ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

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MEETING NOTICE: The next meeting of the Administrative Regulation Review Subcommittee is **tentatively** scheduled on March 2, 1992. See **tentative** agenda on pages 2765-2767 in this Administrative Register.

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

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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
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401 KAR 59:210. New fabric, vinyl and paper surface coating operations.
401 KAR 59:212. New graphic arts facilities using rotogravure and flexography.
401 KAR 59:214. New factory surface coating operations of flat wood paneling.
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Department for Medicaid Services

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907 KAR 1:410. Incorporation by reference of the vision services manual.

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ADMINISTRATIVE REGULATION REVIEW PROCEDURE

Filing and Publication

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

Public Hearing

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

Any person interested in attending the scheduled hearing must submit written notification of such to the administrative body at least five (5) days before the scheduled hearing. If no written notice is received at least five (5) days before the hearing, the administrative body may cancel the hearing.

If the hearing is cancelled, the administrative body shall notify the Compiler of the cancellation. If the hearing is held, the administrative body shall submit within fifteen (15) days following the hearing a statement of consideration summarizing the comments received at the hearing and the administrative body's responses to the comments.

No transcript of the hearing need to 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, repeal, or withdrawal)

STATEMENT OF EMERGENCY
201 KAR 18:131E

A significant backlog of disciplinary hearings has accumulated as a result of the board's inability to schedule and conduct hearings. The board has concluded that the use of a hearing officer to conduct hearings and make recommended findings of fact and conclusions of law will result in a more efficient and expeditious processing of complaints and hearings. The failure to institute this emergency administrative regulation while an ordinary administrative regulation is pending will likely result in the board's inability to meet limitation on conducting hearings. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

BRERETON JONES, Governor
GEORGE ELY, Chairman

GENERAL GOVERNMENT CABINET
Kentucky State Board of Registration for Professional Engineers and Land Surveyors

201 KAR 18:131E. Disciplinary and grievance hearing procedures.

RELATES TO: KRS 322.180, 322.190, 322.200, 322.210, 322.220, 322.250, 322.320
STATUTORY AUTHORITY: KRS 322.180, 322.190, 322.200, 322.220, 322.290
EFFECTIVE: January 21, 1992
NECESSITY AND FUNCTION: Establishes procedural guidelines for board hearings and processing of informal charges, complaints and grievances as required under KRS Chapter 322.

Section 1. Administrative Adjudication Procedure. This rule governs the procedure in all proceedings before the board in which the legal rights, duties or privileges of any person are required by statute or administrative regulation to be determined after an opportunity for a hearing. This procedure shall be construed to secure a just, speedy and inexpensive determination of any proceeding while insuring that the requirements of due process are observed.

Section 2. Definitions. (1) "Person" means any individual, partnership, corporation or association.
(2) "Board" means the State Board of Registration for Professional Engineers and Land Surveyors as provided by KRS Chapter 322.
(3) "Order" means the whole or part of any final disposition of an adjudication.
(4) "Adjudication" means the board process in which a sanction may be imposed.
(5) "Sanction" means revocation or suspension of a license, reprimand or fine.
(6) "License" means any permit, certificate, or registration granted by the board.
(7) "Hearing officer" means a licensed practicing attorney appointed by the board to hear proof and recommend findings of fact.
(8) "Probable Cause Committee" means a committee of one (1) or more present or past board members, appointed by the chairman of the board, and the executive director and legal counsel of the board.
(9) "Grievance" means a formal complaint filed by any licensee or applicant contesting a refusal of the board to:
(a) Permit an applicant to sit for an exam;
(b) Issue a license;
(c) Renew a license.

Section 3. Public Information. (1) Publication, procedure. This procedure shall be published and made available to the public for the guidance of the public.
(2) Publication, adjudication. From time to time, as is convenient to the board, but at least once annually, a list of all adjudications of the board shall be published, identifying the respondent and the final disposition in the matter.
(3) Official record. All matters of official record in any adjudication shall be available to the public for inspection and copying except that the work product of the board investigatory staff shall not be, unless specifically made a part of the official record of an adjudication proceeding.

Section 4. Complaints. Complaints shall be classified as follows: formal and informal.
(1) Formal complaints. Formal charges may be made by any person filing an original and two (2) copies of a complaint with the executive director at the board offices, in the general pleading form used for complaints in any civil action in Kentucky. The complaint shall contain:
(a) The name and address of any person making charges, as well as the name and address of the person or persons against whom charges are being made;
(b) A clear and concise description of the issues of fact and law involved and the statutes, rules and regulations and sections of the Code of Professional Practice and Conduct and Standards of Practice which the party complained against is alleged to have violated;
(c) A demand for a formal hearing before the board according to the regulation;
(d) The relief sought.
(2) Informal complaints. Information of personal knowledge of any person, which, if true, would indicate a possible violation of the registration law by a registrant or applicant, may be presented to the executive director. Upon receipt of such information, the executive director shall, without informing the board of any of the particulars:
(a) Investigate the matter, which investigation may be conducted by calling the parties involved to conference, by personally investigating the matter, or by having the matter investigated by the board staff, or any combination of these methods;
(b) Compile all relevant evidence of probative value.

Section 5. Commencement of Actions. (1) Formal complaints. Upon receipt of a formal complaint referred to in Section 4(1) of this regulation, the executive director shall transmit the complaint to the hearing officer who shall then proceed as set out in Section 6 of this regulation.
(2) Informal complaints. Upon completion of the investigation provided for in Section 4(2) of this regulation, the Probable Cause Committee shall evaluate the evidence developed by the investigation to determine its substantive value. Based on the decision of the Probable Cause Committee, the executive director shall then:
(a) If the informal complaint states no actionable violation of statutes, regulations or binding rules, transmit the committee's decision to the person who filed the informal complaint, after which the complainant may proceed under Section 4(1) of this regulation;
(b) In all other cases: cause to have prepared a formal complaint as provided in Section 4(1) of this regulation and transmit the complaint to the hearing officer, who shall proceed as set out in Section 6 of this regulation.

Section 6. Service and Response. (1) Upon receipt of a formal complaint, the hearing officer shall cause a copy of the complaint and any attachments to be served upon the respondent at the address set out in the complaint by certified mail, return receipt requested.
(2) Not later than twenty (20) days after receipt of the complaint,

as shown on a certified mail receipt, the respondent shall serve upon the hearing officer and upon the board's attorney a response admitting or denying each allegation of fact or law contained in the complaint.

(3) The complaint need not contain documents in support of the complaint, but inspection and copies of any documents to be used upon hearing shall be available to the respondent at the board's office or the office of the board's attorney not later than the date of service of the complaint upon the respondent.

(4) If the respondent fails to file a responsive pleading within the time period set out in subsection (2) of this section, the hearing officer shall notify the respondent by certified mail, return receipt requested, that at the end of seven (7) days the hearing officer shall proceed to deem the respondent in default, the complaint confessed, and make recommended findings of fact and conclusions of law to the board, unless good cause is shown why the respondent is in default.

(5) Upon receipt of a responsive pleading, the hearing officer shall proceed to schedule a hearing on the complaint to be held not sooner than thirty (3) days nor more than sixty (60) days from the date of respondent's reply, the hearing to take place at a time and location most convenient to all parties, in the hearing officer's discretion.

(6) The hearing officer may continue a hearing for not more than thirty (30) days for good cause shown.

Section 7. Prehearing Procedure. Prehearing conferences. At the request of either party, prehearing conferences may be conducted by the hearing officer, who shall keep a record of any agreement as to issues, admission of facts, or stipulations. Any proposed agreement which, if accepted by the board, would settle all issues of the complaint shall:

(1) Be transmitted to the board.

(2) Not be considered to be a waiver of any defenses until accepted by the board.

(3) Be in writing and signed.

(4) Not be binding upon any of the parties until accepted by the board.

Section 8. Evidence. The respondent should be afforded every opportunity to defend and should not be surprised. In order to enable the respondent to defend:

(1) Board subpoenas authorized by law shall be issued to any party upon request.

(a) Prehearing disclosure of evidence.

1. By the board. The licensee or applicant shall have the right to inspect the investigative file relating to a disciplinary action either in person or by legal counsel. The names, addresses and telephone numbers of witnesses expected to be called by the board will be made available. Copies of documentary evidence may be obtained upon the payment of a reasonable charge therefore, except documents that may not be reproduced under the provisions of state or federal law. Nothing in this section shall be construed as giving the licensee or applicant the right to examine or copy the personal notes, observations, or conclusions of the board's investigators nor shall it be construed as allowing access to the work product of legal counsel for the board. Further, appointment for the examination of an investigative file must be made upon reasonable notice, during regular office hours, and at a time convenient to all parties. The licensee or applicant shall also be permitted to examine any items of tangible evidence in the possession of the board.

2. By the licensee or applicant. At least ten (10) days prior to the scheduled hearing date the licensee or applicant shall furnish to the investigator or legal counsel for the board copies of any documents which the licensee or applicant intends to introduce at the hearing and a list of the names, addresses, and home and work telephone numbers of any witnesses to be presented to the hearing panel by the licensee or applicant. The licensee or applicant shall also produce for inspection any items of tangible evidence within its possession or control which it intends to introduce at the hearing.

(b) The rules of evidence. The tribunal shall not be bound by the technical rules of evidence. The tribunal may receive any evidence which it considers to be reliable, including testimony which would be hearsay if presented in a court of law. Documentary evidence may be admitted in the form of copies or excerpts, and need be authenticated only to the extent that the tribunal is satisfied of its genuineness and accuracy. Tangible items may be received into evidence without the necessity of establishing a technical legal chain of custody so long as the board is satisfied that the item is what it is represented to be and that it is in substantially the same condition as it was at the time of the events under consideration.

(2) Irrelevant, immaterial or unduly repetitious evidence shall be excluded.

(3) By agreement of the parties, all or part of the evidence may be received in written form.

(4) The hearing officer may take notice of judicially cognizable facts, and notice may be taken of generally recognized technical or scientific facts, provided, however, that either party shall be afforded an opportunity to contest the facts so noticed.

Section 9. Conduct of Hearings. (1) The hearing shall be adversarial, presided over by the hearing officer, with the charges and evidence against the licensee presented by an attorney designated by the board.

(2) The respondent may appear pro se or by counsel.

(3) The hearing shall be conducted as follows: the petitioner shall present its evidence with opportunity for the respondent to cross--examine; the respondent shall present his evidence, if any, with the petitioner having the right to cross-examine; petitioner shall have the right of rebuttal.

(4) The hearing shall be officially recorded.

(5) The hearing may be continued or adjourned for reasonable cause shown.

(6) The subject matter of the hearing shall be strictly limited to those charges set forth in the complaint. If it appears that additional subject matter should be considered, or additional charges filed, the hearing officer shall order an adjournment for an appropriate period to provide notice of those matters or charges to be communicated to the respondent and to allow reasonable time for the respondent to prepare a defense, unless the adjournment is waived by the respondent.

(7) Not later than fourteen (14) days following the hearing, the hearing officer shall make proposed findings of fact and conclusions of law based on the record, which shall be served on counsel for the petitioner and the respondent. The proposed findings of fact and conclusions of law shall contain: judicious summary of the evidence introduced; a basis for each finding; and any legal precedent or reference to codified law which the hearing officer deems appropriate. In those instances in which the hearing officer recommends that the respondent be found guilty of the charges alleged, he shall not include any recommendation as to the nature of disciplinary action to be taken.

(8) The parties shall have fourteen (14) days from service of the proposed findings of fact and conclusions of law to file exceptions with the hearing officer.

(9) Immediately upon the close of the period for filing exceptions, the hearing officer shall transmit his proposed findings and conclusions, together with the entire record, to the executive director. Not later than fourteen (14) days prior to the next succeeding quarterly meeting of the full board, copies of the hearing officer's recommended findings of fact and conclusions of law, together with exhibits made a part of the recommended findings, together with any written exceptions filed by the parties, shall be served on each member of the board.

Section 10. Adjudication. (1) At the next succeeding meeting of the full board, each case shall be considered by the board, and by majority vote of a quorum the board shall take one of the following actions:

(a) Adopt the hearing officer's recommendation in whole or in part;

(b) Reject the hearing officer's recommendation in whole or in part;

(c) Remand the matter back to the hearing officer to make additional findings of fact and conclusions of law, including the conducting of additional hearings.

(2) If the board finds the respondent guilty of any charge, determine a disciplinary action.

(3) All actions by the board shall be conducted in open session, as required by law.

(4) The board's decision shall be issued in writing, signed by the chairman and executive director, and served upon all parties not later than seven (7) days following the board's decision.

Section 11. Reconsideration. A petition to the board for vacation or reduction of the severity of a sanction imposed shall be in writing and may be submitted at any time subsequent to the issuance of an order. The petition shall be a complete statement of the respondent's grounds for vacation or reduction. The petition shall be considered by the board at the next succeeding quarterly meeting and a decision issued within seven (7) days.

Section 12. Nonregistrants. (1) Applicants for registration. Complaints related to an applicant's qualifications may be received and investigated as provided in Section 4 of this regulation. However, if registration is denied as a result of the investigation, the applicant shall be notified of:

(a) The basis for denial;

(b) His right to a grievance hearing before the board, if he wishes to contest the matter.

(2) A grievance shall be filed with the executive director in the same manner as complaints, as set out in Section 5 of this regulation, and hearings shall be conducted as set out in Section 6 of this regulation.

Section 13. Practice or Offer to Practice by Nonregistrants. Complaints related to an applicant's qualifications may be received and investigated as provided in Section 4 of this regulation. Upon receipt of such complaint the executive director shall:

(1) Attempt to have the complainant seek court action as provided for in KRS Chapter 322; or

(2) The executive director, after consultation with the Probable Cause Committee, may initiate court action as provided for in KRS Chapter 322.

Section 14. Ancillary Matters. (1) Board staff. In any case involving sanction, an employee or agent directly engaged in the performance of investigative or advocacy functions for the board shall not participate or advise in the decision, recommended decision, or board review, except as witness or counsel in a public hearing.

(2) Subpoena. Any member of the board or its executive director may administer oaths and issue subpoenas for the board.

Section 15. Repealed. 201 KAR 18:130 is hereby repealed in its entirety.

GEORGE ELY, Chairman
APPROVED BY AGENCY: October 9, 1991
FILED WITH LRC: January 21, 1992 at 3 p.m.

STATEMENT OF EMERGENCY
601 KAR 1:190E

This administrative regulation allows public entities operating a fixed route bus system under the authority of KRS Chapter 281 to expand service to disabled persons as required by 40 CFR Part 37 and the Americans with Disabilities Act. It is necessary that the administrative regulation be promulgated on an emergency basis to allow the subject public entities to prove to the Federal Transit Administration that they are complying with 49 CFR Part 37. This emergency administrative regulation shall be replaced with an ordinary administrative regulation which was filed with the Administrative Regulation Compiler on February 6, 1992.

BRERETON C. JONES, Governor
DON C. KELLY, Secretary

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
Office of General Counsel

601 KAR 1:190E. Paratransit as a complement to fixed route bus service.

RELATES TO: KRS Chapter 281, 49 CFR 37
STATUTORY AUTHORITY: 49 CFR 37
EFFECTIVE: February 11, 1992
NECESSITY AND FUNCTION: In implementing the Americans with Disabilities Act (ADA) of 1990, the U.S. Department of Transportation promulgated 49 CFR Part 37. This federal regulation requires public entities operating a fixed route system to provide paratransit or other special service to individuals with disabilities that is comparable to the level of service provided to individuals without disabilities who use the fixed route system. However, KRS Chapter 281 requires a fixed route bus provider to provide service only on routes specifically approved by the Transportation Cabinet. The federal regulation requires public entities operating a fixed route bus system to provide complementary transit service to ADA eligible disabled persons within corridors with a width of three-fourths (3/4) of a mile on each side of each fixed route. The public entity is also required to provide a complementary transit service to other specified areas. This administrative regulation is necessary to provide intrastate authority for these public entities to comply with the federal regulations promulgated pursuant to the ADA.

Section 1. All public entities operating a fixed route bus service under a certificate issued by the Department of Vehicle Regulation pursuant to KRS Chapter 281 shall be governed by the provisions of 49 CFR Part 37.

Section 2. The federal regulation 49 CFR Part 37 as effective on October 7, 1991 is adopted by the Transportation Cabinet.

LEWIS H. DOTSON, Commissioner
DON C. KELLY, P.E., Secretary
APPROVED BY AGENCY: February 5, 1992
FILED WITH LRC: February 11, 1992 at 2 p.m.

STATEMENT OF EMERGENCY
601 KAR 40:020E

This emergency administrative regulation sets a new date by which transporters of municipal solid waste are required to show proof of licensing with the Transportation Cabinet as such a transporter. This administrative regulation needs to be adopted on an emergency basis because the January 1, 1992 date in the existing administrative regulation proved to be too stringent for an industry coping with many other changes and reluctant to accept the idea of more oversight. The Natural Resources and Environmental Protection Cabinet has agreed with the Transportation Cabinet that it would be in the public interest to allow the transporters of municipal solid waste until March 1, 1992 to become licensed. No one wants to see trash dumped in a ravine because the transporter is afraid to go to the landfill. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Administrative Regulations Compiler on January 13, 1992.

BRERETON C. JONES, Governor
DON C. KELLY, Secretary

TRANSPORTATION CABINET
Department for Vehicle Regulation
Division of Motor Carriers
Office of General Counsel

601 KAR 40:020E. Application for license to operate vehicles transporting municipal solid waste.

RELATES TO: KRS 174.450
STATUTORY AUTHORITY: KRS 174.450
EFFECTIVE: February 4, 1992
NECESSITY AND FUNCTION: KRS 174.450(9) requires that the Transportation Cabinet promulgate regulations to establish a municipal solid waste transportation licensing program by August 26, 1991, and that on or after November 26, 1991, that each vehicle being used to transport municipal solid waste be identified by the licensee.

Section 1. (1) An applicant for a license to operate municipal solid waste transportation vehicles within the Commonwealth of Kentucky, shall apply to the Transportation Cabinet, Office of General Counsel, 501 High Street, Frankfort, Kentucky 40622.

(2) The following information shall be provided in, or with, the application:

(a) Name in which license is sought. (NOTE: This name shall be identical to the motor carrier's current KYU number issued by the Department of Vehicle Regulation, if applicable. See question below relating to Kentucky Highway Use Tax Identification Number);

(b) Business address, including street address, city, state and zip code;

(c) Telephone number;

(d) Name of a natural person who is either the applicant, or an officer of the applicant, position of this person, Social Security number of this person and home address of this person:

(e) Number of vehicles which the licensee intends to operate;

(f) If the applicant is not a resident of Kentucky and anticipates transporting municipal solid waste from outside Kentucky to a municipal solid waste management facility in Kentucky, a copy of the applicant's "Consent to Service" document as required to be filed with the Natural Resources and Environmental Protection Cabinet;

(g) The applicant's highway use tax identification number, as required by KRS 138.665. (NOTE: If the applicant does not currently have a KYU number, it shall attach a statement of why its transportation operations do not fall within the purview of KRS 138.665);

(h) A statement that the applicant does now have, or is in the process of obtaining, liability insurance on each vehicle in the amounts currently required by Kentucky law;

(i) A statement of whether the applicant or any corporate officer or principal stockholder thereof has ever been convicted of a felony; and

(j) If the applicant is a corporation, a copy of the corporation's certificate of good standing from the Secretary of State in the jurisdiction in which it was incorporated and if a foreign corporation, a certificate to do business in Kentucky from the Kentucky Secretary of State shall be submitted with the application. Neither of these certificates shall be more than thirty (30) days old at the time the application is submitted. If the applicant is doing business under an assumed name, it shall provide proof with the application that the assumed name has been registered with the appropriate county clerk's office. The Transportation Cabinet may require other proof of eligibility to do business in Kentucky or proof of safety fitness [~~its articles of incorporation, along with a list of stockholders who own ten (10) percent or more of the outstanding stock~~].

(3) The official signing on behalf of the applicant shall be sworn, state that he has the authority to represent the applicant, that the information is true and correct to the best of his knowledge and belief and have his signature and oath notarized.

(4) The Transportation Cabinet shall make available a form listing the information required in subsections (2) and (3) of this section to any person wishing to apply for a license to operate municipal solid waste transportation vehicles. These forms may be obtained from the Office of General Counsel, 501 High Street, Frankfort, Kentucky 40622, or by telephoning 502/564-7650.

Section 2. The Transportation Cabinet shall within thirty (30) days of receipt of an application either approve the application to operate municipal solid waste transportation vehicles, disapprove the application or request additional information from the applicant. However, the Transportation Cabinet shall not issue a license to anyone who has not filed a fully completed application form.

Section 3. As soon as the applicant has been licensed to operate municipal solid waste transportation vehicles, the Transportation Cabinet shall provide a form to the licensee so that the individual municipal solid waste transportation vehicles used by that licensee can be identified. This form shall contain space for the licensee to submit the following information:

(1) The municipal solid waste transporter license number and name of the municipal solid waste transporter;

(2) KYU number (if applicable) of the licensee;

(3) Telephone number of the licensee;

(4) Address of the licensee;

(5) Licensee's contact person;

(6) A sworn and notarized statement made by an official of the licensee certifying that the named licensee has, and shall maintain, liability insurance on each vehicle operated under this license. In addition, the official shall state that the applicant has access to, and is familiar with, all applicable regulations of the United States Department of Transportation relating to the safe operation of commercial vehicles and the safe transportation of hazardous materials, and that the applicant shall comply with these regulations;

(7) Identification of each vehicle to be used to transport municipal solid waste which shall include the vehicle's company unit number, complete vehicle identification number (serial number), make of vehicle, year of manufacture, declared gross weight, type of truck, and number of axles, state of license of the vehicle, license plate number (if the vehicle is Kentucky licensed), name of the lessor (if the vehicle is leased), the amount of the fee paid and whether it is a first or renewal registration of that individual vehicle. To identify the type of truck and number of axles, the licensee shall, for a straight truck, code the letters "ST", followed by the total number of axles. For a tractor-trailer, the licensee shall code the letters "TR", followed by the total number of axles.

Section 4. Municipal solid waste transporter vehicle identification cards shall expire at midnight of December 31 of each year.

Section 5. The fee for a municipal solid waste transporter vehicle identification card which shall become effective January 1, or a renewal of an identification card shall be ten (10) dollars. If the card becomes effective in a month other than January, the cost of the identification card shall be prorated by using the following schedule: February - $9.17, March - $8.34, April - $7.50, May - $6.67, June - $5.84, July - $5.00, August - $4.17, September - $3.34, October - $2.50, November - $1.67, December - $0.84.

Section 6. The original vehicle identification card shall be carried in the power unit of the vehicle for which it was issued. No photocopies, reproductions or facsimiles shall be allowed.

Section 7. Even though the Transportation Cabinet does not have the authority to issue temporary identification cards for municipal solid waste transportation vehicles, the cabinet shall promptly issue identification cards to a licensee who has properly applied for the identification cards.

Section 8. The appropriate identification card shall be in the cab of each vehicle transporting municipal solid waste beginning March [~~January~~] 1, 1992.

Section 9. The Transportation Cabinet shall notify the Natural Resources and Environmental Protection Cabinet of all persons found to be transporting municipal solid waste, either without a license to do so, or without a vehicle identification card for the transportation of municipal solid waste.

JERRY D. ANGLIN, Acting Commissioner
DON C. KELLY, Secretary
APPROVED BY AGENCY: January 13, 1992
FILED WITH LRC: February 4, 1992 at 9 a.m.

STATEMENT OF EMERGENCY
701 KAR 5:050E

It is expected that the State Board for Elementary and Secondary Education will be asked at its upcoming meeting to take actions towards suspension and ultimate removal of one (1) or more local school district officials. As a result, the regulation needs to be effective immediately to be applicable to these upcoming proceedings which will occur prior to the expected effective date of the regular proposed amendment to the regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on January 10, 1992.

BRERETON C. JONES, Governor
JOSEPH W. KELLY, Chairman

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Chief State School Officer

701 KAR 5:050E. Summary hearing procedures.

RELATES TO: KRS [~~156.031,~~] 156.132, 156.210
STATUTORY AUTHORITY: KRS 156.070, 156.132
EFFECTIVE: January 21, 1992
NECESSITY AND FUNCTION: [~~KRS 156.031 requires that regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary, and resubmitted to the Legislative Research Commission prior to December 30, 1990.~~] KRS 156.132 requires that the State Board for Elementary and Secondary Education, after a summary hearing as provided for by administrative regulations, suspend any district board of education member or superintendent who is believed to be guilty of immorality, misconduct in office, incompetence, or willful neglect of duty; authorizes the state board to issue subpoenas and administer oaths in removal proceedings; and KRS 156.210 authorizes the chief state school officer to administer oaths and examine witnesses, issue subpoenas, and to have access to public school records. This regulation implements KRS 156.132 by establishing summary hearing procedures for suspension prior to full-blown removal hearing procedures being instituted.

Section 1. When pursuant to KRS 156.132 the Commissioner of Education or the State Board for Elementary and Secondary Education determines it is appropriate to schedule a summary hearing before the state board regarding whether a district board of education member or superintendent should be suspended, the following shall be done:

(1) Arrange scheduling of a summary hearing; and

(2) At least ten (10) days prior to the scheduled hearing, furnish the district board member or superintendent with written notice of the specific charges against him and with written notice of the scheduled hearing. Service of written notice shall be by personal delivery by a person over eighteen (18) years of age or by certified mail return receipt requested with instructions to the delivering postal employee to deliver to the addressee only and show the address where delivered and the date of delivery. [~~When, within its reasonable discretion, the State Board for Elementary and Secondary Education, pursuant to KRS 156.132, feels a summary hearing to determine whether a district board of education member or superintendent is to be suspended shall be held, the hearing shall either be scheduled before the full board, or a panel thereof, or referred to a hearing examiner who is a full time employee of the Department of Education and who has been recommended by the chief state school officer, and the district board member or superintendent shall be furnished the specific charges against him.~~]

Section 2. The full board, or a panel thereof, or any hearing examiner designated to conduct a hearing under this regulation may [~~shall have full authority to, and shall, do the following:~~]

[~~(1) Schedule the hearing, on not less than ten (10) days' written notice, and~~] grant hearing continuances [~~thereof~~] through the chairman of the state board or the hearing panel or through the hearing examiner for just cause shown by verified statement of the accused or by signed statement of his attorney, although when a panel of the state board or a hearing examiner conducts the hearing, a report in the form hereinafter required shall, whenever practicable, be made to the state board for its next regular meeting following referral of the matter to such a panel or hearing examiner.

Section 3. The full board, or a panel thereof, or any hearing examiner designated to conduct a hearing under this regulation shall:

(1) [~~(2)~~] Administer oaths, examine witnesses under oath, issue requested subpoenas to compel attendance of witnesses or production of physical evidence;

(2) [~~(3)~~] Tape record all testimony taken; and

(3) [~~(4)~~] Issue, whenever a hearing panel or hearing examiner is utilized, a written report to the state board containing a synopsis of the testimony taken, any exhibits filed, and a recommendation.

Section 4. [~~3.~~] Any hearing held under this regulation shall be for the purpose of allowing the accused district board member or superintendent to appear, with or without counsel, and to reply to the charges, although witnesses testifying in support of the charges may, at the option of the state board, also be heard. Formal rules of evidence and confrontation and cross-examination of witnesses shall not be applicable unless specifically ordered by the state board.

Section 5. [~~4.~~] Any hearing held under this regulation shall be closed to the public, unless otherwise requested by the accused district board member or superintendent, and any hearing panel's or hearing examiner's report shall be held confidential.

Section 6. [~~5.~~] Any failure of a district board member or superintendent to avail himself of the summary hearing procedures set forth herein shall not be deemed a waiver of his right to contest actual removal from office under KRS 156.132, and the procedures set forth herein shall not be deemed, purely by force of this regulation, to apply to any hearing which shall be held for actual removal.

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: November 27, 1991
FILED WITH LRC: January 21, 1992 at 3 p.m.

REGULATIONS AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

PUBLIC PROTECTION AND REGULATION CABINET
Board of Claims
(As Amended)

108 KAR 1:030. Filing of claims, original signature of claimant required.

RELATES TO: KRS 44.080, 44.086, 44.090
STATUTORY AUTHORITY: KRS Chapter 13A, 44.080, [44.090]
NECESSITY AND FUNCTION: KRS 44.080 requires the Board of Claims to establish rules for its government and for the regulation of the method of pleading and practice before it. The purpose of this regulation is to require the original signature of a claimant.

Section 1. (1) All claims filed with the board pursuant to KRS 44.070 et seq., shall contain the original signature of the claimant [irrespective of] whether or not such claimant is represented by an attorney.
(2) If the claimant is represented by an attorney, the claim shall also contain the original signature of the [such] attorney.

JACK D. RAZOR, Chairman
APPROVED BY AGENCY: September 26, 1991
FILED WITH LRC: October 16, 1991 at 11 a.m.

GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(As Amended)

201 KAR 2:061. Procedures followed by the Kentucky Board of Pharmacy in the investigation and hearing of complaints.

RELATES TO: KRS 315.131, 315.191(4)
STATUTORY AUTHORITY: KRS 315.191(1), (4)
NECESSITY AND FUNCTION: This administrative regulation establishes board procedure for investigations and the administrative hearings process. [The Kentucky Board of Pharmacy in fulfilling provisions of KRS 315.131(1), (2), and (3) has implemented procedures to expedite and enhance the judicial process to effect appropriate resolution in a more timely fashion and in a manner consistent with the severity of the transgression.]

Section 1. Complaints against licensees may be oral or written, [with precedence given to written,] from such sources as consumers, competitors, health professionals, government and provider agencies, or other interested parties.

Section 2. Upon receipt of a [any] complaint [meriting investigation as determined by the executive director], the board shall instruct its staff to:
(a) Conduct an investigation; and
(b) Report the conclusions and recommendations of the investigation to the:
1. Executive director; and
2. Board member assigned by the board to review conclusions and recommendations relating to an investigation. [, or its representative, an inspector shall be dispatched to conduct an investigation and to file a report of his findings.]

Section 3. (1) A panel consisting of the assigned board member, the executive director, and the pharmacy drug inspector shall review the conclusions and recommendation relating to an investigation.
(2) The panel shall recommend one (1) of the following options to the board:
(a) A reprimand restricting the licensee, permit or certificate holder;
(b) The issuance of a formal complaint, order, and notice of hearing.
(3) Documentation of a board reprimand shall be maintained in the appropriate board files. [As consideration of the investigatory findings by the executive director, inspector, the board or its appointee and, when necessary, the counsel for the board, concludes, the following options shall result:
(1) Admonition or other disposition by written communication to the licensee(s) involved, with proper notification of resolution to the complainant. Documentation shall be maintained in the appropriate board office files for reference purposes.
(2) Issuance of formal complaint, order, and notice of hearing. Alleged infractions may result in:
(a) Administrative conference before the executive director and inspector. Should proposed agreements be forthcoming, and after submission be ratified by the board, the matter shall be concluded without further process.
(b) Settlement conference, usually conducted between defense and prosecuting attorneys who strive to agree as to certain stipulations and proposed terms and conditions for an agreed order that appears reasonably acceptable to resolve the complaint. The proposed terms of agreement are then subject to approval of the board. If an agreed order is subsequently agreed to by all parties concerned, the matter is thereby resolved, the matter shall be concluded without further process.
(c) Hearing becomes necessary to resolve the matter.]

Section 4. (1) With the approval of the board, the executive director shall notify the licensee, permit, or certificate holder, in writing, that he may request an administrative conference before the executive director and the pharmacy drug inspector to be held prior to the hearing.
(2) The licensee, permit or certificate holder shall be notified that he may appear with counsel.
(3) An administrative conference shall be held to determine whether an agreement may be reached to resolve the complaint that is acceptable to all parties.
(4) If an agreement is reached, it shall be submitted to the board for approval and board order.

Section 5. (1) A settlement conference may be requested by the attorney for a licensee, permit or certificate holder.
(2) If the board approves the request, a settlement conference shall be held by the attorney for the licensee, permit or certificate holder, and the board attorney.
(3) If the parties to a settlement conference agree on stipulations, proposed terms, and conditions for an agreed order to dissolve the complaint, they shall forward the agreed order to the board for approval.
(4) If the proposed agreed order is approved by the board the complaint shall be considered resolved and a hearing shall not be held.

Section 6. [4.] Hearings. (1) The president of the board or the duly appointed hearing officer shall:
(a) Preside over all administrative hearings; and
(b) [shall] Have the authority to:
1. Rule on all motions;
2. [, to] Control the procedure of the hearing; and
3. [to] Admit or exclude testimony or other evidence.
(2) Evidence in support of the complaint shall be presented by the counsel for the board. [In all cases, said counsel shall have the right to question witnesses and offer evidence into the record.]
(3)(a) Evidence may be admitted if it is of the type commonly relied upon by reasonably prudent men and women in the conduct of their affairs.
(b) Irrelevant, immaterial or unduly repetitious evidence shall be excluded.

(c) Hearsay evidence, including affidavits, may be admitted for the purpose of supplementing competent evidence in the discretion of the president of the board or the hearing officer appointed to conduct the hearing.

(4) All hearings before the board shall proceed in the following order, wherever practical:

(a) Opening statements in the following order:

1. Board counsel;
2. Licensee's counsel or licensee;

(b) Witnesses and evidence in support of the complaint;

(c) Witnesses and evidence on behalf of licensee;

(d) Closing statements in the following order:

1. Licensee's counsel or licensee;
2. Board counsel.

(5)(a) Testimony to be considered by the board may be taken by deposition.

(b) A party or witness **may** [~~will~~] be allowed to testify by deposition, rather than attend the hearing, upon:

1. A showing of inability to attend; and
2. That the other party will have an opportunity to cross-examine at **the** [~~said~~] deposition.

Section **7.** [~~5.~~] Posthearing Proceedings. (1) The board shall deliberate on all cases in closed session.

(2) Board counsel shall not attend, or be involved in any manner, the closed session.

(3) The specific findings of the board shall be made in open session following the board's deliberation.

DONALD J. RUWE, President
APPROVED BY AGENCY: December 4, 1991
FILED WITH LRC: December 5, 1991 at 8 a.m.

DEPARTMENT OF AGRICULTURE
(As Amended)

302 KAR 20:230. Fee basis schedule.

RELATES TO: KRS Chapter 257
STATUTORY AUTHORITY: KRS 257.020, 257.030
NECESSITY AND FUNCTION: To establish procedures for setting a fee basis schedule for the purpose of reimbursement payments to licensed and accredited veterinarians by the department for expenses incurred in performing the professional services mandated by the pseudorabies testing program as set out at 302 KAR 20:220.

Section 1. Definitions. (1) "Fee basis agreement" means the agreement between the state veterinarian and a licensed and accredited veterinarian establishing the rate of reimbursement for professional services performed in connection with the pseudorabies testing program.

(2) "Per head allowance" means the allowance or rate of reimbursement by the department for professional veterinarian services performed under the pseudorabies testing program which is based on the testing performed on each animal.

(3) "Stop fee" means the allowance or rate of reimbursement by the department for professional veterinarian services performed under the pseudorabies testing program based on each farm at which animals are tested.

Section 2. Contract for Fee Basis. Licensed and accredited veterinarians providing the professional services required by the pseudorabies testing program shall receive payment for professional services from the department at the rate specified in the fee basis agreement. The fee basis agreement may provide for a stop fee not to exceed twenty (20) dollars and a per head allowance not to exceed three (3) dollars.

Section 3. Reimbursement Due. The fee basis agreement shall provide that a claim for payment shall be submitted on a pseudorabies testing program statement of services performed. Further, the agreement shall provide that no payment for pseudorabies testing services shall be made until the appropriate pseudorabies test chart has been received and validated by the state veterinarian. All samples must be of test quality.

Section 4. The state veterinarian **shall** [~~may~~] determine the terms and conditions of the fee basis agreement and **shall** [~~may~~] determine the terms and conditions for participation of a licensed and accredited veterinarian in the agreement. The state veterinarian may suspend, terminate, deny or not renew a fee basis agreement when he has good cause to believe that the licensed and accredited veterinarian has:

(1) Failed to perform services in a reasonably prudent and professional manner;

(2) Misrepresented or concealed facts in order to receive or enable others to receive payments;

(3) **Misrepresented** [~~Misrepresenting~~] facts regarding animals tested or test results;

(4) **Failed** [~~Failure~~] to comply with the terms and conditions of the fee basis agreement; **or**

(5) **Submitted** [~~Submitting~~] false or questionable requests for fee basis payments.

Section 5. Auditing Reporting. All participating veterinarians shall be required to maintain fiscal and service records and to provide [~~such~~] records as may be determined necessary by the state veterinarian for the effective administration of the program. A participating veterinarian shall be required to make available upon request all professional service and financial records relating to the fee basis agreement to the Office of the State Veterinarian, Kentucky Department of Agriculture, its representatives or designees for auditing and monitoring purposes.

Section 6. Fee Basis Forms. A fee basis agreement and pseudorabies testing statement of services performed must be made on forms provided by the state veterinarian. The fee basis agreement and pseudorabies statement of professional services forms are incorporated by reference. The fee basis agreement and pseudorabies testing statement of services performed forms **shall be for services performed on or after February 1, 1992** [~~are effective fist day of February, 1992~~], and may be obtained at the Office of the State Veterinarian, 100 Fair Oaks Lane, Frankfort, Kentucky 40601. The effective day of this regulation shall be February 1, 1992.

CHARLES L. HAMILTON, Chairman
APPROVED BY AGENCY: October 30, 1991
FILED WITH LRC: October 30, 1991 at 1 p.m.

COMPILER'S NOTE: The following regulation, 405 KAR 8:010, was amended by the Administrative Regulation Review Subcommittee and the promulgating agency on February 3, 1992. However, the regulation, as amended, was deferred to the March 1992 meeting for further consideration, and was not referred to an appropriate jurisdictional subcommittee for its second review.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(As Amended)

405 KAR 8:010. General provisions for permits.

RELATES TO: KRS 350.020, 350.055, 350.060, 350.070, 350.085, 350.090, 350.130, 350.135, 350.450, 350.465, 27 CFR 55.206, 55.218, 55.219, 55.220, 30 CFR 77.1301(c), 30 CFR Parts 730-733, 735, 773-775, 777, 778.17, 917, 16 USC 470 et seq., 661 et seq., 66A, 703 et seq., 1513 et seq., 30 USC 1253, 1255-1261, 1263-1266, 1272
STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028,

350.060, 350.135, 350.450, 350.465, 30 CFR Parts 730-733, 735, 773-775, 777, 778.17, 917, 16 USC 470 et seq., 661 et seq., 66A, 703 et seq., 1513 et seq., 30 USC 1253, 1255-1261, 1263-1266, 1272

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to permits for surface coal mining and reclamation operations. This regulation provides for permits to conduct these operations. The regulation specifies when permits are required, application deadlines, requirements for applications for permanent program permits, fees, verification of applications, public notice requirements, submission of comments on permit applications, the right to file objections, informal conferences, review of the permit applications, criteria for application approval or denial and relevant actions, term of the permits, conditions of permits, review of outstanding permits, revisions of permits, amendments, [and] renewals, transfers, assignments, and sales of permit rights, administrative and judicial review, and procedures relating to improvidently issued permits.

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

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

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

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

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

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

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

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

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

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

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

(b) Applicable requirements of the Endangered Species Act of 1973, as amended (16 USC 1531 et seq.); the Fish and Wildlife Coordination Act **of 1934**, as amended (16 USC 661 et seq.); the Migratory Bird Treaty Act of 1918, as amended (16 USC 703 et seq.); the National Historic Preservation Act of 1966, as amended (16 USC 470 et seq.); and the Bald Eagle Protection Act **of 1940**, as amended (16 USC 668a), as required by 30 CFR 773.12.

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

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

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

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

(c) The following forms, which are required to be submitted by applicants, are hereby incorporated by reference:

1. Preliminary Application, MPA-00, **11/91**
2. Permittee Information for a Mining Permit, MPA-01, **11/91**
3. Operator Information for a Mining Permit, MPA-02, **11/91**
4. Technical Information for a Mining Permit, MPA-03, **11/91**
5. Surface Owner's Affidavit: Lands Historically Used for Cropland, MPA-03-20.1.B, **11/91**
6. Disinterested Third Party Affidavid: Lands Historically Used for Cropland, MPA-03-20.1.C, **11/91**
7. Application to Revise a Mining Plan, MPA-04, **11/91**
8. Update of Permittee or Operator Information, MPA-05, **11/91**
9. Change of Corporate Owners, Officers or Directors, MPA-06, **11/91**
10. Application to Transfer a Mining Permit, MPA-07, **11/91**
11. Revision Application to Change Operator, MPA-08, **11/91**
12. Application for Renewal of a Mining Permit, MPA-09, **11/91**
13. Application for a Coal Marketing Deferment, MPA-10, **11/91**

and

14. Minor Field Revision Application Form, SME 80, revised 9/91.

(d) These forms may be reviewed or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

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

(2) Information set forth in the application shall be current, presented clearly and concisely, and supported by appropriate

references to technical and other written material available to the cabinet.

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

(a) Names of persons or organizations which collected and analyzed the data;

(b) Dates of the collection and analyses; and

(c) Descriptions of methodology used to collect and analyze the data.

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

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

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

(6) General requirements for maps and plans.

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Within fifteen (15) days of the final date of publication of the advertisement, the applicant shall submit to the cabinet proof of publication of the required final four (4) consecutive weekly notices, satisfactory to the cabinet, which may consist of an affidavit from the publishing newspaper certifying the dates, place and content of the advertisements.

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

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

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

(b) A map or description which shall:

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

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

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

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

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

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

(e) If an applicant seeks a permit to mine within 100 feet of the

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

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

(g) The application number.

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

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

(b) The application number;

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

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

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

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

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

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

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

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

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

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

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

Section 10. Right to File Written Objections. (1) Any person whose interests are or may be adversely affected or an officer or head of any federal, state, or local government agency or authority to be notified under Section 8 of this regulation shall have the right to file written objections to an application for a permit, major revision, amendment, or renewal of a permit with the cabinet, within thirty (30) days after the last publication of the newspaper notice required by Section 8(1) of this regulation.

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

(a) Transmit a copy of the objections to the applicant; and

(b) File a copy at the appropriate regional office of the cabinet for public inspection under Section 8(8) of this regulation.

Section 11. Permit Conferences. (1) Procedure for requests. Any person whose interests are or may be adversely affected by the decision on the application, or the officer or head of any federal, state or local government agency or authority to be notified under Section 8 of this regulation may, in writing, request that the cabinet hold an informal conference on any application for a permit, major revision, amendment, or renewal of a permit. The request shall:

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

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

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

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

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

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

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

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

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

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

Section 12. Public Availability of Information in Permit Applications on File with the Cabinet. (1) General availability.

(a) The cabinet shall make an application for a permit, [major or minor] revision, amendment, or renewal of a permit or an application for transfer, assignment, or sale of permit rights available for the public to inspect and copy by placing a full copy of the application at the regional office for the area in which mining shall occur. The application will be made available by the cabinet for public inspection and copying, at reasonable times, in accordance with Kentucky open records statutes, KRS 61.870 to 61.884. This copy need not include

confidential information exempt from disclosure under subsections (2) and (3) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Review of violations.

(a) Based on available information concerning failure-to-abate cessation orders issued by OSM, Kentucky, or any other state; unabated imminent harm cessation orders issued by OSM, Kentucky, or any other state; delinquent civil penalties assessed pursuant to SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and regulations adopted pursuant thereto, or any other state's laws or regulations under SMCRA; bond forfeitures by OSM, Kentucky, or any other state where violations upon which the forfeitures were based have not been corrected; delinquent abandoned mine reclamation fees; and unabated violations of federal, Kentucky, and any other state's laws, rules and regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, the cabinet shall not issue the permit if any surface coal mining reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant is currently in violation of SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and regulations adopted pursuant thereto, any other state's laws or regulations under SMCRA, or any other law, rule, or regulation referred to in this subsection. In the absence of a failure-to-abate cessation order, the cabinet may presume that a notice of violation issued by OSM, Kentucky, or any other state pursuant to its laws and regulations under SMCRA has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation, except when [where] evidence to the contrary is set forth in the permit application, or when [where] the violation is for nonpayment of abandoned mine reclamation fees or civil penalties. If a current violation exists, the cabinet shall require the applicant or person who owns or controls the applicant, before issuance of the permit, to either:

1. Submit to the cabinet proof that the current violation has been or is in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation; or

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

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

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

(5) Final compliance review. After an application is approved, but before the permit is issued, the cabinet shall reconsider its decision to approve the application, based on the compliance review required by subsection (4)(a) of this section in light of any new information submitted under 405 KAR 8:030, Sections 2(11) and 3(4), or 405 KAR 8:040, Sections 2(11) and 3(4).

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

which has been documented in the approval, that:

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

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

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

(4) The proposed permit area is:

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

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

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

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

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

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

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

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

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

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

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

(8) The applicant has paid all reclamation fees from previous and existing operations as required by 30 CFR 870, or has entered into a payment schedule approved by OSM. If the applicant has entered into a payment schedule approved by OSM, a permit may be issued only if it includes a condition that the permittee comply with the approved payment schedule.

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

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

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

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

(13) The applicant has, with respect to prime farmland obtained either a negative determination or satisfied the requirements of 405 KAR 8:050, Section 3.

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

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

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

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

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

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

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

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

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

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

(a)1. Except as provided for in paragraph (b) of this subsection, for a complete and accurate application submitted under Section 2(2)(a), (b), (d), and (e) of this regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application within sixty-five (65) working days after the notice of administrative completeness under Section 13(2) of this regulation, except that periods of temporary withdrawal under Section 13(3)(b) of this regulation shall not be counted against the sixty-five (65) working-day period available to the cabinet.

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

cabinet.

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

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

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

(a) The applicant;

(b) Each person who files comments or objections to the permit application;

(c) Each party to an informal permit conference, if held;

(d) The county judge-executive of the county, and the chief executive officer of any municipality, in which the permit area lies. This notice shall be sent within ten (10) days after the issuance of the permit and shall include a description of the location of the permit area; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) General.

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

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

(c) The permittee shall conduct surface coal mining and reclamation operations only on those lands specifically designated as the permit area on the maps submitted under 405 KAR 8:030 or 405 KAR 8:040 and authorized for the term of the permit; and which are subject to the performance bond in effect pursuant to 405 KAR Chapter 10.

(2) Right of entry.

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

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

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

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

(3) Environment, public health, and safety.

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

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

2. Immediate implementation of measures necessary to comply; and

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

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

(c) The permittee shall conduct its operations:

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

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

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

(5) Within thirty (30) days after a cessation order is issued by OSM for operations conducted under the permit or after an order for cessation and immediate compliance is issued under 405 KAR 12:020, Section 3 for operations conducted under the permit, except when [where] a stay of the order is granted and remains in effect, the permittee shall either submit to the cabinet the following information,

current to the date the order was issued, or notify the cabinet in writing that there has been no change since the immediately preceding submittal of the information:

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

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

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

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

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

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

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

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

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

(b) If [When] a revision is required by an order issued under Section 19 of this regulation;

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

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

(2) Major revision.

(a) Except as provided in subsections (3)(f) and (6) of this section, a revision shall be deemed [is] a major revision if the cabinet determines that the proposed change is of such scope and nature that [the cabinet determines that] public notice is necessary to allow participation in the cabinet's decision by persons who have an interest which may be adversely affected by the proposed change. Major revisions shall include, but shall not be limited to:

1. Changes in the postmining land use;

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

3. Variances to approximate original contour requirements;

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

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

6. Proposed experimental practices;

7. Changes which may cause major impacts on the hydrologic balance;

8. Incidental boundary revisions that affect new watersheds; and

9. Incidental boundary revisions that include diversions of perennial streams. [;]

[~~10. Incidental boundary revisions that include new areas from which coal will be removed, except these revisions shall be limited to ten (10) percent of the permit area acreage or five (5) acres, whichever is less.~~]

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

(3) Minor revisions.

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

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

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

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

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

a. There are no structures or renewable resource lands (under paragraph (b) of the definition of "renewable resource lands" [~~(as that term is defined in paragraph (b) of the definition provided in 405 KAR 7:020, Section 1~~]) overlying the area;

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

c. The proposed new location is on the same face-up area and coal seam as originally permitted, is within the same drainage area as the original location, is controlled by the same sedimentation pond, and there will be no additional disturbed acreage within the drainage area of that sedimentation pond.

2. Proposals for retention of concrete platforms and small buildings if [~~where~~]:

a. There is no proposed change to the previously approved postmining land use; and

b. The application contains a notarized letter from the surface owner requesting retention of the structure.

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

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

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

type of pipe as the nearest downstream crossdrain.

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

a. The drainage area to the structure will remain the same as the original design;

b. The proposed location will not cause short-circuiting of the structure; and

c. There is no proposed change to the permit boundary.

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

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

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

8. Proposals for relocation of topsoil storage areas if [~~where~~]:

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

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

9. Proposals to substitute plant species if [~~where~~]:

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

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

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

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

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

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

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

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

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

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

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

16. Proposals to add a portable coal crusher if [~~where~~]:

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

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

c. The operation will not generate coal mine waste;

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

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

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

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

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

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

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

20. Proposals for modifications of shared facilities if [~~where~~] that modification has already been approved in a revision for one of the permittees by the Division of Permits and no additional performance bond was required for the initial revision.

21. Proposals to add a hopper to a permitted area if [~~where~~]:

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

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

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

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

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

24. [~~25.~~] Proposals for incidental boundary revisions for minor off-permit disturbances if [~~where~~]:

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

b. The cumulative acreage limitation in subsection (5) of this section [established in the definition of "incidental boundary revision" in 405 KAR 7:020] is not exceeded;

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

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

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

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

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

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

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

a. [Where] The structure has a hazard classification of B or C;

b. [Where] The impoundment is a developed water resource land use;

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

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

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

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

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

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

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

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

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

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

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

(f) Incidental boundary revisions shall be deemed minor revisions if they:

1. Do not exceed ten (10) percent of the relevant surface or underground acreage in the original or amended permit area;

2. Are contiguous to the current permit area;

3. Are within the same watershed as the current permit area;

4. Are required for an orderly continuation of the mining operation;

5. Involve mining of the same coal seam or seams as in the current permit;

6. Involve only lands for which the hydrologic and geologic data and the probable hydrologic consequences determination in the current permit are applicable;

7. Do not involve properties on which mining is prohibited under KRS 350.085 and 405 KAR 24:040, unless appropriate waivers have been obtained, or which have been designated as unsuitable for mining under 405 KAR 24:030, or any properties eligible for listing on the National Register of Historic Places;

8. Do not involve any of the categories of mining in 405 KAR 7:060 and 405 KAR 8:050 unless the current permit already includes the relevant category;

9. Do not constitute a change in the current method of mining; and

10. Will be reclaimed in conformity with the current reclamation plan.

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

(5) Size limitations for incidental boundary revisions.

(a) For surface mining activities, an incidental boundary revision shall not exceed ten (10) percent of the acreage in the original or amended permit area, and shall not exceed twenty (20) acres.

(b) For underground mining activities and auger mining, incidental boundary revisions for surface operations and incidental boundary revisions for underground workings shall be determined separately.

1. For surface operations, an incidental boundary revision shall not exceed the greater of two (2) acres or ten (10) percent of the acreage of surface operations in the original or amended permit area, and shall not exceed twenty (20) acres.

2. For underground workings, an incidental boundary revision shall not exceed ten (10) percent of the acreage of underground workings in the original or amended permit area, and shall not exceed twenty (20) acres.

(c) Cumulative incidental acreage added by successive incidental boundary revisions shall not exceed the limitations in this subsection. Acreage added by incidental boundary revisions prior to a permit amendment shall not be counted toward cumulative incidental acreage after the amendment.

(6) Operator change revisions.

(a) This subsection shall apply to all operator changes that do not constitute a transfer, assignment or sale of permit rights.

(b) A permittee proposing to change the operator approved in the permit shall submit a complete and accurate application for approval of the change. The application shall be on forms provided by the cabinet.

(c) The application shall include, but shall not be limited to, the information set forth in this paragraph:

1. The permit number, the name and business address of the permittee, the telephone number of the permittee, and the identifying number assigned to the permittee by the cabinet;

2. The name, business address and telephone number of the operator approved in the permit, and the identifying number, if any, assigned to the approved operator by the cabinet;

3. For the proposed operator and persons related to the proposed operator through ownership or control, the same information as required for applicants and persons related to applicants through ownership or control by Sections 2(1) through (4) and (8) of 405 KAR 8:030 and 405 KAR 8:040, and Sections 2(11) through (13) of those regulations shall also apply; and

4. For the proposed operator and persons related to the proposed operator through ownership or control, the same information as required for applicants and persons related to applicants through ownership or control by Sections 3(1) through (3) of 405 KAR 8:030 and 405 KAR 8:040, except information under Section 3(3) pertaining to abated violations shall not be required, and Section 3(5) of those regulations shall also apply.

(d) The application shall be verified under oath by the permittee and the proposed operator in the manner required under Section 7 of this regulation.

(e) On or after the date the application has been submitted to the cabinet, the application shall be advertised at least once in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located. The advertisement shall be entitled "Notice of Intention to Mine" and shall be of a form specified by the cabinet. The advertisement shall include, at a minimum, the permit number, the geographic location of the permit area, the name and business address of the permittee, a statement that the permittee proposes to change the operator approved in the permit, the names and business addresses of the currently approved operator and the proposed operator, the cabinet address to which written comments may be sent under paragraph (g) of this subsection and the time available for submission of the comments. A copy of the advertisement and proof of publication acceptable to the cabinet shall be filed with the cabinet and made a part of the application not later than fifteen (15) days after the date of publication.

(f) A person whose interests are or may be adversely affected by the cabinet's decision on the proposed operator change, including an officer of a federal, state, or local government agency, may submit written comments on the application to the cabinet within fifteen (15) days after the date of publication of the advertisement.

(g) The cabinet may approve the proposed operator change if it finds, in writing, that the proposed operator:

1. Is eligible to act as an operator under the criteria in Section 13(4) of this regulation; and

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

(h) For a complete and accurate application, the cabinet shall notify in writing the permittee, the proposed operator, and any commenters on the application, of its decision to approve or deny the application within fifteen (15) working days after the close of the public comment period under paragraph (f) of this subsection, except that periods of temporary withdrawal shall not be counted against the fifteen (15) working day period available to the cabinet. If the notice,

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

(7) [(5)] Fees. Applications for [major and minor] revisions shall include a basic fee of $375, except that minor field revisions and operator change revisions shall have no basic fee. If the revision application proposes incidental boundary revisions which would increase the acreage in the permit, an additional acreage fee of seventy-five (75) dollars per acre, or fraction thereof, shall be included with the application, except that no acreage fee shall be required for surface areas overlying underground workings which will not be affected by surface operations and facilities.

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

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

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

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

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

(d) A renewal fee of $375;

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

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

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

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

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

(6) Approval or denial of renewal applications.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. A processing fee of $375.

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

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

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

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

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

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

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

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

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

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

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

receive a new permit under KRS 350.130(3).

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

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

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

Section 24. Administrative and Judicial Review. (1) Following the final decision of the cabinet concerning the application for a permit, revision or renewal thereof, application for transfer, sale, or assignment of rights or concerning an application for coal exploration, the applicant, permittee or any person with an interest which is or may be adversely affected may request a hearing on the reasons for the final decision in accordance with 405 KAR 7:090.

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

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

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

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

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

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

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

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

(b) The violation, penalty, or fee:

1. Remains unabated or delinquent; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Right to request a formal hearing. Any permittee aggrieved by the notice may request a formal hearing under 405 KAR 7:090.

RONALD P. MILLS, Acting Commissioner
PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: January 10, 1992
FILED WITH LRC: January 10, 1992 at noon

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Administration and Finance
(As Amended)

702 KAR 4:050. Building sites; inspection, approval.

RELATES TO: KRS 156.160, 162.010, 162.060
STATUTORY AUTHORITY: KRS 156.070, 156.160
NECESSITY AND FUNCTION: KRS 156.160 requires the State Board for Elementary and Secondary Education to prescribe regulations relative to sanitary and protective construction of public school buildings; KRS 162.010 requires fee simple title to school property; and KRS 162.060 requires plan and specification approval for school construction by the chief state school officer. This regulation provides for the location of school buildings in accordance with the program approved by the chief state school officer.

Section 1. Definitions. (1) In determining the location of an acceptable site, the term "in the vicinity of," as used in educational facilities plans, shall be defined as within a one (1) mile radius of a specific point or the main highway intersection (center) of a city or one (1) mile beyond any two (2) specific points referenced in the facility plan priority. No site shall be approved which exceeds the one (1) mile limit.

(2) A "major renovation" is a renovation of three (3) or more building systems in a permanent center with a total cost of more than twenty (20) percent of the current replacement cost of the building. The building may be the entire permanent center or a clearly, definable portion of the center (such as, 1973 addition, senior high wing, or physical education facility). The renovation shall have been identified in a district facility plan as a priority in order to be allowed. Building systems are defined as foundations, exterior walls, roofing, ceilings, structural, mechanical (HVAC), electrical (including lighting), plumbing, sewage and storm water disposal, doors and hardware, windows, floor coverings, and fixed equipment. The renovation shall also meet the criteria set forth in the school durability section of the school facilities construction criteria adopted by 702 KAR 1:001 [~~010~~] and consist of work that extends the useful life of the structure and work that is not considered as routine maintenance.

Section 2. The chief state school officer shall cause an inspection to be made of each proposed school building site or proposed real property acquisition including site addition upon written request of the local board of education. Site approval shall be given by the chief state school officer prior to any purchase or commitment to purchase, except that an option-to-purchase which in no way obligates purchaser, may be executed to assure availability of site during this approval procedure. All school sites shall be in agreement with the current school facilities plan except that a local board of education may request approval of the chief state school officer to acquire a school site in a rapidly growing area where the existing school cannot accommodate the increased student population and a new school may be proposed in a future facility plan by the Department of Education. However, no site preparation or construction shall take place prior to the time the proposed new school is a part of the facility plan. The site shall have the approval of the chief state school officer prior to initiation of an application for approval of a construction project.

Section 3. The minimum size of school sites shall be as follows:

(1) Elementary school: five (5) acres plus an additional acre for each 100 or fraction of 100 students of anticipated enrollment.

(2) Middle school, junior high school, and high school: ten (10) acres plus an additional acre for each 100 or fraction of 100 students of anticipated enrollment.

(3) Any deviation from subsections (1) and (2) of this regulation shall be made only after a site inspection and investigation of all other circumstances, including a certification of support by the local education agency and approval by the chief state school officer.

Section 4. Prior to contracting for the purchase of a school site, site expansion, or other real property, the local board of education shall follow the site selection process established in this section. The site selection process is a two (2) step approval process. A tentative approval allows the local district to pursue a site for further assurances and documentation which may lead to the approval to acquire the property.

(1) Using the requirements of this regulation, the local district shall review proposed sites for location and site size.

(a) Location. The site shall be located within parameters established in the facility plan priority. A site not in the vicinity shall not be approved without written waiver by the chief state school officer.

(b) The minimum site size shall be:

1. Elementary school. Five (5) acres plus one (1) acre for each 100 or portion of 100 students projected for the school capacity;

2. Middle, junior, and high school. Ten (10) acres plus one (1) acre for each 100 or portion of 100 students projected for the school capacity. Consideration may be given to acquisition of adequate acreage to meet maximum capacity school size (elementary K-5/6: 600; middle/junior: 900; and high: 1500 students).

(2) The school district shall request a site review visit by the Division of Facilities Management of proposed site(s) and provide a city or county map locating proposed site(s) to the staff member upon their visit.

(3) A tentative approval or disapproval shall be given for each proposed sites(s).

(4) With tentative approval the district shall provide the following documentation to the Division of Facilities Management:

(a) Letter from attorney indicating fee simple title may be obtained. A fee simple title shall be received by local board in accordance with KRS 162.010 and certificate of title insurance provided. Should the mineral rights not be acquired, it shall require a forbearance agreement to ensure surface support.

(b) Plat by registered surveyor indicating property boundaries, acreage, road access, easements, and certification that property is above the 100-year flood plain. The property shall not have easements traversing the site. Easements are allowable along perimeter. Commitments to relocate easement from traversing site to perimeter shall be considered. Consideration may be given if filling of the site will bring building floor level and appurtenances above 100-year elevation.

(c) Letter from professional engineer and/or municipal government agency providing assurance of adequate site utilities to include the following:

1. Water. Adequate water supply for both domestic and fire suppression shall be available. This shall require both an adequate volume, flow and pressure.

2. Power. Adequate electrical service shall be available with normal voltages of 120V/240/v, and three (3) phase.

3. Natural gas. Access to natural gas is desirable but not required.

4. Sewage treatment. Either municipal sewer system shall be available or site shall be equipped with a package sewage treatment plant with the effluent piped to an acceptable blue-line stream. Distance from property line to stream and number of property owners with whom an easement shall be required to be negotiated shall be indicated.

(d) Letter from local government or state highway office confirming road adequacy shall be provided. The public road network servicing a site shall be adequate both in width and capacity to accommodate the projected bus and vehicular traffic for the proposed facility in addition to normal traffic while providing a safe and efficient access. This shall require consultation with either the local government road department or the Kentucky District Highway Office if access is by state highway.

(e) A letter from an architect or engineer relating to any potential environmental or safety hazards in the vicinity of the proposed site shall be provided. Within the vicinity of a selected site, there shall not be any hazards to health or environment which are deemed so by state agencies having jurisdiction. Examples include: airport - landing/takeoff corridor, airborne particulates; hazardous waste site affecting runoff and aquifer; manufacturing concerns; sewage treatment/water purification; chlorine presence; subsurface faults; unstable high-wall conditions of surrounding grounds.

(f) Site survey of site development costs by architects or engineers and projected acquisition cost for the proposed site shall be provided. A cost analysis site survey, as requested by the Division of Facilities Management, shall include but not be limited to: mass site excavation, cost of bringing utilities to site and infrastructures, on-site roadway access (less paving), geotechnical survey (drilling a minimum of four (4) holes for subsurface conditions) with associated above normal footing requirements, any costs for hazardous condition cleanup, and acquisition cost. The site survey shall provide alternative locations or elevations of building as requested by the Kentucky Department of Education on the proposed site.

(g) Current assessed value and classification by property valuation administrator shall be provided.

(5) After evaluation of the submitted documentation, the chief state school officer shall issue an approval to acquire the property or disapprove the acquisition, except when approval is required by the State Board for Elementary and Secondary Education for site cost

analysis survey and acquisition cost exceeding ten (10) percent of the maximum budget for the project.

(6) A disapproved site shall require the district to recommend another site for review as stated in subsection (1) of this section.

(7) The district shall submit a BG-1 application (3/84), **hereby incorporated by reference,** for the site purchase when funding source is capital outlay, special voted building funds, or a school revenue bond issue. **The BG-1 application may be copied or obtained from the Division of Facilities Management, Department of Education, Room 1530, Capital Plaza Tower, 15 Mero Street, Frankfort, Kentucky 40601 from 8 a.m. to 4:30 p.m., Monday through Friday.**

(8) Should the district seek reimbursement of site acquisition costs from School Facility Construction Commission funds, the executive director of the SFCC shall be contacted for an appraiser to be named.

(9) The district shall provide the Division of Facilities Management with a notarized copy of the executed deed and title insurance certificate within thirty (30) days after closing of property purchase. [~~It shall be determined by the local board of education that the following conditions can be met and assurances will be given in writing to the chief state school officer prior to his approval to acquire the site.~~]

[~~(1) A fee simple title shall be obtained in conformance with KRS 162.010. A copy of the deed and attorney's title certificate shall be furnished the chief state school officer for approval of the title to the site.~~]

[~~(2) Assurances that an adequate water supply and sewage disposal can be approved by the Department of Natural Resources and Environmental Protection and the Fire Marshal's office having jurisdiction.~~]

[~~(3) Assurances of adequate access to public roads or streets to accommodate anticipated school traffic.~~]

[~~(4) A copy of a plat of the site survey showing any easements prepared by a registered land surveyor.~~]

[~~(5) Certification by a registered architect, engineer or land surveyor that the site or site addition is above the 100 year flood plain. New building construction, additions or major renovation to existing buildings on land presently owned shall be approved only if it is designed in such a manner that all instructional space and the building systems are at an elevation above the 100 year flood plain.~~]

Section 5. (1) A local board of education desiring approval of a site shall request such approval of the chief state school officer. If all assurances and requirements are in order and conform to the facility plan, except as noted in Section 2 of this regulation, the chief state school officer may approve the site. If questions exist, the chief state school officer shall require the requesting school district to contract with an architectural or engineering firm licensed to operate in the Commonwealth of Kentucky. The firm designated by the chief state school officer shall be from a list approved by the State Board for Elementary and Secondary Education contracted to perform a study of the proposed site. This study shall include the following: estimated costs for site development including utilities to provide required infrastructures, necessary road access including traffic impact and analysis, geotechnical report including a soils analysis and requirements for soils compaction or special footing requirements, and any hazardous conditions. Cost of the study shall be borne by the requesting school district and shall be payable upon receipt and approval of same by the chief state school officer. The chief state school officer may waive the requirements for the study in expansions of existing school sites where proposed construction is not anticipated. The architectural or engineering firm conducting the study shall not be eligible to contract to design any construction activities for that priority project. Acquisition and site preparation costs of the local school board shall be ten (10) percent or less of the maximum budget for the project, unless authorized by the State Board for Elementary and Secondary Education. Sites already owned by the school district that meet criteria of the facility plan shall be included in site approval requests and may be subject to the required study.

(2) Once a site has been designated an approvable site, the local board of education shall obtain a written option of sufficient duration approved by the chief state school officer on all approvable sites under consideration until final approval of a specific site has been made in writing by the chief state school officer.

(3) The local board of education shall certify to the chief state school officer that all reasonable sites within the approvable area have been reviewed and a decision has been made by the local board not to pursue acquisition of those sites. This certification shall list the sites reviewed and include reasons site was not acceptable. This shall be submitted to the Division of Facilities Management prior to approval of the final chosen site. [~~In the event that a local board of education has exhausted the time periods established by the School Facility Construction Commission and has not been able to identify a site that meets the appropriate criteria for approval, the chief state school officer shall take the action necessary based upon the required site investigation to identify and approve a school site. This identification process shall include requesting the school district to contract with an architectural or engineering firm as described above for site analysis.~~]

Section 6. A local board of education shall obtain title insurance, in an amount equal to the current appraised value of the property, from an acceptable title insurance company on property acquired for a school site in compliance with KRS 162.010. A copy of the title insurance shall be forwarded with a copy of the fee simple deed to the chief state school officer within sixty (60) days from the date of the deed.

Section 7. A permanent monument (four (4) by four (4) by eighteen (18) inches deep concrete with a brass pin) shall be set in the boundary line of the site at a point which will provide a starting point for initial and final plot of metes and bounds which will circumscribe the site.

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: November 21, 1991
FILED WITH LRC: November 22, 1991 at 2 p.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(As Amended)

806 KAR 17:066. 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

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 polices 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 rehabilitory 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 medial 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), (c), (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 **issuer** [~~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 certicateholder 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 proteinauria;

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 diptheria 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 polices 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(c)[~~(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 **or certificates** 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 **issuer** [~~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

prospective 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~~]:

(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~~]

1. 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.

2. [~~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!~~]

3. [~~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).~~]

4. [~~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.

5. [~~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:~~]

[~~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
MEDICARE PART A SERVICES AND SUPPLIES				
Inpatient Hospital Services: after $560 deductible	Unlimited number of hospital days benefit period	All but $592 for first 60 days/		
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 life-time 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	There is no prior	100% of costs for		

~~Facility Care~~	~~confinement requirement for this benefit~~	~~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.~~]

6. 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.]~~

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

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 equip-ment,			
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 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 life-time maximum ben-efit 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
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 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 equip-ment,			
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
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	$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 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	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 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 diptheria 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

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 equip-ment,			
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

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

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 ben-efit of $50,000	20% and amounts over the $50,000 lifetime maximum

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

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 life-time maximum ben-efit 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
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 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			
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 out-patient 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
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 life-time maximum ben-efit 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 diptheria 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) **Statements.**

1. You do not need more than one (1) Medicare supplement policy.

2. If you are sixty-five (65) or older, you may be eligible for benefits under Medicaid and may not need a Medicare supplement policy.

3. The benefits and premiums under your Medicare supplement policy will be suspended during your entitlement to benefits under Medicaid for twenty-four (24) months. You must request this suspension within ninety (90) days of becoming eligible for Medicaid. If you are no longer entitled to Medicaid, your policy will be reinstated if requested within ninety (90) days of losing Medicaid eligibility.

4. Counseling services may be available in your state to provide advice concerning your purchase of Medicare supplement insurance and concerning Medicaid.

(b) Questions. To the best of your knowledge:

1. Do you have another Medicare supplement [~~insurance~~] policy or certificate in force?

a. [~~1.~~] If so, with which company?

2. [~~(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?~~]

a. [~~1.~~] If so, with which company?

b. [~~2.~~] What kind of policy? [~~If that policy lapsed, when did it lapse?~~]

[~~(c) Are you covered by Medicaid?~~]

3. [~~(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)?

4. [~~(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 **issuer** [~~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 polices 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)]~~

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) -
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.

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.

(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.

_____
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: (l + 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.

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: (l + 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

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)** (Plan)**	Proposed Insurance Pays (Plan) (Plan)
HOSPITALIZATION Semiprivate room and board, general nursing and miscellaneous hospital services and supplies.	First 60 days	All but $	$		
	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 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" **after "Plan" and complete this column**.

*** 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 Page 1 of 2
(November, 1991)

KENTUCKY MEDICARE SUPPLEMENT COMPARISON STATEMENT

	MEDICARE (PART B): HOSPITAL INSURANCE - COVERED SERVICES PER CALENDAR PERIOD			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

NOTICE TO AGENT/INSURER:
This form is to be retained by the replacing insurer and attached to the replacement policy.

Form LHM-2 Page 2 of 2
(November, 1991)

ELIZABETH P. WRIGHT, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: November 18, 1991
FILED WITH LRC: December 6, 1991 at 9 a.m.

CABINET FOR HUMAN RESOURCES
Office of Inspector General
(As Amended)

900 KAR 2:050. Transfer and discharge rights.

RELATES TO: KRS 194.030(12)(b)
STATUTORY AUTHORITY: KRS 216.515, 216.525, 216.557, 216.560, 42 CFR 483.12
NECESSITY AND FUNCTION: 42 CFR 483.12 requires that the state shall have in effect a fair and impartial decision making process for appeals related to involuntary transfer and discharge. This regulation sets forth guidelines for this process for long-term care facilities as licensed by 902 KAR 20:300 or those long-term care facilities certified in accordance with 42 CFR 483. This regulation sets forth the requirements of the Kentucky Nursing Home Reform Act as it relates to residents' transfer and discharge rights.

Section 1. Definitions. (1) "Discharge" or "transfer" means:
(a) Relocation of a resident from a facility to a noninstitutional setting or another health care facility as defined by KRS Chapter 216B; or
(b) Any intrafacility relocation of a resident, except between beds within the same distinct Medicare or Medicaid certified or noncertified part of the facility. [~~"Discharge" means movement from a facility to a noninstitutional setting when the discharging facility provides notice in accordance with this regulation that it intends to cease to be legally responsible for the care of the resident.~~]
(2) "Facility" means a long-term care facility as defined by KRS 216.510(1) excluding those facilities licensed as family care homes.
(3) "Resident" means a resident of a facility or any legal representative or individual acting on behalf of the resident.
[~~(4) "Transfer" means movement from a specific licensed long-term care facility to another health care facility when the legal responsibility for the care of the resident changes from the transferring facility to the receiving facility. A transfer shall only be effective, and the transferring facility's responsibility for the resident shall end, after the receiving facility accepts legal responsibility for the care of the resident.~~]
(4) [~~(5)~~] "Transfer or discharge rights" means those rights of notification and appeal guaranteed in KRS 216.515 and outlined in this regulation.

Section 2. Transfer and Discharge Rights. (1) Transfer and discharge requirements. The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless:
(a) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility; or
(b) The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility; or
(c) The safety of individuals in the facility is endangered; or
(d) The health of individuals in the facility would otherwise be endangered; or
(e) The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare, Medicaid or state supplementation) a stay at the facility; or
(f) The facility ceases to operate.
(2) Documentation. Before a facility transfers or discharges a resident under any of the circumstances specified in subsection (1)(a) or (e) of this section, the reasons for this transfer or discharge shall be documented in the resident's clinical record. The documentation shall be made by:
(a) The resident's physician when transfer or discharge is necessary under subsection (1)(a) or (b) of this section; and
(b) A physician when transfer or discharge is necessary under subsection (1)(d) of this section.
(3) Notice before transfer. Before a facility transfers or discharges a resident, the facility shall:
(a) Notify the resident and, if known, a family member or legal representative of the resident, in writing, of the transfer or discharge and the reasons for the relocation in a language and manner they understand;
(b) Record the reasons in the resident's clinical record; and
(c) Include in the notice the items described in subsection (5) of this section.
(4) Timing of the notice.
(a) Except when specified in paragraph (b) of this subsection, the notice of transfer or discharge required under subsection (3) of this section shall be made by the facility at least thirty (30) days before the resident is transferred or discharged.
(b) Notice may be made as soon as practicable before transfer or discharge when:
1. An immediate transfer or discharge is required by the resident's urgent medical needs, under subsection (1)(a) of this section; or
2. The resident's health improves sufficiently to allow a more immediate transfer or discharge, under subsection (1)(b) of this section; or
3. The safety of individuals in the facility would be endangered, under subsection (1)(c) of this section; or
4. The health of individuals in the facility would be endangered, under subsection (1)(d) of this section; or
5. The resident has not resided in the facility for thirty (30) days.
(5) Contents of the notice. The written notice specified in subsection (3) of this section shall include the following:
(a) The reason for transfer or discharge;
(b) The effective date of transfer or discharge;
(c) The location to which the resident is transferred or discharged;
(d) A statement that the resident has the right to appeal the action to the cabinet;
(e) The name, address and telephone number of the state long-term care ombudsman; and
(f) For nursing facility residents with developmental disabilities, or who are mentally ill, the mailing address and telephone number of the Department of Public Advocacy.
(6) Orientation for transfer or discharge. A facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.
(7) Notice of bed-hold policy and readmission.
(a) Notice before transfer. Before a facility transfers a resident to a hospital or allows a resident to go on therapeutic leave, the facility shall provide written information to the resident and a family member or legal representative that specifies:
1. That for residents receiving [~~Medicare~~] or **who have an application pending for** Medicaid, that if available under the Medicaid state plan and provider agreement, bed-hold days shall [~~will~~] be requested and the time period [~~duration~~] to the bed-hold policy

under the Medicaid state plan during which the resident is permitted to return and resume residence in the facility; [and]

2. The facility's policies regarding bed-hold periods, which must be consistent with paragraph (c) of this subsection, permitting a resident to return; and

3. **For residents who do not receive or do not have an application pending for Medicaid, the facility's established policy governing readmission.** [The facility's commitment regarding allowing the resident to return, which, if the resident does not receive Medicare or Medicaid, shall be consistent with established facility policy. Facility policy shall be consistent with the conditions under which a resident may be transferred or discharged as set forth in subsections (1) and (2) of this section, which shall be the only limitations to the return of the resident.]

(b) Notice upon transfer. At the time of transfer of a resident to a hospital or for therapeutic leave, a long-term care facility shall provide written notice to the resident and a family member or legal representative, which specifies the duration of the bed-hold policy described in paragraph (a) of this subsection.

(c) Permitting resident to return to facility. A long-term care facility shall establish and follow a written policy under which a resident whose hospitalization or therapeutic leave exceeds the bed-hold period under the Medicaid state plan, is notified and readmitted to the facility immediately upon the first availability of a bed in a semiprivate room if the resident:

1. Chooses to be readmitted; and

2. [1.] Requires the services provided by the facility; and

3. [2.] Is eligible for Medicaid [or Medicare] nursing facility services and the facility is certified to participate in Title XVIII or Title XIX of the Social Security Act.

(8) [(3)] Equal access to quality care. A facility must establish and maintain identical policies and practices regarding transfer, discharge, and the provision of service under the Medicaid state plan for all individuals regardless of source of payment.

Section 3. Appeals Rights. (1) A resident may appeal any discharge.

(2) A resident may appeal a transfer when he is transferred from:

(a) A certified bed into a noncertified bed; or

(b) A bed in a certified entity to a bed in an entity which is certified as a different provider.

(3) A resident has no appeal rights when he is moved from a certified bed into another certified bed of the same certification in the same facility.

(4) A resident, or any person acting on behalf of the resident, may request that the cabinet review any proposed transfer or discharge. The cabinet shall investigate this transfer or discharge to ascertain whether there has been a violation of the resident's transfer or discharge rights. [If the cabinet finds that a violation of the resident's transfer or discharge rights has occurred, the cabinet shall issue a Type B citation informing the facility of the date by which the facility shall comply with the findings of the cabinet. A fine of $200 per day shall be assessed for each day that the facility fails to comply with the findings of the cabinet, except for those days a resident requires acute care. These fines may be trebled in accordance with KRS 216.560(3). [and fine the facility $500 per day for any day or portion of a day that the resident is not in the facility due to an actual or attempted transfer or discharge, except for those days a resident requires acute care.] The fine shall end when the resident is readmitted, refuses readmission or for health or other reasons cannot be readmitted.]

(5) A resident may appeal any discharge or appealable transfer to the cabinet. The resident must inform the cabinet in writing of his intent to appeal within fifteen (15) [ten (10)] days from the resident's receipt of notice of the facility's intent to transfer or discharge. Hearing procedures for appeals are set forth at 900 KAR 2:060.

(6) Penalties. The cabinet shall enforce the provision of this administrative regulation pursuant to KRS 216.555, 216.557 and 216.560.

CLAY CESSNA, Inspector General
HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: December 2, 1991
FILED WITH LRC: December 6, 1991 at 9 a.m.

CABINET FOR HUMAN RESOURCES
Office of Inspector General
(As Amended)

900 KAR 2:060. Hearings concerning transfer and discharge rights.

RELATES TO: KRS 194.030(12)(b)
STATUTORY AUTHORITY: KRS 216.515, 216.525, 216.557, 216.560, 216.567, 42 CFR 483.12
NECESSITY AND FUNCTION: 42 CFR 483.12 requires that the state shall have in place a fair and impartial decision-making process for appeals related to involuntary transfer and discharge. This regulation sets forth guidelines for this process for long-term care facilities as licensed by 902 KAR 20:300 or those long-term care facilities certified in accordance with 42 CFR 483. This regulation sets forth the hearing process for appeals related to residents' transfer and discharge rights under Kentucky's Nursing Home Reform statutes and regulations.

Section 1. Definitions. (1) "Facility" means a long-term care facility as defined by KRS 216.510(1) excluding those facilities licensed as family care homes.

(2) "Hearing officer" means the person designated by the cabinet to conduct a hearing and make a decision regarding any appealed transfer or discharge.

(3) "Resident" means a resident of a facility or any legal representative or individual acting on behalf of the resident.

Section 2. Hearing Procedure. (1) Upon receipt of notice of appeal in accordance with 900 KAR 2:050 or 900 KAR 2:020, Section 2(1) and (2), the secretary of the cabinet shall appoint a hearing officer and a hearing shall occur within thirty (30) days.

(2) Notice of hearing shall be mailed to the facility and resident not less than ten (10) days prior to the commencement of the hearing. The notice of hearing shall contain the reasons, time, and place of the hearing. The notice of hearing shall be mailed by certified mail, return receipt requested, to the facility and the resident.

(3) The facility and the resident may be represented by counsel and make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of such actions. No depositions shall be permitted for the purpose of discovery, however, the hearing officer may authorize depositions of witnesses who, in his opinion, for good cause shown cannot be present at the hearing. A hearing officer shall preside at the hearing, shall keep order, administer oaths, may issue subpoenas and may admit relevant and probative evidence and shall conduct the hearing in accordance with reasonable administrative practice.

(4) All testimony at the hearing shall be recorded but need not be transcribed unless requested. The person or organization requesting a transcript shall bear the cost of such transcript.

(5) The hearing officer may place reasonable time limits upon the presentation of testimony, evidence and argument and may terminate or exclude irrelevant or redundant evidence, testimony or argument.

(6)(a) The hearing officer shall review the:

1. Cabinet's determination that the resident's rights were violated; and

2. Fine imposed by the cabinet.

(b) The hearing officer shall base his review of the cabinet's determination and fines on the:

1. Facts of the case; and

2. Requirements of KRS 216.555, 216.557, 216.560, and this administrative regulation.

(c) Appropriate to the facts of the case, KRS Chapter 216, and this administrative regulation, the hearing officer may:

1. Sustain the cabinet's determination and fine; or

2. Determine that the rights of the resident were not violated, and that the imposition of a fine was not warranted; or

3. Make a different determination with regard to the severity or type of violation, and the fine required by KRS Chapter 216; or

4. Make any other decision warranted by the facts, KRS Chapter 216, and this administrative regulation. ~~[The hearing officer shall make a determination as to whether the resident's transfer or discharge rights, as set forth in 900 KAR 2:050, have been violated. If the hearing officer agrees with the findings of the cabinet that the facility violated the resident's transfer or discharge rights and the imposed fine, this fine shall continue until such time as the resident is readmitted, refuses readmission, or for health or other reasons cannot be readmitted to the facility. If the hearing officer finds that the facility has violated the resident's transfer or discharge rights and the cabinet has not made a similar finding, the facility shall be fined $200 [$500] per day which may be trebled in accordance with KRS 216.560(3) from the date of the hearing officer's finding until the facility complies with the finding of the hearing officer or the resident [is readmitted,] refuses readmission or for the health or other reasons cannot be readmitted to the facility. If the hearing officer finds that no violation has occurred, any fine imposed by the cabinet shall be voided.]~~

(7) The hearing shall be the only hearing as it relates to cabinet findings regarding fines, citations and cited deficiencies concerning transfer and discharge rights under this or any licensure regulations.

(8) The hearing officer's decision shall be the final determination of the cabinet. The cabinet shall forward the decision to the resident and facility within ten (10) days of the receipt of the hearing officer's decision.

(9) No hearing officer shall participate in any hearing involving a facility with which he has had in the past twelve (12) months preceding the hearing, any ownership, in whole or in part, employment, fiduciary, contractual creditor or consultative relationship or any familial relation to the resident.

(10) A judicial review may be accorded the resident or facility as specified the KRS 216.570.

CLAY CESSNA, Inspector General
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: December 2, 1991
FILED WITH LRC: December 6, 1991 at 9 a.m.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(As Amended)

902 KAR 13:020. Applicants' requirements; priority for training.

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 applicants and priority of applicants for training.

Section 1. Requirements for Applicants. Each applicant shall:

(1) Be eighteen (18) years of age or older;

(2)**(a) Not have been convicted of a felony or misdemeanor described in KRS 335B.010(4); or**

(b) Not have been convicted of other crimes directly relating to the applicant's ability to perform the duties of an EMT ~~[Be of good moral character]~~;

(3) **Not be a person who compulsively and habitually uses drugs or controlled substances to the extent that it may effect his ability to perform the duties of an EMT** ~~[Not be habitually addicted to or an abuser of alcoholic beverages, drugs, or controlled substances]~~;

(4) **Not be a person who compulsively and habitually uses alcohol to the extent that it may affect his ability to perform the duties of an EMT** ~~[Understand and be able to read, speak, and write the English language]~~;

(5) **Understand and be able to read, speak, and write the English language;**

(6)**(a)** Submit a signed application on the "Application for Emergency Medical Technician~~[" form dated]~~ (9-30-91)**" form.**

(b) "Application for Emergency Medical Technician (9-30-91)" is incorporated by reference.

(c) This form may be inspected, copied, or ~~[and herein incorporated by reference. This application 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. ~~[a form prescribed by the cabinet]~~.

Section 2. (1) In determining whether a crime directly relates to an applicant's ability to perform the duties of an EMT, the cabinet shall apply the test set out in KRS 335B.020(2).

(2) The following crimes shall be considered by the cabinet as directly relating to an applicant's ability to perform the duties of an EMT:

(a) Offenses under KRS Chapter 189 (traffic regulations punishable by fine or imprisonment or both);

(b) Offenses under KRS Chapter 189A (driving under the influence);

(c) Offenses under KRS Chapters:

1. 218A (controlled substances);
2. 507 (criminal homicide);
3. 508 (assault and related offenses);
4. 509 (kidnapping and related offenses);
5. 510 (sexual offenses);
6. 511 (burglary and related offenses);
7. 512 (criminal damage to property);
8. 513 (arson and related offenses);
9. 514 (theft and related offenses);
10. 515 (robbery);
11. 521 (bribery and corrupt influences);
12. 523 (perjury and related offenses);
13. 525 (riot, disorderly conduct and related offenses);
14. 527 (offenses relating to firearms and weapons);
15. 528 (gambling);
16. 529 (prostitution offenses);
17. 506 (offenses of attempts, conspiracy, or complicity to commit the offenses specified in this subsection).

(3) The cabinet shall also consider convictions of other offenses if they directly relate to an applicant's ability to perform the duties of an EMT.

Section 3. The cabinet may deny an application if it determines that an applicant:

(1) Does not meet the requirements specified in Section 1 of this regulation;

(2) Has been convicted of a crime described in KRS 335B.010(4); or

(3) Has been convicted of other crimes directly relating to the applicants ability to perform the duties of an EMT.

Section **4.** ~~[2.]~~ Priority of Applicants for Training. [(1) The priority of] Applicants for training in courses offered to the public by implementing agencies [which are open to the public and not otherwise exempted by the cabinet] shall be accepted according to the following priorities:

(1) [(a)] First priority: ambulance personnel;

(2) [(b)] Second priority: emergency room personnel and related emergency medical service personnel, **such as** ~~[including, but not limited to,]~~ public safety agencies, rescue and extrication, industrial safety, nursing personnel, and certified public school teachers designated as first aid personnel; and

(3) [(c)] Third priority: all others.

(4) [(2)] Applications shall be filed with the implementing agency ten (10) working days prior to the beginning of the course. The final selection of applicants for each course shall be made by the implementing agency.

C. HERNANDEZ, M.D., M.P.H., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 3, 1991
FILED WITH LRC: October 11, 1991 at 11 a.m.

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

904 KAR 2:116. 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.
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~~].
(12) "HEAP" means home energy assistance program.

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.~~]

~~Family Size~~	~~Monthly~~	[~~Income Scale~~ ~~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.~~]
(c) [~~(d)~~] Households shall receive benefits based on the house-

hold'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.

~~[(c) 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%~~
~~30- 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)1. A household needing a heat system repair shall be referred to the local weatherization program.

2. ~~[The]~~ Weatherization program staff shall evaluate the heating system and have all repairs, necessary to make the system operable, performed as soon as possible.

3. ~~[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 **during the crisis component** 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 11, 1991
FILED WITH LRC: November 15, 1991 at 11 a.m.

CABINET FOR HUMAN RESOURCES
Department for Social Services
(As Amended)

905 KAR 8:090. Personal care assistance services.

RELATES TO: KRS 205.900 through 205.920
STATUTORY AUTHORITY: KRS 194.050, 205.910**, 205.920**
NECESSITY AND FUNCTION: KRS 205.910 requires [~~directs~~] the Cabinet for Human Resources to establish [~~promulgate~~] an eligibility standard for personal care assistance services which shall take [~~takes~~] into consideration the unique economic and social needs of severely physically disabled adults. The Department for Social Services has **promulgated regulations pursuant to KRS 205.920** [~~drafted procedures~~] that shall enable provisions of KRS **205.905-205.920** [~~205.910~~], concerning personal care assistance services to be implemented. [~~The purpose of this regulation is to satisfy the requirements of KRS 205.910.~~]

Section 1. Definitions. (1) The definition of "cabinet" is governed by KRS 205.900(1).

(2) The definition of "evaluation team" is governed by KRS 205.900(2).

(3) The definition of "personal care assistance services" is governed by KRS 205.900(3).

(4) The definition of "qualified agency or organization" is governed by KRS 205.900(4).

(5) The definition of "secretary" is governed by KRS 205.900(5).

(6) The definition of "severely physically disabled adult" is governed by KRS 205.900(6).

(7) "Activities of daily living (ADLs)" means feeding, bathing, and dressing oneself; transferring and toileting.

(8) "Administrative support personnel" means staff designated within the contract agency who offer technical assistance to, and monitor the activities of the qualified agency.

(9) "Approved plan" means the response written by the contract agency to the request for proposal and agreed upon by the Division of Aging Services.

(10) "Authorized representatives of the cabinet" means the Director of the Division of Aging Services or official designee.

(11) "Evaluation team's recommendations" means the official response of the evaluation team signed by all three (3) team members.

(12) "Income eligibility criteria" means a formula to determine eligibility for the personal care attendant program which addresses [~~complies with the statutorial requirement that~~] the "unique economic needs of severely physically disabled adults" as governed by KRS 205.910(1) [~~shall be addressed~~].

(13) "Instrumental activities of daily living (IADLs)" means cooking, shopping, laundry, housekeeping, and other assistance necessary to maintain a person in his own home.

(14) "Contract agency" means the agency with whom the Cabinet for Human Resources has contracted to administer the personal care attendant program.

(15) "Living arrangement" means a noninstitutional environment for a physically disabled adult who lives alone or with family or others.

(16) "Mentally capable" means an adult who is able to recruit, hire, fire, and supervise the persons who provide personal care assistance services. There is no provision for a proxy.

(17) "Participant" means a person accepted into the personal care attendant program who has met the eligibility requirements of a severely physically disabled adult.

(18) "Personal care attendant" means a person who provides personal care attendant services.

(19) "Personal care attendant services" means services to assist an adult with physical disabilities in performing:

(a) Activities of daily living;
(b) Instrumental activities of daily living;
(c) Routine bodily functions care (bowel and bladder);
(d) Turning;
(e) Repositioning; and
(f) If necessary, ambulation and emergency procedures.

(20) "Prescreening" means a process, using a quick checklist, which assesses whether or not an applicant appears to meet the basic requirements for eligibility.

(21) "Subsidy" means a financial reimbursement paid by the state through the contract agency to the participant for services provided by an attendant. The subsidy shall not be considered income for any purpose to the extent permitted by federal law and regulation.

(22) "Work agreement" means an agreement of time and tasks developed by the participant as the employer, for the attendant as the employee.

Section 2. Participant Responsibilities. The participant's responsibilities shall include:

(1) Recruiting attendants;
(2) Screening attendants;
(3) Interviewing attendants;
(4) Selecting attendants;
(5) Hiring attendants;
(6) Instructing attendants on specific personal care duties;
(7) Supervising attendants;
(8) Evaluating attendant care;
(9) Firing attendants;
(10) Discussing and coming to agreement with each attendant about what services shall be provided;
(11) Keeping records and reporting to the agency time worked for payment to the attendant;
(12) Computing required employee payroll, withholdings, and actual payment of required withholdings and taxes appropriate to being an employer;
(13) Establishing terms of employment for attendant to include time, hours, duties, and responsibilities. This shall be in the form of a written agreement between the disabled adult and the attendant; and
(14) Coordinating with the program coordinator the aspects of program requirements.

Section 3. Attendant Responsibilities. The attendant's responsibilities shall include:

(1) Entering into written agreement for terms of work as specified by the participant.
(2) Performing the tasks agreed on between the participant and attendant.
(3) Performing the tasks as instructed by the participant.
(4) Reporting to work as scheduled.
(5) Maintaining the privacy and confidentiality of the participant.

(6) Notifying participant at least six (6) hours in advance when unable to report for work as scheduled.
(7) Maintaining a list of emergency numbers.
(8) Attending attendant training related to specific care needs.
(9) Keeping a daily record of hours worked and services rendered.
(10) Submitting to the participant, documents and material necessary to comply with the formal payment process.
(11) Meeting with participant and program coordinator regarding the participant's progress and the state of the relationship between the participant and the attendant.
(12) Disclosing misdemeanor or felony convictions to the participant and authorize the participant to obtain a record check on the attendant through law enforcement agencies.
(13) Notifying program coordinator of conditions which seriously threaten the health or safety of the participant or attendant.

Section 4. Program Coordinator Responsibilities. The program coordinator's responsibilities shall include:
(1) Locating severely physically disabled persons who may be eligible for participation.
(2) Prescreening applicants who may be eligible to participate in the personal care attendant program.
(3) Assisting the participant in how to conduct an interview and screen prospective attendants.
(4) Assisting in the recruitment and referral of attendants to participants.
(5) Assisting in or arranging for the training of attendants if necessary.
(6) Reviewing with the participant the evaluation completed by the evaluation team.
(7) Assisting the participant in developing a work agreement between the disabled adult and attendant.
(8) Monitoring the progress of each participant on a quarterly basis.
(9) Assisting the participant in finding back-up attendants for emergencies or regular attendant's time off.
(10) Assisting in the recruitment of personal care attendants when requested.
(11) Maintaining a list of qualified personal care attendants.
(12) Assuring that participants receive training in recordkeeping and tax responsibilities related to services.
(13) Completing ten (10) hours of initial care management training and any follow-up training required by the cabinet.

Section 5. Qualified Agency Responsibilities. The responsibilities of the qualified agency shall include:
(1) Employing or contracting with an evaluation team consisting of three (3) individuals:
(a) A program coordinator or social worker;
(b) An occupational or physical therapist; and
(c) A registered nurse.
(2) Providing monthly programmatic and financial reports on attendants per participant to the contract agency.
(3) Developing procedures for payment of subsidies and establishing appropriate fiscal control procedures within the agency.
(4) Employing or contracting for the services of a program coordinator.

Section 6. Evaluation Team Responsibilities. The responsibilities of the evaluation team shall include:
(1) Completing the initial evaluation of applicants.
(2) Reevaluating participants annually or more frequently if changes occur in the participant's situation.

Section 7. Contract Agency Responsibilities. The responsibilities of the contract agency shall include:
(1) Implement the personal care attendant program according to a plan approved by the Division of Aging Services.
(2) Assume fiscal accountability for the state funds designated for the program.
(3) Provide necessary administrative support personnel within the contract agency office.
(4) Provide an appeals procedure and hearing process in compliance with the requirements of 905 KAR 8:140.
(5) Monitor management practices, including program evaluation, to assure effective and efficient program operation and compliance with financial audit requirements.
(6) Provide, in conjunction with provider agencies, a procedure for attendant payment.
(7) Review all recommendations of the evaluation team regarding applicant eligibility and participant services.
(8) Follow the recommendations of the evaluation team or give notice to the applicant within twenty (20) days of receipt of the recommendations and the reasons for not acting upon them.
(9) Respond in writing to the provider agency regarding the evaluation team's recommendations within ten (10) working days.
(10) Submit monthly program reports to the Division of Aging Services.
(11) Maintain files and records for cabinet audit, including participant records and statistical reports.

Section 8. Division of Aging Services Responsibilities. The responsibilities of the Division of Aging Services shall include:
(1) Review proposed plans submitted by contract agencies to administer the personal care attendant program.
(2) Inform the contract agency in writing of the action taken regarding the proposed plan for administration of the personal care attendant program. Action taken by the Division of Aging Services shall include the following:
(a) Approve the plan as submitted;
(b) Require the contract agency to revise the plan; or
(c) Reject the plan.
(3) Monitor the contract agency at least annually, and the qualified agencies and participants as deemed necessary by the division.
(4) Allocate available funding.
(5) Advocate for program expansion.
(6) Provide technical assistance.

Section 9. Eligibility. [~~1. Eligibility Criteria.~~] To be eligible for participation in the personal attendant care services program a person shall meet: [~~must meet both the physical eligibility standard and the income eligibility standard as set forth in this regulation.~~]
(1) The physical eligibility standard which requires that a person shall:
(a) Be eighteen (18) years old or older;
(b) Be severely physically disabled as defined by KRS 205.900(6);
(c) Need not less than fourteen (14) hours of attendant care per week or need an attendant at night;
(d) Reside, or through this program be able to reside, in a noninstitutional setting;
(e) Agree to evaluation of his eligibility for personal care services by an evaluation team from a qualified agency or organization;
(f) Be mentally capable of recruiting, hiring, firing, and supervising attendants;
(g) Agree that his need for continuing attendant care shall be subject to an initial evaluation and reevaluations at yearly intervals;
(h) Work with the program coordinator in establishing a personal care plan as the basis of agreement between the disabled person and his attendant; and
(i) Be capable of preparing attendant payroll reports and required employer tax statements.
[~~Section 2. Physical Eligibility Standard. To participate in the personal care assistance program a person must be eighteen (18) years of age or older with permanent, temporary, or recurring functional loss of two (2) or more limbs, need not less than fourteen (14) hours a week of personal care assistance services or need an attendant at night, and have the ability to select and manage an attendant.~~]
(2) The income equity standards [~~Section 3. Income Eligibility. (1) Income eligibility for receiving personal care assistance services~~] shall be determined by the following formula contained on a form pre-

scribed by the cabinet:

(a) Deduct from the annual gross income the cost of unreimbursed extraordinary medical expenses and impairment related expenses, an amount adjusted to a family size of one (1) at sixty (60) percent of the median income as published in the Title XX Block Grant Plan, dependent care expenses[~~, and any other extraordinary expenses~~] for which a waiver has been obtained from the cabinet to obtain the adjusted gross income.

(b) From the adjusted gross income subtract a basic cost of living factor of $1,260 to obtain the adjusted gross income less the cost of living allowance.

(c) Divide the adjusted gross income less the cost of living allowance by two (2) to allow for the unique economic and social needs of the severely disabled adults.

(d) To obtain the remaining income subtract from the adjusted gross income less the basic cost of living allowance divided by two (2) a supplemental cost of living allowance which shall be calibrated annually so that a participant requiring the minimum level of service at the maximum rate for care shall [~~will~~] become ineligible when the difference between the adjusted gross income and the remaining income equals or exceeds eighty (80) percent of the median income as published in the Title XX Block Grant Plan.

(e) [~~(2)~~] If the remaining income equals the cost of care the client is ineligible.

(f) [~~(3)~~] If the remaining income is more than four (4) dollars but less than the cost of care the client shall contribute to the cost of care.

Section 10. [~~4.~~] Clients' Contribution to Cost of Care. When the eligibility determination indicates the client shall contribute to the cost of care, the following shall apply:

(1) The weekly amount of the clients' contribution shall be determined by dividing the remaining income by fifty-two (52).

(2) The required contribution shall be paid to the attendant.

(3) It shall be the responsibility of the qualified agency [~~or the attendant~~] to collect the contribution.

Section 11. [~~5.~~] Acceptance for Services. (1) A client shall be accepted for service when: [~~Pursuant to the established requirements of the demonstration project, and within budgetary limitations, eligible clients shall be accepted for service.~~]

(a) It is determined that he is eligible to participate in the program; and

(b) Funds are available.

(2) When programs are at capacity, eligible clients' names shall be placed on a chronological waiting list and as vacancies occur be accepted for service on a first come basis.

(3) If [~~In the event of~~] several potential participants make [~~making~~] application at the same time, an equitable procedure for selecting applicants shall [~~will~~] be proposed by the service provider agency to be approved by the contract agency, subject to the approval of the Division of Aging Services.

Section 12. Application and Assessment. (1) Referrals to the personal care attendant program may be by self, family, or other persons or agencies.

(2) When prescreening information indicates interest and eligibility, the evaluation team shall visit the applicant and assist in the completion of the "application form" herein incorporated by reference.

(3) The "evaluation team report" herein incorporated by reference shall be completed and signed by all team members.

(4) The "evaluation team findings and Recommendations" herein incorporated by reference shall be completed and signed by the three (3) team members.

(5) The provider agency shall report the evaluation team's findings and recommendations to the contract agency for final review of participants.

(6) The qualified agency shall be notified in writing as to the final determination.

(7) The qualified agency shall notify the applicant or participant when the findings and recommendations of the evaluation team are accepted by the contract agency.

(8) When the recommendations of the evaluation team are not accepted by the contract agency, the contract agency shall notify the applicant or participant in writing within twenty (20) days and state the reasons for not accepting the recommendations.

Section 13. Attendant Payment. The amount of attendant payment determined shall be in compliance with the following:

(1) The maximum hourly rate for direct personal attendant care shall be established by the Division of Aging Services annually and stated in the contract. Minimum hours per week shall be fourteen (14); maximum hours per week shall be forty (40).

(2) In an extreme situation, a temporary waiver of maximum hours and cost may be granted by the contract agency.

(3) A special night rate may be negotiated when:

(a) A participant does not require an attendant during the day;

(b) A participant does not need direct personal attendant care services from this attendant;

(c) Or to provide for caregiver respite service.

(4) It shall be the responsibility of the participant who is in need of a live-in attendant to directly negotiate with potential attendants on room and board for personal care attendant services. A live-in attendant shall not be excluded from employment as a part-time attendant. Maximum payment under this arrangement shall be for forty (40) hours of personal attendant care services per week.

Section 14. Reporting and Recording. (1) An individual record for each personal care attendant program participant shall be maintained by the qualified agency and shall include:

(a) Prescreening information form;

(b) Application;

(c) Income eligibility form (updated annually);

(d) Evaluation team findings and recommendations (updated annually);

(f) Authorization for extraordinary medical expenses (if applicable);

(g) Employee tax agreement; and

(h) A chronological record of contacts with the participant, family, physician and others involved in care with quarterly monitoring reports.

(2) Each program coordinator shall submit to the provider agency a completed monthly activity report herein incorporated by reference by the designated date in the contract. Copies shall be forwarded to the contract agency and made available to the Division of Aging Services by the contract agency.

Section 15. Suspension of Services. Suspension of services shall occur for the following reasons:

(1) Condition improved - on reevaluation participant is determined to need less than fourteen (14) hours of care per week.

(2) Condition worsened - on reevaluation participant is determined to need more hours of care than the program can provide and to be in danger when left alone due to lack of other caregivers.

(3) Participant's behavior clearly presents a danger to the program coordinator or attendant.

(4) Participant is unwilling or unable to submit required employer taxes.

(5) Participant moves from Kentucky or to an area where funding limitations prohibit services being rendered.

(6) Participant moves into an area of Kentucky where no services are contracted, unless such relocation remains feasible for the closest qualified agency, feasibility being determined by the qualified agency.

(7) Participant expires or is admitted to a long-term care facility.

(8) Participant requests suspension of services.

Section 16. Request for Fair Hearing. The applicant may request a fair hearing within thirty (30) days of any decision by the cabinet, the contract agency or qualified agency as provided by 905 KAR 8:140.

Section 17. Material Incorporated by Reference. (1) Forms necessary for the implementation of the personal care assistance 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 40601. Office hours are 8 a.m. to 4:30 p.m.

LARRY MICHALCZYK, Commissioner
FONTAINE BANKS, JR., for LEONARD HELLER, Secretary
APPROVED BY AGENCY: January 2, 1992
FILED WITH LRC: January 6, 1992 at 11 a.m.

REGULATIONS AMENDED AFTER PUBLIC HEARING OR WRITTEN COMMENTS RECEIVED

GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(Amended After Hearing)

201 KAR 2:105. Licensing/drug distribution requirements for drug manufacturers and wholesalers.

RELATES TO: KRS Chapter 315
STATUTORY AUTHORITY: KRS 315.010, 315.036, 315.191(1)
NECESSITY AND FUNCTION: To establish uniform procedures and fees for the registration of all drug manufacturers and wholesalers and to implement the provisions of the Federal Prescription Drug Marketing Act of 1987, U.S. PL 100-293, 102 Stat. 95, codified at 21 USC § 321 et seq.; and to effect the federal act's requirement to license anyone in the wholesale distribution of prescription drugs. This applies to any person, partnership, corporation or other entity engaging in the wholesale distribution of prescription drugs within the Commonwealth.

Section 1. Definitions. (1) "Wholesale drug distributor" means anyone engaged in wholesale prescription drug distribution and includes those described in KRS 315.010(12), but excepts a common carrier or individual retained solely to transport them and the lawful distribution of drug samples by manufacturers or distributor representatives.

(2) "Wholesale drug distribution" means the **distribution** [~~transfer~~] of legend drugs to persons other than consumers or patients, but shall not include:

(a) The sale, purchase, or trade of a legend drug, or offer of same:

1. By a charitable organization as described in Section 501(c)(3) of the U.S. Internal Revenue Code of 1954 to a nonprofit affiliate of the organization to the extent permitted by law;
2. By hospitals or other health-care entities under common control;
3. To alleviate emergency medical necessity or temporary shortage between pharmacies;
4. By a pharmacist dispensing pursuant to a valid prescription order;
5. **By intracompany sales;**
6. **By blood banks.**

(3) "Manufacturer" means anyone engaged in the commercial production, preparation, propagation, compounding, conversion or processing of a drug, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical synthesis, or both, and includes any packaging or repackaging or a drug or the labeling or relabeling of its container.

(4) "Prescription drug" means any drug required by federal law or regulation to be dispensed only by a prescription, including finished dosage forms and active ingredients subject to Section 503(6) of the Federal Food, Drug, and Cosmetic Act.

(5) "Drug sample" means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug.

Section 2. Requirements. (1) License [~~Permit~~] shall be acquired pursuant to KRS 315.036.

(2) A separate **license** [~~permit~~] shall be required for each facility within the Commonwealth regardless of whether joint ownership or control exists.

(3) An agent or employee of a licensee need not seek licensure under this section when the agent or employee is acting in the usual course of business or employment.

(4) A **license** [~~permit~~] shall not be issued or renewed unless the applicant demonstrates or continues to demonstrate acceptable operational procedures, including, but not limited to:

(a) Adequate maintenance and storage conditions to ensure proper lighting, ventilation, temperature and humidity control, sanitation, space, and security as deemed appropriate by the Kentucky Board of Pharmacy or as per label requirements or official United States Pharmacopeia (USP) compendium requirements. Appropriate manual, electromechanical or electronic temperature and humidity recording equipment, devices, or logs shall be utilized to document proper storage of prescription drugs;

(b) Separation of deteriorated, **damaged,** outdated, misbranded, adulterated or otherwise recalled merchandise **until they are destroyed or returned**;

(c) Providing accurate and precise records of all goods shipped or received including source/recipient, date, quantity, itemized description, and any other information pertinent to the transaction.

(d) All applicants for licensure as controlled substances wholesale drug distributors shall be registered with the state controlled substance authority, and with the U.S. Drug Enforcement Administration and comply with all DEA regulations.

(5) The Kentucky Board of Pharmacy may choose to adopt regulations to include out-of-state distributors or may reciprocally accept in lieu thereof licensure valid by a comparable authority equally recognizing Kentucky's requirements.

Section 3. Qualifications for **License** [~~Permits~~]. (1) **The minimum qualifications shall include:**

(a) The Kentucky Board of Pharmacy shall consider, at a minimum, the following factors in reviewing the qualifications of persons who engage in wholesale distribution of prescription drugs within the Commonwealth:

1. Any convictions of the applicant under any federal, state, or local laws relating to drug samples, wholesale or retail drug distribution of controlled substances;

2. Any felony convictions of the applicant under federal, state, or local laws;

3. The applicant's past experience in the manufacture or distribution of prescription drugs, including controlled substances;

4. The furnishing by the applicant of false or fraudulent material in any application made in connection with drug manufacturing or distribution;

5. Suspension or revocation by federal, state, or local government of any license currently or previously held by the applicant for the manufacture or distribution of any drugs, including controlled substances;

6. Compliance with licensing requirements under previously granted licenses, if any;

7. Compliance with requirements to maintain or make available to the Kentucky Board of Pharmacy or to federal, state, or local law enforcement officials those records required under this section; and

8. Any other factors or qualifications the Kentucky Board of Pharmacy considers relevant to and consistent with the public health and safety.

(b) The Kentucky Board of Pharmacy shall have the right to deny a license to an applicant if it determines that the granting of such a license would not be in the public interest based on health and safety considerations.

(2) No **license** [~~permit~~] shall be issued pursuant to this regulation unless the applicant has furnished proof satisfactory to the Board of Pharmacy:

(a) That the applicant is in compliance with all applicable federal and state laws and regulations relating to drugs [~~and is of good moral character or if the applicant be an association or corporation that the managing officers are of good moral character~~]; and

(b) That the applicant is equipped as to land, buildings, and security to properly carry on the business described in his application.

(3) [~~(2)~~] A duly licensed manufacturer or wholesaler may sell or distribute federal legend drugs only to the following persons:

(a) A currently licensed manufacturer;
(b) A currently licensed wholesaler;
(c) A currently licensed pharmacy;
(d) A currently licensed practitioner;
(e) A currently licensed hospital, but only for use by or in that hospital;
(f) A person in charge of a laboratory, but only for use in that

laboratory for scientific and medical research purposes.

~~[(3) No permit shall be granted to any person who has been convicted of a misdemeanor involving any controlled substance or who has been convicted of any felony.]~~

(4) A **license** ~~[permit]~~ issued pursuant to this regulation may be suspended or revoked for cause.

~~[(5) The Kentucky Board of Pharmacy reserves the right to deny a license to an applicant if it determines that the granting of such a license would not be in the public interest.]~~

Section 4. **License** ~~[Permit]~~ Fees; Renewals. **(1)** All applications for a **license** ~~[permit]~~ under the provisions of this regulation shall be submitted to the Board of Pharmacy on forms furnished by it and shall contain such information as the board may require. Each application shall be accompanied by an annual fee of seventy-five (75) dollars. All **licenses** ~~[permits]~~ shall expire on September 30 following date of issuance and be renewable annually thereafter upon proper application accompanied by the renewal fee of seventy-five (75) dollars and shall be nontransferable.

(2) The Kentucky Board of Pharmacy shall require the following minimum information from each wholesale drug distributor as part of the license:

(a) The name, full business address, and telephone number of the licensee;

(b) All trade or business names used by the licensee;

(c) Addresses, telephone numbers, and the names of contact persons for all facilities used by the licensee for the storage, handling, and distribution of prescription drugs;

(d) The type of ownership or operation (i.e., partnership, corporation, or sole proprietorship); and

(e) The name(s) of the owner or operator of the licensee, including:

1. If a person, the name of the person;

2. If a partnership, the name of each partner, and the name of the partnership;

3. If a corporation, the name and title of each corporate officer and director, the corporate names, and the name of the state of incorporation;

4. If a sole proprietorship, the full name of the sole proprietor and the name of the business entity.

(3) The Kentucky Board of Pharmacy may provide for a single license for a business entity operating more than one (1) facility within the Commonwealth, or for a parent entity with divisions, subsidiaries, or affiliate companies within the Commonwealth when operations are conducted at more than one (1) location and there exists joint ownership and control among all the entities.

(4) Changes in any information in subsection (2) of this section shall be submitted to the Kentucky Board of Pharmacy as required by such authority.

Section 5. Standards. (1) Facilities. All buildings in which legend drugs are wholesaled, repackaged, stored, held, sold, offered for sale, exposed for sale, or kept for sale shall be of suitable size, construction, and location to facilitate cleaning, maintenance, and proper operations. Buildings shall meet all applicable federal, state, and local standards. A facility shall not be located in a residence.

(2) Security.

(a) All wholesale drug distribution centers shall be equipped with an ~~[internal]~~ alarm system to detect entry after hours.

(b) Wholesale drug distributors shall ensure that access from outside their premises is reduced to a minimum. This includes, but is not limited to, the installation of adequate lighting at the outside perimeter of the premises.

(c) Internal security policies shall be developed to provide reasonable protection against theft by **limiting access to areas where legend drugs are held to authorized** personnel. These policies shall provide protection against computer theft and crimes.

(d) Licensees shall employ adequate personnel with the education and experience necessary to safely and lawfully engage in the wholesale distribution of prescription drugs.

(e) Lists of officers, directors, managers and other persons in charge of distribution, storage, and handling of prescription drugs, including a description of their duties and summary of their qualifications, shall be maintained for purpose of review.

(3) Recordkeeping.

(a) Inventories and other records of transactions regarding the receipt and disposition of legend drugs shall be maintained and made available for inspection by authorized inspectors for a period of two (2) years. These records shall **include:**

1. The source of the drugs, including the name and principal address of the seller or transferor, and the address of the location from which the drugs were shipped;

2. The identity and quantity of the drugs received and distributed or disposed of; and

3. The dates of receipt and distribution or other distribution of the drugs. ~~[contain source of supply (items received, quantity, and date) and distribution (items distributed, quantity, and date).]~~

(b) Records **described in this section that are kept at the inspection site or that can be immediately retrieved by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two (2) working days of a request by an authorized official of a federal, state, or local law enforcement agency.** ~~[may be kept at a central location rather than at each distribution center, but records shall be made available for inspection within seventy-two (72) hours of request by authorized inspectors.]~~

(4) Written policies and procedures.

(a) There shall be written policies and procedures to assure that the wholesale drug distributor prepares for, protects against, and handles crisis situations that affect the security or operation of the facility. Such crises shall include fires, floods, or other natural disasters, and situations of local, state, or national emergency.

(b) There shall be written policies and procedures for managing and correcting all errors or inaccuracies in inventories.

(c) There shall be written policies and procedures to assure that any outdated stock or any stock with an expiration date that, in the wholesale drug distributor's view, does not allow sufficient time for repacking or resale shall be segregated from other stock and shall be prepared for return to the manufacturer or otherwise destroyed, and this shall be documented.

(d) There shall be written policies and procedures by which the wholesaler drug distributor exercises control over the shipping and receiving of all stock within the operation.

(5) Returned goods. A wholesale operation shall maintain and follow a written procedure to assure the proper handling and disposal of returned goods.

(6) Handling recalls. A wholesale operation shall maintain and follow written policy for handling recalls and withdrawals of products. The policy shall cover all recalls and withdrawals of drug products due to:

(a) Any voluntary action on the part of the manufacturer;

(b) The direction of the Food and Drug Administration, or any other federal, state, or local government agency; and

(c) Replacement of existing merchandise with an improved product or new package design.

(7)(a) Visual examination of all materials received or shipped to guarantee product identity and to **reasonably guard against** ~~[prevent]~~ acceptance or delivery of damaged, contaminated, tampered, or otherwise unfit stock shall be adequately effected.

(b) Procedures for distribution of approved stock shall provide for a rotation whereby the oldest inventory is distributed first.

(c) Wholesale drug distributors shall be subject to the provisions of any applicable federal, state, or local laws or regulations that relate to prescription drug product salvaging or reprocessing, including Chapter 21, Parts 207, 210, and 211 of the Code of Federal Regulations.

Section 6. Inspection Powers of the Kentucky Board of Pharmacy. ~~[(1)]~~ The Kentucky Board of Pharmacy shall **promulgate** ~~[make rules and]~~ regulations as may be necessary to carry out the purpose and enforce the provisions of this regulation. All ~~[rules and]~~ regulations promulgated shall conform to and not conflict with the wholesaler drug distribution guidelines adopted by the U.S. Food and Drug Administra-

tion or any applicable federal, state, or local laws and regulations and shall permit the Kentucky Board of Pharmacy and authorized federal, state, and local law enforcement officials to enter and inspect the premises and delivery vehicles, purporting or appearing to be used by any manufacturer or wholesaler, and audit records and operational procedures at reasonable times, in reasonable fashion, to the extent authorized by law.

~~[(2) Any person authorized by the Kentucky Board of Pharmacy is hereby given right of entry for inspection purposes during normal business hours upon all premises purporting or appearing to be used by a drug manufacturer or wholesaler.]~~

Section 7. Violations. (1) It shall be a violation of **this regulation** ~~[these rules]~~ for a drug manufacturer or wholesaler to distribute legend drugs directly to a consumer or a patient or to operate in a manner that endangers the public health.

(2) Violation of any of these provisions shall be grounds for the suspension or revocation of the **license** ~~[permit]~~.

TOM M. HOUCHENS, President
APPROVED BY AGENCY: February 4, 1992
FILED WITH LRC: February 5, 1992 at 11 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Amended After Hearing)

405 KAR 7:001. 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

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 **405 KAR 7:035** ~~[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) "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.

(32) [~~(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.

(33) [~~(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.

(34) [~~(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.

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

(36) [~~(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.

(37) [~~(36)~~] "KAR" means Kentucky administrative regulations.

(38) [~~(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.

(39) [~~(38)~~] "KRS" means Kentucky Revised Statutes.

(40) [~~(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.

(41) [~~(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.

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

(43) [~~(42)~~] "MSHA" means Mine Safety and Health Administration.

(44) [~~(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.

(45) [~~(44)~~] "Operations" is defined in KRS 350.010.

(46) [~~(45)~~] "Operator" is defined in KRS 350.010.

(47) [~~(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.

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

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

(50) [~~(49)~~] "Overburden" is defined in KRS 350.010.

(51) [~~(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.

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

(53) [~~(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.

(54) [~~(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.

(55) [~~(54)~~] "Person" is defined in KRS 350.010.

(56) [~~(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.

(57) [~~(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.

(58) [~~(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.

(59) [~~(58)~~] "Reclamation" is defined in KRS 350.010.

(60) [~~(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.

(61) [~~(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.

(62) [~~(61)~~] "SCS" means Soil Conservation Service.

(63) [~~(62)~~] "Secretary" is defined in KRS 350.010.

(64) [~~(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.

(65) [~~(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 reparable.

(66) [~~(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.

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

(68) [~~(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 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.

(69) [~~(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.

(70) [~~(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.

(71) [~~(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.

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

(73) [~~(72)~~] "Surface coal mining operations" is defined in KRS 350.010.

(74) [~~(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.

(75) [~~(74)~~] "Ton" means 2000 pounds avoirdupois (.90718 metric ton).

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

(77) [~~(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.

(78) [~~(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.

(79) [~~(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.

(80) [~~(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.

JUDITH A. VILLINES, Commissioner
PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: February 14, 1992
FILED WITH LRC: February 14, 1992 at 11 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Amended After Hearing)

405 KAR 8:001. 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

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.~~]

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

(49) [~~(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.

(50) [~~(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.

(51) [~~(52)~~] "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.

(52) [~~(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.

(53) [~~(54)~~] "KAR" means Kentucky administrative regulations.

(54) [~~(55)~~] "KRS" means Kentucky Revised Statutes.

(55) [~~(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.

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

(57) [~~(58)~~] "MRP" means mining and reclamation plan.

(58) [~~(59)~~] "MSHA" means Mine Safety and Health Administration.

(59) [~~(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.

(60) [~~(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.

(61) [~~(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.

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

(63) [~~(64)~~] "Operations" is defined in KRS 350.010.

(64) [~~(65)~~] "Operator" is defined in KRS 350.010.

(65) [~~(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.

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

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

(68) [~~(69)~~] "Overburden" is defined in KRS 350.010.

(69) [~~(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.

(70)[~~(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.~~]

(71) [~~(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."

(72) [~~(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.

(73) [~~(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.

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

(75) [~~(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.

(76) [~~(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.

(77) [~~(78)~~] "Person" is defined in KRS 350.010.

(78) [~~(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.

(79) [~~(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.

(80) [~~(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.

(81) [~~(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.

(82) [~~(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.

(83) [~~(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.

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

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

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

(87) [~~(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.

(88) [~~(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.

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

(90) [~~(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.

(91) [~~(92)~~] "Reclamation" is defined in KRS 350.010.

(92) [~~(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.

(93) [~~(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.

(94) [~~(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.

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

(96) [~~(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.

(97) [~~(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.~~]

(98) [~~(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.

(99) [~~(100)~~] "SCS" means Soil Conservation Service.

(100) [~~(101)~~] "Secretary" is defined in KRS 350.010.

(101) [~~(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.

(102) [~~(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.

(103) [~~(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.

(104) [~~(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.

(105) [~~(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).

(106) [~~(107)~~] "SMCRA" means Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87), as amended.

(107) [~~(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 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.

(108) [~~(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.

(109) [~~(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.

(110) [~~(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.

(111) [~~(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.~~]

(112) [~~(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.

(113) [~~(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.

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

(115) [~~(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.

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

(117) [~~(119)~~] "Surface coal mining operations" is defined in KRS 350.010.

(118) [~~(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.

(119) [~~(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).

(120) [~~(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.

(121) [~~(123)~~] "Ton" means 2000 pounds avoirdupois (.90718 metric ton).

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

(123) [~~(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.

(124) [~~(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.

(125) [~~(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.

(126) [~~(128)~~] "TRM" means Technical Reclamation Memorandum.

(127) [~~(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.

(128) [~~(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.

(129) [~~(131)~~] "USDA" means United States Department of Agriculture.

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

(131) [~~(133)~~] "USGS" means United States Geological Survey.

(132) [~~(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.

(133) [~~(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.

(134) [~~(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.

(135) [~~(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.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: February 14, 1992
FILED WITH LRC: February 14, 1992 at 11 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Amended After Hearing)

405 KAR 10:001. 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

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 l36).

(43) "Ton" means 2000 pounds avoirdupois (.907l8 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.

JUDITH A. VILLINES, Commissioner
PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: February 14, 1992
FILED WITH LRC: February 14, 1992 at 11 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Amended After Hearing)

405 KAR 16:001. 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

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 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.

(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.]~~

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

(50) [~~(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.]~~

(51) [~~(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.

(52) [~~(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.

(53) [~~(54)~~] "KAR" means Kentucky administrative regulations.

(54) [~~(55)~~] "KPDES" means Kentucky Pollutant Discharge Elimination System.

(55) [~~(56)~~] "KRS" means Kentucky Revised Statutes.

(56) [~~(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.

(57) [~~(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.

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

(59) [~~(60)~~] "MRP" means mining and reclamation plan.

(60) [~~(61)~~] "MSHA" means Mine Safety and Health Administration.

(61) [~~(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.

(62) [~~(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.

(63) [~~(64)~~] "Noxious plants" means species classified under Kentucky law as noxious plants.

(64) [~~(65)~~] "Operations" is defined in KRS 350.010.

(65) [~~(66)~~] "Operator" is defined in KRS 350.010.

(66) [~~(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.

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

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

(69) [~~(70)~~] "Overburden" is defined in KRS 350.010.

(70) [~~(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.~~]

(71) [~~(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."

(72) [~~(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.

(73) [~~(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.

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

(75) [~~(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.

(76) [~~(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.

(77) [~~(78)~~] "Person" is defined in KRS 350.010.

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

(79) [~~(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.

(80) [~~(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.

(81) [~~(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.

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

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

(84) [~~(85)~~] "RAM" means Reclamation Advisory Memorandum.

(85) [~~(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.

(86) [~~(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.

(87) [~~(88)~~] "Reclamation" is defined in KRS 350.010.

(88) [~~(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.

(89) [~~(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.

(90) [~~(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.

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

(92) [~~(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.~~]

(93) [~~(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.

(94) [~~(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.

(95) [~~(96)~~] "SCS" means Soil Conservation Service.

(96) [~~(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.

(97) [~~(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 reparable.

(98) [~~(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.

(99) [~~(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.

(100) [~~(101)~~] "SMCRA" means Surface Mining Control and

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

(101) [~~(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 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.

(102) [~~(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.

(103) [~~(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.

(104) [~~(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.]~~

(105) [~~(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.

(106) [~~(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.

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

(108) [~~(110)~~] "Surface coal mining operations" is defined in KRS 350.010.

(109) [~~(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.

(110) [~~(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).

(111) [~~(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.

(112) [~~(114)~~] "Ton" means 2000 pounds avoirdupois (.90718 metric ton).

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

(114) [~~(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.

(115) [~~(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.

(116) [~~(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.

(117) [~~(119)~~] "TRM" means Technical Reclamation Memorandum.

(118) [~~(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.

(119) [~~(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.

(120) [~~(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.

(121) [~~(123)~~] "U.S. EPA" means United States Environmental Protection Agency.

(122) [~~(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.

(123) "Valuable environmental resources" means:

(a) 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; and

(b) Habitats of unusually high value for fish and wildlife, as determined by the cabinet in consultation with state and federal agencies with responsibilities for fish and wildlife.

(124) [~~(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.

(125) [~~(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.

(126) [~~(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.

JUDITH A. VILLINES, Commissioner
PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: February 14, 1992
FILED WITH LRC: February 14, 1992 at 11 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Amended After Hearing)

405 KAR 18:001. 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

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.~~]

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

(50) [~~(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.~~]

(51) [~~(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.

(52) [~~(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.

(53) [~~(54)~~] "KAR" means Kentucky administrative regulations.

(54) [~~(55)~~] "KPDES" means Kentucky Pollutant Discharge Elimination System.

(55) [~~(56)~~] "KRS" means Kentucky Revised Statutes.

(56) [~~(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.

(57) [~~(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.

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

(59) [~~(60)~~] "MRP" means mining and reclamation plan.

(60) [~~(61)~~] "MSHA" means Mine Safety and Health Administration.

(61) [~~(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.

(62) [~~(63)~~] "Noxious plants" means species classified under Kentucky law as noxious plants.

(63) [~~(64)~~] "Operations" is defined in KRS 350.010.

(64) [~~(65)~~] "Operator" is defined in KRS 350.010.

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

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

(67) [~~(68)~~] "Overburden" is defined in KRS 350.010.

(68) [~~(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.~~]

(69) [~~(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."

(70) [~~(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.

(71) [~~(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.

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

(73) [~~(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.

(74) [~~(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.

(75) [~~(76)~~] "Person" is defined in KRS 350.010.

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

(77) [~~(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.

(78) [~~(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.

(79) [~~(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.

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

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

(82) [~~(83)~~] "RAM" means Reclamation Advisory Memorandum.

(83) [~~(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.

(84) [~~(85)~~] "Reclamation" is defined in KRS 350.010.

(85) [~~(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.

(86) [~~(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.

(87) [~~(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.

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

(89) [~~(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.~~]

(90) [~~(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.

(91) [~~(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.

(92) [~~(93)~~] "SCS" means Soil Conservation Service.

(93) [~~(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.

(94) [~~(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.

(95) [~~(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.

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

(97) [~~(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.

(98) [~~(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.

(99) [~~(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.

(100) [~~(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.~~]

(101) [~~(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.

(102) [~~(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.

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

(104) [~~(106)~~] "Surface coal mining operations" is defined in KRS 350.010.

(105) [~~(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.

(106) [~~(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).

(107) [~~(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.

(108) [~~(110)~~] "Ton" means 2000 pounds avoirdupois (.90718 metric ton).

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

(110) [~~(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.

(111) [~~(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.

(112) [~~(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.

(113) [~~(115)~~] "TRM" means Technical Reclamation Memorandum.

(114) [~~(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.

(115) [~~(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.

(116) [~~(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.

(117) [~~(119)~~] "U.S. EPA" means United States Environmental Protection Agency.

(118) [~~(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 (l0) degrees.

(119) "Valuable environmental resources" means:

(a) 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; and

(b) Habitats of unusually high value for fish and wildlife, as determined by the cabinet in consultation with state and federal agencies with responsibilities for fish and wildlife.

(120) [~~(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.

(121) [~~(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.

(122) [~~(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.

JUDITH A. VILLINES, Commissioner

PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: February 14, 1992
FILED WITH LRC: February 14, 1992 at 11 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Amended After Hearing)

405 KAR 20:001. 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

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 applica-

ble 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 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.

(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 l36).

(77) "Ton" means 2000 pounds avoirdupois (.907l8 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.

JUDITH A. VILLINES, Commissioner
PHILLIP SHEPHERD, Secretary
APPROVED BY AGENCY: February 14, 1992
FILED WITH LRC: February 14, 1992 at 11 a.m.

BOARD OF FAMILY HEALTH CARE PROVIDERS
(Amended After Hearing)

902 KAR 22:010. Kentucky Board of Family Health Care Providers.

RELATES TO: KRS 216.900 through **216.930** ~~[216.925]~~
STATUTORY AUTHORITY: KRS 216.920
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 **shall** ~~[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 **shall** ~~[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, Chair
APPROVED BY AGENCY: January 31, 1992
FILED WITH LRC: February 5, 1992 at 11 a.m.

BOARD OF FAMILY HEALTH CARE PROVIDERS
(Amended After Hearing)

902 KAR 22:030. Midlevel health care practitioner.

RELATES TO: KRS 216.900 through **216.930** ~~[216.925]~~
STATUTORY AUTHORITY: KRS 216.920, 216.925
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. Definition. "Midlevel health care practitioner (MLP)" means a person certified by the Kentucky Board of Family Health Care Providers to provide limited management of chronic conditions to patients in a licensed network following treatment protocols reviewed and approved by the board pursuant to KRS 216.925.

Section **2.** ~~[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 **3.** ~~[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 **4.** ~~[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 **5. Initial** ~~[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 completion of the qualifying examination is required every five (5) years after initial certification.** ~~[Certification shall begin on or before July 1, 1992, and certification shall be renewed every five (5) years thereafter.]~~

(4) Interagency cooperation.

(a) The board shall notify in writing other health care profession licensing or certifying agencies of an individual's additional certification as a midlevel health care practitioner.

(b) The board shall request that if the other health care profession licensing or certifying agency revokes the midlevel health care practitioner's license or certification, that notice of the revocation be sent to the Cabinet for Human Resources within ten (10) days of the agency's action.

Section **6.** ~~[5.]~~ Recertification of Midlevel Health Care Practitio-

ners. (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 **for recertification**.

(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 7. Revocation of Certification. (1) A midlevel health care practitioner's certification may be revoked for the following reasons:

(a) Conviction of a misdemeanor involving moral turpitude or felony;

(b) Any other health care profession license or certificate is denied or revoked in any state or territory;

(c) Addiction to alcohol or any other chemical substances;

(d) Misrepresentation of any facts during the application, testing and certification process or at any time while practicing as a midlevel health care practitioner in a licensed network;

(e) Failure to complete the ten (10) required medical education hours recognized by the board.

(2) The board shall request in writing to the supervising physician of the licensed network where the midlevel health care practitioner is employed that notification be provided to the designated Cabinet for Human Resources staff of the occurrence of any of the above.

Section **8.** ~~[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) **Continuing education courses approved by any other health care profession licensing or certifying agency shall be considered for relevance to the role of midlevel health care practitioners and for approval as continuing education courses for midlevel health care practitioners by the Kentucky Board of Family Health Care Providers.** ~~[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.

PREVIOUS EXPERIENCE

LICENSES OR CERTIFICATES; Date, number and sources of any previous licenses to practice in any health field in any state or territory.

Name of Trade or Profession	Original Lic. Issue Date	Current Lic. Expiration Date	Name and Address of Licensing Agency
License:			
License:			
License:			

EMPLOYMENT HISTORY: Begin with your present or most recent job and list fully and accurately the details of each job you have held. Include Volunteer work. If you moved to a different position within the same organization so that your duties changed, then describe that as a separate job. Resumes must follow the format shown below. PLEASE NOTE IF YOU WORKED UNDER A DIFFERENT NAME. *(Attach additional sheets if necessary).*

Employed: From: Mo. Day Yr. To: Mo. Day Yr.

Title of Position _____

Reason for leaving _____

Name of Employer _____

Address: _____ Street

_____ City State Zip

Name and title of your immediate supervisor _____

A description of jobs MUST be given:

Employed: From: Mo. Day Yr. To: Mo. Day Yr.

Title of Position _____

Reason for leaving _____

Name of Employer _____

Address: _____ Street

_____ City State Zip

Name and title of your immediate supervisor _____

A description of jobs MUST be given:

Employed: From: Mo. Day Yr. To: Mo. Day Yr.

Title of Position _____

Reason for leaving _____

Name of Employer _____

Address: _____ Street

_____ City State Zip

Name and title of your immediate supervisor _____

A description of jobs MUST be given:

If you have ever been examined and refused a license as a health care professional or if you have ever had a health care professional license canceled or revoked, give full particulars.

_____

_____

_____

Examination Date _____ Application No. _____

APPLICATIONS MUST BE TYPED OR FILLED OUT IN INK

APPLICATION FOR CERTIFICATION

KENTUCKY BOARD OF FAMILY HEALTH CARE PROVIDERS FOR CERTIFICATION TO PRACTICE

Commonwealth of Kentucky

Frankfort, Kentucky 40621

AN EQUAL OPPORTUNITY EMPLOYER M/F/H

CHECK APPROPRIATE BOX

- ☐ Applicant for Examination
- ☐ Certified or licensed PA, ARNP, RN applicant for certification
- ☐ Recertification

To the Kentucky Board of Family Health Care Providers:

I hereby apply for permission to take an examination at the next scheduled examination to demonstrate my qualifications to practice as a midlevel health care practitioner in the Commonwealth of Kentucky. I enclose herewith the required fee of fifty ($50) dollars (certified check or money order) and furnish below the information to which my affidavit is added at the end.

Social Security No. _____ Home Phone No. _____ Work Phone No. _____

☐ Mr.
☐ Ms.

_____ _____ _____ _____
Last Name First Name Middle Name Maiden Name (if any)

Address: _____ _____ _____ _____
Street, R.F.D., or Box No. City State Zip Code

Date of Birth: _____
Month Day Year

PREVIOUS EDUCATION

EDUCATION AND TRAINING: Please circle highest grade completed. College transcripts are required.
Grade School 1 2 3 4 5 6 7 8 High School 9 10 11 12 College 1 2 3 4 Graduate School 1 2 3 4 Have you passed a G.E.D. Test? Yes ☐ No ☐ If yes attach a copy of the scores or the G.E.D. certificate

School	Name and Address of School	Dates Attended From	Dates Attended To	Date of Graduation	Number of Hours Completed	Number of Hours Now Carrying	Fields of Study Major	Fields of Study Minor	Degree, Diploma, or Certificate Earned
High School				mo/yr					Diploma: Yes _____ No _____
Graduate College or University		mo/yr	mo/yr	mo/yr	*	*			Degree:
Graduate College or University		mo/yr	mo/yr	mo/yr	*	*			Degree:
Vocational, Business, Technical		mo/yr	mo/yr	Clock hours weekly:	Clock hours Completed:			Must provide copy of certificate	Certificate Earned:
Apprenticeship	Type:	mo/yr	mo/yr	Length:	Journeyman: yes _____ no _____				Must provide copy of certificate

* Please indicate if quarter hours

I hereby submit a photograph of myself taken within the past six (6) months. Further, I swear that the statements herein contained are strictly true in every respect; that I have never been convicted of a felony or a misdemeanor involving moral turpitude; that I am not addicted to alcohol or other chemicals; that I have read and understand this affidavit; and that if this petition is granted and certification is subsequently issued to me, I will comply with the laws governing the practice of midlevel health care practitioner in the Commonwealth of Kentucky and do my utmost to uphold and maintain professionalism in the health care field.

_____
(Signature of Applicant)

Signed and sworn to before me this _____ day of _____, 19__.

_____
(Official designating officer administering oath)

On this _____ day of _____, 19__, personally appeared before me, referred to in the foregoing application for admission to an examination to demonstrate his qualifications to practice as a midlevel health care provider in the Commonwealth of Kentucky. I hereby certify that the accompanying photograph is that of the person making this application for examination for certification to practice as a midlevel health care provider.

Signature _____
Official Title _____

AFFIDAVIT

State of _____
County of _____

(Attach photograph in space provided on form.)

KAREN A. MAIN, Chairman
APPROVED BY AGENCY: January 31, 1992
FILED WITH LRC: February 5, 1992 at 11 a.m.

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, FEBRUARY 14, 1992

GENERAL GOVERNMENT CABINET
Department for Commission on Human Rights
(Proposed Amendment)

104 KAR 1:010. Posting, [~~and~~] distribution and availability of notices.

RELATES TO: KRS Chapter 344
STATUTORY AUTHORITY: KRS 13A.100, 344.190(14)
NECESSITY AND FUNCTION: This administrative regulation establishes the requirements governing the posting, distribution, and availability of notices by persons covered by KRS 344.010 to 344.450 and 344.990. [~~KRS 344.190(14) provides for commission adoption of regulations requiring the posting of notices prepared or approved by the commission. This rule is designed to educate the public as well as covered businesses to promote acceptance of the respective sections of the Civil Rights Act.~~]

Section 1. [~~Nature of~~] Fair Employment Practices Notices [~~and Who Must Post~~]. Every employer, employment agency, and labor organization subject to KRS 344.010 to 344.450 and 344.990 [~~the Kentucky Civil Rights Act~~], shall post and maintain at their establishments the fair employment practices notices incorporated by reference. These notices may be obtained and copied at the Kentucky Commission on Human Rights, The Heyburn Building, 332 West Broadway, Suite 700, Louisville, Kentucky, 40202, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m. [~~furnished by the Kentucky Commission on Human Rights indicating the substantive provisions of the Kentucky Civil Rights Act, where complaints may be filed and such other information as the Kentucky Commission on Human Rights deems pertinent.~~]

(1) [~~Section 2. Where~~] Employers and Employment Agencies Shall [~~Must~~] Post. Fair employment practices [~~With respect to employers and employment agencies such~~] notices shall [~~must~~] be posted [~~conspicuously~~] in easily-accessible and well-lighted places so as to be readily apparent to [~~customarily frequented by~~] employees and applicants for employment, and at or near each location where the employees services are performed.

(2) [~~Section 3. Where~~] Labor organizations shall [~~Must~~] post "fair employment practices" [~~. With respect to labor organizations, such~~] notices shall [~~must~~] be posted [~~conspicuously~~] in easily- accessible and well-lighted places so as to be readily apparent to [~~customarily frequented by~~] members and applicants for membership.

Section 2. [~~4. Nature of~~] Public Accommodations Notices [~~and Who Must Post~~]. (1) Every owner, lessee, proprietor, or manager of any place of public accommodation, resort, or amusement, shall post and maintain at any [~~such~~] place of public accommodation, resort or amusement notices incorporated by reference. The notice may be obtained and copied at the Kentucky Commission on Human Rights, The Heyburn Building, 332 West Broadway, Suite 700, Louisville, Kentucky 40202, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m. [~~furnished by the commission indicating the provisions of the Kentucky Civil Rights Act dealing with places of public accommodation, resort or amusement; where complaints may be filed and such other information as the commission deems pertinent.~~]

(2) [~~Section 5. Where~~] Public accommodations notices shall [~~Must~~] be posted[~~. Such notices must be posted conspicuously~~] in easily-accessible and well-lighted places at the place of public accommodation, resort or amusement where they may be readily observed by those seeking or granting any of the accommodations, advantages, facilities, or privileges of [~~such~~] places of public accommodations, resort or amusement.

Section 3. Fair [~~6. Nature of~~] Housing Notices. (1) Every person or business entity [~~and Who Must Post. Every real estate operator, real estate broker, real estate salesman, financial institution, builder, developer, insurer or apartment owner~~] subject to KRS 344.360 and 344.367 shall post and maintain at each location and elsewhere, where their services are regularly performed, the fair housing notices incorporated by reference. These notices may be obtained and copied at the Kentucky Commission on Human Rights, The Heyburn Building, 332 West Broadway, Suite 700, Louisville, Kentucky, 40202, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m. [~~indicating the provisions of the Kentucky Civil Rights Act dealing with housing, where complaints may be filed, and such other information as the commission deems pertinent.~~]

(2) Fair [~~Section 7. Where~~] housing notices shall [~~Must~~] be posted[~~. Every real estate operator, real estate broker, real estate salesman, financial institution, builder, developer, insurer or apartment owner subject to KRS 344.360 and 344.367 must post such notices furnished by the Kentucky Commission on Human Rights~~] at every business location and elsewhere, where [~~their~~] services are regularly performed, in an easily-accessible and well-lighted place so as to be readily apparent to all persons seeking services.

Section 4. [~~8.~~] Notice to Owners Listing Property. Every real estate operator, real estate broker, real estate salesperson [~~salesman~~], financial institution, builder, developer and insurer subject to KRS 344.010 to 344.450 and 344.990 [~~the Kentucky Civil Rights Act~~] shall provide to owners of real property at the time they contract for the sale, purchase, or rent, or financing of property, a copy of the pamphlet [~~memorandum entitled:~~] "Your Rights and Responsibilities Under Kentucky's Civil Rights Act" incorporated by reference. The pamphlet may be obtained or copied at [~~and any amendments thereto, prepared with assistance from the office of the Attorney General of Kentucky on the subject of Kentucky law against discrimination in housing. Such notices shall be supplied by~~] the Kentucky Commission on Human Rights, 332 West Broadway, Suite 700, Louisville, Kentucky, 40202, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m.

Section 5. A person subject to this administrative regulation may obtain applicable notices from the Kentucky Commission on Human Rights, The Heyburn Building, 332 West Broadway, Suite 700, Louisville, Kentucky 40202, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m.

EDGAR S. GOINS, Chairperson
APPROVED BY AGENCY: February 7, 1992
FILED WITH LRC: February 13, 1992 at 8 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, March 23, 1992, 9 a.m. at the Louisville office of the Kentucky Commission on Human Rights, The Heyburn Building, 332 West Broadway, Suite 700, Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by Wednesday, March 18, 1992, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Gwen Horton, Kentucky Commission on Human Rights, The Heyburn Building, Suite 700, 332 West Broadway, Louisville, Kentucky 40202.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Gwen Horton
(1) Type and number of entities affected: All employers with eight or more employees, employment agencies, business establishments and owners of property in the state of Kentucky.
(a) Direct and indirect costs or savings to those affected:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any

effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body: Will reduce number of mail inquiries and telephone inquires concerning posting requirements.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: No anticipated effect on state and local revenue is contemplated by the regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The posting of notices allows both the public and affected businesses to comply with the Kentucky Civil Rights Act.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, administrative regulation or government policy either conflicts, overlaps or duplicates the provisions of this regulation.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: The amendments to this regulation were required because of deficiencies found as a result of a quadrennial review.

TIERING: Was tiering applied? No. Tiering was not applied because this regulation has the same effect upon all entities required to post notices. All persons subject to this administrative regulation must be treated equally. To differentiate would violate equal protection and due process.

GENERAL GOVERNMENT CABINET
Department for Commission on Human Rights
(Proposed Amendment)

104 KAR 1:020. Administrative proceeding under the Kentucky Civil Rights Act [~~Rules of practice and procedure~~].

RELATES TO: KRS Chapter 344

STATUTORY AUTHORITY: KRS 13A.100, 344.190

NECESSITY AND FUNCTION: This administrative regulation [~~KRS 344.190(9) and (14) provide for the commission to adopt rules and regulations to effectuate the purposes and provisions of the Act. The rules of practice and procedure before the commission are designed to~~] informs the public [~~complainants and respondents~~] of the procedures [~~steps~~] followed in processing complaints of unlawful discrimination [~~through conciliation, dismissal or public hearing~~].

Section 1. Definitions. [~~When used in this regulation:~~]

(1) "Act" [~~shall~~] means the Kentucky Civil Rights Act, KRS Chapter 344.

[~~(2) "Person, commission, commissioner, discrimination, employer, employment agency, labor organization, employee, religion, place of public accommodation, resort of amusement, real estate operator, real estate broker, real estate salesman, financial institution and licensing agency, credit transaction" shall have the meanings given to them in the Act.~~]

(2) [~~(3)~~]"Chairman" [~~shall~~] means the duly appointed chairman of the Kentucky Commission on Human Rights, or in the event of his absence or inability to act, the vice chairman, or if no vice chairman has been designated, or if the [~~such~~] vice chairman is unable to act, a commissioner designated by the chairman.

(3) [~~(4)~~] "Hearing commissioners" [~~shall~~] means the commissioners designated by the chairman to conduct a hearing.

(4) [~~(5)~~] "Investigator" [~~shall~~] means a member of the commission staff designated by the executive director to investigate the allegations of the complaint and make a determination of whether there is probable cause, or a commissioner appointed by the chairman.

Section 2. Complaint. (1) Filing. [~~Who may file.~~]

(a) [~~Any individual claiming to be aggrieved by an unlawful practice may make, sign, and file with the commission a written sworn complaint.~~] Assistance in drafting and filing complaints shall be available to complainants at the Kentucky Commission on Human Rights, The Heyburn Building, 332 West Broadway, Suite 700, Louisville, Kentucky 40202, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m. [~~commission's office in Frankfort~~], at any other commission office, and from any commission staff member.

[~~(b) A commissioner or the Attorney General may, in like manner, make, sign, and file such complaint.~~]

(b) [~~(c)~~] Upon the receipt of a communication from the Federal Equal Employment Opportunity Commission or United States Department of Housing and Urban Development transmitting a complaint which has been submitted to that agency, the executive director, acting in the name of the commission, may issue a complaint in writing and attach thereto the materials transmitted from the federal government, if any.

(2) Complaint form. The complaint shall be in writing and the commission shall provide a form hereby incorporated by reference to aid the complainant if so desired. This form may be obtained or copied at the Kentucky Commission on Human Rights, The Heyburn Building, 332 West Broadway, Suite 700, Louisville, Kentucky, 40202, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m. The complaint shall [~~must~~] be signed and sworn before a notary public or other person duly authorized by law to administer oaths and take acknowledgments. Notarial service shall be furnished without charge by the commission.

(3) Contents of complaint.

[~~(a)~~] A complaint shall contain the following:

(a) [~~1.~~] The full name and address of the complainant.

(b) [~~2.~~] The name and address of the person, employer, labor organization, employment agency, government agency, place of public accommodation, resort, or amusement, real estate operator, real estate broker, real estate salesman, financial institution or licensing agency against whom the complaint is made.

(c) [~~3.~~] A short and plain statement of the claim showing that the complainant is entitled to relief under the Kentucky Civil Rights Act.

[~~(b) A complaint should contain the following:~~]

(d) [~~1.~~] The date or dates and time of day of the alleged unlawful discriminatory practice, if know, and if the alleged unlawful discriminatory practice is of a continuing nature, the dates between which said continuing unlawful acts of discrimination are alleged to have occurred, if known.

(e) [~~2.~~] A statement as to any other action, civil or criminal, instituted by the complainant in any other forum based upon the same grievance as is alleged in the complaint[~~, together with a statement as to the status or disposition of such other action~~].

(4) Computation of time. [~~Time of filing. A complaint alleging discrimination must be filed within 180 days after the alleged unlawful practice occurs.~~] If the alleged practice is of a continuing nature, the date of the occurrence of said practice shall be deemed to be any date subsequent to the commencement of the practice up to and including the date on which the practice shall have ceased, or the date on which the complaint shall have been filed if the unlawful practice continues.

(5) Place of filing. A complaint shall be filed with the commission at its office in [~~Frankfort or~~] Louisville.

(6) Manner in filing. The complaint may be filed by personal delivery[~~, ordinary mail, registered~~] or [~~certified~~] mail to the commission's office in [~~Frankfort or~~] Louisville. A complaint may be delivered to a commissioner, or a member of the commission's staff or to any other commission office for filing at the commission's [~~Frankfort or~~] Louisville office.

(7) Amendment of complaint. The commission, the presiding hearing commissioner, or the complainant shall have the power reasonably and fairly to amend a complaint.

(a) The power to amend a complaint may be exercised prior to the issuance of a notice of hearing by the commission staff with the consent of the complainant and after the issuance of a notice of hearing by the presiding hearing commissioner with the consent of the complainant.

(b) The complainant's power to amend the complaint may be exercised prior to the issuance of a notice of hearing as a matter of right, and after notice of hearing at the discretion of the presiding

hearing commissioner.

(c) If a complaint is amended, postponement of the hearing date may be granted to the respondent upon a request to the commission. In no event shall the [such] hearing date be more than ten (10) days later than the original hearing date.

(8) Withdrawal of complaint. Upon the written request of the complainant, stating the reasons for a [such] request, a complaint or any part thereof, may be withdrawn: [only on written consent as hereinafter set forth.]

(a) If the request for withdrawal is made before the case has been noted for hearing, the written consent of the executive director shall be obtained.

(b) If the request for withdrawal is made after the case has been noted for hearing, the written consent of the chairman shall be obtained.

(c) In either case of withdrawal, [such] withdrawal shall be without prejudice to the rights of the complainant.

[(9) Dismissal of complaint. If the executive director shall determine, whether upon the face of the complaint, after investigation, or after conference, conciliation, and persuasion, that the complaint shall be dismissed, due to lack of probable cause or for other reasons, he shall dismiss the complaint and notify the parties by mail of such determination and of the complainant's right to apply to the commission for reconsideration of such dismissal.]

Section 3. Investigation, Conference, Conciliation, and Persuasion. (1) Investigation. After the filing of a complaint, the executive director shall designate an investigator from the commission staff and the chairman may designate a commissioner to direct the investigation as chief investigator. The investigator(s) shall make a prompt and thorough investigation of the allegations of the complaint.

[(2) Production of evidence.

(a) An investigator may at any reasonable time request access to premises, records, and documents relevant to the complaint.

(b) If such request is denied, the commission may issue a subpoena duces tecum requiring the production of such documents.

(c) If a person fails to permit access, examination, photographing, or copying, the commission may apply to circuit court for an order requiring the person to permit same.]

(2) [(3)] Conference, conciliation and persuasion.

[(a) If the investigator determines after preliminary investigation that probable cause may exist for crediting the allegations of the complaint, he shall report his recommendations to the executive director, who shall make a finding and report to the commission. The investigator shall endeavor to eliminate the unlawful discriminatory practice by conference, conciliation and persuasion. If a complaint subsequently goes to a hearing, no testimony shall be given or received concerning any offers or counteroffers made in an effort to conciliate any alleged unlawful discriminatory practice.]

(a) [(b)] The investigator shall notify the respondent(s) that a conference [particular meeting] or conversation is for the purpose of attempting to conciliate the complaint.

(b) [These requirements shall not be construed to limit the power of] The commission may [to] conduct further investigations in preparation for a hearing or for other purposes in connection with its statutory duties and [, nor shall they be construed to prohibit the] use [of] evidence obtained through [such] investigations.

(4) Conciliation agreement. If as a result of conference, conciliation, and persuasion, the investigator is able to provide for voluntary [involuntary] compliance, [and to effect the elimination of any unlawful discriminatory practice,] a conciliation agreement shall be prepared. The conciliation agreement [which] shall set forth all measures to be taken by any party, including provisions for compliance reports. The agreement [, and which] shall be signed by the respondent, the complainant and a representative of the commission.

(5) Satisfactory adjustment. Upon the signing of the conciliation agreement, the investigator shall report the same to the executive director, who shall mark the case "satisfactorily adjusted" [and notify the parties and commissioners of the terms of such disposition. Said disposition of a case by conference, conciliation, and persuasion shall not, however, preclude the commission, whenever justice so requires, from reconsidering the terms of such conciliation at any time and taking such further action as it may deem necessary on notice to the parties].

Section 4. Reconsideration. [(1) The complainant, within ten (10) days after receiving a copy of the order dismissing the complaint, may file with the commission an application for reconsideration of the order. Such application must be in writing, stating specifically the ground on which it is based.]

(1) [(2)] Upon receipt of an application for reconsideration, the executive director shall designate a different investigator and the chairman may designate a different commissioner to direct the new investigation as chief investigator. [While a new investigation shall be made,]

(2) The investigator may consider the evidence gathered in the initial investigation. [The investigator(s) shall within ten (10) days make a new determination of whether there is probable cause to believe that the respondent has engaged in an unlawful practice.

(3) Dismissal of a complaint may be reconsidered by the commission on its own initiative at any time within 180 days after the alleged unlawful practice occurred. Notice of such reconsideration shall be provided by the commission to all parties to the initial investigation or final conciliation as the case may be.]

Section 5. Notice of Hearing. (1) [When hearings ordered.

(a) After a finding of probable cause to credit the allegations of the complaint and in case of failure to eliminate said unlawful discriminatory practices or otherwise resolve same, the results of the investigation shall be reported to the executive director, who shall report same to the chairman, with his recommendation on scheduling a hearing.

(b)] The executive director shall schedule a hearing and report same to the chairman who shall thereupon appoint a presiding hearing commissioner and may [in his discretion] appoint one (1) or more additional hearing commissioners.

(2) Notice of hearing.

[(a) The notice of hearing shall state the time and place and shall inform the respondent that he may file an answer to the complaint.

(b) The notice of hearing an sworn complaint, as the same may have been amended, shall be served by registered or certified mail on the respondent at least ten (10) days before the date of the hearing, and the complainant, hearing commissioners and Attorney General shall be furnished a copy of such notice.

(c)] If a party is represented by an attorney, a copy of the notice of hearing and complaint, as the same may have been amended, shall be furnished to said attorney.

(3) Place of hearing. The place of any hearing shall be any [the] office of the commission [in Frankfort] or any [such] other place as may be designated by the commission [it]. The commission shall give consideration to a request for a change of hearing location made by the complainant or the respondent.

Section 6. Answer. (1) Filing of answer. The respondent shall [may by himself] or the respondent's [his] attorney of record answer the complaint or amended complaint. The answer shall be in writing and signed by the respondent or respondent's [his] attorney of record and filed with two (2) copies at the Kentucky Commission on Human Rights, The Heyburn Building, 332 West Broadway, Suite 700, Louisville, Kentucky 40202, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m. [office of the commission in Frankfort or Louisville not less than five (5) days before the hearing date.]

(2) Content. The answer shall state in short and plain terms the defenses to each claim asserted and shall admit or deny the allegations in the complaint. A defense of lack of jurisdiction shall be specifically stated in the answer, together with a brief statement of facts upon which the respondent relies for this defense. If the respondent is without knowledge or information sufficient to form a belief as to the truth of an allegation, the answer shall contain the mailing [post office] address of the respondent.

(3) Manner of filing. The answer may be filed by registered or certified mail addressed to the office of the commission in [Frankfort or] Louisville or by delivery to said offices.

(4) Failure to deny or admit. Failure to deny or admit an allegation in the complaint, unless the respondent shall state in the answer an absence of [that he is without] knowledge or information sufficient to

form a belief, shall be deemed an admission of [~~such~~] allegation.

(5) Defense and new matter. Any allegation of new matter contained in the answer shall be deemed denied without the necessity of a reply.

(6) Extension of time for filing. Upon application, the chairman or the presiding hearing commissioner may for good cause shown extend the time within which the answer may be filed.

(7) Amendments of answer. [~~The answer or any part hereof may be amended as a matter of right at any time before the first hearing and thereafter in the discretion of the presiding hearing commissioner on application duly made therefor.~~] An original with two (2) copies of the amended answer shall be filed with the commission.

[~~(8) Amendment of answer upon amendment of complaint. In any case where a complaint has been amended, the respondent shall have the opportunity to amend this answer within such period as may be fixed by the presiding hearing commissioner.~~

~~(9) Failure to file answer. The hearing commissioners may proceed, notwithstanding any failure of the respondent to file an answer within the time provided herein, to hold a hearing at the time and place specified in the notice of hearing and may make its findings of fact and enter its order upon the testimony taken at the hearing.~~

~~(10) Default. Upon application the chairman may for good cause shown, set aside a default in answering.~~]

Section 7. Hearings. (1) Appearances. Whenever practicable the complainant or the party on whose behalf the complaint was filed shall appear at the hearing, with or without counsel, the submit testimony. [~~The respondent may appear at the hearing with or without counsel and if an answer has been filed or the default in answering has been set aside for good cause shown, may examine and cross-examine witnesses and may present evidence.~~] The complainant, the Attorney General, and in the discretion of the presiding hearing commissioner, any person may intervene, examine and cross-examine witnesses, and present evidence.

(2) Who shall conduct. Hearings shall be conducted before one (1) or more hearing commissioners to be appointed by the chairman. In the event more than one (1) hearing commissioner is appointed, the chairman shall designate one (1) of the hearing commissioners to act as presiding hearing commissioner.

(3) Power and duties of the presiding hearing commissioner. The presiding hearing commissioner shall have full authority to control the procedure of a hearing, to admit or exclude testimony or other evidence, and to rule upon all motions and objections. The presiding hearing commissioner shall make full inquiry into all the facts in issue and shall obtain a full and complete record of all facts necessary for a fair determination of the issues. [~~The presiding hearing commissioner may call and examine witnesses, direct the production of papers or documents, and introduce the same into the record of proceedings.~~]

(4) Procedure.

(a) [~~The case in support of the complaint shall be presented before the hearing commissioners by a commission attorney or staff member. The complainant or his counsel may also present any case in support of the complaint.~~

~~(b)~~] Evidence may be admitted if it is of the type commonly relied upon by reasonably prudent persons [~~men~~] in the conduct of their affairs. However, irrelevant, immaterial, or unduly repetitious evidence shall be excluded and the rules of privilege shall be given effect.

[~~(c) All testimony shall be given under oath or affirmation, and record of the proceedings shall be made and kept.~~

~~(d) No testimony or evidence shall be given or received at any hearing concerning any offers or counteroffers made in an effort to conciliate any alleged unlawful discriminatory practice.~~]

(b) [~~(e)~~] Two (2) or more proceedings under the act may be joined by the commission [~~in its discretion~~].

(5) Stipulations. The parties may file a stipulation as to the facts, in which event the same shall be numbered and used at the hearing. A [~~Such~~] stipulation shall not preclude the offering of additional evidence by any party.

(6) Continuation and adjournments. The hearing commissioners may continue a hearing from day to day or adjourn it to a later date or to a different place by announcement thereof at the hearing, or by appropriate notice to all parties.

(7) Motions and objections. Motions made during a hearing and objections with respect to the conduct of a hearing, including objections to the introduction of evidence, shall be stated in writing or orally and shall be included in the record of the hearings.

(8) Oral arguments and briefs. The presiding hearing commissioner shall permit the parties, their attorneys, or the members of the commission's staff presenting the case in support of the complaint, to argue orally before the hearing commissioners and to file briefs [~~within such time limits as the presiding hearing examiner may determine~~]. Oral arguments shall not be included in the record unless the presiding hearing commissioner shall so direct.

(9) Improper conduct. The presiding hearing commissioner may exclude from the hearing room or from further participation in the proceeding any person who engages in improper conduct before the hearing commissioners.

(10) Waiver of hearing. With the consent in writing of the respondent and notice to all parties, an order may be entered without holding any hearing or the making of any findings of fact or conclusion of law.

(11) Public hearings. All commission hearing shall be open to the public unless the chairman or the presiding hearing commissioner[~~, in his discretion,~~] directs a closed hearing.

(12) Written transcript of the record. The written transcript of the record upon the hearing before the hearing commissioners shall consist of the notice of the hearing, the sworn complaint, as the same may have been amended, the answer, as the same may have been amended, the transcript of the testimony taken at the hearing, the exhibits and depositions offered in evidence, written applications, briefs, orders, motions, oral arguments if directed by the hearing examiner, stipulations, the findings of fact, conclusions of law, and the final order of the commission.

Section 8. Discovery. [~~(1)~~] Subpoenas.

[~~(a) Issuance of subpoena. Whenever it is deemed necessary to compel the attendance of witnesses or the production for examination of any books, payrolls, personnel records, correspondence, documents, papers, or any other evidence relating to any matter under investigation or in question before the commission, any commissioner or the executive director may issue a subpoena or subpoena duces tecum and thereby compel such attendance of witnesses or production for examination of books, papers, and records.~~

~~(b) Issuance of subpoena at instance of party. Any commissioner or the executive director may issue such subpoena or subpoena duces tecum at the instance of any party to a hearing or other proceedings. The issuance of such subpoena and subpoena duces tecum at the instance of a party shall depend upon a showing of the necessity therefor.~~

~~(c) Fees.~~] Where a subpoena or subpoena duces tecum is applied for and issued at the instance of any party to a hearing or other proceeding, the cost of service, witness and mileage fees, if any, shall be borne by the party at whose instance it has been requested and issued. Where a subpoena or subpoena duces tecum is issued at the instance of any commissioner or the executive director, the cost of [~~such~~] service, witness, and mileage fees, if any, shall be borne by the commission.

[~~(2) Depositions and interrogatories.~~

~~(a) Depositions of witnesses, including any party may be taken as prescribed by the Kentucky Rules of Civil Procedure.~~

~~(b) Interrogatories. The commission may, at any time after the complaint is filed, require any party or witness to answer interrogatories. The procedure for interrogatories shall conform to the Kentucky Rules of Civil Procedure, as far as is practicable.~~

~~(3) Refusal to make discovery. If a person fails to permit access, fails to comply with a subpoena, refuses to have his deposition taken, refuses to answer interrogatories, or otherwise refuses to make discovery, the commission or any party may request an order of the circuit court requiring discovery.~~]

Section 9. Filing of Orders. [~~(1) Contents of order. An order of the commission issued after hearing shall set forth the findings of fact and conclusions of law of the hearing commissioners, the commission's final decision, and in the discretion of the commission, opinion containing the reasons for said decision.~~

~~(2) Issuance of orders.~~

~~(a) If upon all the evidence, the hearing commissioners shall find that a respondent had engaged in any unlawful discriminatory practice, the hearing commissioners shall state its finding of fact, conclusion of law and shall make a recommendation on the basis of which the commission may issue and cause to be delivered to respondent an order requiring such respondent to cease and desist from such unlawful discriminatory practice and to take such affirmative action as in the judgment of the commission will carry out the purpose of the act. Affirmative action orders may include the remedies enumerated in KRS 344.230.~~

~~(b) If upon all the evidence, the hearing commissioners shall find that a respondent has engaged in an unlawful discriminatory practice, the hearing commissioner shall state its findings of fact, conclusion of law and shall make a recommendation on the basis of which the commission may similarly issue an order dismissing the complaint.~~

~~(3) Filing.~~] All orders issued by the commission after a hearing shall be filed in the commission's office in Louisville.

[~~Section 10. Reopening of Proceedings. (1) Who may open. After hearing and the issuance of a final order, the commission or the hearing commissioners may, upon its own motion or upon application of any party or intervenor, for good cause shown, or whenever justice so requires, or where an order or determination or decision was made upon default of a party affected thereby; reopen any closed proceeding upon notice of all parties, intervenors and the Attorney General, and take such action as it may deem necessary.~~]

[~~Section 11. Judicial Review. (1) Who may apply. A complainant, respondent, or intervenor aggrieved by an order of the commission, including an order dismissing a complaint or stating the terms of a conciliation agreement, may obtain an order of the court for enforcement of its order.~~

~~(2) Forum. A proceeding for judicial review may be brought in the circuit court in a county in which the alleged unlawful practice which is the subject of the order or complaint occurs or in which a respondent resides or had his principal place of business.~~

~~(3) Filing of written transcript of the record by the commission.~~

~~(a) Upon receipt by the commission of a copy of the court's order so directing, the commission shall cause to be certified and delivered to the clerk of the court the entire record made before the commission, together with the findings of fact, conclusions of law and order of the commission thereon.~~

~~(b) The commission's copy of the written transcript of the record shall be available during the regular office hours of the commission to all parties for examination without cost, and for the purpose of appeal to the circuit court from the order of the commission. The commission's copy of the testimony shall, in the discretion of the commission or the chairman, also be available to intervenors and other persons for such purpose and to such extent as the commission or the chairman may determine.~~]

Section 10. [~~12.~~] Certification. The chairman[~~, the secretary of the commission~~] or the executive director is authorized and empowered to certify all documents or records which are a part of the files and records of the commission.

Section 11. [~~13.~~] Availability of Rules. Rules of practice and procedure [~~The rules and regulations~~] of the commission [~~and any amendments, additions, or modifications thereof,~~] shall be available to the public at the office of the Kentucky Commission on Human Rights, The Heyburn Building, 332 West Broadway, Suite 700, Louisville, Kentucky 40202, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m. [~~in Frankfort or at any other commission office.~~]

Section 12. [~~14.~~] Construction of Rules and Pleadings. (1) Rules of practice and procedure [~~These rules and regulations~~] shall be liberally construed to effectuate the purposes and provisions of KRS 334.010 to 344.450 and 344.990 [~~Chapter 344~~] and the policies of the Kentucky Commission on Human Rights.

(2) All pleadings shall be liberally construed with a view to effect justice between the parties. The [~~, and the commission and~~] hearing commissioners shall [~~will~~], at every stage of any proceeding, disregard errors or defects in the pleadings or proceedings which do not affect the substantive [~~substantial~~] rights of either [~~the~~] parties.

Section 13. Creation [~~15. Amendment~~] of Rules. [~~New~~] Rules of practice and procedure may be adopted, [~~and any rule may be~~] amended, or rescinded by the commission at a regular or special meeting. [~~, provided that~~] Notice of the proposed adoption, amendment, or recision shall be [~~has been~~] given in writing to all members of the commission at least ten (10) days before the meeting [~~at which action is to be taken~~]; except that [~~said~~] ten (10) days notice shall not be required when two-thirds (2/3) of the membership of the commission shall approve in writing any [~~such~~] adoption, amendment, or recision. Provided further, all [~~such~~] amendments and the process for amending commission administrative regulations shall comply with KRS Chapter 13A. [~~Kentucky statutes governing the amendment of Kentucky administrative regulations.~~]

Section 14. [~~16.~~] General Investigations. The commission may[~~, in its discretion,~~] conduct [~~such~~] general investigations into the problems of discrimination [~~as it deems necessary or desirable~~] and may study and report upon the problems of the effect of discrimination on any field of human relationships.

EDGAR S. GOINS, Chairperson

APPROVED BY AGENCY: February 7, 1992

FILED WITH LRC: February 13, 1992 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, March 23, 1992, 9 a.m. at the Louisville office of the Kentucky Commission on Human Rights, The Heyburn Building, 332 West Broadway, Suite 700, Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by Wednesday, March 18, 1992, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Gwen Horton, Kentucky Commission on Human Rights, The Heyburn Building, Suite 700, 332 West Broadway, Louisville, Kentucky 40202.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Gwen Horton

(1) Type and number of entities affected: Any person filing or responding to a complaint of discrimination.

(a) Direct and indirect costs or savings to those affected:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body: Allows for uniform procedure for processing complaints and gives the public notice of the procedure that should minimize employees' time spent answering questions.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method was considered because the promulgation of this regulation will give all persons sufficient notice.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No

statute, administrative regulation or government policy either conflicts, overlaps or duplicates the provisions of this regulation.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: This regulation was amended to correct deficiencies found during a quadrennial review.

TIERING: Was tiering applied? No. Tiering was not applied because regulation has the same effect upon all affected parties. To differentiate would violate equal protection and due process.

GENERAL GOVERNMENT CABINET
Department for Commission on Human Rights
(Proposed Amendment)

104 KAR 1:030. Employer records and reports.

RELATES TO: KRS Chapter 344
STATUTORY AUTHORITY: KRS 13A.100, 344.250
NECESSITY AND FUNCTION: This administrative regulation sets forth the procedure established by the Kentucky Commission on Human Rights with respect to the maintenance of employment records. [KRS 344.250 provides that persons subject to the Civil Rights Act shall make and keep records and make such reports therefrom as the commission shall require by regulation. The act provides for such records and reports to conform with federal reports, and this regulation provides that where federal employment reports are filed and timely made available to the commission, duplicate reports will not be required. Where the reports are not available through the federal government the commission reserves the right to require the information directly in its case investigations.]

[Section 1. Every employer in the Commonwealth of Kentucky who is subject to the Kentucky Civil Rights Act (KRS Chapter 344) and who is also subject to the jurisdiction of the United States Equal Employment Opportunity Commission shall file the appropriate standard employer information report Form (EEG 1-5) with the United States Equal Employment Opportunity Commission in accordance with that commission's instructions and regulations.]

Section 1. Required Records. An employee may substitute federal government employee workforce breakdown report. [2. Employers subject to the jurisdiction of the United States Equal Employment Opportunity Commission shall not be required to furnish information to the Kentucky commission which is duplication of that filed on the appropriate standard employer information report form (EEG 1-5). The Kentucky Commission on Human Rights reserves the right to require reports about the employment practices of individual employers or groups of employers, whenever such information has not been furnished to the Equal Employment Opportunity Commission. In connection with the investigation of a complaint] The commission reserves the right to require the employer to update or modify [provide such] information if the report does [where it has not been received by the commission, or is information more than six (6) months out of date, and where the appropriate EEG form job categories do] not provide a current breakdown descriptive of the employers actual job categories[, the commission may require a more descriptive workforce breakdown].

[Section 3. The provisions respecting confidentiality of information contained in Section 709(c) of the United States Civil Rights Act of 1964 and KRS 344.250(6) shall be observed by all commissioners and staff of the Kentucky Commission on Human Rights.]

Section 2. Retention of Records. (1) [4.] Any personnel or employment record made or kept by an employer [(including but not necessarily limited to application forms submitted by applicants and other records having to do with hiring, promotion, demotion, transfer, layoff or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship)] shall be preserved by the employer for a period of six (6) months from the date of the making of the record or [and] the personnel action involved, whichever occurs later.

(2) [In case of involuntary termination of an employee,] The personnel records of a [the individual] terminated employee shall be kept for a period of six (6) months from the date of termination.

(3) Where a complaint of discrimination has been filed, the respondent employer shall preserve all employee personnel records relevant to the complainant until final disposition of the complaint.

(a) The term "personnel records relevant to the complaint," [for example, would] includes all personnel or employment records relating to the complainant; all personnel or employment records of any [and to] all other employees holding positions similar to that held or sought by the complainant; any [and] application or test results of [forms or test papers completed by an unsuccessful applicant or by all] other applicants [candidates] for the same position [as that for which the complainant applied and was rejected].

(b) The date of "final disposition of the complaint" means the expiration of the statutory period for an appeal of any administrative or judicial order. [date of the statutory period within which the complainant, the Attorney General, and the intervenor, or the commission may bring an action in the circuit court; or the date on which such litigation is terminated, whichever date is later.]

[Section 5. If a person fails to make, keep, or preserve records or make reports in accordance with this regulation, the circuit court for the county in which such person is found, resides or has his principal place of business, upon application of the commission, may issue an order requiring compliance.]

EDGAR S. GOINS, Chairperson
APPROVED BY AGENCY: February 7, 1992
FILED WITH LRC: February 13, 1992 at 8 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, March 23, 1992, 9 a.m. at the Louisville office of the Kentucky Commission on Human Rights, The Heyburn Building, 332 West Broadway, Suite 700, Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by Wednesday, March 18, 1992, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Gwen Horton, Kentucky Commission on Human Rights, The Heyburn Building, Suite 700, 332 West Broadway, Louisville, Kentucky 40202.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Gwen Horton

(1) Type and number of entities affected: Employers in Kentucky with more than eight employees will be affected.

(a) Direct and indirect costs or savings to those affected:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body: Persons affected by the regulation will be able to substitute other governmental reports to the Kentucky Commission on Human Rights which will speed up employee record requests.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: There will be no anticipated effect on state and local revenue.

(4) Assessment of alternative methods; reasons why alternatives

were rejected: The alternative would be to require companies to in some instances duplicate a report already provided to a governmental agency. That procedure would result in additional expenses to an employer.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, administrative regulation or government policy conflicts with this regulation. This regulation was implemented to avoid an employee duplication on another format information previously provided to the federal government.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: Amendments to this regulation were made to correct deficiencies found during a quadrennial review.

TIERING: Was tiering applied? No. Tiering was not applied because all respondents complying with a document request will be similarly affected. To differentiate would violate equal protection and due process.

GENERAL GOVERNMENT CABINET
Department for Commission on Human Rights
(Proposed Amendment)

104 KAR 1:040. Guidelines for employment advertisement.

RELATES TO: KRS Chapter 344

STATUTORY AUTHORITY: KRS 13A.100, 344.190, 344.080, 29 CFR 1604.5

NECESSITY AND FUNCTION: This regulation[, pursuant to KRS 344.080 and 344.190,] is designed to eliminate job advertisements [ads] which discriminate against persons covered under KRS 344.010 to 344.450 and 344.990. [on the basis of sex, as well as other coverages in the civil Rights Act. Employers may not use discriminatory language in job ads, nor may the ads be segregated under headings which discriminate. The regulation provides a procedure by which employers may obtain a "bona fide occupational qualification" exemption. Suggested substitutes for discriminatory terms are provided.]

[Section 1. It shall be a violation of KRS 344.080 for any employer, labor organization, licensing agency, or employment agency to cause to be published, printed, circulated or displayed any advertisement or notice relating to employment, employment opportunities, job openings, union membership, apprentice programs, job training programs, licensing opportunities, or any of the terms, conditions or privileges thereof under an employment advertisement or notice column which is segregated on the basis of race, color, religion, national origin, sex or age or under any column heading which expresses overtly or subtly, directly, or indirectly, any preference, specification or limitation.]

Section 1. Help Wanted Notices or Advertisements. [2. (1) It shall be a violation of KRS 344.080 for any employer, labor organization, licensing agency, or employment agency to cause to be published, printed, circulated or displayed any advertisement or notice relating to employment, employment opportunities, job openings, union membership, apprentice programs, job training programs, licensing opportunities, or any of the terms, conditions or privileges thereof the language of which advertisement or notice expresses any limitation, specification, discrimination or preference as to race, color, religion, national origin, sex or age. A limitation, specification, discrimination or preference as to religion, national origin, sex or age is not a violation where such limitation, specification, discrimination or preference is a bona fide occupational qualification for the particular job advertised as defined in Section 3.]

(1) [(2)] When[ever a] "help wanted" advertisements or notices [is to] contain any job title, terms, phrases or job description which indicate a preference [is not clearly neutral] in terms of sex, religion, age forty (40) to seventy (70) or national origin and [to] the job advertised is not one for which sex, religion, age forty (40) to seventy (70) or national origin is a "bona fide occupational qualification" [as defined in this regulation], then the advertisements or notices shall [should] instead utilize a neutral job title. [whenever practicable. If the use of a neutral job title is not practicable, then the advertisement or notice may contain the nonneutral job title provided, however, that the advertisement or notice also includes: (i) the job title which is the counterpart of the nonneutral job title or (ii) the designation "M/W." Newspapers which print employment advertisements are encouraged to voluntarily print a box on their employment advertising pages indicating that the abbreviation "M/W" when used means men or women.]

(2) [(3)] The commission's [staff has] prepared [a] listing of terms considered discriminatory and suggested nondiscriminatory substitutes is available for review at the Kentucky Commission on Human Rights, The Heyburn Building, 332 West Broadway, Suite 700, Louisville, Kentucky 40202, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m. [and make it available for the guidance of those who come under these provisions, which is filed herein by reference.]

Section 2. Bona Fide Occupational Qualifications. [3.] (1) For the purpose of this regulation, [the] "bona fide occupational qualification" [exception shall include only those vocational qualifications which are reasonable necessary to the normal operation of the particular business, enterprise, or apprentice, or other training programs]. The exemption [exception] shall be narrowly construed [interpreted] so that individuals shall [will] be considered for employment on the basis of their individual capacities [and not on the basis of any characteristics generally attributable to their group]. The employer, labor organization, licensing agency, or employment agency asserting a BFOO defense has the burden of establishing with the Kentucky Commission on Human Rights that religion, national origin, sex or age between forty (40) and seventy (70) is a bona fide occupational qualification.

(2) [The application of the exception is not warranted where based on, for example: assumptions of the comparative general employment characteristics of persons of a particular religion, national origin, sex or age, such as their turnover rate; stereotyped characteristics of the aforementioned classes, such as their mechanical ability or aggressiveness; customer, client, coworker or employer preference, or historical usage, tradition or custom, or the necessity of providing separate facilities of a personal nature, such as rest rooms or dressing rooms.] In regard to sex, the application of the exception may be authorized by the [Kentucky] commission [on Human Rights] where it can be demonstrated that gender-based exclusions are necessary for reasons of personal modesty or privacy. 29 CFR 1604.5, "Guidelines on Job Opportunity Advertising on the Basis of Sex" is incorporated by reference and may be obtained or copied at the Kentucky Commission on Human Rights, 332 West Broadway, Louisville, Kentucky 40202, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m. [is necessary for authenticity or genuineness, such as for an actor or actress, or fitters of intimate apparel.]

Section 3. [4.] Any person who intends to cause to be published, printed, circulated, or displayed a job advertisement [employer, labor organization, licensing agency, or employment agency] may make an inquiry of the Kentucky Commission on Human Rights, The Heyburn Building, 332 West Broadway, Suite 700 [701 West Walnut Street], Louisville, Kentucky, 40202, (502) 588-4024 or toll-free 1-800-292-5566 [585-3363; or in Frankfort, Kentucky, 828 Capital Plaza Tower, 564-3550], as to whether religion, national origin, sex or age between forty (40) and seventy (70) may be [is] a bona fide occupational qualification for a particular job [which they intend to cause to be published, printed, circulated or displayed]. The [Kentucky] commission [on Human Rights] shall, within three (3) [one (1)] working days, give written opinions in response to [such] inquiries. Whether or not an occupational qualification may be deemed to be "bona fide" to a specific job and reasonably necessary to the normal operation of the particular business will be determined on the basis of all the pertinent facts surrounding each particular situation. [An opinion rendered orally or in writing by the commission prior to the publication or display of any advertisement in response to such an inquiry shall be binding on

~~the commission for the purpose of this regulation, except in those instances in which the inquiry has not fully and accurately disclosed the relevant facts regarding the particular job in question. The commission shall maintain records as to each inquiry made pursuant to this section, to include the name, title and address of the inquiries, a summary of the job and job duties, the basis for the exception claimed and time, date, identification number and disposition of the inquiry.~~]

[~~Section 5. It shall be a violation of KRS 344.280 for any newspaper or other publication published or circulated within this Commonwealth to print, publish or circulate employment advertisements under headings or columns that are segregated on the basis of race, color, religion, national origin, sex or age or under any column or heading which expresses overtly or subtly, directly or indirectly a preference, specification or limitation on the basis of race, color, religion, national origin, sex or age.~~]

Section 4. [~~6.~~] Newspapers and other publications which print employment advertisements are encouraged to maintain lists of nondiscriminatory terms; [~~and permissible substitutes~~] and to instruct their employees to advise advertisers of nondiscriminatory terms. [~~employers, labor organizations, licensing agencies, or employment agencies of these terms and to have copies of these regulations available for distribution to advertisers upon request.~~]

[~~Section 7. The use of language including but not limited to "black," "Negro," "colored," "white," "restricted," "interracial," "segregated," "Christian," "Jewish," "men," "women," "boy," "gal," "young," "under 40," or any other work, term, phrase or expression which tends to influence, persuade or dissuade, encourage or discourage, attract or repel, any person or persons because of race, color, religion, national origin, sex, or age between forty (40) and sixty five (65) shall be considered discriminatory advertising in violation of KRS 344.080.~~]

Section 5. [~~8.~~] Nothing contained in this administrative regulation shall be deemed to prohibit the [~~Kentucky~~] commission from including in any conciliation agreements or [~~of its~~] orders [~~against any respondent employer, labor organization, licensing agency, or employment agency~~] a provision requiring a person [~~said respondent~~] to include in any advertisement or notice of [~~regarding any~~] employment or licensing opportunity the term "equal employment opportunity," or any substantially similar term. Nor shall this administrative regulation be deemed to prohibit persons from voluntarily using the term "equal employment opportunity," or any substantially similar term in any notice or advertisement.

[~~Section 9. The Kentucky Commission on Human Rights will follow the above guidelines in determining whether or not a general advertisement or advertising practice violates KRS Chapter 344.~~]

EDGAR S. GOINS, Chairperson

APPROVED BY AGENCY: February 7, 1992

FILED WITH LRC: February 13, 1992 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, March 23, 1992, 9 a.m. at the Louisville office of the Kentucky Commission on Human Rights, The Heyburn Building, 332 West Broadway, Suite 700, Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by Wednesday, March 18, 1992, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Gwen Horton, Kentucky Commission on Human Rights, The Heyburn Building, Suite 700, 332 West Broadway, Louisville, Kentucky 40202.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Gwen Horton

(1) Type and number of entities affected: Any person advertising for an employee in Kentucky or business entity publishing the advertisement.

(a) Direct and indirect costs or savings to those affected:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body: This regulation provides for the availability of a listing of nondiscriminatory terms.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods of notifying the public of permissible advertisements would still accomplish the same goal but possibly at a greater expense.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, administrative regulation or government policy either conflicts or overlaps this regulation - 29 CFR 1605.4 does duplicate some provisions.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: Amendments to this regulation were made pursuant to deficiencies found during a quadrennial review.

TIERING: Was tiering applied? No. Tiering was not applied because the regulation affects all persons and entities advertising for employment the same. To differentiate would violate equal protection or due process.

GENERAL GOVERNMENT CABINET
Department for Commission on Human Rights
(Proposed Amendment)

104 KAR 1:050. Guidelines on discrimination because of sex, religion, employment selection, and national origin.

RELATES TO: KRS 344.010 to 344.450, 344.990, 29 CFR 1604.1 to 1604.4, 1604.6 to 1604.11, 1605.1 to 1605.3, 1606.1 to 1606.8, 1607.1 to 1607.16 [~~Chapter 344~~]

STATUTORY AUTHORITY: KRS 13A.100, 344.190, 29 CFR 1604.1-1604.11, 1605, 1607

NECESSITY AND FUNCTION: [~~Pursuant to KRS 344.020 which states the purpose of the chapter to provide for execution within Kentucky of the various federal civil rights acts and KRS 344.190, this regulation adopts the guidelines on religious discrimination, the guidelines on sex discrimination, and the guidelines on employment testing of the Equal Employment Opportunity Commission.~~] This regulation is designed to give Kentucky employers and employees the benefit of consistent interpretations of law by the Kentucky Commission on Human Rights, the Equal Employment Opportunity Commission [~~, EEOC~~], and the federal courts.

Section 1. Religious Discrimination. 29 CFR 1605. [~~The~~] "Guidelines on [~~religious~~] Discrimination because of Religion" is [~~promulgated by the United States Equal Employment Opportunity Commission as last amended on July 10, 1967, which appears in 29 CFR 1605, are adopted and~~] incorporated by reference and may be obtained or copied at the Kentucky Commission on Human Rights, 332 West Broadway, Suite 700, Louisville, Kentucky, 40202, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m.

Section 2. Sex Discrimination. 29 CFR 1604. [The] "Guidelines on Sex Discrimination Because of Sex" is [promulgated by the United States Equal Employment Opportunity Commission as last amended on November 10, 1980, which appears in 29 CFR 1604.1 through 1604.11 excepting Section 1604.5 on job opportunities advertising which subject is already covered by 104 KAR 1:040, are adopted and] incorporated by reference. A copy may be inspected, copied, or obtained or copied at the Kentucky Commission on Human Rights, 332 West Broadway, Suite 700, Louisville, Kentucky, 40202, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m.

Section 3. Employment Selection Procedure. 29 CFR 1607. "Uniform [The] Guidelines on Employee Selection Procedure" is [employment testing issued by the United States Equal Employment Opportunity Commission, as last amended on July 21, 1970, which appears in 29 CFR 1607, are adopted and] incorporated by reference and may be obtained or copied at the Kentucky Commission on Human Rights, 332 West Broadway, Suite 700, Louisville, Kentucky, 40202, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m.

Section 4. National Origin Discrimination. 29 CFR 1606 "Guidelines on National Origin Discrimination" is incorporated by reference and may be inspected, copied, or obtained at the Kentucky Commission on Human Rights, 332 West Broadway, Suite 700, Louisville, Kentucky, 40202, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m.

EDGAR S. GOINS, Chairperson
APPROVED BY AGENCY: February 7, 1992
FILED WITH LRC: February 13, 1992 at 8 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, March 23, 1992, 9 a.m. at the Louisville office of the Kentucky Commission on Human Rights, The Heyburn Building, 332 West Broadway, Suite 700, Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by Wednesday, March 18, 1992, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Gwen Horton, Kentucky Commission on Human Rights, The Heyburn Building, Suite 700, 332 West Broadway, Louisville, Kentucky 40202.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Gwen Horton
(1) Type and number of entities affected: Kentucky employers and employees.
(a) Direct and indirect costs or savings to those affected:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body: Allows for consistent interpretation of statutes, federal regulations and court decisions.
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on state and local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, administrative regulation or government policy either conflicts, overlaps or duplicates this regulation.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: The amendments to this regulation were made pursuant to deficiencies found during the quadrennial review.
TIERING: Was tiering applied? No. Tiering was not applied because the regulation only promulgates guidelines for persons to comply with the Kentucky Civil Rights Act.

GENERAL GOVERNMENT CABINET
Department for Commission on Human Rights
(Proposed Amendment)

104 KAR 1:060. Records and reports for multiple dwelling developments and reporting form.

RELATES TO: KRS Chapter 344
STATUTORY AUTHORITY: KRS 13A.100, 13A.120, 344.190(10), (11), 344.250(2)
NECESSITY AND FUNCTION: [As provided in KRS 344.250,] This administrative regulation establishes the requirements governing records and submission of annual reports by owners of multiple dwelling developments covered by KRS 344.360. [requires the owner of apartment buildings with twenty five (25) or more units to keep records and to file annual reports with the commission indicating their racial occupancy and application experience. The information obtained is used by the commission in accordance with KRS 344.190(10) and (11) to provide technical assistance to the real estate industry to facilitate compliance with the fair housing provisions.]

Section 1. Definitions.[As used in this rule:]
(1) "Multiple dwelling [apartment] developments" means one (1) or more buildings situated:
(a) At the same general location and either [or] operated under one (1) management or with ownership in common; or
(b) Two (2) or more [than one (1)] buildings located [situated in various locations] within the Commonwealth of Kentucky if they are under the same management or are owned by the same person or persons.
(c) The building(s) shall contain in the aggregate at least twenty-five (25) units;
(d) It shall include, but not be limited to,k an apartment building [or buildings], garden apartment, townhouse, or [and] condominium.
(2) "Racial designation" means white, black, or [and] other.
(3) "Leaseholder" means the party with whom the landlord has entered into an agreement [contracted] for the apartment rental. [, whether] The agreement may [contracting] be either oral or written [orally or in writing]. It shall include the name of the [any] sublettee or assignee of the agreement if [contract where] notice or approval of subletting or assignment is a condition of the agreement [contract].
(4) "Apartment turnover" means a change of leaseholder or purchaser.
(5) "Applicant" means any person who, for the purpose of either renting or purchasing a unit within a multiple dwellings development, appears before either the owner, leaser, agent or other principal or operator [of a multiple apartment development for the purpose of renting or purchasing an apartment].
[(6) Unless the context indicates to the contrary all terms used in this rule have the same meaning as in KRS Chapter 344.]

Section 2. Persons required to report. The owner [or owners] of any [every] multiple dwelling [apartment] development which has [have] twenty-five (25) [units] or more units shall file an annual report with the Kentucky Commission on Human Rights. The report shall contain both [concerning] the racial composition of each occupant of the multiple development including [dwelling and] factors affecting the

composition. Where there are multiple owners of a development and the development is operated as one (1) unit, a consolidated report may be filed. The manager, agent, or any other person responsible for management [of apartments] may file for the owner. Reports for condominiums shall be filed by the development manager.

Section 3. Multiple Dwelling Report. [Form and contents of report.] The report shall be submitted on the "Multiple Dwelling Report" form incorporated by reference. This form may be obtained or copied at [approved by] the Kentucky Commission on Human Rights, the Heyburn Building, 332 West Broadway, Suite 700, Louisville, Kentucky, 40202, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m. A "Suggested Form for Recording Applicant Information" is also incorporated by reference. [in accordance with Exhibit A; and said forms shall be available at any office of the Kentucky Commission on Human Rights.]

Section 4. Filing of reports. One (1) copy of the "Multiple Dwelling Report" shall be filed with the Kentucky Commission on Human Rights by July 1, of each year. The "Multiple Dwelling Report" shall include cumulative information for a period of one (1) year prior to the month of filing. [The commission may waive submission of all or a part of a report for hardship situations as provided in KRS 344.250(4). The executive director of] The commission may [in his discretion] postpone or waive the filing of any required report [required under this rule].

Section 5. Maintenance of records. The owner [or owners] of the multiple dwelling [apartment] development shall [be responsible to have] maintain[ed at all times] the following records:

(1) Racial designation of each applicant for an apartment:

(2) Racial designation of each new apartment leaseholder or purchaser;

(3) Racial designation of each new leaseholder or purchaser;

(4) Apartment rental or sales recruiting techniques [employed]; and

(5) All [Such other records as the Kentucky Commission on Human Rights determines is necessary to effectuate the purpose of KRS Chapter 344. Such] records shall be kept on file for a period of two (2) years and shall be available [produced] for inspection and review upon request between the hours of 8 a.m. and 4:30 p.m. [of the Kentucky Commission on Human Rights during business hours.]

[Section 6. Violation. If a person fails to make, keep or preserve records or make reports in accordance with this regulation, the circuit court for the county in which such person resides, or has his principal place of business, upon application of this commission in accordance with KRS 344.250(7), may issue an order requiring compliance.]

EDGAR S. GOINS, Chairperson

APPROVED BY AGENCY: February 7, 1992

FILED WITH LRC: February 13, 1992 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, March 23, 1992, 9 a.m. at the Louisville office of the Kentucky Commission on Human Rights, The Heyburn Building, 332 West Broadway, Suite 700, Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by Wednesday, March 18, 1992, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Gwen Horton, Kentucky Commission on Human Rights, The Heyburn Building, Suite 700, 332 West Broadway, Louisville, Kentucky 40202.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Gwen Horton

(1) Type and number of entities affected: All dwellings with 25 or more units in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body: Provides for uniformity in reporting.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: No anticipated effect on state and local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were assessed.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, administrative regulation or government policy either conflicts, overlaps or duplicates this regulation.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: Amendments to this regulation were made because of deficiencies found during a quadrennial review.

TIERING: Was tiering applied? No. Tiering was not applied because all multiple dwellings with 25 or more units are required to keep the same report. All owners of multiple dwelling units of 25 or more must be treated the same. To differentiate would be a violation of equal protection and due process.

GENERAL GOVERNMENT CABINET
Department for Commission on Human Rights
(Proposed Amendment)

104 KAR 1:070. Records and reports for apprenticeships and training programs.

RELATES TO: KRS 344.070 [Chapter 344]

STATUTORY AUTHORITY: KRS 13A.100, 344.250(3)

NECESSITY AND FUNCTION: [KRS 344.250(3) provides that the Commission shall require apprenticeships or other training programs to keep records and make reports.] This administrative regulation establishes the requirement governing the submission, retention, content, and substitution of [rule is designed to implement that section by recordkeeping and reports and allowing the filing of similar] records and reports by persons covered by KRS 344.250(3) [as are required by federal or state law to be substituted].

[Section 1. Each person subject to this chapter who controls an apprenticeship or other training program shall keep all records reasonably necessary to the determination of whether discrimination has occurred in the program because of an individual's race, color, religion, national origin, sex or age between forty (40) and sixty five (65).]

Section 1. Retention of Records. An [2. Each] apprenticeship or training program [subject to this chapter] shall keep in chronological order for a period of two (2) years a list of applicants according to race, color, sex and age [who wish to participate in such program, including the chronological order in which applicants were received].

Section 2. Enrollment Records. An [3. Each] apprenticeship or training program [subject to this chapter] shall furnish to the commission [on July 1, 1977, and annually thereafter], upon request [if

~~requested by the commission, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program and~~] a breakdown of current enrollment by race, color, sex and age. [~~The commission may waive submission of all or a part of a report for hardship situations as provided in KRS 344.250(4).~~]

Section 3. Substitution of Records. [~~4.~~] So as to avoid undue burdens on persons subject to this administrative regulation, an apprenticeship or training program may provide to the commission records and reports submitted in the regular course of business to other governmental agencies. However, the commission reserves the right when necessary for a complete investigation to require records in addition to reports previously submitted to other governmental agencies. [~~records and reports shall conform as near as may be similar records and reports required by federal law and Kentucky law, including reports filed with the Federal Bureau of Apprenticeship and Training and the Kentucky Department of Labor. Where similar information is regularly filed with these agencies and made available to the commission, the commission may waive direct submission by the apprenticeship or training program. However, this provision shall not in any way justify any employer, labor organization or joint labor management committee controlling apprenticeship other retraining, including on the job training programs, from supplying information requested by the commission staff in the course of investigating a complaint against those subject to this chapter.~~]

EDGAR S. GOINS, Chairperson
APPROVED BY AGENCY: February 7, 1992
FILED WITH LRC: February 13, 1992 at 8 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, March 23, 1992, 9 a.m. at the Louisville office of the Kentucky Commission on Human Rights, The Heyburn Building, 332 West Broadway, Suite 700, Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by Wednesday, March 18, 1992, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Gwen Horton, Kentucky Commission on Human Rights, The Heyburn Building, Suite 700, 332 West Broadway, Louisville, Kentucky 40202.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Gwen Horton
(1) Type and number of entities affected: All employers operating apprenticeship and training programs.
(a) Direct and indirect costs or savings to those affected:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body: Allows for more efficient recordkeeping for reports.
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: No anticipated effect on state and local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method was addressed.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, administrative regulation or government policy either conflicts, overlaps or duplicates this regulation.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: The amendments to this regulation were made as a result of deficiencies found during a quadrennial review.
TIERING: Was tiering applied? No. Tiering was not applied because all employers conducting apprenticeship and training programs are similarly affected. All employers subject to this administrative regulation must be treated equally. To differentiate would be a violation of equal protection and due process.

GENERAL GOVERNMENT CABINET
State Board of Accountancy
(Proposed Amendment)

201 KAR 1:100. Continuing professional education requirements.

RELATES TO KRS 325.330
STATUTORY AUTHORITY: KRS 325.240
NECESSITY AND FUNCTION: This regulation pertains to continuing professional education requirements for renewal of the permit to practice public accounting in the state.

Section 1. Definitions. [~~(1)~~] A continuing professional education hour means a fifty (50) minute period excluding meals, breaks and business sessions. For university or college courses, each unit of credit shall equal the following continuing education contact hours: semester hour equals fifteen (15) CPE hours; quarter hour equals ten (10) CPE hours.
[~~(2) The practice of public accounting means anyone performing or offering to perform one (1) or more types of services specified in KRS 325.220(5), even when otherwise employed on a full-time basis in another capacity~~].

Section 2. Requirements for Continuing Education Credit. (1) At permit renewal on or before July 1, 1991:
(a) Each permit holder shall report to the board successful completion of twenty (20) hours of continuing professional education earned during the 1990 calendar year.
(b) Upon successful completion of the continuing professional education and all other renewal requirements, one-half (1/2) of the licensees shall receive a one (1) year permit to practice; the remaining half shall receive a two (2) year permit to practice.
(2) At permit renewal on or before July 1, 1992, [~~:~~]
[~~(a)~~] each permit holder renewing the one (1) year permit to practice whose primary occupation at the time of renewal is with a public accounting firm which is or should be registered by the board or who performs audits or reviews [~~and who engaged in the practice of public accounting at any time during the 1991 calendar year~~] shall report to the board successful completion of forty (40) hours of continuing professional education earned during the 1991 calendar year. All others shall obtain thirty (30) hours.
[~~(b) Each permit holder renewing the one (1) year permit to practice who did not engaged in the practice of public accounting at any time during the 1991 calendar year shall report to the board successful completion of thirty (30) hours of continuing professional education earned during the 1991 calendar year.~~]
(3) Effective with permit renewal on or before July 1, 1993 and subsequent years, [~~:~~]
[~~(a)~~] each permit holder whose primary occupation at the time of renewal is with a public accounting firm which is or should be registered by the board or who performs audits or reviews [~~who engaged in the practice of public accounting at any time during the preceding two (2) calendar years~~] shall report to the board successful completion of eighty (80) hours of continuing professional education earned during the preceding two (2) calendar years. All others shall obtain sixty (60) hours.
[~~(b) Each permit holder who did not engage in the practice of~~

~~public accounting at any time during the preceding two (2) calendar years shall report to the board successful completion of sixty (60) hours of continuing professional education earned during the preceding two (2) calendar years.~~]

Section 3. Each permit holder who held a certificate and a permit to practice for less than a full two (2) calendar year [~~permit~~] period shall be required to obtain three (3) hours of continuing professional education for each full month a permit was held.

[~~Section 4. Requests for Extensions of Time to Complete Continuing Professional Education Requirements. (1) A request for an extension shall be in writing, state sufficient cause supported by attached statements from physicians or other appropriate sources, and be submitted with the renewal fee.~~

~~(2) Sufficient cause means medical, psychological, financial or personal problems which have prohibited the permit holder from obtaining the necessary continuing education hours. Extensions may not be granted because of heavy workloads or desire to attend a later course.~~

~~(3) Following a review of the request, a ninety (90) day extension until September 30 may be given and a new permit shall be issued. The permit holder shall submit documentation or certify course completion on or before September 30.~~

~~(4) No further extensions may be granted.~~]

Section 4. [~~5.~~] Waivers From Continuing Professional Education. (1) The request for a waiver from the continuing professional education requirements shall be submitted on a form provided by the board.

(2) Waivers may be granted by the board if the permit holder meets one (1) of the following:

(a) Is physically or psychologically unable to complete the continuing professional education requirements and submits statements from licensed physicians or other appropriate authorities; or

(b) Has encountered a severe personal hardship which has made it extremely difficult or impossible to meet the continuing professional education requirements and such hardship has been described in writing on the waiver form; or

(c) Is completely retired from practice and is fifty-five (55) years of age or older. Completely retired means not performing accounting services in the practice of public accounting, education, government or industry except for management of personal assets or investments. [~~Is retired or not performing accounting services for a fee or salary and is fifty five (55) years of age or older. Retired means cessation of employment from the practice of public accounting or employment in government, education or industry with the exception of managing personal assets or investments.~~]

(3) The board shall respond in writing, accepting or rejecting all waiver requests. Rejections shall specify the reasons for the rejection.

(4) All permit holders granted waivers shall reaffirm the basis of the waiver when the permit to practice is next renewed.

(5) If the circumstances which form the basis of the waiver change, the permit holder shall notify the board within thirty (30) days from the date of the change and resume compliance with the continuing professional education requirements from the date of the change.

Section 5. [~~6.~~] Programs Which Qualify. (1) The overriding consideration in determining whether a specific program qualifies as acceptable continuing education shall be whether it is a formal program of learning which contributes directly to the professional competence of an individual licensed to practice as a certified public accountant in this state.

(2) Continuing professional education programs may qualify only if:

(a) An outline of the program is prepared in advance and preserved; and

(b) The program is at least one (1) continuing professional education hour in length; and

(c) The program is conducted by a qualified instructor. A qualified instructor or discussion leader means anyone whose background training, education or experience makes it appropriate for him to lead a discussion on the subject matter of the particular program; and

(d) A record of registration or attendance is maintained and a course completion document is given to the attendee.

(3) Acceptable subject matter.

(a) The following general subject matters are acceptable if the programs meet the criteria established by this regulation: accounting and auditing; taxation; management services; computer science; communication arts; mathematics; statistics; probability and quantitative applications in business; economics; business law, functional fields of business - finance, production, marketing, personnel relations, business management and organizations; specialized areas of industry (i.e., real estate, farming, etc.); administration practice (i.e., engagement letters, personnel, etc.).

(b) Areas other than those listed in paragraph (a) of this subsection may be acceptable if the permit holder can demonstrate that they contribute to his professional competence. The responsibility for substantiating that a particular program is acceptable and meets the requirements rests solely upon the registrant.

(4) Acceptable programs. The following group programs qualify for credit if they meet the standards specified in this regulation: professional education and development programs of national, state and local accounting organizations; technical sessions at meetings of national, state and local accounting organizations and their chapters; university or college courses (both credit and noncredit courses); formal in-firm education programs; programs of other organizations (accounting, industrial, professional, etc.); and firm meetings for staff or management groups which are structured as formal education programs. Portions of such meetings devoted to the communication and application of general professional policy or procedure may qualify. However, portions devoted to firm administrative, financial and operating matters shall not qualify.

(5) Formal individual study programs. The amount of credit to be allowed for correspondence and formal individual study programs, including taped study programs, shall be recommended by the program sponsor based upon one-half (1/2) the average completion time under appropriate field tests. Permit holders claiming credits for such correspondence or formal individual study courses shall obtain evidence of satisfactory completion of the course from the program sponsor. Evidence of satisfactory completion in this section means a sponsor verification of completion of a workbook or examination on the subject matter. Credit shall be allowed in the renewal period in which the course was completed.

(6) Service as lecturer, discussion leader, or speaker. Instructors, discussion leaders and speakers may claim continuing professional education credit for both preparation and presentation time. Credit may be claimed for actual preparation time up to two (2) times the class contact hours. Credit as an instructor, discussion leader or speaker may be claimed if the session is one which would meet the continuing professional education requirements of those attending. No credit shall be granted for repetitious presentations of group programs unless it can be demonstrated that the program content was substantially changed and such change required significant additional study or research. Maximum credit for such preparation and teachings shall not exceed sixty (60) percent of the renewal period requirement.

(7) Published articles, books. Credit may be awarded for published articles or books provided they contribute to the professional competence of the individual. Credit for preparation of such publications may be given on a self-declaration basis up to twenty-five (25) percent of the total education hours required. In exceptional circumstances, a permit holder may request additional credit by submitting the article or book to the board with an explanation of the circumstances which he feels justifies a greater credit. The board shall determine the amount of credit to be granted.

Section 6. [~~7.~~] Reporting and Controls. (1) Primary responsibility for documenting the requirements rests solely with the permit holder, and evidence to support fulfilling those requirements shall be retained for a period of five (5) years after completion of educational courses.

(2) The board shall verify on a test basis, information submitted by permit holders for renewal of their permit to practice.

(3) If an application for permit renewal is not approved, the permit holder shall be notified and he may be granted a period of time by the board in which to correct the deficiencies noted. Permit holders shall

provide a statement of completion of the required education requirements under penalty of perjury on forms designated by the board.

(4) Course completion evidence shall be a document indicating participation in a formal program of learning which includes:

(a) Name of sponsor; and

(b) Title and description of course content; and

(c) Dates attended; and

(d) Location; and

(e) Number of continuing professional education contact hours.

Section 7. [8.] Preapproved Continuing Professional Education Sponsors. (1) All program sponsors may preregister with the board on an advance approval form which constitutes an agreement between the sponsor and the board that the programs sponsored shall conform to the continuing professional education regulations. All programs and subject areas not covered by this regulation shall have separate approval by the board. Detailed records of each program shall be kept by the sponsor which shall include:

(a) The date and location of the program presentation; and

(b) The names of each instructor or discussion leader; and

(c) A listing of licensees attending each program presentation; and

(d) A written outline of the program presentation.

(2) Records shall be kept by the sponsor for a period of five (5) years following the date each program is presented.

The sponsors of approved programs may advise attendees of such approval and the number of hours of continuing education credit allowable.

(3) The failure by sponsors to comply with the regulations of the board may result in revocation of approval of programs and such action may be made public to all permit holders. The board may select an advisory committee on continuing education and request permit holders to participate as members in the capacity of offering advice on the acceptability of such programs.

(4) Sponsors who have been approved for the Continuing Professional Education Registry of the National Association of State Boards of Accountancy may be considered as approved sponsors for the purposes of this regulation.

JOHN A. THOMPSON, President

APPROVED BY AGENCY: February 13, 1992

FILED WITH LRC: February 13, 1992 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 23, 1992, at 9 a.m. at the administrative offices of the board located at 332 W. Broadway, Suite 310, Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by March 18, 1992, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Susan G. Stopher, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Susan G. Stopher

(1) Type and number of entities affected: 500 certified public accountants (CPAs).

(a) Direct and indirect costs or savings to those affected:

1. First year: No first year costs or savings.

2. Continuing costs or savings: CPAs not engaged in public accounting on a full-time basis will have the continuing professional education requirements reduced by twenty (20) hours for each two (2) year period. The cost per individual will vary from $0-$35 per continuing professional education hour.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Actual cost will depend on which course the participant selects to attend.

(b) Reporting and paperwork requirements: The CPAs affected by this will have record requirements reduced.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No savings.

2. Continuing costs or savings: No savings.

3. Additional factors increasing or decreasing costs: There are no other factors.

(b) Reporting and paperwork requirements: Reduction in review of hours reported.

(3) Assessment of anticipated effect on state and local revenues: There will not be a change in state revenues and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No other methods were considered because of the statutory mandate and educational attainments of 91% of the CPAs annually.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no overlapping or conflicting statute/regulation.

(a) Necessity of proposed regulation if in conflict: Not in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: No

TIERING: Was tiering applied? Yes. Continuing professional education is to require all certified public accountants to maintain current knowledge of all accounting, auditing, and taxation issues. While this is necessary for all CPAs, it is of less importance when a CPA is holding himself out to the public to perform or offering to perform public accounting services as described in KRS 325.220 only on a part-time basis and not performing the attest function. The board believes that this tiering provides assurance to the public that CPAs are maintaining an adequate knowledge base, while not penalizing those engaged in the practice of public accounting on a limited basis.

GENERAL GOVERNMENT CABINET
Kentucky Board of Nursing
(Proposed Amendment)

201 KAR 20:390. Nursing incentive scholarship fund.

RELATES TO: KRS 314.025, 314.026, 314.027

STATUTORY AUTHORITY: KRS 314.131

NECESSITY AND FUNCTION: The nursing incentive scholarship fund program was created by the General Assembly. This regulation implements the administration of the program.

Section 1. Definitions. (1) "Academic year" means, for a registered nursing program, a minimum of two (2) semesters; and for a practical nursing program, the completion of the required program.

(2) "Health facility" as used in this regulation shall have the same meaning as "health facility" as defined at KRS 216B.015(12).

(3) "Resident" as used in this regulation shall be determined pursuant to 13 KAR 2:040.

(4) "Rural area" means a county with less than 50,000 population or a county which is not part of a federally designated metropolitan statistical area.

(5) "Board" means the Kentucky Board of Nursing.

(6) "Committee" means the Nursing Incentive Scholarship Fund Committee.

Section 2. Application. (1) To be eligible for a nursing incentive scholarship, an applicant shall be a Kentucky resident, shall have applied for admission to an educational institution with an approved program of nursing in Kentucky, shall have declared nursing as the major course of study and shall have obtained a Kentucky health facility as a sponsor.

(2) An applicant shall complete an application, on a form provided by the board. The application shall be received by the board between January 1 and June [May] 1.

(3) The applicant shall send or cause to be sent to the board by

June [~~May~~] 1 an official high school transcript or equivalent (GED) and official transcripts showing postsecondary work completed.

(4) The applicant shall attach to the application a copy of the Student Aid Report from either the Kentucky Financial Aid Form (KFAF) or the Application for Student Aid (AFSA) for the current year.

Section 3. The Committee. (1) Members of the committee shall serve for one (1) year and may be reappointed.

(2) The committee shall meet at least annually by July 15 and more often if necessary to decide on scholarships for the upcoming academic year.

(3) The committee shall serve without compensation but may be reimbursed for actual and necessary expenses related to serving on the committee.

Section 4. Criteria for Awards. The committee may consider the following criteria in evaluating applicants:

(1) Prior health care work experience or education;

(2) Previous academic achievement as indicated by transcripts;

(3) Current acceptance as a declared nursing major in an educational institution with an approved program of nursing;

(4) Current admission or enrollment in an approved program of nursing.

Section 5. Amount of Award. (1) The committee shall be notified as to the current fund balance prior to making awards.

(2) The committee shall defer awarding a portion of the amount collected in odd-numbered fiscal years to the following fiscal year. The amount of the deferred portion shall be determined as follows: add the number of licensed RNs renewing as of the current year to the number of licensed LPNs who renewed in the previous year. Divide by two (2). Multiply by five (5). Subtract that figure from the amount collected, less administrative costs.

(3) The committee shall first make awards to those recipients who received awards in the previous year and remain eligible to receive awards pursuant to Section 7 of this regulation in the current year.

(4) The committee shall divide the remaining funds among the remaining applicants based on KRS 314.025(2), 314.026(3), 314.027(2) and on the criteria considered in Section 4 of this regulation. If insufficient applications are received from LPNs, those funds earmarked pursuant to KRS 314.027(2) and unexpended shall be used for other applicants.

(5) The maximum award granted each year shall be the highest tuition charged per [~~for an~~] academic year for a full-time student in [~~by~~] a program of nursing in a public institution at [~~in~~] Kentucky enrolled in [~~by~~] a comparable program. By June [~~May~~] 1 of each year, the committee shall determine the highest annual [~~yearly~~] tuition rate charged by a practical nursing program in a public institution in Kentucky, the highest annual [~~yearly~~] tuition rate charged by an associate degree registered nursing program in a public institution in Kentucky, and the highest annual [~~yearly~~] tuition rate charged by a prelicensure baccalaureate degree registered nursing program in a public institution in Kentucky. [~~In making awards, the committee shall grant the maximum award until all funds for that year have been expended, except~~] For students who will not be enrolled for an entire academic year[~~. In these cases~~], the award shall be one-half (1/2) the maximum. Upon request of the recipient and the sponsor, the committee may award less than the maximum.

Section 6. Procedure for Disbursement of Awards. (1) Prior to actual disbursement of any funds, the educational institution must certify enrollment by the recipient.

(2) Disbursement of funds shall be made directly to the school by the board.

(3) All recipients of awards who are enrolled in registered nursing programs shall take a minimum of eight (8) credit hours per semester.

Section 7. Continuing Eligibility Criteria. (1) A registered nursing student recipient of a nursing incentive scholarship shall be eligible to continue to receive an award provided successful progression through the program is maintained as evidenced by the following:

(a) The completion of a minimum of eight (8) credit hours per semester;

(b) A cumulative grade point average of 2.0 on a 4.0 scale; and

(c) Verification of successful academic progression from the academic advisor of record on a form supplied by the board.

(2) The amount of the award shall be determined pursuant to Section 5(5) of this regulation.

(3) In order to be eligible to receive a continuing award, the recipient must provide the board by June [~~July~~] 1 with the following: a request for continuation, an official transcript for the preceding academic year and a Student Aid Report for the current year.

(4) Award recipients in practical nursing programs are not eligible for continued awards while enrolled in such programs.

Section 8. Disbursement Contract. Prior to disbursement of funds for a particular year, the recipient shall sign a written contract and a promissory note in a form prescribed by the board.

Section 9. Miscellaneous. (1) Verification of employment with the health facility shall be submitted by the sponsor to the board when the recipient's employment commitment begins and when it is completed. Any termination of employment prior to completion shall be reported to the board within thirty (30) days.

(2) If a recipient fails to complete the nursing program in which he is enrolled within the time specified by the program of nursing or if he fails to complete the required employment with the sponsor as specified in the contract, he shall immediately become liable to the board to pay the sum of all scholarships received and accrued interest thereon. Repayment may be deferred in the case of disability, major illness, or accident which prevents a recipient from completing an approved program of nursing, or being employed by the sponsor.

(3) Recipients shall notify the board of any change of name or address.

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

(5) The forms required by this regulation are included by reference as if fully incorporated herein and shall be on file in the Office of the Board of Nursing, 4010 Dupont Circle, Suite 430, Louisville, Kentucky 40207, and shall be available for public inspection between 8 a.m. and 4:30 p.m. Monday through Friday.

(6) Recipients shall be required to pass the licensure examination within two (2) years of graduation. Failure to pass the examination within this period shall cause the sum of all nursing incentive scholarships received and accrued interest thereon to become due and payable.

M. SUSAN JONES, President

APPROVED BY AGENCY: December 5, 1991

FILED WITH LRC: January 17, 1992 at 9 a.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on March 23, 1992 at 10 a.m., in Room 420 of the Professional Towers Building, 4010 Dupont Circle, Louisville, Kentucky. Individuals interested in being hearing at this hearing shall notify this agency in writing by March 18, 1992, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 4010 Dupont Circle, Suite 430, Louisville, KY 40207.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nathan Goldman

(1) Type and number of entities affected: Unknown

(a) Direct and indirect costs or savings to those affected:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: N/A
TIERING: Was tiering applied? Tiering is not applicable.

ECONOMIC DEVELOPMENT CABINET
Department of Business Development
(Proposed Amendment)

306 KAR 1:010. Definitions.

RELATES TO: KRS 154.655
STATUTORY AUTHORITY: KRS 154.680(4) [~~278.280(2)~~]
NECESSITY AND FUNCTION: KRS 154.650 et seq. establishes and directs the Enterprise Zone Authority of Kentucky (hereinafter referred to as the authority) to organize and regulate the implementation of the Enterprise Zone Act. This administrative regulation is being amended to comply with the deficiencies found during quadrennial review by the Task Force on Economic Development. This regulation sets forth definitions [~~for words and/or phrases used by the authority in determining the eligibility of applicants for designation as an Enterprise Zone Area~~].

Section 1. Definitions. (1) "Qualified business" is governed by KRS 154.655(5). [~~of terms or phrases used in regulations and relating to the Enterprise Zone Act are as follows: "Qualified business" means any new or existing business with at least fifty (50) percent of its employees performing substantially all of their services within an enterprise zone.~~]

(2) [~~(1)~~] Employees shall include all full-time employees and all part-time employees who are employed on a regular basis by the business physically located within the same zone, and must not be the result of a dismissal [~~area~~].

(3) [~~(2)~~] "Substantial performance in the zone" means [~~includes~~] any business performed outside of the zone area only if the business originates in the office of the business physically located within the zone, if the employees are dispatched from that office and if the employees are required to report to that office.

[~~(3) It is not permitted that an employer terminate an individual's employment, lay off an employee or otherwise remove an employee from a payroll in order that a new employee who qualifies under these regulations may take the removed employee's place unless said removal was for good cause.~~]

(4) New business data source means the Department for Social Insurance, Division of Unemployment Insurance or the Department for Employment Services, Human Resources Cabinet.

[~~(5) Existing business' increase in capital investment will be based on fixed assets. Increase in capital investment will be based on a firm's net fixed assets as shown on the firm's most recent interim financial statement dated within sixty (60) days of the date of application for certification as a qualified business. The firm's most recent fiscal or calendar year end financial statement will also be required. Follow up status reports will be required every six (6) months until the firm has fulfilled its contract. An authorized official of the firm will be notified when these status reports are due. Reports will be sent to the Kentucky Enterprise Zone Authority, Commerce Cabinet, Frankfort, Kentucky. The authority may request appropriate financial statements which reflects the firm's increase in order to verify the fulfillment of the contract.~~]

[~~(6) Existing business' increase in number of employees may be verified by the Department of Employment Services, Human Resources Cabinet, if hiring has been placed through this agency, by appropriate financial statements showing a breakout of employment and payroll, or by affidavit of an authorized company official. Follow up status reports will be required every six (6) months during the contract period until the business has fulfilled its contract. An authorized official of the business will be notified when these status reports are due. Reports will be sent to the Kentucky Enterprise Zone Authority, Commerce Cabinet, Frankfort, Kentucky.~~]

FRANK A. CLAY, JR., Chairman
APPROVED BY AGENCY: February 14, 1992
FILED WITH LRC: February 14, 1992 at noon
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 23, 1992 at 10 a.m. at the Conference Room, 24th Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 18, 1992, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Gina Hampton, Economic Development Cabinet, 23rd Floor, Capital Plaza Tower, Frankfort, Kentucky.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sara Bell
(1) Type and number of entities affected: None
(a) Direct and indirect costs or savings to those affected: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
(6) Any additional information or comments: This administrative regulation is being amended to comply with the deficiencies found during quadrennial review by the Task Force on Economic Development.
TIERING: Was tiering applied? No. Tiering is not applied because changes being made are only to conform with KRS Chapter 13A and do not affect any entity.

ECONOMIC DEVELOPMENT CABINET
Department of Business Development
(Proposed Amendment)

306 KAR 1:020. Application process.

RELATES TO: KRS 154.660
STATUTORY AUTHORITY: KRS 154.680(4) [~~278.280(2)~~]
NECESSITY AND FUNCTION: This administrative regulation is being amended to comply with the deficiencies found during quadrennial review by the Task Force on Economic Development. [~~KRS 154.650 et seq. establishes and directs the Enterprise Zone Authority of Kentucky to organize and regulate the implementation of the Enterprise Zone Act.~~] This administrative regulation sets forth the procedures by which an application is to be made [~~and the application process used by the authority in the administration of this program~~]. This administrative regulation also established a procedure to after the zone's boundary.

Section 1. Application Process. (1) The authority shall make available application forms.

(2) As part of the application review process, the authority may:

(a) Require applicants to submit oral presentations;

(b) Inspect and evaluate the proposed zone area; and

(c) Request additional information as they deem necessary. [~~devise application forms and shall review each application as submitted by the applicant and request such additional information as they deem necessary. Subsequent to said review, the authority may require oral presentations by the applicants and may visit the proposed zone area.~~]

(3) [~~(2)~~] Failure of an applicant to receive a designation does not preclude future applications [~~application in the following years.~~]

FRANK A. CLAY, JR., Chairman
APPROVED BY AGENCY: February 14, 1992
FILED WITH LRC: February 14, 1992 at noon
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 23, 1992 at 10 a.m. at the Conference Room, 24th Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 18, 1992, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Gina Hampton, Economic Development Cabinet, 23rd Floor, Capital Plaza Tower, Frankfort, Kentucky.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sara Bell
(1) Type and number of entities affected: None
(a) Direct and indirect costs or savings to those affected: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
(6) Any additional information or comments: This administrative regulation is being amended to comply with the deficiencies found during quadrennial review by the Task Force on Economic Development.
TIERING: Was tiering applied? No. Tiering is not applied because changes being made are only to conform with KRS Chapter 13A and do not affect any entity.

ECONOMIC DEVELOPMENT CABINET
Department of Business Development
(Proposed Amendment)

306 KAR 1:030. Eligibility requirements.

RELATES TO: KRS 154.665
STATUTORY AUTHORITY: KRS 154.680(4) [~~278.280(2)~~]
NECESSITY AND FUNCTION: This administrative regulation is being amended to comply with the deficiencies found during quadrennial review by the Task Force on Economic Development. This administrative regulation establishes specific eligibility criteria for designation of enterprise zones. [~~KRS 154.650 et seq. establishes and directs the Enterprise Zone Authority of Kentucky to organize and regulate the implementation of the Enterprise Zone Act. This regulation sets forth the eligibility requirements used by the authority in determining the ability of the applicant to meet the requirements and the criteria which will be acceptable to the authority as supportive of the applicant's eligibility. This regulation needs to establish eligibility criteria for state enterprise zones.~~]

Section 1. Eligibility Requirements. (1) KRS 154.665 establishes the areas eligible for designation as an enterprise zone.

(a) Average rate of unemployment for areas seeking eligibility for an enterprise zone shall be determined by:

1. The 1990 decennial United States Census; or

2. Other statistical data based on Bureau of Labor Statistics Methodology.

(b) Income data shall be based on:

1. The 1990 decennial United States Census; or

2. Authority approval of a study or survey by another source. [~~The average rate of unemployment in such areas shall be determined by 1980 decennial United States Census or other statistical data computed using approved Bureau of Labor Statistics methodology.~~

~~(2) Income data shall be based on 1980 decennial United States Census or which is the product of a study or survey done by a source which is acceptable to the authority.~~]

FRANK A. CLAY, JR., Chairman
APPROVED BY AGENCY: February 14, 1992
FILED WITH LRC: February 14, 1992 at noon
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 23, 1992 at 10 a.m. at the Conference Room, 24th Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 18, 1992, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Gina Hampton, Economic Development Cabinet, 23rd Floor, Capital Plaza Tower, Frankfort, Kentucky.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sara Bell
(1) Type and number of entities affected: None
(a) Direct and indirect costs or savings to those affected: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
(6) Any additional information or comments: This administrative regulation is being amended to comply with the deficiencies found during quadrennial review by the Task Force on Economic Development.
TIERING: Was tiering applied? No. Tiering is not applied because changes being made are only to conform with KRS Chapter 13A and do not affect any entity.

ECONOMIC DEVELOPMENT CABINET
Department of Business Development
(Proposed Amendment)

306 KAR 1:040. Qualification.

RELATES TO: KRS 154.680
STATUTORY AUTHORITY: KRS 154.680(4) [~~278.280(2)~~]
NECESSITY AND FUNCTION: [~~KRS 154.650 et seq. establishes and directs the Enterprise Zone Authority of Kentucky to organize and regulate the implementation of the Enterprise Zone Act.~~] This administrative regulation sets forth the requirements imposed upon a qualified business prior to their obtaining the benefits under KRS Chapters 132, 138, 139 and 141. [~~This regulation sets forth the requirements imposed upon a qualified business in order to obtain enterprise zone benefits.~~]

Section 1. Qualification. (1) Existing business' increase in capital investment will be based on:
(a) Fixed assets;
(b) A firm's net fixed assets:
1. As shown on the firm's most recent interim financial statement;
2. Dated within sixty (60) days of the date of application for certification as a qualified business.
(2) The authority shall require:
(a) The firm's most recent fiscal or calendar year-end financial statement;
(b) Reports will be sent to the Kentucky Enterprise Zone Authority, Economic Development Cabinet, Frankfort, Kentucky. The authority may request appropriate financial statements which reflects the firm's increase in order to verify the fulfillment of the contract.
(3) Existing business' increase in number of employees shall be verified by the Department of Employment Services, Human Resources Cabinet, if hiring has been placed through this agency:
(a) By appropriate financial statements showing a breakout of employment and payroll; or
(b) By affidavit of an authorized company official.
(4) New business' increase in number of employees shall be verified by the Department of Employment Services, Human Resources Cabinet, if hiring has been placed through this agency by appropriate financial statements showing a breakout of employment and payroll.

Section 2. [~~1.~~] Monitoring. The authority may monitor, audit and perform other investigations necessary [~~reserves the right to perform periodic audits, spot check or other policing functions in order~~] to assure compliance with the requirements under the Act.

Section 3. [~~2.~~] Removal of Qualification. Should the authority determine that a qualified business has not fulfilled the terms of the contract used for certification or has not acted in good faith, the authority shall give written notice to the qualified business in question by certified mail. Within sixty (60) days of receipt of said notice, the qualified business may respond to the authority. The authority will render its decision within sixty (60) days of said response.

FRANK A. CLAY, JR., Chairman
APPROVED BY AGENCY: February 14, 1992
FILED WITH LRC: February 14, 1992 at noon
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 23, 1992 at 10 a.m. at the Conference Room, 24th Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 18, 1992, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Gina Hampton, Economic Development Cabinet, 23rd Floor, Capital Plaza Tower, Frankfort, Kentucky.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sara Bell
(1) Type and number of entities affected: None
(a) Direct and indirect costs or savings to those affected: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
(6) Any additional information or comments: This administrative regulation is being amended to comply with the deficiencies found during quadrennial review by the Task Force on Economic Development.
TIERING: Was tiering applied? No. Tiering is not applied because changes being made are only to conform with KRS Chapter 13A and do not affect any entity.

ECONOMIC DEVELOPMENT CABINET
Department of Business Development
(Proposed Amendment)

306 KAR 1:050. Removal of designation.

RELATES TO: KRS 154.680
STATUTORY AUTHORITY: KRS 154.680(4) [~~278.280(2)~~]
NECESSITY AND FUNCTION: This administrative regulation is being amended to comply with the deficiencies found during quadrennial review by the Task Force on Economic Development. [~~KRS 154.650 et seq. establishes and directs the Enterprise Zone Authority of Kentucky to organize and regulate the implementation of the Enterprise Zone Act. The authority is vested with the power to remove the designation of any area if it no longer meets the criteria set out in this act or by regulations.~~] This administrative regulation sets forth [~~the~~] guidelines for the removal of an enterprise zone [~~used by the authority and manner in which the~~] designation [~~may be removed. This regulation sets forth the guidelines used by the Kentucky Enterprise Zone Authority and manner in which the state enterprise zone designation may be removed~~].

Section 1. Removal of Designation. The authority may determine, after ten (10) years of designation, that a zone no longer meets the criteria established for designation pursuant to KRS 154.650 et seq. or administrative regulations. The authority shall:

(1) Give written notice to the enterprise zone designee by certified mail of the findings;

(2) The enterprise zone designee shall have sixty (60) days from receipt of notice to respond to the authority's findings;

(3) The authority shall render a decision. [~~If, at any time, after ten (10) years of designation the authority determines that a zone no longer meets the criteria for designation as set out in this act or by any regulation adopted by the authority, the authority shall give written notice to the designee (original zone applicant) in question by certified mail. Within sixty (60) days of receipt of said notice the designee shall be given the opportunity to respond to and/or refute the authority's conclusion. Upon receipt of said response and/or refutation by the authority, the authority may require the designee or representative thereof to appear before them and present their arguments for the continuance of said designation. After said presentation, the authority shall render its decision, from which there shall be no further appeal provided by this act.~~]

Section 2. (1) If at any time during the lifetime of a zone the applicant or governing body of the zone area withdraws any or all of the incentives provided in its original application without good cause, said conduct shall constitute cause for withdrawal or termination of the designation by the Enterprise Zone Authority.

(2) An increase or decrease in the average national rate of unemployment or the median income of the zone residents shall not affect the zone's designation.

(3) In the event a designation is removed, the authority may develop [~~, in its discretion, work out~~] a phaseout program if appropriate to the situation.

FRANK A. CLAY, JR., Chairman
APPROVED BY AGENCY: February 14, 1992
FILED WITH LRC: February 14, 1992 at noon
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 23, 1992 at 10 a.m. at the Conference Room, 24th Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 18, 1992, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Gina Hampton, Economic Development Cabinet, 23rd Floor, Capital Plaza Tower, Frankfort, Kentucky.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sara Bell
(1) Type and number of entities affected: None
(a) Direct and indirect costs or savings to those affected: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
(6) Any additional information or comments: This administrative regulation is being amended to comply with the deficiencies found during quadrennial review by the Task Force on Economic Development.
TIERING: Was tiering applied? No. Tiering is not applied because changes being made are only to conform with KRS Chapter 13A and do not affect any entity.

ECONOMIC DEVELOPMENT CABINET
Department of Business Development
(Proposed Amendment)

306 KAR 1:060. Conflict of interest.

RELATES TO: KRS 154.680
STATUTORY AUTHORITY: KRS 154.680(4) [~~278.280(2)~~]
NECESSITY AND FUNCTION: This administrative regulation is being amended to comply with the deficiencies found during quadrennial review by the Task Force on Economic Development. [~~KRS 154.650 et seq. establishes and directs the Enterprise Zone Authority of Kentucky to organize and regulate the implementation of the Enterprise Zone Act.~~] This administrative regulation sets forth standards for the [~~manner in which the Kentucky Enterprise Zone~~] authority [~~members shall conduct themselves~~].

Section 1. Conflict of Interest. (1) Any member of the authority who engages in any activity, investment or other interest having a monetary benefit which may be or is located in a potential or existing enterprise zone, shall:

(a) Disclose the nature and details of that interest; and

(b) Refrain from any vote by the authority which may affect that interest. [~~Should any member of the authority find, during his or her tenure, that he or she has or may have a monetary interest which may be or is located in a potential zone, said member shall disclose the nature of that interest and shall refrain from any vote which may affect that interest.~~]

(2) The conflict of interest provisions contained in KRS [~~Chapter~~] 45A.455 shall be applicable to all proceedings undertaken by this authority.

FRANK A. CLAY, JR., Chairman
APPROVED BY AGENCY: February 14, 1992
FILED WITH LRC: February 14, 1992 at noon
PUBLIC HEARING: A public hearing on this administrative

regulation shall be held on March 23, 1992 at 10 a.m. at the Conference Room, 24th Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 18, 1992, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Gina Hampton, Economic Development Cabinet, 23rd Floor, Capital Plaza Tower, Frankfort, Kentucky.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sara Bell
(1) Type and number of entities affected: None
(a) Direct and indirect costs or savings to those affected: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
(6) Any additional information or comments: This administrative regulation is being amended to comply with the deficiencies found during quadrennial review by the Task Force on Economic Development.
TIERING: Was tiering applied? No. Tiering is not applied because changes being made are only to conform with KRS Chapter 13A and do not affect any entity.

ECONOMIC DEVELOPMENT CABINET
Department of Business Development
(Proposed Amendment)

306 KAR 1:070. Duties of the authority.

RELATES TO: KRS 154.680 [~~154.690~~]
STATUTORY AUTHORITY: KRS 154.680 [~~279.280(2)~~]
NECESSITY AND FUNCTION: This administrative regulation is being amended to comply with the deficiencies found during quadrennial review by the Task Force on Economic Development. This administrative regulation sets forth the functions of the authority. [~~KRS 154.650 et seq. establishes and directs the Enterprise Zone Authority of Kentucky to organize and regulate the implementation of the Enterprise Zone Act. The Enterprise Zone Authority is empowered to administer the act and by regulation to establish criteria to guide the applicant, monitor the implementation of this act, assist units of local government, etc. This regulation is to set forth the means by which the authority shall perform these functions but is not exclusive of any other means which they may devise.~~]

Section 1. Duties of the Authority. (1) [~~The authority shall formulate and make available to all applicants an application form which shall be used in all applications.~~

~~(2)~~] By a vote of the majority of the authority or of those eligible to vote the zone shall be designated and determined [~~thereby~~] eligible for the benefits available under this act.

(2) [~~(3)~~] The authority shall keep all applications on file as a repository of information to be made available to other applicants as well as to assist the authority in assisting a designated area seeking federal Enterprise Zone status.

(3) [~~(4)~~] The authority shall prepare guidelines and such other information as may be necessary from time to time to assist local governments and employers in obtaining the benefits of any incentive or inducement program provided by law and to further certify that qualified employers are made eligible for the benefits of this act.

Section 2. Conditions. The application submitted by the applicant and the subsequent approval of said application by the authority and designation of an area as enterprise zone as submitted by applicant shall constitute a contract between the applicant and the authority which shall be binding as to both terms and conditions.

Section 3. Annual Review. An annual report is to be prepared by the designee and submitted to the authority by February 15 each year wherein the designee certifies continued compliance with the requirements of the act and makes note of all changes in the zone's make-up and structure. This review shall be for informational and monitoring purposes.

FRANK A. CLAY, JR., Chairman
APPROVED BY AGENCY: February 14, 1992
FILED WITH LRC: February 14, 1992 at noon
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 23, 1992 at 10 a.m. at the Conference Room, 24th Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 18, 1992, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Gina Hampton, Economic Development Cabinet, 23rd Floor, Capital Plaza Tower, Frankfort, Kentucky.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sara Bell
(1) Type and number of entities affected: None
(a) Direct and indirect costs or savings to those affected: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
(6) Any additional information or comments: This administrative

regulation is being amended to comply with the deficiencies found during quadrennial review by the Task Force on Economic Development.

TIERING: Was tiering applied? No. Tiering is not applied because changes being made are only to conform with KRS Chapter 13A and do not affect any entity.

ECONOMIC DEVELOPMENT CABINET
Department of Business Development
(Proposed Amendment)

306 KAR 1:090. Geographic neighborhood area.

RELATES TO: KRS 154.700
STATUTORY AUTHORITY: KRS 154.680(4) [~~278.280(2)~~]
NECESSITY AND FUNCTION: This administrative regulation is being amended to comply with the deficiencies found during quadrennial review by the Task Force on Economic Development. [~~KRS 154.650 et seq. establishes and directs the Enterprise Zone Authority of Kentucky to organize and regulate the implementation of the Enterprise Zone Act.~~] This administrative regulation sets forth the standards and policies to which the Neighborhood Enterprise Association Corporation (hereinafter referred to as the corporation) must conform.

Section 1. Geographic Neighborhood Area. (1) the area in which each corporation is formed shall be defined by the incorporating residents and shall be confined to the zone area or an area within the zone.

(2) The incorporating residents shall be those persons residing in the neighborhood area that undertake to form and organize the corporation. There may be more than one (1) geographic neighborhood area within the Enterprise Zone.

Section 2. Incorporation of the Corporation. To incorporate [~~(1) When incorporating the corporation~~], the residents must comply with the provisions of KRS Chapters 271B [A] and[~~/or~~] 273.

[~~(2) Stock interests shall be without charge to each resident and the rules pertinent to residence requirements, etc., shall be contained in the bylaws of the corporation.~~]

Section 3. Certification of the Corporation. (1) To obtain certification the corporation must make application to the local legislative body of appropriate jurisdiction. the local legislative body shall prescribe the guidelines for [~~such~~] procedure. The local legislative body upon certification, [~~by the local legislative body that body~~] must apply to the authority for certification of the corporation. The authority shall grant certification if the corporation has complied with the requirements of the act and other regulations adopted by the authority.

(2) Upon granting certifications, [~~to the corporation~~] the authority shall place the corporation's charter and bylaws in a file which shall be available to the public for general inspection. This file shall be in addition to the [~~that~~] file maintained by the Secretary of State [~~in which the corporation is required by law to subscribe for incorporation~~].

(3) To obtain certification the corporation must be a nonprofit corporation and registered [~~as such~~] with the Secretary of State's Office.

Section 4. Relationship Between the Corporation and State and Local Governments. (1) The property in the neighborhood area of a certified corporation which is owned by the state or local government shall be leased to the corporation unless it is in current use or subject to plans or development by the local [~~said~~] government.

(2) The corporation and the local governing authority shall maintain a relationship in which one is accountable to the other for enforcement of any and all standards or services exchanged or provided.

FRANK A. CLAY, JR., Chairman
APPROVED BY AGENCY: February 14, 1992
FILED WITH LRC: February 14, 1992 at noon
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 23, 1992 at 10 a.m. at the Conference Room, 24th Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 18, 1992, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Gina Hampton, Economic Development Cabinet, 23rd Floor, Capital Plaza Tower, Frankfort, Kentucky.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sara Bell
(1) Type and number of entities affected: None
(a) Direct and indirect costs or savings to those affected: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
(6) Any additional information or comments: This administrative regulation is being amended to comply with the deficiencies found during quadrennial review by the Task Force on Economic Development.
TIERING: Was tiering applied? No. Tiering is not applied because changes being made are only to conform with KRS Chapter 13A and do not affect any entity.

ECONOMIC DEVELOPMENT CABINET
Department of Business Development
(Proposed Amendment)

306 KAR 2:010. Economic development bond project reporting requirements.

RELATES TO: KRS Chapter 152
STATUTORY AUTHORITY: KRS Chapters 13A, 152
NECESSITY AND FUNCTION: KRS Chapter 152 provides that all economic development bond projects shall be presented to the General Assembly Capital Projects and Bond [~~Oversight~~] Committee (hereinafter "committee") for review and recommendation prior to the issuance of bonds. This regulation establishes requirements for the reporting of information to the committee by the Economic Development Cabinet (hereinafter "cabinet").

Section 1. Definitions of terms or phrases used in this regulation relating to the issuance of economic development bonds are the same as those stated in applicable sections of KRS Chapter 152.

Section 2. The cabinet shall submit the following information to the committee prior to its consideration of economic development bond projects:

(1) A copy of the written commitment from the public or private organization which has requested state bonds and a copy of the final proposed written agreement between the cabinet and the public or private organization requesting state bonds;

(2) The project estimated job creation and job retention;

(3) The estimated percentage of public and private local involvement;

(4) The projects estimated payback and contribution in retiring the associated debt obligation;

(5) The amount of the proposed funding;

(6) The terms of repayment including the interest rate, term, and schedule of payments;

(7) An explanation of the funding terms;

(8) The degree to which the project would compete with similar businesses within the area;

(9) A list of the principal owners, partners, and stockholders that own twenty (20) percent or more of the business, and of the officers and directors of the project to be funded.

Section 3. A written report shall biennially be submitted by the cabinet with the budget request that includes the amount of economic development bond fund proceeds still available, the amount of interest earned on unused proceeds, any refundings of economic development bonds, a list of loans, grants or other forms of assistance made and to whom, the original and remaining amount of each loan, the principal and interest repaid in that fiscal year and the disposition of these funds.

Section 4. The cabinet shall annually prepare and submit to the committee a written report which evaluates each economic development bond fund project which has been funded by said cabinet under the criteria stated in Section 2 of this regulation. This report shall evaluate in summary fashion the nature of the financing provided on each project and compliance of the organization that requested state bonds with the agreement it entered into with the cabinet. This report shall also delineate the amounts paid back from projects and the remaining balance outstanding.

PAUL E. PATTON, Chairman

APPROVED BY AGENCY: February 14, 1992

FILED WITH LRC: February 14, 1992 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 23, 1992 at 10 a.m. at the Conference Room, 24th Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 18, 1992, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Gina Hampton, Economic Development Cabinet, 23rd Floor, Capital Plaza Tower, Frankfort, Kentucky.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jeff Noel

(1) Type and number of entities affected: None

(a) Direct and indirect costs or savings to those affected: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: This administrative regulation is being amended to comply with the deficiencies found during quadrennial review by the Task Force on Economic Development.

TIERING: Was tiering applied? No. Tiering is not applied because changes being made are only to conform with KRS Chapter 13A and do not affect any entity.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:020. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. These regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures, revised February 14, 1992 [~~December 6, 1991~~], are incorporated by reference and shall be referred to as Corrections Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

1.1	Legal Assistance for Corrections Staff
1.2	News Media
01-04-01	The operation of Contracted Adult Correctional Facilities (Amended 2/14/92) [~~(Amended 12/6/91)~~]
1.6	Extraordinary Occurrence Reports
1.9	Institutional Duty Officer
1.11	Population Counts and Reporting Procedures
1.12	Operation of Motor Vehicles by Corrections Cabinet Employees
2.1	Inmate Canteen
2.2	Warden's Fund
2.10	Surplus Property
03-01-01	[~~3.1~~] Code of Ethics (Amended 2/14/92)
3.12	Institutional Staff Housing
4.2	Staff Training and Development
4.3	Firearms and Chemical Agents Training
6.1	Open Records Law
7.2	Asbestos Abatement
8.4	Emergency Preparedness
9.1	Use of Force
9.4	Transportation of Inmates to Funerals or Bedside Visits
9.6	Contraband
9.7	Storage, Issue and Use of Weapons Including Chemical Agents
9.8	Search Policy
9.9	Transportation of Inmates

9.10	Security Inspections
9.11	Tool Control
9.18	Informants
9.19	Found Lost or Abandoned Property
10.2	Special Management Inmates
10-03-01	[~~10.3~~] Safekeepers (Amended 2/14/92)
10.4	Special Needs Inmates
11.2	Nutritional Adequacy of the Diet for Inmates
11.3	Special Diet Procedures
13.1	Pharmacy Policy and Formulary
13.2	Health Maintenance Services
13.3	Medical Alert System
13.4	Health Program Audits
13.5	Acquired Immune Deficiency Syndrome
13.6	Sex Offender Treatment Program
14.2	Personal Hygiene Items
14.3	Marriage of Inmates
14-04-01	Legal Services Program
14.6	Inmate Grievance Procedures
15.1	Hair and Grooming Standards
15.2	Offenses and Penalties
15.3	Meritorious Good Time
15-05-01	[~~15.5~~] Restoration of Forfeited Good Time (Amended 2/14/92)
15.6	Adjustment Procedures and Programs
15-07-01	Inmate Account Restriction
16-01-01	Inmate Visits [~~(Added 12/6/91)~~]
16.2	Inmate Correspondence
16.3	Telephone Calls
16.4	Inmate Packages
17-01-01	Inmate Personal Property [~~(Amended 12/6/91)~~]
17.2	Assessment Center Operations
17.3	Controlled Intake of Inmates
18.4	Classification of the Inmate
18.5	Custody/Security Guidelines
18.6	Classification Document
18.7	Transfers
18.8	Guidelines for Transfers Between Institutions
18.9	Out-of-state Transfers
18-10-01	Preparole Progress Reports [~~(Amended 12/6/91)~~]
18.11	Kentucky Correctional Psychiatric Center Transfer Procedures
18.12	Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill
18.13	Population Categories
18.15	Protective Custody
19.1	Government Services Projects
19.2	Community Services Projects
20-01-01	Educational Programs [~~(Amended 12/6/91)~~]
22.1	Privilege Trips
25-01-01	Gratuities
25.2	Public Official Notification of Release of an Inmate
25.3	Prerelease Program
25.4	Inmate Furloughs
25.6	Community Center Program
25.7	Expedient Release
25.8	Extended Furloughs
25.10	Administrative Release of Inmates
27-01-01	Probation and Parole Procedures
27-02-01	Duties of Probation and Parole Officers
27-03-01	Workload Formula Supervisor/Staff Ratio
27-05-01	Testimony, Court Demeanor and Availability of Legal Services
27-06-01	Availability of Supervision Services
27-06-02	Equal Access to Services
27-07-01	Cooperation with Law Enforcement Agencies
27-08-01	Use of Force
27-09-01	Kentucky Community Resources Directory
27-10-01	Advanced Supervision
27-11-01	Intensive Supervision
27-12-01	Supervision: Case Classification
27-12-02	Risk/Needs Assessment
27-12-03	Initial Interview
27-12-04	Conditions of Regular Supervision/Request for Modification
27-12-05	Releasee's Report
27-12-06	Grievance Procedures for Offenders
27-12-07	Employment, Education/Vocational Referral
27-12-08	Supervision Plan
27-12-09	Casebook
27-12-10	Guidelines for Monitoring Supervision Fee
27-12-11	Guidelines for Monitoring Financial Obligations Ordered by the Releasing Authority
27-12-12	Other Financial Obligations (Not Ordered by Releasing Authority)
27-12-13	Community Service Work
27-12-14	Client Travel Restrictions
27-13-02	Alcohol Detection
27-14-01	Interstate Compact Transfers
27-14-02	Interstate Compact Out-of-state Probation and Parole Violation
27-15-01	Supervision Report; Violations, Unusual Incidents
27-16-01	Search; Seizure; Chain of Custody; Disposal of Evidence
27-17-01	Absconder Procedures
27-18-01	Probation and Parole Issuance of Detainer/Warrant
27-19-01	Preliminary Revocation Hearing
27-20-01	Division of Probation and Parole Controlled Intake Program
27-20-02	Prisoner Intake Notification
27-20-03	Prisoner Status Change
27-21-01	Apprehension and Transportation of Probation and Parole Violators
27-22-01	Fugitive Unit - Apprehensions
27-22-02	Fugitive Unit - Transportation of Fugitives
27-23-01	In-state Transfer
27-24-01	Closing Supervision Report
27-24-02	Reinstatement of Clients to Active Supervision
27-25-01	Application for Final Discharge from Parole
27-26-01	Assistance to Former Clients and Dischargees
27-27-01	Restoration of Civil Rights
27-28-01	Firearms/Explosives: Application for Relief from Disability
27-29-01	Parole Review Dates Modification
28-01-01	Probation and Parole Investigation Reports (Introduction, Definitions, Confidentiality, Timing, and General Comments)
28-01-02	Probation and Parole Investigation Reports (Administrative Responsibilities)
28-01-03	Probation and Parole Investigation Reports (Presentence/Postsentence Investigation Interview Procedure)
28-01-04	Probation and Parole Investigation Reports (Presentence/Postsentence Verification, Composition, Case Material and Submission Schedules)
28-01-05	Probation and Parole Investigation Reports (Computation of Jail Custody Credit)
28-01-06	Probation and Parole Investigation Reports (Misdemeanant Presentence Investigation Reports for the Circuit and District Courts)
28-01-07	Probation and Parole Investigation Reports (Supplemental Postsentence Investigation Report, Case Material, and Submission Schedule)
28-01-08	Probation Parole Investigation Reports (Partial Investigation Reports and Submission Schedule)
28-01-09	Release of Information of Factual Content on Presentence/Postsentence Investigation Reports
28-02-01	Expedient Release Program
28-03-01	Parole Plans/Halfway Houses/Extended Furlough/Sponsorship/Gradual Release
28-04-01	Furlough Verifications
28-05-01	Out-of-state Investigations

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: February 14, 1992
FILED WITH LRC: February 14, 1992 at 10 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for March 23, 1992 at 9 a.m., in the Auditorium of the State Office Building. Those interested in attending this hearing shall notify

in writing: Jack Damron or Ellen Tharpe, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron

(1) Type and number of entities affected: 2,953 employees of the Corrections Cabinet, 8,272 inmates, 13,221 parolees and probationers, and all visitors to state correctional institutions.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.

2. Continuing costs or savings: Same as 2(a)1.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Monthly submission of policy revisions.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:040. Kentucky State Penitentiary.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. These regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures, [~~are~~] revised February 14, 1992 [~~on August 15, 1991 and~~] are incorporated by reference and [~~hereinafter~~] shall be referred to as Kentucky State Penitentiary Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

KSP 000000-06	Administrative Regulations
KSP 010000-04	Public Information and Media Communication
KSP 020000-15	Legal Assistance
KSP 02-01-01	Inmate Commissary Program [~~(Added 8/15/91)~~]
KSP 02-12-01	Inmate Personal Funds [~~(Added 8/15/91)~~]
KSP 030000-01	Inventory Records and Control
KSP 030000-04	Requisition and Purchase of Supplies and Equipment
KSP 040000-01	Management Information System
KSP 040000-02	Inmate Records
[~~KSP 050000-14~~	~~Searches and Preservation of Evidence Deleted 2/14/92~~]
KSP 060000-01	Special Security Unit
KSP 060000-02	Special Management Units: Assignment, Classification Review and Release
KSP 060000-04	Protective Custody Unit
KSP 070000-01	Hospital Services
KSP 070000-02	Sick Call
KSP 070000-03	Health Evaluations
KSP 070000-04	Consultations
KSP 070000-05	Emergency Medical Procedure
KSP 070000-13	Pharmacy Procedures
KSP 070000-14	Medical Records
KSP 070000-16	Psychiatric and Psychological Services
KSP 070000-17	Dental Services for Special Management Units
KSP 070000-19	Optometric Services
KSP 070000-20	Menu Preparation and Planning
KSP 070000-24	Food Service, General Sanitation, Safety, and Protection Standards and Requirements
KSP 070000-25	Food Service Inspections
KSP 070000-30	Therapeutic Diets
KSP 090000-01	Inmate Work Programs/Safety Inspections of Inmate Work Locations
KSP 09-08-01	Searches and Preservation of Evidence (Added 2/14/92)
KSP 100000-03	Disposition of Unauthorized Property
KSP 100000-05	Procedures for Providing Clothing, Linens and Other Personal Items
KSP 100000-06	Inmate Mail and Packages
[~~KSP 100000-07~~	~~Inmate Telephone Access Deleted 2/14/92~~)]
KSP 100000-08	Behavioral Counseling Record
KSP 100000-09	Due Process/Disciplinary Procedures
KSP 100000-14	Property Room: Clothing Storage and Inventory
KSP 100000-15	Uniform Cell Standards for Fire Safety, Sanitation and Security
KSP 100000-18	Inmate Grievance Committee Hearings
KSP 100000-20	Legal Services Program
KSP 100000-21	Photocopies for Nonindigent Inmates with Special Court Deadlines
KSP 110000-04	Preparole Progress Report
KSP 110000-06	General Guidelines of the Classification Committee
KSP 110000-07	Statutory Good Time Restoration
KSP 110000-08	Award of Meritorious Good Time
KSP 110000-10	Special Needs Inmates
KSP 110000-12	Unit Classification Committee - Inmate Work Assignments
KSP 110000-13	Classification Document
[~~KSP 110000-14~~	~~Vocational School Placement (Deleted 2/14/92)~~]
KSP 110000-15	Transfers to Kentucky Correctional Psychiatric Center (KCPC)
KSP 110000-16	Consideration of Further Treatment Requirements for Inmates Prior to Release
KSP 110000-18	Functions of the Classification Committee
[~~KSP 120000-04~~	~~Academic Education (Deleted 2/14/92)~~]
KSP 120000-07	Community Center Program
KSP 120000-08	Inmate Furloughs
KSP 120000-11	Religious Services - Staffing
KSP 120000-18	Religious Services - Religious Programming
KSP 120000-20	Marriage of Inmates
KSP 120000-31	Extended Furloughs
KSP 120000-32	Discharge of Inmates by Shock Probation
KSP 130000-10	Execution Plan
KSP 15-01-01	Inmate Grooming and Dress Code [~~(Added 8/15/91)~~]
KSP 16-01-01	Visiting Program
KSP 16-03-02	Inmate Telephone Access (Added 2/14/92)
KSP 17-01-01	Inmate Personal Property [~~(Added 8/15/91)~~]
KSP 19-05-01	Correctional Industries [~~(Added 8/15/91)~~]
KSP 20-04-01	Educational Programs (Added 2/14/92)

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: February 14, 1992
FILED WITH LRC: February 14, 1992 at 10 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for March 25, 1992 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack T. Damron and Tom Campbell, Corrections Cabinet, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron
(1) Type and number of entities affected: 353 employees of the Kentucky State Penitentiary, 785 inmates, and all visitors to state correctional institutions.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.
2. Continuing costs or savings: Same as 2(a)1.
3. Additional factors increasing or decreasing costs: Same as 2(a)1.
(b) Reporting and paperwork requirements: Monthly submission of policy revisions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:090. Frankfort Career Development Center.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. These regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures, revised February 14, 1992 [~~September 13, 1991~~], are incorporated by reference and shall be referred to as Frankfort Career Development Center Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

FCDC 01-04-01	Confidentiality of Information Roles and Services of Consultant, Contract Personnel, Governmental Services Supervisors and Volunteers
FCDC 01-05-01	Duties and Responsibilities of FCDC Duty Officer
FCDC 01-09-01	Organization and Assignment of Responsibilities
FCDC 02-02-01	Inventory of Nonexpendable Personal Property
FCDC 02-09-01	Inmate Account Draw and Savings Deposit Transactions Between Inmates
FCDC 02-10-01	Fiscal Management and Control
FCDC 02-11-01	Fiscal Management: Accounting Procedures
FCDC 02-12-01	Fiscal Management: Checking Accounts
FCDC 02-13-01	Purchasing and Receiving
FCDC 06-02-01	Inmate Records [(~~Revised 9/13/91~~)]
FCDC 08-01-01	Fire Safety Practices (Revised 2/14/92)
FCDC 09-01-02	Institutional Entry and [/] Exit Surveillance and Perimeter Security Procedures (Revised 2/14/92)
FCDC 09-03-01	Control and Accountability of Flammable Toxic, Caustic and Other Hazardous Materials [(~~Revised 9/13/91~~)]
FCDC 09-06-08	Searches and Contraband Control [(~~Revised 9/13/91~~)]
FCDC 11-03-01	Food Service
FCDC 12-03-01	Laundry, Clothing, Hygiene and Grooming Services [(~~Revised 9/13/91~~)]
FCDC 12-04-01	Sanitation Practices and Inspections [(~~Revised 9/13/91~~)]
FCDC 13-01-01	Use of Pharmaceutical Products
FCDC 13-01-02	Medical Emergencies
FCDC 13-01-03	Informed Consent
FCDC 13-02-01	Inmate Medical Screenings and Health Evaluations
FCDC 13-03-01	Psychiatric and Psychological Services
FCDC 13-03-02	Parental Administration of Medications and Use of Psychotropic Drugs
FCDC 13-05-01	Family Notification: Serious Illness, Injury, Major Surgery or Death
FCDC 13-06-01	Chronic and Convalescent Care
FCDC 13-08-01	Sick Call/Physician's Weekly Clinic
FCDC 13-09-01	Management of Serious and Infectious Diseases
FCDC 13-10-01	Treatment Protocol Regarding First-Aid Procedures, Routine Health Care
FCDC 13-11-01	Health Education: Provision of Special Health Care Needs
FCDC 13-12-01	Elective Services
FCDC 13-13-01	Physicians Referrals
FCDC 13-14-01	Health Records
FCDC 13-15-01	Routine and Emergency Dental Appointments
FCDC 13-16-01	Routine and Emergency Eye Examinations
FCDC 13-17-01	Inmate Death
FCDC 14-01-01	Prohibiting Inmate Authority Over Other Inmates [(~~Revised 9/13/91~~)]
FCDC 14-02-01	Inmate Grievance System (Revised 2/14/92)
FCDC 14-03-01	Inmates Shall Not Be Subject to Discrimination Based on Race, Religion, National Origin, Sex, Handicap or Political Beliefs and Are Protected Against Corporal Punishment [(~~Revised 9/13/91~~)]
FCDC 14-04-01	Legal Services Program [(~~Revised 9/13/91~~)]
FCDC 15-01-01	Good Time - Credits [(~~Revised 9/13/91~~)]
FCDC 15-03-01	Conduct of Adjustment Hearings (Chairperson) [(~~Revised 9/13/91~~)]
FCDC 15-04-01	Detention Orders and Protective Custody Requests [(~~Revised 9/13/91~~)]
FCDC 16-01-01	[~~Inmate~~] Visiting (Revised 2/14/92)
FCDC 16-02-01	Inmate Correspondence [~~Mail Policy~~] (Revised 2/14/92)
FCDC 16-03-01	Inmate Access to Telephones (Revised 2/14/92)
FCDC 16-04-01	Inmate Packages (Added 2/14/92)
FCDC 17-01-01	Inmate Property Control (Revised 2/14/92)
FCDC 17-02-01	Inmate Reception, Orientation, and Discharge (Revised 2/14/92)
FCDC 18-01-01	Inmate Classification and Review (Revised 2/14/92)
[~~FCDC 18-02-01~~	~~Reclassification Document (Deleted 2/14/92)~~
~~FCDC 18-03-01~~	~~Instructions for Six Month Review (Deleted 2/14/92~~]
FCDC 19-01-01	Security and Operation of the Governmental Services Program (Revised 2/14/92)
FCDC 19-02-01	Inmate Work Programs (Revised 2/14/92)

FCDC 20-01-01	Academic and Vocational Education (Revised 2/14/92)
FCDC 22-01-01	Privilege Trips
[FCDC 22-01-02	Activity Trips (Deleted 2/14/92)]
FCDC 22-01-03	Shopping Trips (Added 2/14/92)
FCDC 22-02-01	Recreation and Inmate Activities (Revised 2/14/92)
FCDC 22-02-03	Arts and Crafts Program (Added 2/14/92)
FCDC 23-01-01	Religious Services [Activities] (Revised 2/14/92)
FCDC 24-01-01	Social Services Program (Revised 2/14/92)
FCDC 24-02-01	Substance Abuse Programs (Revised 2/14/92)
FCDC 25-01-01	Escorted Leaves (Revised 2/14/92)
[FCDC 25-02-01	Temporary Release/Community Center Program (Deleted 2/14/92)]
FCDC 25-03-01	Release Preparation Program (Revised 2/14/92)

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: February 14, 1992
FILED WITH LRC: February 14, 1992 at 10 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for March 25, 1992 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron and Tom Campbell, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron
(1) Type and number of entities affected: 45 employees of the Frankfort Career Development Center, 180 inmates, and all visitors to state correctional institutions.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.
2. Continuing costs or savings: Same as 2(a)1.
3. Additional factors increasing or decreasing costs: Same as 2(a)1.
(b) Reporting and paperwork requirements: Monthly submission of policy revisions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

EDUCATION PROFESSIONAL STANDARDS BOARD
(Proposed Amendment)

704 KAR 20:005. Kentucky standards for preparation--certification of professional school personnel program approval.

RELATES TO: KRS 161.020, 161.028 [161.025], 161.030
STATUTORY AUTHORITY: KRS [156.070,] 161.028, 161.030
NECESSITY AND FUNCTION: KRS 161.020 prohibits any person from holding the position of superintendent, principal, teacher, supervisor, director of pupil personnel, or other public school position for which certificates may be issued unless he holds a certificate of legal qualifications for the particular position; KRS 161.028 [161.025] gives the Education Professional Standards Board the authority and responsibility to establish standards and requirements for obtaining and maintaining a teaching certificate and to set standards for approving and evaluating college, university and school district programs for the preparation of teachers and other professional school personnel [Kentucky Council on Teacher Education and Certification the duty to develop and recommend policies and standards relating to teacher preparation and certification]; and KRS 161.030 rests the certification of teachers and other school personnel, [and] the approval of college and university preparation programs for teachers and other school personnel [teacher preparatory colleges and universities] and their curricula with the Education Professional Standards Board [State Board of Education]. This regulation[, which has been reviewed and recommended by the Kentucky Council on Teacher Education and Certification,] establishes the standards and procedures which are to be used for the approval of the various teacher preparation programs offered by the colleges and universities[, and where applicable, these curriculum standards are consistent with the Program of Studies as incorporated in 704 KAR 3:304; and this regulation also establishes procedures and necessary justifications for future development of new preparation certification programs].

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

Section 2. The Kentucky Standards for the Preparation-Certification of Professional School Personnel are hereby amended, and the amended document is hereby incorporated by reference and identified as the Kentucky Standards for the Preparation-Certification of Professional School Personnel, revised February 1992 [July, 1990]. A copy of this document can be inspected, copied and obtained from the Office of Teacher Education and Certification [Instruction, Department of Education], 18th Floor, Capital Plaza Tower, Frankfort, Kentucky, 8 a.m. - 4:30 p.m., Monday-Friday.

[Section 3. Any proposal for the development by the Council on Teacher Education and certification of a program of preparation certification for a new position shall be evaluated in writing by the office of the chief state school officer on the basis of the following criteria:

(1) There are compelling reasons for establishing a preparation certification program. Alternate procedures for insuring professional competence for the position are either not feasible or are not appropriate. The likelihood of unsatisfactory practices represents too high a risk for noncertification alternatives.

(2) A distinctive and specific body of knowledge exists for the new position which is not likely to be attained without a specific preparation certification plan. The body of knowledge is sufficiently extensive for a program of preparation - twelve (12) semester hours of credit or more - rather than something that can be earned in miscellaneous noncredit experiences.

(3) There are pupils having unique characteristics which require the teacher to have specialized knowledge and skills or there is a need for special services for which unique professional preparation is required.

(4) There is a sufficient demand for the training for this position to warrant the development of preparation certification programs at one (1) or more Kentucky teacher education institutions and for sustaining these programs over a period of several years.

(5) The preparation certification requirement is cost effective in terms of the anticipated benefits to the local school district.]

JANICE WEAVER, Chairman
APPROVED BY AGENCY: February 4, 1992

FILED WITH LRC: February 13, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on March 26, 1992, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 21, 1992, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: Dr. Traci Bliss, Office of Teacher Education and Certification, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Akeel Zaheer

(1) Type and number of entities affected: Three institutions of higher education offering certification programs for school nurse, school social worker, school business administrator, and vocational rehabilitation counselor.

(a) Direct and indirect costs or savings to those affected: Individuals would not be required to obtain certification in areas specified.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Institutions of higher education will have to inform candidates currently enrolled in the certification programs regarding deadline dates for discontinuation of the programs.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Savings to Office of Teacher Education and Certification related to certificate issuance, recordkeeping, and information dissemination.

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: Notification to institutions of higher education regarding deadline dates for discontinuing certification programs and issuance of certification.

(3) Assessment of anticipated effect on state and local revenues: No effect on state and local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Certification requirements are uniformly applicable to all individuals, school districts, and institutions of higher education as appropriate.

EDUCATION PROFESSIONAL STANDARDS BOARD
(Proposed Amendment)

704 KAR 20:110. Business administrators.

RELATES TO: KRS 161.020, 161.028, [161.025,] 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030 [156.070, 156.160]

NECESSITY AND FUNCTION: KRS 161.020 and [, 161.025,] 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board [Kentucky Council on Teacher Education and Certification and approved by the State Board of Education]; furthermore, the teacher education institutions are required to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures adopted by the Education Professional Standards Board [recommended by the Council and approved by the State Board]. This regulation establishes an appropriate certificate and relates to the corresponding standards and procedures for program approval as included in the Kentucky Standards [State Plan] for the [Approval of] Preparation- [Programs for the] Certification of Professional School Personnel.

Section 1. (1) The standard certificate for school business administrator shall be issued in accordance with the pertinent Kentucky statutes and [State Board of Education] regulations of the Education Professional Standards Board to an applicant who has had at least two (2) years successful experience in government, business, or education as required for provisional certification and in addition has completed three (3) years experience as a school business administrator and who has completed the approved program of preparation which corresponds to the certificate at a teacher education institution approved under the standards and procedures included in the Kentucky Standards [State Plan] for the [Approval of] Preparation- [Programs for the] Certification of Professional School Personnel.

(2) The duration period for the standard certificate for school business administrator shall be for continuing service.

(3) Effective with the 1992-93 academic year candidates shall not be admitted to the preparation program leading to the Standard Certificate for School Business Administrator. The issuance of the Standard Certificate for School Business Administrator shall be discontinued effective September 1, 1994.

Section 2. (1) The provisional certificate for school business administrator shall be issued in accordance with the pertinent Kentucky statutes and [State Board of Education] regulations of the Education Professional Standards Board to an applicant who has a bachelor's degree and at least two (2) years successful experience in government, business, or education and who has completed at least eighteen (18) semester hours credit selected from the curriculum required for the standard certificate and in accordance with the program requirements of the preparing institution.

[(2) The provisional certificate for school business administrator will be issued on the condition that upon employment in the position the holder will participate fully in the work conference held by the State Department of Education as in service education.]

(2) [(3)] The provisional certificate shall have a duration period of four (4) years and will be subject to renewal once upon completion of eight (8) semester hours credit selected from the curriculum for the standard certificate.

(3) Effective with the 1992-93 academic year candidates shall not be admitted to the preparation program leading to the Provisional Certificate for School Business Administrator. The issuance of the Provisional Certificate for School Business Administrator shall be discontinued effective September 1, 1993.

JANICE WEAVER, Chairman

APPROVED BY AGENCY: February 4, 1992

FILED WITH LRC: February 13, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on March 26, 1992, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 21, 1992, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: Dr. Traci Bliss, Office of Teacher Educa-

tion and Certification, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Akeel Zaheer

(1) Type and number of entities affected: 176 local school districts and approximately 30 individuals enrolled in school business administrators certification programs.

(a) Direct and indirect costs or savings to those affected: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Institutions of higher education will have to inform candidates currently enrolled in the certification program regarding deadline dates for discontinuation of the certificate.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Savings to Office of Teacher Education and Certification related to certificate issuance, recordkeeping, and information dissemination.

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: Notification to institutions of higher education regarding deadline dates for discontinuing certification programs and issuance of certification.

(3) Assessment of anticipated effect on state and local revenues: No effect on state and local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative qualifications for assignment as school business administrator are being defined in a separate regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Certification requirements are uniformly applicable to all individuals, school districts, and institutions of higher education as appropriate.

EDUCATION PROFESSIONAL STANDARDS BOARD
(Proposed Amendment)

704 KAR 20:132. School nurse.

RELATES TO: KRS 161.020, 161.028 [~~161.025~~], 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030 [~~156.070, 156.160~~]

NECESSITY AND FUNCTION: This regulation establishes the standard for the issuance of a certificate for the position of school nurse.

Section 1. (1) The provisional certificate for school nurse shall be issued in accordance with the pertinent Kentucky statutes and regulations of the Education Professional Standards Board [~~State Board of Education~~] to an applicant who is licensed as a registered nurse by the Kentucky Board of Nursing [~~Education and Nurse Registration~~] and who has completed the approved program of preparation which corresponds to the certificate at a teacher education institution approved under the standards and procedures included in the Kentucky Standards [~~State Plan~~] for the [~~Approval of~~] Preparation- [~~Programs for the~~] Certification of Professional School Personnel.

[~~(2) Registered nurses serving in an approved position of school nurse during the 1978-79 or the 1979-80 school year may be issued the provisional certificate for school nurse for a duration period of five (5) years and renewable for subsequent five (5) year periods upon completion of three (3) years experience as a school nurse during each five (5) year period.~~]

(2) [~~(3)~~] The provisional certificate for school nurse [~~issued after the 1979-80 school year~~] shall be issued for a duration period of five (5) years and shall require the completion of the fifteen (15) semester hour curriculum for school nurses for the first renewal. Subsequent renewals shall require the completion of fifteen (15) semester hours additional credit toward the completion of the bachelor's degree. Upon completion of the bachelor's degree, the certificate may be renewed on three (3) years experience as a school nurse during each five (5) year renewal period.

(3) Beginning September 1, 1993, the Provisional Certificate for School Nurse shall no longer be issued.

(4) In accordance with KRS 161.020(3), the validity and terms of renewal of the Provisional Certificate for School Nurse issued prior to September 1, 1993, shall continue to be determined by the provisions of this regulation.

(5) Qualifications of individuals serving in the position of school nurse in a school or school district who do not hold the Provisional Certificate for School Nurse, shall be determined by 704 KAR 20:165.

JANICE WEAVER, Chairman

APPROVED BY AGENCY: February 4, 1992

FILED WITH LRC: February 13, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on March 26, 1992, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 21, 1992, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: Dr. Traci Bliss, Office of Teacher Education and Certification, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Akeel Zaheer

(1) Type and number of entities affected: 176 local school districts and approximately 1 individual enrolled in school nurse certification program.

(a) Direct and indirect costs or savings to those affected: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Institutions of higher education will have to inform candidates currently enrolled in the certification program regarding deadline dates for discontinuation of the certificate.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Savings to Office of Teacher Education and Certification related to certificate issuance, recordkeeping, and information dissemination.

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: Notification to institutions of higher education regarding deadline dates for discontinuing certification programs and issuance of certification.

(3) Assessment of anticipated effect on state and local revenues: No effect on state and local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative qualifications for assignment as school nurse are being defined in a separate regulation 704 KAR 20:165.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None
TIERING: Was tiering applied? No. Certification requirements are uniformly applicable to all individuals, school districts, and institutions of higher education as appropriate.

EDUCATION PROFESSIONAL STANDARDS BOARD
(Proposed Amendment)

704 KAR 20:165. Qualifications for professional school positions [~~Newly created positions~~].

RELATES TO: KRS 161.020, 161.028 [~~161.025~~], 161.030
STATUTORY AUTHORITY: KRS 161.028, 161.030 [~~156.070, 156.160~~]
NECESSITY AND FUNCTION: KRS 161.020 requires appropriate certification for each professional school position; however, [~~new~~] positions are established in the local school districts for which a specific certification is not issued [~~often created in advance of the establishment of a statewide certification program for the position~~]. In this regulation [~~empowers~~] the Education Professional Standards Board identifies required [~~Superintendent of Public Instruction to determine interim~~] qualifications for such assignments. [~~until such time as a certification program is designed for the position in question. Section 1.~~] The Education Professional Standards Board [~~Superintendent of Public Instruction~~] shall be authorized to determine the qualifications [~~and certification requirements~~] for positions identified in this regulation for which no program of preparation-certification has [~~yet~~] been established [~~by the Kentucky State Board of Education~~].

Section 1. School Social Worker. The qualifications for the position of school social worker shall be one (1) of the following:
(1) A valid license as either "social worker" or as "certified social worker", issued by the Kentucky State Board of Examiners of Social Work; or
(2) A valid certificate for school social worker issued prior to September 1, 1993.
(3) For the purposes of KRS 161.020 and 161.720 a valid license as either "social worker" or as "certified social worker" issued by the Kentucky State Board of Examiners of Social Work shall be equivalent and have equal status to a certificate issued by the Education Professional Standards Board pursuant to KRS 161.030.

Section 2. School Business Administrator. The qualifications for the position of school business administrator shall be one (1) of the following:
(1) Kentucky certification for school superintendent;
(2) A bachelor's or advanced degree in business;
(3) Valid Kentucky certification for school business administrator issued prior to September 1, 1994.

Section 3. School Nurse. The qualifications for the position of school nurse shall be the following:
(1) A current and active license as registered nurse issued by the Kentucky Board of Nursing; and
(2) One (1) of the following:
(a) A provisional certificate for school nurse issued prior to September 1, 1993; or
(b) A bachelor's or master's degree in nursing; or
(c) Completion of a continuing education curriculum developed by the Kentucky School Nurse Association and approved by the Education Professional Standards Board.
(3) Every two (2) years each school nurse shall complete thirty (30) clock hours of continuing education units developed by the Kentucky School Nurse Association and approved by the Education Professional Standards Board.
(4) For the purposes of KRS 161.020 and 161.720 a current and active license as registered nurse issued by the Kentucky Board of Nursing shall be equivalent and have equal status to a certificate issued by the Education Professional Standards Board pursuant to KRS 161.030.

Section 4. Director of District-wide Services. A director of district-wide services may qualify for this position on the basis of certification either as school superintendent, supervisor of instruction, school business administrator, or principal. This regulation does not apply to any position for which a specific certificate is available, such as director of pupil personnel.

Section 5. Director of Federally Supported Programs. A director of federally supported programs may qualify for this position on the basis of certification either as school superintendent, supervisor of instruction, or school principal.

Section 6. Consultant. A consultant in elementary education, special education, or in an academic subject field may qualify for the position on the basis of the following:
(1) Master's degree or nondegree fifth-year program;
(2) Certification in the appropriate subject field or service area;
(3) Three (3) years of teaching experience in the appropriate subject field or service area.

Section 7. Reading Program Consultant. A reading program consultant may qualify for the position on the basis of certification as a reading specialist.

Section 8. Gifted Education Coordinator. A gifted education coordinator may qualify for the position on the basis of the following:
(1) A master's degree or nondegree fifth-year program;
(2) A certificate endorsement for teacher of gifted education;
(3) Three (3) years of teaching experience.

Section 9. Special Education Work Study Program Coordinator. A special education work study program coordinator may qualify for the position on the basis of certification as a teacher of exceptional children.

Section 10. Professional Development Coordinator. The professional development coordinator may qualify for the position on the basis of certification as a principal or supervisor of instruction.

Section 11. Instructional Television Coordinator. An instructional television coordinator may qualify for the position on the basis of certification for classroom teaching.

Section 12. Instructional Coordinator. The instructional coordinator may qualify for the position on the basis of certification for supervisor of instruction or school principal at the appropriate level.

Section 13. Adult Education Teacher. An adult education teacher may qualify for the position on the basis of certification for classroom teaching.

Section 14. School Health Coordinator. A school health coordinator may qualify for the position on the basis of certification for classroom teaching or by meeting qualifications for school nurse as identified in Section 3 of this regulation.

JANICE WEAVER, Chairman
APPROVED BY AGENCY: February 4, 1992
FILED WITH LRC: February 13, 1992 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation will be held on March 26, 1992, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 21, 1992, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: Dr. Traci Bliss, Office of Teacher Education and Certification, Capital Plaza Tower, 500 Mero Street, Frank-

fort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Akeel Zaheer

(1) Type and number of entities affected: 176 local school districts and individuals enrolled in school assignments for which a specific certificate is not issued.

(a) Direct and indirect costs or savings to those affected: Costs to districts in recruiting qualified personnel and to individuals in meeting the specified qualifications.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Individuals seeking the identified positions will have to obtain and maintain certification. Employing districts must maintain records of qualification.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Costs to Office of Teacher Education and Certification related to certificate issuance, recordkeeping, and information dissemination.

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: N/A

(3) Assessment of anticipated effect on state and local revenues: No effect on state and local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Specific certification for these assignments is unnecessary or is duplicative of other professional licenses.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Qualification/certification requirements are uniformly applicable to all individuals, school districts, and institutions of higher education as appropriate.

EDUCATION PROFESSIONAL STANDARDS BOARD
(Proposed Amendment)

704 KAR 20:194. Social workers' standard certification.

RELATES TO: KRS 161.020, 161.028 [~~161.025~~], 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030 [~~156.070, 156.160~~]

NECESSITY AND FUNCTION: KRS 161.020[~~, 161.025,~~] and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board [~~Kentucky Council on Teacher Education and Certification and approved by the State Board of Education~~]; furthermore, the teacher education institutions are required to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures adopted by the Education Professional Standards Board [~~recommended by the council and approved by the state board~~]. This regulation establishes an appropriate certificate and relates to the corresponding standards and procedures for program approval as included in the Kentucky Standards [~~State Plan~~] for the [~~Approval of~~] Preparation- [~~Programs for the~~] Certification of Professional School Personnel.

Section 1. (1) The standard certificate for school social worker shall be issued in accordance with the pertinent Kentucky statutes and [~~State Board of Education~~] regulations of the Education Professional Standards Board to an applicant who has completed the qualifications for provisional certification for the position of school social worker, three (3) years of successful experience as a school social worker, and a minimum of sixty (60) semester hours graduate credit from an approved program of preparation which corresponds to this certification at a teacher education institution approved under the standards and procedures included in the Kentucky Standards [~~State Plan~~] for the [~~Approval of~~] Preparation- [~~Programs for the~~] Certification of Professional School Personnel. A minimum of thirty-six (36) semester hours of the graduate program shall be in addition to the qualifications for provisional certification and shall be selected from the professional component outlined in the state plan for the school social worker so as to provide further depth and breadth of preparation. As an alternate curriculum the completion of a master's of social work degree from an institution accredited by the [~~National~~] Council on Social Work Education shall be accepted in lieu of sixty (60) semester hour graduate curriculum stated above.

(2) The duration period for the standard certificate for school social worker shall be for continuing service.

(3) Effective with the 1992-93 academic year candidates shall not be admitted to the preparation program leading to the Standard Certificate for School Social Worker. Beginning September 1, 1993, the Standard Certificate for School Social Worker established under this regulation shall no longer be issued.

(4) In accordance with KRS 161.020(3), the validity and terms of renewal of the Standard Certificate for School Social Worker issued prior to September 1, 1993, shall continue to be determined by the provisions of this regulation.

(5) Qualifications of individuals in the position of social worker in a school or school district who do not have the Standard Certificate for School Social Worker shall be determined by 704 KAR 20:165.

JANICE WEAVER, Chairman

APPROVED BY AGENCY: February 4, 1992

FILED WITH LRC: February 13, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on March 26, 1992, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 21, 1992, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: Dr. Traci Bliss, Office of Teacher Education and Certification, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Akeel Zaheer

(1) Type and number of entities affected: 176 local school districts and approximately 20 individuals enrolled in school social worker certification programs.

(a) Direct and indirect costs or savings to those affected: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Institutions of higher education will have to inform candidates currently enrolled in the certification program regarding deadline dates for discontinuation of the certificate.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Savings to Office of Teacher Education and Certification related to certificate issuance, recordkeeping, and information dissemination.

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: Notification to institutions of higher education regarding deadline dates for discon-

tinuing certification programs and issuance of certification.

(3) Assessment of anticipated effect on state and local revenues: No effect on state and local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative qualifications for assignment as school social worker are being defined in a separate regulation 704 KAR 20:165.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Certification requirements are uniformly applicable to all individuals, school districts, and institutions of higher education as appropriate.

EDUCATION PROFESSIONAL STANDARDS BOARD
(Proposed Amendment)

704 KAR 20:195. Social workers provisional certification.

RELATES TO: KRS 161.020, 161.028 [~~161.025~~], 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030 [~~156.070, 156.160~~]

NECESSITY AND FUNCTION: KRS 161.020[~~, 161.025,~~] and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board [~~Kentucky Council on Teacher Education and Certification and approved by the State Board of Education~~]; furthermore, the teacher education institutions are required to be approved for offering the preparation programs corresponding to particular certificates on the basis on standards and procedures Education Professional Standards Board [~~recommended by the council and approved by the state board~~]. This regulation establishes an appropriate certificate and relates to the corresponding standards and procedures for program approval as included in the Kentucky Standards [~~State Plan~~] for the [~~Approval of~~] Preparation- [~~Programs for the~~] Certification of Professional School Personnel.

Section 1. (1) The provisional certification for school social worker shall be issued in accordance with the pertinent Kentucky statutes and [~~State Board of Education~~] regulations of the Education Professional Standards Board to an applicant who has completed the approved program of preparation which corresponds to this certification at a teacher education institution approved under the standards and procedures included in the Kentucky Standards [~~State Plan~~] for the [~~Approval of~~] Preparation- [~~Programs for the~~] Certification of Professional School Personnel.

(2) The provisional certification for school social worker shall be issued initially for a duration period which expires ten (10) years from the calendar year of completion of the curriculum requirements. This certificate shall be renewed for a ten (10) year period only upon completion of the planned fifth year program. This certification may be extended for life upon completion of three (3) years of successful teaching experience on a regular certificate and upon completion of a planned fifth year program.

(3) The provisional certification for school social worker shall be issued to an applicant who holds a regular teaching certificate for the elementary, middle school, or high school level and who completes eighteen (18) semester hours credit, including supervised practice in school social work, from the curriculum for school social worker emphasizing the social work portion of the program rather than the portion dealing with professional education.

(4) Beginning September 1, 1992, the Provisional Certificate for School Social Worker established under this regulation shall no longer be issued.

(5) In accordance with KRS 161.020(3) the validity and terms for renewal of the Provisional Certificate for School Social Worker issued prior to September 1, 1992, shall continue to be determined by the provisions of this regulation.

(6) Qualifications of individuals in the position of social worker in a school or school district who do not hold the Provisional Certificate for School Social Worker shall be determined by 704 KAR 20:165.

[~~Section 2. Provisional certification for school social worker may be issued for a one (1) year period on the basis of a professional commitment made by the applicant to complete the usual program of preparation at a minimum rate of six (6) semester hours each year provided the applicant holds a bachelor's degree, has completed at least six (6) semester hours credit from the approved curriculum for school social work, and secures an agreement from a prospective employer to adjust the annual work load to provide opportunity for earning the additional college credits on schedule and for participating in the work conferences conducted by the State Department of Education for school social workers.~~]

JANICE WEAVER, Chairman

APPROVED BY AGENCY: February 4, 1992

FILED WITH LRC: February 13, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on March 26, 1992, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 21, 1992, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: Dr. Traci Bliss, Office of Teacher Education and Certification, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Akeel Zaheer

(1) Type and number of entities affected: 176 local school districts and approximately 20 individuals enrolled in certification programs leading to the standard certification for school social worker.

(a) Direct and indirect costs or savings to those affected: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Institutions of higher education will have to inform candidates currently enrolled in the certification program regarding deadline dates for discontinuation of the certificate.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Savings to Office of Teacher Education and Certification related to certificate issuance, recordkeeping, and information dissemination.

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: Notification to institutions of higher education regarding deadline dates for discontinuing certification programs and issuance of certification.

(3) Assessment of anticipated effect on state and local revenues: No effect on state and local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative qualifications for assignment as school social worker are being defined in a separate regulation 704 KAR 20:165.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Certification requirements are uniformly applicable to all individuals, school districts, and institutions of higher education as appropriate.

EDUCATION PROFESSIONAL STANDARDS BOARD
(Proposed Amendment)

704 KAR 20:310. Written examination and internship prerequisites for vocational teachers.

RELATES TO: KRS 161.028, 161.030
STATUTORY AUTHORITY: KRS 161.028 [~~156.070~~], 161.030
NECESSITY AND FUNCTION: KRS 161.030 requires that all new teachers, including out-of-state teachers with less than two (2) years' experience, successfully complete appropriate written tests prior to initial certification in Kentucky and serve a one (1) year internship. The tests are to measure communication skills, general knowledge, professional education concepts, and knowledge in the specific teaching field of the applicant. The Education Professional Standards Board [~~State Board for Elementary and Secondary Education~~] is charged with selecting the tests; determining minimum acceptable levels of achievement on each test; establishing a reasonable fee related to the cost of administration of the tests, such fees to be paid by the teacher applicants; and establishing procedures for persons having less than minimum levels of performance on any test to repeat that test and be informed of strengths and weaknesses in performance areas. This regulation implements such duties relative to teacher testing and internship for vocational teachers as specified in 704 KAR 20:305[~~, Section 1(3)~~].

Section 1. All new industrial education, health and personal service occupation, public service teacher applicants, and other applicants for vocational teacher certificates both with and without a teacher preparation degree; and out-of-state applicants for vocational certification with less than two (2) years of teaching experience shall successfully complete the appropriate written tests prior to initial Kentucky certification. Each applicant without a teacher preparation degree shall successfully complete the Comprehensive Test of Basic Skills (CTBS) for communication skills and general knowledge and the Kentucky Department for Adult and Technical Education [~~Office of Vocational Education's~~] Teacher Aptitude Test (TAT). Each applicant with a teacher preparation degree shall successfully complete the National Teachers' Examination (NTE) Core Battery as specified in 704 KAR 20:305, Section 2(1). All applicants shall take a specialty test in the occupational area for which certification is to be granted. Specialty tests are identified as follows:

(1) Industrial education - National Occupational Competency Testing Institute's (NOCTI) Teacher Occupational Competency Test (TOCT) if one corresponding to the teaching specialty is available; or if not, the Kentucky [~~Office of Vocational Education,~~] Department for Adult and Technical [~~of~~] Education, developed test corresponding to the teaching specialty.

(2) Health occupations - the appropriate state or national examination, where one exists; or, if not, the Kentucky [~~Office of Vocational Education,~~] Department for Adult and Technical [~~of~~] Education, developed test corresponding to the teaching specialty.

(3) Public service - the corresponding Kentucky [~~Office of Vocational Education,~~] Department for Adult and Technical [~~of~~] Education, developed test.

Section 2. In order to satisfy the testing prerequisites for teacher certification, and before an initial certificate is granted, each applicant shall make the following minimum passing score on each of the following tests:

(1) The Comprehensive Test of Basic Skills.
(a) Communication skills - 742;
(b) General knowledge - 720;
(2) The teacher aptitude test - 660 [~~650~~].
(3) Specialty area tests for industrial education.
(a) Air conditioning - NOCTI - air conditioning refrigeration - 548;
(b) Aircraft mechanics - NOCTI - airframe and power plant - 578;
(c) Appliance repair - NOCTI - major appliance repair - 531;
(d) Auto body repair - NOCTI - auto body repair - 613;
(e) Auto mechanics - NOCTI - auto mechanics - 554;
(f) Auto parts - state developed - auto parts - 490;
(g) Building maintenance - NOCTI - building trades maintenance - 548;
(h) Cabinetmaking - NOCTI - cabinetmaking and millwork - 523;
(i) Carpentry - NOCTI - carpentry - 597;
(j) Civil & highway technology - NOCTI - civil technology - 392;
(k) Commercial art - NOCTI - commercial art - 518;
(l) Commercial sewing - NOCTI - power sewing - 600;
(m) Diesel mechanics - NOCTI - diesel mechanics - 509;
(n) Drafting - NOCTI - machine drafting - 564;
(o) Electricity - NOCTI - industrial electrician - 538;
(p) Electronics - NOCTI - electronics technology - 498;
(q) General miner - state developed - general miner - 520;
(r) Graphic arts - NOCTI - printing - offset - 495;
(s) Heavy equipment operator - state developed - heavy equipment operator - 510;
(t) Heavy equipment repair - NOCTI - diesel mechanics - 509;
(u) Industrial machinery maintenance - state developed - industrial machinery maintenance - 480;
(v) Instrumentation - NOCTI - electronics technology - 498;
(w) Interior finishing - state developed - interior finishing - 460;
(x) Machine shop - NOCTI - machine trades - 525;
(y) Masonry - NOCTI - masonry - 556;
(z) Meat cutting - state developed - meat cutting - 580;
(aa) Mine maintenance technology - state developed - mine maintenance technology - 560;
(bb) Mine equipment operator - state developed - mine equipment operator - 570;
(cc) Office machine repair - NOCTI - electronics technology - 498;
(dd) Plumbing - NOCTI - plumbing - 501;
(ee) Radio & TV production - state developed - radio & TV production - 440;
(ff) Radio & TV repair - NOCTI - radio & TV repair - 629;
(gg) Sheet metal - NOCTI - sheet metal - 596;
(hh) Small engine repair - NOCTI - small engine repair - 560;
(ii) Tailoring - NOCTI - textile production/fabrication - 557;
(jj) Tool and die - NOCTI - tool and die maker - 369;
(kk) Truck mechanics - NOCTI - diesel mechanics - 509;
(ll) Upholstery - state developed - upholstery - 520;
(mm) Welding - NOCTI - welding - 510;
(4) Specialty area test for health and personal service occupation.
(a) Barbering - The Kentucky Board of Barbering [~~Examination and Barbering~~] Instructors' License;
(b) Biomedical equipment technician - Board of Examiners for Biomedical Equipment Technicians operating under the Certification Commission Examination and Biomedical Equipment Technician;
(c) Cosmetology - Kentucky Board of Hairdressers and Cosmetologists Instructors' License;
(d) Dental assisting - Dental assistants' National Board Examination and Dental Assistants' Certification or American Dental Association National Board Examination and Dental Hygiene Licensure coupled with State or Regional Board of Dentistry Examination and Dental Hygiene Licensure;
(e) Health services - The National Council of Licensure Examination Administered by the Kentucky Board of Nursing and Registered Nurse License in Kentucky;
(f) Medical assisting - The National Council of Licensure Examination administered by the Kentucky Board of Nursing and Registered Nurse License in Kentucky or American Association of Medical Assistants' Examination and Medical Assistant Certification;
(g) Medical laboratory technician - American Society of Clinical Pathologist Certification Examination and Medical Technologist Registration or National Certification Agency Certification Examination and Clinical Laboratory Scientist Certification;
(h) Medical secretary - state developed - medical secretary, with a minimum score of 580;
(i) Practical nursing - The National Council Licensure Examination administered by the Kentucky Board of Nursing and Registered Nurse License in Kentucky;
(j) Radiologic technology - American Registry of Radiologic Technologists' Certification Examination and Radiographers' Registra-

tion;

(k) Respiratory therapy technology - National Board for Respiratory Care;

(l) Surgical technology - The National Council Licensure Examination administered by the Kentucky Board of Nursing and Registered Nurse License in Kentucky or Association of Surgical Technologists' Examination under the direction of the Liaison council on Certification and Surgical Technologists' Certification;

(5) Specialty area test for public service:

(a) Public service - state developed - public service, with a minimum score of 630; and

(6) Specialty area test: other

(a) Commercial foods - NOCTI - quantity foods preparation, with a minimum score of 618.

(b) Tractor trailer/truck driver - state developed, with a minimum score of 994.

Section 3. Teacher applicants in any [new] vocational programs for which no appropriate specialty test is yet available shall not be required to take a specialty test, except for research and validation purposes. After the new program has been piloted and fully implemented, any new teacher applicant will be required to pass a designated specialty test.

Section 4. Applicants for initial certification may take the written tests on any of the dates established by the Kentucky Department for Adult and Technical [of] Education[, Office of Vocational Education], with such tests to be administered at least twice monthly. Public announcement of testing dates and locations shall be issued sufficiently in advance of testing dates to permit advance registration as required by the Kentucky Department for Adult and Technical Education [Office of Vocational Education]. It shall be the responsibility of each applicant to seek information regarding the dates and location of the tests and to make application to the Kentucky Department for Adult and Technical Education [Office of Vocational Education] for the appropriate tests prior to the deadlines established and sufficiently in advance of anticipated employment. Applicants must authorize test results to be forwarded to the Office of Teacher Education and Certification [Division], Department of Education.

Section 5. Applicants shall pay an examination fee of fifty (50) dollars directly to the testing agency for the four (4) tests. In the event that fewer than the four (4) tests are to be taken, the fee schedule shall be as follows: (1) CTBS - Communication Skills, ten (10) dollars; (2) CTBS - General Knowledge, ten (10) dollars; (3) Teacher Aptitude Test, ten (10) dollars; (4) specialty area tests, twenty (20) dollars.

Section 6. Applicants who fail to achieve at least the minimum score on one (1) or more of the test(s) shall be permitted to retake the test or those tests a maximum of two (2) times within one (1) year from the date of initial test. [and] All retakes must meet the regularly scheduled testing dates. [However,] Initial certification will not be granted until acceptable scores are achieved in each of the required areas.

Section 7. The Department of Education in conjunction with the Education Professional Standards Board shall collect such data and conduct such analyses of the impact of these tests as to permit a review of these regulations on at least a biennial basis.

Section 8. (1) All applicants for Kentucky vocational teaching certificates who successfully complete the required written tests shall serve a one (1) year internship. The teacher shall be a full-time employee or serve on at least a half-time basis and shall have supervision, assistance, and assessment during the one (1) year internship as identified in KRS 161.030. [The Office of Vocational Education shall administer the internship program and shall follow the requirements established by the State Board for Elementary and Secondary Education.]

[(1) A beginning teacher committee meeting the requirements of KRS 161.030 shall be identified by the Office of Vocational Education and shall consist of:

(a) A resource teacher who is certified as a vocational teacher in the same area in which the intern seeks certification;

(b) The school principal where the internship is being served; and

(c) A vocational teacher educator from a state approved teacher training institution or, if the teacher training institution is unable to provide a member, an occupational specialist within the Office of Vocational Education.]

(2) Internships for vocational teachers in area centers and state vocational-technical schools shall be administered by the Kentucky [Office of Vocational Education,] Department of Education through a memorandum of agreement with the Kentucky Department for Adult and Technical Education.

JANICE WEAVER, Chair

APPROVED BY AGENCY: February 4, 1992

FILED WITH LRC: February 13, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on March 26, 1992, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 21, 1992, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: Dr. Traci Bliss, Office of Teacher Education and Certification, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dr. Traci Bliss

(1) Type and number of entities affected: All new vocational teacher certificate applicants with less than 2 years of teaching experience.

(a) Direct and indirect costs or savings to those affected:

1. First year: No change.

2. Continuing costs or savings: No change.

3. Additional factors increasing or decreasing costs (note any effects upon competition): No change.

(b) Reporting and paperwork requirements: Reporting - the Educational Professional Standards Board assumed the responsibilities for certification from the State Board of Education. Paperwork - each applicant without a teacher preparation degree is administered the Vocational Teacher Tests in the Department for Adult and Technical Education. Internships for vocational teachers in area centers and state vocational-technical schools shall be administered by the Kentucky Department of Education through a memorandum of agreement with the Kentucky Department for Adult and Technical Education.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Major reduction in paperwork due to test administration occurring in the Department for Adult and Technical Education.

1. First year: Test administration for Vocational Education does not occur in the Department of Education.

2. Continuing costs or savings: See number 1.

3. Additional factors increasing or decreasing costs: See number 1.

(b) Reporting and paperwork requirements: No change.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No change.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: No

TIERING: Was tiering applied? No. The vocational teacher regulation applies to all applicants.

WORKFORCE DEVELOPMENT CABINET
Department for Adult and Technical Education
(Proposed Amendment)

780 KAR 9:010. Testing program.

RELATES TO: KRS 151B.110, 151B.125
STATUTORY AUTHORITY: KRS 151B.110, 151B.125
NECESSITY AND FUNCTION: KRS 151B.125 recognizes the responsibility of the Department for Adult and Technical Education, recognizes the GED diploma and the State Board for Adult and Technical Education's responsibility for such. This regulation establishes the means whereby adults can be tested by official GED testing centers to determine their eligibility for receiving a High School Equivalency Diploma.

Section 1. (1) The GED test shall provide a valid means of measuring the educational achievement of adults who are nonhigh school graduates and of comparing their competency with that of high school graduates. The tests shall be high school level batteries consisting of five (5) comprehensive examinations: English, literature, mathematics, natural science, and social studies.

(2) The GED test shall be administered to:

(a) Any person seventeen (17) years of age or older who has been out of a formal classroom situation for a period of one (1) year before making application, or whose high school class (the class of which he was or would have been a member) has graduated; or

(b) To any person sixteen (16) years of age who has been committed or placed in a state correctional facility, been committed by the court to an educational program, or who has completed a program of instruction provided by such agencies as the Job Corps and the Postal Service Academy, an apprenticeship program, or other similar programs of instruction for which completion of training is certified by the director of the program and presented to a chief examiner of an official GED center with a request that the subject adult be tested;

(3) Official GED testing centers shall be established under contract with the GED Testing Service of the Commission on Accreditation with locations authorized by the State Board for Adult and Technical Education. GED testing services for individuals confined to state correctional and health institutions shall be approved by the State Board for Adult and Technical Education.

(4) Testing fees shall be established by the State Board for Adult and Technical Education at a uniform fee of fifteen (15) [~~ten (10)~~] dollars or three (3) dollars per sub test. The State Board for Adult and Technical Education shall charge no fee for testing services provided for individuals confined to state correctional and health institutions.

(5) Applicants seeking a high school equivalency diploma shall complete the appropriate application form provided for this purpose prior to taking the GED test. This form shall be available upon request from local school superintendents or the State Board for Adult and Technical Education. Military personnel shall not be required to complete the application form prior to taking the test; however, the application form shall be completed before a high school equivalency diploma shall be issued.

(6) If an applicant passes all five (5) tests with a minimum test score of thirty-five (35) but does not attain an average standard score of forty-five (45), he shall be eligible to retake any one (1) or all tests in an attempt to raise the overall standard score to meet the requirements. However, the testing center proctor shall recommend which test or tests to be retaken.

C. RICHARD WARNER, Chairman
APPROVED BY AGENCY: January 16, 1992
FILED WITH LRC: February 12, 1992 at noon
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 24, 1992 at 10 a.m. (EST) in Room 306, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 19, 1992, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. Those persons wishing to attend and testify shall contact in writing: Audrey T. Carr, Secretary, State Board for Adult and Technical Education, 302 Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Beverly Haverstock
(1) Type and number of entities affected: Approximately 50 local GED testing centers and 20,000 examinees, each year taking tests.
(a) Direct and indirect costs or savings to those affected:
1. First year: No costs to state agency; however, agencies contracting for GED services (CHR's, JOBS & JTPA contracts) and organizations, foundations or businesses who reimburse or pay for examining test fee will be affected and individuals will pay an additional $5 for full test or $3 per section.
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: NA
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: Increasing the money generated per local test site will decrease the need for supplemental funds at the local level.
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: The GED testing fee has not increased for 15 years. Costs exceed revenue generated by current fee. No federal regulations or mandate is involved. The state legislature has given the State Board for Adult and Technical Education the authority to set the GED testing fees. This increase should resolve the problem.
TIERING: Was tiering applied? No. Tiering is not appropriate as the cost of taking the GED tests should be applied uniformly throughout the state.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
(Proposed Amendment)

815 KAR 20:120. Water supply and distribution.

RELATES TO: KRS Chapter 318
STATUTORY AUTHORITY: KRS 13A.120, 198B.040 (10), 318.130
NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This regulation relates to the types of piping, pipe sizes for a potable water supply system and the methods to be used to protect and control it. Amendment to the "Application Chart" in Section 2 of this regulation is necessary in order to move "lawn sprinklers" from a low hazard section to a high hazard area due to the chemicals used in lawn care. This amendment was approved by the Plumbing Code Committee on November 6, 1991 and the Board of Housing on January 23, 1992. [~~The amendments to Section 20 and the "Application Chart" in Section 2 of this regulation are necessary to clarify the type of backflow prevention desired in sprinkler systems added to domestic water distribution systems. This amendment was approved by the Plumbing Code Committee on November 7, 1990 and the Board of Housing on November 29, 1990.~~]

Section 1. Definition of Terms. (1) "ASSE" means American Society of Sanitary Engineers.

(2) "ASTM" means American Society for Testing Materials.

(3) "Critical level (CL)" means the level to which the vacuum breaker may be submerged before backflow will occur. Where CL marking is not shown on the vacuum breaker, the bottom of the device shall be taken as the CL.

(4) "DWV" means drain, waste and vent piping.

(5) "SDR" means standard dimensional ratio.

Section 2. Quality. (1) The bacteriological and chemical quality of the water supply shall comply with the regulations of the department and other governing authorities. Toxic materials shall be kept out of the potable water system.

(a) Piping conveying, and all surfaces in contact with potable water shall be constructed of nontoxic materials.

(b) Chemicals or other substances that could produce either toxic conditions, taste, odor, or discoloration in a potable water system shall not be introduced into, or used in, such systems.

(c) The interior surface of a potable water tank shall not be lined, painted, or repaired with any material which will affect either the taste, odor, color, or potability of the water supply when the tank is placed in, or returned to, service. All interior tank coatings shall be from the list approved by the authority having jurisdiction.

(2) Potable water only shall be accessible to plumbing fixtures that supply water for drinking, bathing, culinary use or the processing of medicinal, pharmaceutical or food products.

(3) The potable water supply system shall be designed, installed, and maintained in such manner as to prevent contamination from nonpotable liquids, solids, or gases being introduced into the potable water supply through cross connections or any other piping connections to the system.

(4) Cross connections shall be prohibited except when and where, as approved by the authority having jurisdiction, suitable protective devices are installed.

(5) Cross connections between a private water supply and a public water supply shall not be made.

(6) When cross connection control devices are properly installed, they create a closed water system. A properly sized thermal expansion tank shall be installed in the cold water supply located as near the water heater as possible.

(7) Backflow and back siphonage protection. Means of protection against backflow shall be as required in paragraphs (a) through (l) of this subsection in order of degree of protection provided. Backflow includes both back pressure and back siphonage.

(a) Air gap. Provides the best level of protection in all backflow situations. Minimum required air gap shall be determined as follows:

1. How measured. The minimum required air gap shall be measured vertically from the lowest end of a potable water outlet to the flood rim or line of the fixture or receptacle into which it discharges.

2. Size. The minimum required air gap shall be twice the effective opening of a potable water outlet, unless the outlet is a distance less than three (3) times the effective opening away from a wall or similar vertical surface, in which case the minimum required air gap shall be three (3) times the effective opening of the outlet. The minimum required air gap shall not be less than shown in the following table - Minimum Air Gaps for Plumbing Fixtures.

MINIMUM AIR GAPS FOR PLUMBING FIXTURES

Fixture	Minimum Air Gap When not affected by near wall (inches)	Minimum Air Gap When affected by near wall (inches)
Lavatories and other fixtures with effective opening not greater than 1/2 inch diameter	1	1 1/2
Sink, laundry trays, gooseneck bath faucets and other fixtures with effective openings not greater than 3/4 inch diameter	1 1/2	2 1/4
Over rim bath fillers and other fixtures with effective openings not greater than 1 inch diameter	2	3
Drinking water fountains - single orifice not greater than 7/16 (0.437) inch diameter or multiple orifices having total area of 0.150 square inches (area of circle 7/16 inch diameter)	1	1 1/2
Effective openings greater than 1 inch	2 x diameter of effective opening	3 x diameter of effective opening

NOTE 1. Side walls, ribs, or similar obstructions do not affect air gaps when spaced from inside edge of spout opening a distance greater than three (3) times the diameter of the effective opening for a single wall, or a distance greater than four (4) times the diameter of the effective opening for two (2) intersecting walls.

NOTE 2. Vertical walls, ribs, or similar obstructions extending from the water surface to or above the horizontal plane of the spout opening require a greater air gap when spaced closer to the nearest inside edge of spout opening than specified in NOTE 1 above. The effect of three (3) or more such vertical walls or ribs has not been determined. In such cases, the air gap shall be measured from the top of the wall.

(b) Reduced pressure principle back pressure backflow preventer. Reduced pressure principle back pressure backflow preventers provide the best mechanical protection against backflow available, and may be considered equivalent to an air gap in most situations.

(c) Double check valve assembly: applicable to low level of hazard back pressure backflow conditions only. These devices are manufactured assemblies consisting of two (2) independently acting check valves and including shutoff valves at each end, and petcocks and test gauges for testing the watertightness of each check valve.

(d) Pressure type vacuum breaker: applicable to back siphonage conditions only.

(e) Atmospheric type vacuum breaker: applicable to back siphonage conditions only. When applicable, all atmospheric type vacuum breakers shall be installed after the last cutoff valve on the water line. These devices may operate under normal atmospheric pressure when the critical level (CL) is installed at the required height in accordance with the following table:

CRITICAL LEVEL (CL) SETTINGS
FOR ATMOSPHERIC TYPE VACUUM BREAKERS

Fixture or Equipment	Method of Installation
Aspirators, ejectors, and and showers	CL at least 6 in. above flood level of receptacle
Bidets	CL at least 6 in. above flood level of receptacle
Cup beverage vending machines	CL at least 12 in. above flood level of machine
Dental units	On models without built-in vacuum

	breakers: CL at least 6 in. above flood level rim of bowl.
Dishwashing machines	CL at least 6 in. above flood level of machine
Flushometers (closet & urinal)	CL at least 6 in. above top of fixture supplied
Garbage can cleaning machines	CL at least 6 in. above flood level of machine
Hose bibs (sinks or receptacles)	CL at least 6 in. above flood level of receptacle served
Hose outlets	CL at least 6 in. above highest point on hose line
Laundry machines	CL at least 6 in. above flood level of machine
Lawn sprinklers	CL at least 12 in. above highest sprinkler or discharge outlet
Steam tables	CL at least 12 in. above flood level
Tanks & vats	CL at least 6 in. above flood level rim or line

NOTE 1. Critical level (CL) is defined as the level to which the vacuum breaker may be submerged before backflow will occur. Where CL marking is not shown on the vacuum breaker, the bottom of the device shall be taken as the CL.

(f) Barometric loop: applicable only to back siphonage conditions. The use of a barometric loop shall not be acceptable as the primary back siphonage preventer.

(g) Location of backflow and back siphonage preventers. Backflow and back siphonage preventers shall be in an accessible location, preferable in the same room as the fixture or connection they protect. Devices may be installed in utility or service spaces. Devices and air gaps shall not be subject to flooding or freezing.

(h) Inspection of devices. Periodic inspections shall be made of all backflow and back siphonage preventers to determine whether they are in proper working condition. Reduced pressure principle back pressure backflow preventers shall be tested on at least an annual basis. Records shall be kept on all such inspections.

(i) Approval of devices. Before any device for the prevention of backflow or back siphonage is installed, it shall have first been certified by a recognized testing laboratory acceptable to the plumbing official. Devices installed in a building potable water supply distribution system for protection against backflow shall be maintained in good working condition by the person or persons responsible for the maintenance of the system.

(j) Protection of potable water system. All potable water openings, outlets, and connections, except those serving residential units, shall be protected against backflow in accordance with one (1) of the following paragraphs, (a) through (l) of this subsection.

(k) Degree of hazard. The protection required at any given outlet or connection shall be determined based on the degree of hazard posed by that outlet or connection as follows:

1. Severe hazard. Potential for contamination by toxic substances or disease-causing organisms.

2. Moderate hazard. Potential for contamination by nontoxic but objectionable substances.

3. Minor hazard. Potential for contamination by generally nontoxic, nonobjectionable substances, but which may cause the consumer to question the quality of water.

(l) Minimum acceptable protection. All openings and outlets shall be protected by an air gap between the opening and floor level rim whenever possible. The acceptable protection for various types of outlets or connections shall be as shown in the following table:

APPLICATION CHART

TYPE AND PRESSURE	DESCRIPTION	INSTALLED AT	EXAMPLES OF INSTALLATIONS		APPLICABLE STANDARDS
Reduced Pressure Principle Backflow Preventer For high hazard cross connections.	Two independent check valves with intermediate relief valve. Supplied with shut-off valves and ball-type test cocks.	All cross connections subject to backpressure or back siphonage where there is a high potential health hazard from contamination. Continuous pressure.	Main Supply Lines Commercial Boilers Cooling Towers Hospital Equipment Processing Tanks Laboratory Equipment Waste Digesters Car Wash Sewage Treatment Lawn Sprinklers		A.S.S.E. No. 1013 A.W.W.A. C506 FCCCHR of USC CSA B.64.4 Sizes 3/4 " - 10"
(A) Double Check Valve Assembly For low hazard cross connections.	Two independent check valves. Supplied with shutoff valves and ball type test cocks.	All cross connections subject to back pressure where there is a low potential health hazard or nuisance. Continuous pressure.	Main Supply Lines Food Cookers Tanks and Vats ~~[Lawn Sprinklers]~~ Commercial Pools	N O	A.S.S.E. No. 1015 A.W.W.A. C506 FCCCHR of USC CSA B.64.5 Sizes 3/4" - 10"
(B) Dual Check Valve Backflow Preventer For low hazard applications.	Two independent check valves. Checks are removable for testing.	Cross connections where there is a low potential health hazard and moderate flow requirements.	Post ground hydrants.	N T O X I C	A.S.S.E. No. 1024 Sizes 3/4" & 1"
(A) Backflow Preventer with Intermediate Atmospheric Vent For moderate hazard cross connections in	Two independent check valves with intermediate vacuum breaker and relief valve.	Cross connections subject to back pressure or back siphonage where there is a moderate health hazard. Continuous	Boilers (Small) Cooling Towers (Small) Dairy Equipment Residential		A.S.S.E. No. 1012 CSA B.64.3 Sizes 1/2" & 3/4"

small pipe sizes.		pressure.		
		Pump outlet to prevent backflow to carbon dioxide gas and carbonated water into the water supply system to beverage machines.	Postmix Carbonated Beverage Machine	Special Approvals
(B) Laboratory Faucet and Double Check Valve with Intermediate Vacuum Breaker In small pipe sizes for moderate to low hazard.	Two independent check valves with intermediate vacuum breaker and relief vent.	Cross connection subject to back pressure or back siphonage where there is a moderate to low health hazard.	Laboratory Faucets and Pipe Lines Barber Shop and Beauty Parlor Sinks	A.S.S.E. No. 1035 (N-LF9)
(A) Atmospheric Vacuum Breakers For moderate to high hazard cross connections.	Single float and disc with large atmospheric port.	Cross connections not subject to backpressure or continuous pressure. Install at least 6" above fixture rim. Protection against back siphonage only.	Process Tanks Dishwashers Soap Dispensers Washing Machines [~~Lawn Sprinklers~~]	A.S.S.E. No. 1001 ANSI.A112.1.1 CSA B.64.1.1 FCCCHR of USC Sizes 1/4" - 3"
(B) Antisiphon Pressure Breakers For moderate to high hazard cross connections.	Spring loaded single float and disc with independent 1st check. Supplied with shutoff valves and ball type test cocks.	This valve is designed for installation in a continuous pressure potable water supply system 12" above the overflow level of the system being supplied. Protection against back siphonage only.	Laboratory Equipment Cooling Towers Comm. Laundry Mach. Swimming Pools Commercial Plating Tanks Lg. Total & Urinal Facilities Degreasers, Photo Tanks Livestock Water Systems Lawn Sprinklers	A.S.S.E. No. 1020 CSA B.64.1.2 FCCCHR of USC Sizes 1/2" - 2"
(C) Hose Connection Vacuum Breakers For residential and industrial hose supply outlets.	Single check with atmospheric vacuum breaker vent.	Install directly on hose bibs, service sinks and wall hydrants. Not for continuous pressure.	Hose Bibs Service Sinks Hydrants	A.S.S.E. No. 1011 CSA B.64.2 Size 3/4" Hose

CROSS CONNECTIONS, DEGREE OF HAZARD AND ACCEPTABLE PROTECTION FOR VARIOUS PLUMBING OUTLETS AND CONNECTIONS

	Degree of Hazard			Acceptable Protection				
					Backflow		Back siphonage	
Type of Connection	Severe	Moderate	Minor	Air Gap	Reduced Pressure Device	Double Check Valve Assembly	Pressure Type Vacuum Breaker	Atmospheric Type Vacuum Breaker
I. Connections subject to back pressure from:								
A. Pumps, tanks, and lines handling:								
1. Toxic substance	X			X	X			
2. Nontoxic subst.		X		X	X	X		
B. Boilers								
1. With chemical additives	X			X	X			
2. Without chemical additives		X		X	X	X		
C. Gravity due to obvious site conditions subject to:								
1. Contamination by toxic substances	X			X	X			

2. Contamination by nontoxic subst.		X		X	X	X		
II. Water outlets and connections not subject to back pressure:								
A. Connection to sewer or sewage pump	X			X				
B. Outlet to receptacles containing toxic substances	X			X	X		X	X
C. Outlet to receptacles containing nontoxic substances		X		X	X	X	X	X
D. Outlet into domestic water tanks			X		Each case treated separately			
E. Flush valve toilets	X			X	X		X	X
F. Flush valve urinals		X		X	X		X	X
G. Outlets with hose attachments subject to contamination from:								
1. Toxic substances	X			X	X		X	X
2. Nontoxic subst.		X		X	X	X	X	X
H. Outlets to recirculating cooling tower:								
1. With chemical additives	X			X	X			
2. Without chemical additives		X		X	X	X		

Section 3. Water Required. (1) Every building equipped with plumbing fixtures and used for habitation or occupancy shall be equipped with a supply of potable water.

(2) In buildings used as residences or buildings in which people assemble or are employed, both hot and cold water shall be supplied.

Section 4. Water Service. (1) The water service piping to any building shall be not less than three-fourths (3/4) inch nominal pipe size but shall be of sufficient size to permit a continuous and ample flow of water to all fixtures on all floors at all times.

(2) The underground water service pipe from the main or water supply system to the water distribution system shall not be less than five (5) feet apart horizontally from the house sewer and shall be separated by undisturbed or compacted earth except they can be placed in the same trench provided:

(a) The bottom of the water service pipe at all points shall be at least eighteen (18) inches above the top of the sewer at its highest point.

(b) The water service pipe shall be placed on a solid shelf excavated at one (1) side of the common trench.

(c) The number of joints in the water service pipe shall be kept to a minimum.

Section 5. Distribution. (1) The water supply shall be distributed through a piping system entirely independent of any other piping system.

(2) Piping which has been used for any other purpose than conveying potable water shall not be used for conveying potable water.

(3) Nonpotable water may be used for flushing water closets and urinals, provided such water shall be piped in an independent system.

(a) When a dual water distribution system is used, the nonpotable water supply shall be durably and adequately identified by color markings and metal tags, or other appropriate method as may be approved by the governing authority. Each outlet on the nonpotable water distribution system which might be used for drinking or domestic purposes shall be permanently posted: DANGER - UNSAFE WATER. Each branch, fitting or valve shall be identified by the word - "NONPOTABLE WATER" either by signs or brass tags that are permanently affixed to the pipe, fittings, valves, etc. These identification markings shall not be concealed. Their maintenance shall be the responsibility of the owner.

(4) Any backflow device or cross-connection control device shall be approved by the department.

(5) Combination stop and waste valves, cocks, or hydrants shall not be installed in the underground water distribution system without the installation of an approved backflow preventer.

(6) No private water supply shall be interconnected with any public water supply.

(7) Water used for cooling of equipment or in other processes shall not be returned to the potable water system. Such water shall be discharged into a drainage system through an air gap, or may be used for nonpotable purposes on written approval of the plumbing official.

Section 6. Water Supply to Fixtures. Plumbing fixtures shall be provided with a sufficient supply of water for flushing to keep them in a sanitary condition. Every water closet or pedestal urinal shall be flushed by means of an approved tank or flush valve. The tank or valves shall furnish at least a sufficient amount of water to thoroughly cleanse the surface area of water closets, urinals or similar fixtures. When a water closet, urinal, or similar fixture is supplied directly from the water supply system through a flushometer or other valve, such valves shall be set above the fixture in a manner so as to prevent any possibility of polluting the potable water supply by back siphonage. All such fixtures shall have a vacuum breaker. Plumbing fixtures, devices or appurtenances shall be installed in a manner that shall prevent any possibility of a cross connection between the potable water supply system, drainage system or other water system.

Section 7. Connections to Boilers. Potable water connections to boiler feed water systems in which boiler conditioning chemicals are introduced shall be made through an air gap, or provided with a reduced pressure principle backflow preventer located in the potable water line before the point where such chemicals are introduced. Boilers shall be equipped with a check valve in the cold water supply to the boiler.

Section 8. Water Supply to Drinking Fountains. The orifice of a drinking fountain shall be provided with a protective cowl to prevent

any contamination of the potable water supply system.

Section 9. Sizing of Water Supply Piping. (1) The minimum size water service from the property line to the water heater shall be three-fourths (3/4) inch. The hot and cold water piping shall extend three-fourths (3/4) inch in size to the first fixture branch. No two and one-half (2 1/2) inch fixture branches are supplied from any one-half (1/2) inch pipe. (EXCEPTION: A combination of two (2) of the following fixtures may be connected utilizing the one-half (1/2) inch branch: a flush tank water closet, a lavatory or drinking fountain.)

(2) The following schedule shall be used for sizing the water supply piping to fixtures. The branch pipe to any fixture shall terminate not more than thirty (30) inches from the point of connection to the fixture and in every instance shall be brought to the floor or wall adjacent to the fixture. No concealed water branch pipe shall be less than one-half (1/2) inch nominal pipe size.

Fixture Branches	Nominal Pipe Size (Inches)
Bath tubs	1/2
Combination sink and tray	1/2
Cuspidor	1/2
Drinking fountain	1/2
Dishwasher (domestic)	1/2
Kitchen sink (res.)	1/2
Kitchen sink (com.	1/2 or 3/4 as required
Lavatory	1/2
Laundry tray	1/2
Sinks (service, slop)	1/2
Sinks flushing rim	3/4
Urinal (flush tank)	1/2
Urinal (direct flush type)	1/2 or 3/4 as required
Water closet (tank type)	1/2
Water closet (flush valve type)	1
Hot water boilers	3/4
Hose bibs	1/2
Wall hydrant	1/2
Domestic clothes washer	1/2
Shower (single head)	3/4

(3) Water hammer. In all building supply systems in which devices or appurtenances are installed utilizing quick acting valves that cause noises due to water hammer, protective devices such as air chambers or approved mechanical shock absorbers shall be installed as close as possible to the quick acting valve causing the water hammer.

(a) Where mechanical shock absorbers are installed, they shall be in an accessible place.

(b) Where mechanical devices are used, the manufactures specifications shall be followed as to location and method of installation.

Section 10. Water Supply Pipes and Fittings, Materials. Water supply piping for a potable water system shall be of galvanized wrought iron, galvanized steel, brass, Types K, L, and M copper, cast iron, Types R-K, R-L, and R-M brass tubing, standard high frequency welded tubing conforming to ASTM B-586-73, fusion welded copper tubing conforming to ASTM B-447-72 and ASTM B-251, DWV welded brass tubing conforming to ASTM B-587-73, seamless stainless steel tubing, Grade H conforming to ASTM A-268-68, filament-wound reinforced thermosetting resin pipe conforming to ASTM D-2996 (red thread for cold water use and silver and green thread for hot and cold). Polyethylene (PE) plastic pipe conforming to ASTM D-2239-69, copper tubing size PE conforming to ASTM D-2737 for water service only if installed with compression couplings, Poly(vinyl chloride) (PVC) plastic pipe conforming to ASTM D-1785-69, Chlorinated Poly(vinyl chloride) (CPVC) plastic pipe conforming to ASTM D-2846-70, Poly(vinyl chloride) (PVC) standard dimensional ratio (SDR) 21 and (SDR) 26 conforming to ASTM D-2241-84, polybutylene (PB) plastic pipe conforming to ASTM-D-3309-85b with brass, copper or celcon fittings, Quicktite connection using a celcon asetal copolymer, polybutylene cone and stainless steel ring, plastic pipe and fittings shall bear the NSF seal of approval. (EXCEPTION: Polybutylene pipe utilizing insert fittings of brass, copper or celcon shall use only copper clamping rings.) Polybutylene hot and cold water connectors to lavatories, sinks and water closets shall conform to ASTM-D-33-09-85b, and polybutylene plastic pipe conforming to ASTM 2662 for cold water applications only. Fittings shall be brass, copper or approved plastic or galvanized cast iron or galvanized malleable iron. Piping or fittings that have been used for other purposes shall not be used for the water distribution system. All joints in the water supply system shall be made of screw, solder, or plastic joints. Cast iron water pipe joints may be caulked, screwed, or machine drawn. When Type M copper pipe, Type R-M brass tubing, standard high frequency welded tubing or stainless steel tubing is placed within a concrete floor or when it passes through a concrete floor it shall be wrapped with an approved material that will permit expansion or contraction. In no instance shall Polyethylene, PVC or CPVC be used below ground under any house or building (refer also to 815 KAR 20:060 and 815 KAR 20:073).

Section 11. Temperature and Pressure Control Devices for Shower Installations. Temperature and pressure control devices shall be installed on all shower installations that will maintain an even temperature and pressure and shall provide nonscald protection. Such devices shall be installed on all installations other than in homes or apartment complexes.

Section 12. Water Supply Control. (1) A main shutoff valve shall be provided near the curb, in or near the meter box or property line on the water service pipe. In addition, a main supply control valve shall be placed inside a foundation wall. The main supply control valve shall be accessible and provided with a drip or drain valve. A pit or similar type installation is prohibited for a potable water supply shutoff valve.

(2) Pressure on gravity tanks shall have their supply lines valved at or near their source.

(3) Each family unit in a two (2) family or multifamily dwelling shall have each family unit controlled by an arrangement of shutoff valves which will permit each unit to be shutoff without interfering with the cold water supply to any other family unit or portion of the building.

(4) In all buildings other than dwellings, shutoff valves shall be installed which permit the water supply to each piece of equipment to be isolated without interference with the supply to other equipment.

(5) Each fixture or group of bath fixtures shall be valved and each lawn sprinkler opening shall be valved. In residential construction all fixtures except bathtub and showers shall be valved individually or in lieu each group of fixtures shall be valved.

(6) A group of fixtures or fixture group shall mean two (2) or more fixtures adjacent to or near each other in the same room or back to back on a common wall.

(7) The cold water branch to each hot water storage tank or water heater shall be provided with a shutoff valve located near the equipment and only serving this equipment.

Section 13. Water Supply Protection. All concealed water pipes, storage tanks, cisterns, and all exposed pipes or tanks subject to freezing temperatures shall be protected against freezing. Water services shall be installed at least thirty (30) inches in depth.

Section 14. Temperature and Pressure Relief Devices for Water Heaters. Temperature and pressure relief devices shall be installed on all water heaters on the hot water side not more than three (3) inches from the top of the heater. Temperature and pressure relief devices shall be of a type approved by the department. When a water heater is installed in a location that has a floor drain, the discharge from the relief device shall be piped to within two (2) inches of the floor; when a water heater is installed in a location that does not have a floor drain, the discharge from the relief device shall be piped to the outside of the building with an ell turned down and piped to within four (4) inches of the surface of the ground. The relief device may also discharge through an air gap to a sump basin, service sink, open receptacle or any other point of discharge in which equivalent safety is provided as approved by the Division of Plumbing. Relief devices shall be installed on a pneumatic water system (see Section 17).

Section 15. Protection of a Private Water Supply or Source. Private water supplies or sources shall be protected from pollution in a manner approved by the department. Such approval shall be obtained before an installation is made.

Section 16. Domestic Solar Water Heaters. Domestic solar water heaters may have a "single wall heat exchanger" provided the solar panel and the water heater exchanger use a nontoxic liquid such as propylene glycol or equal, and that the heat exchanger is pretested by the manufacturer to 450 PSI and that the water heater has a warning label advising that a nontoxic heat exchanger fluid shall be used at all times and that a pressure relief valve is installed at the highest point in the solar panel.

Section 17. Domestic Water Heater Preheating Device. A domestic water heater preheating device may be used and connected with the high pressure line from the compressor of a domestic home air conditioner or heat pump water heater. Double wall heat-exchangers with two (2) separate thicknesses separating the heat exchange fluid (other than potable water) from the potable water supply shall be provided. The water inlet to the heat exchange vessel shall be provided with a check valve, and adjacent to, and at the outlet side of the check valve, an approved pressure relief valve set to relieve at five (5) PSI above the maximum water pressure at the point of installation shall be provided if the heat exchange units contain more than twenty (20) pounds of refrigerants. This device shall be equipped with a temperature limit control that would actuate a pump that would circulate hot water from the water heater through the preheater device. Condensate drain water shall be piped in accordance to the plumbing code and in no instance shall it be permitted to drain into crawl space, or into a sewer or vent stack, or be installed in areas subject to freezing. If a drain is not available or if a drain is located above the vent, a condensate pump shall be utilized.

Section 18. Tanks and Vats, below Rim Supply. Tanks and vats with potable water supply below the rim shall be subject to the following requirements:

(1) Where a potable water outlet terminates below the rim of a tank or vat and the tank or vat has an overflow of diameter not less than given in the following table, sizes of overflow pipes for water supply tanks, the overflow pipe shall be provided with an air gap as close to the tank as possible.

SIZES FOR OVERFLOW PIPES
FOR WATER SUPPLY TANKS

Maximum capacity of water supply line to tank	Diameter of over-flow pipe (inches ID)	Maximum capacity of water supply line to tank	Diameter of over-flow pipe (inches ID)
0- 50 gpm	2	400- 700 gpm	5
50-150 gpm	2 1/2	700-1000 gpm	6
150-200 gpm	3	Over 1000 gpm	8

(2) The potable water outlet to the tank or vat shall terminate a distance not less than one and one-half (1 1/2) times the height to which water can rise in the tank above the top of the overflow. This level shall be established at the maximum flow rate of the supply to the tank or vat, and with all outlets, except the air gap overflow outlet closed.

(3) The distance from the outlet to the high water level shall be measured from the critical point of the potable water supply outlet.

Section 19. Water Distribution for Fan Coil Units. When a domestic water heater is used for heating purposes through a fan coil medium, its temperature shall not exceed 140 degrees Fahrenheit. It shall utilize not less than three-fourths (3/4) inch Type M copper in its piping and its run shall not exceed 140 feet between the water heater and the heating unit (relates to 815 KAR 20:070).

Section 20. Fire Protection Systems. Fire protection systems using water from the potable water distribution system shall be equipped with two (2) check valves, one (1) of which may be an alarm check valve.

Section 21. Water Distribution and Connections to Mobile Homes. (1) An adequate and safe water supply shall be provided to each mobile home conforming to the regulations of the department.

(2) All materials, including pipes and fittings used for connections shall conform with the other sections of this code.

(3) An individual water connection shall be provided at an appropriate location for each mobile home space. The connection shall consist of a riser terminating at least four (4) inches above the ground with two and three-fourths (2 3/4) inch valve outlets with screw connection, one (1) for the mobile home water system and the other for lawn watering and fire control. The ground surface around the riser pipe shall be graded so as to divert surface drainage. The riser pipe shall be encased in an eight (8) inch vitrified clay pipe or equal with the intervening space filled with an insulating material to protect it from freezing. An insulated cover shall be provided which shall encase both valve outlets but not prevent connection to the mobile home during freezing weather. A shutoff valve may be placed below the frost depth on the water service line, but in no instance shall this valve be a stop-and-waste cock.

Section 22. Conservation of Water (refer to 815 KAR 20:070).

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: January 31, 1992
FILED WITH LRC: February 14, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 24, 1992 at 10 a.m. in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 19, 1992, (five days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is received. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

(1) Type and number of entities affected: Master and journeymen plumbers.

(a) Direct and indirect costs or savings to those affected: No costs or savings involved by implementation of this amendment.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None created by amendment.

(2) Effects on the promulgating administrative body: None beyond requirements of updating State Plumbing Code with approved amendments to regulation.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: State or local revenues will not be affected by amending regulation.

(4) Assessment of alternative methods; reasons why alternatives

were rejected: Plumbing Code Committee and Board of Housing review all proposed amendments and accept on basis within limits defined.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No known conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. Tiering was used because many of the requirements relative to water supply size and distribution need to be different for different types of facilities. For example, any areas which might have the potential hazard from back siphonage must be protected with check flow devices. Otherwise, one is not required.

PROPOSED REGULATIONS RECEIVED THROUGH NOON, FEBRUARY 14, 1992

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
Office of General Counsel

601 KAR 1:190. Paratransit as a complement to fixed route bus service.

RELATES TO: KRS Chapter 281, 49 CFR 37
STATUTORY AUTHORITY: 49 CFR 37
NECESSITY AND FUNCTION: In implementing the Americans with Disabilities Act (ADA) of 1990, the U.S. Department of Transportation promulgated 49 CFR Part 37. This federal regulation requires public entities operating a fixed route system to provide paratransit or other special service to individuals with disabilities that is comparable to the level of service provided to individuals without disabilities who use the fixed route system. However, KRS Chapter 281 requires a fixed route bus provider to provide service only on routes specifically approved by the Transportation Cabinet. The federal regulation requires public entities operating a fixed route bus system to provide complementary transit service to ADA eligible disabled persons within corridors with a width of three-fourths (3/4) of a mile on each side of each fixed route. The public entity is also required to provide a complementary transit service to other specified areas. This administrative regulation is necessary to provide intrastate authority for these public entities to comply with the federal regulations promulgated pursuant to the ADA.

Section 1. All public entities operating a fixed route bus service under a certificate issued by the Department of Vehicle Regulation pursuant to KRS Chapter 281 shall be governed by the provisions of 49 CFR Part 37.

Section 2. The federal regulation 49 CFR Part 37 as effective on October 7, 1991 is adopted by the Transportation Cabinet.

LEWIS H. DOTSON, Commissioner
DON C. KELLY, P.E., Secretary
APPROVED BY AGENCY: February 5, 1992
FILED WITH LRC: February 6, 1992 at 3 p.m.
PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on March 23, 1992 at 9 a.m., local prevailing time in the Transportation Cabinet, Fourth Floor Conference Room, corner of High and Holmes Streets, Frankfort, Kentucky 40622. Any person who intends to attend this hearing must in writing by March 18, 1992 so notify this agency. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is cancelled, written comments will only be accepted until March 18, 1992. Send written notification of intent to attend the public hearing or written comments on the administrative regulation to: Sandra G. Pullen, Staff Assistant, Transportation Cabinet, State Office Building, 501 High Street, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen
(1) Type and number of entities affected: Five municipal governments who provide a fixed route bus service under the provisions of KRS Chapter 281 and the disabled citizens near to the fixed bus route.
(a) Direct and indirect costs or savings to those affected:
1. First year: It will cost the municipalities more to provide this service, but how much more is unknown. It is dependent upon the number of disabled persons in the area wishing to take advantage of the expanded service. However, not providing the expanded service would cause them to lose federal funds from the Federal Transit Administration.
2. Continuing costs or savings: Same each year.
3. Additional factors increasing or decreasing costs (note any effects upon competition): No factors affect competition.
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: Will prevent a loss of funds coming to Kentucky by the Federal Transit Administration by allowing the five municipalities to comply with federal law.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Federal mandate so no alternatives.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Conflicts with KRS Chapter 281.
(a) Necessity of proposed regulation if in conflict: Federal mandate.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: The Transportation Cabinet has requested that a bill be considered by the 1992 General Assembly to resolve the conflict.
TIERING: Was tiering applied? Yes. Tiering was applied in that it was only made applicable to those public entities covered by federal regulation. Any private entities providing a similar service in another community is exempted from the federal and state regulation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal regulation 49 CFR Part 37 adopted pursuant to the 1990 Americans with Disabilities Act.
2. State compliance standards. Adopt the federal regulations and require that they govern public entities which operate a fixed route bus service.
3. Minimum or uniform standards contained in the federal mandate. Requires public entities which operate a fixed route bus service to provide essentially the same service to the disabled in a quarter-mile corridor around the fixed route. Limits the amount the public entity can charge for this service.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, the exact same requirements.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes X No
If yes, complete questions 2-4.
(2) State what unit, part or division of local government this administrative regulation will affect. Those public entities which operate a fixed route bus service pursuant to the provision of KRS Chapter 281 will be affected. There are only five cities in Kentucky which operate bus services under the provisions of KRS Chapter 281 instead of KRS Chapter 96A. Their public transit unit of the municipal government will be affected.
(3) State the aspect or service of local government to which this administrative regulation relates. The providers of fixed route bus service will have to expand their service areas and limit their fees for disabled persons.

(4) Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): While it will cost the cities more funds to operate this expanded service, not to do so would jeopardize their federal funds from the Federal Transit Administration. In addition, most of the cities want to provide this or a similar service to their disabled citizens and have been prohibited from doing so by state law.

Expenditures (+/-):

Other Explanation: See Federal Mandate Comparison form.

EDUCATION PROFESSIONAL STANDARDS BOARD

704 KAR 20:610. Kentucky Primary Alternative Certification Program.

RELATES TO: KRS 161.028, 161.030, 161.048, 161.049

STATUTORY AUTHORITY: KRS 161.028, 161.030, 161.048, 161.049

NECESSITY AND FUNCTION: KRS 161.048 directs the Education Professional Standards Board to adopt regulations establishing standards for local district training programs and the approval and evaluation process for an alternative training program for primary teachers. This regulation establishes the required elements of a local district program, outlines the training and responsibilities required of the professional support team, the candidate eligibility requirements, the procedures for admission, the professional development plan, the candidate training program, a candidate appeals process, and a program evaluation. The alternative training program as defined in KRS 161.048 is an alternative program to prepare a candidate for initial teacher certification. A local district or a group of districts may seek approval to offer the program to prepare teachers of primary school programs as defined in KRS 158.030(2) for the early elementary certificate established in 704 KAR 20:005, except for the preparation of teachers of exceptional children.

Section 1. School District Plan. (1) Submission and approval. A local school district or group of districts may seek approval for an alternative certification program to prepare candidates in all instructional fields except special education for initial teacher certification. The district plan must be approved by the Education Professional Standards Board prior to employment of candidates in the program. School district alternative certification plans must be submitted to the Office of Teacher Education and Certification in the Kentucky Department of Education for review. The Office of Teacher Education and Certification shall forward all plans that meet review criteria to the Education Professional Standards Board for approval. District plans must be signed by the superintendent of each participating district. The district plan shall include the following:

(a) Written evidence that the district has sought joint sponsorship of the program with a college or university.

(b) The names and qualifications of the individuals who will provide formal instruction to participants.

(c) A description of the required training program for members of the professional support team.

(d) A tentative budget to include anticipated personnel costs for the period of time for which approval is requested.

(e) The name, title, work address, and telephone number of the program director.

(f) A description of the candidate appeals process.

(g) Professional support team roles and expectations for each stage of the candidate training program.

(h) Time and personnel allocations for permitting Phase 3 (as defined in Section 6 of this regulation) candidates to observe an experienced teacher (as defined in Section 6 of this regulation) at least one (1) class period per week.

(2) Review criteria and procedures.

(a) Staff in the Office of Teacher Education and Certification shall review each plan in terms of compliance with established alternative certification program regulations; adequacy of financial and personnel resources; and qualifications of training program staff, particularly in the areas of instruction and supervision.

(b) Office of Teacher Education and Certification staff shall recommend acceptance or denial of the plan to the Education Professional Standards Board along with a rationale for the recommendation. The board shall review the staff recommendations, approve or deny each plan, and transmit the decision and rationale for the decision to the district or group of districts. Approval decisions granted by the board shall specify the period for which approval is granted. The approval period shall not exceed five (5) years. If the plan is denied approval, it may be revised and resubmitted.

(3) Extension of approval. The superintendent of a district or superintendents of a group of districts may request an extension of program approval for an additional period not to exceed five (5) years. The request shall include results of program evaluation and a financial impact analysis. Additional assurances of program quality as requested by the Education Professional Standards Board shall be provided.

(4) Program revisions. Significant deviations in program components shall be submitted to the Education Professional Standards Board for approval prior to implementation of program changes. The proposed revision along with the corresponding section of the original plan and a rationale for the revision are to be sent to staff in the Office of Teacher Education and Certification for review and presentation to the Education Professional Standards Board for approval.

Section 2. Professional Support Team. The school district shall assign a professional support team to each candidate. The professional support team shall be composed of a school principal, an experienced teacher, a college or university faculty member, and an instructional supervisor. If an instructional supervisor or college or university faculty member is not available, the district shall assign a member with comparable experience. The school principal shall serve as the chair of the team.

(1) Principal. The principal of the school where the candidate is initially assigned to teach shall chair the professional support team. The chair shall keep records of the following:

(a) All informal classroom observations and critiques.

(b) All formal classroom observations and evaluations.

(c) Documented changes made in the candidate's professional development plan.

(d) At regular intervals, the chair shall convene the candidate and the team to discuss professional progress and modifications in the professional development plan if needed.

(2) Experienced teacher. The experienced teacher shall hold current Kentucky certification valid for teaching in the primary grades at Rank I or II levels and shall have at least four (4) years of full-time teaching experience. At least one (1) year of the teaching experience shall be in the district that has employed the candidate and at least one (1) year shall be in a primary school program.

(3) Instructional supervisor. The instructional supervisor shall hold a valid Kentucky certificate for supervision of instruction and shall have at least one (1) year of prior experience in the employing school district. If an instructional supervisor is not available, the district shall assign a person who holds a valid Kentucky certificate for supervision of instruction and who has held the full-time position of supervisor of instruction for at least one (1) year within the three (3) preceding years.

(4) College or university faculty member. The college or university representative shall be a full-time or part-time faculty member who has credentials or experiences in child development, early childhood education, or a closely related field. If a faculty member is not available, the district shall assign a person approved by a college or university who has held the position of college faculty member within the preceding three (3) years and whose credentials or experiences are in child development, early childhood education, or a closely related field.

(5) Training for professional support team. Each member of the professional support team shall successfully complete the Kentucky Teacher Internship Program (KTIP) training for classroom observers. Each member of the support team shall successfully complete the written and coding tests for the KTIP prior to service on a professional support team. Training for a team member shall not occur after Phase

1 of the candidate training begins.

Section 3. Candidate Eligibility Requirements. (1)(a) A bachelor's degree with a minimum grade point average of two and five-tenths (2.5) on a four (4.0) point scale.

(b) Kentucky teacher certification passing scores on the Communication Skills and General Knowledge Tests of the National Teacher Examinations (NTE) Core Battery.

(c) Completion of at least twenty-one (21) semester hours of credit in a planned program of child development or a related area or at least five (5) years of volunteer or work experience in the field of early childhood education, child development, or other experience with young children.

(2) Waiver of grade point average and experience requirements. The Education Professional Standards Board may grant a waiver of the grade point average or experience requirements to candidates having at least a two (2.0) on a four (4.0) point scale provided the candidate has attained exceptional experience working with young children.

Section 4. Procedures for Admission. All candidates for entry into an alternative certification program must receive a one (1) year provisional teaching certificate prior to program participation. Candidates must apply to the Office of Teacher Education and Certification in the Kentucky Department of Education for the one (1) year provisional teaching certificate and shall be classified as Rank IV for salary purposes. The following are to be submitted with the application:

(1) Official transcripts of all college work.

(2) Official National Teacher Examinations scores.

(3) Written evidence of an offer of employment by a school district with an approved alternative certification program.

(4) Evidence of a criminal record review.

(5) Three (3) recent letters of reference from persons not related to the candidate who are familiar with the candidate's professional work.

(6) Documentation of the candidate's employment history with a current position description. Unemployed candidates are to submit the description of the position held immediately prior to application for entry into the alternative certification program or other evidence of work with young children.

Section 5. Professional Development Plan. (1) An individual professional development plan consistent with the district plan for assisting a teacher toward proficiency as described in KRS 156.101(6)(c)6 and with the district's approved alternative certification proposal shall be developed for each candidate. The professional development plan shall be discussed with the candidate prior to the beginning of the program and shall address all phases of the training program and shall include a minimum of 250 hours of formal instruction. Formal instruction shall be for the purpose of ensuring that the candidate acquires the competencies established in 704 KAR 20:290, TEC 22.1 and shall relate directly to the candidate's professional development plan and to the knowledge base of the Kentucky Teacher Internship Program (KTIP).

(2) Approval of professional development plan. Each candidate's professional development plan shall be submitted to the Education Professional Standards Board for review and approval. If the board judges that the professional development plan is not consistent with the approved district plan, the board may deny approval of the individual plan and may deny the candidacy until an appropriate professional development plan is approved. For each candidate seeking certification through an approved alternative training program, the district shall submit the following to the Office of Teacher Education and Certification:

(a) Identification of the school or an accurate description of another location, in which the candidate shall be trained during the first eight (8) weeks of the program. Reasons for selecting a nonschool site shall be provided.

(b) Identification of the school or an accurate description of another location, in which the candidate shall teach and be trained during the two (2) subsequent eighteen (18) week periods of training.

(c) The proposed daily work load appropriate for Rank IV and a schedule of the candidate for each phase of the training.

(d) A copy of the official letter offering employment to the candidate.

(e) Evidence that the candidate has accepted the offered employment.

(f) The names and positions of the members of the four (4) person professional support team to include evidence that each member has successfully completed training and testing for participation in the Kentucky Teacher Internship Program or the required update as established in 704 KAR 20:320.

Section 6. Candidate Training Program. The candidate training program shall provide essential knowledge and skills in three (3) phases.

(1) Phase I training. The four (4) member professional support team and the candidate shall meet before the candidate begins Phase 1 training for orientation to the approved training program and to the responsibilities and expectations for each team member and the candidate. Phase 1 training shall include a full-time seminar and practicum of not less than eight (8) weeks. Phase 1 training shall occur prior to the time the candidate assumes responsibility for a classroom and shall include the following:

(a) An introduction to basic teaching strategies through supervised teaching experiences with students.

(b) Integration of the candidate's supervised teaching experience with formal instruction in child development and learning, basic teaching strategies, classroom management, dealing with diverse learning styles of diverse student populations, student assessment with emphasis on methods of continuous program assessment and authentic assessment tasks, an understanding of school governance including school- based decision-making, and the knowledge base for the Kentucky Teacher Internship Program.

(c) A formal orientation to the policies, organization, curriculum, and student characteristics of the employing district. The orientation shall be supervised or provided by one (1) or more members of the professional support team.

(2) Phase 2 training. Phase 2 training shall include eighteen (18) weeks of formal instruction, informal observations, and critiques of the candidate's performance. During this period the candidate shall have responsibility on a one-half (1/2) time basis for a classroom assignment. Formal instruction, informal observations, critiques, and evaluations shall relate directly to the candidate's professional development plan and to the competencies established in 704 KAR 20:290 and subsection (1)(b) of this section. Phase 2 training shall comply with the following:

(a) Prior to or during the first week of Phase 2 training, the professional support team shall discuss with the candidate the purpose and expectations of informal observations, critiques, formal observations, and evaluations.

(b) The candidate shall be visited, informally observed, and critiqued at least once per week by one (1) or more members of the professional support team. During the eighteen (18) week period, each member of the support team shall visit, informally observe, and critique the candidate at least five (5) times.

(c) Each team member shall schedule a formal observation of the candidate at least once during the first five (5) weeks, once during the second five (5) weeks, and once during the last eight (8) weeks.

(d) The support team shall meet to formally evaluate the candidate at the end of five (5) weeks, at the end of ten (10) weeks, and at the end of eighteen (18) weeks. After each set of formal evaluations, the support team shall meet with the candidate to discuss evaluation results. Modifications of the candidate's professional development plan may be needed as a result of the formal evaluations.

(3) Phase 3 training shall include eighteen (18) weeks of formal instruction, informal visits and critiques of classroom performance, and at least two (2) formal observations and evaluations. During Phase 3 training, the candidate shall have a full-time classroom assignment. Phase 3 training shall comply with the following:

(a) Each member of the professional support team shall informally visit and critique the candidate at least once per month. Each informal observation shall last at least one (1) hour.

(b) The candidate shall spend at least one (1) class period per

week observing an experienced teacher. Teachers selected for observation shall represent a variety of models of primary classrooms and shall be chosen for their ability to demonstrate a variety of exemplary teaching techniques and strategies.

(c) Each member of the professional support team shall formally observe and evaluate the candidate at least twice. No more than eight (8) weeks shall elapse without a formal observation.

(d) Formal instruction shall continue during this period.

(4) Completion of training program.

(a) The candidate shall take the professional knowledge test of the Core Battery of the National Teacher Examinations (NTE) and the specialty area test identified in 704 KAR 20:305 no earlier than the Phase 3 training period. The scores required of the candidate shall be those established in 704 KAR 20:305. The professional support team shall not recommend approval for a candidate until passing scores are achieved on both tests.

(b) Upon successfully completing the alternative training program, the Professional Knowledge Test of the Core Battery of the National Teacher Examinations, and the specialty area test as established in 704 KAR 20:305, and upon receiving a recommendation of approval by the professional support team, the candidate shall be issued a statement of eligibility for participation in the Kentucky Teacher Internship Program established in KRS 161.030 and implemented through 704 KAR 20:320.

(5) Informal observation and critique.

(a) During an informal observation each support team member shall record observations of the candidate's performance in relation to the Kentucky Teacher Internship Program knowledge base and the performance of students in the classroom. Team members may use the classroom observation instrument of the Kentucky Teacher Internship Program. Each informal observation leading to a critique shall be no less than twenty (20) minutes. Visits for informal observations shall be announced and unannounced and shall include the range of times and activities for which the candidate has classroom responsibilities.

(b) A conference shall be held with the candidate following each informal observation to discuss results. The conference shall occur as soon as possible after the observation in order to assist the candidate in improving classroom performance and the performance of students.

(6) Formal observation and evaluation.

(a) Formal observations shall be scheduled in advance with the candidate and shall last no less than one (1) hour each. Team members shall use the classroom observation instrument of the Kentucky Teacher Internship Program during each formal observation and shall provide observation results to the candidate as soon as possible after the end of the formal observation.

(b) As a part of the formal evaluation, team members shall review the candidate's progress as recorded on observation instruments, notes, and other documents relating to the candidate's classroom performance.

(c) Each formal evaluation shall consist of the team's written assessment of the candidate's performance as measured through formal and informal observations.

(d) Following each set of formal evaluations, the team shall meet with the candidate to discuss evaluation results which may lead to modification of the candidate's professional development plan. The team and the candidate shall plan together for the candidate's professional growth over the following training periods.

(7) Evaluation report of the candidate.

(a) At the conclusion of the alternative training program, the chair of the support team shall prepare a comprehensive evaluation report on the candidate's performance. This report shall be submitted to the Education Professional Standards Board and shall contain a recommendation as to whether the teacher candidate should be issued a statement of eligibility to complete the internship pursuant to KRS 161.030. The support team shall make one (1) of the following recommendations:

1. Approved: recommends issuance of certificate to complete the internship;

2. Insufficient: recommends the candidate be allowed to seek reentry into a teacher preparation program; or

3. Disapproved: recommends the candidate not be allowed to enter a teacher preparation program.

(b) All team members shall vote on the final recommendation. If the professional support team fails to achieve a majority vote (3-1 or 4-0) for any recommendation, the decision shall be interpreted as falling under the insufficient category. The team chair shall prepare a narrative describing the vote. Team members may attach an individual position statement to any recommendation. All documents shall be forwarded by the chair to the Education Professional Standards Board for review.

Section 7. Candidate Appeals Process. (1) The sponsoring district or consortium shall establish an appeal process for candidates in the alternative training program and shall notify the Education Professional Standards Board of this process at the time of application for approval of the program.

(2) Complaints relative to failure of the sponsoring district or consortium or the professional support team to comply with and follow all prescribed statutory and regulatory requirements and procedures of an approved alternative training program shall be directed to and assessed by the superintendent or designee of the sponsoring district or consortium. The district shall notify the Education Professional Standards Board of all appeals and actions taken as a result of appeals.

Section 8. Program Evaluation. (1) The district or consortium proposal for an alternative teacher preparation program shall include a schedule for short-range program evaluation to include, but not be limited to, an evaluation of the effectiveness of the formal instruction in relation to acquisition by the candidate of the knowledge and competencies specified in this regulation, the supervised teaching, the assistance provided by the professional support team, and the effectiveness of the candidate in the classroom during the two (2) eighteen (18) week training sessions. The plan shall include a schedule for long-range program evaluation to include, but not be limited to, the goals of the alternative preparation program and the effectiveness of the program in meeting these goals.

(2) The Education Professional Standards Board shall conduct, or cause to be conducted, periodic reviews of the district training programs which shall include on-site evaluations to verify the quality of the programs. The on-site evaluations shall be scheduled in advance with the district to allow sufficient time for the district to provide evaluation results and other necessary records and documents, ensure availability of program staff and candidates, and provide other facilities for the conduct of evaluation. The Education Professional Standards Board shall provide a copy of its evaluation report to the district within thirty (30) working days of receipt of the board's evaluation report. The board shall review the report and response and shall take appropriate action. If in the judgement of the board an alternative training program exhibits continuing and insurmountable weaknesses, the board may direct termination of the program at the end of the school year.

JANICE WEAVER, Chairman
APPROVED BY AGENCY: February 4, 1992
FILED WITH LRC: February 13, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on March 26, 1992, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 21, 1992, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Dr. Traci Bliss, Executive Secretary, Education Professional Standards Board, 18th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dr. Dianne Worthy

(1) Type and number of entities affected: Local school districts opting to offer alternative certification programs and individuals enrolling in such program.

(a) Direct and indirect costs or savings to those affected: Estimate that costs will affect 2-5 districts the first year, 5-10 the second year.

1. First year: Staffing and training costs to participating districts, time and salaries of four-member support team per candidate and salary for candidate.

2. Continuing costs or savings: Continued costs, same as the first year unless number of candidates increases.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Number of candidates in each district's program each year.

(b) Reporting and paperwork requirements: Districts offering alternate certification program will prepare and file application for approval by the Education Professional Standards Board. Candidates' academic credentials and work experience will be reviewed by districts; comprehensive records on candidates' admission, employment, progress through the program and completion must be maintained by district along with all communication in this regard with the Education Professional Standards Board and of all results of candidate and program evaluation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Substantial and continuing informational paperwork to every district and teacher education institution every year.

1. First year: Staff salary and operating costs for the preparation of application packets; dissemination of information; review of proposals; presentation and disposition by EPSB; communication between districts and EPSB; and the certification of the candidate.

2. Continuing costs or savings: Increase in staff salary and operating costs resulting in any increase in number of proposals to be reviewed. Increase in number of final reports to be processed and candidates to be certified. Costs related to program review and on-site evaluation.

3. Additional factors increasing or decreasing costs: Frequency of on-site evaluations.

(b) Reporting and paperwork requirements: Processing and recordkeeping related to review and approval of district plans. Processing of final reports. Preparation of proposal packets each year. Monitoring and evaluation of programs, certification of candidates and maintenance of all records pertaining to the above.

(3) Assessment of anticipated effect on state and local revenues: Costs associated with implementing program to districts choosing to participate.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Required by KRS 161.049.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: KRS 161.030 and related regulations on preparation of school personnel.

(a) Necessity of proposed regulation if in conflict: To provide an alternative route for preparing teachers required by KRS 161.049.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: KRS 161.049 mandates the regulation.

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. No district is required to participate in the alternative certification program. However, this regulation applies uniformly to all local school districts that choose to participate.

EDUCATION PROFESSIONAL STANDARDS BOARD

704 KAR 20:640. Repeal of 704 KAR 20:140.

RELATES TO: KRS 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY AND FUNCTION: KRS 161.028 directs the Education Professional Standards Board to "reduce and streamline the credential system. . . ." New regulations for the preparation-certification of school media librarians in July 1988 which include the provision for endorsement from one (1) grade level to the other. This regulation provides for repealing the former regulation which has been superseded by 704 KAR 20:146.

Section 1. 704 KAR 20:140, Librarians, is hereby repealed.

JANICE WEAVER, Chairman

APPROVED BY AGENCY: February 4, 1992

FILED WITH LRC: February 13, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on March 26, 1992, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 21, 1992, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: Dr. Traci Bliss, Office of Teacher Education and Certification, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Akeel Zaheer

(1) Type and number of entities affected: None

(a) Direct and indirect costs or savings to those affected: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: Notification to institutions of higher education regarding deadline dates for discontinuing certification programs and issuance of certification.

(3) Assessment of anticipated effect on state and local revenues: No effect on state and local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: New, revised standards and requirements for an equivalent certification area were adopted in 1988 making 704 KAR 20:140 redundant.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Certification requirements are uniformly applicable to all individuals, school districts, and institutions of higher education as appropriate.

EDUCATION PROFESSIONAL STANDARDS BOARD

704 KAR 20:650. Criteria for preparation-certification programs.

RELATES TO: KRS 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY AND FUNCTION: KRS 161.028 directs the Education Professional Standards Board to "establish standards and requirements for obtaining and maintaining a teaching certificate" and to "reduce and streamline the credential system...." This regulation establishes the criteria and procedures for justifying the development

of new certification categories and related certificate programs and for their continuance.

Section 1. Any proposal for the development of a program of preparation-certification for a new position or for the continuance of a certification program shall be evaluated in writing by the Education Professional Standards Board on the basis of the following criteria:

(1) There are compelling reasons for establishing and continuing a preparation-certification program. Alternate procedures for ensuring professional competence for the position are either not feasible or are not appropriate. The likelihood of unsatisfactory practices represents a high risk for noncertification alternatives.

(2) A distinctive and specific body of knowledge exists for the school position which cannot be attained without a specific preparation-certification program. The body of knowledge and skills is sufficiently extensive to justify a program of preparation and proficiency cannot be earned and maintained through staff development or in noncredit experiences.

(3) There are pupils having unique characteristics which require the teacher to have specialized knowledge and skills or there is a need for special services for which unique professional preparation is required.

(4) There is a sufficient demand for training for the position to warrant the development of a preparation-certification program at one (1) or more Kentucky teacher education institutions and for sustaining the program over a period of several years.

(5) The preparation-certification requirement is cost effective in terms of the anticipated benefits to the local school district.

(6) The proposed or existing program of preparation-certification is not equivalent or substantially equivalent to a license or certificate issued by another professional licensing board that represents licensed professionals in that field and that is recognized by the Council on Postsecondary Accreditation.

JANICE WEAVER, Chairman

APPROVED BY AGENCY: February 4, 1992

FILED WITH LRC: February 13, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on March 26, 1992, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 21, 1992, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: Dr. Traci Bliss, Office of Teacher Education and Certification, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Akeel Zaheer

(1) Type and number of entities affected: 176 local school districts and 25 institutions of higher education that offer certification programs and individuals seeking to qualify for professional positions in local schools.

(a) Direct and indirect costs or savings to those affected: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: N/A

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Office of Teacher Education and Certification and Education Professional Standards Board must review certification categories and determine need in order to create or maintain the categories.

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: Need for certification categories and related program must be documented and specific criteria must be met.

(3) Assessment of anticipated effect on state and local revenues: No effect on state and local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The lack of specific criteria and procedures led to proliferation of certificate categories.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Certification requirements are uniformly applicable to all individuals, school districts, and institutions of higher education as appropriate.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of the February 3, 1992 Meeting

The February meeting of the Administrative Regulation Review Subcommittee was held on Monday, February 3, 1992 at 2 p.m. in Room 327 of the Capitol. Chairman Tom Kerr called the meeting to order, and the secretary called the roll. The minutes of the January 3 and 6, 1991 meeting were approved.

Present were:

Members: Representative Tom Kerr, Chairman; Senators Gene Huff, Pat McCuiston, and Bill Quinlan; Representatives Jim Bruce and James Yates.

Guests: Greg Holmes, Sheila Tharpe, Sandy Godby, Crime Victims Board and Board of Claims; Richard L. Ross, Board of Pharmacy; Dr. Donald Notter, Lee Sisney, Department of Agriculture; Dave Rosenbaum, Jim Villines, William C. Eddins, Greg Higdon, James Cash, Linda Stacy, Kathlin M. Hayrame, Doyle Willis, Natural Resources and Environmental Protection Cabinet; Morgan Kelly, Petroleum Storage Tank Environmental Assurance Fund Commission; Tom Campbell, Lori Poole, Corrections Cabinet; Sandra G. Pullen, Transportation Cabinet; Kevin Noland, Michael L. Luscher, Department of Education; Thomas Lyons, University of Louisville; Patrick Watts, Department of Insurance; Susan Mastin Scott, Rebecca Goodman, Bob Johnston, Eddie B. Smith, Ralph Dennis, Claude G. Rhorer, Jr., Public Service Commission; Michael Lankford, Kentucky State Racing Commission; Judith Walden, Department of Housing, Buildings, and Construction; Ked Fitzpatrick, Hugh Spalding, Robert Calhoun, Gary W. Bevill, Michael Cheek, Diana Gaetz, Pat Pennington, Dr. Patricia Nicol, Mark Cornett, Ralph Von Derau, David Crawe, Sue Tuttle, Pat Bishop, Harry Dickerson, Kenneth P. Crawford, M.D., Jeanne Southworth, Janice Kline, Marion Guarnieri, Joyce Lea, Eric Friedlander, Mike Townsend, Robin Rena Gray, Gary R. Hammonds, Cabinet for Human Resources; Richard Riedel, Joel B. Turner, Kentucky Racing Health and Welfare Fund; John Armes, Mike Ovesen, Gene Cooper, Michael J. Finney, Kentucky Pork Producers; David Vance, Jim Judy, KAHCF; Mark E. Garber, Kentucky Association of Professional Surveyors; Kathy Gannoe, Bluegrass LTC Ombudsman Program; Samuel L. Perkins; James Street, Linda Ain, Diane Parrish, Lexington Fayette Urban County Government; Anne Porter Rouse, Long-term Care; Ron Adams, Humana.

LRC Staff: Joe Hood, Greg Karambellas, Tom Troth, Patrice Carroll, Susan Wunderlich, Donna Pierce, Peggy Jones, Susan Eastman, Lee Huckleberry (Speaker Blandford's Office).

The Subcommittee determined that the following administrative regulations, as amended, complied with KRS Chapter 13A:

Board of Claims: Practice and Procedure

108 KAR 1:030 (Filing claims, original signature of claimant required.) This administrative regulation was amended to comply with the format and language requirements of KRS 13A.222. Senator Huff asked why the agency required both the claimant's and attorneys signature on the claim form. Board personnel responded that this verified that the claimant wished to pursue the claim. In response to questions by Chairman Kerr, agency personnel stated that: (1) there was a 2 year waiting period before a hearing; (2) the lag was due to the small number of hearing officers (5 hearing officers), and the number of claims filed annually (1,400); (3) the Board of Claims did not have federal funds for the hiring of additional hearing officers; (4) The Board made a decision on a claim within 30 days after receipt of hearing officer's recommendation. Representative Bruce asked why the Board did not have more hearing officers. Board personnel stated that its request for more hearing officers had not been approved. Representative Bruce asked whether the hearing officers were "selective" in the cases they heard. Board personnel stated that hearing officers were under contract with the Board. In response to a question by Senator Huff, Board personnel stated that while there were no federal funds available to the Board of Claims, there were federal funds available for the Crime Victims Compensation Board. Senator McCuiston requested the Board to investigate whether all hearing officers were caring a fair share of the case load. The Subcommittee approved a motion requesting LRC to ask the appropriate legislative subcommittee to determine whether there is a need for additional hearing officers.

General Government Cabinet: Board of Pharmacy

201 KAR 2:061 (Procedures followed by the Kentucky Board of Pharmacy in the investigation and hearing of complaints.) This administrative regulation was amended to: (1) provide the correct statutory authority citation; (2) comply with the drafting requirements of KRS Chapter 13A.222(4)(b) governing the expression of mandatory requirements; and, (3) establish specific procedures for investigations, settlement, and hearings.

Department of Agriculture: Livestock Sanitation

302 KAR 20:230 (Fee basis schedule.) This regulation was deferred from January, 1992, to amend various sections to conform with the requirements of KRS Chapter 13A. The agency submitted amendments to provide a summary of material incorporated by reference as required by KRS 13A.2251(2); and provided copies of the forms incorporated by reference. They also agreed to amend the regulation to conform to the drafting requirements of KRS 13A.222. Section 6, line 6 was amended by deleting the phrase "are effective first day of February, 1992" and inserting "shall be for services performed on or after February 1, 1992". The Fee Basis Agreement was amended in Section A4, line 1, by deleting "reasonably" and insert "a"; Section A5, by deleting "that have been issued or will be"; Section B, line 3, by making other KRS Chapter 13A corrections; and Section C, by adding a new subsection 6 to specify restrictions on the payment to the veterinarian.

Corrections Cabinet: Policies and Procedures

501 KAR 6:020 (Corrections policies and procedures.) This administrative regulation was amended to amend policy and procedures manuals to comply with the drafting requirements of KRS 13A.222 relating to format, prohibited words, and expressions of mandatory requirements. In addition, CPP 17-01-01 was amended to clarify the term "camouflage"; and to correct an incorrect reference to "male swimsuits and blouses" and "female swim trunks". Representative Bruce asked why all policies were not consistent throughout the prison system. As an example, he stated that a constituent was not permitted to transfer a TV set from one institution to another. Agency personnel replied that they were attempting to establish a uniform policy and procedure manual. Agency personnel offered to investigate the incident mentioned by Representative Bruce.

501 KAR 6:150 (Eastern Kentucky Correctional Complex.) Various policies incorporated by reference in this regulation were amended to specify the correct statutory citations in the "Reference" line of each policy.

Education and Humanities Cabinet: Department of Education: Office of District Support Services: Facilities Management

702 KAR 4:050 (Building sites; inspection, approval.) Senator McCuiston stated to Kevin Noland, Counsel to the Department, that one county in his district had been told to tear down three existing buildings and build three new ones. Senator McCuiston stated that in this time of fiscal crisis, that the state needs to be very careful about the expenditure of funds and buildings should not be torn down needlessly. Chairman Kerr questioned the requirement of an application form in Section 4(7) (erroneously numbered as 7. in the original regulation) that is not incorporated by reference in this regulation. The agency agreed to amend this subsection to incorporate the required form by reference.

Public Protection and Regulation Cabinet: Department of Insurance: Health Insurance Contracts

806 KAR 17:066 (Medicare supplement insurance policies.) The Subcommittee and agency agreed to amend this regulation as follows: (1) Correct statutory citation in the RELATES TO line; (2)

correct typographical errors; (3) insert inadvertent omissions; (4) amend forms and notices to comply with federal requirements and to clarify requirements.

Cabinet for Human Resources: Office of Inspector General: Long-Term Care

The two administrative regulations listed below were reviewed by the Administrative Regulation Subcommittee at its January 7, 1992, meeting. At this meeting, Dandridge F. Walton and Marie Alagia Cull, Kentucky Association of Health Care Facilities (KAHCF); Karen Jones, Protection and Advocacy Division, and Kathy Gannoe, Bluegrass LTC Ombudsman Program, appeared before the Subcommittee. Eric Friedlander (CHR) appeared before the Subcommittee to answer members questions, and David Vance, counsel for Kentucky Association of Health Care Facilities (KAHCF) signed up to agree with the suggested amendments to both administrative regulations. At the January meeting:

The following objections to these administrative regulations were raised by KAHCF: (1)(a) 900 KAR 2:050, Section 2, exceeded federal requirements, established in 42 CFR 483.12, by requiring that facilities' readmission policies with regard to Medicaid patients also apply to private pay and Medicare patients; (b) federal law contains no provisions governing the readmission of Medicare and private pay residents; (c) federal law requires readmission after the expiration of the bed-hold period only of Medicaid recipients; (d) Section 2(7)(a)3 exceeds federal requirements by applying the standard for transfer and discharge to readmission.

(2)(a) Section 2 contradicts KRS 216.557 by requiring the issuance of a Type B citation without requiring a direct or immediate relationship of a violation to the health, safety or security of a resident, in addition to a violation of federal or state law or administrative regulation; (b) facility appeal rights are violated by 900 KAR 2:040, Section 7; (c) Section 2 violates KRS 216.557(2) by establishing a $200 fine for each day a facility fails to comply with Cabinet findings, because the statute requires a grace period for compliance and requires the administrative body to exercise its discretion in assessing a fine within a range of $100 to $500 rather than permitting a uniform fine to be assessed in all cases.

Ms. Jones and Ms. Gannoe stated that these administrative regulations complied with federal law because: (1) federal law required the same procedures regardless of source of payment, therefore, requiring these procedures with regard to Medicare and private pay patients as well as Medicaid patients; (2) the requirements are necessary in order to provide patients protection from unilateral transfers or discharge by facilities; (3) the Cabinet had exercised the discretion granted it by KRS Chapter 216 to determine the specific fine that would be levied. Agency personnel reiterated item (3) of the Jones and Gannoe statement.

Members of the Subcommittee stated that it was unclear whether: (1) the administrative regulation exceeded federal requirements; (2) state statutes permitted the assessment of a uniform fine or required an assessment in each case; (3) a grace period for correction was allowed by the statutes; (4) a fine could be assessed for each day of noncompliance.

At the request of the Subcommittee, agency personnel and representatives of regulated entities this administrative regulation was deferred until Subcommittee staff could research federal regulatory requirements and KRS Chapter 216.

900 KAR 2:050 (Transfer and discharge rights.) At the February 3 meeting of the Subcommittee, Subcommittee staff stated that 900 KAR 2:050, and relevant subsections relating to readmission, exceed 42 CFR 483.12 (3)(b)(3)(i)(ii). This administrative regulation requires a nursing facility to establish a written policy regarding readmission, when hospitalization or therapeutic leave exceeds a state's bed hold period. The federal requirement applies only to Medicaid, not to Medicare or private pay residents. Section 2(7)(a)3 of this administrative regulation wrongly applies the same standards for "readmission" that are applied for transfer and discharge. It further erroneously provides that these standards "shall be the only limitations to the return of a resident".

Arguments have been made that the requirement of 42 C.F.R. 483.12(c)(1) for equal treatment of all patients means that "readmission" is included in "transfer, discharge and provision of services". Subcommittee staff stated that 42 C.F.R. 483.12(c)(1) does not include "readmission" under "transfer", "discharge" or "provision of services"; and that 42 CFR 483.12(b)(1),(2) protects all residents by requiring notice of bed hold and readmission policies before transfer, and upon transfer.

Subcommittee staff stated that 42 CFR 483.12(3)(b)(3)(i),(ii) requires a nursing facility to establish a written policy regarding readmittance, when hospitalization or therapeutic leave exceeds a state's bed hold period. However, it extends this requirement only to those who require the services of the facility and are eligible for Medicaid. Therefore, Section 2(7)(c) exceeds the federal requirements, and does not comply with 42 CFR 483.12, KRS 13A.245, and, KRS Chapter 13A.

This administrative regulation was amended as follows: (1) Section 2(7)(a)1 was amended to remove the word "Medicare"; and, language was added to include residents "who have an application pending for" Medicaid. (2) Section 2(7)(a)3 was amended to delete existing language, and to add "for residents who do not receive or do not have an application pending for Medicaid, the facility's established policy governing readmission.". (3) Section 2(7)(c)3 was amended to delete language referring to "Medicare", in order to comply with the limitation in the federal regulation limiting the bed hold requirement to Medicaid residents.

With regard to the sections of this administrative regulation governing penalties, Subcommittee staff stated that 42 USC Section 1396r(h) permits a state to impose remedies alternative to those specified in 42 USC Section 1396r(h)(2)(A)(i)-(iv). Federal authorities had approved alternative remedies on April 19, 1990. These alternative remedies are KRS 216.555, KRS 216.557, KRS 216.550. In violation of KRS 13A.120(2)(f), the penalties imposed by this administrative regulation did not comply with the statutory scheme established by applicable sections of KRS Chapter 216, because the Cabinet was not required: to determine the: (1) type of violation; (2) effect on the resident; (3) amount of the various penalties imposed by KRS Chapter 216; (4) period within which a violation shall be corrected; (5) extensions were to be granted; and (6) whether waiver of KRS Chapter 216 penalties was permissible under the facts of the particular violations.

Section 3(4) was amended to delete new and existing language and to provide that the Cabinet shall enforce the provisions of this administrative regulation pursuant to the applicable sections of KRS Chapter 216.

The Subcommittee approved a motion adopting the amendments to this regulation.

900 KAR 2:060 (Hearings concerning transfer and discharge rights.) The Subcommittee approved an amendment of Section 2(6) to: (1) delete new and existing language; and (2) provide that a hearing officer of the Cabinet shall: (a) review the Cabinet's determinations and findings on the basis of the facts of each case and of the requirements and penalties provided for by applicable sections of KRS Chapter 216; and (b) make a determination based on the factors specified above.

Emergency Medical Technicians

902 KAR 13:020 (Applicant's requirements; priority for training.) This administrative regulation was deferred at the January 1992, meeting of the Subcommittee, in order to develop standards for the determination of "good moral character". The Subcommittee approved a motion amending this administrative regulation to: (1) provide specific standards for the determination of "good moral character"; (2) specify which actions, criminal convictions and health problems shall be considered; and, (3) provide, as a general rule, that these elements shall directly relate to the duties of an EMT. Representative Bruce asked for an explanation of procedures for the removal of an EMT before an application may be denied. Agency personnel stated that the administrative regulation prescribing these procedures would be amended. Representative Bruce asked whether any license had been suspended or revoked, adding that it appeared licenses had been suspended or revoked for lack of good moral character, after an EMT had only been charged, but not convicted, of a crime.

Department for Social Insurance: Public Assistance

904 KAR 2:116 (Low income home energy assistance program.) The initial review stated that Section 4(2)(d), relating to heat system repairs, should have been placed in 903 KAR 6:020 because it governs Weatherization Program Staff and all aspects of the Weatherization program. Agency personnel agreed to amend 903 KAR 6:020 to transfer Section 4(2)(d) to it, and to amend this administrative regulation to delete the requirements of this section. Senator Huff asked whether the amendment to this administrative regulation permitted repairs of a heating unit. Agency personnel stated that such repairs had always been done by the Cabinet, and that this administrative regulation granted authority for the repairs to the Weatherization Program, because expertise and funds for such repairs existed in the Weatherization Program. This administrative regulation was amended to comply with the format requirements of KRS 13A.220.

Department for Social Services: Aging Services

905 KAR 8:090 (Personal care assistance services.) This administrative regulation was amended by adding statutory citation of KRS 205.920 in the STATUTORY AUTHORITY line and KRS 205.920 and 205.905 through 205.920 in the NECESSITY AND FUNCTION paragraph.

The Subcommittee determined that the following regulations complied with KRS Chapter 13A:

Transportation Cabinet: Department of Vehicle Regulation: Division of Motor Vehicle Licensing: Motor Vehicle Tax

601 KAR 9:135 (Apportioned registration.)

Department of Highways: Traffic

603 KAR 5:066 (Weight limits for trucks.)

603 KAR 5:070 (Motor vehicle dimension limits.)

University of Louisville: Board of Trustees

It was pointed out that these regulations were found deficient by the Interim Joint Committee on Education during the 1990-91 quadrennial review, and that these amendments are made to conform the regulations to the requirements of KRS Chapter 13A. It was further pointed out that these regulations are substantively identical to the regulations on the same subject matter that have been promulgated by other state universities.

740 KAR 1:010 (Acquisition and disbursement of funds, accounting system and reports.)

740 KAR 1:020 (Annual audit.)

740 KAR 1:030 (Purchasing; inventories; sales of surplus property; bidding procedures.)

740 KAR 1:040 (Disposal of property proceeds; title.)

740 KAR 1:050 (Management of capital construction projects.)

740 KAR 1:060 (Contracting for capital construction projects.)

740 KAR 1:080 (Affiliated corporations.)

740 KAR 1:090 (Fund for excellence.)

740 KAR 1:100 (Issuance of bonds.)

Public Protection and Regulation Cabinet: Public Service Commission: Utilities

807 KAR 5:006 (General rules.)

Kentucky State Racing Commission: Thoroughbred Racing

810 KAR 1:011 (Pari-mutuel wagering.)

Department of Housing, Buildings and Construction: Elevator Safety

815 KAR 4:010 (Elevators, dumbwaiters, escalators and moving walks standards.)

Kentucky Building Code

815 KAR 7:025 (Kentucky Building code.)

Cabinet for Human Resources: Department for Health Services: Maternal and Child Health

902 KAR 4:010 (Lay-midwifery.)

902 KAR 4:070 (Handicapped children's services.)

Health Services and Facilities

902 KAR 20:016 (Hospitals operation and services.)

Department for Social Insurance: Public Assistance

904 KAR 2:015 (Supplemental programs for the aged, blind, and disabled.)

Food Stamp Program

904 KAR 3:025 (Technical requirements.)

Department for Social Services: Aging Services

905 KAR 8:210 (Kentucky long-term care ombudsman program.)

Office of Inspector General

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

Department for Medicaid Services

907 KAR 1:140 (Alternative home and community based services for the mentally retarded (AIS/MR).)

907 KAR 1:150 (Payments for alternative home and community based services for the mentally retarded.)

Department for Mental Health and Mental Retardation: Substance Abuse

908 KAR 1:310 (Administrative procedures for DUI facilities and programs.)

The following regulations were deferred upon agreement by the promulgating agency and the Subcommittee:

Board of Registration for Professional Engineers and Land Surveyors

201 KAR 18:131 (Disciplinary and grievance hearing procedures.)

Natural Resources and Environmental Protection Cabinet: Department for Surface Mining Reclamation and Enforcement: Permits

405 KAR 8:010 (General provisions for permits.) This regulation was amended to reflect the appropriate dates of material incorporated by reference. Upon request by the Subcommittee, the agency agreed to defer the regulation, as amended at today's meeting, to the March 1992 meeting.

Public Protection and Regulation Cabinet: Public Service Commission: Utilities

807 KAR 5:066 (Water.)

The following regulations were withdrawn by the promulgating agency:

Crime Victims Compensation Board: Claims and Awards

107 KAR 1:025 (Attorneys fees prohibited.) At the request of the agency, this administrative regulation was withdrawn. It provided that attorneys fees would not be granted. A question had been raised concerning the authority of the Board to prohibit attorneys fees. KRS 346.040 grants the Board the authority to promulgate administrative regulations relating to the approval of attorneys fees. Whether authority to approve attorneys fees was also a grant of authority to prohibit attorneys fees is questionable.The Subcommittee approved a motion to request LRC to refer this administrative regulation to the appropriate Standing Committees for review and possible legislation to establish the exact authority granted to the Board.

107 KAR 1:050 (Prorating awards.) (Found deficient by Interim Joint Committee on State Government during Quadrennial Review) At the request of the agency, this administrative regulation was withdrawn. Chairman Kerr stated that, during the Quadrennial Review of administrative regulations, this administrative regulation had been found deficient because: (1) KRS 346.185(2) provides that 70% of claims shall be paid if there are insufficient funds for the Board to award full payment for all claims; (2) Contrary to KRS Chapter 346, this administrative regulation provided that, if there were insufficient funds to pay all claims, certain aspects of a claim would be paid at 100% while other aspect would be paid at 70%. Chairman Kerr informed agency personnel that this administrative regulation would expire upon the effective date for Acts enacted during the current session of the General Assembly (the expiration date for administrative regulations found deficient during quadrennial review - {KRS 13A.347(4)}).

Public Protection and Regulation Cabinet: State Racing Commission

810 KAR 1:023 (Health and Welfare Fund.) At the request of the Commission, this administrative regulation was withdrawn. Subcommittee staff informed the Subcommittee that: (1) a similar administrative regulation had been found deficient by the Subcommittee in 1987; (2) KRS 230.374 does not establish standards or criteria for the organization of the Fund, including its Board of Directors; (3) such criteria or standards are a matter that should be determined by the General Assembly; (4) the absence of standards and criteria in applicable statutes have resulted in controversy over the jurisdiction of the Fund between Fund personnel and the Commission, and in a law suit. Fund personnel stated that they had not been aware of the legislative history, or of prior Subcommittee actions on this administrative regulation. They stated they would prefer that the organization and the board of the Fund be established by its bylaws. Chairman Kerr stated that the issues should be resolved by the appropriate legislative subcommittees of the General Assembly. The Subcommittee approved a motion requesting LRC to refer the issues raised by this administrative regulation to the appropriate Standing Committees and that relevant material be transmitted.

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

OTHER BUSINESS:

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET

Underground Storage Tanks

(Various Administrative Regulations: 401 KAR 42:011-42:200; 415 KAR 1:010-1:040)

Questions had been raised regarding the administrative regulations governing underground storage tanks. Appearing for the Natural Resources and Environmental Cabinet were William C. Eddins and Greg Higdon. Samuel L. Perkins also appeared, at the request of the Subcommittee, to discuss issues raised by these administrative regulations.

Representative Bruce stated that while Kentucky strictly enforces standards without consideration of other factors such as actual risks, cost, and alternative methods for correction, other states consider these factors. Representative Bruce gave Subcommittee members an analysis of the approaches taken by other states. He introduced Mr. Perkins, and asked him to discuss the issues with the Subcommittee. Mr. Perkins stated that two issues needed to be addressed: (1) the clean up levels, and (2) abandoned tanks; that there are more than 33,700 underground storage tanks at over 12,000 facilities; that 88%, or about 29,000, of the tanks are in the highest risk category ready for replacement, and are single or double wall steel tanks, 21 to 25 years old. Mr. Perkins stated that the: (1) cost for remediating each tank would be between $25,000 and $50,000, or between $740 million to $1.4 billion; (2) the number of tanks and the cost are estimated figures, because the actual number of tanks is not known; and (3) if Kentucky applied some of the more liberal standards that are applied in surrounding states, the cost could be reduced. Mr. Perkins gave several examples to illustrate the problems arising because of the application of a strict standard rather than consideration of alternatives. He stated that Kentucky's background enforcement is one part per million, while in other states it may be 1 to 500 parts per million. Within existing Kentucky administrative regulations, Kentucky has incorporated procedures that would permit risk assessment factors or standards, if Kentucky so chooses. Another example was a 50 gallon diesel spill in an isolated area that had little or no impact on water, soil or human health. Kentucky requires that such a spill be cleaned up to 1 part per million, which would be appropriate for a clean up standard in an urban area in which the risk to human health and contamination was greater. Mr. Perkins stated that this illustrated the defect in Kentucky's enforcement: the application of a uniform standard to different situations without consideration of alternatives, or the breakdown of chemicals by natural organisms in the soil, and the actual effect on environment and human health.

Secretary Higdon stated that the Cabinet was aware of the magnitude of the problem. He added that existing administrative regulations authorized risk assessment, and that the Cabinet had begun a review of the issues raised by Representative Bruce. He added that the issue included all clean ups, not simply those related to underground storage tanks. Commissioner Eddins stated that EPA had waived petroleum contamination from hazardous waste and placed it in the category of solid waste. By statute and regulation, the Cabinet must grant a permit if the waste is not removed, or require that the waste be removed. He assured Subcommittee members that risk assessment will be applied. However, because federal regulation required it to be considered solid waste, he stated that the state's options were more restricted.

Representative Bruce stated that the application of strict standards will result in the closing down of a number of small businesses such as locally owned service stations. He added that alternative requirements would protect the environment without resulting in unnecessary harm; and, that such alternatives could lessen the need for legislation during the current General Assembly to correct the problem. Senator McCuiston asked for an explanation of the damage to the environment and health that the various parts per million requirements would cause. Cabinet personnel responded that this would depend upon the type of soil and the location in which the contamination occurred. Cabinet personnel explained that certain chemicals would more easily contaminate, and would have more adverse effect on the health of the very young.

Mr. Perkins stated that the danger varied with the environmental situation: for example, contamination of aquifers, drinking water sources, and that the long-term impact on certain soil conditions would be less.

Cabinet personnel stated that these factors are taken into consideration. Representative Bruce asked why Kentucky had to apply the strictest standards rather than the standards applied by surrounding states. Secretary Higdon stated that the General Assembly had created a fund to provide some insurance for ongoing operations. However, the time periods established with regard to this fund have precluded some people from benefiting from it. He suggested that the General Assembly consider increasing funding in order to expand the opportunity for those affected to participate in the fund. He added that the Cabinet would review the requirements and the use of risk assessment. Secretary Higdon stated that the Cabinet would prefer flexibility rather than the establishment of rigid standards. He felt that existing administrative regulations permitted the Cabinet to apply suggested alternative approaches, and that additional legislation was not required.

The Subcommittee adjourned at 3 p.m. until March 2, 1992 at 1 p.m. in Room 125 of the Capitol Annex.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

SENATE COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES HOUSE COMMITTEE ON NATURAL RESOURCES AND ENVIRONMENT
Meeting of January 27, 1992

The Senate Committee on Agriculture and Natural Resources and the House Committee on Natural Resources and Environment met jointly January 27, 1992, and submits this report:

The committee determined that Division of Disaster and Emergency Services administrative regulations 106 KAR 1:081, 106 KAR 1:091, 106 KAR 1:101, 106 KAR 1:111, 106 KAR 1:121, and 106 KAR 1:131 comply with KRS Chapter 13A.

The committee withdrew its previous objection and determined that Division of Water administrative regulation 401 KAR 5:031 complies with KRS Chapter 13A.

The committee deferred administrative regulations 405 KAR 8:030, 405 KAR 8:040, 405 KAR 16:180, and 405 KAR 18:180 upon the request of the Department for Surface Mining Reclamation and Enforcement.

The meeting adjourned January 27, 1992, at 2:50 p.m.

SENATE STANDING COMMITTEE ON BUSINESS ORGANIZATIONS AND PROFESSIONS
Meeting of January 29, 1992

The Senate Committee on Business Organizations and Professions met on Wednesday, January 29, 1992, and considered administrative regulations referred by LRC.

The committee approved the following administrative regulation:

201 KAR 10:080 - Bd. of Exam. & Reg. of Landscape Architects.

The committee deferred the following administrative regulations until the next regularly scheduled meeting:

201 KAR 2:010 - Ky. Board of Pharmacy.
810 KAR 1:001 - Ky. State Racing Commission.
810 KAR 1:004 - Ky. State Racing Commission.
810 KAR 1:005 - Ky. State Racing Commission.
810 KAR 1:007 - Ky. State Racing Commission.
810 KAR 1:008 - Ky. State Racing Commission.
810 KAR 1:009 - Ky. State Racing Commission.
810 KAR 1:010 - Ky. State Racing Commission.
810 KAR 1:012 - Ky. State Racing Commission.
810 KAR 1:014 - Ky. State Racing Commission.
810 KAR 1:015 - Ky. State Racing Commission.
810 KAR 1:016 - Ky. State Racing Commission.
810 KAR 1:017 - Ky. State Racing Commission.
810 KAR 1:018 - Ky. State Racing Commission.
810 KAR 1:021 - Ky. State Racing Commission.
810 KAR 1:050 - Ky. State Racing Commission.
810 KAR 1:002 - Ky. State Racing Commission.
810 KAR 1:003 - Ky. State Racing Commission.
810 KAR 1:006 - Ky. State Racing Commission.
810 KAR 1:013 - Ky. State Racing Commission.
810 KAR 1:019 - Ky. State Racing Commission.
810 KAR 1:020 - Ky. State Racing Commission.

The Committee adjourned at 10:15 a.m.

SENATE STATE GOVERNMENT COMMITTEE
Meeting of February 6, 1992

The Senate State Government Committee met on February 6, 1992. The Committee reviewed the following regulation of the Registry of Election Finance and found it no longer deficient:

801 KAR 2:010. Processing complaints; hearings.

SENATE COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES HOUSE COMMITTEE ON NATURAL RESOURCES AND ENVIRONMENT
Meeting of February 10, 1992

The Senate Committee on Agriculture and Natural Resources and the House Committee on Natural Resources and Environment met jointly February 10, 1992, and submits this report:

The committee determined that Department of Agriculture administrative regulation 302 KAR 20:230 complies with KRS Chapter 13A.

The committee deferred administrative regulations 405 KAR 8:030, 405 KAR 8:040, 405 KAR 16:180, and 405 KAR 18:180 upon the request of the Department for Surface Mining Reclamation and Enforcement.

The meeting adjourned February 10, 1992, at 3:00 p.m.

CUMULATIVE SUPPLEMENT

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LOCATOR INDEX - EFFECTIVE DATES

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

VOLUME 17

Emergency Regulation	17 Ky.R Page No.	Effective Date
200 KAR 17:030E	3085	4-15-91
Replaced		8-22-91
200 KAR 17:040E	3088	4-15-91
Replaced		8-22-91
200 KAR 17:050E	3090	4-15-91
Replaced		8-22-91
415 KAR 1:010E	3356	4-25-91
Replaced		9-25-91
415 KAR 1:020E	3357	4-25-91
Replaced		9-25-91
415 KAR 1:030E	3358	4-25-91
Replaced		9-25-91
900 KAR 4:010E	3360	4-16-91
Replaced		10-6-91
902 KAR 20:290E	3363	5-7-91
Replaced	3538	8-21-91

Regulation	17 Ky.R Page No.	Effective Date
201 KAR 16:010		
Amended	3494	
Withdrawn		11-27-91
415 KAR 1:010	3592	(See 18 Ky.R.)
415 KAR 1:020	3594	(See 18 Ky.R.)
415 KAR 1:030	3597	(See 18 Ky.R.)
601 KAR 1:190	3600	(See 18 Ky.R.)
704 KAR 3:035		
Amended	3254	(See 18 Ky.R.)
780 KAR 2:130		
Amended	3260	(See 18 Ky.R.)
805 KAR 4:085		
Amended	3270	(See 18 Ky.R.)
805 KAR 4:100		
Amended	3272	(See 18 Ky.R.)
805 KAR 4:110		
Amended	3274	(See 18 Ky.R.)
807 KAR 5:014	3072	
Withdrawn		9-13-91
900 KAR 4:010	3342	(See 18 Ky.R.)
902 KAR 10:030		
Amended	3048	(See 18 Ky.R.)
902 KAR 20:290		
Amended	3538	8-21-91
902 KAR 55:075	3606	(See 18 Ky.R.)
905 KAR 1:180		
Amended	3558	8-22-91
905 KAR 1:320	3608	(See 18 Ky.R.)
905 KAR 1:330	3612	8-22-91
905 KAR 5:060	3075	
Amended	3470	(See 18 Ky.R.)
905 KAR 5:070	3618	8-22-91

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Emergency Regulation	18 Ky.R Page No.	Effective Date
101 KAR 1:325E	256	6-21-91
Replaced	82	9-6-91
101 KAR 2:035E	4	6-14-91
Died		10-7-91
105 KAR 1:215E	979	8-21-91
Replaced	1326	11-8-91
109 KAR 13:010E	1288	10-4-91
Replaced	2199	1-10-92
200 KAR 5:330E	980	8-30-91
Replaced	1894	1-10-92
201 KAR 18:131E	2768	1-21-92
301 KAR 1:085E	2520	1-3-92
301 KAR 2:044E	619	8-9-91
Replaced	1329	10-22-91
301 KAR 2:220E	1288	10-15-91
Replaced	1381	12-17-91
405 KAR 7:001E	2108	11-27-91
405 KAR 7:021E	2112	11-27-91
405 KAR 8:001E	2112	11-27-91
405 KAR 8:010E	1798	11-1-91
405 KAR 10:001E	2119	11-27-91
405 KAR 12:001E	2122	11-27-91
405 KAR 16:001E	2124	11-27-91
405 KAR 18:001E	2130	11-27-91
405 KAR 20:001E	2136	11-27-91
405 KAR 24:001E	2140	11-27-91
415 KAR 1:040E	7	6-13-91
Replaced	715	9-25-91
500 KAR 8:010E	9	5-31-91
Withdrawn		7-1-91
Resubmitted	257	7-1-91
Replaced	1333	11-8-91
500 KAR 8:020E	258	7-1-91
Replaced	1334	11-8-91
500 KAR 8:030E	259	7-1-91
Replaced	1132	11-8-91
501 KAR 6:020E	983	8-21-91
Replaced	795	11-8-91
Resubmitted	1813	11-13-91
Replaced	1927	2-7-92
501 KAR 6:150E	1814	10-16-91
601 KAR 1:190E	2770	2-11-92
601 KAR 12:060E	621	7-26-91
Replaced	1007	10-1-91
601 KAR 40:020E	2770	2-4-92
701 KAR 5:050E	2772	1-21-92
701 KAR 5:090E	10	5-29-91
Replaced	217	9-6-91

Emergency Regulation	18 Ky.R Page No.	Effective Date
702 KAR 1:001E	259	7-11-91
Replaced	569	10-6-91
702 KAR 3:220E	1293	9-18-91
Replaced	476	11-8-91
704 KAR 3:006E	260	7-11-91
Replaced	1340	11-8-91
704 KAR 20:580E	263	6-17-91
Replaced	75	8-2-91
806 KAR 17:066E	2144	12-6-91
900 KAR 2:050E	1816	10-16-91
900 KAR 2:060E	1818	10-16-91
902 KAR 20:006E	985	8-22-91
Replaced	1347	1-10-92
902 KAR 22:010E	2185	12-9-91
902 KAR 22:030E	2186	12-9-91
903 KAR 5:270E	265	6-17-91
Replaced	608	9-6-91
904 KAR 2:006E	622	7-19-91
Replaced	1047	10-6-91
904 KAR 2:015E	1294	9-24-91
Replaced	881	10-16-91
Resubmitted	2188	12-4-91
904 KAR 2:016E	1298	9-24-91
Replaced	1245	11-25-91
904 KAR 2:110E	1308	9-24-91
Replaced	1595	1-10-92
904 KAR 2:116E	2192	11-21-91
904 KAR 2:360E	1310	9-24-91
Replaced	1891	11-25-91
904 KAR 3:010E	1819	11-7-91
Replaced	2043	2-7-92
904 KAR 3:020E	11	6-5-91
Replaced	202	8-21-91
904 KAR 3:025E	15	6-5-91
Replaced	246	8-21-91
904 KAR 3:035E	1822	11-7-91
Replaced	2047	2-7-92
905 KAR 2:080E	1313	10-8-91
Replaced	1734	1-10-92
905 KAR 8:150E	628	7-23-91
Replaced	593	10-6-91
907 KAR 1:004E	629	7-23-91
Replaced	507	10-6-91
907 KAR 1:010E	265	7-1-91
Replaced	519	10-6-91
907 KAR 1:011E	640	7-23-91
Replaced	520	10-6-91
907 KAR 1:012E	645	7-24-91
Replaced	525	10-6-91
907 KAR 1:013E	646	7-24-91
Replaced	911	10-16-91
907 KAR 1:021E	267	7-1-91
Replaced	594	10-6-91
907 KAR 1:022E	650	7-19-91
Replaced	526	10-16-91
907 KAR 1:025E	654	7-19-91
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907 KAR 1:027E	268	7-1-91
Replaced	538	10-6-91
907 KAR 1:040E	269	7-1-91
Replaced	541	10-6-91
907 KAR 1:044E	661	7-29-91
Replaced	915	10-16-91
907 KAR 1:045E	662	7-29-91
Replaced	916	10-16-91
907 KAR 1:140E	1826	11-7-91
907 KAR 1:150E	1828	11-7-91
907 KAR 1:340E	664	7-23-91
Replaced	547	10-6-91
907 KAR 1:480E	270	7-1-91
Replaced	595	10-6-91
907 KAR 1:485E	271	7-1-91
Replaced	596	10-6-91
907 KAR 1:490E	271	7-1-91
Replaced	598	10-6-91
907 KAR 1:495E	272	7-1-91
Replaced	599	10-6-91
907 KAR 1:505E	665	7-23-91
Replaced	600	10-6-91
907 KAR 1:510E	666	7-23-91
Replaced	601	10-6-91
907 KAR 1:515E	666	7-23-91
Replaced	1053	10-6-91
907 KAR 1:520E	667	7-23-91
Replaced	603	10-6-91
907 KAR 1:525E	668	7-23-91
Replaced	1054	10-6-91
907 KAR 1:530E	669	7-23-91
Replaced	606	10-6-91
907 KAR 1:535E	670	7-29-91
Replaced	966	10-16-91
907 KAR 1:540E	1318	9-24-91
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908 KAR 1:300E	1830	10-16-91
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908 KAR 1:310E	1831	10-22-91

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11 KAR 12:001	2069	2-7-92
30 KAR 1:040		
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30 KAR 1:050		
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31 KAR 4:070	555	
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45 KAR 1:020		
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45 KAR 1:030	1692	
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45 KAR 1:040	1693	
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45 KAR 1:050	1695	
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101 KAR 1:325		
Amended	82	9-6-91
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105 KAR 1:070		
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105 KAR 1:220	936	11-8-91
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105 KAR 1:240	940	11-8-91
106 KAR 1:080		
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106 KAR 1:081	1697	
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106 KAR 1:090		
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106 KAR 1:091	1712	
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106 KAR 1:100		
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106 KAR 1:101	1717	1-27-92
106 KAR 1:111	1719	1-27-92
106 KAR 1:120		
Amended	73	
Withdrawn		8-27-91
106 KAR 1:121	1720	
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106 KAR 1:131	1721	
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107 KAR 1:025		
Amended	1910	
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107 KAR 1:050		
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108 KAR 1:030	2070	
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109 KAR 10:010		
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109 KAR 11:010		
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109 KAR 11:020		
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109 KAR 11:030		
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109 KAR 12:010		
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109 KAR 12:020		
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109 KAR 12:030		
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109 KAR 12:040		
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109 KAR 12:050		
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109 KAR 13:010	1723	
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200 KAR 3:010		
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200 KAR 5:050		
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200 KAR 5:075		
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200 KAR 5:076	1724	1-10-92
200 KAR 5:301		
Amended	1354	1-10-92
200 KAR 5:300		
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Repealed	1725	1-10-92
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200 KAR 5:307		
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Repealed	1725	1-10-92
200 KAR 5:315		
Amended	1367	1-10-92
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200 KAR 6:010		
Repealed	1725	1-10-92
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200 KAR 12:020		
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200 KAR 17:020		
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201 KAR 2:061	2449	
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201 KAR 2:105		
Amended	2348	
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201 KAR 2:167	2734	
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201 KAR 9:031		
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201 KAR 9:175		
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201 KAR 18:131	2450	
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201 KAR 30:100	940	11-22-91
201 KAR 30:110	945	11-22-91
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301 KAR 1:015		
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301 KAR 1:085		
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301 KAR 1:200		
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301 KAR 2:044		
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301 KAR 2:047		
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Amended	1161	11-26-91
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301 KAR 2:190		
Repealed	1331	10-22-91
301 KAR 2:195	948	
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301 KAR 2:220		
Amended	1381	12-17-92
301 KAR 2:250		
Amended	2597	
301 KAR 3:021		
Amended	90	8-28-91
301 KAR 3:080		
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301 KAR 10:010	212	
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306 KAR 1:030		
Amended	2877	
306 KAR 1:040		
Amended	2878	
306 KAR 1:050		
Amended	2879	
306 KAR 1:060		
Amended	2879	
306 KAR 1:070		
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306 KAR 1:090		
Amended	2881	
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401 KAR 5:031		
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401 KAR 8:020		
Amended	1170	
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Amended	1175	
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401 KAR 8:150		
Amended	1180	
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401 KAR 8:200		
Amended	1186	
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401 KAR 31:010		
Amended	92	9-25-91
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Amended	103	9-25-91
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401 KAR 31:060		
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401 KAR 32:010		
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401 KAR 32:100		
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401 KAR 37:100		
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401 KAR 48:050		
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401 KAR 50:012		
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401 KAR 50:046	952	
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401 KAR 50:047	2734	
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Died*		10-15-91
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Amended	2616	
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401 KAR 59:225		
Amended	767	
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Amended	2632	
401 KAR 59:230		
Amended	771	
Died*		10-15-91
Amended	2635	
401 KAR 59:240		
Amended	774	
Died*		10-15-91
Amended	2638	
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Amended	787	
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Amended	2686	
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405 KAR 7:015		
Amended	341	12-17-91
405 KAR 7:020		
Amended	343	
Amended	1060	
Repealed	2112	11-27-91
405 KAR 7:021	2458	
405 KAR 7:030		
Amended	353	11-26-91
405 KAR 7:035	560	
Amended	1069	
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405 KAR 7:080		
Amended	356	
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405 KAR 8:001	2460	
Amended	2837	
405 KAR 8:010		
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405 KAR 8:020		
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405 KAR 8:040		
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405 KAR 10:001	2468	
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405 KAR 10:050		
Amended	409	
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405 KAR 16:190		
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405 KAR 16:200		
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405 KAR 16:210		
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405 KAR 18:001	2482	
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405 KAR 18:180		
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405 KAR 18:190		
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405 KAR 18:200		
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405 KAR 18:220		
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405 KAR 20:001	2490	
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405 KAR 20:010		
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415 KAR 1:010		
Amended	311	9-25-91
415 KAR 1:020		
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415 KAR 1:030		
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500 KAR 8:010		
Amended	148	
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Amended	1131	
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500 KAR 8:030	565	
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501 KAR 6:020		
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501 KAR 6:030		
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Amended	459	10-6-91
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Amended	2885	
501 KAR 6:130		
Amended	798	11-8-91
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Amended	2354	
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601 KAR 1:030		
Amended	2355	
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