basis, responsible for activities at the site:

1. If OAA Title III-C funds are utilized the maximum paid hours per day shall be five (5); and

2. OAA Title III-B or other funds may be used to pay for additional hours;

(k) Permit staff of the agency or the cabinet and federal representatives to monitor and inspect the operation; and

(l) Attend meetings scheduled by the agency and the division.

(2) The service provider contracting to provide meals only shall:

(a) Provide the contracting agency with statistical and other information necessary for state reporting requirements;

(b) Employ adequate numbers of qualified staff to ensure satisfactory conduct of the service;

(c) Permit staff of the nutrition service provider, the agency, the Cabinet for Human Resources and federal representatives to monitor and inspect the operation; and

(d) Attend meetings scheduled by the agency and the division.

Section 3. Eligibility. (1) Eligibility for congregate meals shall be based on the following criteria:

(a) A person aged sixty (60) or older and the spouse of that person;

(b) Volunteers to handicapped persons residing in elderly housing complexes where a congregate site is located;

(c) Disabled individuals who reside in noninstitutional households with and accompany persons eligible for congregate meals; and

(d) Clients in adult day care, adult day health care, and Alzheimer's respite programs.

(2) Eligibility for home-delivered meals shall be based on the following criteria:

(a) A person aged sixty (60) or over and the spouse of that person, if:

1. Either is, by reason of illness or incapacitating disability, unable to attend a congregate site; and

2. There is no one in the home able to prepare a nutritious meal on a regular basis; or

(b) A nonelderly disabled person who is a member of a noninstitutional household with an elderly person.

Section 4. Meal Planning. Nutrient dense meals shall be planned using preparation and delivery methods that preserve the nutritional value of

foods. The use of saturated fats, salt and sugar shall be restricted to maintain good health.

(1) Menus shall be:

(a) Planned with suggestions from participants. A formal procedure shall be established in each district.

(b) Planned on a monthly or quarterly basis using inclusive months, and prepared on menu forms which shall bear the name of the person who prepared the menu.

(c) Certified in writing as providing one-third (1/3) of the current daily recommended dietary allowances for persons fifty-one (51) years and older as established by the Food and Nutrition Board of the National Academy of Sciences - National Research Council. Certification shall be by the dietitian or certified nutritionist whose services are used by the provider.

(d) Submitted for approval to the division dietitian.

1. Two (2) copies of the menu shall be prepared:

a. The original shall be submitted to the division for approval; and

b. One (1) copy shall be retained in the agency.

2. Copies of corrected menus shall be resubmitted to the division.

(e) Adhered to, subject to seasonal availability of food items as well as availability of USDA donated foods, if applicable. Substitution to the approved menu shall be minimal. A list shall be submitted to the division compositely each month that includes:

1. The date of substitution;

2. The original menu item; and

3. The substitution.

(f) Posted in a conspicuous location, including each congregate meal site and each preparation site. Notification of the meals to be served shall be provided to participants receiving home delivered meals.

(2) Special menus which allow for religious, ethnic, cultural and regional dietary practices may be provided where feasible and appropriate but are not required on an individual basis; dietary preferences of a majority of the participants shall be reflected.

(3) Therapeutic diets may be offered if practical and feasible. A written order signed by the physician shall be on file, and reviewed and reordered if [whenever] a change in the condition of the participant is reported or observed, but at least annually. Therapeutic menus shall be planned and prepared under the supervision of a registered dietitian.

(4) Additional foods like [such as] fresh produce, baked items, and donated canned items, may be added to the meal to provide personal satisfaction and additional nutrition. Home-canned foods shall not be used.

(5) When a potluck meal is served at a particular site, no congregate meal shall be served at that site. Home delivered meals shall be provided on the same basis as if the potluck meal had not been scheduled.

(6) Vitamin and mineral supplements shall not be provided with nutrition program funds; however, citrus juice or drinks fortified with vitamin C are recommended. Only full strength juices shall be used as one (1) of the required meal components. A fruit beverage or drink, even if fortified, shall be used in the optional

beverage category.

(7) A minimum of four (4) hours of consultation per month by a registered dietitian or certified nutritionist is required. Responsibilities shall include, but are not restricted to:

(a) Evaluation of the food preparation and service operations including measurement of food temperatures and portion sizes;

(b) Assessment of food quality and employee practices;

(c) Staff training; and

(d) Menu preparation or review.

(8) Individual diet counseling with participants shall only be provided by a dietitian.

Section 5. Meal Components. Meal component standards shall be as follows:

(1) The meat or meat alternate requirement shall be three (3) ounces of cooked edible portion of meat, fish or poultry with each meal. A three (3) ounce equivalent of meat alternate (nonmeat protein source) may be used to fulfill the requirement. Additional requirements include:

(a) Breeding shall be in addition to the three (3) ounce requirement;

(b) The use of cured and processed meat items shall be limited to one (1) time per week due to their high sodium content;

(c) The use of meat extender items shall be limited to a maximum of twice per week to minimize portion control problems;

(d) Cold entrees may be used during the hot months but shall not be used in the winter.

(2) The vegetable and fruit requirement shall be a minimum of two (2) one-half (1/2) cup servings or three (3) one-third (1/3) cup servings of a fruit or vegetable, or full-strength fruit or vegetable juice. The following criteria shall apply:

(a) Partial strength or simulated fruit juice or drinks, even when fortified, shall only be considered optional beverages;

(b) One (1) cup portions of tossed salad shall be considered as one-half (1/2) cup servings;

(c) A rich source of vitamin A shall be included at least every other day;

(d) The vitamin C meal requirement shall not come from more than two (2) food items, which shall be designated by an asterisk on each menu; because extended heating of food diminishes vitamin C content, the C source shall be a cold item as often as possible;

(e) When fruit or fruit salad is used in place of a second vegetable, the dessert shall not be a "fruit only" item;

(f) When soup is served as one (1) of the fruit and vegetable components, juice shall not be served as the second;

(g) Starchy vegetables shall be limited to one (1) per meal, and a good balance of succulent and starchy vegetables shall be presented;

(h) A bread alternate shall be used as one (1) of the vegetable choices only if a full one-half (1/2) cup portion of fruit is used as the dessert in the same meal;

(i) Vegetables that may be used as meat alternates shall not simultaneously fulfill both the vegetable and the protein requirement; and

(j) Fresh and frozen vegetables shall be used to the capacity that freezer and refrigerated storage shall allow. To minimize the sodium content of meals provided in the nutrition program, salt shall not be added during the

cooking of canned vegetables.

(3) The bread or bread alternate requirement shall:

(a) Be one (1) serving of enriched or whole grain bread, biscuits, muffins, rolls, sandwich buns, cornbread or other hot breads with each meal;

(b) Weigh at least one (1) ounce;

(c) Furnish a minimum of two (2) grams protein; and

(d) Be one-half (1/2) cup volume for bread alternates.

(4) The butter or fortified margarine requirement shall be one (1) teaspoon per meal. The following criteria shall apply:

(a) All purchased margarine shall be from predominantly vegetable sources; special emphasis shall be placed on limiting saturated fats and cholesterol.

(b) Butter or margarine used in cooking may count toward the required amount.

(c) Condiments shall be served in place of butter or margarine:

1. On days when the bread item is used to make a sandwich; and

2. The menu shall indicate the condiment.

(5) The dessert requirement shall be one-half (1/2) cup serving and shall meet the following criteria:

(a) Fruit shall be served for dessert twice weekly, and desserts containing fruits as well as fruit only items shall be included;

(b) Fresh fruit shall be used weekly or a minimum of twice monthly;

(c) A dessert which furnishes a minimum of 100-200 milligrams of calcium shall be provided at least weekly;

(d) Ice cream, ice milk or sherbet shall be served weekly during the hot months and at least monthly thereafter, except that yogurt or puddings made with milk may be served instead of ice cream in the home delivered meals program or in those sites not equipped with freezer storage; and

(e) Juice may be served occasionally as the dessert item but shall be accompanied by a small cookie or peanut butter cracker to provide the satiety value normally furnished by the dessert.

(6) The milk requirement shall be:

(a) One-half (1/2) pint of skim or two (2) percent milk served:

1. In an unopened, commercially filled container; or

2. From an approved bulk milk dispenser;

(b) Other choices such as fortified whole milk, buttermilk or the calcium equivalent in cheese; or

(c) A calcium alternate for the required one (1) cup fluid milk if approved by the division dietitian.

(7) Other foods or beverages may be provided according to the following criteria:

(a) Coffee, tea, decaffeinated beverages, fruit juice and fruit-flavored drinks may be offered but are not required.

(b) The service of water is required with meals; it is recommended that cups and pitchers of cold water be preset just prior to meal service in locations convenient to participants.

(c) When a full-strength citrus juice listed under other foods and beverages is to fulfill the vitamin C requirement for the meal, then it shall be so indicated with an asterisk; this designation shall require the service of this menu item to participants.

Section 6. Food Procurement. Foods purchased for use in the nutrition program shall be of good quality and shall be obtained from sources which conform to federal, state and local regulatory standards for quality, sanitation, and safety. The following requirements apply:

(1) Foods shall be purchased and received according to the acceptable brands list or the approved equal to those brands.

(2) Quantity food purchases shall be made using specifications on the current acceptable brands list.

(3) Purchases for canned, packaged and frozen foods shall, when feasible, be made quarterly.

(4) Meat products shall be ordered monthly.

(5) Fresh dairy products, bread and eggs shall be purchased weekly.

(6) Fresh fruits and vegetables shall be purchased on a local market basis.

(7) Other methods of purchasing may be used if [provided that] they result in the best price for the quality desired.

(8) Use of term contracts for repetitively purchased items is encouraged. Fixed quantity contracting shall be used when definite items and quantities can be determined for future delivery dates.

Section 7. Food Preparation. Standardized recipes shall be used in food preparation and yield shall be indicated. Recipes shall specify the yield adjusted for the requirements of the nutrition program for the elderly.

(1) The following standards shall be established for quality control:

(a) Food production standards.

1. Hot foods shall be produced within eight (8) hours preceding service unless otherwise directed in the recipe;

2. Protein foods shall be cooked completely once the cooking cycle has begun;

3. Foods to be served cold and neutral temperature foods may be prepared earlier than the preceding eight (8) hours if so directed in the recipe;

4. Solid and semisolid cooked foods stored under refrigeration shall be placed in containers that are no more than four (4) inches in depth.

(b) A chilled food system for bulk food shall not be used; chilled food systems for individually portioned meals may be considered for approval by the division dietitian provided that the cumulative hot-holding time for these meals is less than two (2) hours.

(c) Holding times shall be kept to an absolute minimum, but the holding time for hot foods shall not exceed three (3) hours after preparation. Exception to this requirement may be granted by the division provided that meal quality is not compromised with extended hot-holding and that appropriate temperatures are maintained.

(d) Temperature standards.

1. Potentially hazardous foods (protein foods) shall be cooked to heat all parts of the product to an internal temperature of at least 140 degrees Fahrenheit; minimum internal temperature shall be 165 degrees Fahrenheit for poultry and 150 degrees Fahrenheit for pork;

2. Hot foods shall be packed at temperatures of at least 160 degrees Fahrenheit, and the internal temperature of hot foods to be transported shall be at least 140 degrees Fahrenheit during transportation and service;

3. Cold foods shall not exceed forty-five (45) degrees Fahrenheit during transportation and service; and

4. Thermometers used to check food temperatures shall be:

a. Of metal stem-type construction;

b. Numerically scaled;

c. Accurate to plus or minus three (3) degrees Fahrenheit; and

d. Checked periodically to ensure that each thermometer is registering accurately.

5. Food temperatures for both hot and cold items shall be checked and recorded daily at the kitchen and at the site of service.

(2) Food preparation facilities shall be in compliance with state and local fire, health, sanitation and safety regulations which apply to food service operations. Food preparation and service kitchens shall be inspected periodically by state and local health officials and the division dietitian.

(3) Standards for food handling and personal hygiene shall be in accordance with the State Food Service Code governed by 902 KAR 45:005.

Section 8. Congregate Meal Service. Congregate meals shall be provided by nutrition service providers who, five (5) or more days per week, provide at least one (1) hot or other appropriate meal per day and any additional meals which the recipient of a grant or contract may elect to provide in a congregate setting.

(1) The following requirements shall apply to the transportation of meals to congregate sites:

(a) Insulated containers shall be used for bulk food delivery;

(b) Bulk foods shall be transported in stainless steel pans or aluminum disposable pans. Use of plastic shall be restricted to cold foods only; and

(c) Hot items shall be transported in bulk containers separate from cold products. Containers shall be preheated or prechilled before being loaded.

(2) The following order of service shall be followed:

(a) Congregate meals shall be served after packaging the home delivered meals. Foods shall be maintained at appropriate temperatures during all phases of food service.

(b) Milk and other cold food items shall not be preset on tables prior to meal service; tables shall not be preset with eating or drinking utensils for more than four (4) hours prior to meal service unless each item is individually wrapped.

(c) After all participants have been served, volunteers and other staff may be served.

(d) Food items left over from meals may be:

1. Offered as seconds to participants after all have been served;

2. Packaged in individual trays, labeled, dated and immediately frozen for later use in the home delivered meals program:

a. Frozen meals shall be stored at zero degrees Fahrenheit or below; and

b. Distributed within two (2) weeks from the date they are packaged in the center.

3. If neither of these options is possible, the foods shall be discarded.

(3) Only complete meals shall be claimed for payment. The omission of any of the required meal components shall cause that meal to be incomplete and ineligible for payment and for USDA reimbursement. Refusal by a participant of

specific meal components shall not render that meal incomplete.

(4) Center carry-out policy shall:

(a) Discourage the carry out of food items with particular emphasis on potentially hazardous foods but shall not prohibit this practice. Food items which may be taken home are those items which a participant has left from his own meal;

(b) Assure participants shall be advised concerning the risks involved when foods are held at unsafe temperatures; and

(c) Assure staff or volunteers shall not devote time or supplies to the task of packaging individual menu items as carry-outs for participants or staff.

(5) Participants shall have an opportunity to evaluate meals and service.

(6) The aging planner or representative shall monitor the food service operation a minimum of twelve (12) times per year to evaluate compliance with nutrition program policies.

(7) An ongoing nutrition education program shall be implemented and may include a minimum of one (1) session each month at each nutrition site. The program shall include using a wide range of teaching techniques for a variety of topics including, but not limited to:

- (a) Health promotion and disease prevention;
- (b) Consumer approaches; and
- (c) Food fads and diets.

Section 9. Home Delivered Meal Service. Home delivered meals shall be provided by nutrition service providers who, five (5) or more days a week, provide at least one (1) home delivered hot, cold, frozen, dried, canned or supplemental foods meal per day and any additional meals which the recipient of a grant or contract may elect to provide.

(1) Meals shall be delivered only to eligible persons in their homes. Meals may be left with a designee of the older person provided the designee has been informed of the requirements of the nutrition program and has indicated a willingness to comply with those requirements.

(2) Frozen meals or shelf stable meals shall not be used in the home delivered meals program without prior approval of the division dietitian. Alternatives to frozen meals shall be sought especially during the hot months for those participants who do not have fans or air conditioning and the heating of a frozen meal in the home may [could] substantially increase the temperature of the home. Documentation for the provision of frozen or shelf stable meals shall [must] show:

(a) The participant has expressed a preference for frozen or shelf stable meals; or

(b) The participant lives off an established route; and

(c) Proper storage and heating facilities are available in the home; and

(d) The participant is able to prepare and consume the meal alone or with available assistance.

(3) Providers of home delivered meals shall use methods of delivery that shall prevent outside contamination and hold food at appropriate temperatures. Delivery of meals shall meet the following criteria:

(a) Delivery routes shall be kept as short as possible to minimize nutrient loss and to facilitate temperature retention;

(b) Meals shall be delivered within three (3)

hours from the end of preparation to the final destination, unless an exception is approved by the division;

(c) Nutrition site personnel shall check and record temperatures of meals at least weekly toward the end of the longest delivery route. When temperature retention problems are found, daily checks of temperatures shall be made until the problem is corrected;

(d) When heated delivery equipment is not available, other means to hold temperature shall be used;

(e) Eutectic plates or artificial ice shall be placed over the cold foods within the food boxes. Ice may be used if the food containers are constructed so as to prevent water seepage into the food;

(f) Neutral temperature foods shall be packaged and delivered in a way as to prevent outside contamination; and

(g) Frozen meals shall be maintained in a frozen state during delivery. When the meal has thawed to the extent that ice crystals are not contained in the meal:

1. The meal shall not be refrozen for later use; however,

2. A meal which has begun to thaw may be held for a brief period at forty-five (45) degrees Fahrenheit or below, or heated and consumed immediately.

(4) The aging planner or representative shall monitor the food service operation a minimum of twelve (12) times per year to evaluate compliance with nutrition program policy.

Section 10. Emergency Meals. Provisions shall be made for furnishing emergency meals during inclement weather conditions, power failure, or any disaster that may cause isolation or create a special need. Meals may be shelf stable, frozen, freeze-dried, dehydrated, or a combination of these, provided they meet the nutritional requirements of the program and menus have been approved by the division dietitian. Additional criteria include:

(1) Menus shall be planned for a minimum of three (3) days;

(2) Frozen meals shall be used only:

(a) If the participant is able to store, prepare and consume the meal alone or with available assistance; and

(b) If the delivery system is arranged so that storage time after delivery is minimal;

(3) Water shall be provided if necessary;

(4) Butter or margarine may be optional;

(5) The menu plan shall include some foods which require no cooking prior to consumption;

(6) One (1) dish meals may be used provided that both the protein and one (1) of the vegetable requirements are contained in the single serving;

(7) Foods may be taken to the nutrition sites and participants may assist with packaging the foods for distribution;

(8) Emergency meal packages shall be distributed to homebound clients with home delivered meals and may be used for congregate participants when centers are closed;

(9) For reporting purposes, meals shall be counted during the quarter in which they were distributed.

Section 11. USDA Assistance. The USDA provides a per meal rate of assistance, in the form of commodities or cash-in-lieu-of commodities, for

each meal served to an eligible participant. Revenue generated shall accrue to the division.

(1) The area development district shall disburse USDA monies to service providers based upon each provider's proportion of the total number of eligible meals served in the state.

(a) Disbursements of cash and receipt of commodities shall be reflected in the next billing after receipt by the provider.

(b) The provider shall expend USDA monies within one (1) year from the time payment is received.

(c) USDA funds shall be used to expand the total number of meals provided in the state and shall not be used to reduce funds from any other grant or contract which the provider may be given.

(2) When commodities are accepted, the provider shall:

(a) Place orders according to procedures established by the division;

(b) Maintain records to indicate items received and utilized; and

(c) Store commodities together on designated shelves or pallets separate from purchased goods; a separate room is not required.

(3) When cash-in-lieu-of commodities is accepted, the provider shall:

(a) Maintain records to show the amount of cash received and how it was expended;

(b) Use cash to purchase USDA commodities and other foods for the nutrition program;

(c) Purchase meals provided the cost of the meal is quoted as a unit cost which includes both food and labor. Ready to serve meals may be purchased on a unit cost basis provided each meal contains food equivalent in value to the current rate of reimbursement.

(4) Cash reimbursement criteria include:

(a) Only meals containing the components of the required meal pattern and actually consumed by eligible participants may be claimed;

(b) Meals claimed for reimbursement shall not be claimed under other USDA reimbursement programs;

(c) Section 2 of the USDA-NPE Budget and Financial Summary Report, herein incorporated by reference, shall be submitted to the division by the 15th of the month following the report period to:

1. Claim cash reimbursement;

2. Certify commodity meals served; and

3. Certify meals ineligible for USDA reimbursement.

(d) Cash reimbursement is to be based on the total number of meals served to eligible participants multiplied by the reimbursement rate as established by USDA less commodity entitlement monies if applicable.

(5) Financial records kept by the provider shall show:

(a) Meals provided are bid without regard to USDA reimbursement;

(b) USDA funds are used as a revenue source for expansion of meals served in the state;

(c) The unit cost of a meal is not reduced in anticipation of future USDA reimbursement but is stated as a true cost in both bidding and reporting procedures; and

(d) Monthly financial reports reflect USDA expenditures.

Section 12. Nutrition Program Costs. (1) Ready-to-serve meal costs shall include the following:

(a) The cost of raw food, including food purchased with USDA cash resources and the dollar value of USDA donated foods used;

(b) The costs of serving supplies, disposables, cleaning materials, and noncapital items used in the preparation of food;

(c) The costs of labor for food preparation, cooking, portioning of foods, and delivery of food to the site of service. Labor costs shall include:

1. Fringe benefits;

2. Wages for persons who prepare and maintain the sanitary condition of the kitchen and storage areas; and

3. Wages paid for time spent in food and supplies inventorying, storing and receiving and in direct supervision of employees;

(d) Equipment costs of capital items like ranges, dishwashers, trucks and vans, steam tables, freezers, etc.;

(e) The costs of space, related utility costs, and equipment operation, maintenance and repair costs; and

(f) The nonlabor costs of transporting food, food storage, handling charges for USDA donated foods, insurance and general liability.

(2) Food service and delivery costs shall include:

(a) The total labor costs for serving foods and for home delivery of meals to participants;

(b) Mileage and maintenance of vehicles costs for home delivery of meals;

(c) Costs incurred for nutrition education and nutrition outreach services;

(d) Project management costs, including personnel, equipment and supply costs; and

(e) Other general expenses related to overall program management.

(3) Food service contract bids shall be structured according to the request for proposal outline developed by the division. Meals shall be bid without regard to funding source, and shall contain both a ready-to-serve cost and a served, delivered cost.

Section 13. Material Incorporated by Reference. (1) The form necessary for the implementation of the nutrition program for the elderly shall be herein incorporated.

(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.

Section 14. Repeal. 905 KAR 8:030 is hereby repealed.

LARRY MICHALCZYK, Commissioner

HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: September 30, 1991

FILED WITH LRC: October 4, 1991 at 4 p.m.

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

905 KAR 8:200. Senior community service employment program.

RELATES TO: KRS 205.201, 42 USC 3001 et seq.
STATUTORY AUTHORITY: KRS 194.050, 205.204(2)
NECESSITY AND FUNCTION: 42 USC 3001 et seq., the Older Americans Act of 1965, as amended,

authorizes grants to states to provide assistance in the development of new or improved programs for older persons. KRS 194.050 authorizes the Cabinet for Human Resources to adopt regulations as necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds. KRS 205.204 designates the Cabinet for Human Resources as the state agency to administer the Older Americans Act in Kentucky. The function of this regulation is to set forth the standards of operation for the senior community service employment program in Kentucky, in compliance with KRS 13A.221 that requires a separate administrative regulation for each topic of general subject matter.

Section 1. Definitions. (1) "Allotment" means the initial designation of an amount of appropriated funds to project sponsors and subproject sponsors operating in the state.

(2) "Authorized position" means an enrollment opportunity during a project year.

(3) "Cash welfare payment" means public assistance through federal, state or local government cash payments for which eligibility is determined by a need or income test.

(4) "Community service":

(a) Means:

1. Social, health, welfare and educational services;

2. Legal assistance and other counseling services, including tax counseling and assistance and financial counseling;

3. Library, recreational and similar services;

4. Conservation, maintenance or restoration of natural resources;

5. Community betterment or beautification;

6. Pollution control and environmental quality efforts;

7. Weatherization activities;

8. Economic development; and

9. Other types of services which the department may approve.

(b) Excludes:

1. Building and highway construction except that normally performed by the project sponsor; and

2. Work which primarily benefits private, profit-making organizations.

(5) "Department" means the United States Department of Labor, including its agencies and organizational units.

(6) "Division" means the Division of Aging Services, Department for Social Services, Cabinet for Human Resources.

(7) "Employment and training program" means publicly funded efforts designed to offer training and placement services which enhance an individual's employability.

(8) "Enrollee" means an individual who is eligible, receives services, and is paid wages for engaging in community service employment under a project.

(9) "Grant agreement" means a legally binding agreement in document form which is a grant or other form of agreement entered into between the Department for Social Services and an eligible organization and which awards federal funds and provides for authorized activities under Title V of the Act.

(10) "Host agency" means a public agency or private, nonprofit organization, other than a political party, exempt from taxation under the provision of Section 501(c)(3) of the Internal

Revenue Code of 1954, which provides a worksite and supervision for an enrollee.

(11) "Local government" means a local unit of government, including:

(a) County;

(b) Municipality;

(c) City, town or township;

(d) Local public authority;

(e) Special or intrastate district;

(f) Council of governments;

(g) Sponsor group representative organization;

(h) Other regional or interstate government entity; or

(i) Any agency or instrumentality of a local government, except institutions of education and hospitals.

(12) "Low income" means an income which during the preceding six (6) months on an annualized basis or the actual income during the preceding twelve (12) months, whichever is more beneficial to the applicant, is not more than 125 percent more than the poverty levels established and periodically updated by the United States Department of Health and Human Services. In addition, an individual who receives or is a member of a family which receives regular cash welfare payments shall be deemed to have a low income.

(13) "National average unit cost" means all administration costs, other enrollee costs and enrollee wage and fringe benefit costs.

(14) "OAA" means the Older Americans Act of 1965, as amended.

(15) "Project" means an undertaking by a project sponsor pursuant to a grant agreement between the department and a project sponsor which provides for the employment of eligible individuals and the delivery of associated services.

(16) "Project sponsor" means an eligible organization which has entered into a grant agreement with the department. The Cabinet for Human Resources is the state agency project sponsor.

(17) "Project year" means the twelve (12) month period covered by a grant agreement.

(18) "Reallocation" means the redistribution of Title V funds as proposed by the department from one (1) state to another or from one (1) project sponsor to another.

(19) "SCSEP" means senior community service employment program as authorized under Title V of the OAA.

(20) "Subproject agreement or contract" means an agreement entered into between a project sponsor and an organization which provides for the transfer of federal funds to the organization for the purpose of carrying out activities authorized in the grant agreement.

(21) "Subproject sponsor" means the area development district or the community action agency which contracts with the division.

(22) "Temporary position" means an enrollment opportunity in addition to the authorized positions made available during a project year if [when] a portion of project funds is not being used as planned in the grant agreement.

Section 2. Responsibilities of the Subproject Sponsor. (1) Subproject sponsors shall obtain and record the personal information necessary for a proper determination of eligibility for each individual and may request documentation to ensure that only eligible individuals are enrolled.

(2) Subproject sponsors shall recertify the income of each enrollee once each year according to the schedule set forth in contract. Enrollees found to be ineligible for continued enrollment because of income shall be given immediate written notice of termination and shall be terminated thirty (30) days after the notice.

(3) If a subproject sponsor determines that an enrollee was incorrectly declared eligible as a direct result of false information given by that individual, the enrollee shall be terminated immediately.

(4) If a subproject sponsor determines that an enrollee was incorrectly declared eligible through no fault of the enrollee, the project shall give the enrollee immediate notice and the enrollee shall be terminated thirty (30) days after the notice.

(5) If a subproject sponsor makes an unfavorable determination on continued eligibility the project shall explain in writing to the enrollee the reason or reasons for the determination. Individuals affected by an unfavorable determination shall be informed of the appeals procedures available.

(6) If a subproject sponsor terminates an enrollee for failure to perform assigned tasks, the enrollee shall be informed in writing of the reason or reasons for termination and of the right to appeal in accordance with procedures described in the grant application.

(7) If a subproject sponsor makes an unfavorable determination of enrollment eligibility pursuant to certification for continued enrollment the subproject sponsor shall assure that the individual is referred to other potential sources of assistance.

(8) The subproject sponsor shall assure by contract provision that persons shall not, on the grounds of race, color, religion, sex, national origin, or handicap be excluded from participation in, be denied the benefits of, or be subjected to discrimination in connection with any program or activity funded in whole or in part with funds made available from the division or under Title V of the Act.

(9) Subproject sponsors shall cooperate with other project and subproject sponsors, agencies providing services to elderly persons and persons with low incomes, and agencies providing employment and training services.

(10) Subproject sponsors shall not select, reject, promote or terminate individuals based on political affiliations. The selection or advancement of enrollees as a reward for political services or as a form of political patronage, whether or not the political service or patronage is partisan in nature shall be prohibited.

(11) Subproject sponsors shall not involve political activities, as defined in Section 674.321(a)-(c) Title V OAA, in the overall operations of their projects.

(12) Subproject sponsors shall not use funds provided under the Act or regulations to assist, promote or deter union organizing.

(13) Subproject sponsors shall not hire and a host agency shall not be a worksite for a person in an administrative capacity, staff position, or community service employment position funded under this project if a member of that person's immediate family is engaged in an administrative capacity for that subproject or host agency.

(a) If there are state or local legal requirements regarding nepotism which are more

restrictive, those requirements shall be followed by the subproject sponsor;

(b) Immediate family shall mean wife, husband, son, daughter, mother, father, brother, sister, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent or grandchild; and

(c) Engaged in an administrative capacity shall include those persons who in the administration of projects, subprojects or host agencies have responsibility for the selection of enrollees from among eligible applicants.

(14) Subproject sponsors shall ensure through provisions in the annual program plan that host agencies provide adequate orientation, instruction and supervision for enrollees regarding responsibilities and safety.

(15) Subproject sponsors shall require each enrollee selected for enrollment to receive physical examinations as follows:

(a) Each enrollee shall have an examination within the two (2) month period immediately before the first day of employment;

(b) An enrollee shall have an additional examination at intervals which ensure that no enrollee participates in community service employment more than fifteen (15) months without an examination or a waiver of examination;

(c) If an enrollee is terminated he may reenroll without an additional examination provided the time elapsed since the last examination has not exceeded fifteen (15) months and provided the schedule of one (1) examination per fifteen (15) month period is resumed based on the date of the last examination;

(d) An examination shall not be the basis for denial of participation unless there is clear indication of potential adverse health effects as a result of the performance of the tasks to be assigned; and

(e) If an individual objects to an examination the subproject sponsor shall obtain a signed waiver prior to the enrollee's first day of employment.

(16) Subproject sponsors shall provide orientation as follows:

(a) As soon as practicable to enrollees with information on:

1. Project objectives;
2. Community service employment assignments;
3. Training;
4. Supportive services;
5. Responsibilities, rights and duties of the enrollees;
6. Permitted and prohibited political activities; and
7. Plans for transition to unsubsidized employment.

(b) For host agencies and individuals who [will] supervise enrollees to ensure that enrollees receive adequate supervision and opportunities for transition to the host agency staff or other unsubsidized employment.

(17) Subproject sponsors shall assess each new enrollee to determine the most suitable assignment for the individual, permitting the effective use of each enrollee's skills and aptitudes. The sponsor shall consider the individual's:

- (a) Preference of occupational category;
- (b) Work history;
- (c) Skills;
- (d) Aptitudes;
- (e) Potential for performing community service

duties; and.

(f) Potential for transition to unsubsidized employment.

(18) Subproject sponsors shall evaluate at least yearly each enrollee's potential for transition to unsubsidized employment and the appropriateness of the enrollee's current job assignment. An alternate assignment shall be developed if a determination is made that an alternate assignment [will]:

(a) Provides greater opportunity for use of the enrollee's skills and aptitudes;

(b) Provides work experience to enhance the potential for unsubsidized employment; or

(c) Serves the best interests of the enrollee.

(19) Assessments and evaluations shall be documented and a part of each enrollee's permanent record. Information on assessments and evaluations shall be submitted to the division as the activities occur during the program year and at least annually.

Section 3. Recruitment and Eligibility. (1) Recruitment methods shall:

(a) Assure that the maximum number of eligible individuals shall have an opportunity to participate in the project; and

(b) Assure equitable participation of minority individuals, Indians, and limited English speaking eligible individuals in proportion to their numbers in the state.

(2) Eligibility criteria shall be as follows:

(a) An individual shall not be less than fifty-five (55) years of age and no upper age limit shall be imposed for initial or continued enrollment;

(b) The income of an individual seeking initial enrollment, reenrollment after termination, or certification for continued enrollment, or of the family of which the individual is a member shall not exceed the low income standards defined in Section 674.103 of Title V OAA regulations;

(c) Residency requirements shall include:

1. An individual upon initial enrollment shall reside in the state in which the project or subproject is approved [authorized];

2. Place of residence shall be the individual's declared permanent dwelling place; and

3. Requirements pertaining to length of residency prior to enrollment shall not be imposed.

(d) Subproject sponsors shall not impose additional conditions or requirements for enrollment eligibility.

(3) Enrollment priorities shall apply to vacant positions, including temporary positions, and shall not require the termination of an eligible enrollee. Enrollment priorities shall be as follows:

(a) Eligible individuals who are sixty (60) years old or older;

(b) Eligible individuals seeking reenrollment following termination due to illness, or unsubsidized placement if [provided that] reenrollment is sought within one (1) year of termination;

(c) Eligible individuals enrolled in temporary positions;

(d) Other eligible individuals; and

(e) Consideration shall be given to within the above established priorities to individuals most in need. In determining those most in need,

subproject sponsors may consider the extent to which the individual's income is below the low income standard.

Section 4. Community Service Employment. (1) The subproject sponsor shall place the enrollee in a community service job as soon as possible after the completion of enrollee orientation or training.

(2) Hours of community service employment shall be as follows:

(a) A subproject sponsor or host agency shall not require an enrollee to work more than twenty (20) hours during one (1) week;

(b) A subproject sponsor or host agency shall not offer an enrollee an average of fewer than twenty (20) hours of paid participation per week unless the shorter period is:

1. Permitted [Authorized] by the division's grant agreement;

2. In writing by the Department of Labor; or

3. By written agreement between an enrollee and the subproject sponsor, if [provided that] the agreement has been approved by the division;

(c) An enrollee shall not work more than 1,300 hours including paid hours of orientation, training, sick leave, and vacation during the twelve (12) month period specified in the annual program plan and Title V Section 674.310(b)(1) of the OAA;

(d) A subproject sponsor or host agency shall to the extent possible ensure that enrollees work during normal business hours if they so desire.

(3) Enrollees shall be employed at worksites in or near their home areas.

(4) Enrollees shall be employed in assignments which:

(a) Contribute to the general welfare of the community;

(b) Provide services related to publicly owned and operated facilities and projects;

(c) Provide services related to projects sponsored by organizations, other than political parties, exempt from taxation under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1954; and

(d) Provide community services as defined in Section 1 of this regulation.

(5) Subproject sponsors or host agencies shall to the fullest extent possible give enrollees first consideration for assignments involved in the operation of projects.

(6) Enrollees shall not be assigned to work involving the construction, operation or maintenance of a facility used or to be used for sectarian religious instruction or worship, or to work which primarily benefits private profit-making organizations.

(7) Enrollees shall not be permitted to work in buildings, surroundings or conditions which are unsanitary, hazardous or dangerous to the enrollees' health or safety. Periodic visits shall be made to the worksites to assure the working conditions and treatment of enrollees are consistent with provisions of the Act and regulations promulgated under the Act.

(8) If a portion of the project funds have not been used as planned in the annual program plan, subproject sponsors may use funds during the period of agreement to enroll additional eligible individuals in temporary positions as follows:

(a) The number of temporary positions may not

exceed twenty (20) percent of the total number of authorized positions established in the contract;

(b) Payments to or on behalf of enrollees shall not exceed the amount of the unused funds available;

(c) Subproject sponsors or host agencies shall inform individuals enrolled in temporary positions that the employment is temporary and may be terminated at any time;

(d) Subproject sponsors or host agencies shall seek to maintain full enrollment in authorized positions and shall seek to schedule enrollments and terminations to avoid excessive terminations at the end of the project period;

(e) Subproject sponsors shall notify the division in writing of action taken in the area of employing temporary positions; and

(f) Enrollee file information shall indicate the temporary status of the enrollee and the written agreement between the individual and the host agency. Copies shall be sent to the subproject sponsor and the project sponsor.

(9) Individuals enrolled in this program shall not be federal employees as a result of employment.

(10) Enrollees shall receive wages for community service employment which shall not be lower than whichever is the highest of:

(a) The minimum wage [which would be] applicable to the employee under Fair Labor Standards Act of 1938, if Title V, Section 6(a)(1) of the OAA applied to the participant and the participant were not exempt under Title V, Section 13 of the OAA;

(b) The state or local minimum wage for the most nearly comparable covered employment; or

(c) The prevailing rates of pay for persons employed in similar public occupations by the same employer.

(11) Subproject sponsors shall administer fringe benefits uniformly to all enrollees including enrollees in temporary positions as follows:

(a) Enrollees shall receive all fringe benefits required by law;

(b) If [Where] enrollees are not covered by the state workers' compensation law the subproject sponsor shall provide enrollees with workers' compensation benefits equal to that provided by law for covered employment and OAA Section 504(b) guidelines;

(c) Subproject sponsors shall be authorized to pay the cost of unemployment insurance where required by law and the OAA Section 502(b)(1)(N);

(d) Fringe benefits which shall be allowable costs include the following:

1. Annual leave;
2. Sick leave;
3. Holidays;
4. Health insurance; and
5. Other fringe benefits approved in the annual plan.

(e) Subproject sponsors shall not expend federal funds for contributions into a retirement system unless the project can demonstrate that:

1. Contributions bear a reasonable relationship to the cost of providing benefits to enrollees;
2. Enrollees have a reasonable expectation of receiving the value of contributions vested if [at the time] they are made on behalf of the enrollees; and
3. The retirement system or plan is of a

defined benefit type and a separate actuarial determination has established a reasonable expectation that the enrollees shall [will] receive benefits as a result of contributions.

Section 5. Enrollee Supportive Services. Subproject sponsors shall provide supportive services designed to assist enrollees in successful participation in community service employment and to prepare enrollees for and assist them in attaining unsubsidized employment. Supportive services may include:

(1) Counseling or instruction, including that designed to assist enrollees personally in areas like health, nutrition, Social Security benefits, Medicare benefits and retirement laws;

(2) Incidentals including work shoes, badges, uniforms, safety glasses, eyeglasses and hand tools; and

(3) Transportation for enrollees provided the service is in the direct performance of employment or employment related activities. Reimbursement from Title V OAA funds shall not exceed the limitation on mileage rates established by federal travel regulations.

Section 6. Training. (1) Training which in the judgment of the subproject has the primary purpose of providing or improving skills [which] an enrollee expects [will be expected] to use in the performance of his job assignment shall be provided as follows:

(a) An enrollee shall be paid for the hours of training at the established wage rate;

(b) Subproject sponsors shall not schedule required training for an enrollee which exceeds 240 hours during a project year without prior approval from the division; and

(c) Enrollees engaging in required training may be reimbursed for the cost of travel and room and board necessary to participate, provided reimbursement does not exceed rates established by current federal travel regulations.

(2) Training which is available to an enrollee but does not have the primary purpose of providing or improving skills necessary in the performance of job assignments shall be voluntary. Voluntary training may enhance skills for the regular job assignment and an enrollee's potential for unsubsidized employment and may be provided as follows:

(a) Subproject sponsors are not required to compensate enrollees for hours of voluntary training or to count uncompensated hours of voluntary training within the 1300 hour limit on compensated participation;

(b) Subproject sponsors may provide new enrollees with training related to assignments prior to and as a preparation for employment;

(c) Training in preparation for employment combined with time spent in orientation shall be completed within the first eighty (80) hours of the individual's enrollment. The division may approve extended periods. [except when extended periods are approved by the division;]

(d) Subproject sponsors shall enroll each individual in the project prior to orientation and training in preparation for community service employment and shall initiate enrollee status as a paid employee;

(e) Subproject sponsors shall seek to obtain training for enrollees at no cost to the project. If [Where] training is not available from other sources Title V funds may

be used for training; and

(f) Subproject sponsors shall not prevent or limit enrollees from engaging in training available from sources other than Title V during hours other than hours of community service employment.

Section 7. Placement into Unsubsidized Employment. Subproject sponsors shall employ reasonable means to place enrollees into unsubsidized jobs using the following criteria:

(1) Subproject sponsors shall place into unsubsidized employment the number of enrollees which equals twenty (20) percent of the authorized positions;

(2) Subproject sponsors shall contact public and private employers directly to develop or identify suitable unsubsidized employment opportunities;

(3) Subproject sponsors shall encourage host agencies to employ enrollees in their regular work forces; and

(4) Subproject sponsors shall follow up on enrollees who are placed into unsubsidized employment and document follow-up at least once within three (3) months of placement.

Section 8. Duration of Enrollment. A subproject sponsor shall establish and use time limitations on enrollment within a subproject. Limitations shall be approved in the annual program plan and grant application. The subproject sponsor shall demonstrate the following:

(1) The limitation shall be applied in an equitable and uniform manner;

(2) Enrollees whose only source of income is the Title V program shall not be terminated solely because of the limitations;

(3) No limitation shall be less than 1,040 hours of paid community enrollment in a twelve (12) month period;

(4) No hours of paid enrollment prior to July 1, 1985 shall be counted against the limitation; and

(5) Enrollees subject to termination because of a limitation on enrollment shall be informed in writing no less than twelve (12) months prior to scheduled termination.

LARRY MICHALCZYK, Commissioner

HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: September 30, 1991

FILED WITH LRC: October 10, 1991 at 11 a.m.

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

905 KAR 8:220. General administration, programs for the elderly.

RELATES TO: KRS 205.201, 205.203, 205.455-465.31, 45 CFR 92.25(g)(2), (3) Part 74, Subpart B. 213, 1321, 5 USC 552, 7501 et seq., 42 USC 3001 et seq., 905 KAR 8:170

STATUTORY AUTHORITY: KRS 194.050, 205.204(2)

NECESSITY AND FUNCTION: 42 USC 3001 et seq., the Older Americans Act of 1965, as amended, authorizes grants to states to provide assistance in the development of new or improved programs for older persons. KRS 194.050 authorizes the Cabinet for Human Resources to adopt regulations as necessary to implement

programs mandated by federal law, or to qualify for the receipt of federal funds. KRS 205.204 designates the Cabinet for Human Resources as the state agency to administer the Older Americans Act in Kentucky. The function of this regulation is to set forth the policies and procedures governing the general administration of the Older Americans Act in Kentucky, in compliance with the statutory requirement of KRS 13A.221 that requires a separate administrative regulation for each topic of general subject matter. This proposed administrative regulation consolidates the provisions of 905 KAR 8:010, 8:040, 8:050, 8:060, and 8:080.

Section 1. Definitions. (1) "Area development district" means one (1) of the fifteen (15) regional planning and development agencies with which the Division of Aging Services contracts for the local delivery of aging services.

(2) "Area agency on aging" means that local agency designated under the provisions of Title III of the Older Americans Act to administer funds received under that title for a given planning and service area.

(3) "Administration on Aging" means that federal agency housed within the Office of the Secretary of Health and Human Services which is responsible for the administration of grant awards to state units on aging under Title III of the Older Americans Act.

(4) "Area plan" means the plan submitted by an area agency on aging for the approval of the Division of Aging Services which releases funds under contract for the delivery of services within the planning and service area.

(5) "Division" means the Division of Aging Services.

(6) "Fidelity bond" means a bond indemnifying the recipient against losses resulting from the fraud or lack of integrity, honesty, or fidelity of one (1) or more employees, officers or other person holding positions of trust.

(7) "In-kind resources" means the value of property or services which benefit a grant-supported project or program and which are contributed by nonfederal third parties without charge to the grantee.

(8) "Local cash match" means cash donated to pay costs of centers or sites or services.

(9) "Planning and service area" means that multicounty geographical entity in which a given area agency on aging is responsible for the delivery of aging services.

(10) "Program income" means the gross income earned by a contractor from activities part or all of the cost of which is either borne as a direct cost by federal funds or counted as a direct cost towards meeting a cost sharing or matching requirement of federal funds.

(11) "State plan" means the formal application of the division for federal Title III funds under the Older Americans Act and provides a basis for the expenditures of these funds.

Section 2. The Division of Aging Services shall distribute federal and state funds for aging programs through contract allocation under authorization of:

(1) Title III of the Older Americans Act, which shall be distributed by formula:

(a) Funds authorized under the following categories shall be for the purpose of assisting the division and the area agencies on aging to develop or enhance for older persons,

comprehensive and coordinated community-based services throughout the state:

1. State administration;
2. AAA - administration;
3. State long-term care ombudsman, Title III-B;
4. Supportive services, Title III-B;
5. Congregate meals services, Title III C 1;
6. Home-delivered meals services, Title III C 2;
7. In-home services, Title III-D;
8. Special needs services, if funds are available, Title III E;
9. Elder abuse services, if funds are available, Title III G;
10. Preventive health services, if funds are available, Title III F;
11. Outreach services, if funds are available.

(b) Except for the Office of the Long-Term Care Ombudsman and state administration, the division shall award the available funds to designated area agencies on aging according to the intrastate funding formula determined by the division after consultation with the area agencies on aging in the state and publication of the formula by the division for review and comment by older persons and the general public.

(2) The Acts of the General Assembly, Kentucky Homecare Program, as amended, and a grant from the United States Department of Health and Human Services, the division shall distribute available state and federal funds to area development districts according to a funding formula determined by the division. The contracting agency may provide services directly, subcontract for all or part of the services, provide the services through other funding sources or through volunteer efforts. Regardless of the method, the contracting agency shall assure availability of the following services based on approved definitions under the homecare program:

- (a) Assessment;
- (b) Case management;
- (c) Chore;
- (d) Escort;
- (e) Home-delivered meals;
- (f) Home health aide;
- (g) Homemaker and home management;
- (h) Homemaker personal care;
- (i) Home repair;
- (j) Respite.

(3) Title V of the Older Americans Act, the division shall distribute federal funds made available by the United States Department of Labor for the provision of useful part-time employment to low-income persons, fifty-five (55) years of age or older. The division shall allocate funds made available to designated agencies according to number of employment slots in each area. Designated agencies shall administer these funds either directly or by contract.

(4) Funds authorized under other federal and state programs shall be for the purpose of assisting the division to develop or enhance for older persons, comprehensive and coordinated community-based services throughout the planning and service areas. The division shall allocate funds made available to designated area agencies on aging according to need and population, through contracts with area development districts. Designated agencies shall administer these funds either directly or by contract.

Section 3. Responsibilities of the Division.

(1) Advisory councils. The division shall:

- (a) Utilize the Institute for Aging as one (1) of the methods to obtain citizen participation;
- (b) Cooperate with the Council for Social Services as appropriate in accordance with its mandate; and

(c) Participate on the Long-Term Care Coordinating Council and provide input in the area of long-term care for the elderly.

(2) The division shall advocate for older persons in the Commonwealth pursuant to the Older Americans Act regulation 45 CFR 1321.13 and shall:

(a) Review, monitor, evaluate and comment on federal, state and local plans, budgets, regulations, programs, laws, levies, hearings, policies and actions which affect or may affect older individuals and recommend changes in these which the division deems appropriate;

(b) Provide technical assistance to agencies, organizations, associations or individuals representing older persons;

(c) Review and comment, upon request, on applications to state and federal agencies for assistance relating to meeting the needs of older persons;

(d) Conduct public hearings on the needs of older persons;

(e) Represent the interests of older persons before appropriate legislative, executive branch and regulatory bodies in the Commonwealth;

(f) Establish and operate the long-term care ombudsman program in accordance with the provisions of Section 307(12)(A) of the Older Americans Act; and

(g) Require area agencies on aging to indicate in area plans advocacy activities in which they shall engage on behalf of the elderly.

(3) The division shall encourage the appointment of older Kentuckians to boards and commissions in state and local governments in an effort to actively involve these individuals in the development of services and programs for the elderly. The division shall conduct the following activities in meeting this responsibility:

(a) Work with citizens advocate groups participating on boards and commissions;

(b) Assist agencies and organizations seeking appointees by identifying potential older people to serve on boards or commissions and referring them to the appropriate agencies or individuals;

(c) Obtain information from agencies and organizations on qualifications for selection to boards or commissions, periods of service, and appointment dates; and

(d) Transmit information on qualifications for membership or participation, period of service, and appointment and expiration dates to senior citizen organizations, service providers, and area agencies on aging for the future appointment of older people to boards and commissions.

(4) Area agencies on aging designation and funding.

(a) The Division of Aging Services shall designate planning and service areas (PSAs) in accordance with the provisions of Section 305(a)(1)(E) of the Older Americans Act and shall consider:

1. The geographical distribution of individuals age sixty (60) and older in the Commonwealth;

2. The incidence of the need for supportive

services, nutrition services, multipurpose senior centers and legal assistance;

3. The distribution of older individuals who have the greatest social need with particular attention to low-income minority individuals residing in these areas;

4. The distribution of older Indians residing in these areas;

5. The distribution of resources available to provide services or centers;

6. The boundaries of existing areas within the Commonwealth which were drawn for the planning or administration of supportive services programs;

7. The location of general purpose local government within the Commonwealth with regard to its PSA-wide service delivery capability; and

8. Other factors deemed relevant.

(b) In designating within each planning and service area (PSA) a public or private nonprofit agency or organization as the area agency on aging the division shall:

1. Designate in accordance with Section 305 (b)(5)(C) of the Older Americans Act according to the following:

a. An established office of aging which is operating within a designated planning and service area and has a PSA-wide service capability;

b. An office or agency of a unit of general purpose local government, which is designated to function only for the purpose of serving as an area agency on aging by the chief elected official of the unit;

c. An office or agency designated by the appropriate chief elected officials of [any] combinations of units of general purpose local government to act only on behalf of a combination for this purpose; or

d. A public or nonprofit private agency in a planning and service area or a separate organizational unit within the agency which is under the supervision or direction for this purpose of the designated state agency and which can and shall engage only in the planning or provision of a broad range of supportive services, or nutrition services within the planning and service area.

2. If [When] designating a new area agency on aging, give right of first refusal to a unit of general purpose local government; and

3. Give preference, if [when] the unit of general purpose local government declines designation, to an established office on aging in conformity with Section 305(c)(5) of the Older Americans Act.

(c) The division shall develop and make known to the area agencies on aging procedures for and conditions under which area plan funding may be suspended. The following shall be applied:

1. The suspension of funding authority to an area agency on aging by the state agency temporarily suspends federal assistance under the area plan pending corrective action by the area agency on aging or pending a decision by the division to terminate the contract;

2. If [When] conditions warrant, the division may suspend area plan operations in whole or in part. The conditions shall result from the area agency on aging's failure to comply with contract award stipulations, standards or conditions;

3. To suspend area plan operations, the division shall notify the area agency on aging in writing of the action being taken, the reason

for the action and the conditions of the suspension. This notice shall be given at least thirty (30) days prior to the effective date of suspension and shall note the right of the area agency on aging to appeal the decision and the procedures to be followed for an appeal;

4. The division shall grant to an area agency on aging whose area plan has been suspended in whole or in part an opportunity for a hearing in accordance with the provisions set forth in Section 15 of this regulation;

5. The division may, at its discretion, allow federal financial participation in necessary and proper costs which the area agency on aging may [could] not reasonably avoid during the period of suspension;

6. In suspending area plan operations, the division shall determine the amount of unearned Title III funds the area agency on aging has on hand. The anticipated length of suspension, the extent of area plan operations suspended, and the amount of funds balance on hand shall determine whether the division shall require the balance to be returned;

7. The division may, at its discretion, reinstate the suspended area plan operations if it determines that conditions warrant;

8. Federal participation in reinstated area plan operations may resume immediately upon reinstatement, but not for costs accrued for those area plan operations while they were suspended. The obligational authority unearned at [the time of] suspension again becomes available for earning by the project at the previously established matching ratio; and

9. If the suspension of area plan operations continues for three (3) consecutive months in a budget year, federal funding of area plan operations is automatically terminated.

(d) The termination of funding means the cancellation of state or federal assistance, in whole or in part, under a contract at a time prior to the date of completion.

1. The division may terminate state or federal support for an area plan prior to the end of an approved budget year or project period if:

a. The area development district violates the conditions under which the contract was approved;

b. Program performance is inadequate; or

c. Nonfederal resources are not available.

2. If the division terminates funding for an area plan, the division shall:

a. Notify the area development district in writing of the actions being taken and the reasons for the action. This notice shall be given at least thirty (30) days prior to the effective date of termination;

b. Specify reports to be completed;

c. Notify the area agency on aging of the right to appeal; and

d. The procedure to be followed for appeal.

3. The division shall grant to the area development district whose area plan has been terminated in whole or in part an opportunity for a hearing.

4. The division or the area development district may terminate the contract in whole, or in part, if [when] both parties agree that the continuation of the project may [would] not produce beneficial results commensurate with the further expenditure of funds. The two (2) parties shall agree upon the termination conditions, including the effective date and, if [in case of] partial termination[s], the portion to be terminated. The area

development district shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The Division of Aging Services shall allow full credit to the area development district for the federal share of the noncancellable obligations, properly incurred by the area development district prior to termination.

5. A termination of area plan obligation or authority which leads to withdrawal of designation shall comply with paragraph (e) of this subsection.

(e) The division shall withdraw the area agency on aging designation if, after reasonable notice and opportunity for a hearing, the division finds that:

1. The area agency on aging does not meet the requirements set out in paragraph (b)1 through 3 of this subsection;

2. The plan or plan amendment is not approved;

3. There is substantial failure in the provision or administration of an approved area plan to comply with provisions of the area plan requirements under the Older Americans Act; or

4. There is a request by the area development district.

(f) If the division withdraws the area agency on aging's designation, it shall:

1. Notify the commissioner of the administration on aging in writing of its action;

2. Provide a plan for the continuity of services in the affected planning and service area; and

3. Designate a new area agency on aging in the planning and service area in a timely manner.

(g) If necessary to ensure continuity of services in a planning and service area, the Division of Aging Services may, for a period of up to 180 days after its final decision to withdraw designation of an area agency on aging:

1. Perform the responsibilities of the area agency on aging; or

2. Assign the responsibilities of the area agency on aging to another agency in the planning and service area.

(h) If necessary the commissioner of the administration on aging may extend for a period of up to an additional 180 days the limit in paragraph (e) 3 of this subsection if the state agency:

1. Requests an extension; and

2. Demonstrates to the commissioner of the administration on aging a need for the extension.

(i) The division shall initiate the designation withdrawal process and shall:

1. Notify the area agency on aging of intent to withdraw designation, citing influencing factors and outlining steps to be taken in appeal of the intent;

2. Extend to the area agency on aging a minimum of thirty (30) days in which to respond;

3. Following the area agency on aging's response, if appropriate, the division may require of the area agency on aging the submission within an additional thirty (30) days a corrective action plan which may [would] avert withdrawal of designation;

4. If the area agency on aging requests a state hearing, the division shall assist in the facilitation of the hearing; and

5. Following the appeal process, the division shall notify the area agency on aging in writing of the hearing.

(j) Close-out procedures for the grant. If [When] federal support for an area plan is terminated, the following shall apply:

1. The area agency on aging shall immediately refund to the division [any] unencumbered balance of cash advanced to the area agency on aging;

2. The area agency on aging shall complete and submit to the division, within sixty (60) days after the date of completion or termination, a final program and financial report and other financial or performance reports required as a condition of the grant;

3. The division shall make a settlement for the upward or downward adjustments to the federal share of costs after these reports are received;

4. The area agency on aging shall dispose of equipment and supplies purchased with Title III funds in accordance with established policies of the Cabinet for Human Resources. Funds realized from the sale of this equipment or supplies shall be an adjustment in program costs;

5. If a final audit has not been performed prior to close-out of the grant, the division shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit; and

6. The area agency on aging shall provide for the close-out of all subcontracted service providers in accordance with the Cabinet for Human Resources policies.

(5) The division shall coordinate and, as appropriate, enter into agreements with departments within the Cabinet for Human Resources, Corrections Cabinet, Justice Cabinet, Administrative Office of the Courts, Public Advocacy, the Kentucky Department of Agriculture, Department of Transportation, and other state offices, study groups, and councils in the planning for and provision of health and supportive services to the elderly and to appropriately utilize funding sources. The division shall encourage area agencies on aging in advocacy roles to undertake activities on a regular basis which are designed to facilitate the coordination of plans and activities with other public and private agencies and organizations.

(6) The division shall conduct, within budget limitations, activities to implement training and education programs which include the following:

(a) Conduct annual assessments to informally identify training needs and develop correlating plans;

(b) Identify and review resources available to meet training needs;

(c) Develop a comprehensive education and training plan;

(d) Seek additional resources to implement the plan;

(e) Effect interagency coordination for the provision of specialized training;

(f) Facilitate and assist the efforts of higher education in statewide forums of a gerontological orientation;

(g) Coordinate education programs with private, public, governmental and educational organizations and institutions;

(h) Provide and coordinate training opportunities for personnel of agencies and programs utilizing aging services' funding;

(i) Provide training to area agencies and

local programs on self-evaluation and monitoring; and

(j) Provide training as part of the state training plan including ongoing technical assistance and annual program evaluation.

(7) The division shall include assurances in the state plan that preference is given to older persons in greatest social or economic need in the provision of services under the plan and shall utilize the following methods for preference to older persons with the greatest economic or social need and low-income minority:

(a) After consultation with the area agency on aging, develop and use an intrastate funding formula which shall reflect the proportion among the planning and service areas of persons age sixty (60) and over in greatest economic or social need with particular attention to low-income minority individuals;

(b) Seek input from area agencies on aging and service providers in the development of methods for giving preference;

(c) Review priorities for services and needs assessment data in order to determine the specific types of services most needed by the target population;

(d) Encourage the location and access to senior centers and services in geographic areas which contain known populations of older persons with greatest economic or social need;

(e) Encourage local coordination efforts with those agencies or organizations which provide services or entitlements to the target population; and

(f) Monitor and evaluate area agencies on aging to ensure services are targeted to meet the needs of older persons with the greatest economic or social need, with particular attention to low-income minority individuals.

(8) In compliance with 45 CFR 1321.17(f)(9), the division shall:

(a) Have and employ appropriate procedures for data collection from area agencies on aging to permit the state to compile and transmit statewide data requested by the commissioner on aging in a form the commissioner directs on an annual basis.

(b) Establish a statewide uniform reporting system to collect and analyze data relating to complaints and conditions in long-term care facilities for the purpose of identifying and resolving significant problems, with provision for submission of this data to the agency of the state responsible for licensing or certifying long-term care facilities in the state and to the commissioner on aging on an annual basis.

(c) Require each area agency on aging to assure that providers of services shall provide the area agency on aging in a timely manner with statistical and other information which the area agency on aging requires to meet its planning, coordination, evaluation and reporting requirements.

(d) Not request, nor shall an area agency on aging request, for the purpose of Older Americans Act reporting, information or data from providers which is not pertinent to services furnished pursuant to the Older Americans Act or a payment made for these services.

(9) Each fiscal year the division in order to meet the required nonfederal share applicable to its allotments under Title III of the Older Americans Act, shall expend under the state plan for both services and administration at least

the average amount of state funds it expended under the plan for the three (3) previous fiscal years. Funds made available under Title III Part D shall be in addition to, and shall not be used to supplant, funds that are or may [would otherwise] be expended under a federal, state, or local law by a state or unit of general purpose local government, including area agencies on aging which have in their planning and services areas existing services which primarily serve older individuals who are victims of Alzheimer's disease and related disorders with neurological and organic brain dysfunction, and the families of these victims.

(10) The division shall monitor the performance of programs and activities initiated under the Older Americans Act for quality and effectiveness and shall monitor other programs for which the division has administrative responsibility.

(a) In compliance with the monitoring and evaluation responsibilities the division shall:

1. Monitor and assess services as approved in area plans to determine compliance with contract requirements, approved area plans, and with applicable federal and state statutory requirements;

2. Conduct annual or more frequently, if indicated on-site monitoring visits to the area development districts;

3. Conduct on-site visits to assess and approve potential new service delivery sites;

4. Monitor, through on-site visits, the implementation of new programs;

5. Conduct on-site visits if [when] problems occur to assess and make recommendations for improvement and to bring the program into compliance with the contract;

6. Conduct on-site follow-up visits, as appropriate, to assure that the plan of correction has been implemented;

7. Conduct monitoring through the review and analysis of reports submitted to the division by the area agencies on aging;

8. Submit written evaluation of findings with recommendations regarding on-site monitoring visits to the area development district;

9. Submit written evaluation of findings and recommendations regarding review and analysis of reports to the area development districts, if indicated; and

10. Provide training to area agencies on aging and local programs on self-evaluation and monitoring.

(b) The division shall take corrective action if [when] a contractor is not fulfilling its contract.

1. Upon identification of the deficiency, the division shall:

a. Notify the contractor, describing the precise nature of the problem, identify the corrective action desired and the time frame in which the action shall be taken or the problem shall be resolved. The contractor shall submit a written corrective action plan as specified by the division. If the contractor deficiencies appear to endanger or seriously affect the health or welfare of participants or staff, corrective measures shall be taken immediately;

b. Monitor and follow up, to assure that action was taken and the problem or deficiency resolved. The contractor shall submit documentation to confirm the problem or deficiency was resolved; and

c. Notify other licensing or regulatory

agencies if the problems are within their jurisdiction.

2. If the contractor continues to be in noncompliance, the following procedures shall be implemented:

a. The division shall notify the contractor of the continuing problem or deficiency and the action to be taken.

b. The division shall advise the Commissioner of the Department for Social Services of the problem and make a recommendation for the Cabinet for Human Resources action.

c. The contractor shall be advised of the actions that shall be taken if noncompliance continues. Actions include but are not limited to the following: renegotiation of the contract, employment of financial sanctions or cancellation of the contract.

(11) The needs assessment and program analysis shall provide another means of coordination of needs and services, and shall provide area-specific information and a statewide summary. Persons age sixty (60) and over who are frail, homebound by reason of illness or incapacitating disability, or otherwise isolated shall be given priority in the delivery of services. Activities which shall be conducted to evaluate and determine the needs, specific groups within the aging population, and services which shall be addressed or receive top priority include the following:

(a) Review and analyze the findings of the needs assessment and other surveys and documents that provide information regarding the needs of the elderly;

(b) Compile and analyze data obtained from area and local program plans;

(c) Conduct public hearings and compile and analyze data obtained;

(d) Review and analyze census and other data which reflect the status of the elderly;

(e) Gather and analyze client data from the homecare program and other applicable information systems;

(f) Analyze program performance reports;

(g) Analyze financial reports;

(h) Conduct literature search;

(i) Distribute needs assessment information related to the delivery or planning of services to the elderly; and

(j) Establish statewide service priorities based on the needs assessment.

(12) The division, as the state unit on aging, shall have an adequate number of qualified staff to carry out the functions prescribed in 45 CFR 1321.9 of the Older Americans Act regulations and other programs for which the division has administrative responsibility and shall, subject to the requirements of merit employment systems of state and local governments, give preference to individuals aged sixty (60) or older for staff positions in state and area agencies on aging for which individuals qualify.

(13) The division shall, if [when deemed] appropriate, utilize public hearings as one (1) method of obtaining both proactive and reactive community and consumer participation in prioritizing and evaluating activities and projects carried out under the state plan. The division shall:

(a) Schedule a minimum of one (1) public hearing annually for the purpose of evaluating activities and projects carried out in the state plan;

(b) Specify the inclusion of an evaluation of

the state plan's effectiveness in reaching older individuals with the greatest economic or social needs, with particular attention to low-income minority individuals;

(c) If [When deemed] appropriate, schedule public hearings for the purpose of receiving community and consumer participation in the development and implementation of service activities;

(d) Require of the area agency on aging a timely conducted public hearing prior to the consideration of a request of the division for a waiver from a service provision responsibility required in the area plan; and

(e) Schedule, advertise and conduct public hearings it deems appropriate in a manner designed to encourage, enhance and facilitate community and consumer participation.

(14) The division shall consider the views of older persons and the general public in developing and administering the state plan and shall:

(a) Utilize methods which may include but are not limited to public hearings, in receiving public and consumer participation in identifying service needs and establishing funding priorities prior to the submission of the state plan for federal approval;

(b) If [When] appropriate, advertise the date, time, location and purpose of each public hearing in at least one (1) major newspaper in the planning and service area in and for which the hearing is being held;

(c) Respond to requests of the Institute for Aging for information and submit for its review and comment proposed plans, budgets, programs, policies and general initiatives;

(d) Elicit input from appropriate external sources as opportunities present themselves;

(e) Require area agencies on aging to develop procedures for receiving community and consumer participation in the planning and service delivery process in conformance with 45 CFR 1321.57(c) and 1321.61 (b); and

(f) Review and consider comments received regarding program plans, budgets, policies and general initiatives, and make changes if [when] feasible and in the best interests of those individuals for whom the programs are designed.

(15) Required services.

(a) The division shall assure that the area agency on aging allots an adequate proportion of its funding under Title III-B, excluding amounts waived or used for administration, for the provision of the following categories of services:

1. Services associated with access to services for transportation, outreach, and information and referral;

2. In-home services for homemaker, home health aide, visiting and telephone reassurance, chore maintenance, supportive services for families of elderly victims of Alzheimer's disease and related disorders; and

3. Legal assistance.

(b) If the division proposes to grant a waiver to an area agency on aging:

1. The division shall publish the intention to grant a waiver together with the justification for the waiver at least thirty (30) days prior to the effective date of the decision to grant the waiver;

2. An individual or service provider from the area with respect to which the proposed waiver

applies may request a hearing before the state agency on the request for waiver; and

3. The division shall afford the individual or service provider an opportunity for a hearing within the thirty (30) day period prior to the effective date of the decision to grant the waiver.

(c) If the division grants a waiver of the requirement the following information shall be provided to the commissioner, administration on aging (AOA):

1. A report regarding the waiver that details the demonstration made by the area agency on aging to obtain the waiver;

2. A copy of the record of the public hearing conducted which indicates the notification of the interested parties and the testimony of these individuals; and

3. A copy of the record of a public hearing conducted by the division for an individual or service provider from the area to which the waiver applies.

(16) A waiver of the division administration and program requirements based on federal or state laws and regulations shall be allowed by the division only if [when] there is federal or state statutory provision to grant a waiver.

(17) The division shall conduct joint meetings with the area agencies on aging (AAAs). The division, as the state unit on aging, is mandated to coordinate statewide planning and development of activities, and provide technical assistance to each area agency on aging to ensure effective procedures for coordination of programs within the planning and service area and shall:

(a) Notify the area agencies on aging in writing in advance of the date the joint meeting shall take place.

(b) Solicit input from the area agencies on aging as to the topics and concerns to address and discuss at the joint meeting.

Section 4. Area Agencies on Aging Responsibilities. (1) Each area agency on aging shall establish an advisory council as follows:

(a) Functions of council. The area advisory council shall carry out advisory functions which further the area agency's mission of developing and coordinating community-based systems of services for older persons in the planning and service area. The council shall advise the agency relative to:

1. Developing and administering the area plan;
2. Conducting public hearings;
3. Representing the interest of older persons;

and

4. Reviewing and commenting on community policies, programs and actions which affect older persons with the intent of assuring maximum coordination and responsiveness to older persons.

(b) Composition of council. The council shall include individuals and representatives of community organizations who shall help to enhance the leadership role of the area agency in developing community-based systems of services. The advisory council shall be made up of:

1. More than fifty (50) percent older persons, including minority individuals who are participants or who are eligible to participate in programs under the Older Americans Act;
2. Representatives of older persons;
3. Representatives of health care provider

organizations, including providers of veterans' health care if providers of veterans' health care are located in the geographical area development district;

4. Representatives of supportive services providers organizations;

5. Persons with leadership experience in the private and voluntary sectors;

6. Local elected officials; and

7. The general public.

(c) Review by advisory council. The area agency on aging shall submit the area plan and amendments for review and comment to the advisory council before transmittal to the division for approval.

(2) Area agencies on aging shall be required to serve as the public advocate for the development or enhancement of comprehensive and coordinated community-based systems of services in each community throughout the planning and service area. The area agency on aging shall:

(a) Monitor, evaluate, and provide comment on policies, programs, hearings, levies, and community actions which affect older persons;

(b) Solicit comments from the public on the needs of older persons;

(c) Represent the interests of older persons to local-level and executive branch officials, public and private agencies or organizations;

(d) Consult with and support the Commonwealth's long-term care ombudsman program;

(e) Undertake on a regular basis activities designed to facilitate the coordination of plans and activities with other public and private organizations, including units of general purpose local government, with responsibilities affecting older persons in the planning and service area to promote new or expanded benefits and opportunities for older persons;

(f) Undertake a leadership role in assisting communities throughout the planning and service area to target resources from appropriate sources to:

1. Meet the needs of older persons with greatest economic or social need, with particular attention to low-income minority individuals; and

2. Influence the location of services and specialization in the types of services most needed by the above-referenced group; and

(g) Prohibit grantees or contractors from employing a means test for services funded from the area agency on aging.

(3) The area agency on aging shall ensure that service providers verify eligibility of those individuals participating in the Title III programs utilizing the Title III Age Verification and Eligibility form, except for those individuals utilizing only ombudsman, legal, outreach, and information and referral services.

(a) Prior to the implementation of the contract, the area agency on aging shall review with the Title III subcontractors their procedures for documenting participant age or other eligibility determinants.

(b) Subcontractors' records shall include the following information:

1. The participant's age or birth date;
2. The method of verifying the reported age;
3. The staff involved in the verification process;
4. Other eligibility determinants; and
5. Verification of other eligibility determinants.

(c) The area agency on aging shall approve the subcontractor's form and procedures, if other than the state form, and forward a copy of the information to the Division of Aging Services, prior to the implementation of the contract, for final approval.

(d) Require verification of eligibility only once even though the participant may receive both supportive and nutrition services.

(e) Not require verification of eligibility to be updated each fiscal year if the subcontractor maintains the participant's central file or if a new subcontractor makes arrangements for the transfer of the verification information.

(f) Participants who receive services from different subcontractors need verify eligibility only once under the following conditions:

1. The area agency on aging designates a subcontractor as the primary agency responsible for verifying eligibility and for maintaining and filing the verification information;

2. Other subcontractors may contact the primary agency to confirm that eligibility has been verified. The primary agency may send to the requesting subcontractor a copy of the eligibility verification, which is filed in the record, or may give the information verbally. Verbal confirmation of eligibility shall be documented in the participant's record. The record shall include data specified in paragraph (b) through 5 of this subsection.

(4) The area agency on aging shall be the leader relative to aging issues on behalf of older persons in the planning and service area. The agency shall proactively carry out, under the leadership and direction of the Division of Aging Services, a wide range of functions related to the development or enhancement of comprehensive and coordinated community-based systems in, or serving, each community in the planning and service area.

(a) A comprehensive and coordinated community-based system shall:

1. Have a visible focal point of contact for [where] anyone to [can] go or call for help, information or referral on an aging issue;

2. Provide a range of options;

3. Assure that these options are readily accessible to older persons; the independent, semidependent and totally dependent, no matter what their income;

4. Include a commitment of public, private, voluntary and personal resources committed to supporting the system;

5. Involve collaborative decisionmaking among public, private, voluntary, religious and fraternal organizations and older people in the community;

6. Offer special help or targeted resources for the most vulnerable older persons, those in danger of losing their independence;

7. Provide effective referral from agency to agency to assure that information or assistance is received no matter how [or where] contact is made in the community;

8. Evidence sufficient flexibility to respond with appropriate individualized assistance, especially for the vulnerable older person;

9. Have a unique character which is tailored to the specific nature of the community; and

10. Be directed by leaders in the community who have the respect, capacity, and authority necessary to convene interested persons, assess needs, design solutions, track overall success, stimulate change and plan community responses

for the present and for the future.

(b) For the purpose of assuring access to information and services for older persons, the area agency on aging shall work with community leadership in the planning and service area to designate one (1) or more focal points on aging in each community, as appropriate. The area agency on aging shall:

1. List designated focal points in the area plan;

2. Define "community" as it relates to population served by a given focal point; the definition shall be approved by the division;

3. Give special consideration to developing and designating multipurpose senior centers as focal points;

4. Assure that services financed under the Older Americans Act, in or on behalf of the community shall be either based at, linked to or coordinated with the focal points;

5. Assure access from the focal points to services financed under the Older Americans Act;

6. Work with or work to assure that community leadership works with other applicable agencies and institutions in the community to achieve maximum comprehensive arrayal of, coordination with or access to other services and opportunities for the elderly from the focal points; and

7. Refrain from engaging in an activity which is inconsistent with its statutory mission prescribed in the Older Americans Act or policies prescribed by the state under regulation 45 CFR 1321.11.

(5) Each area agency on aging shall provide for adequate and qualified staff to perform its functions and shall:

(a) Function organizationally as prescribed under designation provision of Section 305(b)(5)(C) of the Older Americans Act;

(b) Have on file for review a staffing plan that identifies the number and types of staff assigned to carry out area agency on aging responsibilities and functions;

(c) Indicate in the area plan staffing patterns and relationships if [when] the area agency on aging is housed under an umbrella organization; and

(d) Respond to corrective action initiatives and general information requests of the division if [when] issues arise concerning staffing practices.

(6) Each designated area agency on aging shall prepare and develop, for a specified planning and service area, a plan of duration as determined by the division. Each plan shall be subject to amendment by the area agency on aging upon request of the division and shall include:

(a) Procedures for delivery, through a comprehensive and coordinated system, of an array of supportive, nutrition and other services as may be prescribed under federal, state and local programs and policies;

(b) Description of arrangements with local providers to ensure the delivery of these services and identification of the service providers;

(c) Assurances that categorical service allotments shall be expended in the manner prescribed by policy of the Division of Aging Services;

(d) Designation, if [where] feasible, of multipurpose senior centers as community focal points for comprehensive service delivery;

(e) Procedures for establishment and

maintenance of information and referral services to assure access to services;

(f) Procedures for ensuring preferential consideration in the provision of services to older individuals with greatest economic or social needs, targeting low-income minority individuals, in compliance with all federal and state statutory and regulatory provisions and Division of Aging Services policy;

(g) Procedures for identifying for each previous fiscal year the number of low-income minority older individuals in the planning and service area and for describing methods used to satisfy their service needs;

(h) Procedures for outreach efforts which assure service access by eligible individuals and which target the rural, disabled and low-income minority elderly and those general population older persons with greatest social need;

(i) Procedures for conducting periodic evaluation of and public hearings on activities carried out under the area plan;

(j) Procedures for providing technical assistance to service providers and focal points and for an annual evaluation of the effectiveness of outreach;

(k) Procedures for receiving the views of service recipients;

(l) Procedures for serving as the advocate and focal point for the elderly within the community;

(m) Procedures, if [when] needed, for the provision by existing organizations of day care for adults and respite for their families;

(n) Procedures for establishing an advisory council of older individuals, including minority elderly and program participants, representatives of older individuals, local elected officials, providers of veterans health care and the general public, to advise routinely on the development and administration of the area plan and the operations for which it provides;

(o) Procedures for developing and publishing methods by which services, particularly those identified through state policy as access services, are prioritized;

(p) Procedures for effective and efficient coordination of programs and services operated or delivered in accordance with all state and federal statutory and regulatory provisions;

(q) Procedures for facilitating the coordination of community-based long-term care services emphasizing the development of client-centered case management;

(r) Procedures for determining the service needs of abused, neglected and exploited older individuals, and for identifying public and private nonprofit entities involved in prevention, identification and treatment of these individuals;

(s) Procedures which facilitate the involvement of long-term care providers in coordination of community-based long-term care services and for working to ensure community awareness of and involvement in addressing the needs of residents of long-term care facilities;

(t) Procedures which facilitate the coordination of access services with community activities which benefit victims of Alzheimer's disease and the families of these victims;

(u) Procedures which facilitate the coordination of area agency-funded mental health services with those provided by other community organizations;

(v) Procedures for conducting outreach activities, if [where] feasible, to identify eligible older Indians and ensure access to services;

(w) Procedures for compiling and disseminating in the planning and service area enrollment policies and course-study information of institutions of higher education specifically related to older individuals;

(x) Procedures for conducting outreach activities to identify older individuals eligible for supplemental security income, Medicaid and food stamp benefits; for informing them of eligibility requirements; and for assisting them in accessing those benefits;

(y) Assurances that funds received under Title III shall be expended in accordance with applicable state and federal statutory and regulatory provisions and with Division of Aging Services' policy; and

(z) Assurances that, if applicable, operation of the district long-term care ombudsman program shall be in accordance with state and federal statutory and regulatory provisions and with Division of Aging Services' policy.

(7) Each area agency on aging shall have a plan for denial, suspension or reduction of services to eligible persons. Each plan shall be maintained on file at the area agency on aging and shall be accessible for monitoring purposes. The plan shall specify, at a minimum:

(a) That if [when] services for a client or participant are denied, suspended or reduced, one (1) of the following situations shall be present and documented:

1. Funds are no longer available or are reduced;

2. The service level is no longer needed;

3. Prioritization and needs determination indicate the client no longer meets the criteria established for receiving services; or

(b) The division shall receive written notice of actions other than those listed in paragraph (a) through 3 of this subsection which may result in the denial of access to a program to an eligible participant.

(8) The area agencies on aging shall implement, within budget limitations, education and training programs that respond to the needs of senior citizens, service providers and other groups as needs are identified and funding sources become available. Activities which shall be conducted by the area agency on aging to implement [such] training and education programs include the following:

(a) Conduct annual assessments to informally identify training needs and develop correlating plans;

(b) Identify and review resources available to meet training needs;

(c) Develop a comprehensive education and training plan;

(d) Seek additional resources to implement the plan;

(e) Effect interagency coordination for the provision of specialized training;

(f) Facilitate and assist the efforts of higher education in statewide forums of a gerontological orientation;

(g) Conduct and coordinate specific training on aging programs districtwide;

(h) Coordinate education programs with private, public, governmental and educational organizations and institutions;

(i) Conduct training for area advisory

councils;

(j) Specify the training requirements of the service providers;

(k) May enter into contracts through the area development districts with providers of education and training services which can demonstrate the experience or capacity to provide these services, except that these contract authority shall be effective for a fiscal year only to the extent, or in amounts as are provided in appropriate Acts; and

(l) Plan and implement staff development initiatives.

(9) Each area development district may use its own definition of equipment as long as it includes tangible personal property having a useful life of at least one (1) year and a unit cost of \$500 or more.

(a) Equipment records shall be current and shall contain at least the following information:

1. Description of the item;
2. Serial number;
3. Source of funds used to purchase the item;
4. Federal share (%) of the cost;
5. Acquisition cost and date;
6. Unit cost;

7. Location, use and condition of the equipment and date this equipment was obtained;

8. Information on the disposition of the item.

(b) There shall be a system to prevent loss, damage, or theft and adequate maintenance procedures to keep equipment in good condition.

(c) Purchase of equipment with a unit cost of \$500 or more requires prior approval from the Division of Aging Services.

(d) Equipment which is replaced may be traded in, or may be sold and the proceeds applied to the acquisition cost. If equipment with a unit cost of \$1,000 or more is to be disposed of, not replaced, the granting agency has the right to require transfer of the equipment and title to an eligible party. If approved by the granting agency, the equipment may be sold with the federal share of the proceeds applied to the program as program income. If the federal share is not applied to the program as program income, the federal share, less selling expenses, shall be returned to the federal government or an eligible nonfederal party named by the cabinet's Department of Social Services.

(e) The area development district shall agree to the transfer of items of equipment and supplies with a value of less than \$1,000 to a new provider, if a new provider is selected as a result of competition, or if a contract is terminated by the provider or the cabinet, and a new provider is secured. This equipment and supplies shall be transferred to the cabinet's Department for Social Services if no new provider has been secured. If there is a termination of a contract or a selection of a new provider, the transfer shall be made within thirty (30) days from the date of receipt of notice from the department, this notice to be by certified mail, return receipt requested.

(10) Area agency on aging responsibilities for monitoring and evaluation shall:

(a) Permit staff of the Cabinet for Human Resources, persons acting for the Cabinet for Human Resources, and staff designated by appropriate federal agencies to monitor and evaluate programs and activities initiated under the Older Americans Act and other programs for which the division has administrative responsibility;

(b) Respond to monitoring reports prepared by the division by submission of and compliance with a corrective action plan based on monitoring findings;

(c) Be responsible for fiscal or program exceptions established by evaluation, monitoring or audit and promptly settle monitoring, fiscal and program audit exceptions by making direct payment, or reduction of future reimbursement, or by other methods approved by the Cabinet for Human Resources;

(d) Furnish appropriate technical assistance to providers of supportive services, nutrition services, or multipurpose senior centers in the planning and service area covered by the area plan and conduct an annual evaluation of the effectiveness of outreach;

(e) Conduct periodic evaluations of, and public hearings on, activities carried out under the area plan;

(f) Monitor, evaluate, and, if [where] appropriate, comment on the policies, programs, hearings, levies, and community actions which affect older persons;

(g) Monitor and assess services as approved in area plans to determine compliance with contract requirements, approved area plans, and with applicable federal and state statutory requirements;

(h) Submit written evaluation of findings with recommendations regarding on-site monitoring visits and reports to the service providers;

(i) Require the service provider to permit staff of the Cabinet for Human Resources, persons acting for the Cabinet for Human Resources, and staff designated by appropriate federal agencies to monitor and evaluate programs and activities initiated under the Older Americans Act and other programs for which the division has administrative responsibility; and

(j) Require the service provider to have provision for interview of clients by persons and agencies listed in paragraph (i) of this subsection, and the area agency on aging, except if [where] confidentiality requirements are applicable.

(11) The area development districts shall adhere to the procurement requirements contained in the references and shall:

(a) Promote open and free competition among qualified competitors.

(b) Not restrict or eliminate competition by placing unreasonable or unnecessary requirements on potential bidders.

(c) Establish procurement procedures which take into account the requirements of OMB Circular A-102 and other federal, state and local requirements. Procedures shall include:

1. Method for resolving protests, disputes and claims;
2. Written code or standards of conduct;
3. Review process to avoid unnecessary purchases or duplicative items;
4. Affirmative action standards which encourage contracting with minority-owned, small businesses;
5. Methods for procurement; and
6. Evaluation and selection criteria.

(d) Efforts shall be made by the area development districts to formally advertise programs and services. If the area development districts choose to utilize noncompetitive negotiations, they shall clearly document, and maintain on file, that only one (1) responsible

provider is available, capable and qualified to provide the service; and that by using noncompetitive negotiations, open and free competition shall not be restricted. Area development districts shall maintain records sufficient to detail the significant history of the procurement. In addition to maintaining these documents on file, the area development districts shall provide, upon request, copies to the division, prior to subcontracting, supporting noncompetitive negotiations.

(12) Area agencies on aging shall conduct public hearings on area plans prior to their submission to the division. Amendments to area plans determined by the division to be nonadministrative in nature shall also be subject to public hearings. Area agencies on aging shall comply with the following provisions in scheduling public hearings:

(a) The selected hearing site shall be that most readily accessible to residents in the planning and service area.

(b) Notice of the hearing date, time and location shall be advertised in the area media at least ten (10) days prior to the hearing.

(c) A copy of the area plan or amendment shall be available for public review during the ten (10) working day period prior to the scheduled public hearing and the opportunity for review publicly advertised.

(d) A verbal presentation on the plan or amendment shall be given at the public hearing and written summaries of the plan or amendment made available for distribution. Area agency staff shall be present to respond to questions from the audience, which shall be encouraged.

(e) The area agency shall elicit from the audience both verbal and written recommendations and extend for a period of up to two (2) weeks the opportunity to submit comments.

(f) Written suggestions and summaries of verbal comments shall be kept on file by the area agency on aging for the duration of the plan.

(13) The area agencies on aging shall comply with the following program reporting requirements of the division:

(a) A quarterly program performance report shall be submitted to the division fifteen (15) calendar days after each quarter in accordance with format and instructions provided by the division.

(b) An annual program performance report shall be submitted to the division for the federal fiscal year October 1 - September 30 in accordance with format and instructions provided by the division.

(c) A homecare quarterly report shall be submitted to the division in accordance with format and instructions provided by the division.

(d) A monthly meal count report for Title III and homecare shall be submitted to the division by the 15th of each month following the month reported.

(e) The statewide computerized reporting system shall be utilized to collect information on homecare services in accordance with the homecare reporting instructions. This system shall be utilized and maintained in accordance with instructions and format provided by the division.

(f) Title V progress reports shall be submitted to the division fifteen (15) to twenty (20) calendar days after the end of each quarter in accordance with format and instructions

provided by the division.

1. Title V monthly narrative reports shall be submitted on local administration, job development, enrollee activities, orientation, on-the-job training, coordination and cooperation between agencies, outstanding activities, or problem areas.

2. Information on individual Title V enrollees shall be submitted at least annually or as various enrollee activities occur. Information shall include program certification or income eligibility, physical examination, client intake, job description, and evaluation activities.

(g) Special reports shall be required by the division as periodically specified. These reports may include but are not limited to:

1. Evaluations of outreach activities. In accordance with the Older Americans Act, Section 306(a)(6)(P), area agencies on aging shall conduct evaluations of outreach activities as prescribed by guidelines received from the Administration on Aging.

2. Evaluation of unmet need. In accordance with the Older Americans Act regulations, Section 1321.52, the division shall submit objectively collected and statistically valid data with evaluative conclusions concerning the unmet need for supportive services, nutrition services, and multipurpose senior centers gathered pursuant to Section 307(a)(3)(A) of the Older Americans Act to the Administration on Aging. The evaluations shall consider services in these categories regardless of the source of funding for the services. This information shall conform to guidance issued by the administration on aging.

(14) The area agency on aging shall assure that a written uniform system is in place for maintenance of waiting lists and shall follow these guidelines:

(a) Each waiting list for services shall be reported to the division as part of the quarterly program performance report.

(b) The waiting list for homecare services shall be updated monthly and shall include persons awaiting assessment, those assessed, and those for whom additional services are needed.

(c) The system shall be based on either a first-come, first-served basis or an approved objective method to prioritize applicants.

(d) Applicants shall be advised and presented with the written procedures and method of facilitating the waiting list.

(e) Applicants who are determined to be potentially eligible based on prescreening information gathered by the case manager may be placed on a waiting list.

Section 5. Service Provider Responsibilities.

(1) Each service provider shall specify in writing to the area development district how the provider intends to satisfy the needs of low-income minority individuals in the area served. The provider shall provide services to low-income minority individuals at least in proportion to the numbers of low-income minority older persons in the population served by the provider.

(2) The service provider shall provide the area agency on aging with statistical and other information which enables the area agency on aging to conform with state-required planning, coordination, evaluation and reporting provisions.

(3) The service provider shall provide for each homemaker providing services funded through the division a comprehensive training course designed by the division.

Section 6. Participant Responsibilities. (1) To receive services from a program or service administered by the division, the participant shall:

(a) Sign an application for services within thirty (30) days of receiving services or if the client is unable for physical or mental reasons to consent and has a legal guardian, caregiver, spouse or other proxy, the application shall be signed by that person.

(b) Signify the following voluntarily by signing the application:

1. Verification of income, if questionable except for Title III, which prohibits a means test;

2. Release of information to specified agencies;

3. Access by the cabinet and the area development district to the participant's records for monitoring purposes; and

4. Understanding by the participant of "participant responsibilities".

(2) If either party feels that an offense has occurred, recourse shall be sought through the mediation, grievance, or complaint procedures established by the provider, the area development district or the department.

(3) Participant services shall not be suspended by a provider agency until the case manager, center director or agency director has determined that the provisions of the care plan cannot be met due to the behavior of the participant or family. Services may be suspended if the service provider or case manager deems that a worker shall be at imminent risk or danger. The provider agency shall report suspension of services immediately to the area agency on aging who shall investigate the suspension and make a final determination.

(4) A written report which documents the grounds requiring suspension, attempts to resolve the situation and written notice that the client may file a grievance under fair hearing procedures shall be forwarded to the area development district or to the division if the area development district provides case management directly.

(5) If [When] conflicts or disagreements occur involving either staff or participants regarding mutual respect, the following steps shall be followed:

(a) A verbal warning to the staff or participant for the first conflict;

(b) A written warning for a second conflict;

(c) Suspension;

(d) In situations of suspension as described in subsection (3) of this section, a written report which documents the grounds requiring suspension, attempts to resolve the situation and written notice that the client may file a grievance under the fair hearing procedures shall be forwarded to the area development district or to the Division of Aging Services if the area development district provides case management directly; and

(e) Detailed written records shall be maintained for the service provider.

(6) The following shall be excluded from subsections (1) through (5) of this section:

(a) Residents and family members who receive

services under the long-term care ombudsman program.

(b) Participants and providers of intake and referral, outreach and legal assistance.

(c) Congregate services provided in or arranged by a senior citizens center, nutrition site or other provider. Senior centers, nutrition sites, day care or other congregate programs may develop and display conspicuously a policy of mutual respect as appropriate for the congregate location.

Section 7. Confidentiality and Disclosure. (1) Client information obtained by the division or its contractors from an older person shall not be disclosed by the provider or agency in a form that identifies the person without the informed consent of the person or legal representative unless the disclosure is required by court order, or for program monitoring by authorized federal, state or local monitoring agencies.

(2) The division, the area agencies on aging, and the service providers shall refer reports of abuse, neglect, exploitation or spouse abuse received to Adult Protective Services, Department for Social Services.

(3) The division shall not be required to disclose those types of information or documents that are exempt from disclosure by a federal agency under the Federal Freedom of Information Act, 5 USC 552.

(4) The division or an area agency on aging shall not require a provider of legal assistance to reveal information that is protected by attorney-client privilege.

(5) Each area agency on aging shall have written confidentiality procedures.

Section 8. Center and Nutrition Site Operation. The division shall set minimum requirements for the types of service sites. Title III-B or Title III-C services shall be funded at a site only if [when] the site has been approved by the division. A site shall not become operational until an on-site visit by the division has been completed and express approval given by the division, except for emergency situations.

(1) The following criteria shall apply to the types of service sites:

(a) Services shall comply with the standard service definitions as governed by 905 KAR 8:170, Support services for the elderly.

(b) Prior to approval of any Title III-B or III-C site, it shall be inspected by the following:

1. Local health department for compliance with applicable health codes. These codes shall vary depending on the types of services provided at the site;

2. Local fire department for compliance with fire and building safety codes; and

3. Division shall conduct on-site visits for compliance with Section 307(a)(8) of the Older Americans Act.

(c) Sites shall be located as near as possible to the target group of individuals.

(d) Sites shall comply with the confidentiality and disclosure requirements.

(e) Sites shall be clearly identified to the public with a sign.

(f) Location of the facility.

1. The selection of a site for a center shall be based on information on older people in its service area and on the advice of public and

voluntary agencies serving the elderly. The following factors shall be given consideration in choosing a site:

- a. Demographic information and projections;
- b. Accessibility to the maximum number of people who are socially or economically deprived;
- c. Proximity to other services and facilities;
- d. Convenience to public or private transportation or location within comfortable walking distance for participants;
- e. Free of structural barriers or difficult terrain; and
- f. Safety and security of participants and staff.

2. A center shall take necessary actions to create for handicapped older people barrier-free access and movement within the facility in conformance with the requirements of Section 504 of the Rehabilitation Act of 1973.

3. Arrangements shall be made for security of facility equipment, furniture, and files.

4. If appropriate, the facility shall make arrangements to offer activities and services at other locations in its service area.

5. If feasible, the location shall be a place [where] the people in the service area feel free to attend and participate.

(g) Safety requirements of local, state, and federal laws shall be met.

1. The center shall be free of physical hazards.

2. Signs shall be visible for exits, entrances, and other areas of importance.

3. Bathrooms and kitchens shall include safety features appropriate to their special uses.

4. Procedures for fire safety shall be adopted, including fire drills, inspection, and maintenance of fire extinguishers, periodic inspection and training by fire department personnel.

5. Procedures for disaster other than fire shall be developed and posted.

6. The facility shall be properly maintained and repaired as appropriate.

(h) Existing service sites that do not meet the above requirements shall comply with a corrective action plan administered by the division.

(2) Nutrition site requirements.

(a) Each nutrition site shall have an individual, either volunteer or paid staff, who is responsible for the administration of the site. At least one (1) staff person shall be present at the site during hours of operation.

(b) Minimum services which shall be available at a nutrition site are:

1. At least one (1) hot meal shall be provided two (2) or more days a week.

2. Arrangements for outreach services shall be in place. These services may be funded by III-B or III-C.

3. Information and referral shall be available through the nutrition site.

4. Nutrition education shall be available through the nutrition site.

(c) An optional service may be home-delivered meals.

(d) The total number of participants to be served shall be adequate to justify the cost of operating the site.

(e) Meals may be either prepared on site, catered, or prepared in a central kitchen.

(3) Senior service site requirements.

(a) Each senior service site shall have an individual, either paid or volunteer staff, who

is responsible for the administration of the site. At least one (1) staff person shall be present at the site during hours of operation.

(b) At a minimum, services shall be provided on a regularly scheduled basis, and be in operation two (2) or more days per week.

(c) The total number of participants to be served shall be adequate to justify the cost of operating the site.

(d) Minimum services which shall be available at this site:

1. Outreach activities, in addition to one (1) or more services, shall be provided;

2. Congregate meals shall not be provided at this site; and

3. Information and referral shall be available through the senior service site.

(4) Senior center requirements.

(a) Each senior center shall have an individual, either paid or volunteer staff who is responsible for the administration of the center. At least one (1) staff person shall be present at the site during hours of operation.

(b) The senior center shall be open at least four (4) hours a day, three (3) or more days per week.

(c) The total number of participants to be served shall be adequate to justify the cost of operating this center.

(d) Minimum services which shall be available at this center:

1. Services which are available at a nutrition site, with emphasis on outreach activities; and

2. At least one (1) additional supportive service shall be provided at this center.

(5) Multipurpose senior citizens center responsibilities.

(a) Each multipurpose senior citizens center shall have a full-time center director and an adequate number of qualified full-time or part-time staff to administer the center and provide quality service.

(b) At a minimum, a multipurpose senior citizens center shall be open six (6) hours per day and five (5) days per week.

(c) The total number of participants to be served shall be adequate to justify the cost of operating this center.

(d) Minimum services which shall be available at a multipurpose senior citizens center:

1. The services which are available at a nutrition site with emphasis on mandated outreach services;

2. At least one (1) component service shall be provided in each of the following categories:

a. Access services which includes transportation, outreach and information and referral;

b. In-home services which includes homemaker, home health aide, telephone, visiting reassurance and chore maintenance;

c. Other services which may be provided include services to residents of care-providing facilities, health-related services, volunteer activities, placement, individual and group activities and other services as defined by the division standard service definitions.

(6) Altering center operations.

(a) Prior approval shall be obtained from the division by an area agency on aging which intends to:

1. Close a center or open a new senior center;

2. Change the hours or days of operation;

3. Change the location of the center;

4. Change the method of providing services in

a manner that affects availability of ongoing services;

5. Substantially reduce the level or number of services.

(b) Justification for the change shall include:

1. The proposed effective date of this change;

2. Need or reason for the change;

3. The number of participants affected by this particular change or action;

4. Whether this change is temporary or permanent; explanation;

5. The cost benefit;

6. If a change is being made to an existing center, whether this facility was altered, renovated or constructed with Older Americans Act funds; date work was completed;

7. Whether the area agency on aging advisory council recommended this change;

8. What provisions are proposed to continue services to these participants; and

9. For a proposed new center, costs involved in meeting local fire, health, safety and sanitation regulations.

(c) A request to open a new center shall include copies of the completed health and fire department inspection forms and completed Title III site and focal point pages, if applicable.

(d) If [When] meal preparation at a new center is proposed, notify the division and the local fire and health departments.

(e) The division shall review the information submitted and if necessary or feasible conduct an on-site visit before a determination is made.

(f) In case of altered center operations due to damages caused by fires, floods, storms, high winds, and tornadoes, the Division of Aging Services shall be notified by telephone that emergency alterations are necessary. Prior approval shall be obtained by telephone from the Division of Aging Services on a conditional basis under emergency circumstances with final approval pending written documentation of the proposed change; local fire, health and safety inspections, and an on-site visit by the division.

Section 9. Sectarian Use of a Facility. With respect to the acquisition (in fee simple or by lease for ten (10) years or more), alteration, or renovation of existing facilities, or the construction of new facilities, the division shall assure that Title III funds shall not be used for sectarian instruction or to provide a facility for religious worship. The prohibition does not preclude the use of a facility owned by a religious organization for the delivery of services to the elderly.

Section 10. Contracts. (1) The division shall designate planning and service areas in the state and shall make a contract under an approved area plan with one (1) area agency (area development district) in each planning and service area for the purpose of building comprehensive systems for older persons throughout the state. The area development district, in turn, shall contract with service providers to perform certain specified functions. Each contract negotiated shall contain at least the following:

(a) A complete detailed description of services to be provided by the contractor;

(b) A complete description of other responsibilities of the contractor including: records retention, reporting requirements,

cost-sharing, and compliance with applicable assurances, laws, and regulations;

(c) A complete description of the cabinet's responsibilities and commitments to the contractor including: technical assistance which shall be provided and activities which the cabinet shall perform in order for the contractor to meet its obligations;

(d) A complete description of the basis for reimbursement to the contractor for services rendered including:

1. Rates;

2. Frequency of billing;

3. Invoice requirements;

4. Office site for [where] invoices [are] to be submitted; and

5. A budget if [when] applicable;

(e) Assurances regarding the rights of cabinet personnel or designees; state or federal officials or auditors; or independent auditors to inspect records and monitor service delivery of the contractor relative to evaluation and audits;

(f) A requirement that the contractor accepts responsibility for an audit exceptions arising from its failure to comply with the terms of the contract including regulations applicable to federally-funded activities;

(g) A final invoice for services rendered under the contract shall be submitted to and received by the Department for Social Services no later than thirty (30) days following the expiration date of the contract, unless a written request for waiver of this deadline is submitted by the contractor and approved by the Department of Social Services fifteen (15) days prior to the expiration date and accompanied by a signed statement from the contractor that it is the final invoice and that no further billings shall be sent to the Department for Social Services relative to cost for services provided under the agreement; and

(h) A clause that either party shall have the right to terminate the contract upon thirty (30) days written notice served on the other by registered or certified mail.

(2) A certified public accountant shall be engaged by an area development district to make independent audits of the area development district's financial and other records for the period for which the contract is in effect.

(a) The certified public accountant engaged by the area development district shall make an independent audit of the area development district's financial and other records for the period for which the contract is in effect, and submit an original of the audit to the Kentucky Department of Local Governments and a copy of the audit to the division properly certified by the certified-public accountant, not later than ninety (90) days after the end of the [said] period or upon completion of an organization-wide audit conducted in accordance with OMB A-128 and the Single Audit Act of 1984, PL 98-502. The engagement letter between the area development district and its certified public accountant shall contain the following clauses:

1. The auditor shall, in accordance with generally accepted auditing standards, examine the agency's final expenditure reports as required and issue a report on the examination. Specifically included within the scope of this examination are the following audit procedures:

a. The auditor shall familiarize himself with

the agency's approved cost allocation plan as submitted to the Kentucky Department of Local Government or to the area development district if provider agency is a subcontractor of the area development district and verify that the agency used the correct accounting methodology to derive the expenditures presented on the above-mentioned final expenditure reports;

b. The audit report shall contain a supplemental schedule that consolidates individual subcontractor's final expenditure reports into a total expenditure report for each major service program. While the auditor may disclaim an opinion on this supplemental schedule, he shall verify its mathematical accuracy;

c. The auditor shall familiarize himself with applicable requirements as set forth in the Department for Social Services' aging policies, contract requirements, and applicable federal requirements. Deviations from these requirements which, in the judgment of the independent auditor, relate to substantive program or financial matters, shall be furnished directly by the auditor to the division, Kentucky Department for Social Services.

(b) The cabinet, Kentucky Auditor of Public Accounts, U.S. Department of Health and Human Services, U.S. General Accounting Office, and other appropriate federal agencies retain the right to audit and review the area development district's records and accounts for a period of three (3) years from the date of the last payment received for the contract period, or until audited and audit exceptions are resolved; and

(c) The final audited fiscal report, reconciled with the audit, shall be submitted not later than ninety (90) days after the ending date of the contract, or upon completion of an organization-wide audit conducted in accordance with OMB A-128 and the Single Audit Act of 1984, PL 98-502, or, if termination or cancellation occurs, not later than sixty (60) days after notice of the termination or cancellation. The cabinet has the right to deny payment for a fiscal report that does not comply with this provision.

(3) The division shall authorize the carry over of federal funds on a case-by-case basis. Area agencies on aging shall submit a narrative request for permission to carry over federal funds explaining the reason for a fund surplus and the intended use of these funds. Under Title III of the Older Americans Act, carry-over federal funds shall be matched with fifteen (15) percent local funds and no state general funds shall be carried over. Program income shall be expended in the same year in which it is collected. Each area agency on aging shall be advised to plan, administer and monitor its programs in a manner which assures that funds are utilized in the year in which they are allocated.

(4) The contractor shall certify that it [is not and] shall not violate [either directly or indirectly] a conflict of interest statute or other applicable statute or principle by the performance of the contract.

(5) Contributions.

(a) Contributions or donations, as pertains to Title III programs, made by participants and other contributors shall be considered program income and shall be utilized to expand services provided under the Older Americans Act. Each

service provider shall have an established method for providing the opportunity for participants to voluntarily contribute to the estimated cost of services rendered. Participants may be provided information to assist them in determining the amount, if any, of an individual contribution. If the participant is unable to contribute, that person shall not be denied services for failure to contribute. A means test shall not be used.

(b) Confidentiality of contributions from participants and other contributors shall be assured. Collection of contributions shall be done in a discreet manner. No written acknowledgement of the amount of contributions shall be issued except upon request of the person making the contribution when [at the time] the contribution is made. Participants desiring a record of their contributions shall be encouraged to use checks if [when] making contributions. To insure against loss, mishandling or theft of contributions, the following procedures shall be followed:

1. Two (2) persons, a participant and a staff person, shall be selected at each site to be responsible for counting and recording contributions daily;

2. Provision shall be made for safe-keeping of money from the date of collection until the provider arranges for transfer of funds. This shall be a locked box placed in a safe or a secure cabinet, file closet, or daily deposit; and

3. Funds shall be verified and collected at least weekly by the service provider.

(6) In-kind contributions shall be allowed to be used for the purpose of meeting the match if [when] state funds, available local cash, and program income are not enough to provide the match required to obtain maximum federal funds.

(a) The subcontractor shall provide to the area agencies on aging certified statements of donated items;

(b) Match verification requirements shall be completed by the service provider and submitted to the area agency on aging if [when] applicable; and

(c) The Cabinet for Human Resources shall retain the right to request a review of these documents.

(7) In accordance with the contract, the contractor or area development district shall have a properly executed fidelity bond. The bond shall be sufficient to cover maximum sums handled quarterly under the contract with the Division of Aging Services; and a copy shall be provided to the Department for Social Services no later than sixty (60) days from the effective date of the contract. Bonds required shall be obtained from companies holding certificates of authority as acceptable sureties.

(8) Matching requirements.

(a) The area agency on aging shall meet the matching requirements through allowable costs and third party in-kind contributions, program income or cash. Match may be cash or in-kind. Match, whether it is cash or in-kind, shall meet the following requirements:

1. It shall not be supported with federal funds;

2. It shall be an allowable cost;

3. It shall be included in the accounting records and audit; and

4. It shall not be used to match other federal program.

(b) Certification of the appropriate match amount shall be submitted to the Department for Social Services by the area agency on aging on a quarterly basis. The match requirement shall be met by category by the end of each quarter of the fiscal year. The procedure for certifying match shall be as follows:

1. The area agency on aging monthly financial reports shall indicate the amount of match collected and applied during the month;

2. At the end of the quarter, the financial report shall indicate the total amount of funds necessary to meet the match requirement, by category, for the quarter; and

3. Requests for reimbursement shall reflect the amount of federal and state funds that is due based on expenditures and match. The Division of Aging Services shall not penalize contractors in terms of reimbursement of federal and state funds during the first two (2) months of the quarter if the required match is not documented on the report. The required amount of match shall be documented at the end of each quarter. Adjustments, decreases if necessary, in payment shall be made at this time.

(9) Program income shall pertain to revenue received by service agencies under contract or subcontract with the division to conduct programs and provide services which are paid for either fully or partially with federal or matching funds. Program income includes participant contributions, proceeds from the sale of equipment or property, and rental fees. Program income shall be spent during the same fiscal year it is collected and shall be used to further the objectives of the aging program. The cost principles applicable to federal funds also apply to program income. Program-related income, under Title III, shall be used in either the additive alternative in 45 CFR 92.25(g)(2) or the cost-sharing or matching alternative in 45 CFR 92.25(g)(3) or a combination of the two (2). The deduction alternative described in 45 CFR 92.25(g)(1) shall not be permitted.

(10) The area development district and subcontractors shall maintain records pertaining to the contract for a period of not less than three (3) years after the matters pertaining to the contract are resolved in accordance with applicable federal and state laws, regulations and policies.

(11) The area development district may enter into subcontracts only upon receipt of a final contract with the Cabinet for Human Resources. To conduct activities or services on its behalf, the area development district may enter into subcontracts, and amendments thereof, with profit-making corporations with prior approval of the Cabinet for Human Resources. Recipients of awards shall be incorporated to safeguard the interest of the cabinet, the area agency on aging, the recipient of the award itself, the individuals involved in the delivery of services, and the individuals participating in the program, unless award is made to an individual under a personal service contract.

(a) The area development district shall execute a formal subcontract for those activities and services to be conducted by an agency or organization other than the area development district. The subcontract shall contain sufficient program and fiscal information to assure that the activities and services under an approved plan shall be conducted in conformity with the Older Americans

Act. Once a subcontract has been executed by an area development district to carry out a service or activity under an approved plan, the subcontract shall be forwarded within thirty (30) days to the division and made part of the approved area plan.

(b) If the unit cost rate of a fixed rate subcontract is increased, a subcontract amendment reflecting the increase shall require prior review by the area agency on aging advisory council, approval by the area development district board and approval of the division.

(12) The division shall require prior approval of transfers of funds allocated to area development districts. With respect to Title III funds, the following shall apply:

(a) The area agency on aging may elect, in its area plan to transfer a portion of the funds for use as the area agency on aging considers appropriate to meet the needs of the area served;

(b) The area agency on aging may elect to transfer between allotments up to a percentage, set by the division, of an agency's separate allotments for congregate and home-delivered nutrition services;

(c) The area agency on aging may elect to transfer not more than a percentage, set by the division, of the funds allotted for a fiscal year between programs under part B and part C of Title III, for use as the agency considers appropriate;

(d) Title III funds shall not be transferred from Part B, C1, C2 after approval of the original budget by the division; and

(e) If the area agency on aging proposes to transfer more than the above percentages from one (1) allotment to another, the request shall be submitted to the division by March 1 of each approaching fiscal year and shall be by written request with justification for each transfer.

Section 11. Medication Assistance. Providers other than licensed home health agencies may allow staff to assist participants in medication usage. Assistance shall be provided only by staff who have received training in medication assistance and only to individuals whose care plans include this service.

(1) The assessor or case manager shall:

(a) Conduct an assessment of the individual to determine the presence of sensory or functional impairment which may indicate problems with taking medication.

(b) Collect information from the client on medications, including prescriptions and over-the-counter drugs and the following:

1. Name and dosage of the medication;
2. Purpose of the medication;
3. The amount of the medication ordered;
4. Amount to be taken each time and when;
5. The physician's name.

(c) Prepare a list of medications prescribed including the times at which they shall be taken.

(d) If a client is using over-the-counter medications or home remedies, contact the client's physician or pharmacist to secure approval for their continued use.

(2) The provider shall:

(a) Set up a schedule to be followed daily. After each medication has been taken, the provider shall check it off. Refer to the schedule and remind the client if [when] medicine is due.

(b) Assure that the correct medication is

given by checking the prescription label before giving the medicine bottle to the client.

(c) Assure that the method of taking the medication is followed.

(d) Explain to the client the importance of taking prescription or over-the-counter medication as directed.

(e) Place certain medications within the client's reach so that the client can place these tablets under the tongue the moment chest pain occurs.

(f) Put away sleep and pain medications after each use. Sleeping pills and other addicting drugs shall be used only as ordered by the doctor.

(g) Review the evening medication schedule with the client, being sure the client knows the method and time to take medications if [when] no assistance can be given, leaving the medications within easy reach of the client and encouraging the client to take nighttime doses in a well-lit room.

(h) If the client has questions about the medications, encourage the client to consult his doctor.

Section 12. Volunteers. Each area agency on aging shall develop mechanisms for volunteer recruitment and training. The division shall coordinate with the foster grandparent program, retired senior volunteer program, senior centers, and other agencies or organizations in the provision of meaningful volunteer services. The division shall review proposals for continuation of volunteer programs, comment to the respective agencies, and submit letters of support upon request of the applicant agencies.

Section 13. Records Check. In the programs administered by the division, applicants for employment and volunteers with direct client contact shall be requested to authorize the release of police records to the area development district using a request for police record search. An applicant or volunteer with a criminal record may be employed only with the approval of the executive director of the area development district. It shall not be a condition of employment for the applicant to authorize the release of police records. It shall not be a condition of participant eligibility in the Title V program for the applicant to authorize the release of police records. Title V participants applying to be employed by the area development district or service provider in direct ongoing program responsibilities shall authorize the release of police records.

Section 14. State Plan. The division shall develop and submit for federal approval and funding a state plan for the delivery of services to the elderly in accordance with the provisions of Section 307 of the Older Americans Act and which advances the state agency mission as set forth under 45 CFR 1321.7. Administration of the state plan shall be subject to the federal legislative and regulatory provisions and Division of Aging Services policies.

(1) The state plan shall include:

(a) Identification of the single state agency that has been designated to develop and administer the plan;

(b) Statewide program objectives to implement the requirements under Title III of the Older

Americans Act and subsequent objectives established through the rulemaking process;

(c) A resource allocation plan indicating the proposed use of all Title III funds directly administered by the state agency, and the distribution of Title III funds to each planning and service area;

(d) Identification of the geographic boundaries of each planning and service area and of area agencies on aging designated for each planning and service area;

(e) Provision of prior federal fiscal year information relating to low-income minority and rural older individuals as required by Sections 307(a)(23) and (29) of the Older Americans Act;

(f) Assurances and provisions required in Sections 305 and 307 of the Act and requirements under 45 CFR 1321.5-1321.75; and

(g) Assurances as prescribed by the Commissioner of the U.S. Administration on Aging.

(2) The division shall provide for amendments to the state plan on aging services in accordance with the provisions of 45 CFR 1321.19. The state plan shall be amended to:

(a) Reflect new or revised federal statutes or regulations.

(b) Reflect a material change in any law, organization, policy or state agency operation.

(c) Reflect information required annually by Sections 307(a)(23) and (29) of the Older Americans Act.

(3) The division shall submit for prior approval of the commissioner of the Administration on Aging proposed amendments to the state plan required under 45 CFR 1321.17(a) or (f); and shall notify the commissioner of changes of provisions under 45 CFR 1321.17(b) through (d).

(4) The division shall exercise the right of appeal and request for hearing on federal disapproval of state plan on aging services under the provisions of Sections 307(c) and 207(d) of the Older Americans Act which are subject to the provisions of 45 CFR Part 213.

Section 15. Hearing Procedures for Area Agency on Aging. (1) The division shall provide an opportunity for a hearing to area agencies on aging if [when] the division proposes the following adverse actions:

(a) Disapproves the area plan or plan amendment submitted by the area agency as specified in 45 CFR 1321;

(b) Withdraws the area agency on aging's designation as provided in 45 CFR 1321; or

(c) Denies an application for designation as a planning and service area under 45 CFR 1321.

(2) If a complaint is filed, the area agency on aging shall be afforded:

(a) An opportunity to review pertinent evidence on which the adverse action was based;

(b) An opportunity to appear in person before a group which shall render an impartial decision to refute the basis for the decision;

(c) An opportunity to be represented by counsel;

(d) An opportunity to present witnesses and documentary evidence;

(e) An opportunity to cross-examine witnesses; and

(f) A written impartial decision which sets forth:

1. The reasons for the decision;

2. The evidence on which the decision is based; and

3. A statement explaining the complainant's rights to appeal.

(3) Complaints filed by area agencies on aging shall be as follows:

(a) Area agencies on aging shall file a written request for a hearing with the Commissioner, Department for Social Services, within thirty (30) days following its receipt of the notice of the adverse action. The request shall contain reasons for the appeal.

(b) If [When] a request for a hearing is received, the Commissioner, Department for Social Services, shall:

1. Appoint a hearing officer and provide written notification of the appointment to the interested parties;

2. Notify the area agency on aging of the date, time and location of the hearing;

3. Make arrangements for official recording of the hearing and retain the official transcript, if transcribed, of testimony and other material submitted. Interested parties may obtain transcripts of hearings upon request to the Department for Social Services and upon payment at rates that do not exceed the actual cost. An expense shall be borne by persons requesting the transcript;

(c) The Department for Social Services may terminate formal hearing procedures if the department and area agency on aging, and other interested parties participating in the hearing, negotiate a written agreement that resolves the issue which led to the hearing.

(d) It is the responsibility of the hearing officer to conduct a fair and impartial hearing, avoid delay, and maintain order. In so doing, he has authority that includes but is not limited to:

1. Regulating the course of the hearing;

2. Regulating the participation and conduct of parties, amicus curiae, and others at the hearing;

3. Ruling on procedural matters and, if necessary, issuing protective orders or other relief to a party against whom discovery is sought;

4. Taking an action authorized by the regulations;

5. Administering oaths and affirmations;

6. Examining witnesses;

7. Receiving or excluding evidence;

8. Ruling on or limiting evidence or discovery; and

9. Recommending a final decision.

(e) The final decision on an area agency on aging appeal to the Department for Social Services shall be rendered by the Commissioner, Department for Social Services. The decision of the commissioner shall contain information from the federal regulations 45 CFR 1321 regarding appeal rights.

(f) The Department for Social Services shall complete the hearing within eighty (80) days of the date the request for hearing was received by the state agency. The state agency shall issue the hearing decision within ten (10) working days after the hearing is completed.

Section 16. Hearing Procedures for Title III Subcontractors or Applicants to be Subcontractors. Subcontractors or applicants to be subcontractors of area agencies on aging shall be provided an opportunity for a hearing whose application to provide services under an area plan is denied or a service provider funded

under Title III whose subcontract is terminated or not renewed except as provided in 45 CFR Part 74 Subpart B.

(1) The procedure for complaints lodged by service providers or applicants to provide services who are subcontractors shall be as follows:

(a) The service provider or unsuccessful applicant to provide services shall contact the contracting agency to try to work out a satisfactory solution.

(b) If a complaint is filed, the complainant shall comply with the contracting agency's hearing procedures which shall include the following provisions:

1. A service provider or unsuccessful applicant to provide services aggrieved by an adverse action of a contracting agency shall, within ten (10) working days from receipt of notice of the adverse action, file a written complaint with the agency;

2. The contracting agency shall notify all parties of interest that a complaint has been filed and determine a time and place for the hearing;

3. An opportunity to review pertinent evidence on which the adverse action was based;

4. An opportunity to appear in person before an individual or a group of three (3) persons which can render an impartial decision to refute the basis for the decision;

5. An opportunity to be represented by counsel;

6. An opportunity to present witnesses and documentary evidence;

7. An opportunity to cross-examine all witnesses; and

8. A written impartial decision within ten (10) days of receipt of complaint which sets forth:

a. The reasons for the decision;

b. The evidence on which the decision is based; and

c. A statement explaining the complainant's rights to appeal.

(2) If the complainant is not satisfied with the decision of the contracting agency, the complainant shall file a notice of appeal within five (5) working days of the adverse action to the area development district and the area development district board of directors shall be responsible for the provision of a full evidentiary hearing within twenty (20) days of receipt of written notice of the complaint in order to render a final impartial decision. It shall be the responsibility of the area development district to provide an official transcript of the hearing at the final local appeal level to include all testimony, a copy of findings of fact, conclusions of law and final order, along with other evidence and exhibits submitted for the record. An impartial decision shall be made as soon as practicable or within ten (10) working days.

(3) The hearing shall be limited to those issues included in the original complaint. Only those issues shall be addressed unless issues have been added, modified, or deleted through written agreement of the involved parties.

(4) The complainant may drop the complaint if satisfied with the response of the area development district. If the complainant is not satisfied, the complainant may appeal to the Department for Social Services for a state-level review within five (5) working days from the time the decision is received.

(5) Upon receipt of the request, the hearing officer appointed by Department for Social Services shall request the transcript of the hearing before the area development district board of directors and notify interested parties that the appeal has been filed. Upon proper motion of any interested party, the hearing officer may dismiss an appeal if it was not timely filed, or remand the appeal to the area development district board of directors if the appellant did not exhaust his administrative remedies at the local level.

(6) The hearing officer shall make a determination of the issues based on the transcript of the hearing before the area development district board of directors. New evidence shall not be introduced during the appeal to the Department for Social Services unless it is determined by the hearing officer that additional evidence is necessary in order to make a decision.

(7) The hearing officer shall forward his recommended decision to the Commissioner, Department for Social Services, within ten (10) days of receipt of appeal. The final decision shall be rendered by the Commissioner, Department for Social Services, within ten (10) working days after receipt of hearing officer's recommendation. The decision of the Commissioner

of the Department for Social Services shall be the final order.

Section 17. Material Incorporated by Reference. (1) Forms necessary for the implementation of the general administration of programs for the elderly are being incorporated by reference.

(2) Material incorporated by reference may be inspected and copied at the Department of Social Services, CHR Building, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

Section 18. Repeal. The following administrative regulations are repealed:

(1) 905 KAR 8:010, Older Americans Act audit guide.

(2) 905 KAR 8:040, Allocation formula for Older Americans Act.

(3) 905 KAR 8:050, Older Americans Act procedural instructions for contractors.

(4) 905 KAR 8:060, Older Americans Act state plan.

(5) 905 KAR 8:080, Older American Act financial management and nutrition guide.

LARRY MICHALCZYK, Commissioner

HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: October 9, 1991

FILED WITH LRC: October 10, 1991 at 11 a.m.

REGULATIONS AMENDED AFTER PUBLIC HEARING OR WRITTEN COMMENTS RECEIVED

DEPARTMENT FOR MILITARY AFFAIRS
Division of Disaster and Emergency Services
(Amended After Hearing)

106 KAR 1:081. Kentucky emergency response commission fee system requirements.

RELATES TO: KRS 39.800 to 39.990, 42 USC 11001 to 11050

STATUTORY AUTHORITY: KRS 39.817, 39.845, 39.850, 39.890, 42 USC 11002(c), 11003(c)(d)

NECESSITY AND FUNCTION: This regulation sets forth the requirements to be followed by facilities subject to paying a fee.

Section 1. Definitions. (1) "Category One Facility" means any facility owned or operated by local, state or federal government which is exempted from paying any fee in accordance with KRS 39.817. This exemption applies solely to fees and does not exempt any Category One Facility from reporting requirements pursuant to KRS 39.800 to 39.905.

(2) "Category Two Facility" means any facility that has not less than 10,000 pounds and not more than 499,999 pounds of each of ten (10) or fewer hazardous substances. The combined total of all hazardous substances shall not exceed 499,999 pounds.

(3) "Category Three Facility" means any facility that has 10,000 pounds or more of each of eleven (11) or more hazardous substances. The combined total of all hazardous substances shall not exceed 499,999 pounds.

(4) "Category Four Facility" means any facility that has a total inventory of over 499,999 pounds of hazardous substances.

(5) "Category Five Facility" means any facility that has an extremely hazardous substance as set out in Section 6 of this regulation in excess of the threshold planning quantity.

(6) "DES/SARA-312" means the state annual chemical inventory reporting form due March 1 each year, covering the preceding calendar year.

(7) "DES/SARA-312-C" means the confidential state annual chemical inventory reporting form due March 1 each year, covering the preceding calendar year which may be used if a facility elects to withhold location information on a specific chemical from disclosure to the public pursuant to 42 USC 11044(a).

(8) "Hazardous chemical" means any substance for which a facility is required to prepare or have available a material safety data sheet under the Occupational Safety and Health Act of 1970 and federal regulations promulgated under that Act.

(9) "Hazardous substance" means any substance defined in KRS 39.805(5) [and for annual inventory reporting purposes shall include hazardous chemicals].

(10) "KyERC" means the Kentucky Emergency Response Commission.

Section 2. Facility Requirements. (1) In accordance with the planning requirements of KRS 39.845 and 39.850, 42 USC 11002(c) and 11003(c)(d), no later than sixty (60) days after a facility notifies the Kentucky Emergency Response Commission that it is subject to the requirements of this section, the facility shall

provide emergency response planning information to the local emergency planning committee and shall assist the local emergency planning committee develop a Tab Q-7 or commission-approved equivalent as set out in Section 6 of this regulation for all extremely hazardous substances set out in Section 6 of this regulation in excess of the threshold planning quantity for submission in accordance with the requirements of 106 KAR 1:091.

(2) After initial submission and approval of the Tab Q-7 or commission-approved equivalent in accordance with subsection (1) of this section, each March 1 any facility that has an extremely hazardous substance as set out in Section 6 of this regulation in excess of the threshold planning quantity shall review the Tab Q-7 or commission-approved equivalent and send certification to the local emergency planning committee stating that there were no changes and therefore the plan is correct as is; or the plan has been revised and the revisions are included with the certification.

(3) A Category Five Facility which is not subject to the annual chemical inventory reporting requirement due on DES/SARA-312 and, if applicable DES/SARA-312-C shall comply with Section 2(1) and (2) of this regulation and shall file the fee in accordance with Section 4 of this regulation.

(4) Any facility subject to the annual chemical inventory reporting requirements contained in KRS Chapter 39.890, and 42 USC 11022 shall submit Form DES/SARA-312 and, if applicable DES/SARA-312-C as set out in Section 6 of this regulation no later than March 1 each year in accordance with the filing instructions in Section 4 of this regulation.

Section 3. Fees shall be payable in accordance with the schedule listed below except the same owner or owners of two (2) or more facilities in a single county subject to paying a fee shall pay a fee not to exceed a total of \$250 for all those facilities in that county.

(1) Category One Facility fee is \$0.

(2) Category Two Facility fee is \$40.

(3) Category Three Facility fee is \$250.

(4) Category Four Facility fee is \$250.

(5) Category Five Facility fee is \$250.

Section 4. Filing Requirements for Fees and Forms DES/SARA-312 and DES/SARA-312-C. A computer-generated form containing all the information in DES/SARA-312 and DES/SARA-312-C may be accepted. All fees and forms DES/SARA-312 and, if applicable DES/SARA-312-C, shall be filed simultaneously, no later than March 1 each year. Checks shall be made payable to "Kentucky State Treasurer" and shall be marked "For KyERC Fee Account". Fees and forms shall be mailed to: Chairman, Kentucky Emergency Response Commission, EOC Building-Boone National Guard Center, Frankfort, Kentucky 40601-6168.

Section 5. Penalties. Failure to comply with provisions of this regulation shall result in penalties as provided in KRS 39.990(3).

Section 6. The forms referred to in Sections 1(6), (7), 2(1), (2), (3), (4) and 4 of this regulation is [are] set out in this section.

ADMINISTRATIVE REGISTER - 2311

The list of extremely hazardous substances referred to in Section 2(1), (2) of this regulation are set out in this section.

**The List of Extremely Hazardous Substances and their Threshold Planning Quantities
(Alphabetical Order)**

CAS No.	Chemical Name	Threshold planning quantity (pounds)	Notes
75865	ACETONE CYANOHYDRIN	1000	
1752303	ACETONE THIOSEMICARBAZIDE	1000/10000	e
107028	ACROLEIN	500	
79061	ACRYLAMIDE	1000/10000	d, l
107131	ACRYLONITRILE	10000	d, l
814686	ACRYLYL CHLORIDE	100	e, h
111693	ADIPONITRILE	1000	e, l
116063	ALDICARB	100/10000	c
309002	ALDRIN	500/10000	d
107186	ALLYL ALCOHOL	1000	
107119	ALLYLAMINE	500	e
20859738	ALUMINUM PHOSPHIDE	500	b
54626	AMINOPTERIN	500/10000	e
78535	AMITON	500	e
3734972	AMITON OXALATE	100/1000	e
7664417	AMMONIA	500	l
300629	AMPHETAMINE	1000	e
62533	ANILINE	1000	d, l
88051	ANILINE, 2,4,6-TRIMETHYL-	500	e
7783702	ANTIMONY PENTAFLUORIDE	500	e
1397940	ANTIMYCINA	1000/10000	c, e
86884	ANTU	500/10000	
1303282	ARSENIC PENTOXIDE	100/10000	d
1327533	ARSENOUS OXIDE	100/10000	d, h
7784341	ARSENOUS TRICHLORIDE	500	d
7784421	ARSINE	100	e
2642719	AZINPHOS-ETHYL	100/10000	e
86500	AZINPHOSMETHYL	10/10000	
98873	BENZAL CHLORIDE	500	d
98168	BENZENAMINE, 3-(TRIFLUOROMETHYL)-	500	e
100141	BENZENE, I(CHLOROMETHYL)-4-NITRO-	500/10000	e
98055	BENZENEARSONIC ACID	10/10000	e
3615212	BENZIMIDAZOLE, 4,5-DICHLORO-2-(TRIFLUOROMETHYL)-	500/10000	e, g
98077	BENZOTRICHLORIDE	100	d
100447	BENZYL CHLORIDE	500	d
140294	BENZYL CYANIDE	500	e, h
15271417	BICYCLO(2.2.1)HEPTANE-2-CARBONITRILE, 5-CHLORO-6(((METHYLAMINO)CARBONYL)OXY)IMINO-, (1 S-(2-ALPHA, 2-BETA, 4-ALPHA, 5-ALPHA, 6E))-	500/10000	e
534076	BIS(CHLOROMETHYL)KETONE	10/10000	e
4044659	BITOSCANATE	500/10000	e
10294345	BORON TRICHLORIDE	500	e
7637072	BORON TRIFLUORIDE	500	e
353424	BORON TRIFLUORIDE COMPOUND WITH METHYL ETHER(1:1)	1000	e
28772567	BROMADIOLONE	100/10000	e
7726956	BROMINE	500	e, l
1306190	CADMIUM OXIDE	100/10000	e
2223930	CADMIUM STEARATE	1000/10000	c, e
7778441	CALCIUM ARSENATE	500/10000	d
8001352	CAMPHECHLOR	500/10000	d
56257	CANTHARIDIN	100/10000	e
51832	CARBACHOL CHLORIDE	500/10000	e
26419738	CARBAMIC ACID, METHYL-, 0-(((2,4-DIMETHYL-1,3-DITHIOLAN-2-yl)METHYLENE)AMINO)-	100/10000	e
1563662	CARBOFURAN	10/10000	
75150	CARBON DISULFIDE	10000	
786196	CARBOPHENOTHION	500	e
57743	CHLORDANE	1000	d
470906	CHLORFENVINFOS	500	e
7782505	CHLORINE	100	
24934916	CHLORMEPHOS	500	e

ADMINISTRATIVE REGISTER - 2312

999815	CHLORMEQUAT CHLORIDE	100/10000	e, h
79118	CHLOROACETICACID	100/10000	e
107073	CHLOROETHANOL	500	e
627112	CHLOROETHYLCHLOROFORMATE	1000	e
67663	CHLORFORM	10000	d, l
542881	CHLOROMETHYL ETHER	100	d, h
107302	CHLOROMETHYL METHYL ETHER	100	c, d
3691358	CHLOROPHACINONE	100/10000	e
1982474	CHLOROXURON	500/10000	e
21923239	CHLORTHIOPHOS	500	e, h
10025737	CHROMIC CHLORIDE	1/10000	e
10210681	COBALT CARBONYL	10/10000	e, h
62207765	COBALT, ((2,2'-(1,2-ETHANEDIYL-BIS(NITRIL-O-METHYLIDYNE)) [q E] IS(6-FLUOROPHENOLATO)) (2-)N, NI, O, OI	100/10000	e
64868	COLCHICINE	10/10000	e, h
56724	COUMAPHOS	100/10000	
5836293	COUMATETRALYL	500/10000	e
95487	CRESOL, O	1000/10000	d
535897	CRIMIDINE	100/10000	e
4170303	CROTONALDEHYDE	1000	
123739	CROTONALDEHYDE(E)-	1000	
506683	CYANOGEN BROMIDE	500/10000	
506785	CYANOGEN IODIDE	1000/10000	e
2636262	CYANOPHOS	1000	e
675149	CYANURIC FLUORIDE	100	e
66819	CYCLOHEXIMIDE	100/10000	e
108918	CYCLOHEXYLAMINE	10000	e, l
17702419	DECABORANE(14)	500/10000	e
8065483	DEMETON	500	e
919868	DEMETON-S-METHYL	500	e
10311849	DIALIFOR	100/10000	e
19287457	DIBORANE	100	e
111444	DICHLOROETHYL ETHER	10000	d
149746	DICHLOROMETHYLPHENYLSILANE	1000	e
62737	DICHLORVOS	1000	
141662	DICROTOPHOS	100	e
1464535	DIEPOXYBUTANE	500	d
814493	DIETHYL CHLOROPHOSPHATE	500	e, h
164254	DIETHYLCARBAMAZINE CITRATE	100/10000	e
71636	DIGITOXIN	100/10000	c, e
2238075	DIGLYCIDYL ETHER	1000	e
20830775	DIGOXIN	10/10000	e, h
115264	DIMEFOX	500	e
60515	DIMETHOATE	500/10000	
2524030	DIMETHYL PHOSPHOROCHLORIDOTHIOATE	500	e
77781	DIMETHYL SULFATE	500	d
75785	DIMETHYLDICHLOROSILANE	500	e, h
57147	DIMETHYLHYDRAZINE	1000	d
99989	DIMETHYL-P-PHENYLEDIAMINE	10/10000	e
644644	DIMETILAN	500/10000	e
534521	DINITROCRESOL	10/10000	
88857	DINOSEB	100/10000	
1420071	DINOTERB	500/10000	e
78342	DIOXATHION	500	e
82666	DIPHACINONE	10/10000	e
152169	DIPHOSPHORAMIDE, OCTAMETHYL-	100	
298044	DISULFOTON	500	
514738	DITHIAZANINE IODIDE	500/10000	e
541537	DITHIOBIURET	100/10000	
316427	EMETINE, DIHYDROCHLORIDE	1/10000	e, h
115297	ENDOSULFAN	10/10000	
2778043	ENDOTHION	500/10000	e
72208	ENDRIN	500/10000	
106898	EPICHLOROHYDRIN	1000	d, l
2104645	EPN	100/10000	e
50146	ERGOCALCIFEROL	1000/10000	c, e
379793	ERGOTAMINE TARTRATE	500/10000	e
1622328	ETHANESULFONYL CHLORIDE, 2-CHLORO-	500	e
10140871	ETHANOL, 1,2-DICHLORO-, ACETATE	1000	e
563122	ETHION	1000	
13194484	ETHOPROPHOS	1000	e
538078	ETHYLBIS(2-CHLOROETHYL)AMINE	500	e, h
371620	ETHYLENE FLUOROHYDRIN	10	c, e, h
75218	ETHYLENE OXIDE	1000	d, l

ADMINISTRATIVE REGISTER - 2313

107153	ETHYLENEDIAMINE	10000	
151564	ETHYLENEIMINE	500	d
542905	ETHYLTHIOCYANATE	10000	e
22224926	FENAMIPHOS	10/10000	e
122145	FENITROTHION	500	e
115902	FENSULFOTHION	500	e,h
4301502	FLUENETIL	100/10000	e
7782414	FLUORINE	500	k
640197	FLUOROACETAMIDE	100/10000	i
144490	FLUOROACETIC ACID	10/10000	e
359068	FLUOROACETYL CHLORIDE	10	c,e
51218	FLOUROURACIL	500/10000	e
944229	FONOFOS	500	e
50000	FORMALDEHYDE	500	d,l
107164	FORMALDEHYDE CYANOHYDRIN	1000	e,h
23422539	FORMETANATE HYDROCHLORIDE	500/10000	e,h
2540821	FORMOTHION	100	e
17702577	FORMPARANATE	100/10000	e
21548323	FOSTHIETAN	500	e
3878191	FUBERIDAZOLE	100/10000	e
110009	FURAN	500	
13450903	GALLIUM TRICHLORIDE	500/10000	e
77474	HEXACHLOROCYCLOPENTADIENE	100	d,h
4835114	HEXAMETHYLENEDIAMINE,NIN-DIBUTYL-	500	e
302012	HYDRAZINE	1000	d
74908	HYDROCYANIC ACID	100	
7647010	HYDROGEN CHLORIDE (GAS ONLY)	500	e,l
7664393	HYDROGEN FLUORIDE	100	
7722841	HYDROGEN PEROXIDE (CONC. GREATER THAN 52%)		
7783075	HYDROGEN SELENIDE	10	e
7783064	HYDROGEN SULFIDE	500	
123319	HYDROQUINONE	500/10000	
13463406	IRON,PENTACARBONYL-	100	e
297789	ISOBENZAN	100/10000	e
78820	ISOBUTYRONITRILE	10000	e,h
102363	ISOCYANIC ACID,3,4-DICHLOROPHENYL ESTER	500/10000	e
465736	ISODRIN	100/10000	
55914	ISOFLUORPHATE	100	c
4098719	ISOPHORONE DIISOCYANATE	100	b,e
108236	ISOPROPYL CHLOROFORMATE	1000	e
119380	ISOPROPYLMETHYLPYRAZOLYL DIMETHYL-	500	e
	CARBAMATE		
78977	LACTONITRILE	1000	e
21609905	LEPTOPHOS	500/10000	e
541253	LEWISITE	10	c,e,h
58899	LINDANE	1000/10000	d
7580678	LITHIUM HYDRIDE	100	b,e
109773	MALONONITRILE	500/10000	
12108133	MANGANESE, TRICARBONYL METHYLCYCLO-	100	e
	PENTADIENYL		
51752	MECHLORETHAMINE	10	c,e
950107	MEPHOSFOLAN	500	e
1600277	MERCURIC ACETATE	500/10000	e
7487947	MERCURIC CHLORIDE	500/10000	e
21908532	MERCURIC OXIDE	500/10000	e
10476956	METHACROLEIN DIACERATE	1000	e
760930	METHACRYLIC ANHYDRIDE	500	e
126987	METHACRYLONITRILE	500	h
920467	METHACRYLOYL CHLORIDE	100	e
30674807	METHACRYLOYLOXYETHYLISOCYANATE	100	e,h
10265926	METHAMIDOPHOS	100/10000	e
558258	METHANESULFONYL FLUORIDE	1000	e
950370	METHIDATHION	500/10000	e
2032657	METHIOCARB	500/10000	
16752775	METHOMYL	500/10000	h
151382	METHOXYETHYLMERCURIC ACETATE	500/10000	e
80637	METHYL 2-CHLOROACRYLATE	500	e
74839	METHYL BROMIDE	1000	l
79221	METHYL CHLOROFORMATE	500	d,h
60344	METHYL HYDRAZINE	500	
624839	METHYL ISOCYANATE	500	f
5566.6	METHYL ISOTHIOCYANATE	500	b,e
74931	METHYL MERCAPTAN	500	
3735237	METHYL PHENKAPTON	500	e
676971	METHYL PHOSPHONIC DICHLORIDE	100	b,e

ADMINISTRATIVE REGISTER - 2314

556649	METHYL THIOCYANATE	10000	e
78944	METHYL VINYL KETON	10	e
502396	METHYLMERCURIC DICYANAMIDE	500/10000	e
75796	METHYLTRICHLOROSILANE	500	e,h
1129415	METOLCARB	100/10000	e
7786347	MEVINPHOS	500	
315184	MEXACARBATE	500/10000	
50077	MITOMYCIN C	500/10000	d
69232224	MONOCROTOPHOS	10/10000	e
2763964	MUSCIMOL	500/10000	a,h
505602	MUSTARD GAS	500	e,h
13463393	NICKEL CARBONYL	1	d
54115	NICOTINE	100	c
65305	NICOTINE SULFATE	100/10000	e
7697372	NITRIC ACID	1000	
10102439	NITRIC OXIDE	100	c
98953	NITROBENZENE	1000	
1122607	NITROCYCLOHEXANE	500	e
10102440	NITROGEN DIOXIDE	100	
62759	NITROSDIMETHYLAMINE	1000	d,h
991424	NORBORMIDE	100/10000	e
PMN82147	ORGANORHODIUM COMPLEX (PMN-82-147)	10/10000	e
630604	OUABAIN	100/10000	c,e
23135220	OXAMYL	100/10000	e
78717	OXETANE, 3,3-BIS(CHLOROMETHYL)	500	e
2497976	OXYDISULFOTON	500	e,h
10028156	OZONE	100	e
1910425	PARAQUAT	10/10000	e
2074502	PARAQUAT METHOSULFATE	10/10000	e
56382	PARATHION	100	c,d
298000	PARATHION-METHYL	100/10000	c
12002038	PARIS GREEN	500/10000	d
19624227	PENTABORANE	500	e
2570265	PENTADECYLAMINE	100/10000	e
79210	PERACETIC ACID	500	e
594423	PERCHLOROMETHYLMERCAPTAN	500	
108952	PHENOL	500/10000	
4418660	PHENOL 2,2'-THIOBIS(4-CHLORO-6-METHYL-	100/10000	e
64006	PHENOL,3-(1-METHYLETHYL)-,METHYLCARBAMATE	500/10000	e
58366	PHENOXARSINE, 10,101-OXIDI	500/10000	e
696286	PHENYL DICHLOROARAIN	500	d,h
59881	PHENYLHYDRAZINE HYDROCHLORIDE	1000/10000	e
62384	PHENYLMERCURY ACETATE	500/10000	
2097190	PHENYLSILATRANE	100/10000	e,h
103855	PHENYLTHIOUREA	100/10000	
298022	PHORATE	10	
4104147	PHOSACETIM	100/10000	e
947024	PHOSFOLAN	100/10000	e
75445	PHOSGENE	10	l
732116	PHOSMET	10/10000	e
13171216	PHOSPHAMIDON	100	e
7803512	PHOSPHINE	500	
2703131	PHOSPHONOTHIOIC ACID, METHYL-,O-ETHYL O-	500	e
	(4-(METHYLTHIO) ESTER		
50782699	PHOSPHONOTHIOIC ACID, METHYL-,S-(2-(BIS	100	e
	(1-METHYLETHYL)AMINO)ETHYL O-ETHYL ESTER		
2665307	PHOSPHONOTHIOIC ACID, METHYL-,O-(4-NITRO-	500	e
	PHENYL)O-PHENYL ESTER		
3254635	PHOSPHORIC ACID, DIMETHYL4-(METHYLTHIO)	500	e
	PHENYL ESTER		
2587908	PHOSPHOROTHIOIC ACID, O,O-DIMETHYL-S-	500	c,e,g
	(2-METHYLTHIO) ETHYL ESTER		
7723140	PHOSPHORUS	100	b,h
10025873	PHOSPHORUS OXYCHLORIDE	500	d
10026138	PHOSPHORUS PENTACHLORIDE	500	b,e
1314563	PHOSPHORUS PENTOXIDE	10	b,e
7719122	PHOSPHORUS TRICHLORIDE	1000	
57476	PHYSOSTIGMINE	100/10000	e
57647	PHYSOSTIGMINE, SALICYLATE(1:1)	100/10000	e
124878	PICROTOXIN	500/10000	e
110894	PIPERIDINE	1000	e
23505411	PIRIMIFOS-ETHLY	1000	e
10124502	POTASSIUM ARSENITE	500/10000	d
151508	POTASSIUM CYANIDE	100	b
506616	POTASSIUM SILVER CYANIDE	500	b

ADMINISTRATIVE REGISTER - 2315

2631370	PROMECARB	500/10000	e, h
106967	PROPARGYL BROMIDE	10	e
57578	PROPIOLACTONE, BETA-	500	e
107120	PROPIONITRILE	500	
542767	PROPIONITRILE, 3-CHLORO-	1000	
70699	PROPIOPHENONE, 41-AMINO	100/10000	e, l, g
109615	PROPYL CHLOROFORMATE	500	e
75569	PROPYLENE OXIDE	10000	l
75558	PROPYLENEIMINE	10000	d
2275185	PROTHOATE	100/10000	e
129000	PYRENE	1000/10000	c
140761	PYRIDINE, 2-METHYL-5-VINYL-	500	e
504245	PYRIDINE, 4-AMINO-	500/10000	4
1124330	PRIDINE, 4-NITRO-, I-OXIDE	500/10000	e
53558251	PYRIMINIL	100/10000	e, h
14167181	SALCOMINE	500/10000	e
107448	SARIN	10	e, h
7783008	SELENIUS ACID	1000/10000	
7791233	SELENIUM OXYCHLORIDE	500	e
563417	SEMICARBAZIDE HYDROCHLORIDE	1000/10000	e
3037727	SILANE, (4-AMINOBTYL)DIETHOXYMETHYL-	1000	e
7631892	SODIUM ARSENATE	1000/10000	d
7784465	SODIUM ARSENITE	500/10000	d
26628228	SODIUM AZIDE (NA(N3))	500	b
124652	SODIUM CACODYLATE	100/10000	e
143339	SODIUM CYANIDE (NA(CN))	100	b
62748	SODIUM FLOUROACETATE	10/10000	
13410010	SODIUM SELENATE	100/10000	e
10102188	SODIUM SELENITE	100/10000	h
10102202	SODIUM TELLURITE	500/10000	e
900958	STANNANE, ACETOXYTRIPHENYL-	500/10000	e, g
57249	STRYCHNINE	100/10000	c
60413	STRYCHNINE, SULFATE	100/10000	e
3689245	SULFOTEP	500	
3569571	SULFOXIDE, 3-CHLOROPROPYLCOTYL	500	e
7446095	SULFUR DIOXIDE	500	e, l
7783600	SULFUR TETRAFLUORIDE	100	e
7446119	SULFUR TRIOXIDE	100	b, e
7664939	SUFURIC ACID	1000	
77816	TABUN	10	c, e, h
13494809	TELLURIUM	500/10000	e
7783804	TELLURIUM HEXAFLUORIDE	100	e, k
107493	TEPP	100	
13071799	TERBUFOS	100	e, h
78002	TETRAETHYL LEAD	100	c, d
597648	TETRAETHYL TIN	100	c, e
75741	TETRAMETHYL LEAD	100	c, e, l
509148	TETRANITROMETHANE	500	
10031591	THALLIUM SULFATE	100/10000	h
6533739	THALLOUS CARBONATE	100/10000	c, h
7791120	THALLOUS CHLORIDE	100/10000	c, h
2757188	THALLOUS MALONATE	100/10000	c, e, h
7446186	THALLOUS SULFATE	100/10000	
2231574	THIOCARBAZIDE	1000/10000	e
39196184	THIOFANOX	100/10000	
297972	THIONAZIN	500	
108985	THIOPHENOL	500	
79196	THIOSEMICARBAZIDE	100/10000	
5344821	THIOUREA, (2-CHLOROPHENYL)-	100/10000	
614788	THIOUREA, (2-METHYLPHENYL)-	500/10000	e
7550450	TITANIUM TETRACHLORIDE	100	e
584848	TOLUENE 2,4-DIISOCYANATE	500	
91087	TOLUENE 2,6-DIISOCYANATE	100	
110576	TRANS-1,4-DICHLOROBUTENE	500	e
1031476	TRIAMIPHOS	500/10000	e
24017478	TRIAZOFOS	500	e
76028	TRICHLOROACETYL CHLORIDE	500	e
115219	TRICHLOROETHYLSILANE	500	e, h
327980	TRICHLORONATE	500	e, k
98135	TRICHLOROPHENYLSILANE	500	e, h
1558254	TRICHLORO(CHLOROMETHYL)SILANE	100	e
2713, 355	TRICHLOR(DICHLOROPHENYL)SILANE	500	e
998301	TRIETHOXSILANE	500	e
75774	TRIMETHYLCHLOROSILANE	1000	e
824113	TRIMETHYLOLPROPANE PHOSPHITE	100/10000	e, h

ADMINISTRATIVE REGISTER - 2316

1066451	TRIMETHYLTIN CHLORIDE	500/10000	e
639587	TRIPHENYLTIN CHLORIDE	500/10000	e
555771	TRIS(2-CHLOROETHYL)AMINE	100	e,h
2001958	VALINOMYCIN	1000/10000	c,e
1314621	VANADIUM PENTOXIDE	100/10000	
08054	VINYL ACETATE MONOMER	1000	d,l
81812	WARFARIN	500/10000	
129066	WARFARINSODIUM	100/10000	e,h
28347139	XYLYENE DICHLORIDE	100/10000	e
58270089	ZINC, DICHLORO(4,4-DIMETHYL-5((((METHYLAM- ION)CARBONYL)OXY)IMINO)PENTANENITRILE) (T-4)-	100/10000	e
1314847	ZINC PHOSPHIDE	500	

*Only the statutory or final RQ is shown. for more information, see 40 CFR Table 302.4.

Notes:

- a This chemical does not meet acute toxicity criteria. Its TPQ is set at 10,000 pounds.
- b This material is a reactive solid. The TPQ does not default to 10,000 pounds for nonpowder, nonmolten, nonsolution form.
- c The calculate TPQ changed after technical review as described in the technical support document.
- d Indicates that the RQ is subject to change when the assessment of potential carcinogenicity and/or other toxicity is completed.
- e Statutory reportable quantity for purposes of notification under SARA sect 304(a)(2).
- f The statutory 1 pound reportable quantity for methyl isocyanate may be adjusted in a future rulemaking action.
- g New chemicals added that were not part of the original list of 402 substances.
- h Revised TPQ based on new or reevaluated toxicity data.
- i Chemicals on the original list that do not meet toxicity criteria but because of their high production volume and recognized toxicity are considered chemicals of concern ("Other Chemicals").
- j TPQ is revised to its calculated value and does not change due to technical review as in proposed rule.
- k The TPQ was revised after proposal due to calculation error.

KENTUCKY EMERGENCY RESPONSE COMMISSION

Tier Two EMERGENCY AND HAZARDOUS CHEMICAL INVENTORY Specific Information by Chemical		Facility Identification Name _____ Street _____ City _____ County _____ State _____ Zip _____ SIC Code _____ DUNS Number _____ ID# _____ Date Received _____ Check Number _____		Owner/Operator Name _____ Name _____ Phone () _____ Home () _____ 24 Hr. Phone () _____ Fax () _____ 24 Hr. Fax () _____	
Chemical Description CAS _____ Chem. Name _____ Quant. _____ Pkg _____ EHS Name _____		Physical and Health Hazards Pkg _____ Spill _____ Reactivity _____ Incompatible _____ Delayed _____ TSCA Code _____		Inventory TSCA Code _____ TSCA Code _____ TSCA Code _____ TSCA Code _____ TSCA Code _____	
CAS _____ Chem. Name _____ Quant. _____ Pkg _____ EHS Name _____		Pkg _____ Spill _____ Reactivity _____ Incompatible _____ Delayed _____ TSCA Code _____		TSCA Code _____ TSCA Code _____ TSCA Code _____ TSCA Code _____ TSCA Code _____	
CAS _____ Chem. Name _____ Quant. _____ Pkg _____ EHS Name _____		Pkg _____ Spill _____ Reactivity _____ Incompatible _____ Delayed _____ TSCA Code _____		TSCA Code _____ TSCA Code _____ TSCA Code _____ TSCA Code _____ TSCA Code _____	

Check appropriate box.

☐ \$250 fee attached

☐ \$40 fee attached

☐ No fee required

Volume 18, Number 7 – January 1, 1992

KENTUCKY EMERGENCY RESPONSE COMMISSION
TIER TWO INSTRUCTIONS
GENERAL INFORMATION

Submission of this Tier Two form is required by the Kentucky Emergency Response Commission in accordance with Title III of the Superfund Amendments and Reauthorization Act of 1986, Section 312 and KRS 39.990 and subsequent regulations. The purpose of this Tier Two form is to provide state and local officials and the public with specific information on hazardous chemicals present at your facility during the past year.

CERTIFICATION

The owner or operator or officially designated representative of the owner or operator must certify that all information included in the Tier Two submission is true, accurate, and complete. On the first page of the Tier Two report, enter your full name and official title. Sign your name and enter the current date. Also, enter the total number of pages included in the Confidential and Nonconfidential information Sheets as well as all attachments. An original signature is required on at least the first page of the submission. Submissions to the SERC, LEPC, and fire department must each contain an original signature on at least the first page. Subsequent pages must contain either an original signature, a photocopy of the original signature, or a signature stamp. Each page must contain the date on which the original signature was affixed to the first page of the submission and the total number of pages in the submission.

YOU MUST PROVIDE ALL INFORMATION REQUESTED ON THIS FORM TO FULFILL ANNUAL CHEMICAL INVENTORY REQUIREMENTS.

THE KENTUCKY EMERGENCY RESPONSE COMMISSION REQUIRES SUBMISSION OF THE TIER TWO FORM.

WHO MUST SUBMIT THIS FORM

This request applies to the owner or operator of any facility that is required, under regulations implementing the Occupational Safety and Health Act of 1970, to prepare or have available a Material Safety Data Sheet (MSDS) for a hazardous chemical present at the facility. MSDS requirements are specified in the Occupational Safety and Health Administration (OSHA) Hazard Communication Standard, found in Title 29 of the Code of Federal Regulations at 1910.1200.

WHAT CHEMICALS ARE INCLUDED

You must report the required information on this Tier Two form for each hazardous chemical present at your facility in quantities equal to or greater than established threshold amounts (discussed below), unless the chemicals are excluded under Section 311(e) of Title III. Hazardous chemicals are any substance for which your facility must maintain an MSDS under OSHA's Hazard Communication Standard.

WHAT CHEMICALS ARE EXCLUDED

Section 311(e) of Title III excludes the following substances:

- (I) Any food, food additive, color additive,

drug, or cosmetic regulated by the Food and Drug Administration:

(II) Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use:

(III) Any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public:

(IV) Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual:

(V) Any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

OSHA regulations, Section 1910.1200(b), stipulate exemptions from the requirement to prepare or have available an MSDS.

REPORTING THRESHOLDS

Minimum thresholds have been established for Tier Two reporting under Title III, Section 312. These thresholds are as follows:

For Extremely Hazardous Substances (EHSs) designated under section 302 of Title III, the reporting threshold is 500 pounds (or 227 kg.) or the threshold planning quantity (TPQ), whichever is lower:

For all other hazardous chemicals for which facilities are required to have or prepare an MSDS, the minimum reporting threshold is 10,000 pounds (or 4,540 kg.).

You need to report hazardous chemicals that were present at your facility at any time during the previous calendar year at levels that equal or exceed these thresholds. For instructions on threshold determinations for components of mixtures, see "What About Mixtures?" on page 2 of these instructions.

Please read these instructions carefully. Print or type all responses.

WHEN TO SUBMIT THIS FORM

Owners or operators of facilities that have hazardous chemicals on hand in quantities equal to or greater than set threshold levels must submit a Tier Two form by March 1.

WHERE TO SUBMIT FEE

(See Fee Schedule on page 4)

Checks shall be made payable to: "Kentucky State Treasurer" and shall be marked "For KyERC Fee Account". Fees and form shall be mailed to:

Chairman, Kentucky Emergency Response Commission
EOC Building, Boone National Guard Center
Frankfort, KY 40601-6168

WHERE TO SUBMIT THIS FORM

Send a completed Tier Two form(s) to each of the following organizations:

1. Your State Emergency Response Commission.
2. Your Local Emergency Planning Committee.

3. The fire department with jurisdiction over your facility.

PENALTIES

Any owner or operator who violates any Tier Two reporting requirements shall be subject to penalties as set forth in P.L. 99-499, Title III, Section 325 and KRS Chapter 39.990 and subsequent regulations.

If your Tier Two responses require more than one page use additional forms and fill in the page number at the bottom of the form.

REPORTING PERIOD

Enter the appropriate calendar year, beginning January 1 and ending December 31.

FACILITY IDENTIFICATION

Enter the full name of your facility (and company identifier where appropriate).

Enter the full street address or state road. If a street address is not available, enter other appropriate identifiers that describe the physical location of your facility (e.g. longitude and latitude). Include city, county, state, and zip code.

Enter the primary Standard Industrial Classification (SIC) code and the Dun & Bradstreet number for your facility. The financial officer of your facility should be able to provide the Dun & Bradstreet number. If your firm does not have this information, contact the State or regional office of Dun & Bradstreet to obtain your facility number or have one assigned.

OWNER/OPERATOR

Enter the owner's or operator's full name, mailing address, and phone number.

EMERGENCY CONTACT

Enter the name, title, and work phone number of at least one local person or office who can act as a referral if emergency responders need assistance in responding to a chemical accident at the facility.

Provide an emergency phone number where such emergency information will be available 24 hours a day, every day. This requirement is mandatory. The facility must make some arrangement to ensure that a 24 hour contact is available.

IDENTICAL INFORMATION

Check the box indicating identical information, located below the emergency contacts on the Tier Two form, if the current chemical information being reported is identical to that submitted last year. Chemical descriptions, hazards, amounts, and locations must be provided in this year's form, even if the information is identical to that submitted last year.

CHEMICAL INFORMATION: Description, Hazards, Amounts, and Locations

The main section of the Tier Two form requires specific information on amounts and locations of hazardous chemicals, as defined in the OSHA Hazard Communication Standard.

If you choose to indicate that all of the information on a specific hazardous chemical is identical to that submitted last year, check the appropriate optional box provided at the right side of the storage codes and locations on the Tier Two form. Chemicals descriptions, hazards, amounts, and locations must be provided even if the information is identical to that submitted last year.

- What units should I use?

Calculate all amounts as weight in pounds. To convert gas or liquid volume to weight in pounds, multiply by an appropriate density factor.

- What about mixtures?

If a chemical is part of a mixture, you have the option of reporting either the weight of the entire mixture or only the portion of the mixture that is a particular hazardous chemical (e.g., if a hazardous of only 5% of a particular hazardous chemical, you can indicate either 100 lbs. of the mixture or 5lbs. of the chemical).

The option used for each mixture must be consistent with the option used in your Section 311 reporting.

Because EHSs are important to Section 303 planning, EHSs have lower thresholds. The amount of an EHS at a facility (both pure EHS substances and EHSs in mixtures) must be aggregated for purposes of threshold determination. It is suggested that the aggregation calculation be done as a first step in making the threshold determination. Once you determine whether a threshold for an EHS has been reached, you should report either the total weight of the EHS at your facility, or the weight of each mixture containing the EHS.

CHEMICAL DESCRIPTION

1. Enter the Chemical Abstract Service registry number (CAS). For mixtures, enter the CAS number of the mixtures as a whole if it has been assigned a number distinct from its constituents. For a mixture that has no CAS number, leave this item blank or report the CAS number of as many constituent as possible.

If you are withholding the name of a chemical in accordance with criteria specified in Title III, Section 322, enter the generic class or category that is structurally descriptive of the chemical (e.g., list toluene disocyanate as organic (sooyante) and check the box marked Trade Secret. Trade secret information should be submitted to EPA and must include a substantiation. Please refer to EPA's final regulation on trade secrecy (53 FR 28772, July 29, 1988) for detailed information on how to submit trade secrecy claims.

2. Enter the chemical name or common name of each hazardous chemical.
3. Check box for ALL applicable descriptors: pure or mixture; and solid, liquid, or gas; and whether the chemical is or contains an EHS.
4. If the chemical is a mixture containing EHS, enter the chemical name of each EHS in the mixture.

EXAMPLE:

You have pure chlorine gas on hand, as well as two mixtures that contain liquid chlorine. You write "chlorine" and enter the CAS number. Then you check "pure" and "mix" — as well as "liquid" and "gas".

PHYSICAL AND HEALTH HAZARDS

For each chemical you have listed, check all the physical and health hazard boxes that apply. These hazard categories are defined in 40 CFR 370.2. The two health hazard categories and three physical hazard categories are a consolidation of the 23 hazard categories defined in the OSHA Hazard Communication Standard, 29 CFR 1910.1200.

**Hazard Category Comparison
For Reporting Under Section 311 and 312**

EPA's Hazard Categories	OSHA's Hazard Categories
Fire Hazard	Flammable Combustion Pyrophoric Oxidizer Liquid
Sudden Release of Pressure	Explosive Compressed Gas
Reactive	Unstable Organic Peroxide Water Reactive Reactive
Immediate (Acute) Health Hazards	Highly Toxic Toxic Irritant Sensitizer Corrosive
	Other hazardous Chemicals with an adverse effect with short term exposure
Delayed (Chronic) Health Hazard	Carcinogens
	Other hazardous chemicals with an adverse effect with long term exposure

MAXIMUM AMOUNT

1. For each hazardous chemical, estimate the greatest amount present at your facility on any single day during the reporting period.
2. Find the appropriate range value code in Table I.

3. Enter this range value as the Maximum Amount.

4. If range value 05 (100,000 to 999,999) is used for the maximum daily amount, enter the actual weight in pounds in the Inventory column directly below the code number. This is necessary to determine the appropriate fee category.

TABLE I REPORTING RANGE

Range Value	Weight Range in Pounds From...	To...
01	0	99
02	100	999
03	1,000	9,999
04	10,000	99,999
05	100,000	999,999
06	1,000,000	9,999,999
07	10,000,000	49,999,999
08	50,000,000	99,999,999
09	100,000,000	499,999,999
10	500,000,000	999,999,999
11	1 billion	higher than 1 billion

EXAMPLE:

You received one large shipment of solvent mixture last year. The shipment filled five 5,000-gallon storage tanks. You know that the solvent contains 10% benzene, which is a hazardous chemical.

You figure that 10% of 25,000 gallons is 2,500 gallons. You also know that the density of benzene is 7.29 pounds per gallon, so you multiply 2,500 gallons by 7.29 pounds per gallon to get a weight of 18,225 pounds.

Then you look at Table I and find that the range value 04 corresponds to 18,225. You enter 04 as the Maximum Amount.

AVERAGE DAILY AMOUNT

1. For each hazardous chemical, estimate the average weight in pounds that was present at your facility during the year.

To do this, total all daily weights and divide by the number of days the chemical was present on the site.

2. Find the appropriate range value in Table I.
3. Enter this range value as the Average Daily Amount.

EXAMPLE:

The 25,000-gallon shipment of solvent you received last year was gradually used up and completely gone in 315 days. The sum of the daily volume levels in the tank is 4,536,000 gallons. By dividing 4,536,000 gallons by 315 days on site, you calculate an average daily amount of 14,400 gallons.

You already know that the solvent contains 10% benzene, which is a hazardous chemical. Since 10% of 14,400 is 1,440, you figure that you had an average of 1,440 gallons of benzene. You also know that the density of benzene is 7.29 pounds per gallon, so you multiply 1,440 by 7.29 to get a weight of 10,500 pounds.

Then you look at Table I and find that the range value 04 corresponds to 10,500. You enter 04 as the Average Daily Amount.

(If you are using the form as a worksheet for completing a Tier One form, you should write 10,500 in the shaded area.)

NUMBER OF DAYS ON SITE

Enter the number of days that the hazardous chemical was found on site.

EXAMPLE:

The solvent composed of 10% benzene was present for 315 days at your facility. Enter 315 in the space provided.

STORAGE CODES AND STORAGE LOCATIONS

List all nonconfidential chemical locations in this column, along with storage types/conditions associated with each location. Please note that a particular chemical may be located in several places around the facility. Each row of boxes followed by a line represents a unique location for the same chemical.

Storage Codes: Indicate the types and conditions of storage present.

- Look at Table II. For each location, find the appropriate storage type and enter the corresponding code in the first box.
- Look at Table III. For each location, find the appropriate storage types for pressure and temperature conditions. Enter the applicable pressure code in the second box. Enter the applicable temperature code in the third box.

TABLE II - STORAGE TYPES

CODES TYPES OF STORAGE

A	Above ground tank
B	Below ground tank
C	Tank inside building
D	Steel drum
E	Plastic or nonmetallic drum
F	Can
G	Carboy
H	Silo
I	Fiber drum
J	Bag
K	Box
L	Cylinder
M	Glass bottles or jugs
N	Plastic bottles or jugs
O	Tote bin
P	Tank wagon
Q	Rail car
R	Other

TABLE III - TEMPERATURE AND PRESSURE CONDITIONS

CODES STORAGE CONDITIONS

	(PRESSURE)
1.	Ambient pressure
2.	Greater than ambient pressure
3.	Less than ambient pressure
	(TEMPERATURE)
4.	Ambient temperature
5.	Greater than ambient temperature

- Less than ambient temperature but not cryogenic
- Cryogenic conditions

EXAMPLE:

The benzene in the main building is kept in a tank inside the building, at ambient pressure and less than ambient temperature.

Table II shows you that the code for a tank inside a building is C. Table III shows you that the code for ambient pressure is 1, and the code for less than ambient temperature is 6.

You enter: C-1-6

TIER TWO INSTRUCTIONS

Storage Locations

Provide a brief description of the precise location of the chemical, so that emergency responders can locate the area easily. You may find it advantageous to provide the optional site plan or site coordinates as explained below.

For each chemical, indicate at a minimum the building or lot. Additionally, where practical, the room or area may be indicated. You may respond in narrative form with appropriate site coordinates or abbreviations.

If the chemical is present in more than one building, lot, or area location, continue your responses down the page as needed. If the chemical exists everywhere at the plant site simultaneously, you may report that the chemical is ubiquitous at the site.

Optional Attachments: If you choose to attach one of the following, check the appropriate Attachments box at the bottom of the Tier Two form.

- A site plan with site coordinates indicated for building, lots, areas, etc. throughout your facility.
- A list of site coordinate abbreviations that correspond to building, lots, areas, etc. throughout your facility.
- A description of dikes and other safeguard measures for storage locations throughout your facility.

EXAMPLE:

You have benzene in the main room of the main building, and in tank 2 in tank field 10. You attach a site plan with coordinates as follows: main building = G-2, tank field 10 = B-6. fill in the Storage Location as follows:

B-6 [Tank 2] G-2 [Main Room]

CONFIDENTIAL INFORMATION

Under Title III, Section 324, you may elect to withhold location information on a specific chemical from disclosure to the public, if you choose to do so.

ADMINISTRATIVE REGISTER - 2323

- Enter the word "confidential" in the Nonconfidential Location section of the Tier Two form on the first line of the storage locations.
- On a separate Tier Two Confidential Location Information Sheet, enter the name and CAS number of each chemical for which you are keeping the location confidential.
- Enter the appropriate location and storage information, as described above for nonconfidential locations.
- Attach the Tier Two Confidential Location information Sheet to the Tier Two form. This separates confidential locations from other information that will be disclosed to the public.

CERTIFICATION

Instructions for this section are included on page one of these instructions.

FEE SCHEDULE

Check appropriate box on the form.

- \$0 Category One Facility is owned or operated by local, state or federal government.
- \$40 Category Two Facility has no less than 10,000 pounds and no more than 499,999 pounds of each of ten (10) or fewer hazardous substances.
The combined total of all hazardous substances shall not exceed 499,999 pounds.
- \$250 Category Three Facility has 10,000 pounds or more of each 11 or more hazardous substances. The combined total of all hazardous substance shall not exceed 499,999 pounds.
- \$250 Category Four Facility has a total of over 499,999 pounds of hazardous substances.
- \$250 Category Five Facility has an extremely hazardous substance in excess of the threshold planning quantity.

TAB Q-7- COVERED FACILITIES

FACILITY NAME

FAC EMERGENCY RESP COORD

COMMUNICATIONS

St. _____
City _____

Title _____

Office # _____
Home # _____
R. Freq _____
Pager # _____

ALTERNATE FAC EMERG RESP COORD

Title _____

Office # _____
Home # _____
R. Freq _____

HAZARDOUS CHEMICAL(S) NAME UN ID#/CAS#

FORM

PACKAGED CONTAINER

MAXIMUM QUANTITY

HEALTH RISK

SKETCH OF FACILITY AND STORAGE AREAS

FACILITY RESPONSE POINT (RP) AND DIRECTIONS

STAGING AREA (Support units will report and await assignment by local organization)

TRANSPORTATION ROUTES AND MODES OF TRANSPORTATION (include supplier and telephone number—describe how chemicals are handled—list hazardous points along the routes)

SPECIAL FACILITIES LIKELY TO BE AFFECTED BY A RELEASE (List affected facilities and day/night contacts)

ADMINISTRATIVE REGISTER - 2324

PROTECTIVE ACTIONS (In-place sheltering of evacuation--give brief description of area(s) where protection actions may be required--add evacuation procedures to Annex EE)

EMERGENCY EQUIPMENT ON HAND/TRAINING/EXERCISING

SPIII CONTAINMENT/CLEAN-UP/DISPOSAL

EMERGENCY NOTIFICATION

Local 24 hr. warning number (LEPC) _____
 Haz-mat Coord. (Day) _____ or _____
 (Night) _____ or _____
 Alt. Coord. (Day) _____ or _____
 (Night) _____ or _____
 _____ Fire Dept. _____
 _____ Police Dept. _____
 DES Coord. (Day) _____ or _____
 (Night) _____ or _____
 _____ Rescue _____ or _____
 _____ Ambulance _____ or _____

Kentucky Emergency Response Commission (KERC) 502-564-7815

Kentucky DES Area Coordinator (O) _____
 (H) _____

Nat. Resources & Envir. Prot. Cabinet (NR&EPC) 502-564-2380

National Response Center (NRC) 1-800-424-8802

Envir. Prot. Agency (EPA) Hotline 1-800-535-0202
 Hours: 8:30 a.m. - 7:30 p.m., Mon-Fri.
 including federal holidays

Chemtrec 1-800-424-9300

This is to certify that the Kentucky Emergency Response Commission has recommended that this administrative regulation be adopted.

JAMES H. MOLLOY, Chairman
 Kentucky Emergency Response Commission

TEBBS S. MOORE, Brigadier General
 APPROVED BY AGENCY: December 9, 1991
 FILED WITH LRC: December 9, 1991 at 2 p.m.